

Viewing the community as a collective individual, by contrast, is a bottom-up approach. The community is an agglomeration of individuals. Self-definition of individual inhabitants comes first. The sum of these self-definitions then defines the community. Collective individualism questions our assumption that spatial identity is a proxy for individual identity. To be sure, since people search for themselves in their community, there will continue to be some overlap between community and individual definitions. However, freedom from the strictures of spatial identity allows us to rethink the basis of local government power. Instead of asking what is the power of the community, we need to ask what is the power of the individual, for the power of the collective individual is the power of the community.

II. THE MOLDING OF POLITICAL POWER AROUND THE COLLECTIVE INDIVIDUAL

As Cato concluded every speech with the words, *Carthago delenda est*, so do I every opinion, with the injunction "divide the counties into wards."⁶⁸

The decentralized "politics of [local government] boundary creation are uniquely American."⁶⁹ In the United States, local governments control the delineation of boundaries.⁷⁰ In contrast, "[i]n the United Kingdom, communities wishing to incorporate must petition an agency of national government."⁷¹ Alexis de Tocqueville traced this desire for decentralized government to our historical pre-Revolutionary equality among citizens.⁷² In a society where revolution is preceded by a relatively egalitarian state, there is a desire for more decentralized government. In contrast, people who have had to struggle for equality prefer a centralized government because a strong central government pre-

Feb. 13, 1996, at A2 ("If it were not for CRA, nobody would be getting these loans, and houses would not be selling at these amounts.").

⁶⁸ RICHARD K. MATTHEWS, *THE RADICAL POLITICS OF THOMAS JEFFERSON: A REVISIONIST VIEW* 87 (1984) (quoting Letter from Thomas Jefferson to Joseph C. Cabell (Feb. 2, 1816)).

⁶⁹ WEIHER, *supra* note 47, at 165.

⁷⁰ This feature is in sharp contrast to other nations where "[u]rban development and local government formation . . . are integrated into national policy." *Id.* For a comparative study of local government structure in 20 Western industrialized countries, see *LOCAL GOVERNMENT AND URBAN AFFAIRS IN INTERNATIONAL PERSPECTIVE* (Joachim J. Hesse ed., 1990).

⁷¹ WEIHER, *supra* note 47, at 3.

⁷² See DE TOCQUEVILLE, *supra* note 11, at 297. Of course, citizens were defined as white male landowners.

vents a transfer of power to the elite.⁷³

The fracturing of local government is a basic concept in American government. Indeed, since the time of the Founding Fathers there has been a search for the optimally sized government for the American people. Because of this distrust of centralized government, Jefferson sought "not to trust it all to one, but to divide it among the many, distributing to everyone exactly the functions he is competent to."⁷⁴ Jefferson's goal was to "dissolve[] [government] into the unity of society [by] republicanism, decentralization, and specialization."⁷⁵ In an attempt to bring government to the people, Jefferson's political wards would form a direct attachment between citizens and their governments and would "attach [the citizen] by his strongest feelings to the independence of his country, and its republican constitution."⁷⁶

The present fractured state of local government, then, should come as no surprise. Its creation was not happenstance,⁷⁷ but rather a deliberate attempt to empower the individual. Perhaps the question of the validity of such fracturing can be explained by exploring the notion that local government, while seeking to protect the individual from the state is, in fact, itself created by the state. Professor Frug calls this relationship among localities, individuals and the state the "principal puzzle confronted by liberal theorists":⁷⁸ "Cities were partly creations of the state, yet they were also partly creations of the individuals who lived

⁷³ See *id.* De Tocqueville states:

It may be remarked, that, at the present day, the lower orders in England are striving with all their might to destroy local independence, and to transfer the administration from all the points of the circumference to the centre; whereas the higher classes are endeavoring to retain this administration within its ancient boundaries. I venture to predict that a time will come when the very reverse will happen.

Id.

⁷⁴ MATTHEWS, *supra* note 68, at 82 (quoting Letter from Thomas Jefferson to Joseph C. Cabell (Feb. 2, 1816)).

