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Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism

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ARTICLE

Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism

SHERYLL D. CASHIN*

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INTRODUCTION

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; . . . and the smaller the compass within which they are placed, the more easily will they concert and

execute their plans of oppression.¹

What is required is a search for some improvement in the ways we accommodate the varied interests of those whose lives are affected by organized social life.²

James Madison predicted that majority factions in smaller units of government would dominate and oppress minority groups in the absence of an external check provided by a national government. The political science literature offers some empirical evidence to support Madison's intuition.³ In a previous work, this article's author marshaled some of this evidence to argue that voters at the state level appear to behave more self-interestedly as decisionmaking authority is brought closer to them, creating a risk of majoritarian voter tyranny for welfare recipients.⁴

In America's metropolitan regions, however, the fragmentation of the polity into scores, if not hundreds, of separate political jurisdictions has created a different dynamic of oppression by powerful factions. Consistent with Madison's intuitions, political majorities in individual suburban jurisdictions frequently exercise delegated local powers in ways that exclude undesirable entrants.⁵ But this form of majoritarian dominance affects marginalized groups that live *outside* the individual community doing the excluding. Less well-known and examined in the legal literature is a phenomenon that will be referred to in this article as "the tyranny of the favored quarter." In most American metropolitan regions there are high-growth, developing suburbs that typically represent about a quarter of the entire regional population but that also tend to capture the largest share of the region's public infrastructure investments and job growth.⁶ Yet, through retention of local powers, the favored quarter is able to avoid taking on any of the region's social service burdens. Marginalized populations, particularly the minority poor who are relegated to poverty-ridden, central city neighborhoods, are largely excluded from participating in the favored quarter's economic prosperity. And the majority of the metropolitan population—citizens who live in central cities and older suburbs—often subsidize and are negatively impacted by the growth of the favored quarter.

1. THE FEDERALIST NO. 10 (James Madison).

2. Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1151 (1980).

3. See generally Sheryll D. Cashin, *Federalism, Welfare Reform and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 583-97 (1999) (citing empirical evidence demonstrating that middle class suburban voters tend to have decisive influence on state budget allocations, that they strongly resist redistributive spending for the poor, and that negative racial stereotypes play a dominant role in shaping white voters' attitudes toward welfare recipients).

4. See generally *id.*

5. An oft-cited example of this phenomenon is the practice of exclusionary zoning whereby suburban jurisdictions zone for high-end residential and commercial uses in order to, *inter alia*, meet the rational economic goal of maximizing the property tax base while minimizing demands for public services. See *infra* notes 27-31 and accompanying text.

6. See *infra* text accompanying notes 99-138.

Viewed from a regional perspective, this dominance of the favored quarter is decidedly antimajoritarian. But the fact of fragmented metropolitan governance, coupled with society's strong cultural preference for local powers, may be blinding us to these realities. In particular, the degree of influence and subsidization of the favored quarter is completely hidden from public view. This invisibility of the favored quarter's systematic advantage occurs in part because fragmented governance reduces the ability of citizens to learn what is going on regionally. But more specifically, it occurs because information about the geographic allocation of public investments is not systematically collected or disclosed to the public.⁷ In at least one instance, when accessible geographically coded data about the location of public investments were widely disseminated, it catalyzed the formation of a broad regional coalition for successful legislative change.⁸

This article argues that our nation's ideological commitment to decentralized local governance has helped to create the phenomenon of the favored quarter. Localism, or the ideological commitment to local governance, has helped to produce fragmented metropolitan regions stratified by race and income. This fragmentation produces a collective action problem or regional prisoner's dilemma that is well-known in the local governance literature.⁹ More importantly, as argued below, metropolitan fragmentation produces a collective action problem that benefits *only* an affluent minority of the metropolitan population. The legal literature on "Our Localism" has struggled to offer paradigms to redress the inequities that result from individual governments exercising local powers in self-maximizing ways.¹⁰ Policy advocates also have responded to this prob-

7. See *infra* notes 189-91 and accompanying text.

8. See *infra* notes 189-91, 263-72 and accompanying text (discussing the metropolitan-wide coalition formed in the Twin Cities area and resulting regional reforms enacted by the Minnesota legislature).

9. The classic collective action problem occurs when the interest of each individual is too small relative to the costs of participation to justify his or her participation, so there is no incentive to take individual action. The collective interest of all the individuals combined may be very great, but because they are separated from each other, they either do not see the benefits of organizing or are unable to organize. Therefore, those individuals who see a significant benefit for themselves in taking action will be able to dominate the public debate. See Denis J. Brion, *An Essay on LULU, NIMBY, and the Problem of Distributive Justice*, 15 B.C. ENVTL. AFF. L. REV. 437, 444-45 (1988). This collective action problem can grow until it becomes a "tragedy of the commons," in which individuals exploit common areas for their own benefit, since each person suffers only a proportional fragment of the repercussions of damaging the common area. This effect ultimately leads to destruction of the common area, since the combined exploitation of all the individuals sharing the commons is too much for the commons to bear. See Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1245 (1968).

10. See, e.g., Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996) [hereinafter Briffault, *Local Government Boundary Problem*] (acknowledging that hands-on political participation is more likely to occur in small polities than in large ones, but concluding that regional governance offers a more promising way to achieve fairness); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 426-27 (1990) [hereinafter Briffault, *Localism II*] (arguing that political and economic theories have been unsuccessful in developing solutions to problems of locality size and cost internalization); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843 (1994)

lem of metropolitan fragmentation by calling for "New Regionalist" solutions that require either metropolitan-wide cooperation or governance that transcends fragmented political borders.¹¹ And there is much debate about whether regional solutions should be mandated by higher-level government or facilitated through voluntary, negotiated agreements.¹² Richard Briffault accurately notes that externally mandated solutions are more likely to reduce regional disparities but that they have the least political viability.¹³ Further, he notes that solutions that depend on voluntary participation by individual jurisdictions, while more viable politically, are not likely to have any effect.¹⁴ But beyond this incisive observation, the academic literature on local governance does not address squarely the politics surrounding metropolitan fragmentation.¹⁵ Thus, an empirical examina-

(arguing that regional administration makes it difficult for politically engaged communities to form and alienates citizens from decisionmaking process, and that having many small communities nourishes cultural differences); Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 273-79 (1993) (arguing that citizens feel strongest pull toward participation in their immediate neighborhoods); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607 (1997) (arguing that small communities foster citizen participation, efficiency, government responsiveness to citizen needs, and sense of community).

According to Briffault, "Our Localism," much like "Our Federalism," reflects an ideological preference for decentralizing power to lower levels of government. See Richard Briffault, *Our Localism, Part I: The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 2 n.1 (1990) [hereinafter Briffault, *Localism I*]; see also *id.* at 113 ("Local autonomy is to a considerable extent the result of and reinforced by a systemic belief in the social and political value of local decision making."). The term "localism" will be used in this article as shorthand for the ideological preference for local decisionmaking.

11. See, e.g., ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* (1994) [hereinafter DOWNS, *NEW VISIONS*] (advocating metropolitan-wide cooperation); MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 11-12 (1997) [hereinafter ORFIELD, *METROPOLITICS*] (advocating, *inter alia*, regional fair share affordable housing, property tax base sharing, land use planning and growth management, public works and transportation reform, and elected metropolitan coordinating structure); NEAL R. PEIRCE, *CITISTATES* (1993) (arguing for regional approaches to economic development, environmental concerns, transportation, and other issues); DAVID RUSK, *CITIES WITHOUT SUBURBS* (1993) [hereinafter RUSK, *CITIES WITHOUT SUBURBS*] (advocating annexation and regional governance); DAVID RUSK, *INSIDE GAME / OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA* 147, 327-33 (1999) [hereinafter RUSK, *INSIDE GAME / OUTSIDE GAME*] (advocating regional land use planning, tax base sharing, and "social housing"); Anthony Downs, *Ecosystem: Suburban, Inner-City*, J. PROP. MGMT., Nov.-Dec. 1997, at 60 (advocating regional governance and taxbase sharing); Jeremy Nowak, *Neighborhood Initiative and the Regional Economy*, 11 ECON. DEV. Q. 3 (1997) (advocating regionalist approaches to inner-city community development).

This article uses the term "New Regionalism" to refer to this current wave of regionalist proposals and efforts. Unlike the regionalist proposals of earlier decades, the current movement focuses primarily on achieving regional cooperation and limited-purpose regional governance, rather than on creating regional governments that supplant fragmented local governments. See generally JOHN J. HARRIGAN, *POLITICAL CHANGE IN THE METROPOLIS* 342-65 (1993) (recounting movement for metropolitan-wide government from 1950s to 1970s and analyzing its marked lack of success).

12. See, e.g., Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1152-54; Ford, *supra* note 10, at 1908-09; Frug, *supra* note 10, at 295.

13. See Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1156.

14. See *id.*

15. Richard Briffault has vigorously challenged the normative account for localism in light of existing social and wealth inequities. See Briffault, *Localism II*, *supra* note 10, at 420. Also, Gerald Frug lays bare the federal and state *policy* choices that have led to metropolitan fragmentation and its

tion of metropolitan politics will be useful, if not required, in order to understand the full implications of existing local governance arrangements and to develop meaningful new paradigms that have transformative potential.

In particular, the theoretical justifications for local governance should be tested against the empirical reality of the favored quarter. The collective action problem wrought by fragmented local governance creates a system in which the "free riders" are the most privileged people in our society. A system that enables a privileged minority to garner a majority of scarce public resources for development while exporting much of the cost of its high-end development to other communities calls into question the normative justifications for localism.¹⁶ This article will analyze the political and other forces that enable the tyranny of the favored quarter. Permissive state laws reflecting a popular bias toward local authority have contributed to the proliferation of new, homogeneous local polities, particularly in outer-ring developing suburbs. In turn, the balkanization of the metropolitan population into separate jurisdictions, increasingly stratified by income and usually stratified by race, has changed the nature of political discourse at the local, state, and national level.

This article argues that the favored quarter is able to free ride more effectively in a fragmented political environment because: (1) fragmentation entrenches a narrow perception of self-interest that makes it difficult for an atomized polity to form alliances in the collective regional interest; and (2) fragmentation reifies and enhances the power of affluent communities, both hastening and masking their dominance in the competition for public investments.

Part I briefly surveys the legal literature on localism, identifying the normative debate about appropriate forms of governance that has preoccupied this scholarship and underscoring why an empirical account of metropolitan politics and the favored quarter will enlighten this debate. Part II develops the thesis that decentralized power or, rather, the ideology of localism, has created a new political environment that renders collective solutions particularly difficult and reinforces the dominance of the favored quarter. It offers empirical and anecdotal evidence of the "tyranny of the favored quarter," relying in particular on evidence drawn from political science, economics, and metropolitan policy literature. Part III examines the few examples of meaningful regionalism in America and analyzes the political contexts that permitted such arrangements. This part supports Briffault's intuition that only strong external levers or mandates are likely to be effective in addressing regional problems, given the invitation to self-interest wrought by existing localist regimes. Part III summarizes the chief political constraints to regionalism and speculates on the types of proposals that might overcome these constraints while also effectively address-

resulting inequalities. See Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1068-73 (1996).

16. See *infra* text accompanying notes 61-97.

ing problems of regional inequity. It then argues that the normative values which are offered in support of local government, including citizen participation and efficiency, are not well served by the localist paradigm. Instead, Part III argues that these values are best vindicated in a regionalist model in which local governments exist but administer a smaller domain of local powers and in which grassroots processes are used to build support for powerful regional governance structures. Part III acknowledges, however, that regionalist proposals will necessarily have dissenters—most likely citizens living in the favored quarter. And if participatory political processes work correctly, those dissenters will necessarily have regionalist solutions imposed upon them by a regional majority. Even so, Part III explains, localist ideals do not justify conferring absolute veto power on any individual jurisdiction that objects to a regionalist solution. It concludes that if this is a defining characteristic of localist ideology, then it should give way to other, more compelling values—like equity and fairness.

I. THE LOCALISM DEBATE

Part A of this section presents a brief overview of the racial and economic stratification and political fragmentation that has accompanied suburban development over the past five decades and the legal and social forces that fueled this phenomenon. Part B then presents an overview of the normative debates in the localism literature that this metropolitan fragmentation has precipitated. Finally, Part C examines the three normative justifications for localism and identifies logical weaknesses with these normative arguments.

A. THE FRAGMENTED METROPOLIS

The literature on localism responds in part to the empirical reality of a fragmented metropolis. In a seminal work, Charles Tiebout predicted that mobile citizens would sort themselves among multiple, competing local jurisdictions by seeking their preferred mix of taxes and services.¹⁷ His prediction has proved accurate in the sense that a sorting of the polity has occurred. One need only examine the demographic and spatial transformation of metropolitan regions between 1950 and 1990 to observe this phenomenon. In 1950, almost seventy percent of the population in America's metropolitan areas lived in central cities.¹⁸ As a consequence, at least outside the segregated South, city residents used and competed for the same public institutions—city schools, parks, transportation, and city hall. Common public institutions were a unifying

17. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) (arguing that a citizen, as "consumer-voter," chooses to locate in that community which best satisfies his or her pattern of preferences for public goods).

18. See RUSK, *CITIES WITHOUT SUBURBS*, *supra* note 11, at 5. "According to the U.S. Census Bureau, a 'metropolitan area' . . . is 'a geographic area consisting of a large population nucleus together with adjacent communities which have a high degree of economic and social integration with that nucleus.' In short, a metro area is a city and its suburbs." *Id.* at 6.

force for a heterogeneous urban polity.¹⁹ By 1990, however, over sixty percent of the population in America's metropolitan areas lived in suburbs and a majority of the jobs in metropolitan areas were also located in suburbs.²⁰

Consistent with the Tieboutian, public choice model, this suburbanization was marked by the creation of multiple local jurisdictions tailored to a range of citizen tastes.²¹ In 1942, there were approximately 24,500 municipalities and special districts in the United States.²² By 1992, that number had more than doubled, to 50,834.²³ As a result, "the typical metropolitan area had 113 local governments, including forty-seven general purpose governments, such as a . . . municipality."²⁴ In the New York metropolitan area alone there are over 2000 separate governmental units.²⁵ The central city of Detroit, Michigan is surrounded by no less than 338 suburban governments and 116 suburban school districts.²⁶ The reasons for the formation of these new governments also accord to some degree with Tiebout's sorting-out thesis. According to Paul Kantor, "[S]uburban development has been marked by small communities dashing to secure incorporation in order to achieve control over their fiscal and social destinies."²⁷ As Kantor explained:

Because state law in the twentieth century was altered to allow relatively easy incorporation in order to prevent further annexation by central cities of suburban areas, families and businesses moving to suburbia almost universally sought municipal incorporation in order to control the development of their communities. Incorporation cut the locality free of county control, where matters of land use might otherwise be subject to competing political interests from outside the locality Other state laws also encouraged local governmental incorporation, even by very small jurisdictions. State enabling laws were enacted to permit the creation of special districts for very expensive services, such as sewage treatment, schools, [and other services] that might be well beyond the fiscal capacity of many smaller localities to supply by themselves.

Most important, the practice of state governments to rely on the local property tax, rather than state assistance programs, to provide most of the funding for

19. *See id.* at 5.

20. *See id.*

21. *See* Tiebout, *supra* note 17, at 418 (positing that citizens act as "consumer-voters," choosing to move to local jurisdictions whose mix of services and taxes meet their needs).

22. *See* NANCY BURNS, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS* 6 (1994) (citing U.S. DEP'T OF COMMERCE, *1 1987 CENSUS OF GOVERNMENTS* xvi (1989)).

23. *See* U.S. DEP'T OF COMMERCE, *1 1992 CENSUS OF GOVERNMENTS* v (1994) (by 1992, the number of municipalities (19,279) and special districts (31,555) in the United States totaled 50,834).

24. Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1120 (citing Donald N. Rothblatt, *Summary and Conclusions*, in *METROPOLITAN GOVERNANCE* (Donald N. Rothblatt & Andrew Sancton eds., 1993)).

25. *See* PAUL KANTOR, *THE DEPENDENT CITY REVISITED: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT AND SOCIAL POLICY* 164 (1995).

26. *See* RUSK, *CITIES WITHOUT SUBURBS*, *supra* note 11, at 34-35.

27. KANTOR, *supra* note 25, at 164.

local governmental services made it essential for localities to incorporate in order to control their tax burdens Since property tax yields depend mainly on the value of development within a jurisdiction and school costs are related to the density of residential settlement, the economic pressures to limit population while controlling development to pay the bills are overwhelming.²⁸

The decentered nature of American governance, therefore, has given birth to a systematic practice of exclusion.²⁹ By delegating “nearly complete authority to control land use to the lowest incorporated governmental units,”³⁰ state governments have created a social, fiscal, and political environment in which suburban jurisdictions are rationally motivated to use highly exclusionary zoning and developmental policies, and homogeneous localities can give effect to their worst biases.³¹ For example, in at least one study of the forces driving incorporation of new governments from the 1950s through the 1980s, a researcher found that, while the desire for better services and lower taxes had some influence in the 1950s and 1960s, the desire for racial exclusion was much more influential in those two decades.³²

In addition to systematic practices of exclusion, one researcher has demonstrated that political boundaries facilitate a recruitment and selection process that also contributes to economic and racial stratification.³³ In short, political

28. *Id.* For a prize-winning history of the development of American suburbs and the public policies and social forces fueling the phenomenon, see KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985). For a detailed and persuasive account of the local government laws that have contributed to the development and rising power of suburbs, particularly affluent suburbs, see Briffault, *Localism I*, *supra* note 10, at 18-85, and Briffault, *Localism II*, *supra* note 10, at 356-82.

29. *See generally* MICHAEL N. DANIELSON, *THE POLITICS OF EXCLUSION* (1976); Briffault, *Localism I*, *supra* note 10, at 41, 57 (detailing the practice of exclusion in many metropolitan areas).

30. KANTOR, *supra* note 25, at 163.

31. *See* JACKSON, *supra* note 28, at 241 (describing “economic and racial homogeneity” as “perhaps [the] most important characteristic of the postwar suburb”). The economic motivation for exclusion stems from the tremendous horizontal competition that exists between municipalities throughout the United States. *See* KANTOR, *supra* note 25, at 164. With the structural transformation of the U.S. economy from an industrial to a service base, fueled by changes in technology, multinational corporations now have the option of locating business functions in central cities, suburbs, rural locations or overseas. *See generally id.* at 7-9, 90-99. All local jurisdictions, therefore, are in a pitched battle with each other to enhance their “market position as a ‘desirable’ enclave of low taxes, fine residential amenities, and attractive public services” that “can only be secured by making deliberate efforts to exclude a broad range of residential and industrial developments.” *Id.* at 164. The racially neutral tools used by localities to exclude undesirables include large lot zoning, minimum building size regulations, building code prohibitions, land conservation for nonresidential purposes, and nonparticipation in federal subsidized housing programs. *See id.* at 166-67.

32. *See* BURNS, *supra* note 22, at 75-95. Burns did not find noticeable race effects in the 1970s and 1980s in terms of formation, while tax avoidance continued to have an influence in those decades. *See id.* at 80, 83. Interestingly, Burns concluded that new cities were formed only where there was a strong business interest, typically a real estate developer or a large manufacturer, to underwrite the cost of a defensive incorporation effort. *See id.* at 102.

33. *See generally* GREGORY R. WEIHER, *THE FRACTURED METROPOLIS* (1991).

boundaries, by providing crucial, geographically identifiable information, make it easier for people to make locational decisions based upon factors of race and income.³⁴ And the recent empirical literature on locational choice suggests that race, as opposed to the mix of services and taxes a jurisdiction offers, is the strongest of the factors that influence locational decisions.³⁵

Not surprisingly, increased suburban development has also been accompanied by dramatically increased concentrations of minority poverty in central cities,³⁶ particularly in the Northeast during the 1970s and in the Midwest and South-

34. *See id.* at 13-15 (discussing the exclusionary effects of incorporation and "recruitment" by community members and realtors to ensure that only the "right" people move to a given municipality). Another study of 30 municipalities created in Los Angeles County between 1950 and 1970 found that only one of these new cities had an income range across its population that was comparable to the range across the entire county. *See* DENNIS MUELLER, PUBLIC CHOICE II 169-70 (1989) (citing GARY MILLER, CITIES BY CONTRACT 134 (1981)). Most of the new municipalities showed increasing income and racial homogeneity compared to older, existing towns and this sorting out process was linked to a common preference for lower taxes and an avoidance of the redistributive outlays of the larger, older cities. *See id.*

Similar attitudes also affect neighborhood composition. At the neighborhood level, although white attitudes toward integration have become more liberal over time, there is strong evidence that white demand for housing in a neighborhood is clearly affected, to some degree, by its racial composition, thereby limiting prospects for achieving stable racial integration. *See, e.g.,* Reynolds Farley et al., *Continued Racial Residential Segregation in Detroit: "Chocolate City, Vanilla Suburbs" Revisited*, 4 J. HOUSING RES. 1, 22-28 (1993) (analyzing data from the Detroit area between 1976 and 1992 and determining that whites' locational decisions are still influenced at least partly by race). In the Detroit metropolitan area, for example, the "tipping point" at which whites would predictably move out to more homogenous settings increased from a 30% black neighborhood in 1976 to 40% in 1992. *See id.* at 32.

35. *See* David Lowery, *Sorting in the Fragmented Metropolis: Updating the Social Stratification-Government Inequality Debate* 5-6 (1998) (unpublished paper presented at the Annual Meeting of the American Political Science Association, on file with author) (canvassing the research literature). Lowery concludes that "'race remains the most powerful mechanism for social sorting in housing markets.'" *Id.* at 6 (quoting Susan S. Fainstein & Norman I. Fainstein, *The Racial Dimension in Urban Political Economy*, 25 URB. AFF. Q. 187, 189 (1989)). Thus, Tiebout's theory that people would sort themselves according to their preferences for public goods has much less force in a society where racial and socioeconomic associational preferences appear to loom so large.

36. African-American poverty is more highly concentrated than white and Hispanic poverty. In 1997, 58% of African-Americans living in poverty lived within central cities, 24% lived in suburban areas, and 18% lived in rural areas. *See* Bureau of Labor Statistics & Bureau of the Census, *Annual Demographic Survey, March Supplement, Table Four* (last modified Sept. 16, 1998) <http://ferret.bls.census.gov/macro/031998/pov/4_001.htm> (percentages given in this paragraph are author's own calculations using *Annual Demographic Survey* data). Fifty-six percent of Hispanics living in poverty lived in central cities, 33% lived in the suburbs, and 11% lived in rural areas. *See id.* Thirty-five percent of non-Hispanic whites living in poverty lived in central cities, 39% lived in the suburbs, and 26% lived in rural areas. *See id.*

The concentration of the minority poor in central cities is a modern phenomenon. In 1900, African-Americans in urban areas generally lived in areas that were 90% white. *See* Frug, *supra* note 15, at 1064. Racial segregation, however, grew steadily over the first 60 years of the Twentieth Century. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID* 30 (1993). One survey indicates that segregation in northern cities rose from 60% to 89% in the 30 years between 1910 and 1940 alone. *See id.* at 21. In southern cities, segregation rose from 38% to 81% within the same time period. *See id.* As the number of blacks living in cities more than doubled between 1940 and 1970, the average percentage of blacks living in segregated areas remained high at all times. *See id.* at 45-46.

west during the 1980s.³⁷ The more highly fragmented the political landscape of a metropolitan region, the more racially and economically segregated it tends to be.³⁸ At least one study has examined the geographic distribution of the affluent as well as the poor, finding that between 1970 and 1980, the geographic segregation of both the poor and the affluent has increased.³⁹ Thus, economic segregation appears to be increasing⁴⁰ even while racial segregation may be declining slightly.⁴¹ These patterns of increased economic segregation have placed a severe, disproportionate burden on central city and inner-ring suburban governments that are faced with rising social costs and declining tax bases due to the migration of jobs and people away from these areas.⁴²

B. THE NORMATIVE DEBATE

The normative debate on localism reflects a scholarly tension regarding the equity impacts of fragmented local government. One school of thought, most prominently advocated by Gerald Frug, states that local governments are power-

37. See Paul A. Jargowsky, *Ghetto Poverty Among Blacks in the 1980s*, 13 J. POL'Y ANALYSIS & MGMT. 288, 289 (1994) (studying 1990 census data and finding that ghetto poverty among blacks increased in Midwest and Southwest during 1980s); Paul A. Jargowsky & Mary Jo Bane, *Ghetto Poverty in the United States, 1970-1980*, in THE URBAN UNDERCLASS 235, 256 (Christopher Jencks & Paul E. Peterson eds., 1991) (finding ghetto poor most likely to live in Northeast and North Central regions); John D. Kasarda, *Inner-City Concentrated Poverty and Neighborhood Distress: 1970 to 1990*, 4 HOUSING POL'Y DEBATE 253, 258-60, 281 (1993) (finding that urban poverty worsened nationwide, with greatest increases in Northeast and Midwest, despite some turnaround in individual cities).

