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Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism

Christopher J. Tyson*

"Involuntary" annexation—the ability of cities to expand their territory unilaterally by extending their boundaries—is one of the most controversial devices in land use law. It is under attack in virtually every state where it exists. Involuntary annexation is a direct threat to "localism," the belief in small, autonomous units of government as the optimum forum for expressing democratic freedom, fostering community, and organizing local government. Localism has been justifiably faulted with spurring metropolitan fragmentation and the attendant challenges it creates for regional governance. This critique is at the center of "New Regionalism," a movement of scholars and policy makers focused on promoting regional governance structures that respect the cultural draw of localism while correcting for its deficiencies. New Regionalism emphasizes bottom-up, voluntary governance structures and dismisses approaches like involuntary annexation as politically infeasible. Both types of approaches face considerable political challenges, but there are arguably more examples of well-functioning involuntary annexation regimes than there are successful models of New Regionalism. While involuntary annexation has been critical to the success of metropolitan regions in Texas and North Carolina, many regard it as a violation of the liberty and freedom that comes with property rights. Property rights are rooted in instinctive and culturally reinforced notions of personal identity and the inviolability of ownership. Localism extends this logic to municipal identity. The hostility toward involuntary annexation, therefore, can be understood as a response to the taking of a person's perceived right to express individual identity, group identity, status, and ownership through municipal identity. This notion of municipal identity as property threatens to undermine both existing involuntary annexation regimes as well as future New Regionalist proposals. While New Regionalism has well-reasoned justifications for focusing on more-voluntary, bottom-up governance structures, involuntary annexation remains a potent tool for facilitating regional governance and is worthy of defense and preservation.

I. INTRODUCTION

II. OVERVIEW AND HISTORY OF INVOLUNTARY ANNEXATION

A. Indiana

B. Kansas

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I. INTRODUCTION

The subject of state and local government law is less about substantive legal doctrine than it is about institutional design. Decisions that affect localities can be made at a variety of levels—federal, state, or local—and by a variety of institutions—executive, administrative, legislative, or judicial—within each level. State and local government law involves the location of decision-making authority within this matrix. The subjects that define this area of law—such as the scope of municipal autonomy and the resolution of interlocal conflict and cooperation—are primarily interesting not for their substantive content, that is, what should be decided, as much as for what they say about who should decide.1

The metropolitan-boundary problem has long been a defining issue in local government law.2 Increasingly, metropolitan regions are arranged around municipal boundaries that separate central city and suburban local governments from each other. The result is a patchwork of governments throughout a region. This fragmentation


not only leads to the uneven distribution of regional burdens and social stratification, but it allows provincialism to frustrate interregional collaboration and metropolitan development. Moreover, different metropolitan municipalities take on identities that reflect disparate levels of market value, social worth, political power, and cultural meaning.

Social and consumer behavior within metropolitan regions responds to these dynamics. For instance, the choice of where to purchase or rent a home is typically linked to other decisions that ultimately impact quality of life, wealth creation, social status, political power, and perceived safety and well-being. This drives the decision-making process around locating in the central city, suburb A, or suburb B. Consequently, municipal boundaries define the territorial and socially constructed bounds of community and locational choice. They facilitate wildly esoteric, yet painfully tangible and consequential, distinctions between communities that signal value to the market as well as to civil society. They inform the design and operation of local government law at foundational levels—chiefly in the development of the laws governing municipal-boundary formation and reformation. Municipal-boundary laws—specifically a state’s annexation laws—are central to how locational value is created and preserved.

The impact of location decisions on local government law has been explored in the zoning context. How municipal-boundary laws impact these social and economic processes, however, receives less attention. Annexation laws regulate the manner and degree to which municipal boundaries can be extended. Most states require some form of popular sanction by the residents or property owners living in an

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3. See, e.g., Richard Briffault, Our Localism: Part II—Localism and Legal Theory, 90 COLUM. L. REV. 346, 357-64 (1990) (discussing the social and demographic changes that influenced the evolution of the legal classification of suburbs and the manner in which it has limited the ability of metropolitan regions’ central cities to grow).