⁷⁵ Samuel P. Huntington, *The Founding Fathers and the Division of Powers*, in AREA AND POWER *supra* note 8, at 150, 162.

⁷⁶ MATTHEWS, *supra* note 68, at 77 (quoting Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816)). According to Federalists such as Madison who viewed a large republic as a surer bastion of liberty, factionalism threatened purely democratic government. But see THE FEDERALIST No. 10, at 128 (James Madison) (Isaac Kramnick ed., 1987) ("Hence, it clearly appears that the same advantage which a republic has over a democracy in controlling the effect of faction is enjoyed by a large over a small republic—is enjoyed by the union over the states composing it.").

⁷⁷ See WEIHER, *supra* note 47, at 179 ("[T]he proliferation of governments in the United States did not occur by divine fiat.").

⁷⁸ Frug, *supra* note 2, at 1076.

within them."⁷⁹ The tension in empowering local government is that such power is always at the will of the state, not at the will of the people as a romantic Jeffersonian view presumes. Where local government has been empowered, it has been by action of the state.⁸⁰

However, we cannot simply rely on the notion that "[m]unicipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them."⁸¹ Municipalities are more than governmental units. Local governments, by creating easily recognizable boundaries within a region, serve as proxies for socioeconomic status, race, lifestyle. They are no more mere subdivisions of the state than children are mere subdivisions of their parents. Admittedly, in both instances the superior being has the ability to force the inferior being to act against the inferior's wishes. The inferior being, however, still possesses its own identity independent of the superior being.

The law sometimes chooses to hang municipal power on this independent spirit of local governments. In areas where individuality is encouraged, local governments are empowered. These are the areas such as "home and family" and "community,"⁸² where a distinct local identity is formulated.⁸³ This identity, in turn, distinguishes one locale from

⁷⁹ *Id.*

⁸⁰ For examples, see the New York and Pennsylvania home-rule statutes, N.Y. MUN. HOME RULE LAW § 50 (McKinney 1994); Act of Dec 19, 1996, ch. 29, 1996 Pa. Legis. Serv. 177 (West) (to be codified at 53 PA. CONS. STAT. ANN. § 2961) ("A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter."). Although calling for grants of municipal power to be "liberally construed in favor of the municipality," such power is given by the state to local government—not taken by municipalities from the state. *Id.* Also, "local governments have no federal constitutional rights against their states and local residents have no constitutional claim to belong to particular local government." *Voting Rights*, *supra* note 3, at 792 n.90 (discussing Staten Island's obstacles to achieving secession).

⁸¹ *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), *overruled on other grounds* by *Baldwin v. Winston-Salem*, 710 F.2d 132 (4th Cir. 1983).

⁸² See *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (upholding a local ordinance restricting land use to single family dwellings); see also Frug, *supra* note 3, at 265 (discussing cases in which the Supreme Court has upheld local government authority to regulate community issues). Recently, the Eighth Circuit held that the City of St. Louis's interest in decreasing congestion and noise in residential areas was a rational basis for restricting single family dwellings to eight or fewer unrelated persons. See *Oxford House-C v. City of St. Louis*, 77 F.3d 249, 252 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 65 (1996) ("Cities have a legitimate interest in decreasing congestion, traffic, and noise in residential areas, and ordinances restricting the number of unrelated people who may occupy a single family residence are reasonably related to these legitimate goals.").

⁸³ But see Williams, *supra* note 3, at 119 (citing the protection of property values,

another, even though they are in the same state. "Political boundaries are manifestations of the widespread recognition of *place*, a spatial unit with its own identity, separate and recognizable from other spatial units."⁸⁴

The independence of local government, however, is not unlimited. Local governments—themselves distinct political entities—coexist with other local governments in the region and the state.⁸⁵ Furthermore, although the state law respects the independence of local government, it limits this independence when it conflicts with state goals. The tension between the independence of local government and state intrusions upon that independence parallels the tension between the independence of individuals and state intrusions upon individual autonomy.⁸⁶

In order to gain a clearer understanding of the power of local governments we should compare instances in which the courts have upheld the independence of local government with those in which courts have disregarded local government boundaries. Polar definitions or concepts are of little value when attempting to find a practical, workable solution. To state that localism "lead[s] to an association of the locality with individual autonomy"⁸⁷ does not determine at what point autonomy works for the good of all. Likewise, "Dillon's Rule," which states that local governments have only those powers that are specifi-

and not home and family, as the impetus for deference to local autonomy).