Black inner-city ghettos expanded significantly between 1980 and 1990. A ghetto is defined as an urban census tract in which 40% or more of the population is poor—meaning, in 1989, income of less than \$10,360 for a family of three. See Jargowsky & Bane, *supra*, at 293; see also Kasarda, *supra*, at 255 (describing tracts with 20% or more of their residents in poverty as “poverty tracts” and those with 40% or more as “extreme poverty tracts”). The number of census tracts in central cities that could be classified as ghettos increased from 3200 to 5000 in the 1980s—an increase of 54%. See RUSK, CITIES WITHOUT SUBURBS, *supra* note 11, at 78 (citing Paul A. Jargowsky, *supra*).

38. See RUSK, CITIES WITHOUT SUBURBS, *supra* note 11, at 33-35. It is not surprising, for example, that the metropolitan region of Detroit, where the central city is surrounded by 338 suburban jurisdictions and 116 suburban school districts is one of the most racially segregated regions in the United States. See *id.* at 34-35, 37. Metropolitan Detroit has a segregation index of 88 on a scale where 100 represents the complete separation of the races. See *id.* at 28-30.

39. See Douglas S. Massey & Mitchell L. Eggers, *The Spatial Concentration of Affluence and Poverty During the 1970s*, 29 URB. AFFAIRS Q. 299 (1993). In fact, the degree of segregation increased more significantly for the affluent. By 1980, at least one-third of a typical affluent family's neighbors were affluent while only one-fourth of a typical poor family's neighbors were poor. See *id.* at 306-07.

40. See Paul A. Jargowsky, *Take the Money and Run*, 61 AM. SOC. REV. 984, 990-91 (1996) (finding that economic segregation increased steadily for whites, blacks, and Hispanics in 1970s and 1980s, and that greatest increases occurred for blacks and Hispanics in 1980s).

41. See Alan J. Abramson et al., *The Changing Geography of Metropolitan Opportunity: The Segregation of the Poor in U.S. Metropolitan Areas, 1970 to 1990*, 6 HOUSING POL'Y DEBATE 45, 59 (1995) (finding that income segregation increased from 1970 to 1990, and that racial segregation declined over that period).

42. See ORFIELD, METROPOLITICS, *supra* note 11, at 17-18 (noting that nearly one-half of middle class African-American households in the Minneapolis area live in suburbs); David Rusk, *Segregation and Poverty: How We Promote Poverty*, WASH. POST, May 18, 1997, at C1 (discussing problems associated with migration from cities to suburbs and potential solutions being tried in various metropolitan areas).

less and that more authority ought to be vested in them in order to promote certain values.⁴³ For Frug and others, local autonomy is justified first and foremost because it maximizes “democratic participation in public affairs.”⁴⁴ In addition, proponents of local autonomy argue that it promotes the efficient allocation of goods and services⁴⁵ and that it creates and reinforces a salutary concept of community.⁴⁶ These three values—democratic participation, efficiency, and community—form the basis of an entrenched predisposition toward localized authority in legislative and judicial decisionmaking where they concern local government law. As a result, general purpose municipal governments typically have great autonomy in matters of zoning, land use, property taxation, and the provision of public services.⁴⁷

An alternative view, advocated by Richard Briffault, is that the localist ideology animating most judicial and legislative discourse on local government is not normatively justified, *inter alia*, because of the manner in which localism perpetuates interlocal wealth disparities in metropolitan regions.⁴⁸ In particular, Briffault contends that only the affluent suburbs enjoy the full benefits of localism.⁴⁹ Central cities and older, inner-ring suburbs are economically constrained by declining tax bases, high service burdens, and the threat of flight by

43. See, e.g., Frug, *supra* note 2, at 1070; see also GORDON L. CLARK, JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY 77 (1985) (asserting that Dillon’s Rule—that is, when state and local interests conflict, state interests will always be favored—is still the major judicial model relied upon by courts); Edwin A. Gere, Jr., *Dillon’s Rule and the Cooley Doctrine: Reflections of the Political Culture*, 8 J. URB. HIST. 271, 296 (1982) (noting that courts still construe state-local relationship according to Dillon’s Rule); cf. Richard T. Ford, *Beyond Borders: A Partial Response to Richard Briffault*, 48 STAN. L. REV. 1173, 1183 (1996) (arguing that local governments are powerless, but it may be problematic or impossible for them to achieve autonomy).

While Frug views cities as “powerless,” the empirical facts on racial and economic isolation suggest that the *developing* and *affluent* localities possess sufficient power to create a desired social and economic identity in the regional economy. See *infra* text accompanying notes 100-53.

44. Frug, *supra* note 10, at 271; see also Ford, *supra* note 10, at 1908-09 (claiming local authority fosters civic participation and promotes pluralism in society); Jerry Frug, *Administrative Democracy*, 40 U. TORONTO L.J. 559, 574-79 (1990) (arguing that centralization is not necessarily more efficient and that more democratic local governments can internalize costs of their decisions); Gerald Frug, *Empowering Cities in a Federal System*, 19 URB. LAW. 553 (1987) (characterizing participation theory as holding that only through city and neighborhood elections do most citizens experience democracy); Frug, *supra* note 2, at 1067-73 (arguing for local decisionmaking and granting more power to localities); Poindexter, *supra* note 10, at 625 (explaining fractured local government as attempt to empower individuals).

45. In other words, local autonomy increases the likelihood that public goods are tailored to local tastes and demands. See Tiebout, *supra* note 17, at 418.

46. See Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1123-28; Frug, *supra* note 10, at 266-67.

47. See Briffault, *Localism I*, *supra* note 10, at 84-91, 111-15 (summarizing the localist predisposition in academic, judicial and legislative discourse and resulting spheres of autonomy for local governments). For an extended treatment of the normative values supporting local autonomy, see *infra* text accompanying notes 62-97.

48. See Briffault, *Localism II*, *supra* note 10, at 425, 451-53. Briffault also argues that the participation and economic efficiency justifications for localism are empirically suspect. See *id.* at 412-14, 418-19; see also *infra* text accompanying notes 62-97.

49. See Briffault, *Localism II*, *supra* note 10, at 425.

businesses and persons with the wherewithal to leave.⁵⁰ For these dependent localities, the theoretical possibility of exercising local zoning, service-provision and revenue-raising powers to shape their economic and social destinies may seem a cruel joke.⁵¹

In sum, the values of civic participation and efficiency that undergird localism clash with the values of fairness and equity when one confronts the real world impact of local autonomy. For Briffault, any marginal benefits of increased local authority are vastly outweighed by the collective harm to metropolitan regions and to the people who live there that is caused by the fragmented exercise of some local powers.⁵² For Frug and Ford, the value of democratic participation is sacrosanct. Even though they both fully acknowledge and criticize the wealth disparities perpetuated by fragmented local autonomy, they feel that local democratic participation should not be sacrificed; instead, it should be harnessed to bring about effective change.⁵³

This normative debate recurs in the academic discourse on potential reforms to redress the effects of political fragmentation. The difficult “boundary problem” that exists in metropolitan regions—the creation of harmful spillover effects because of locally bounded regulatory powers and the inability of the fragmented metropolitan polity to solve problems that transcend local borders—has prompted Frug and Ford to propose radical changes in existing arrangements in local governance. For example, they would render local borders more permeable through a system of cross-border voting, thus preserving the decentralized local participatory politics and community autonomy that local governance engenders.⁵⁴ In addition, Frug proposes the creation of regional legislatures that would not exercise supra-local powers but would serve as fora “for inter-local negotiations about how to decentralize power.”⁵⁵

Briffault concludes that none of the proposals offered by Frug and Ford will work because they do not overcome the self-interested nature of local boundary politics. In short, Briffault reasons that because of adherence to the public-choice vision of allowing local polities ultimately to decide how much cooperation they are willing to engage in, meaningful cooperation is not likely to occur under these proposals.⁵⁶ Instead, Briffault argues that, in addition to more permeable local boundaries, regional governance institutions with the power to enforce regional duties are required.⁵⁷ He concedes, however, that such struc-

50. *See id.* at 408.

51. *See id.* at 355, 408 (describing the reality of constrained choices faced by central cities and older suburbs).

52. *See id.* at 355.

53. *See Ford, supra* note 10, at 1908-11; Frug, *supra* note 10, at 271.

54. *See Ford, supra* note 10, at 1909-10 & n.221; Frug, *supra* note 10, at 253, 324-25, 329-30.

55. Frug, *supra* note 10, at 297.

56. *See Briffault, Local Government Boundary Problem, supra* note 10, at 1147-51, 1154-55, 1158-59.

57. *See id.*

tures are unlikely to be adopted because of the popularity of decentralization.⁵⁸ And he notes that, in the past, regional cooperation has been dependent on pressure from higher levels of government.⁵⁹ Apart from the political or theoretical viability of these proposals, this debate underscores that the political constraints on pursuing regional solutions are structural.⁶⁰

This literature begins an important debate about whether and how the existing regime of local governance can be altered to eliminate or mitigate the negative spillover effects that accompany fragmented local authority. Professor Briffault rightly notes that additional contextual analysis is required, particularly of those few areas where meaningful regionalism has taken root.⁶¹ Close attention to the political impact of decentralization and the phenomenon of the favored quarter will enlighten this debate and help illuminate the barriers to solving the problems of inequity wrought by fragmentation. But before examining the real-world impact of fragmentation, it is useful to underscore the normative values that scholars bring to bear in justifying localism. The final section of this part begins to test these normative values against the empirical realities of the fragmented American metropolis.

C. NORMATIVE JUSTIFICATIONS FOR LOCALISM

As noted, the values of democratic participation, efficiency, and community undergird an entrenched predisposition toward localized authority among local government scholars, judges, and legislatures.⁶² This section explains in more detail each of these values and expresses skepticism that strong decentralization serves these values.

1. Citizen Participation

The *sine qua non* of localism is the idea that small government best facilitates political participation and civic engagement by the public.⁶³ Alternatively, the argument is that small government is the best vehicle for cultivating citizens. This idea dates back at least to our country's founding, when Thomas Jefferson saw local governments as crucial to the survival of American democracy—his ideal being the New England town meeting.⁶⁴ The central idea put forth by Frug and other scholars is that citizen participation in governmental affairs is an important political value that can only be achieved through small units of government because only through such units is meaningful hands-on participa-

58. *See id.*

59. *See id.* at 1122, 1154, 1165-70.

60. *See* Georgette C. Poindexter, *Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses*, 47 WASH. U. J. URB. & CONTEMP. L. 3, 24-44 (1995) (suggesting restructuring of regional tax bases to overcome inequitable burdens current tax structure places on central cities).

61. *See* Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1171.

62. *See supra* text accompanying notes 43-47.

63. *See* Frug, *supra* note 2, at 1068-70.

64. *See* Joseph P. Viteritti, *Municipal Home Rule and the Conditions of Justifiable Secession*, 23 FORDHAM URB. L.J. 1, 9 (1995).

tion by individual citizens possible.⁶⁵ In Frug's view, citizen participation enhances both the lives of individual citizens and the welfare of the citizenry at large. Hence, in order to promote democracy and citizen engagement, cities necessarily must have meaningful powers. The people will only participate in local politics, Frug warns, if there is a genuine transfer of power to localities, enabling citizens to see that their political efforts have an effect on their daily lives.⁶⁶ Madison's concerns about a tyranny of the majority in small governmental units can be addressed, he argues, through state-level legal restraints that protect individual rights.⁶⁷

At least two empirical assumptions animate this reasoning. The first assumption is that the smallness or immediacy that comes from an intimate context is most likely to propel citizen action and involvement. Frug reasons, for example, that citizens feel the strongest incentive toward participation in their immediate neighborhoods, since political action on this level has a direct and concrete effect on their daily lives.⁶⁸ Put differently, scholars who hold out the value of citizen participation as an argument for decentralizing power to the lowest possible level of government assume that people participate more in local government than in state or national government.⁶⁹ The second assumption is that local government is more likely to be responsive to citizen demands and, hence, to encourage citizens to participate. Carol Rose suggests, for example, that the informal contacts between citizens and officials that occur on the local level constitute a form of participation that is much more powerful than voting alone.⁷⁰ She also believes that citizens' voices are more easily heard in small governmental units. Since there are fewer constituents, she reasons, each vote has a greater impact than it would in a larger system, and it is easier for people to organize into groups that constitute a large proportion of the population.⁷¹

Such empirical assumptions about the nature of citizen relations with local and state government have not gone unquestioned.⁷² But more importantly,

65. See Frug, *supra* note 2, at 1068-70.

66. See *id.*

67. See *id.* at 1072.

68. See Frug, *supra*, note 10, at 297; see also Poindexter, *supra* note 10, at 617 (arguing that the smaller the community, the more likely it is that citizens will be able to see a direct result of their participation, thus inspiring further participation).

69. See Barry Friedman, *Valuing Federalism*, 82 MINN. L. REV. 317, 391 (1997) (arguing that at the local level many people call or write government officials, and are able to speak directly to them); see also *id.* at 394-95 (arguing that many people see state and national government as beyond their control, but that when they participate in local politics, they can see a direct result of their action, which produces a feeling of empowerment); cf. Ford, *supra* note 10, at 1909 (arguing that regional administration would make it difficult for politically engaged communities to form because centralized government alienates citizens from the decisionmaking process and only allows for interest group representation).

70. See Carol M. Rose, *The Ancient Constitution vs. The Federalist Empire: Anti-Federalism from the Attack on "Monarchism" to Modern Localism*, 84 NW. U. L. REV. 74, 97 (1989).

71. See *id.* at 110.

72. See Cashin, *supra* note 3, at 575-78 (pointing out that citizen participation is stronger in national elections than in state and local races and noting the "ugly side" of state and local control of political processes: the political subordination of weak minorities by strong majorities); see also Briffault,

even assuming that citizen participation is enhanced at the local level, this is not a persuasive argument for vesting localities with all the power that they can conceivably administer. As argued below, the extreme degree of decentralized power that currently exists in metropolitan America may in fact be undermining the value of citizen participation, *inter alia*, because of the way fragmentation disenfranchises citizens who do not live in powerful suburban localities.⁷³

2. Efficiency

The efficiency argument for localism emanates from the work of Charles Tiebout, who argued that multiple local governments would lead to a more efficient allocation of public goods and services.⁷⁴ He reasoned that decentralizing power to numerous localities would set up market-like, horizontal competition among them for mobile "consumer-voters" who could "vote with their feet" by moving to the locality that provides the mix of taxes and services that best fit their personal tastes.⁷⁵ Thus, according to this hypothesis, fragmented local governance is preferable to centralized government: the greater the number of localities and the greater the variation among them, the greater the likelihood that a "consumer-voter" will find a locality meeting his or her preferences.⁷⁶ In this manner, Tiebout argued, local government will more accurately reflect public preferences than state or national government.⁷⁷ Some defenders of localism have adopted this line of reasoning⁷⁸ and numerous scholars have debated the Tiebout hypothesis.⁷⁹

Localism II, *supra* note 10, at 412-14, 418-19 (challenging the validity of the citizen participation rationale).

73. *See infra* text accompanying notes 300-06.

74. *See generally* Tiebout, *supra* note 17.

75. *Id.* at 418.

76. *See id.*

77. *See id.* at 416.

78. *See* ROBERT L. BISH & VINCENT OSTROM, UNDERSTANDING URBAN GOVERNMENT 53 (1973) (noting that citizens show their preferences by moving elsewhere and that localities respond by altering their policies or cutting taxes); PAUL E. PETERSON, CITY LIMITS 46-47 (1981) (asserting that interlocal competition constrains inefficiency and improves local government responsiveness to voter concerns); *cf.* Richard E. Wagner & Warren E. Weber, *Competition, Monopoly, and the Organization of Government in Metropolitan Areas*, 18 J.L. & ECON. 661, 672 (1975) (stating that regional governments force voters to pay for the full line of government services rather than allowing them to pick and choose the services they want).

Carol Rose writes that localities are more idiosyncratic than larger units of government, citing peculiar local preferences for certain sports teams or parades. The more localities there are, she reasons, the greater the variation of citizen choice there will be, and each municipality can tailor its programs to its citizens' specialized needs. *See* Rose, *supra* note 70, at 97. Georgette Poindexter cites the exodus of people from central cities to suburbs as evidence that citizens really do act as "consumer-voters," choosing where they wish to live based on the quality of services, particularly schools, and the level of taxation. *See* Poindexter, *supra* note 10, at 615. Smaller suburban governments, she reasons, are more efficient and more responsive to citizen needs, and citizens have shown their preference for this by moving there. *See id.* at 618; *see also id.* at 609, 631 (arguing that the city is a manifestation of the revealed choices of its citizens).

79. For an extensive review of the social science literature spawned by Tiebout's 1956 article, see generally Lowery, *supra* note 35.

However, Tiebout conditioned his thesis on some critical assumptions, including that: (1) there was full mobility of all consumer-voters; (2) they had no limitations on their wage-earning capacity; and (3) all local governments had complete control over their mix of services and taxes.⁸⁰ This article's author has previously argued that these and other important caveats of the Tiebout hypothesis tend to be ignored by its adherents.⁸¹ Yet, as illustrated below in presenting the favored-quarter phenomenon, there is a great deal of difference in the relative power of localities in the metropolis and in the relative mobility of its various citizens.⁸² Thus, the efficiency justification for strongly decentralized government is flawed in that it does not account for these factors.⁸³

3. Community

Several scholars argue that small governmental units inculcate a sense of community among their citizens.⁸⁴ Participation in daily governmental affairs, Frug argues, counteracts the conditions of loneliness and alienation that exist in modern metropolitan society.⁸⁵ The experience of participating in local politics, he argues, can bring different types of people together who would not otherwise interact, fostering a sense of community and helping citizens overcome their fear of people who are different.⁸⁶ Alternatively, Richard Ford reasons that local government gives citizens the power to shape their communities and to create a community formed by individuals with similar tastes and desires.⁸⁷ To nourish cultural differences, he reasons, we should have many small communities with control over their own affairs.⁸⁸ Similarly, Georgette Poindexter suggests that citizens choose localities in part because they feel socially at ease there.⁸⁹ The resulting homogeneity, she argues, creates an automatic sense of community.⁹⁰

Both the community and citizen participation rationales for localism borrow from the tradition of civic republicanism. Civic republicans value deliberation

80. See Tiebout, *supra* note 17, at 419.

81. See Cashin, *supra* note 3, at 581-82 & n.126.

82. See *infra* text accompanying notes 100-53.

83. See Cashin, *supra* note 3, at 581-82 & n.126; see also *infra* text accompanying notes 297-301.

84. See, e.g., Frug, *supra* note 15, at 1078-79 (arguing that community is built as people come together to deliberate over what policies their governments should adopt); see also BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 152 (1984) (arguing that political participation and a sense of community are inextricably linked; community grows out of participation in local affairs, and at the same time, makes such participation possible); *id.* at 268 (arguing that local governments are essential to participation, because citizens need to feel that they have power over their affairs in order to be inspired to participate and only local governments enable day-to-day participation).

85. See Frug, *supra* note 15, at 1075-78.

86. See *id.* at 1079.

87. See Ford, *supra* note 43, at 1175.

88. See Ford, *supra* note 10, at 1909.

89. See Poindexter, *supra* note 10, at 621.

90. See *id.* at 623 (arguing that, while the community derives its identity from the individuals within it, its citizens also partially derive their identity from the community and often define themselves to outsiders as being "from" that community).

and collective self-determination, which, in their view, most naturally occur through small units of government that enable hands-on participation by citizens.⁹¹ The ideal unit for republicans is the Greek city-state—a small, homogeneous unit with a strong sense of community.⁹² Indeed, the sense of community, empathy, and responsibility for others within the polis is an essential component of republicanism.⁹³ Deliberation is easier to sustain when there is agreement on general principles.⁹⁴ Thus, because large polities diminish the connection between the rules and the ruled, and decrease opportunities for hands-on participation, they are not as valued as small units of government in republican thought.⁹⁵ Local governments serve as teachers of civic virtue and as essential components of the republican system, helping citizens to fulfill their proper role through daily participation in governmental affairs.⁹⁶

As an empirical matter, the community rationale seems to have a sounder evidentiary basis than the citizen participation and efficiency rationales. It seems a tautology to claim that smaller environments enhance opportunities for building connections between individuals, and hence for building a collective identity or sense of community. But even assuming that small multiple governments best inculcate community, this argument ignores the impact of the atomization of the polity into separate identities often distinguished by race and income. As argued below, the socioeconomic stratification that has resulted from highly fragmented local governance appears to be reducing the capacity of the American metropolis to develop meaningful solutions to very real social and other problems that transcend political borders.⁹⁷

In sum, none of the three normative justifications for localism presents a persuasive case for the extreme decentralization of government powers that currently exists in the United States because they ignore certain empirical realities. The next part examines the phenomenon of the favored quarter both to underscore the degree of inequity that results from the current localist regime and to begin to test the theoretical case for localism against the empirical reality of modern metropolitan politics.

II. THE INSIGHTS OF POLITICS—POLITICAL CHOICE AND DOMINANCE OF THE OUTER-RING

The atomization of potential national majorities is the simultaneous institutionalization of majorities at the local level. The result may be something different

91. See, e.g., Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1555-56 (1988).

92. See *id.*

93. See *id.*

94. See *id.*

95. See *id.*

96. See Mark C. Gordon, *Differing Paradigms, Similar Flaws: Constructing a New Approach to Federalism in Congress and the Court*, 14 YALE J. ON REG. 187, 221 (1996).

97. See *infra* text accompanying notes 173-91.

than the thriving cells of democracy envisioned by Jefferson. The result may only be a system of structured inequalities.⁹⁸

A close look at the political reality in metropolitan America affirms the intuitions of Professor Briffault and others who assert that localism benefits only the relatively affluent suburbs that are not constrained by service burdens and declining tax bases.⁹⁹ This part first presents evidence of the “tyranny of the favored quarter.” It then offers theories as to how localism supports this phenomenon and concludes with a synopsis of the political barriers to regionalism.

A. THE FAVORED QUARTER

Myron Orfield, a Minnesota state legislator, has written extensively about the phenomenon of the favored quarter in the metropolitan policy literature. Marshaling empirical evidence of the impact of metropolitan fragmentation, he has demonstrated how the favored quarter tends to receive a disproportionate share of public infrastructure funds.¹⁰⁰ Typically, he argues, metropolitan regions in America consist of central cities and inner-ring suburbs characterized by concentrated poverty and social service needs and an outer suburban ring commonly characterized by rapid growth and concentrated resources.¹⁰¹ The outer-ring suburbs that are experiencing rapid growth constitute the “favored quarter”—a term popularized by real estate developers—that, through disproportionate political influence, receive massive, disproportionate infrastructure investments that fuel their growth, including new roads and highways, expensive wastewater treatment systems, and other developmental infrastructure.¹⁰² At the same time,

98. WEIHER, *supra* note 33, at 5.

99. See *supra* text accompanying notes 9-12. In a 1970 study, Albert Hirshman described this phenomenon. See WEIHER, *supra* note 33, at 22-24 (citing ALBERT O. HIRSHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970)). According to Hirshman, when the quality of a product does not meet the standards of consumers, they can use “voice” (the ability to protest) or “exit” (the ability to leave) to change the situation. See HIRSHMAN, *supra*. The study found that when the *price* of a good or service rises, marginal consumers (those with limited financial resources) will be the first to exit. On the other hand, when the *quality* of the product deteriorates, the “connoisseurs,” those who are interested in quality rather than price, will be the first to exit. Unfortunately, the connoisseurs are the consumers most able to exercise their “voice” by exiting; marginal consumers are often constrained. This effect eventually creates city populations that are dependent upon city institutions, without the option of departure and having no leverage to demand change. See *id.*

100. See generally ORFIELD, METROPOLITICS, *supra* note 11.

101. See *id.* at 2-8. Inner-ring suburbs have more in common with the central city than with the high-growth suburban fringe. See *id.* at 4. And they actually are worse off than many central cities, which have the benefit of a downtown business district and elite neighborhoods. See *id.* Orfield’s research shows that when the social ills of poverty spread to inner-ring suburbs they tend to accelerate much faster than they do in the central city because these largely residential suburban areas do not have the tax base to address the rapid increase in social needs like schools, police protection, etc. See *id.*

102. See *id.* at 2, 5. In the Twin Cities area, for example, the “favored quarter” is comprised of the developing suburbs to the south and west of the I-494 beltway, including the high job-growth towns of Eden Prairie, Minnetonka, and Plymouth. See *id.* at 6-8. During the 1980s, the state spent \$1.09 billion

the favored quarter does not undertake anywhere near its fair share of the region's social burdens.¹⁰³ Orfield estimates that, as of the year 2000, "three out of four Americans will live in metropolitan regions with the same patterns of extravagant metropolitan development and of social and economic polarization" ¹⁰⁴

Even to the uninitiated, the phenomenon of the favored quarter should be familiar. An area can be fairly characterized as a "favored quarter" if it meets three conditions: (1) it captures the largest or a disproportionate share of public infrastructure investments in the region; (2) it has the region's largest tax base and is the area of highest job growth; and (3) it retains local powers, which it uses in a manner that closes its housing markets to non-affluent regional workers, thus becoming "both socially and politically isolated from regional responsibilities."¹⁰⁵ These three conditions, and much of the empirical evidence in support of them, are discussed in turn below.