4. There has long been a national policy supporting home ownership and considerable federal resources have been dedicated to creating accessible, stable, and appreciating residential markets. See generally Lee Anne Fennell, Homeownership 2.0, 102 NW.U. L. REV. 1047 (2008) (proposing a comprehensive system of risk allocation to improve homeownership as an investment for homebuyers).

area proposed for annexation before the annexation can take effect. This enables residents who migrate out of a central city to stop the central city’s expansion into the unincorporated areas where they have resettled. Central city emigration typically involves wealthier residents who are highly mobile and often hostile to wealth redistribution. They typically pay more in taxes than they require in government services. Consequently, their exit from the central city diminishes its tax base. It is in the central city’s best interest to recapture these residents and their tax dollars. Expanding the taxable territory is the only way for a central city to fund existing public service and amenity levels as well as maintain its share of redistributed state and federal funds. Consequently, annexation law has emerged as a bulwark against the ability of metropolitan-area central cities to expand their territory in a manner that allows them to balance the books.

Not all states have conditioned boundary expansion on popular support. There are a few states that have taken specific measures to limit the possibility that their central cities will be boxed in by the suburban municipalities formed on their borders by giving them unilateral or near-unilateral power to extend their boundaries. “Involuntary” annexation—also known as “forced” or “unilateral” annexation—is a subset of annexation law that allows a municipality to extend its borders to encompass new territory without the consent of the residents or property owners in the annexed area. Seven states have some version of this feature in their annexation regimes: Indiana, Kansas, Kentucky, Nebraska, North Carolina, Tennessee, and Texas. In all seven of these states, involuntary annexation provisions have faced or are facing some level of organized opposition.

The controversy over involuntary annexation stems from widely held beliefs about the relationship between government, territory, identity, and freedom. In the minds of most Americans, being in the right school district, neighborhood, suburb, or district affects individual and family life chances and outcomes. The location decisions made by individuals, families, and firms alike incorporate presumptions about wealth, privilege, poverty, disadvantage, status, and stigma.

8. See infra Part II.
Consequently, the real and perceived consequences of these distinctions ascribe a level of risk to location choice. This notion of risk reflects relative levels of financial and political access, freedom, and authority that accrue to an individual or family based on the implications of their location choice or municipal identity.

Municipal identity is more than the unincorporated territory or local government unit within which one’s property is located. It encompasses notions of value and worth that operate in the modern metropolis and that are attached to a particular municipality. Municipal identity implicitly involves matters of real property and, by extension, notions of fundamental rights in and to the municipal identity attached to real property. How municipal identity operates is inextricably tied to municipal boundaries because it is given legal and political force through the design of a state’s annexation regime.10

Using involuntary annexation to limit location choice offends widely held values of liberty, freedom, and property rights popularly and culturally understood as municipal identity. This phenomenon has been characterized as “localism,” and the hostility toward involuntary annexation illustrates the manner in which localism has come to be expressed through the logic, rhetoric, and methodology of property rights.11 While there is no recognized constitutional property right to local self-government, the rhetoric of property rights dominates the arguments against involuntary annexation and frames the public’s conception of municipal identity as property.12 Understanding these

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10. See, e.g., sources cited supra note 2.
11. See infra Part III.
12. See Richard Briffault, Our Localism: Part I—The Structure of Local Government Law, 90 COLUM. L. REV. 1, 7-8 (1990) (“As a matter of conventional legal theory, the states enjoy complete hegemony over local governments. Under both federal and state constitutional law, local governments have no rights against their states. Localities may not assert the contracts clause, the equal protection clause or the privileges and immunities clause against their state governments. Nor do the residents of local governments have any inherent right to local self-government: local residents may not assert a constitutional claim to belong to a particular local government or to have any local government at all. The formal legal status of a local government in relation to its state is summarized by the three concepts of ‘creature,’ ‘delegate’ and ‘agent.’ The local government is a creature of the state. It exists only by an act of the state, and the state, as creator, has plenary power to alter, expand, contract or abolish at will any or all local units. The local government is a delegate of the state, possessing only those powers the state has chosen to confer upon it. Absent any specific limitation in the state constitution, the state can amend, abridge or retract any power it has delegated, much as it can impose new duties or take away old privileges. The local government is an agent of the state, exercising limited powers at the local level on behalf of the state. A local government is like a state administrative agency, serving the state in its..."
developments is important for the emerging discussion on “New Regionalism,” which has largely discounted annexation’s role in remaking metropolitan governance.