⁸⁴ WEIHER, *supra* note 47, at 166.

⁸⁵ The clearest judicial declarations on this theory are the *Mount Laurel* cases. See Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713, 727-28 (N.J. 1975) (*Mount Laurel I*) ("[T]he general welfare which developing municipalities . . . must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality."); Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390, 422-35 (N.J. 1983) (*Mount Laurel II*) (instructing municipalities to coordinate development of low income housing projects to conform to a state plan); Hills Dev. Co. v. Township of Bernards, 510 A.2d 621, 632 (N.J. 1986) (*Mount Laurel III*) (upholding the constitutionality of the Fair Housing Act, N.J. STAT. ANN. §§ 52:27D-301 to -329 (West 1986 & Supp. 1996), New Jersey's legislative response to the previous *Mount Laurel* which enables municipalities to determine "what is required [of] them").

⁸⁶ In essence, this is a privacy argument. See *Roe v. Wade*, 410 U.S. 113, 152 (1973) ("The Constitution does not explicitly mention any right of privacy. In a line of decisions . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution."); *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (discussing different zones of privacy); see also Williams, *supra* note 3, at 85 (analyzing theories of local government law offered by Cooley, Dillon, Justice Brennan and the Burger Court majority, and finding a pattern: "each author's theory of city status is closely linked with his desire to rein in excessive governmental power" although each one sees different "nightmares of government run amok").

⁸⁷ *Our Localism: Part II*, *supra* note 3, at 444.

cally granted by constitution or statute, or that arise by implication from an express grant of power,⁸⁸ gives no guidance as to the breadth and depth of such power. By comparing instances of state power respecting local autonomy and individuality with examples of state power suppressing such individuality, we begin to cut a finer definition of the power of local governments and their place in political structure.⁸⁹ I will examine three areas in which this tension has existed: 1) imposition of inter-local remedies, 2) manipulation of municipal boundaries, and 3) voting rights.

A. *Housing vs. Schools: Gautreaux, Milliken and Their Progeny*

Both housing and schools invoke notions of community spirit, home and family. If the power of local boundaries were centered solely on a Rockwellian ideal, then local boundaries would be respected in both areas. The state, however, has a clear interest in both housing and schools that could trample local boundaries in both instances. How, then, have the courts treated the existence of local boundaries in these two situations?

*Hills v. Gautreaux*⁹⁰ and *Milliken v. Bradley*⁹¹ addressed the racial and economic externalities brought about by "white flight" from the city to the suburbs. In *Gautreaux*, black tenants and applicants for Chicago public housing claimed that the Chicago Housing Authority ("CHA") and the United States Department of Housing and Urban Development ("HUD") were guilty of racial discrimination in public housing. They sought a metropolitan-wide remedy to the discriminatory placement of public housing projects.⁹² In *Milliken*, parents of black school children in Detroit claimed that the Detroit public school system was racially segregated. They likewise sought a metropolitan-wide remedy

⁸⁸ See JOHN F. DILLON, 1 COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 449, 448-451 (5th ed. 1911) ("[A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable.").

⁸⁹ See Williams, *supra* note 3, at 85 (noting that since cities "have no set place in American constitutional structure . . . courts and commentators have been able to redefine city status without the textual constraints that limit reformulations of the status of the state and federal governments").

⁹⁰ 425 U.S. 284 (1976).

⁹¹ 418 U.S. 717 (1974) (*Milliken I*).

⁹² See *Gautreaux*, 425 U.S. at 286-92.