1. Public Infrastructure Investments

As the moniker suggests, typically, only about a quarter of the regional population lives in the favored quarter.¹⁰⁶ Yet, Orfield has documented a recurrent pattern of such affluent communities garnering the largest and an often disproportionate share of public infrastructure investments that fuel economic growth.¹⁰⁷ Other studies also suggest that outer-ring suburbs receive a dispropor-

on new highways, 75% of it serving these developing suburbs. *See id.* at 7. During the 1990s, virtually all of the metro area transportation budget was earmarked to expand capacity in this southern and western quarter. *See id.* A system of sewer financing was put in place in the mid-1980s through which the inner core—the central cities and inner-ring suburbs—subsidized the construction and operation of sewer capacity at the fringe. *See id.* at 7-8. Even though there was abundant unused sewer capacity elsewhere in the region, at the request of suburban jurisdictions and developers, between 1987 and 1991 the region spent approximately \$50 million on new sewer capital costs, a disproportionate share of it in the southern and western quadrant. *See id.* "By 1992, the central cities were paying more than \$6 million a year to help move their middle-class households and businesses to the edge of the region." *Id.* at 8.

103. *See id.* at 5-7. Such affluent areas typically have highly restrictive housing markets; usually they have cornered the market in low-density executive housing and attractive businesses with low service requirements. *See id.*

104. *Id.* at 171.

105. MYRON ORFIELD, SEATTLE METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY IN THE PUGET SOUND REGION 1-2 (1999) [hereinafter ORFIELD, SEATTLE METROPOLITICS]. "[O]ne of the most successful real estate consulting firms in the country [is] often asked to identify the favored quarter for businesses seeking to locate in a given metropolitan area. . . . When advising major clients . . . they systematically search for subregions with the greatest presence of executive housing, high-end local retail malls, recent highway improvements, employment growth, low commercial real estate vacancy rates, and high share of regional economic growth." *Id.* at 27 & n.80 (describing the real estate consulting firm, Robert Charles Lesser and Co.).

106. *See id.* at 2 ("Only about 30 percent of the Puget Sound population live in communities such as these."); MYRON ORFIELD, PORTLAND METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 2 (1998) [hereinafter ORFIELD, PORTLAND METROPOLITICS] ("[The] favored sector generally compris[es] about one-quarter of the region's population . . .").

107. *See, e.g.,* MYRON ORFIELD, ATLANTA METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 30-31 (1998) [hereinafter ORFIELD, ATLANTA METROPOLITICS] (noting that of the more

tionate share of public investments for highways, roads, sewers, and so forth.¹⁰⁸ In this sense, the favored quarter is not a pure market phenomenon. Instead, public subsidies and policies may be shaping market choices by significantly

than \$1 billion spent on major new capacity for highways, a total of \$619 million “flowed north to the fast growing economies of the northern suburbs” and that “most proposed new capacity is to be added on the outer fringes . . . particularly to the north and east”); MYRON ORFIELD, BALTIMORE METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 24 (1998) [hereinafter ORFIELD, BALTIMORE METROPOLITICS] (noting that of the \$1.55 billion spent in the region for highway infrastructure improvements between 1985 and 1995, almost 60% was spent “to aid in the development” of the fast growing Anne Arundel and Howard counties); MYRON ORFIELD, CHICAGO REGIONAL REPORT 7-8 (1996) (noting that of the approximately \$5 billion spent on highway improvements in the Chicago region between 1984 and 1994, 57.1% was spent in the northern and western suburbs, an area that comprised only 39.7% of all regional households); MYRON ORFIELD, DETROIT METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 27 (1999) [hereinafter ORFIELD, DETROIT METROPOLITICS] (noting that 78% of the nearly \$1 billion in regional highway spending on new capacity projects between 1985 and 1996 was spent on a county—Oakland County—that accounts for approximately 26% of the regional population); MYRON ORFIELD, GRAND RAPIDS AREA METROPOLITICS: A WEST MICHIGAN AGENDA FOR COMMUNITY AND STABILITY 39-40 (1999) [hereinafter ORFIELD, GRAND RAPIDS AREA METROPOLITICS] (noting that of the \$256 million spent for highway improvements in the area between 1985 and 1996, over 65% was spent on behalf of the growing economies of Kent County—“a county that accounts for approximately 50% of the regional population”—and that approximately 70% of approved future highway spending will be spent in Kent County); MYRON ORFIELD, SAN FRANCISCO BAY AREA METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 35-36 (1998) (noting that of the projected \$1.8 billion in new highway capacity projected to be spent for the years 1996-2002, “the majority . . . is earmarked to be distributed within a 10 mile radius of each of three major interchanges . . . primarily serving I-880 Silicon Valley commuters and the fast growing, high tax base communities of eastern Contra Costa County”); ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 42 (noting that more than one-third of the \$3.3 billion in state and federal highway funding spent in the Puget Sound region between 1985 and 1995 went to projects to improve access to the affluent communities east and north of Seattle and that nearly \$895 million of the \$1.24 billion in approved future highway projects is targeted for spending in affluent sectors).

108. See, e.g., RICHARD VOITH, TRANSPORTATION INVESTMENTS IN THE PHILADELPHIA METROPOLITAN AREA: WHO BENEFITS? WHO PAYS? AND WHAT ARE THE CONSEQUENCES? 5 (Federal Reserve Bank of Philadelphia Working Paper No. 98-7, 1998) (on file with author) (finding that, from 1986-95, highway capital expenditures benefitting suburban residents were \$1041, about 2.5 times the \$424 per capita allocated to city residents; even when transit investments were included, “per capita transportation investments benefitting suburban residents exceed those benefitting [sic] city residents by 47 percent”); Subhrajit Guhathakurta & Michele L. Wichert, *Who Pays for Growth in the City of Phoenix? An Equity-Based Perspective on Suburbanization*, 33 URB. AFF. REV. 813, 826 (July 1998) (finding that residents located in the inner areas of Phoenix were assessed significantly higher property taxes than were suburban residents who lived within the sprawled Phoenix city limits); *id.* at 830-32 (finding that 35% of households located in the outer suburban areas of Phoenix were benefiting significantly more than the 65% of households located in the middle and inner sectors in terms of publicly funded capital investments, with suburban households receiving 40% to more than 100% more per household in capital improvement funds than the average household in the city); *id.* at 833 (noting one local official’s estimate “that new developments occurring around the fringes of the city are subsidized at the rate of \$14,000 to \$15,000 per unit” and that “there seems to be a cross-subsidization of suburban households by inner-city dollars”); SURFACE TRANSPORTATION POLICY PROJECT, GETTING A FAIR SHARE, AN ANALYSIS OF FEDERAL TRANSPORTATION SPENDING 6 (1996) (finding that outer-ring suburbs received \$115.11 per capita of federal transportation funds in 1995, compared with \$54.25 per capita for the urban core); see also Robert Inman, *How to Have a Fiscal Crisis: Lessons from Philadelphia*, 85 AM. ECON. REV. 378, 380 (1995) (finding that for every dollar of state aid received by the average Pennsylvanian, a resident of Philadelphia received only 61 cents). In at least one metropolitan area—Phoenix—this phenomenon of a favored suburban quarter being subsidized by the urban core with respect to capital/infrastructure expenditures occurred even in the context of consolidated metropoli-

reducing the real costs of private choices.¹⁰⁹ Put differently, citizens and businesses of the favored quarter are not fully internalizing the costs of their locational choices. There is extensive literature on the costs of urban sprawl that suggests that low-density suburban development does not pay for itself.¹¹⁰ Instead, at least in the realm of public infrastructure investments, there is a degree of cross-subsidization whereby the urban core—central cities and inner-ring suburbs—is helping to defray the costs of low-density development in the outer-ring suburbs.¹¹¹

tan government. See Guhathakurta & Wichert, *supra*, at 814 (arguing that “taxation and expenditure policies of municipal governments have strong spatial biases that tend to intensify differences between inner-city and suburban areas [even] within the same jurisdiction”). For a more extended discussion of this literature, see Cashin, *supra* note 3, at 585-86 nn.141-42.

109. The cost of low-density development has been lowered because of state and federal transportation investments favoring highways and federal tax breaks for owner-occupied housing. See JOSEPH GYOURKO & RICHARD VOITH, DOES THE U.S. TAX TREATMENT OF HOUSING PROMOTE SUBURBANIZATION AND CENTRAL CITY DECLINE? 2 (Federal Reserve Bank of Philadelphia Working Paper No. 97-13, 1997) (on file with author) (discussing effects of federal tax breaks); VOITH, *supra* note 108, at 2 n.1; see also Richard Voith, *Does Federal Tax Treatment of Housing Affect the Pattern of Metropolitan Development?*, BUS. REV. 3, Mar.-Apr. 1999, at 8-9 (a publication of the Federal Reserve Bank of Philadelphia) (noting that wealthy households could save more than \$12,500 annually by deducting mortgage interest and property taxes and that therefore these deductions increase the number of households who choose suburban communities with large houses on large lots). Hence, the American preference for low-density suburban development likely reflects these subsidized lower prices as well as intrinsic preferences. See VOITH, *supra* note 108, at 2 n.1. *But see* U.S. GEN. ACCOUNTING OFFICE, COMMUNITY DEVELOPMENT: EXTENT OF FEDERAL INFLUENCE ON “URBAN SPRAWL” IS UNCLEAR 2, 3 (1999) (“[R]esearchers have generally been unable to assign a cost or level of influence to individual factors, including particular federal programs or policies . . . [However, the] shortage of quantitative evidence does not mean that federal programs and policies do not have an impact on urban sprawl; it simply means that the level of the federal influence is difficult to determine.”).

110. See OFFICE OF TECH. ASSESSMENT, U.S. CONGRESS, THE TECHNOLOGICAL RESHAPING OF METROPOLITAN AMERICA 206-08 (1995) [hereinafter OTA REPORT] (canvassing the literature on the costs of sprawl and reaching this conclusion); see also ROBERT W. BURCHELL ET AL., TRANSIT COOPERATIVE RESEARCH PROGRAM, THE COSTS OF SPRAWL—REVISITED 46-50 (1998) [hereinafter BURCHELL, COSTS OF SPRAWL—REVISITED] (canvassing the literature and finding general agreement that capital (infrastructure) costs for low-density sprawl are higher than for planned or more dense forms of growth).

Unplanned suburban growth costs far more than planned growth. A 1997 analysis concluded that, by managing growth, citizens could reduce land consumption by 60% and road building by 25%. See Robert W. Burchell, *Economic and Fiscal Costs (and Benefits) of Sprawl*, 29 URB. LAW. 159, 180 (1997). A 1995 New Jersey study predicted that unplanned growth would require \$1.4 billion more for roads, water and sewer lines, and schools over a twenty-year period than would planned growth. See OTA REPORT, *supra*, at 204 (citing Robert W. Burchell & David Listokin, “Land, Infrastructure, Housing Costs and Fiscal Impacts Associated with Growth: The Literature on the Impacts of Sprawl versus Managed Growth,” Paper, Center for Urban Policy Research, Rutgers University 1995). These higher costs are often paid for through local government revenues, which forces central cities and inner-ring suburbs to effectively subsidize suburban growth. See OTA REPORT, *supra*, at 204-05. Another study suggests that the costs of low-density suburban development to a region outweigh the benefits such development brings. For middle income (between \$30,000 and \$75,000 a year) new households in the Chicago area, the net cost to the region of building in suburban areas rather than in the central city is estimated to be between \$1500 and \$2300. See JOSEPH PERSKY & WIM WIEWEL, CENTRAL CITY AND SUBURBAN DEVELOPMENT: WHO PAYS AND WHO BENEFITS? 8 (1996).

111. See Guhathakurta & Wichert, *supra* note 108, at 833 (citing study of cross-subsidization of capital expenditures in Phoenix); *id.* at 106 (citing the conclusion of the OTA Report, see *supra* note

Some would counter that affluent, outer-ring communities rightly receive the largest share of public infrastructure investments—first, because this is where private markets demand it, and second, because these communities, with their large tax bases, contribute the most to the regional economy. It is not surprising, the argument goes, that the largest share of federal and state transportation funds is allocated to build highways in newer, high-growth communities where new capacity is needed most. And it might also be argued that it is unfair to scrutinize the allocation of infrastructure investments in isolation from all the other government benefits that are distributed in a given region. When the relative allocations of all forms of government aid and transfer payments are considered, along with relative tax contributions, it is not at all clear that the urban core is subsidizing the outer ring.¹¹²

There are several responses to these claims. First, the claim that public infrastructure investments are merely following market needs and demands is, at a minimum, highly contestable. Although research to date has not quantified precisely the influence of federal and state infrastructure funding on low-density suburban development, several studies suggest that such public investments do have *some* influence on growth patterns.¹¹³ More importantly, as noted above, there is considerable agreement in the research literature that low-density development costs more than compact development and that it is necessarily subsidized, if not by the urban core, then by higher levels of government.¹¹⁴ And, it has been argued, without this significant subsidy, new suburban development would occur naturally but in more dense patterns that build off existing infrastructure.¹¹⁵

110, that sprawled development is more costly than compact development and often subsidized by the urban core). Specifically, the OTA Report concluded that the subsidies sometimes derive from a combination of local, state, and federal government resources but in other cases the costs are directly subsidized by the central cities or older suburbs. See OTA REPORT, *supra* note 110, at 208; see also JACKSON, *supra* note 28, at 150-53 (noting that because highways, transport systems, and sewers are interjurisdictional by nature, residents of the central city bear some of the cost of connecting suburbanites to the city).

112. These arguments were raised in various forms by participants in the Georgetown Faculty Scholarship Workshop (April 1999) and at presentations made to the law faculties at the University of Alabama (April 1999) and Vanderbilt University (October 1999).

113. See, e.g., VOITH, *supra* note 108, at 2-3 & nn.2-3 (noting “considerable evidence that investments in transportation infrastructure have significant effects on the relative attractiveness of local communities” and, hence, local land values, and that the weight of the evidence suggests that “highway investments do guide development patterns”).

114. See *supra* notes 110-11 and accompanying text.

115. See, e.g., RICHARD MOE & CARTER WILKIE, CHANGING PLACES: REBUILDING COMMUNITY IN THE AGE OF SPRAWL 255 (1997) (suggesting that with a truly “free” market that depended on private financing alone, far less sprawl would occur); KANTOR, *supra* note 25, at 163 (“If left to itself . . . the market governing [suburbanization] would very likely have extended many of the familiar mixed patterns of residential development found in the central city.”); see also HARRIGAN, *supra* note 11, at 323 (citing study comparing two New York communities—Westchester and Staten Island—which found that in Staten Island, where there were no exclusionary zoning policies and developers were free to respond to market demands, they built “small, inexpensive homes packed together at a fairly high density”).

The second claim is that all intergovernmental aid and transfer payments should be considered, along with all tax contributions, in analyzing the degree of subsidization of the favored quarter. It has been argued that "cities receive large transfer payments from federal and state governments that more than make up for the implicit subsidies that go to the outer suburbs and exurban areas to sponsor sprawl."¹¹⁶ For example, a study conducted in 1981 showed that central cities received greater intergovernmental transfers per capita than did suburbs.¹¹⁷

However, most of the 'extra' money the cities receive from higher levels of government appears to be a result of the large percentage of poor residents they contain. Higher concentrations of the poor in the central city place greater burdens on government than the non-poor, including additional demands for welfare, medical programs, housing assistance, and social services. Thus, monies from the federal and state governments represent a subsidy to the poor people of the cities, not the cities themselves. If the poor moved to the suburbs, the local governments of the suburbs would receive the transfer payments now going to the cities.¹¹⁸

In addition, according to more recent studies that exclude income transfer payments to the poor, central cities do not receive a greater share of all other forms of intergovernmental aid.¹¹⁹

Finally, in examining the phenomenon of the favored quarter, arguably it is legitimate to scrutinize public infrastructure investments in isolation because

116. OTA REPORT, *supra* note 110, at 214.

117. *See id.* (citing ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, FISCAL DISPARITIES: CENTRAL CITIES AND SUBURBS, 1981 (1984), which found that central cities received \$705 per capita while areas outside the central city received \$451 per capita, a ratio of 1.63). By 1987, the gap between cities and suburbs on intergovernmental transfers had declined to 1.53. *See* OTA REPORT, *supra* note 110, at 214. It is likely that, thirteen years later in 2000, given the continued migration of people away from central cities, this gap has narrowed even further.

For a study suggesting that central cities may receive a greater share of county government aid, see Brett W. Hawkins & Rebecca M. Hendrick, *Do County Governments Reinforce City-Suburban Inequalities? A Study of City and Suburban Service Allocations*, 75 Soc. Sci. Q. 755 (1994) (finding that the suburbs surrounding the city of Milwaukee supply most of Milwaukee County's property tax revenue but that, for ten services examined, most of the service is allocated to the city); *see also* Brett W. Hawkins & Rebecca M. Hendrick, *Do Metropolitan Special Districts Reinforce Sociospatial Inequalities? A Study of Sewerage and Technical Education in Milwaukee County*, PUBLIUS, Winter 1997, at 135, 143 [hereinafter Hawkins & Hendrick, *Metropolitan Special Districts*] (finding that the services distributed by the Milwaukee Sewage District and the Milwaukee Technical College were "equity-enhancing" because city residents received more in services relative to their contribution in taxes toward these services). *But see* JAMES M. BANOVIETZ, GOVERNMENTAL COST BURDENS AND SERVICE BENEFITS IN THE TWIN CITIES METROPOLITAN AREA (1965) (finding that suburbs subsidized central city through county welfare program, but that for an aggregate of 20 other county services the city subsidized suburbs).

118. OTA REPORT, *supra* note 110, at 214.

119. *Cf.* Inman, *supra* note 108, at 380 (finding that from 1963 to 1990, Philadelphians received 61 cents of state aid for every dollar received by an average Pennsylvanian); *see also* BANOVIETZ, *supra* note 117 (finding that central city subsidized surrounding suburbs for 20 county programs but that suburbs subsidized central city through county welfare program).

this type of government aid appears to be contributing to affluent communities' advantaged status as the situs of concentrated growth.¹²⁰ The best argument in defense of allocating the largest share of these investments to affluent communities is that these communities most likely contribute the largest share of taxes and fees used to raise revenues for such investments. One researcher has suggested, however, that for highway funds, which are typically generated through user fees,¹²¹ this argument is not legitimate.¹²² Richard Voith analyzed the allocation of highway investments in the Philadelphia metropolitan region and concluded that "suburbs receive much larger per capita investments in highways than does the city [of Philadelphia], but the city . . . pays less user fees, in aggregate."¹²³ But Voith reasoned that such user fees will rise in locations where highway investment is made. Hence, he concluded that, when evaluating the impacts of highway spending on regional growth patterns, one should focus on differences in the allocation of highway investment across locations and ignore any differences among locations regarding the user fees they raise.¹²⁴ In sum, if a public infrastructure subsidy contributes to concentrated tax revenue growth in a particular location, it is difficult to use the fact of this concentrated tax base to justify the public policy decision to concentrate public resources there—*a fortiori* when a more even distribution of public infrastructure subsidies might result in a more even distribution of economic growth. Alternatively, if market demands are such that concentrating public resources in a particular location will best maximize regional economic growth, there is still a strong argument that the individual locations fortunate to be the site of such public investments have an obligation to share some of their increased tax base with other communities that contributed revenues for such public investments.¹²⁵ Again, a distinct feature of the favored quarter is that it manages to garner the largest share of federal, state, and regional public investments that fuel growth while *not* sharing in regional responsibilities.

2. Tax Base and Job Growth

While the favored quarter likely would experience substantial economic growth even in the absence of concentrated infrastructure subsidies, some

120. See VOITH, *supra* note 108, at 4 ("Communities fortunate enough to be net recipients of public funds for infrastructure will have an advantage in competing for people and firms, and communities that fail to receive transportation investments and pay taxes or user fees that are spent in other communities will be at a disadvantage.").

121. Federal highway funds are raised primarily through a gasoline tax which is earmarked for the Highway Trust Fund. See *id.* at 16. The federal gas tax "is basically a user fee because it increases with increases in highway use." *Id.* Pennsylvania state highway funds are also generated primarily through user fees, including gasoline taxes, vehicle registration fees and other fees—fees which increase with vehicle usage and car ownership. *Id.*

122. See *id.* at 18-19.

123. *Id.* at 18.

124. See *id.* at 18-19.

125. See *infra* text accompanying notes 271-72.

studies suggest that the disproportionate allocation of public infrastructure funding to these communities does have a significant effect on their competitive position relative to other communities.¹²⁶ Whatever the causal factors, another distinct feature of the favored quarter is that it is the situs of concentrated job growth. In the Chicago metropolitan region, for example, the favored quarter comprises outer-ring suburbs northwest of the city. From 1980 to 1990 these northwestern suburbs garnered 458,000 new jobs—*fully 99.8 percent of the entire increase for the region*.¹²⁷ During the same period, the city of Chicago lost about 90,000 jobs and the other suburbs of the region gained only about 90,000 jobs.¹²⁸ And it is likely that these northwestern suburbs became the situs of rapid job growth in part because of massive public infrastructure investments that facilitated and subsidized the locational decisions of private businesses and citizens.¹²⁹ This pattern of concentrated job growth in select outlying suburbs is repeated in many metropolitan regions across the United States.¹³⁰

126. See VORTH, *supra* note 108, at 2-3 & nn.2-3 (“Studies of transportation investments generally find that locations close to large investments in transportation infrastructure enjoy increased land values . . . [and] suggest that highway investments do guide development patterns.”) (citation omitted); *id.* at 6, 19 (noting that higher level of highway investment in the suburbs was likely to have a significant negative effect on the number of jobs located in the city of Philadelphia, causing an estimated reduction in the city of about 40,000 jobs); *id.* at 20 (concluding that “highway investment differentials are [also] likely to increase . . . geographic sorting . . . result[ing] in a higher concentration of high-income households in the suburbs and a higher concentration of low-income households in the city”).

127. See MYRON ORFIELD, CHICAGO METROPOLITICS: A REGIONAL AGENDA FOR MEMBERS OF THE U.S. CONGRESS 27 (Feb. 1998) [hereinafter ORFIELD, CHICAGO METROPOLITICS] (citing studies, see NORTHEASTERN ILLINOIS PLANNING COMMISSION, DATA BULLETIN 95-1, 1990 LAND USE IN NORTHWESTERN ILLINOIS COUNTIES, MINOR CIVIL DIVISIONS, AND CHICAGO COMMUNITY AREAS (June 1995), and noting that northwestern suburbs gained 458,202 jobs from 1980 to 1990 while the number of jobs created region-wide during that period was 458,788).