New Regionalism promotes the voluntary accession of metropolitan governments into region-wide governance structures that control some, if not all, of the functions of metropolitan governance. New Regionalism encourages the collaborative and participatory development of bottom-up remedies to address the inequality that results from metropolitan fragmentation. New Regionalism prefers that local governments choose to cede power voluntarily to a region-wide entity, which runs counter to the decidedly top-down, state-imposed design of involuntary annexation.\(^{13}\)

Annexation, in general, is controversial, but involuntary annexation is viewed by many as extreme. It is understandably susceptible to criticism for being politically infeasible, which explains the lack of attention it receives from New Regionalist scholars and policy makers.\(^{14}\) Ironically, New Regionalism’s push for a movement toward regional governance structures has, to date, proven to be just as politically dubious as expanding involuntary annexation. The latter, however, has proven useful in mitigating the effects of urban sprawl and metropolitan fragmentation.\(^{15}\)

Although involuntary annexation is under attack in the states where it remains, it deserves to be preserved and included in the New Regionalist discussion of pathways to more comprehensive and equitable forms of metropolitan governance. If this is to happen, however, it is necessary to understand how the legitimacy of localism and the attendant notions of property rights in municipal identity have

\(^{13}\) See Lisa T. Alexander, The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities, 38 FORDHAM URB. L.J. 629, 632-33 (2011) (“New regionalism has been defined as ‘any attempt to develop regional governance structures or interlocal cooperative agreements that better distribute regional benefits and burdens.’” (quoting Cashin, supra note 9, at 2027-28)). Minnesota’s Minneapolis-St. Paul (“Twin Cities”) region is frequently lauded as a model of regional governance and an example of the New Regionalist ideal. Since 1994, the Metropolitan Council of the Twin Cities has exercised jurisdiction over all sewer, transit, and land use planning for the seven counties and 188 cities within the Twin Cities metropolitan region. See, e.g., MYRON ORFIELD, METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY 13 (1997); Janice C. Griffith, Regional Governance Reconsidered, 21 J.L. & POL. 505, 532-33 (2005).

\(^{14}\) See Cashin, supra note 9, at 2027 (“The ‘New Regionalist’ agenda accepts the political futility of seeking consolidated regional government.”).

\(^{15}\) See infra Part III.
developed and been sustained in a manner that has undermined the legitimacy of involuntary annexation as a worthwhile component of not only statewide land use regimes, but also the scholarly discourse around metropolitan governance.

Part II of this Article provides an overview of the existing state annexation regimes that permit involuntary annexation and the various designs of involuntary annexation provisions in those states. Part III considers the various ideological, political, and legal underpinnings of the backlash to involuntary annexation. Specifically, this Part explores the broader antistatist and property rights foundations of localism. It also introduces and explores the idea of municipal identity as property. Part IV addresses the manner in which involuntary annexation has been omitted from the broader New Regionalism debate.

II. OVERVIEW AND HISTORY OF INVOLUNTARY ANNEXATION

Annexation is a significant area of local government law affecting the ability of cities to retain residential and business taxpayers who settle outside of the city’s municipal boundaries but within its metropolitan region.16 Urban historian Kenneth Jackson has stated, “Without exception, the adjustment of local boundaries has been the dominant method of population growth in every American city of consequence.”17 Boundary expansion was the largest driver of municipal expansion in the second half of the twentieth century, with almost four-fifths of 521 central cities expanding their boundaries by 10% or more between 1950 and 2000.18 Recent data released by the United States Census Bureau show that “more than 93,000 annexations occurred in the United States between 2000 and 2010, resulting in the addition of over 8 million acres of territory to existing municipalities.”19

Virtually every state’s annexation regime provides more than one method for annexing land, and most provisions require the consent of the property owners in the area proposed for annexation. In the states where annexation is the most controversial, the controversy is almost

16. Annexation law is controlled by the states, and therefore, there are fifty different approaches to annexation. For a discussion of annexation, see, for example, David Rusk, Annexation and the Fiscal Fate of Cities, in THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM 1, 9-11 (2006).
19. Smith, supra note 7, at 165.
always due to involuntary annexation provisions.\textsuperscript{20} No two states' involuntary annexation provisions are alike, and over time states have modified their involuntary annexation provisions to reflect shifting public sentiment toward municipal-boundary expansion.

Involuntary annexation provisions are largely defined by the absence of a requirement that the local resident, voter, or property owner consent to the enactment of a proposed annexation.\textsuperscript{21} They effectively provide municipalities a unilateral or near-unilateral ability to extend their boundaries to encompass unincorporated territory. While controversial, involuntary annexation is likely a small fraction of the total annexation activity occurring in states with involuntary annexation provisions. Only one study has analyzed the frequency of annexation activity by method of annexation.\textsuperscript{22} That study found that roughly 9\% of annexations conducted in North Carolina between 1990 and 2009 were involuntary annexations.\textsuperscript{23}

States that incorporate some meaningful version of a unilateral municipal-determination feature fall within the Article's definition of an "involuntary annexation state." Arguably any qualification on unilateral power calls into question its unilateral nature, but Indiana, Kansas, Kentucky, Nebraska, North Carolina, Tennessee, and Texas have managed to maintain fairly broad and permissive involuntary annexation provisions.\textsuperscript{24} Qualifications on that power include significant preconditions and requirements that must be satisfied before a municipality can exercise its involuntary annexation powers or include opportunities for a popular veto of involuntary annexations after they take effect. These provisions are designed in a variety of

\textsuperscript{20} See infra Part II.