128. See ORFIELD, CHICAGO METROPOLITICS, *supra* note 127; see also MARK ALAN HUGHES, OVER THE HORIZON: JOBS IN THE SUBURBS OF MAJOR METROPOLITAN AREAS 16 (1993) (examining the change in employment patterns between 1980 and 1990 for 12 large metropolitan areas and finding that “[i]n every area, employment growth was disproportionately located in the suburban counties”); *id.* at 19-20 (examining employment patterns in the Chicago metropolitan area and finding “absolute suburbanization, with job loss in the city (indeed, in all central cities of the [region]) and job gain in the suburbs (especially in the suburbs along the region’s I-290/I-294 beltway.”); P. Gordon & H.W. Richardson, *Employment Decentralization in U.S. Metropolitan Areas: Is Los Angeles an Outlier or the Norm?*, 28 ENV’T & PLANNING 1727, 1733 (1996) (examining the employment decentralization patterns in 12 large metropolitan regions between 1976 and 1987 and finding that the outer suburbs had the fastest employment growth among all metro subregions in all employment sectors except manufacturing).

129. See ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 24 (noting that 57% of transportation infrastructure funds were spent in the northwestern quadrant—an area with 39% of the region’s population); see also ORFIELD, METROPOLITICS, *supra* note 11, at 162 (noting that “[m]ost new highway spending [in the Chicago region] went to support the northwestern development boom”).

130. See *supra* note 128; see also, e.g., ORFIELD, ATLANTA METROPOLITICS, *supra* note 107, at 36-37 (noting that most of the region’s job growth from 1990-95 was concentrated in the city’s northern suburbs, with two areas experiencing over 50% growth, while three districts in the city of Atlanta and seven in the southern suburbs experienced decreases in jobs of 4-7%); ORFIELD, BALTIMORE METROPOLITICS, *supra* note 107, at 29 (noting that of the seven districts that lost more than 10 jobs per 100 persons between 1980 and 1990, 3 were in the city and 4 in the inner suburbs and that those districts that experienced job growth over this period were in the suburbs directly northeast of the city, with growth rates between 14 and 100%); ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 19 (noting that “the

One likely consequence of the geographic separation of high job-growth centers from centers of high poverty and unemployment is a spatial mismatch that significantly impedes employment opportunities for inner-city residents.¹³¹ Another likely consequence is extreme fiscal disparities between growing, high tax base communities and central cities and older suburbs saddled with declining tax bases or rapidly increasing service demands. Most municipal services are funded from property tax revenues, but typically there are wide disparities in property values across metropolitan regions.¹³² These fiscal disparities will worsen with time because the dynamics that lead to them are mutually reinforcing.

Twin Cities southwestern developing suburbs, which represent 27 percent of the region, gained 61 percent of its new jobs” between 1980 and 1990); ORFIELD, DETROIT METROPOLITICS, *supra* note 107, at 35 (noting that between 1985 and 1995, the city of Detroit lost 1.5% of its jobs per 100 persons, and several high-need communities surrounding the city lost between 4 and 38.2% of their jobs, while those affluent areas with the most jobs per capita experienced between 31.3 and 47.2% growth); ORFIELD, GRAND RAPIDS AREA METROPOLITICS, *supra* note 107, at 45-46 (noting that in 1997, the city’s working class suburbs had between 31.0 and 45.9 jobs per 100 persons, while its affluent suburbs had between 62.5 and 74.3 jobs per 100 persons); ORFIELD, PHILADELPHIA METROPOLITICS, A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 22 (1997) [hereinafter ORFIELD, PHILADELPHIA METROPOLITICS] (noting that, between 1980 and 1990, many older cities and boroughs lost 50% or more of their jobs per capita, while middle-income townships gained 18.2% of jobs per capita); ORFIELD, PORTLAND METROPOLITICS, *supra* note 106, at 36-37 (noting that from 1990 to 1994 the “southwestern high property value suburbs . . . which in 1993 together represented less than one-quarter of the regional population, gained approximately 57 percent of the region’s new jobs”); ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 49 (noting while the Puget Sound metro area had 56.8 jobs per 100 persons in 1997, “the greatest concentration of jobs was in the fast-growing, mostly affluent, communities east of [Seattle],” which had concentrations ranging from 108 to 361 jobs per 100 persons); ORFIELD, SOUTH FLORIDA METROPOLITICS, A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 46-47 (1998) (noting that the South Florida region is expected to experience a 3.4 jobs per 100 persons loss from 1990 to 2015, while 12 high growth suburbs are expected to gain between 15.6 and 33.7 jobs per 100 persons during this period). *But see* ORFIELD, PITTSBURGH METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY (1999) 44-45 (noting that from 1990-97, the city of Pittsburgh gained jobs at 12.8% per capita, while job losses occurred both in suburbs with already low job rates and in neighboring affluent communities).

131. Economists and social scientists have been debating the validity of the “spatial mismatch theory” for three decades. *See, e.g.*, David Ellwood, *The Spatial Mismatch Hypothesis: Are the Teenage Jobs Missing in the Ghetto?*, in THE BLACK YOUTH EMPLOYMENT CRISIS 147-90 (Richard B. Freeman & Harry J. Holzer eds., 1986) (analyzing statistics from Chicago and determining that spatial mismatch has at most only a small effect on the black-white differential in employment rates); John Kain, *Housing Segregation, Negro Unemployment, and Metropolitan Decentralization*, Q.J. ECON. 82, 175-97 (1968) (positing the spatial mismatch theory); John D. Kasarda, *Urban Industrial Transition and the Underclass*, ANNALS AM. ACAD. POL. & SOC. SCI. 501, 536 (1989) (arguing that poorly educated blacks are isolated in central cities while most job growth takes place in the suburbs).

132. *See, e.g.*, ORFIELD, PORTLAND METROPOLITICS, *supra* note 106, at 39 (noting that in 1993 the average property value of the northwest developing suburbs in the Chicago region was 240% of that of the central city and 195% of that of the inner suburbs); *id.* (noting that in 1994 the average property value of the southwest developing suburbs in the Twin Cities region was 216% of that of the central city and 174% of that of the inner suburbs). In the Portland region, which leads the country in controlled-growth policies that encourage development in the urban core, the average property value of high-value suburbs was 143% of that of the central city and 149% of low-value suburbs. *See id.*; *see also* Arthur C. Nelson with Jeffrey H. Milgroom, *Regional Growth Management and Central-City Vitality: Comparing Development Patterns in Atlanta, Georgia, and Portland, Oregon*, in URBAN REVITALIZATION, POLICIES AND PROGRAMS 1-2, 31-35 (Fritz W. Wagner et al. eds., 1995) (examining benefits to city of Portland from comprehensive land use planning in Portland region).

ing. First, in the competition for the “high-end” tax base—the commercial businesses and executive housing that generate the most revenues and least service burdens—usually only the wealthiest communities succeed.¹³³ The exclusive, high tax base suburbs are able to keep taxes low, both because of low service demands and because taxes are spread across a broad, rich tax base. “[W]ith low tax rates, [these affluent communities] continue to attract more and more business, the presence of which continually lowers the overall tax rate.”¹³⁴ In contrast, the nonwealthy developing suburbs are left to fend for the remaining new development—typically lower-value homes and multifamily units—which adds to the tax base but ultimately creates high public service and infrastructure costs that are difficult to meet.¹³⁵ These short-term decisions to take on less profitable new development ultimately lead to fiscal distress in working-class suburbs because such suburbs are forced either to raise property taxes and fees to meet service demands or to offer low-funded services, both of which make these communities less attractive in the regional competition for economic growth.¹³⁶ Finally, central cities, saddled with increasing concentrations of poverty, are forced to have much higher tax rates than outlying suburbs in order to keep up with increasing social service demands. This tax differential and the ongoing trend of declining consumer demographics in central cities are large negatives in the competition to recruit and retain businesses and middle-class taxpayers.¹³⁷ Thus, the cycle of increasing fiscal health in affluent suburbs and declining fiscal health in the urban core continues. “In the clearest sense, the increase of property wealth in affluent suburbs and the stagnation of decline of central city, satellite city, and inner-suburban values represents, in part, an interregional transfer of tax base.”¹³⁸

3. Local Powers and the Exporting of Costs

Finally, the concentration of public infrastructure investments and job growth in the favored quarter is overlaid with strong local powers typically delegated by states to all incorporated municipalities, including zoning, police, and taxation powers. As noted, affluent communities can generally exercise such local powers to exclude undesirable entrants, attract desirable entrants, and, ultimately, avoid taking on many of the region’s social service burdens.¹³⁹ In this way, affluent communities, consciously or unconsciously, can export some of the costs of their development to other, less-advantaged communities. This exportation of costs takes place in two forms: (1) through the direct subsidization by the urban core of the suburban fringe’s new infrastructure capacity;¹⁴⁰

133. See BURCHELL, COSTS OF SPRAWL—REVISITED, *supra* note 110, at 107-08 (describing how lower tax rates lure businesses away from central city into suburbs).

134. ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 30.

135. See ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 19; ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 30.

136. See ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 30.

137. See *id.*

138. ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 13.

139. See *supra* text accompanying notes 129-42.

140. See *supra* text accompanying notes 106-25.

and (2) through the creation of social costs that flow from exclusive, low-density suburban development.¹⁴¹

Some of the alleged social costs of exclusionary low-density development in outer-ring suburbs include environmental degradation; waste of existing, underutilized public infrastructure; increasing isolation of poor communities from middle-class norms and the low-skill jobs available in suburbs; and the decline of central cities and inner suburbs, with attendant higher crime and increased concentrations of poverty.¹⁴² There is, however, an extensive literature debating the costs and benefits of low-density sprawled development and considerable disagreement as to its precise costs.¹⁴³ One area of agreement appears to be that sprawled development requires more capital expenditure than compact development.¹⁴⁴ There is much more debate, however, regarding the alleged negative impacts and societal costs of sprawl.¹⁴⁵

141. See DOWNS, *NEW VISIONS*, *supra* note 11, at 13-14 (noting that many suburbs "create social costs without paying for them" by enacting exclusionary zoning ordinances that maximize home values but "force low- and moderate-income workers to live far from suburban jobs and commute long distances, which increases traffic congestion and air pollution and imposes time losses on all commuters"); MOE & WILKIE, *supra* note 115, at 71 (asserting that developers of sprawl capture benefits for themselves while other communities in the region bear the costs).

142. See ORFIELD, *METROPOLITICS*, *supra* note 11, at 7-10; see also HENRY L. DIAMOND & PATRICK F. NOONAN, *LAND USE IN AMERICA* 35-40 (1996) (describing economic, environmental and social costs of urban sprawl); DOWNS, *NEW VISIONS*, *supra* note 11, at 79-91 (describing negative impacts of the social and economic isolation of America's inner cities); OTA REPORT, *supra* note 110, at 215-17 (describing environmental costs of urban sprawl).

143. The debate began in earnest in 1974 with the publication of a seminal, three-volume study, *The Costs of Sprawl*, by the Real Estate Research Corporation. See REAL ESTATE RESEARCH CORPORATION, *THE COSTS OF SPRAWL: ENVIRONMENTAL AND ECONOMIC COSTS OF ALTERNATIVE RESIDENTIAL DEVELOPMENT PATTERNS AT THE URBAN FRINGE* (U.S. Gov't Printing Office ed., 1974), cited in BURCHELL, *COSTS OF SPRAWL—REVISITED*, *supra* note 110, at i ("From the time of its publication until today, it has been regarded by the social science community as one of the most significant critiques of sprawl and among the most influential studies ever undertaken."). Comparing six different prototypes of development, from low-density sprawl to high-density planned development, the general conclusion of the study was that "for a fixed number of households, sprawl is the most expensive form of residential development in terms of economic costs, environmental costs, natural resource consumption, and many types of personal costs." BURCHELL, *COSTS OF SPRAWL—REVISITED*, *supra* note 110, at 11. Although "sprawl" was not specifically defined, "[T]he study implied that sprawl[ed] development has at least two major traits: low average residential density . . . and a lack of overall planning at either the regional or community level." *Id.* Since *The Costs of Sprawl—Revisited* was published, scores of researchers have scrutinized and challenged its findings and methodology. See generally *id.* at 12, 48-49.

144. This essential finding of the *The Costs of Sprawl—Revisited* study has been vindicated in subsequent major studies. See *supra* notes 110-25 and accompanying text; see also REAL ESTATE RESEARCH CORPORATION, *supra* note 143, at 46-47 (citing ROBERT W. BURCHELL, *FISCAL IMPACTS OF ALTERNATIVE LAND DEVELOPMENT PATTERNS IN MICHIGAN: THE COSTS OF CURRENT DEVELOPMENT VERSUS COMPACT GROWTH* (1997); ROBERT W. BURCHELL, *IMPACT ASSESSMENT OF THE NEW JERSEY INTERIM STATE DEVELOPMENT AND REDEVELOPMENT PLAN* (1992); ROBERT W. BURCHELL, *SOUTH CAROLINA INFRASTRUCTURE STUDY: PROJECTION OF STATEWIDE INFRASTRUCTURE COSTS 1995-2015* (1997); ROBERT W. BURCHELL AND DAVID LISTOKIN, *LAND, INFRASTRUCTURE, HOUSING COSTS, AND FISCAL IMPACTS ASSOCIATED WITH GROWTH: THE LITERATURE ON THE IMPACTS OF TRADITIONAL VERSUS MANAGED GROWTH* (1995); JAMES E. DUNCAN, ET AL., *THE SEARCH FOR EFFICIENT URBAN GROWTH PATTERNS* (1989); JAMES E. FRANK, *THE COSTS OF ALTERNATIVE DEVELOPMENT PATTERNS: A REVIEW OF THE LITERATURE* (1989)).

145. See generally BURCHELL, *COSTS OF SPRAWL—REVISITED*, *supra* note 110 (reviewing findings of

While it may be impossible to quantify the costs imposed by outer-ring suburbs on other communities, it seems irrefutable that affluent suburbs are garnering many of the benefits of participating in a regional economy—such as access to regional labor markets and consumers, as well as to regional highway systems, and the like—while not sharing appreciably in regional social burdens. In the Chicago metropolitan region, for example, the affluent northwest suburbs are home to about a quarter of the regional population and nearly 100% of the region's job growth, but they house only 2.7% of young children who live in poverty and less than 1% of the elementary-level children in their school districts receive free or reduced-cost lunch.¹⁴⁶ By contrast, the city of Chicago, with 38% of the regional population and a 6% decline in its job base, is home to 35% of young children in poverty and some 70% of its elementary school children receive a free or reduced-cost lunch.¹⁴⁷ Among the social costs of such concentrated poverty are higher drop-out rates, teen pregnancy rates, and unemployment among young people relegated to concentrated poverty neighborhoods.¹⁴⁸ In addition, schools with high concentrations of poor children tend to lag behind all others in school performance, leaving children relegated to such schools ill-prepared for college or the workforce.¹⁴⁹ Crime also increases dramatically in poverty-concentrated areas.¹⁵⁰ Thus, while “[t]he central city is struggling under a disproportionate share of concentrated poverty and all of its attendant costly social needs” and “[m]iddle-income . . . suburbs developing without sufficient property tax base face increasing social and academic chal-

approximately 500 studies and identifying 41 alleged impacts of sprawl—two-thirds of which were negative and one-third of which were positive). Burchell and his colleagues found the highest level of agreement on the claims that sprawl (1) generates more vehicle travel than compact forms of development, *see id.* at 62-63; (2) generates more vehicle trips and fewer trips by other transportation modes, *see id.* at 65-66; (3) consumes more agricultural land than does compact development, *see id.* at 73-75; and (4) consumes more fragile environmental lands than does compact development, *see id.* at 78-79.

146. *See supra* text accompanying note 127; ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 16 tbl.3; *id.* at 23 (noting for example that only 0.2% of the Naperville, 0.8% of the Elmhurst, and 0.7% of the Kildeer school districts' children received free or reduced-cost lunch). “Most social scientists use free and reduced-cost lunch statistics to measure children in poverty. They believe that it is more realistic than federal poverty standards [because] [c]hildren are eligible for reduced lunch if their income level is not above 185 percent of the federal poverty level, and they are eligible for free lunch if their income is not above 130 percent of the poverty level.” *Id.* at 23. “By 1990, a single mother and her child were not poor unless they had an income of less than \$8420. Most social scientists do not think this is a measure of poverty, but of desperate poverty.” *Id.* at 20.

147. *See* ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 16 tbl.3 & 23.

148. *See, e.g.,* MASSEY & DENTON, *supra* note 36, at 169-70; Jonathan Crane, *Effects of Neighborhoods on Dropping Out of School and Teenage Childbearing*, in *THE URBAN UNDERCLASS* 299-320 (Christopher Jencks & Paul Peterson eds., 1991); Susan E. Mayer, *How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates*, in *THE URBAN UNDERCLASS* 321-41 (Christopher Jencks & Paul Peterson eds., 1991).

149. *See generally* Gary Orfield, *Urban Schooling and the Perpetuation of Job Inequality in Metropolitan Chicago*, in *URBAN LABOR MARKETS AND JOB OPPORTUNITY* 161-96 (George E. Peterson & Wayne Vroman eds., 1992).

150. *See, e.g.,* ORFIELD, METROPOLITICS, *supra* note 11, at 3 (citing evidence of higher crime rates among high-poverty census tracts in Minneapolis).

lenges . . . affluent suburban systems enjoy insulated, stable prosperity financed by local business growth.”¹⁵¹ And the key to the favored quarter’s fiscal stability and insulation is the zoning power.¹⁵² Again, affluent communities deliberately and rationally engage in “fiscal zoning” whereby they regulate predominately for expensive homes and commercial properties with low service needs and they wall out social needs associated with lower-cost housing.¹⁵³

B. PAROCHIALISM AND THE BARRIERS TO REGIONALISM

Having established the *fact* of the favored quarter, this section offers theories as to how our nation’s commitment to localism precipitates this phenomenon. This article posits that the favored quarter is able to exploit metropolitan fragmentation born of a localist ideology for two reasons. First, fragmentation gives effect to and inculcates a narrow conception of self-interest, one premised on cultural, racial, and economic differences that effectively blinds citizens to their potential regional allies. Second, fragmentation ensures the dominance of the favored quarter because it atomizes the would-be political majority and sets in motion certain institutional biases that tend to reify and enhance the power of affluent communities. The result of this overlay of structured parochialism and atomization of the polity is a metropolitan politics that systematically benefits the favored quarter. For, as urban scholars have emphasized, “urban politics is essentially a politics of spatial allocation of advantages and disadvantages.”¹⁵⁴ “Any political structure has imbedded in it a value bias, or . . . a distributional tendency.”¹⁵⁵ The section below attempts to explain how the current fragmented political structure of metropolitan America creates a distributional tendency in the direction of the favored quarter.

1. The Parochialism Theory

This section posits a parochialism theory that rests on a belief that fragmented political borders, arising from five decades of suburban development, entrench a narrow, ill-conceived conception of self-interest that blinds citizens to the real potential benefits of collective alliances across borders. This happens for two reasons. First, fragmented political borders were themselves the result of economic, social, and racial differentiation—a locational sorting process by which citizens sought to achieve fundamental preferences and desires. Second, the resulting socioeconomic jurisdictional segregation further reduces the capacity of citizens, over time, to empathize with anyone who can be characterized as “other.”

151. ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, at 22.

152. *See id.* at 29.

153. *See supra* notes 27-31 and accompanying text.

154. ROBERT L. LINEBERRY, EQUALITY AND URBAN POLICY 14 (1977).

155. OLIVER P. WILLIAMS, METROPOLITAN POLITICAL ANALYSIS: A SOCIAL ACCESS APPROACH 52 (1971).

a. Locational Sorting—A Process of Racial and Economic Differentiation. As noted above, the desire for lower taxes and avoidance of the redistributive outlays of larger, older cities and the desire for racial exclusion are the two factors most prominently identified by researchers for the formation of new local governments.¹⁵⁶ Well before rapid suburbanization began in the 1950s, in 1939, Federal Housing Administration economist Homer Hoyt produced a seminal analysis of residential growth patterns in American cities, identifying for the first time a process of economic segregation in central city real estate markets.¹⁵⁷ As one author put it, even at the neighborhood level and before rapid suburbanization, “subcultures of our urban populations, which ha[d] similar access requirements, tend[ed] to cluster spatially.”¹⁵⁸ Unfortunately, commercial real estate builders perpetuated this process of early sectoral segregation by income near the city center in developing suburban housing and retail properties.¹⁵⁹ In 1966, Hoyt repeated his analysis, verifying the trends he identified in 1939, and subsequent studies have disclosed a remarkable persistence of economic sectoral segregation trends.¹⁶⁰

Economic segregation, therefore, appears to be endemic to modern land usage in the United States. But beyond economic differentiation, race seems to be one of the strongest factors in the process of locational sorting that has occurred in metropolitan America.¹⁶¹ For many white citizens, racial factors appear to be fundamental in defining their preferences and interests in choosing

156. See *supra* notes 31-41 and accompanying text; see also WEIHER, *supra* note 33, at 184-85 (citing empirical studies that document varying reasons for incorporation of new governments, including protection of private corporations against taxation and regulation, allowing upper and middle classes to escape financing public services for low-income citizens, making possible the provision of public services at low tax rates, and preventing the construction of low-income housing).

157. See generally FEDERAL HOUS. ADMIN., *THE STRUCTURE AND GROWTH OF RESIDENTIAL NEIGHBORHOODS IN AMERICAN CITIES* (U.S. Gov't Printing Office ed., 1939). Analyzing block-by-block data of rental markets in 142 cities, Hoyt found that rental areas tended to conform to a pattern of sectors whereby the highest rental areas tended to be located in one sector and that intermediate rental areas tended to adjoin the highest rental areas and so on. See *id.* at 76. More importantly, he concluded that the highest rental area of the city leads growth development patterns, following a definite path of outward radial movement of the high-rental sector from the center of the city. Other rental sectors would follow this movement, trying to get as close as possible to the high rent core. See *id.* at 114.

In considering the growth of a city, the movement of the high rent area is in a certain sense the most important because it tends to pull the growth of the entire city in the same direction. The homes of the leaders of society are located at some point in the high rent area. This location is the point of highest rents or the high rent pole. Residential rents grade downward from this pole as lesser income groups seek to get as close to it as possible. This high rent pole tends to move outward from the center of the city along a certain avenue or lateral line.

Id.

158. WILLIAMS, *supra*, note 155, at 59-60.

159. See John S. Adams, *Housing Submarkets in an American Metropolis*, in *OUR CHANGING CITIES* 108 (John Fraser ed., 1991) (“[Hoyt’s] sector concept entered the thinking of analysts, planners, developers, and builders, and it assumed a self-fulfilling quality as real estate investment decisions based on it perpetuated geographical patterns that it was designed to describe and explain.”).

160. See *id.*

161. See *supra* notes 31-35 and accompanying text.

where to live.¹⁶² Scholars have documented a desire of many white citizens for racial homogeneity in the places they live, and have noted the degree of conflict that arises, particularly in suburbs, when such homogeneity appears threatened.¹⁶³ While there has been a general improvement in the willingness of whites to live in integrated settings, the general desire of whites to maintain white majority status has remained fairly consistent through the decades of suburbanization.¹⁶⁴ In one opinion survey, for example, residents of upper- and middle-class suburbs of Philadelphia “ranked maintenance of their community’s social characteristics—defined in terms of keeping out ‘undesirables’ and maintaining the ‘quality’ of residents—as a more important objective for local government than either the provision of public services or maintenance of low tax rates.”¹⁶⁵

Whatever racial, social or economic preferences have animated private market choices in the process of suburbanization, a sustained commitment to

162. *See id.*

163. *See generally* A. Scott Henderson, *A Better Home in a Nice Neighborhood: Housing, Race, and Residential Conflict*, in CONTESTED TERRAIN: POWER, POLITICS, AND PARTICIPATION IN SUBURBIA (Marc L. Silver & Martin Melkonian eds., 1995) (detailing strong negative responses of white citizens to proposed land sale and construction of a racially mixed subdivision in Lackawanna, New York, a suburb of Buffalo).

164. *See supra* notes 31-35 and accompanying text; *see also* HOWARD SCHUMAN ET AL., RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS 162-63 (1985) (analyzing opinion surveys from the 1960s through the 1980s), *quoted in* W. DENNIS KEATING, THE SUBURBAN RACIAL DILEMMA: HOUSING AND NEIGHBORHOODS 199 (1994) (“[A] large proportion of whites object to any governmental action that might facilitate a change from white preponderance, and, so far as we can tell, this opposition has decreased very little over the past four decades.”); *see also* WEIHER, *supra* note 33, at 65 (noting that whites show overwhelming approval of the principles of racial equality but that they are much less likely to approve of integration “when they are presented with the concrete alternative of having blacks as neighbors”); *id.* at 90 (citing SCHUMAN ET AL., *supra*, for the proposition that public acceptance of the principle of open housing has increased by 90% but public support for specific government programs implementing open housing has only been as high as 46%).

It is worth noting that, while race relations have improved in the United States since the onset of the civil rights movement, a 1990 survey suggests that a majority of white Americans still harbor negative views of African-Americans. The survey of racial attitudes conducted by the University of Chicago’s National Opinion Research Center found that a majority of whites considered blacks to be more likely than whites to prefer living off welfare (78%), to be lazy (62%), to be violence-prone (56%), less intelligent (53%) and less patriotic (51%). *See* KEATING, *supra*, at 194-95.

165. DANIELSON, *supra* note 29, at 28 (citing a study conducted by Oliver Williams). It seems clear that, in the lexicon of the survey, “undesirable” was understood as a code word for persons of lower socioeconomic status. Given the correlation between race and low socioeconomic status in many areas, it is not unreasonable to suspect that “undesirable” may also have had a racial connotation. *See also* HARRIGAN, *supra* note 11, at 315 (citing a study conducted by Oliver Williams, which found that an “overwhelming percentage of white suburbanites of all social classes agreed that suburban communities have a right to exclude people they think are undesirable”). Racial attitudes, as opposed to other factors that might define self-interest, have also had a decisive influence in other policy arenas. *See, e.g.,* John B. McConahay, *Self-Interest versus Racial Attitudes as Correlates of Anti-Busing Attitudes in Louisville: Is It the Buses or the Blacks?*, 44 J. POL. 692 (1982) (concluding that measures of self-interest such as having a child bused were only weakly related to antibusing attitudes while racial attitudes were “strong and consistent correlates of opposition to busing: the more prejudiced, the more opposed”).

localism has been the key to giving full effect to these preferences. As one keen scholar of the early movement for metropolitan-wide government observed: "Most of [the] descriptive evidence supports the following propositions as constituting the metropolitan political 'settlement.' *Assuming no outside interventions, policy areas which are perceived as neutral with respect to controlling social access may be centralized; policies which are perceived as controlling social access will remain decentralized.*"¹⁶⁶ Decentralization, he argued, "encourages the formation and formalization of terrain-based political coalitions."¹⁶⁷ Once new political boundaries are formed, it becomes much easier for mobile citizens to make racial and economic differentiations because geographic borders make those distinctions more readily apparent than they would be at the neighborhood level.¹⁶⁸ Thus, the new political jurisdictions that have formed in the United States in the past three decades have tended to be more economically or racially homogenous than older communities.¹⁶⁹ In fact, the effectiveness of local powers appears to increase with increased homogeneity.¹⁷⁰ The increased social and political cohesiveness that comes with increased homogeneity improves the ability of a municipality to wield local powers to exclude undesirables and pursue the locality's collective self-interest. From this standpoint, smallness and homogeneity are distinct advantages for a locality. And there is abundant empirical evidence of homogenous localities using local powers to maximize internal benefits.¹⁷¹ Thus, one urban scholar concludes that local

166. WILLIAMS, *supra* note 155, at 93 (emphasis in original); see also HARRIGAN, *supra* note 11, at 371 (noting that the devices that control access to "life-styles . . . become the issues over which suburbanites fight most vehemently" and that "the public issues that challenge most directly the exclusivity of these life-styles are busing . . . public housing, zoning, and . . . the equalizing of fiscal disparities in the metropolis").

167. WILLIAMS, *supra* note 155, at 51.

168. See WEIHER, *supra* note 33, at 111.

169. See *id.* at 113 (noting that "segregation by race, educational attainment, and occupation has come to be organized by city rather than neighborhood over the period 1960-1980"); see also *supra* text accompanying notes 31-41 (citing empirical studies of increasing municipal homogeneity).

The critical role of local municipal power in achieving this homogeneity is particularly apparent when one compares American residential patterns to those of other countries. In societies where local governments play a minor role in regulating land use and housing, social and economic segregation is far less pervasive and lower-income families tend to be evenly dispersed throughout the metropolis, including outer-ring developing areas. See DANIELSON, *supra* note 29, at 23.

170. See *id.* at 27-28, 42 ("The more homogenous a suburb, the more easily it can seek to maximize internal benefits through exclusionary housing policies. And the more successful these policies, the less likely becomes the presence of dissenting voices within the local constituency."); Richard Child Hill, *Separate and Unequal: Governmental Inequality in the Metropolis*, 68 AM. POL. SCI. REV. 1557, 1559 (1974) ("The more status-homogenous the suburb, the easier it tends to be, politically, to maintain the primacy of prized values.").

171. See *supra* text accompanying notes 102-11; see also DANIELSON, *supra* note 29, at 41-48 (describing how localities employ, *inter alia*, exclusionary zoning to limit access to their housing markets, how they use police power to limit access to their parks and recreational facilities, and how they use other powers to destroy existing affordable housing within their borders); Michelle J. White, *Self-Interest in the Suburbs: The Trend Toward No-Growth Zoning*, POL'Y ANALYSIS 185 (1978) (analyzing the use of "no-growth" zoning to achieve exclusionary purposes that served the rational self-interest of suburban localities).

suburban government has become “an instrument for protecting parochial interests” and a “means of escaping the social contract.”¹⁷²

b. Reinforcement of Racial and Economic Differences and the Reduced Capacity for Coalition Building. While racial and economic differentiation animates the formation of new local polities and the locational choices of mobile citizens, once citizens locate in or form jurisdictions of increased homogeneity, that social differentiation is reinforced and further inculcated. Thus, under the second prong of the parochialism theory, this section posits that socioeconomic jurisdictional segregation further reduces the capacity of citizens, over time, to empathize with the “other.”¹⁷³ Alternatively, there is a strong tendency to protect and maintain socioeconomic homogeneity once it is established. Hence, cross-border cooperation is not likely on issues that citizens perceive as a threat to homogeneity. For example, in one study of intermunicipal cooperation agreements in metropolitan areas, researchers found that social and economic differentiation among communities presents “an important obstacle to cooperative relations among urban communities.”¹⁷⁴ Examining the intermunicipal agreements entered into among 238 municipalities that existed in the Philadelphia metropolitan area, the researchers observed that cooperative agreements tended to occur more frequently in relatively undifferentiated semi-rural sectors and less frequently in the highly differentiated urbanized sectors.¹⁷⁵ Any cooperation that did occur among urbanized communities “tended to occur among communities which were socially and economically similar”¹⁷⁶ and “social distance [was] a more important determinant of cooperation than [was] economic distance.”¹⁷⁷ Thus, the researchers concluded that metropolitan fragmentation “tends to create sharp social breaks which follow municipal boundaries [and therefore] the intermunicipal social distances influence not only the pattern of cooperation but also its extent.”¹⁷⁸

This lack of cooperation among socially and/or economically distinct municipi-

172. WEIHER, *supra* note 33, at 182; *see also* Hill, *supra* note 170, at 1559 (“In the context of a fragmented system of governments in the metropolis, municipal government becomes an institutional arrangement for promoting and protecting the unequal distribution of scarce resources.”). Hill notes that “[s]uburban governments tend to function as corporate representatives of the class and status groups interests of their populations” and marshals data indicating “that metropolitan areas with large numbers of municipalities tend to have greater inequality among municipalities.” *Id.* at 1566.

173. Professor Frug has also made this argument. *See generally* Frug, *supra* note 15.

174. Thomas R. Dye et al., *Differentiation and Cooperation in a Metropolitan Area*, 7 *MIDWEST J. POL. SCI.* 145, 154 (1963).

175. *See id.*

176. *Id.* at 155.

177. *Id.*

178. *Id.* at 150. *See also* Ruth Hoogland DeHoog et al., *Metropolitan Fragmentation and Suburban Ghettos: Some Empirical Observations on Institutional Racism*, 13 *J. URB. AFF.* 479, 488-89 (1991) (finding that blacks in suburban residential communities fared worse “both in objective numbers of services and the more subjective perceptions of services and government” when they lived in a fragmented majority-black town as compared to a consolidated metropolitan government).

palities¹⁷⁹ is not surprising because fragmented local autonomy tends to encourage a highly parochial perspective among citizens.¹⁸⁰ This may occur both because socioeconomic stratification reduces citizen contact with different types of people¹⁸¹ and because the localist system encourages and rewards highly homogeneous communities that exercise local authority in self-maximizing ways.¹⁸² In contrast, it has been argued that large suburban jurisdictions with heterogeneous populations tend to be more responsive to pressures for meeting regional needs, like affordable housing.¹⁸³

Given this reduced capacity for bridging interjurisdictional social and economic differences, regionalists must work doubly hard to forge meaningful metropolitan-wide coalitions. However, it is particularly difficult for the citizens of an atomized polity to recognize, much less pursue, a mutual destiny with persons outside their local political jurisdiction. In most metropolitan regions, for example, the older, inner-ring suburbs have much more in common with the central city than they do with affluent, outer-ring suburbs.¹⁸⁴ Older suburbs are currently experiencing the same pattern of socioeconomic instability that central cities have traditionally endured because of middle-class flight and the concentration of needy populations.¹⁸⁵ And the older suburbs also suffer from dispropor-

179. This is not to suggest that there is no cross-border cooperation among socioeconomically distinct municipalities. The author's point is merely that socioeconomic differential across borders substantially increases barriers to cooperation. For a survey of the current extent and nature of regional cooperation in the United States, see *infra* text accompanying notes 224-50.

180. See DANIELSON, *supra* note 29, at 39 ("Local autonomy combines with limited size, a fairly homogenous population, and the mobilization of residential interests to provide most suburbanites with a highly parochial perspective on the metropolis.').

181. See *id.* at 20-21 (discussing heightened suburban indifference to the issues and problems of the central city); *id.* at 108 (documenting the results of a survey of citizens in New York's Westchester County which showed that very few people were open to considering or accepting any responsibility for the region's affordable housing).

182. See generally *supra* text accompanying note 28.

183. See DANIELSON, *supra* note 29, at 109-10 (citing Montgomery County, Maryland; Nassau County, New York; and Fairfax County, Virginia as examples of jurisdictions that have sought to broaden housing opportunities for their diversifying populations); DeHoog et al., *supra* note 178 (noting that blacks fared better objectively and subjectively in terms of government services received with consolidated metropolitan government). *But see* ALBERTO ALESINA ET AL., PUBLIC GOODS AND ETHNIC DIVISIONS 26-27 (National Bureau of Econ. Research Working Paper No. 6009, 1997) (on file with author) (concluding that ethnically diverse jurisdictions in the United States devote lower shares of spending and less per capita spending to core public goods, like education and roads, because white majorities vote to reduce the supply of productive public goods as the share of blacks and other minorities increases).

184. See ORFIELD, METROPOLITICS, *supra* note 11, at 4.

185. See *id.* The concentration of needy populations has immediate social repercussions, including an acceleration of white and middle-class flight from the public schools, an exponential increase in violent crime, and a significant reduction of property values, see *id.* at 3-4, not to mention the acute social effects of concentrated poverty on the individuals who live there, see *id.* at 18-19; MASSEY & DENTON, *supra* note 36, at 75-77; WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987). By the 1990s, this pattern of socioeconomic instability began to cross into older, inner suburban communities, accelerating and intensifying there because these largely residential communities had fewer social and fiscal resources to combat these trends. See, e.g., ORFIELD, METROPOLITICS, *supra* note 11, at 4. This pattern of concentration of need and

tionate allocations of public infrastructure funds to the favored quarter.¹⁸⁶ Such older suburbs are often composed of white middle-class and other populations that specifically sought to escape the central city.¹⁸⁷ On the other hand, central cities often are home to a large minority population whose leadership fear losing power by participating in a regional alliance.¹⁸⁸ Racial and economic stratification fuels these concerns and suspicions, even though citizens of the urban core—the central city and the inner-ring suburbs—have the potential to be powerful allies based upon mutual self-interest.

Finally, differences and suspicions arising from fragmented local governance fester because there is a serious lack of information that would enable citizens to develop a regional identity or a notion of a collective regional interest. An emerging literature suggests that the economic destinies of cities and suburbs are interwoven, and that those suburbs that surround a vibrant urban core appear to be better off economically than those that surround economically weak central cities.¹⁸⁹ In a fragmented political environment, however, there are few opportunities or fora to collect and disseminate information that would help the

social burdens in the central city and older suburbs is being replicated in virtually every metropolitan region in the country in some form. *See id.* at 157-66 (describing similar patterns in the Portland, Chicago, and Philadelphia regions).

186. *See generally supra* text accompanying notes 100-25.

187. *See* ORFIELD, *METROPOLITICS*, *supra* note 11, at 15-16, 30.

188. *See, e.g.*, HARRIGAN, *supra* note 11, at 361-63 (noting frequent opposition of minority leaders to campaigns for metropolitan government); John A. Powell, *Race and Space: What Really Drives Metropolitan Growth*, BROOKINGS REV., Fall 1998, at 20, 22. Powell (who spells his name using lower case letters) argues that “[m]inorities . . . fear the erosion of political power and the loss of control over the political process if the political base of their communities [is regionalized].” *Id.*

189. *See* LARRY C. LEDEBUR & WILLIAM R. BARNES, NATIONAL LEAGUE OF CITIES, CITY DISTRESS, METROPOLITAN DISPARITIES, AND ECONOMIC GROWTH 1-2 (1992) (metropolitan areas with income disparities between central cities and outer suburbs greater than average sustained net declines in employment growth, while those with income disparities less than average had modest employment growth); Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-N.W. J. ENVTL. L. & POL’Y 137, 150 (1999) (citing a study showing that in regions surrounding the 100 largest U.S. cities, half of suburban families had at least one member employed in the central city, 67% of suburban families depended on the central city for medical care, and 43% had a family member attending an institution of higher learning in the central city); William N. Goetzmann et al., *Do Cities and Suburbs Cluster?*, CITYSCAPE: A J. OF POL’Y DEV. AND RES., May 1998, at 193 (showing a correlation between price fluctuations in housing markets in central Los Angeles with those in its suburbs); H. V. Savitch et al., *Ties That Bind: Central Cities, Suburbs, and the New Metropolitan Region*, 7 ECON. DEV. Q. 341, 344 (1993) (analyzing income data for 59 metropolitan areas and concluding that areas with higher central city income levels have higher suburban income levels); Richard Voith, *City and Suburban Growth: Substitutes or Complements?*, BUS. REV. Sept.-Oct. 1992, at 21, 29 (a publication of the Federal Reserve Bank of Philadelphia) (describing a study of 28 metropolitan areas in the Northeast and North Central regions and concluding that suburban economic performance is unlikely to be strong in areas with declining central city incomes). *But see* John P. Blair & Zhongcai Zhang, “*Ties That Bind*” *Reexamined*, 8 ECON. DEV. Q. 373 (1994) (suggesting that state policies that influence both suburbs and central cities may be the cause of the linkage between the economic fates of central cities and suburbs, rather than suburban dependence on the central city); Edward W. Hill et al., *Can Suburbs Survive Without Their Central Cities? Examining the Suburban Dependence Hypothesis*, 31 URB. AFF. REV. 147 (1995) (finding that, although suburbs and central cities are interdependent, healthy suburbs can exist around poor central cities).

public understand these mutual connections. The Twin Cities region built a strong regional alliance of interests from the urban core because a visionary state representative sponsored a comprehensive study that demonstrated in an accessible, geographically mapped form precisely where public resources were being invested and how the communities from the urban core were being negatively affected.¹⁹⁰ Normally, however, the degree of influence, subsidization, and advantage of the favored quarter is completely hidden from public view. If geographically coded data on the location of public investments is collected at all, it is not systematically disclosed to the public.¹⁹¹ As a result, the collective interest of the entire region is rarely recognized or part of the public's agenda.

2. The Institutionalization Theory

While political fragmentation inculcates a parochialism that may discourage or distract citizens from forging potentially beneficial regional alliances, it also institutionalizes the advantaged position of the favored quarter. Richard Child Hill, a political scientist, aptly describes the structural impact of political fragmentation on power and relational dynamics in metropolitan regions:

Imbedded in the principles, procedures and policies governing and structuring the relationships between classes, and among status groups in the metropolitan community is a "mobilization of bias": a set of institutional rules of the game variously resting upon authority, influence, and force which benefit some at the expense of others. . . . Residential segregation by class and race shapes interaction patterns, friendship ties, marital selection, and social consciousness. The distribution of income and residential location shapes political relationships between collectivities with discordant interests and creates differential access to public goods and services. Access to public goods and services—in particular, education and cultural facilities—controls access to jobs and income. In this manner an interdependent set of local institutions gives rise to the structure of inequality in the modern metropolis.¹⁹²

Indeed, one scholar has argued that the process of suburbanization has led to a "new political geography of growing suburban strength and declining urban power" in state legislatures, which are responding to an "increasingly entrenched and narrow" set of interests.¹⁹³ This section presents an institutionaliza-

190. See generally ORFIELD, *METROPOLITICS*, *supra* note 11, at 104-55.

191. In order to produce its report, *Getting a Fair Share*, about where the \$20 billion a year in federal surface transportation funds were being allocated, the Surface Transportation Policy Project (STPP) had to make several requests under the Freedom of Information Act. See Interview with Don Chen, former Director of Research, Surface Transportation Policy Project (Oct. 1998).

192. Hill, *supra* note 170, at 1558-59; see also HARRIGAN, *supra* note 11, at 5 (noting that "[p]olitical bias in the metropolis . . . involves two questions[:] Who benefits from the ongoing political structure and process in the metropolis? And who pays the cost of those benefits?").

193. See Margaret Weir, *In the Shadows: Central Cities' Loss of Power in State Politics*, *BROOKINGS REV.*, Spring 1995, at 18; see also *id.* at 19 (noting that Democrats in the legislature who were once

tion theory, or rather, a view as to the “institutional rules of the game” that appear to be at work on behalf of affluent suburban communities. This article asserts that fragmentation institutionalizes the dominance of the favored quarter for three reasons. First, it enhances the favored quarter’s advantaged position in the competition for public investments because the would-be regional majority is atomized and affluent; homogenous communities have the lowest barriers to effective political participation within relevant public decisionmaking fora. Second, fragmentation sets in motion a process of economic competition that, over time, tends to strengthen the fiscal position of the favored quarter and weaken that of other communities. Finally, fragmentation institutionalizes societal attitudes, making a different distributional politics less possible because the current milieu of socioeconomic segregation and of geographically disaggregated concentrations of poverty and affluence are seen as “natural.”

a. Institutionalization of Political Power: The Competition for Public Investments. Under this prong of the institutionalization theory, it is to be expected that the favored quarter would dominate in the competition for public investments because it starts from an original position of wealth and homogeneity not enjoyed (or not enjoyed equally) by other localities in the metropolis. Homogeneity and smallness will make it easier for localities of the favored quarter or the interest groups that represent them—such as developers—to mobilize to influence state or other political decisionmakers responsible for allocating relevant public benefits. Wealth, obviously, will assist in underwriting the costs of such mobilization and, unfortunately, in enhancing access to political decisionmakers. As Mancur Olson argued in his theory of collective action, political activity is likely to be dominated by small groups of individuals or interests seeking to maximize benefits for themselves.¹⁹⁴ The easiest groups to organize, in his view, would be a few individuals or firms that desire government benefits paid for by the general public—a phenomenon known in the public choice literature as “rent-seeking.”¹⁹⁵ On the other hand, large, unorganized groups, as

sympathetic to concerns of the urban core “now agree to push costs back down to the city [of Chicago]” in order to win suburban votes and that “state legislators have represented only a narrow part of suburban interests” to the detriment of inner-ring “collar” counties that are trying to raise revenues to serve fast-growing school-age populations); Margaret Weir, *Central Cities’ Loss of Power in State Politics*, CITYSCAPE: A J. OF POL’Y AND RES., May 1996, at 23, 23 (evaluating changes in state politics in New York and Illinois and concluding that “[s]tate politics are increasingly driven by a suburban-based politics of ‘defensive localism’ that seeks to limit State action in addressing urban economic and social problems”); *id.* at 35 (noting that the “burdens that State governments place on local governments, both through their attentiveness to special interests and through their efforts to cut taxes, will likely stimulate political divisions among suburbs and raise possibilities for occasional coalitions between some suburbs and cities on State legislation”).

194. See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1971).

195. Rent-seeking is a term used by economists to describe political activity by persons or groups undertaken with the intent of gaining special privileges from the government, usually monopoly rights. See Jonathan R. Macy, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223, 224 (1986). The implication of this asserted activity is

compared to small groups, would have strong disincentives or barriers to collective action before legislative bodies.¹⁹⁶ The atomized metropolitan polity, which is separated by social and economic distances that inhibit cross-border alliances,¹⁹⁷ can be likened to Olson's large, unorganized groups. Due to the atomization and parochialism of this polity, the favored quarter has little effective opposition. Strong economic interests are freer to hold sway with political and public institutions—for example, state executive and legislative branches and public financing authorities—that play a critical role in the allocation of resources and the setting of policies that shape regional development patterns. Hence, the favored quarter's rent-seeking efforts are more likely to be successful in this fragmented system.¹⁹⁸

While it would be simplistic to suggest that the favored quarter phenomenon fits this neatly into Olson's theory, or that his theory accurately reflects real-world political realities,¹⁹⁹ the political science literature does offer some empirical support for the proposition that affluent interest groups wield more collective influence in legislative, and hence political, processes.²⁰⁰ And state

that wealth gets transferred from society at large to discrete, well-organized groups with greater access to the political system. In the view of some scholars, governments will enact laws to benefit these groups at the expense of society as a whole. *See id.* at 230. *See generally* OLSON, *supra* note 194; Daniel A. Farber & Phillip P. Frickey, *The Jurisprudence of Public Choice*, 65 TEX. L. REV. 873, 892 (1987) (describing the increasing perception among the public that legislation is enacted primarily as a result of the pressure exerted by special interest groups).

196. *See* OLSON, *supra* note 194, at 125-31 (explaining the free rider problem and other disincentives).

197. *See supra* text accompanying notes 156-90.

198. According to interest group theory, the interests of the favored quarter are clear and direct, and thus overcome the collective action problems faced by the regional majority. *See* Timothy J. Choppin, Note, *Breaking the Exclusionary Land Use Regulatory Barrier: Policies to Promote Affordable Housing in the Suburbs*, 82 GEO. L.J. 2039, 2056 (1994). Economically advantaged citizens are also not daunted by the costs inherent in organizing, which gives them an additional advantage. *See id.*

In a system of unitary or regional governance, affluent populations obviously would also have strong influence. But that influence would be tempered by democratic popular control mechanisms and by the forced sharing that comes with participation in the same tax base. In most major central cities, for example, the business community has strong, if not definitive, influence on the economic development strategies pursued by big-city mayors. *See, e.g.,* KANTOR, *supra* note 25, at 95-97, 113-20 (describing the dependence of cities on the locational choices of multinational corporations and the economic incentives packages mayors typically offer to attract and retain large private employers). But even in the most economically weak or dependent cities, an organized political base can temper this influence. *See id.* at 131-34 (describing the relative impact of organized opposition groups in San Francisco, Chicago, and Detroit). In addition, in a unitary or regional government, affluent interests would be forced through a common tax base to undertake a degree of resource sharing. *See id.* *But see* Guhathakurta & Wichert, *supra* note 108 (citing evidence of considerable cross-subsidization of the outer suburbs by the urban core even when those suburbs were within the Phoenix city limits).

199. *See* Farber & Frickey, *supra* note 195, at 899-901 (arguing that interest group and public choice theorists have overstated the degree of influence of special interests on legislative outcomes, ignoring other important factors, like ideology and constituent interest).

200. *See* KAY LEHMAN SCHLOZMAN & JOHN T. TIERNEY, ORGANIZED INTERESTS AND AMERICAN DEMOCRACY 7 (1986) (conducting a systematic study of interest group politics before Congress and concluding, *inter alia*, that "[t]he activities of organized interests build into the American political system a minoritarian counterweight to some of its more majoritarian tendencies" and "the minorities thus benefited—while not unanimous in their interests—are disproportionately but not uniformly

political institutions appear to be fairly susceptible to rent-seeking, or, it has been argued, they are more susceptible than are federal institutions.²⁰¹ In addition, the political science literature suggests that state politics is highly responsive to the demands and preferences of suburban, middle-class voters.²⁰² In the realm of public school finance reform, for example, when state legislatures have taken up the issue of resolving interjurisdictional inequities in school funding, in the absence of a court order, these political bodies were incapable of eliminating interdistrict inequities.²⁰³ And middle-class suburban districts appear to have decisive influence on the outcome of state political decisionmaking on education aid; rationally, these voters tend to maximize public benefits for their own districts.²⁰⁴

While none of this empirical evidence suggests that the favored quarter will necessarily have decisive influence in state political or regional debates, it supports the idea that state political institutions are responsive to activated political groups. And, in the competition for public infrastructure investments, the favored quarter seems to be winning.²⁰⁵ This “governmental allocation of values,”²⁰⁶ which to some degree is divorcing public fiscal resources from public needs, appears to have an increasingly important role in perpetuating inequality among the segregated classes and status groups of the metropolis.²⁰⁷

b. Institutionalization of Economic Power: Horizontal Competition and the Process of Strengthening and Weakening. Fragmented governance also institutionalizes the advantaged position of the favored quarter because it sets in motion a process of fiscal strengthening of affluent communities and of weakening less advantaged communities. This process has already been described in detail.²⁰⁸ Again, only the favored quarter is largely free to use local powers to shape its economic and social destiny.²⁰⁹ And the impact of this local power is reinforced by generous or disproportionate public infrastructure funding. This congruence of forces creates something of a closed loop whereby the economic power and hegemony of the favored quarter increases over time. An original position of relative wealth and influence is enhanced and institutionalized as

affluent ones”); Farber & Frickey, *supra* note 195, at 883-90 (canvassing contemporary political science research concerning interest groups and legislator behavior and concluding that it “suggests a complex political world ill-fitting any simple formula” but that “the national political process appears vulnerable [to] domination by narrow economic interests”).

201. See Cashin, *supra* note 3, at 598 & nn.192-93 (citing sources).

202. For an extensive discussion of the empirical literature and evidence demonstrating the dominance of suburban middle-class voters over state fiscal choices, see *id.* at 583-91.

203. See *id.* at 587 (citing, *inter alia*, William N. Evans et al., *Schoolhouses, Courthouses, and Statehouses After Serrano*, 16 J. POL’Y ANALYSIS & MGMT. 10 (1997)).

204. See *id.* at 588 & nn.149-50 (citing studies).

205. See *supra* text accompanying notes 100-25.

206. Hill, *supra* note 170, at 1567.

207. See *id.*

208. See *supra* notes 131-38 and accompanying text.

209. See *supra* text accompanying notes 99-105.

certain affluent communities use local powers in a manner that both increases their economic strength and weakens the relative economic position of other communities through the exporting of costs.²¹⁰

c. Institutionalization of Societal Attitudes and the Impact on Politics. While fragmentation appears to institutionalize political and economic advantages in the metropolis, it also tends to institutionalize societal attitudes that, in turn, reinforce existing disparities of power, wealth, and social access. This hardening of certain societal attitudes can be viewed as one of the structural effects of localism on national, state, and, most forcefully, metropolitan politics. It has been argued, for example, that the racial and economic segregation by political jurisdiction that has accompanied suburbanization, while a relatively new phenomenon, has come to be accepted by the metropolitan populace as the “natural” order.²¹¹ The degree of government intervention or subsidy that contributed to metropolitan socioeconomic fragmentation is not generally acknowledged or recognized, and citizens may tend to view resulting fiscal, economic, and social inequality as reflections of private choice and merit. Because our overarching jurisdictional, and hence social, structures are so antithetical to racial and economic mixing, it has been argued that we, as a society, have a great deal of difficulty imagining a different distributional order in which mutual responsibility is accepted, if not embraced.²¹²

The role of public attitudes in institutionalizing existing socioeconomic disparities can be seen most clearly in the realm of public education. As noted above, the social science literature has identified ethnic divisions as a barrier to the provision of public services.²¹³ While poor minorities, for example, are most in need of good public schools to improve their skills, public school funding within segregated cities is frequently low because of ethnic conflict.²¹⁴ But a vicious circle inhibits effective solutions; as William Julius Wilson has vociferously argued, because of poor schools, the relative skills of minorities relegated to poor urban neighborhoods do not improve and their poverty level increases, exacerbating problems of unemployment and decay associated with declining central cities.²¹⁵ This result, in turn, makes ethnic conflict even more acute because it reinforces white voters’ stereotypes about minorities.²¹⁶

210. *See id.*

211. *See* John A. Powell, Lecture at the National Building Museum Series on Smart Growth (June 29, 1999). Powell argues that racial segregation between political jurisdictions is not a pure market phenomenon but is a direct by-product of federal and state public policies that encouraged and subsidized the migration of whites away from the urban core. *See id.* (citing federal housing and transportation policies); *see also supra* text accompanying notes 106-11 (citing evidence of such subsidization).

212. *See* Powell, *supra* note 211.

213. *See supra* text accompanying note 178.

214. *See* Alesina et al., *supra* note 183, at 6.

215. *See generally* Wilson, *supra* note 185; William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (1996).

216. *See* Alesina et al., *supra* note 183, at 6.

This trend is dangerous to society as a whole because regional inequities create significant gaps in opportunities for citizens to participate in the economic mainstream. At the same time, regional fragmentation increases the political barriers to closing such gaps.²¹⁷ Again, in the absence of a state court order, virtually none of the state legislatures that have tackled the problem of interdistrict school finance inequity have closed the gap in per-pupil spending between rich and poor school districts.²¹⁸ In fact, some legislatures, under the guise of school finance reform, have rendered poor school districts worse off by effecting a net reduction in their funding.²¹⁹ As the parochialism and institutionalization theories suggest, the political barriers to bridging interdistrict fiscal disparities, like the political barriers to regionalism, are structural. Fragmented local governance begets a narrow, parochial self-interest and reinforces wealth and power disparities in a way that creates a much more difficult political environment for regional thinking.

III. NEW REGIONALISM: CONFRONTING THE LOCALIST IDEAL

The fiscal and social access disparities that flow from fragmented metropolitan governance are at the core of the regionalist challenge. Metropolitan movements of earlier decades sought to stem this growing inequity by creating metropolitan-wide governments.²²⁰ But this effort met with dramatic failure primarily because it was completely antithetical to the desire of suburban voters for local autonomy.²²¹ The "New Regionalist" agenda accepts the political futility of seeking consolidated regional government.²²² Instead, it attempts to bridge metropolitan social and fiscal inequities with regional *governance* structures, or fora for robust regional cooperation, that do not completely supplant local governments.²²³ It is an inchoate movement that does not admit of well-defined goals, in part because the focus of regional efforts vary with each

217. In metropolitan regions characterized by extreme polarization of resources, social needs, and public attitudes, a child's life chances are more likely defined by where she lives than by who she is. For inner-city children relegated to poor urban school districts, the gap between the education they receive and the standards demanded by colleges and the information economy may already be insurmountable. See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES* (1992); Gary Orfield, *Urban Schooling and the Perpetuation of Job Inequality in Metropolitan Chicago*, in *URBAN LABOR MARKETS AND JOB OPPORTUNITY* 161-96 (George E. Peterson & Wayne Vroman eds., 1992). But see Michael Marriott, *Iron Hand Reshapes Philadelphia's School System*, N.Y. TIMES, Feb. 20, 1991, at B9 (describing efforts to improve Philadelphia's school system); Cameron McWhirter & Sheryl Kennedy, *The Model: Windy City Shines as School Reform Success: Progress Is Reported a Decade After Being Labeled Nation's Worst School System*, DETROIT NEWS, Mar. 21, 1999, at A10 (citing recent improvements in Chicago's school system, including improved test scores, new buildings, reduced truancy rates, and a new curriculum).

218. See Cashin, *supra* note 3, 587-88 nn.146 & 149.

219. See *id.*

220. See *supra* note 11 (distinguishing "New Regionalism" from the early, failed regional government movement).

221. See generally HARRIGAN, *supra* note 11, at 342-65.

222. See, e.g., RUSK, *INSIDE GAME / OUTSIDE GAME*, *supra* note 11, at 9.

223. See, e.g., *id.*

metropolitan context. For purposes of this article, however, "New Regionalism" describes any attempt to develop regional governance structures or interlocal cooperative arrangements that better distribute regional benefits and burdens. This part first examines the existing forms of regional cooperation and then explores the possibilities for achieving New Regionalist solutions that will help metropolitan areas transcend the phenomenon of the favored quarter. It then returns to the localism literature, drawing on the earlier analysis of the favored quarter and metropolitan politics to underscore why a regionalist model better serves the values that localism purports to serve.

A. THE CURRENT STATUS OF REGIONALISM IN THE UNITED STATES

There is a fair amount of institutionalized regional cooperation in metropolitan America. One researcher has found that twenty-seven large urban areas²²⁴ in the United States have some form of regional collaborative efforts between the central city and some or all of its suburbs.²²⁵ These arrangements fall roughly into three categories: (1) metropolitan government; (2) regional tax sharing; and (3) regional service sharing.²²⁶ At the pinnacle of metropolitan cooperation are the four regions that share consolidated city and county government²²⁷ and the three regions that have multipurpose regional governments which administer a regional tax and deliver a limited set of regional services.²²⁸ Accepting that consolidated metropolitan government is an historic anomaly that is not likely to be repeated in the United States, the three areas that have achieved limited purpose regional governance and tax sharing—Portland, Seattle, and, in particular, the Twin Cities—represent the highest aspirations for the New Regionalism

224. The 27 areas are: Atlanta, Georgia; Birmingham, Alabama; Boston, Massachusetts; Charlotte, North Carolina; Charlottesville, Virginia; Chicago, Illinois; Dallas, Texas; Dayton, Ohio; Denver, Colorado; Hartford, Connecticut; Houston, Texas; Indianapolis, Indiana; Jacksonville, Florida; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Minneapolis/St. Paul, Minnesota; Nashville, Tennessee; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Portland, Oregon; San Antonio, Texas; San Francisco, California; Seattle, Washington; St. Louis, Missouri; and Washington, D.C. See Anita A. Summers, *Major Regionalization Efforts Between Cities and Suburbs in the United States* 9 tbl.1 (Wharton Real Estate Ctr., Working Paper No. 246, June 1998) (on file with author). There are 258 urbanized areas in the U.S. with at least 50,000 inhabitants and a total metropolitan population of at least 100,000 people (75,000 for New England). See U.S. Census Bureau, *About Metropolitan Areas* (visited Aug. 30, 1999) <<http://www.census.gov/population/www/estimates/aboutmetro.html>>.

225. See Summers, *supra* note 224, at 11 (noting that a full search of the literature revealed evidence of such collaboration in 27 large urban areas). This study does not account for the considerable interlocal cooperation that occurs between suburban jurisdictions but does not include central cities. Cf. Dye et al., *supra* note 174, at 154 (revealing that neighboring communities with similar social and economic bases tend to cooperate more with each other than those with dissimilar population, and pointing out that often suburban areas have more in common with one another than they do with the central cities they border).

226. See generally Summers, *supra* note 224, at 9 tbl.1 & 11-13.

227. See *id.* at 9 tbl.1 & 12 (citing consolidated governments of Indianapolis, Indiana; Jacksonville, Florida; Miami, Florida; and Nashville, Tennessee).

228. See *id.* (citing the multipurpose governments of Minneapolis-St. Paul, Minnesota; Portland, Oregon; and Seattle, Washington metropolitan regions).

movement.²²⁹ But even short of such limited-purpose regional governance, all twenty-seven of the identified metropolitan regions have some form of regional tax sharing.²³⁰ However, precious few of these tax sharing arrangements involve the sharing of property tax revenues in a manner designed to reduce the fiscal inequities that flow from uneven patterns of growth and public investment in metropolitan areas.²³¹

Finally, the most common form of regional cooperation involves cross-border sharing and delivery of services. With the exception of Houston, which through aggressive annexation has incorporated much of the population it might have shared services with, all of the identified regions share a number of services “over an area larger than the legal boundary of the central city.”²³² In particular, “[t]he delivery of transportation services is the major catalyzing agent” for regional structures because transportation service is necessarily interjurisdictional and requires magnitudes of investment and consumption that no single political jurisdiction could provide.²³³ Hence, transportation is regionalized in virtually all metropolitan regions, with some form of interlocal transit district overseeing the financing and operation of transportation services, particularly for mass transit.²³⁴ In addition, in order to take advantage of federal transportation funding for roads and mass transit, every large metropolitan region in the United States has a metropolitan planning organization that undertakes regional transportation planning.²³⁵ Unfortunately, the federal mandate of regional transportation planning does not translate into a broad commitment to regional *land*

229. For an extended discussion of the regionalism achievements of the Twin Cities area, *see infra* text accompanying notes 268-72. Portland, Oregon has used an urban growth boundary and regional governance structure which enables it to maintain a vibrant urban core and regional transportation system. *See Nelson with Milgroom, supra* note 132, at 6. The Greater Portland Metropolitan Service District oversees all regional transportation, land use planning, and solid waste disposal, and it operates many of the region’s parks, recreation, and tourism facilities. *See Summers, supra* note 224, at 10 tbl.2. The Seattle region’s Department of Metropolitan Services oversees transportation and waste water treatment for the area. *See id.*

230. *See Summers, supra* note 224, at 9 tbl.1 & 10. “Nine of the areas have a general regional tax for use for a large bundle of services; 18 assign specific taxes to specific functions.” *Id.*

231. *See id.* at 10 tbl.2 (identifying Charlottesville, Virginia; Dayton, Ohio; Houston, Texas; and Minneapolis-St. Paul, Minnesota as areas with some form of regional property tax base sharing in a manner that contributes to general operations of receiving governments). In fact, only the Twin Cities Fiscal Disparities program and the Dayton Government Equity Fund appear to be designed specifically to reduce interlocal fiscal disparities by sharing property value growth. *See id.*

232. *Id.* at 9.

233. *Id.* at 10.

234. *See generally id.* at 10 tbl.2 & 12.

235. *See generally id.* (identifying a number of regional structures that have a planning function, particularly regarding transportation); DIAMOND & NOONAN, *supra* note 142, at 45-48 (reviewing the metropolitan planning requirements of federal transportation legislation). The federal Transportation Equity Act for the 21st Century (TEA-21) requires that urbanized areas create Metropolitan Planning Organizations (MPOs) to develop transportation plans for areas with populations greater than 50,000. *See Transportation Equity Act for the 21st Century*, Pub. L. No. 105-178, § 1203, 112 Stat. 107 (1998) (codified in scattered sections of 16, 23, 40, 42, 45, and 49 U.S.C.).

use planning; most localities resist regional cooperation on land use.²³⁶ Beyond transportation, other services that are frequently provided on a regional basis, with multiple localities contributing via an interlocal structure, include park and recreational services, waste water and solid waste treatment, airports, sports arenas, and convention centers.²³⁷

It has been argued that the primary impetus for most forms of regional cooperation is the desire to achieve economies of scale.²³⁸ It is not surprising that this rationale—as opposed to the desire to internalize externalities or to redistribute resources—would predominate, given the public good characteristics of most shared services.²³⁹ Transportation, waste treatment and disposal, and signature facilities for recreation, culture, sports, or convention centers most likely engender interlocal cooperation because most citizens and localities perceive them as a benefit—or a necessity—that they can enjoy, with little threat of loss due to zero-sum competition.²⁴⁰ But beyond the sharing of these public-good types of facilities and services, there is little in the way of formalized regional cooperation in the United States.²⁴¹

In particular, regional cooperation on issues like affordable housing, which would require a re-ordering of the existing distribution of social benefits and burdens in metropolitan regions, rarely if ever happens in the American metropolis in the absence of an external mandate, usually from state courts or legislatures.²⁴² The Twin Cities metropolitan area is one of the very few in the United States that has begun to forge regional solutions to problems of tax base inequities, limited affordable housing, inequitable land use and infrastructure development, and, perhaps most importantly, fragmented governance.²⁴³ In the United States this kind of regional consensus is rare, difficult, and often controversial.²⁴⁴ Instead, in most metropolitan regions the collective well-being

236. See *infra* note 244. Even in the context of transportation planning, there are often bitter interlocal disputes about the siting of roads or other transportation infrastructure. See, e.g., Jennie Allen, An Evaluation of Federally Mandated Regional Cooperation in the Washington, D.C. Metropolitan Area 22-24 (1997) (unpublished manuscript, on file with author) (citing examples of interlocal disputes).

237. See Summers, *supra* note 224, at 10 tbl.2. A wide variety of regional structures have been created for the provision of such services, including regional commissions or councils, formal interlocal service contracts, regional tax sharing structures, and multigovernmental consolidations. See *id.* at 12-13. These “[s]tructures have been tailored to the services the relevant communities are cooperating on.” *Id.* at 10.

238. See *id.* at 10.

239. See *id.* at 10, 12-13.

240. Cf. Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387 (1954) (describing a public good as one for which “each individual’s consumption of such a good leads to no subtraction from any other individual’s consumption of that good”).

241. See generally Summers, *supra* note 224, at 10 tbl.2.

242. Cf. Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1147-51, 1154-55, 1158-59.

243. See *infra* text accompanying notes 268-72.

244. As noted, the Twin Cities, Portland, and Seattle metropolitan areas are among the very few in the nation that have undertaken significant regional cooperation arrangements. See *supra* text accompa-

of the region is not being pursued, primarily because of the aggregate spillover effects of local power being exercised by scores of autonomous localities, each without consideration of the impact of local decisions on the entire region.²⁴⁵ For example, the delegation of land use zoning powers to municipalities that compete with each other to develop a vital tax base can stimulate exclusionary practices throughout the region, resulting in economic segregation, increased housing costs, and inefficient “leapfrog” development that exacts costs on the entire region for expensive, duplicative infrastructure.²⁴⁶ The local-boundary dependent nature of the property tax structure reinforces “interlocal competition [and] interlocal wealth disparities [that result in] inferior services and infrastructure in central cities.”²⁴⁷ In addition, as a result of the demonstrated interdependence of central cities and their suburbs,²⁴⁸ such interlocal competition can “mak[e] affluent areas as well as poorer ones less well-off than they might have been had the region as a whole invested more in poorer localities.”²⁴⁹ Thus, the localist, public choice vision—that the horizontal competition between maximally empowered local governments produces better outcomes for individuals and the collective polity—simply does not accord with the empirical evidence.²⁵⁰ The idea propounded by Professors Frug and Ford that regional solutions should be the result of a fully voluntary negotiation process ignores the realities of metropolitan politics. Any notion that affluent suburban localities can be depended upon to voluntarily engage in metropolitan coalitions that require them to sacrifice some benefits or to take on more in the way of regional burdens is fanciful.

The evidence on affordable housing development supports this claim. Since

nying notes 223-29. But such efforts require sustained leadership, attention, and battle. *See* ORFIELD, *METROPOLITICS*, *supra* note 11, at 12; PEIRCE, *supra* note 11, at 3, 9-12 (1993) (describing the entrenched problems faced by Phoenix, Seattle, the Twin Cities, and several other urban areas, and suggesting possible regional solutions requiring a large degree of cooperation). And these efforts are not truly voluntary; they have required substantial involvement of state institutions, particularly the state legislature. *Cf.* Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1147-48 & nn.160 & 165 (noting that localities do not voluntarily enter into cooperative arrangements for land use planning or tax base sharing and that the strides in affordable housing in New Jersey were the result of state-imposed requirements).

245. *See* DIAMOND & NOONAN, *supra* note 142, at 33 (describing the “regional prisoners’ dilemma” and demise of regional welfare that results in metropolitan areas due to the vesting of land use decisionmaking, fiscal autonomy, and other responsibility at the local level); DOWNS, *NEW VISIONS*, *supra* note 11, at 31-42 (same); Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1133-40, 1147 (same).

246. *See* Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1134-35.

247. *Id.* at 1140.

248. *See supra* note 189 (describing studies finding a strong correlation between the economic health of central cities and that of surrounding suburban jurisdictions such that those metropolitan areas with lower income disparities between city and suburbs experienced higher economic growth). *See also* Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1137-39 (same).

249. Briffault, *Local Government Boundary Problem*, *supra* note 10, at 1140.

250. *Cf. id.* at 1150 (arguing that “the interlocal competition celebrated by public choice [theorists] aggravates, rather than mitigates, sprawl and fiscal disparities” in metropolitan regions); *see also infra* text accompanying notes 312-14.

the New Jersey Supreme Court, in its famous *Mount Laurel* decision,²⁵¹ first sought to bar suburban localities from engaging in exclusionary zoning practices that prevent affordable housing development, low-income housing advocates have had only moderate success in expanding housing opportunity for the poor. Even in New Jersey, where state institutions have been the most interventionist in attacking suburban exclusionary practices,²⁵² the results have been disappointing, particularly for the minority poor. The largest and most comprehensive study to date of the *Mount Laurel* initiatives concluded that the program has produced housing primarily for moderate-, not low-income, households.²⁵³ In addition, very few families have moved from urban to suburban areas as a result of the program,²⁵⁴ and, of the "*Mount Laurel*" units amenable to evaluation, "81 percent of all suburban . . . units are occupied by White households, [and] 85 percent of all urban . . . units are occupied by Black or Latino households."²⁵⁵ The handful of other states that have tackled fair-share affordable housing have used more tepid measures than those employed by New Jersey.²⁵⁶ It is not surprising, therefore, that most low-income housing in the

251. *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975) [hereinafter *Mount Laurel I*]; see also *Southern Burlington County NAACP v. Township of Mount Laurel*, 456 A.2d 390 (N.J. 1983) [hereinafter *Mount Laurel II*]. In *Mount Laurel I*, the court held that suburban municipal zoning regulations that barred multifamily housing and mobile homes violated the state constitution. It reasoned that municipalities exercising zoning powers vested by the state constitution *in the state* under the *general* welfare clause must use those powers to promote the welfare of the entire metropolitan region. Hence, each municipality was required to enable the development of its "fair share" of present and future regional affordable housing needs. See *Mount Laurel I*, 336 A.2d at 727-28.

252. In *Mount Laurel II* the Court clarified that all municipalities in state-identified "growth areas" were required to adopt all affirmative measures necessary to fulfill the fair share affordable housing requirement, which could be discharged only by presenting numerical proof of units provided and these numbers had to conform to estimated regional needs. 456 A.2d at 421-22. After this ruling, the New Jersey State Legislature enacted the Fair Housing Act, which created a Council on Affordable Housing (COAH) in order to implement "the constitutional obligation enunciated by the [New Jersey] Supreme Court." N.J. STAT. ANN. § 52:27D-301 (West 1986). COAH calculates the regional fair share requirements and oversees compliance. "[T]he statute represents the first political commitment in the United States to statewide planning to expand the number and locations of affordable housing units for low and moderate income people." J. Peter Byrne, *Are Suburbs Unconstitutional?*, 85 GEO. L.J. 2265, 2272 (1997) (reviewing CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* (1996); and DAVID L. KIRP ET AL., *OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA* (1995)).

253. See NAOMI BAILIN WISH & STEPHEN EISDORFER, CENTER FOR PUBLIC SERVICE, SETON HALL UNIV., *THE IMPACT OF THE MOUNT LAUREL INITIATIVES: AN ANALYSIS OF THE CHARACTERISTICS OF APPLICANTS AND OCCUPANTS* 68 (1996).

254. See *id.* at 69 (noting that only 15% of the 2675 cases for which previous and new residence were known moved from urban to suburban locations).

255. *Id.* at 70-71. Between 1987 and 1993, a total of 54,000 moderate- and low-income units were developed under the New Jersey fair housing initiative; 14,000 of these units were in suburbs. See CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* 159 (1996).

256. A few other states have relied on the *Mount Laurel* cases to impose less stringent restrictions on suburban exclusionary zoning practices. See, e.g., *Britton v. Town of Chester*, 595 A.2d 492 (N.H. 1991) (concerning an ordinance which effectively excluded multifamily housing from all zoning districts within the town); *Township of Williston v. Chesterdale Farms, Inc.*, 341 A.2d 466 (Pa. 1975) (concerning a zoning ordinance prohibiting apartments); see also Melinda Westbrook, *Connecticut's New Affordable Housing Appeals Procedure: Assaulting the Presumptive Validity of Land Use Deci-*

United States is located in the urban core²⁵⁷ and that “[s]ubstantial experience shows widespread and powerful efforts by non-poor whites to maintain separation from poor people and people of color.”²⁵⁸

The *Mount Laurel* experience confirms that burden-sharing arrangements do not occur naturally in metropolitan regions and that, even in the face of years of systematic counterefforts by state judicial and political institutions, a great deal of economic and racial exclusion occurs because of the retention of key powers at the municipal level.²⁵⁹ Thus, advocates of robust metropolitan cooperation that will make a difference in the lives of marginalized localities and groups will necessarily have to engage state or federal institutions in order to overcome a “localist veto” wielded primarily by affluent suburban communities.

B. THE POSSIBILITIES FOR NEW REGIONALISM

The parochialism theory argues that localism fosters a narrow conception of self-interest that blinds citizens to the possible benefits of regional alliances. The institutionalization theory argues that localism reinforces and institutionalizes the hegemony of the favored quarter. Both theories illuminate some of the political barriers to New Regionalism, although there may be others. This section addresses the question of how citizens in metropolitan regions might transcend these structural constraints. There are at least two possible paths to a robust regionalism that better distributes benefits and burdens, both of which require the regional polity to develop a broader or more enlightened concept of

sions, 66 CONN. B.J. 169 (1992) (describing Connecticut’s 1990 Affordable Housing Land Use Appeals Procedure Act); Margaret D. Price, *Beyond Mt. Laurel: An Analysis of Legislative and Judicial Attempts to Increase the Availability of Affordable Housing in Suburbia* (July 14, 1998) (unpublished manuscript, on file with author) (identifying states with judicial or legislative approaches, with New Jersey having the most aggressive program).

257. See, e.g., Nowak, *supra* note 11, at 5 (noting that “Philadelphia contains 82% of the region’s public housing units and 54% of all units that have any public financing or rent subsidy assistance”). See also Department of Hous. and Urban Dev., *Beyond Shelter: Building Communities of Opportunity* (visited Aug. 31, 1999) <<http://www.huduser.org/publications/txt/natlprt.txt>> (emphasizing that although poverty is increasingly concentrated in the urban core, it is a detriment to the entire metropolitan area). Half of all very low income renters (those with incomes less than half the area median) live in cities. See Department of Hous. and Urban Dev., *The State of the Cities, 1999* (visited Aug. 31, 1999) <http://www.huduser.org/publications/polleg/New_tsoc99/part1-03.html>.

258. Florence Wagman Roisman, *Sustainable Development in the Suburbs and Their Cities: The Imperatives of Racial, Ethnic and Economic Inclusion* 18 (May 1997) (unpublished manuscript, on file with author) (citing virulent opposition to racial and economic integration projects in Yonkers, New York; Baltimore County, Maryland; and North Dallas, Texas).

259. Even those non-poor minorities who can afford single family, larger-lot housing available in affluent suburbs encounter “persistent, widespread racial and ethnic discrimination in housing.” John A. Yinger, *Access Denied, Access Constrained: Results and Implications of the 1989 Housing Discrimination Study*, in CLEAR AND CONVINCING EVIDENCE 69 (1993) (citing a study performed by the Urban Institute and Syracuse University for HUD, as evidence that severe racial discrimination in housing markets persists); see also Margery A. Turner & Ron Wienk, *The Persistence of Segregation in Urban Areas: Contributing Causes*, in HOUSING MARKETS AND RESIDENTIAL MOBILITY 199 (G. Thomas Kingsley & Margery A. Turner eds., 1993) (citing the HUD Housing Discrimination Study and concluding that “[d]iscriminatory practices seriously limit the ability of minorities to exercise free housing choice”).

self-interest: (1) grassroots coalition building based upon actual—as opposed to perceived—self-interest, and (2) the smart growth and sustainable development movement.

Before discussing these paths to regional consensus, however, it will be useful to clarify the model of “New Regionalism” envisioned. The New Regionalist agenda seeks to create new regional governance structures that wield powers over policy areas that transcend local borders—like land use and transportation planning—while leaving local governments a reduced but meaningful sphere of local authority. It does not seek consolidated metropolitan government. The impetus for seeking new regional institutions and arrangements is the interjurisdictional inequity wrought by fragmented local governance. Adherents of Tieboutian public-choice theory welcome such fragmentation on the questionable assumption that it maximizes citizen choices and leads to a more efficient allocation of public goods.²⁶⁰ Their prescription for mitigating any resulting interjurisdictional inequities would be to rely on fiscal transfers from federal and state governments to low-income areas.²⁶¹ But the evidence offered in this article suggests that fragmentation has led to a new political order in which a narrow class of suburban interests is dominating the political economy of state decisionmaking—or the political economy of most institutional processes that allocate public resources that fuel growth. The primary end of New Regionalism, therefore, should be an energized coalition of citizens and interests that can reassert democratic majoritarianism in such institutional decisionmaking. Thus, the New Regional model envisioned does not focus exclusively on the creation of new regional institutions, because, in the absence of a broad, energized coalition of citizens and interests, the favored quarter would likely continue to dominate the outcome of decisionmaking by any new, regional governance structure.²⁶²

1. Grass Roots Coalition Building to Redress Fiscal Inequity

The Twin Cities region offers an example of the first possibility. Recognizing the debilitating effects of extremely uneven distributions of growth and social service needs in the region, some visionary leaders began a labor intensive effort to build a coalition that would pursue reforms in the state legislature.²⁶³ Among the issues they would ultimately tackle were land use planning, regional governance, fair-share affordable housing, regional tax base sharing, and wel-

260. See *supra* notes 74-83 and accompanying text.

261. See Hawkins & Hendrick, *Metropolitan Special Districts*, *supra* note 117, at 136-37 (noting that the “public choice prescription for mitigating interjurisdictional inequalities” is “[f]iscal transfers by overlapping governments” within a federal system and noting that “[p]ublic choice scholars . . . value the smaller governments that are overlapped”).

262. See Guhathakurta & Wichert, *supra* note 108, at 830-32 (finding dominance of outer suburbs of Phoenix in the allocation of public capital investments, to the detriment of the 65% of citizens living in the inner and middle cores of the city).

263. See generally ORFIELD, *METROPOLITICS*, *supra* note 11, at 104-56.

fare reform.²⁶⁴ Over a period of several years, a coalition was built among a very broad range of interest groups including mayors from declining suburban communities, inner-city community groups, environmentalists, and churches.²⁶⁵ Organizers understood that older, inner-ring suburbs held the balance of power in the state legislature and that building an alliance between representatives from the central cities and the several inner-ring suburbs would create a narrow majority.²⁶⁶ Objective, geographically mapped data—and several years of sharing this information in hundreds of speeches and meetings—provided a critical organizing tool that built bridges between communities not inclined to see themselves as allies. For example, once the inner-ring suburbs understood that a fair-share affordable housing bill would not increase their obligations—they already had more than their fair share—but would instead open up more affluent, developing suburbs to such housing, they became very strong supporters of the bill.²⁶⁷

Ultimately, this coalition succeeded in enacting several pieces of regional legislation that began a process toward fairer distributions of public resources and regional burdens in the Twin Cities area.²⁶⁸ Most significantly, the Twin Cities region now has a limited-purpose regional government—the Metropolitan Council—with meaningful powers. Rather than serve merely as a forum for voluntary cooperation and negotiation, among other things, the Council administers all sewer and transportation services for the seven counties and 188 cities and townships in the region.²⁶⁹ Administering approximately \$600 million a year in public funds, it sets the direction for the region's land use and transportation policies.²⁷⁰ In addition, all of the localities in the Twin Cities region

264. *See id.*

265. *See id.*

266. *See id.*

267. *See id.* at 111-13.

268. Acts passed by the legislature include The Metropolitan Reorganization Act, 1994 Minn. Sess. Law Serv. 628 (West) (changing the Metropolitan Council (Met Council) from a regional planning agency to a regional government, operating regional sewers and transit systems). *See also* The Metropolitan Land Use Planning Act, MINN. STAT. §§ 473.145-249 (1998) (protecting farmers from assessments for storm sewers, public roads, and other public works; other regulations of development were stripped from the bill as a result of opposition from real estate agents, labor unions, and builders); ORFIELD, METROPOLITICS, *supra* note 11, at 122-26, 129. Acts considered by the legislature include the Comprehensive Choice Housing Act, 77th Sess., H.F. 671 (Minn. 1993) (setting goals to establish affordable housing based on the median income of each community), which was vetoed twice by the governor; *see also* the Metropolitan Reinvestment Act (later known as the Housing Disparities Act), 78th Sess., H.F. 2174 (Minn. 1994) (establishing tax base sharing in the region to finance low-income housing, which ultimately did not pass the Senate); ORFIELD, METROPOLITICS, *supra* note 11, at 114-21, 132, 137-38. A version of the tax base sharing plan for affordable housing eventually passed as the Livable Communities Act. *See* MINN. STAT. § 473.252 (1998).

269. *See* Summers, *supra* note 224, at 10 tbl.2.

270. *See* ORFIELD, METROPOLITICS, *supra* note 11, at 135. The goal of the Met Council is to develop a comprehensive development guide for the metropolitan area. *See* MINN. STAT. § 473.145 (1998). To achieve this, the Met Council has been granted various powers that previously were exclusively granted to municipalities. For instance, the Met Council has the power to construct transit systems and roads,

participate in a system of tax base sharing whereby a percentage of each locality's annual growth in tax revenues is placed in a regional pool and shared.²⁷¹ Hence, those areas, like the favored quarter, that benefit from large public infrastructure investments and corresponding rapid growth are required to share some of their revenue growth, particularly with communities that are experiencing net declines in their tax base. The overall result is a healthier, more sustainable regional economy that benefits communities that are net contributors as well as those that are net recipients.²⁷²

In a few other metropolitan communities, civic organizations have begun similar efforts to mobilize citizens around issues of regional equity. For example, the Commercial Club of Chicago, which comprises the region's business leadership, recently initiated Chicago Metropolis 2020.²⁷³ This new organization is designed to create partnerships and draw people from across the Chicago region into a serious effort at long-term regional visioning and assessment.²⁷⁴ At the same time, the Commercial Club has produced a proposed blueprint designed to "enhance the economic vitality of the Chicago region and provide the best possible conditions of living for all its residents."²⁷⁵ The report offers recommendations for addressing problems arising from hypersegregation of the poor, inequality in education and training, and sprawl and balkanization.²⁷⁶ The

see MINN. STAT. § 473.405 (1998), and is authorized to accept federal transportation funding on behalf of the metropolitan area, *see* MINN. STAT. § 473.223 (1998). The Met Council also has the same powers of housing and redevelopment as are granted to municipal governments. *See* MINN. STAT. § 473.195 (1998). *But see* James Poradek, *Putting the Use Back in Metropolitan Land Use Planning: Private Enforcement of Urban Sprawl Control Laws*, 81 MINN. L. REV. 1343, 1360 (1997) (alleging that the Met Council has interpreted its statute narrowly, not granting itself the power to enforce its decisions).

A provision for direct election of Met Council members by the region's voters passed the state legislature in 1997 but was vetoed by the governor. *See* ORFIELD, METROPOLITICS, *supra* note 11, at 121-22.

271. *See* MINN. STAT. § 473F.08 (1998). The Fiscal Disparities program channels 40% of the growth in each municipality's commercial-industrial tax base into a single fund, which is then redistributed to municipalities according to their populations and fiscal capacities. *See* Alex Schwartz, *Rebuilding Downtown: A Case Study of Minneapolis*, in URBAN REVITALIZATION, POLICIES AND PROGRAMS 163, 169 (Fritz W. Wagner et al. eds., 1995). A 1995 attempt to expand tax base sharing, the Metropolitan Fair Tax Base Act, would have created a single unified regional tax base. *See* ORFIELD, METROPOLITICS, *supra* note 11, at 144-49. However, this bill encountered strong opposition from representatives of the wealthy southern suburbs and did not pass. *See id.*

272. In 1991, the Fiscal Disparities program redistributed \$290.5 million, or 30.8% of the region's tax base. *See* Schwartz, *supra* note 271, at 170. Over three-fourths of the municipalities in the region receive more funds from the program than they contribute. Without the program, the ratio between the highest per capita tax base and the lowest would be 22 to 1; with the program, this ratio is 4 to 1. *See id.* *But see* Thomas Luce, *Regional Tax Base Sharing: The Twin Cities Experience*, Wharton Real Estate Center Working Paper #269 (1997) (unpublished manuscript, on file with author) (finding that the program reduced inequality in the total tax base by only 20% per capita and that the formula for redistribution—market value per capita—did not guarantee that the poorest jurisdictions would receive funds from the pool).

273. *See generally* ELMER W. JOHNSON, THE COMMERCIAL CLUB OF CHICAGO, CHICAGO METROPOLIS 2020: PREPARING METROPOLITAN CHICAGO FOR THE 21ST CENTURY (Jan. 1999).

274. *See id.*

275. *Id.* at 1.

276. *See generally id.* at 2-5.

Club hopes the report will provide a focal point for region-wide dialogue and coalition building that leads to legislative and private sector initiatives.²⁷⁷ Similarly, the Greater Baltimore Committee—a group of corporate and civic leaders—has called for regional growth management policies, tax base sharing, and regional affordable housing in order to address the social and economic decline of Baltimore City and surrounding older suburbs and to produce a better, more competitive business climate for the entire region.²⁷⁸ But such direct appeals to equity issues are rare among civic regionalization efforts, which tend to focus on more politically palatable goals, such as controlling sprawled growth and traffic congestion.²⁷⁹ While there appear to be sufficient bases of mutual self-interest for citizens of central cities and older suburbs (and even of affluent suburbs) to coalesce around issues of regional inequity,²⁸⁰ strong regional legislation has not been enacted outside of the Twin Cities, Portland, and Seattle. It has been suggested that regional tax base sharing has not yet been adopted outside the Twin Cities because “the evidence [in support of it] has to be marshaled more vigorously” or perhaps because “the [differing] composition of the poverty population [in other cities] . . . mean[s] that the coalitions are not so natural.”²⁸¹ Interestingly, those few places that are most noted for strong regional policies are not very diverse racially,²⁸² suggesting that the barriers to regionalization in most American metropolitan areas stem primarily from social distance within the regional polity.²⁸³

2. The Smart Growth and Sustainable Development Movement

Unlike direct appeals to redress fiscal inequity, environmental and quality of life issues offer a route to regionalism that may be more politically feasible while at the same time have the potential to build coalitions that ultimately address issues of social and economic fairness. The Atlanta region offers a salient example of the transformative potential of growth issues. Often held out by urban planners as an example of the evils of uncontrolled sprawl, the

277. *See id.*

278. *See* GREATER BALTIMORE COMM., ONE REGION ONE FUTURE: A REPORT ON REGIONALISM (1997); *see also* GREATER BALTIMORE COMM. & GREATER BALTIMORE ALLIANCE, GREATER BALTIMORE: STATE OF THE REGION REPORT (1998) (comparing the Greater Baltimore region to 20 other metropolitan regions by a series of indicators and providing a baseline for dialogue and action on regionalism in the area) [hereinafter GREATER BALTIMORE, STATE OF THE REGION REPORT].

279. *Cf.* Summers, *supra* note 224 (summarizing 27 major regionalization efforts in the United States, and finding that most of them center on goals such as controlling sprawl and establishing public transportation).

280. *See supra* text accompanying notes 184-90 and 248-49.

281. Summers, *supra* note 224, at 7 (noting that while Orfield's analyses of Chicago, *see* ORFIELD, CHICAGO METROPOLITICS, *supra* note 127, and Philadelphia, *see* ORFIELD, PHILADELPHIA METROPOLITICS, *supra* note 130, suggest that a political coalition for tax base sharing ought to be feasible there, as it was in the Twin Cities, they have not been enacted for the reasons stated in the text).

282. *See* GREATER BALTIMORE, STATE OF THE REGION REPORT, *supra* note 278, at 10 (noting that the Twin Cities and Portland regions, which “are often noted for cooperative regional policies,” are 90.3% and 87.8% white, respectively).

283. *See supra* notes 173-83 and accompanying text.

thirteen-county Atlanta region has become so clogged with traffic congestion that it is no longer eligible for federal funds for new roads because its ozone level exceeds federal air pollution guidelines.²⁸⁴ In response, the Georgia state legislature, under the strong leadership of Governor Roy Barnes, recently passed a law creating the Georgia Regional Transportation Authority (GRTA).²⁸⁵ The GRTA will be composed of fifteen members appointed by the governor.²⁸⁶ This "transportation superagency" will have "broad powers to impose transit systems and highways on local governments, [to] restrict development, and even [to] put pressure on cities and counties to raise taxes."²⁸⁷ The bill is intended to overcome the inaction that resulted from years of squabbling and competition for development among many local governments. As a result of this fragmentation, the region had never been able to agree on a regional plan for growth and mass transit.²⁸⁸ The GRTA will have effective veto power over any new development proposed by a locality that is in an overly congested area or that does not have adequate transportation routes.²⁸⁹ The GRTA will also be empowered to plan and build new rail or bus systems or carpool lanes and to withhold certain state funding from any county that refuses to pay required taxes.²⁹⁰

284. See David Firestone, *Georgia Setting Up Tough Anti-Sprawl Agency*, N.Y. TIMES, Mar. 25, 1999, at A20; see also Nelson with Milgroom, *supra* note 132, at 1, 6-11 (detailing how middle- and upper-class flight to Atlanta's suburbs and extensive outward development created a shrinking tax base and an underutilized downtown).

285. See 1999 Ga. Laws 38.

286. See Firestone, *supra* note 284, at A20.

287. *Id.*; see also 1999 Ga. Laws 38.

288. See Firestone, *supra* note 284, at A20. Atlanta's racial divide has also been an obstacle to mass transit. The predominantly white outer counties have long opposed expansion of MARTA, Atlanta's heavy rail transport system, because of their fear of being brought closer to the predominantly black inner-city. See *Urban Sprawl: To Traffic Hell and Back*, THE ECONOMIST, May 8, 1999, at 23.

289. See Firestone, *supra* note 284, at A20.

290. See *id.* The ease with which this measure moved through the state legislature shocked many observers of Georgia politics. The Atlanta region has experienced the same patterns of sprawled growth, increased concentrations of inner-city poverty, and racial and socioeconomic polarization as other large metropolitan regions. See Nelson with Milgroom, *supra* note 132, at 3-6. A number of new constituencies for meaningful land use and transportation planning emerged as a result of the negative effects of uncontrolled, low-density sprawl. Business leaders and large corporate campaign contributors were increasingly concerned about air quality issues in the 1998 gubernatorial campaign. See Editorial, *Growth, Pollution Demand Attention*, ATLANTA J. & CONST., May 19, 1998, at 12A. New organizations were also formed to lobby for smart growth, including the Metro Atlanta Transportation Initiative, formed by the Metro Atlanta Chamber of Commerce. See David Goldberg, *Election '98: Growth and Development; Trying to Get a Grip on the Sprawl; Georgia's New Governor Will Have a Plateful of Proposals to Deal With Traffic Issues*, ATLANTA J. & CONST., July 12, 1998, at 5D. Citizens sickened by long daily commutes made traffic congestion a primary election issue, and Governor Barnes staked much of his political capital on the bill by attempting to fulfill an election campaign promise to reduce congestion. See Charles Walston & Charmagne Helton, *Election '98: Campaign Notebook; Metro Atlanta Pollution Hangs Heavily in the Air in Governor's Race*, ATLANTA J. & CONST., July 9, 1998, at 6D. Rural counties from outside the Atlanta region were convinced to support the bill in part because of a Georgia State University study that projected a negative impact to the entire state from uncontrolled congestion in the region that ultimately would precipitate a substantial loss of jobs. See Firestone, *supra* note 284, at A20. Finally, and most critically, political leaders recognized that the state could not sustain

A similar confluence of practical concerns arising from sprawled development has animated the consideration of controlled growth and land use initiatives in some two hundred localities²⁹¹ and about sixteen states.²⁹² While

the loss of millions in federal transportation dollars due to air pollution violations without a substantial negative impact to its economy. *See id.*

291. In 1998, there were 240 state and local measures on the ballot related to conservation, parklands, and smart growth. *See* Phyllis Myers, *Livability at the Ballot Box: State and Local Referenda on Parks, Conservation, and Smarter Growth, Election Day, 1998* (visited Aug. 31, 1999) <<http://www.brookings.org/es/urban/myers.pdf>>. Seventy-two percent of them were approved. *See id.* From the mid-1970s, localized smart growth movements emerged in many states, initiated by citizens concerned about the effects of unchecked urban development on the environment and the strain placed on existing infrastructure and public services by increased traffic and population growth. *See* BURCHELL, COSTS OF SPRAWL—REVISITED, *supra* note 110, at 37. These citizen concerns have moved to the fore of national and state electoral politics in the nineties. *See, e.g.,* E. J. Dionne, Jr., Editorial, “Smart Growth” Politics, WASH. POST, Jan. 15, 1999, at A29 (describing the popularity of smart growth as a political issue); Mike Padgett, *Deep Impact: Arizona Not Alone in Quest to Manage Urban Sprawl*, BUS. J., Dec. 18, 1998, at 1 (discussing the widespread concern about smart growth issues across the country); Graeme Zielinski, *Growth Issues Shaping Political Landscape in South*, WASH. POST, June 6, 1999, at V7 (discussing the efforts of local political candidates to portray themselves as pro-smart growth). In many states where there is no statewide growth management legislation, localities have taken measures to discourage sprawled development. For example, in California, where there is no statewide growth management legislation, a grassroots citizen movement in Ventura County led to initiatives forbidding the county to rezone land for development in the four largest cities without voter approval. *See* Richard Lacayo, *The Brawl Over Sprawl*, TIME, Mar. 22, 1999, at 44. The most common form of local growth control is the impact fee, whereby a locality charges builders for the costs of services like roads, sewers, and water systems. *See* DIAMOND & NOONAN, *supra* note 142, at 37.

292. Most of the growth management programs that have been enacted in the states set a series of statewide goals for development and require or suggest that localities comply with them. *See* CONSTANCE E. BEAUMONT, SMARTER STATES, BETTER COMMUNITIES 268-69 (1996). Some require localities to establish comprehensive growth plans that are subject to review on the state level. *See id.* at 209.

At least four states, most notably Oregon, employ urban growth boundaries whereby each region must plan for growth based on present rates and draw a line around the area that would accommodate such growth over a set period; construction of new housing and businesses is targeted within or cannot exceed the boundary. *See* ME. REV. STAT. ANN. tit. 30-A, § 4326 (West 1999) (Maine); OR. REV. STAT. §§ 197.005-.860 (1997) (Oregon); TENN. CODE ANN. § 6-58-104 (1999) (Tennessee); WASH. REV. CODE § 36.70A.110 (1999) (Washington).

Rather than prohibiting building in nonurbanized areas, three states promote compact growth by targeting state funds toward developed areas. *See* MD. CODE ANN., STATE FIN. & PROC. § 5-7B-01 (1998); N.J. STAT. ANN. § 27:1C-2 (West 1999); 24 VT. STAT. ANN. tit. 24, § 4302 (c)(1)(B) (1999). The Maryland “Smart Growth” legislation, for example, restricts state spending to “priority funding areas” that are designated by local governments but which must be served by existing infrastructure and which must meet state minimum density requirements. *See* John W. Frece & Andrea Leahy-Fuchek, *Smart Growth and Neighborhood Conservation*, 13 NAT. RESOURCES & ENV’T 319, 321-23 (1998).

Five states prohibit development in areas that do not have the infrastructure to support it, a technique known as a concurrency requirement. *See* DEL. CODE ANN. tit. 9, § 6956 (1998); FLA. STAT. ch. 163.3180 (1998); ME. REV. STAT. ANN. tit. 38, § 484 (West 1998); VT. STAT. ANN. tit. 10, § 6086 (1999); WASH. REV. CODE § 36.70A.070(6)(E) (1999).

Nine states have open-space programs designed to preserve undeveloped wilderness and farmland. *See* COLO. REV. STAT. § 36-1-107.5 (1998); GA. CODE ANN. § 2-6-27 (1999); HAW. REV. STAT. § 195F-5 (1999); MD. CODE ANN., NAT. RES. § 5-9A-05 (1998); N.J. STAT. ANN. § 13:18A-9 (1999); OHIO REV. CODE ANN. § 901.54 (West 1999); 3 PA. CONS. STAT. § 914.1 (1998); UTAH CODE ANN. § 11-38-302 (1999); WASH. REV. CODE §§ 36.70A.160 to 170 (1999). Pennsylvania, for example, has a voluntary program to protect farmland whereby the state purchases development rights from farmers and uses conservation easements to prohibit such land from being used for anything but agriculture. *See*

growth management legislation typically faces considerable opposition from business interests—particularly developers²⁹³—citizen backlash over traffic congestion, school crowding, and loss of open space has created a groundswell of popular support for legislative initiatives designed to contain sprawl.²⁹⁴ In addition, in the last decade, a citizen-driven, sustainable development movement has begun to take root in many regions.²⁹⁵ As with the regional coalition

BEAUMONT, *supra*, at 167. Other states have established incentive programs in which they offer grants or other incentives to encourage conservation of open space. *See id.* at 175 (citing Vermont's Housing and Conservation Trust Fund and a similar program operated by New York).

Finally, five states use negative incentives to encourage localities to plan for growth, withholding certain state funds if localities do not meet specified state planning requirements. *See* CONN. GEN. STAT. § 8-23 (1997); ME. REV. STAT. ANN. tit. 30, § 4349 (West 1998); TENN. CODE ANN. § 6-58-104 (1999); UTAH CODE ANN. § 11-38-203 (1999); WASH. REV. CODE § 36.70A.040 (1999).

293. Smart growth movements in many states have faced opposition from business interests, particularly developers, whose considerable spending for lobbying efforts against growth management tends to influence, if not kill, much proposed smart growth legislation. *See* Carl Weiser, *Developers Outspend Anti-Sprawl Lobbyists*, GANNETT NEWS SERVICE, Mar. 18, 1999, available in LEXIS, Nexis Library, Gannett File. As a result, much growth management legislation tends to emphasize nonregulatory approaches that steer growth, rather than restrict it. *See id.* Another source of opposition to smart growth comes from localities who resent state interference. *See* Rob Gurwitt, *The State vs. Sprawl*, GOVERNING, Jan. 1999, at 18, 20 (noting that in Maryland, the chief political opposition to smart growth legislation came not from developers but from counties who opposed state land use planning criteria and having to subject their plans to state review).

294. *See supra* note 291 (citing news stories on the political viability of the anti-sprawl issue). Although most smart growth movements were initiated by citizen pressure, in some cases governors or state legislators took the lead in creating growth management legislation. *See* Firestone, *supra* note 284 (noting Governor Barnes' instrumental role in achieving growth and land use legislation for the Atlanta, Georgia region); Stuart Meck, *Rhode Island Gets it Right: The Little State With a Big Planning Program*, PLANNING, Nov. 1997, at 12 (noting that in Maryland, Governor Glendening took the lead in introducing smart growth); Patrick W. Merkel, *Most "Smart" Growth Activity is Taking Place in the States*, METROPOLITAN CORP. COUNS., May 1999, at 26, 27 (noting that Governor Jane Hull was instrumental in the passage of growth management legislation in Arizona). In addition, the increased interest in environmental tourism has led many states to see preservation of wilderness areas as crucial to their financial survival. *See* Dennis E. Gale & Suzanne Hart, *Public Support for Local Comprehensive Planning Under Statewide Growth Management: Insights from Maine*, 11 J. OF PLAN. ED. & RES. 192 (1992).

295. The sustainable development movement is international in scope and focuses on preserving natural resources while not completely halting development. *See* J.B. Ruhl, *Sustainable Development and Land Use Law: Taming the Suburban Amoeba in the Ecosystem Age: Some Do's and Dont's*, 3 WIDENER L. SYMP. J. 61, 68 (1998). The movement began in response to citizen concerns in the early 1970s with air pollution and other environmental issues caused by overdevelopment. *See* F. Douglas Muschett, *An Integrated Approach to Sustainable Development*, in PRINCIPLES OF SUSTAINABLE DEVELOPMENT 5 (F. Douglas Muschett ed., 1997).

There are over 1400 local, environmentally focused sustainable development programs in existence in the United States ranging in focus from small scale recycling to regional planning efforts. *See* Renewable Energy Policy Project and the Center for Renewable Energy and Sustainable Technology, *Renew America* (visited Aug. 3, 1999) <http://www.solstice.crest.org/sustainable/renew_america/>. The majority of local sustainable development initiatives develop indicators to measure community well-being and they emphasize citizen participation in determining what indicators to monitor and in developing a vision for the community's future. *See* Timothy Beatley, *The Vision of Sustainable Communities*, in COOPERATING WITH NATURE 233, 256 (Raymond J. Burby ed., 1998). In many communities, sustainable development coalitions have influenced regional land use plans and resulted in new private or legislative initiatives. *See, e.g.*, KEVIN J. KRIZEK & JOE POWER, A PLANNER'S GUIDE TO

built in the Twin Cities, broad coalitions for sustainable development tend to be forged based upon the collection, dissemination, and monitoring of objective information, usually indicators of community well-being.²⁹⁶ One hopes that regional coalitions born of a concern with traffic congestion and sprawl can be sustained and expanded to address other regional concerns that transcend local borders, like affordable housing and job access for inner-city residents.

In both the Twin Cities and Atlanta examples, citizens were able to overcome the problem of parochialism and the hegemony of the favored quarter because, while the incentives for joining the regional coalition were premised on self-interest, activists were able to establish a more enlightened premise for self-interest that harnessed and re-energized region-wide majoritarian politics. Focusing civic dialogue on objective evidence of fiscal inequities or on problems arising from unmanaged growth may have helped citizens and leaders overcome an ingrained reluctance, grounded in stereotypes, to engage in cross-border collaboration. Neither approach to regionalism would have been successful, however, had the regional majority lacked a supra-local forum that could *impose* mandates on recalcitrant or dissenting localities. In addition, popular control mechanisms had to be energized to overcome the influence of powerful interests. In the Twin Cities region, for example, the opposition of outer-ring developing communities to tax base sharing and fair share affordable housing was sustained, vociferous, and sometimes ugly.²⁹⁷ Although studies suggest that the favored quarter ultimately would be better off by being part of a region with a more even distribution of resources and burdens,²⁹⁸ given the often brutish, short-term perspective of local politics it is hard to imagine an outer-ring mayor agreeing to give up power and advantage. In short, any meaningful approaches to regionalism will require that structural reforms be enacted by the state legislature. Professor Briffault is correct that meaningful regionalism requires external, supra-local mandates in order to overcome the self-interest engendered

SUSTAINABLE DEVELOPMENT 34-47 (1996) (describing the work of such coalitions in Seattle, Washington; Chattanooga, Tennessee; Santa Monica, California; and Cambridge, Massachusetts).

These efforts tend to be regional in scope. Even where there are no metropolitan-wide organizing bodies, once environmental initiatives are adopted by one locality, interest groups and citizen pressure often cause neighboring communities to adopt similar legislation. *See generally*, President's Council on Sustainable Dev., *Sustainable Communities Task Force Report, Fall 1997* (visited Aug. 28, 1999) <http://www.whitehouse.gov/PCSD/Publications/suscomm/ind_suscom.html>. Ten states also have statewide sustainable development programs, which tend to devise goals for sustainable development in key areas identified by citizen participants. *See KRIZEK & POWER, supra*, at 14-15.

296. Categories of indicators measured in Jacksonville, Florida include education, economy, public safety, health, and mobility. *See DIAMOND & NOONAN, supra* note 142, at 102. A similar program in Seattle, Washington groups its indicators into four broad areas: environment; population and resources; economy; and culture and society. *See id.* at 103. The indicators used range from water quality to community involvement in the arts. *See id.*

297. *See ORFIELD, METROPOLITICS, supra* note 11, at 13. In one instance, an angry mob of suburban residents occupied the city council chambers in protest of a planned low-income housing development in their neighborhood. *See id.* at 127-28.

298. *See supra* note 189 and accompanying text.

by a localist system.²⁹⁹

C. RECONCILING NEW REGIONALISM WITH THE LOCALIST IDEAL

Briffault's argument about the necessity of taking some powers away from local governments in order to achieve meaningful regionalism raises the critical question whether the normative values of localism are necessarily sacrificed in a New Regionalist system and whether that sacrifice is worthwhile. The two scenarios for regional coalition building offered above suggest that strong political coalitions that transcend existing socioeconomic parochialism and favored quarter hegemony might be built. The debate raised by the local governance literature is whether the outcomes of such political coalitions—for example, a state legislative mandate that reduces local powers while creating powerful new regional structures—is normatively justified. This section argues, first, that the normative values of localism are not vindicated by the current system of extremely fragmented local governance. Second, it asserts that these normative values are better vindicated in a regionalist system that provides for local powers but vests strong powers in regional governance structures created as a result of regional political consensus. It presents both arguments in turn for each of the normative values offered in defense of localism.

Again, the three main normative arguments for localism are that: (1) it engenders democratic participation of the citizenry in government; (2) it promotes the efficient allocation of public resources; and (3) it engenders a salutary concept of community. The localist, public choice vision would vest maximum authority in individual municipalities, empowering citizens of like tastes and preferences to chart their collective social and economic destiny.³⁰⁰ Beyond the questionable empirical assumptions animating the three normative arguments for localism,³⁰¹ the phenomenon of the favored quarter illustrates how these purported "localist" values are currently being undermined by this localist vision.

1. Citizen Participation

In the current fragmented system of local governance, the degree of actual power wielded by individual localities varies greatly. In contrast to the Tieboutian vision of multiple localities with unrestrained policy choices, the reality is that only affluent, outer-ring communities have unlimited use of delegated local powers because they are not constrained by declining tax bases and increasing social services burdens. Hence, the majority of metropolitan citizens are disenfranchised in the sense that they live in communities that are less equipped or ill-equipped to respond to their policy and service demands. Further, these citizens have no say in important land use and other decisions, made by favored

299. *See supra* text accompanying notes 12, 56-59.

300. *See supra* text accompanying notes 43-47.

301. *See supra* text accompanying notes 63-97.

quarter communities, that substantially and negatively impact them. Indeed, the power of individual communities to affect the lives of nonresidents was the impetus for scholarly proposals for cross-border voting and regional negotiation fora.³⁰²

More importantly, the fragmented metropolis limits the ability of *all* localities, including those of the favored quarter, to deal effectively with problems that often gravely affect the quality of life of their citizens. Traffic congestion is the primary example. Despite living in relatively cohesive communities with strong local powers, attractive and growing tax bases, and limited social service burdens, the citizens of the favored quarter typically are victims of some of the worst traffic congestion in their regions.³⁰³ Such congestion is in large part the ultimate spillover effect of scores of localities making uncoordinated land use decisions.³⁰⁴ For problems like transportation and air quality—which are beyond the ability of individual localities to address but which can profoundly affect citizens in their daily lives—citizens need effective regional fora to develop meaningful, coordinated solutions. The idea that citizens will feel alienated by such regional fora³⁰⁵ presupposes the existence of local fora that could effectively address their concerns. In the case of public policy problems that transcend local borders, however, the choice is between futile citizen participation at the local level—accompanied by frustration with festering, unresolved problems—or a regional forum which, while a degree removed from local citizens, can begin to tackle issues that are truly regional in scope.

No doubt, in the current, localist system, citizens are able to participate in and influence some sphere of local policy decisions and issues that affect them. But, as this article has argued, the localist vision is undermining the value of citizen participation. More importantly, this article's chief claim is that a regionalist model can *better* serve this normative value. First, the regionalist model this article envisions does not present a false choice between all powers being vested locally and a full, regional government in which traditionally local powers are centralized.³⁰⁶ Instead, the New Regionalism model offers citizens a

302. See *supra* text accompanying notes 53-55.

303. See ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 41-42 (describing the increased congestion experienced by suburban commuters who live far from their places of work); Alice Reid, *Traffic Outside Offices Becomes Issue Inside; Congestion Hinders Getting to Meetings as Well as Getting to Work*, WASH. POST, Nov. 16, 1998, at C1 (describing the extreme traffic congestion in the suburbs of Washington, D.C.); see also Surface Transportation Policy Project, *An Analysis of the Relationship Between Highway Expansion and Congestion in Metropolitan Areas* (last modified Nov. 1998) <<http://www.transact.org/congestion/analysis.htm>> (analyzing traffic congestion data for 70 metropolitan areas over 15 years and concluding that areas that invested heavily in new road capacity ended up with slightly higher congestion costs per person and travel delay than those areas that did not invest heavily in new roads).

304. See *supra* text accompanying notes 284-90.

305. See Ford, *supra* note 10, at 1909 (arguing that regional entities are more alienating than localities).

306. Cf. Frug, *supra* note 2, at 1068-70 (holding up the city as the ideal democratic unit and claiming that true participation cannot occur in larger units).

two-tiered system of metropolitan governance. This system would vest localities with broad local powers, but these localities would cede control to regional fora on matters that are truly regional in scope.³⁰⁷ Second, under this model, the *citizens of the metropolis* would collectively decide where to draw the line between local and regional powers. As noted, effective regionalism will require that reforms be enacted by state legislatures. This, in turn, presupposes an energized, democratic process whereby citizens have bridged often extreme interjurisdictional social and economic differences in order to build a region-wide political majority. As the parochialism and institutionalization theories make clear, the structural barriers to such coalition building are marked.³⁰⁸ Without substantial, sustained involvement by elected representatives and citizens from a majority of the localities in a given metropolitan region, regional reforms will not be realized. In most metropolitan regions, citizens would have to be much more civically engaged and activated than they currently are in order to bridge differences and influence state political institutions. Thus, a successful regionalism movement would result in a richer civic infrastructure and more engaged citizenry than currently exists in most metropolitan regions. In addition, if such new regional fora were created, the citizens of the urban core—the regional majority—would be more enfranchised than they are under the current localist system because they would have a forum for influencing the policy choices of individual localities that could negatively affect them.

The localities and citizens that are most likely to dissent from a newly forged regional consensus are those from the favored quarter. As the institutionalization theory underscores, the citizens of the favored quarter currently benefit from an institutional bias that disproportionately advantages them in state political processes and hence in the competition for public investments.³⁰⁹ Under the New Regionalist model, they would still be able to participate effectively in state democratic processes, and, because the New Regionalist model does not eliminate local government, they would continue to exercise control over a reduced sphere of local governance. The fact that these dissenters might lose in a political battle against an activated regional majority does not undermine the value of citizen participation, as some local governance scholars might suggest.³¹⁰ It is the nature of democratic politics that there are winners and losers and that the losers tend to be a political minority.³¹¹ In the rare circumstance of

307. The Georgia Regional Transit Authority, for example, has the power to veto local land use decisions deemed contrary to the regional land use plan. *See supra* text accompanying notes 287-90.

308. *See supra* text accompanying notes 154-219.

309. *See supra* text accompanying notes 100-25.

310. *See supra* text accompanying notes 53-55, 84-88 (citing the views of Frug and Ford who advocate voluntary forms of regionalism or cross-border cooperation).

311. Obviously, political minorities may need protections afforded by higher levels of government when political majorities wield power in a manner that harms important rights and interests. While a political minority in the metropolitan region, the favored quarter is not insulated from the political process; it has the least barriers to effective political participation and therefore is unlikely to need the protections afforded by higher levels of government.

activated regional coalitions that impose requirements on affluent suburbs, however, one could argue that what the citizens have done is reclaimed democracy and set it back on its normal course. It is the current situation, in which a political minority—the favored quarter—dominates the regional agenda, that is antidemocratic.

2. Efficiency

The efficiency rationale for localism is perhaps the least legitimate of the three normative claims. Compelling evidence suggests that fragmented local governance leads to *inefficient* allocation, if not waste, of scarce public resources and of land.³¹² The Tieboutian, public choice argument that decentralized government maximizes government responsiveness to citizen demands and tastes also falls short because of the disenfranchising effects of fragmented government. In particular, citizens relegated to poor urban neighborhoods often have little choice about where they can live or work, and due to poor urban schools, their workforce preparedness often falls far below that of their suburban counterparts.³¹³ Localism maximizes government responsiveness primarily to the demands of advantaged citizens and communities. In fact, public choice theory predicts these disenfranchising effects. It also predicts that fragmented local communities are not likely to be able to cooperate on issues that require either a redistribution of resources from one community to another or, in the case of the favored quarter, a lessening of institutional distributive tendencies that have benefited the favored quarter.³¹⁴

312. See *supra* text accompanying notes 110-11, 246-49. See also Briffault, *Localism II*, *supra* note 10 at 412-14, 418-19 (challenging the empirical validity of the efficiency rationale).

313. See *supra* text accompanying notes 131, 149.

314. Public choice theorists agree that voting-with-the-feet or voluntary association will not produce global optimality for an entire affected population in the presence of externalities because an individual jurisdiction achieves optimality with respect to itself by creating a homogenous local polity. See, e.g., DENNIS C. MUELLER, *PUBLIC CHOICE II* 155, 171 (1989). And, “[i]f the incumbent membership of a local polity is free to exclude new members, then one can expect a sorting out of individuals into local polities of identical tastes and incomes . . .” *Id.* at 172. The sorting out process happens both as a result of local polities excluding unacceptable entrants and as a result of individuals with the power to exit leaving jurisdictions they find unacceptable. See *id.* at 158-63, 167-68.

A *socially optimal* arrangement would maximize the average utility or benefits enjoyed by each individual throughout the region, thus balancing the goal of economic efficiency against the goal of fairness. This would be achieved either by a more equitable distribution of the types of individuals across the various polities or by a redistribution of resources from advantaged localities to less advantaged localities. See *id.* at 161, 171-72. In other words, to maximize social well-being for everyone, people would either have to be forced to live with people they otherwise would not choose to live with (thereby increasing the chance of further flight) or cross-subsidization between localities would be required. But neither solution could be achieved in a world where the local polity retains critical policy authority—like the power to exclude through zoning and to determine the mix of local taxes. Where such policy authority is retained, under either proposed solution, members of some jurisdictions would be required to act against their individual economic self-interest or personal tastes.

Public choice theory, therefore, supports the argument that redistribution or a reordering of existing distributive tendencies is unlikely to be achieved at the local level. A view of the American polity where primary citizenship lies at the local level means that “the rights of the local polity to define its own

By contrast, those metropolitan areas that have undertaken strong regional approaches to land use, transportation planning, and infrastructure investments have achieved a much more efficient allocation of public resources and land.³¹⁵ And regionalist approaches to the provision of public services typically provide economies of scale that enable regions to effectively address public issues that are regional in scope.³¹⁶ Yet at the same time, the New Regionalist model leaves an important but reduced sphere of governance to local governments. In this way, the institutional strengths of local and regional governments can be maximized. This model achieves greater efficiency because it allows each level of government to address those issues for which it has the most institutional competence and hence the best ability to meet the demands of citizens.

3. Community

Admittedly, the community rationale is one of the strongest normative arguments for localism.³¹⁷ However, an emerging literature and design movement—"New Urbanism"—argues that fragmented residential suburbs create a sense of alienation rather than community among their residents because of the automobile culture on which they depend and because of the lack in many suburbs of public fora that promote citizen-to-citizen contact.³¹⁸ More importantly, if the desire for "community" effectively means the desire for racial and socioeconomic homogeneity, this normative justification loses some of its legitimacy. Proponents of this value, including Professors Ford and Poindexter,³¹⁹ focus on

citizenship and to pick and choose entrants would dominate the right of citizens in the larger confederation to migrate, free of hindrances, to any local polity" they choose. *Id.* at 172. By contrast, if primary citizenship lies not at the local level but at a higher level—say with the metropolitan region or the state—presumably individuals would be more free to enter and exit local communities without hindrance, or the state could facilitate intergovernmental transfers to maximize social well-being for all citizens. *See id.*

315. *See generally* Nelson with Milgroom, *supra* note 132 (contrasting the efficiency and policy outcomes in Portland, Oregon as compared to those in Atlanta, Georgia and concluding that regional land use controls are critical to the viability of the urban core).

316. *See supra* text accompanying notes 238-40.

317. *See supra* text accompanying notes 84-97.

318. *See, e.g.*, BURCHELL, COSTS OF SPRAWL—REVISITED, *supra* note 110, at 86-88 (citing literature on negative social impacts of sprawl, including JAMES KUNTSLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* (1993)); ORFIELD, SEATTLE METROPOLITICS, *supra* note 105, at 8-15.

The "New Urbanism" design movement seeks to promote a sense of community in suburbs by redesigning public spaces. *See* PETER KATZ, *THE NEW URBANISM: TOWARD ARCHITECTURE OF COMMUNITY* x-xi (1994). The movement began in the 1980s as a reaction to traditional suburban developments. It seeks to create and maintain a public realm through changes in neighborhood scale as well as in the traditional modes of transportation and land use planning. *See id.* In particular, the movement favors walkable neighborhoods that promote pedestrian traffic and open public spaces designed to be inhabited rather than just viewed by people. *See* Elizabeth Moule & Stefanos Polyzoides, *The Street, the Block and the Building*, in KATZ, *THE NEW URBANISM: TOWARD ARCHITECTURE OF COMMUNITY* xxi, xxi-xxii (1994).

319. *See supra* text accompanying notes 87-90 (citing Ford and Poindexter's argument that local governance is justified in part because it nurtures cultural and social identity).

the cultivation of community that occurs within small localities and view this as a benefit of localism. This article has offered a sustained analysis of the impact of the social and economic differentiation that comes with localism on metropolitan politics. At minimum, this analysis legitimately questions whether the cultivation of community that occurs at the lowest political level—the municipality or town—outweighs the negative impact of social and economic jurisdictional stratification, for this stratification may be contributing to and institutionalizing negative societal attitudes grounded in stereotypes.³²⁰ Also, it clearly inhibits metropolitan regions from developing effective regional solutions to problems that are truly regional in scope.

Finally, the New Regionalist model does not require the sacrifice of small localities or communities. They are retained in a regionalist system and would continue to have significant local powers. In addition, the regionalist model offered here serves the normative value of community because the process of building coalitions for regional reform necessarily builds community. There is a strong need in metropolitan America to find ways to transcend the barriers of race and income that are reinforced by fragmented political borders. A regionalist system will provide a stronger sense of community over time than currently exists in fragmented, localist systems.³²¹

In sum, none of the normative justifications for localism present a persuasive case for the extremely decentered local powers that currently exist in metropolitan America. Instead, they present a powerful case for vesting local governments with *some* local powers. They do not, however, justify conferring on affluent localities effective veto power in the event that a majority of the metropolis reaches consensus on regional cooperative arrangements. Moreover, none of the proponents of localism have presented a persuasive argument as to why these normative values justify complete deference to local authority when such authority is being wielded in ways that offend other important societal values, namely equity and fairness.

CONCLUSION

This article has argued that the normative values that are offered in support of localism are better vindicated in a regionalist system that enables the *majority* of citizens of the metropolis to shape their economic and social destinies. In contrast, the phenomenon of the favored quarter illuminates how the majority of citizens can suffer under a highly fragmented system of local governance. This reality underscores the most important normative justification for regionalism: equity. Civic republicans and localists certainly recognize the problems of inequity that fragmented governance engenders. Scholars like Professors Frug and Ford hope to overcome such regional disparities with procedural reforms designed to engender more vigorous intraregional dialogue and local participa-

320. See *supra* notes 211-16 and accompanying text.

321. See *supra* notes 307-09 and accompanying text.

tory politics.³²² By focusing on the phenomenon of the favored quarter, this article has offered a more detailed account of interest group politics in metropolitan regions than has been countenanced to date in the local governance literature. A realistic examination of the power dynamics in metropolitan regions underscores why localist strategies that depend completely on voluntary cooperation will fail to redress regional inequities.

Although this article has offered two promising possibilities for bringing about meaningful regionalism, its author is only mildly optimistic about the potential for regionalism in America. Regionalism is most likely to take root on matters of land use and transportation, and even in this realm the structural political constraints engendered by localism are considerable. The political constraints to regionalist proposals are particularly acute on issues affecting the poor. On issues like fair share affordable housing and school finance reform, state legislatures have shown themselves to be quite tepid in responding to the serious negative externalities wrought by localism.³²³ Thus, while there is some hope that participatory politics can be harnessed in state legislatures to redress interlocal disparities of opportunity, the structural effects of localism on state politics are such that state political institutions cannot be depended upon to bring about meaningful reforms in the policy arenas that matter most to the urban poor. For this reason, as this author has argued elsewhere,³²⁴ the federal government has an important role to play in protecting the interests of the poor and in promoting regionalism. Among the practical, noncontroversial steps the federal government could take are: (1) mandating systematic, geographically coded disclosure to the public of the annual allocations of federal transportation funds and of other forms of intergovernmental aid; and (2) undertaking stronger monitoring and enforcement of existing regional planning and sustainable development requirements embodied in federal transportation legislation.³²⁵ Both steps would facilitate and support grassroots coalition building in metropolitan areas, which is the best, or only, route to regional equity.

322. See *supra* notes 54-55 and accompanying text.

323. See *supra* text accompanying notes 193, 203-04, 251-59.

324. See generally Cashin, *supra* note 3.

325. See *supra* note 235.