\textsuperscript{21} Most states require a threshold of consent by residents, property owners, or both as a condition of effecting a valid annexation. This can take the form of a petition or a referendum vote. These requirements are explicit in statutory design and their presence makes it impossible to unilaterally extend municipal boundaries. See, e.g., LA. REV. STAT. \textsection 33:172(A)(1)(a) (2012) ("No ordinance enlarging the boundaries of a municipality shall be valid unless, prior to the adoption thereof, a petition has been presented to the governing body of a municipality containing the written assent of a majority of the registered voters and a majority in number of the resident property owners as well as twenty-five percent in value of the property of the resident property owners within the area proposed to be included in the corporate limits, all according to the certificates of the parish assessor and parish registrar of voters.").

\textsuperscript{22} See Smith, supra note 7, at 166-67.

\textsuperscript{23} See id. at 170 tbl.1.

\textsuperscript{24} As of the conclusion of North Carolina's 2012 legislative session, the state no longer has an involuntary annexation regime. The pioneering design and effectiveness of North Carolina's involuntary annexation provisions (despite those provisions' relatively recent repeal) warrant the state's inclusion in this article's classification of involuntary annexation states. See infra Part II.E.
ways, and each construction reflects the state’s conception of the role of boundary formation and management in shaping its local communities.

Some important caveats are in order. Local government boundary policy varies considerably in each of the fifty states. The following is not meant to be an exhaustive summary of all approaches to annexation, but rather a description of those regimes that best resemble what this Article considers to confer unilateral or near-unilateral rights over boundary expansion to local governments. Additionally, and as the footnotes make clear, annexation is closely related to municipal incorporation law, which is not the focus of this Article and, therefore, is not directly addressed.

A. Indiana

Indiana's annexation statute does not allow expressly for involuntary or unilateral annexation. It does allow municipalities to extend their boundaries by ordinance, however. “Generally, the annexation process formally begins when a municipality adopts an ordinance annexing territory . . . .” 25 “However, . . . the annexation process can begin when an individual files a petition with a municipality requesting that the municipality annex his or her property . . . .” 26 If by ordinance, a municipality may adopt it only after its legislative body has held a public hearing concerning the proposed annexation.

The statute provides that individuals attending the hearing must have the opportunity to testify and that notice of the hearing must be sent to each property owner in the area proposed for annexation and to the owners of property adjacent to public rights of way included in the area to be annexed. 27 It is possible, however, that the ordinance can be passed against the opposition of property owners in an area proposed for annexation. 28 This possibility essentially gives the municipality the opportunity to involuntarily annex new territory.

26. Id. at 972-73; see INDIANA CODE § 36-4-3-5(a) (2012).
27. See INDIANA CODE § 36-4-3-2.1(a) (“The municipality shall hold the public hearing not earlier than sixty (60) days after the date the ordinance is introduced. All interested parties must have the opportunity to testify as to the proposed annexation.”).
28. See id. §§ 36-4-3-2.1 to -2.2, 36-4-3-3.
29. See id.
Under the ordinance option, municipalities must meet certain threshold conditions. The first is contiguity. Under Indiana’s statute, “territory sought to be annexed may be considered ‘contiguous’ only if at least one-eighth (1/8) of the aggregate external boundaries of the territory coincides with the boundaries of the annexing municipality.” Additionally, the municipality must adopt a fiscal plan prior to giving notice of the proposed annexation to the affected property owners. The fiscal plan must show “[t]he cost estimates of planned services to be furnished to the territory to be annexed[,] itemized estimated costs for each municipal department or agency[, t]he method or methods of financing the planned services[,] how specific and detailed expenses will be funded[, and t]he plan for the organization and extension of services.”

Indiana’s implicit involuntary approach includes a the property owner “check” on involuntary annexation that is triggered once the annexation is complete. Once an annexation ordinance has been adopted and published, the affected property owners have ninety days to file a remonstrance. The remonstrance must include the signatures of “(A) at least sixty-five percent (65%) of the owners of land in the annexed territory; or (B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.” If property owners in the newly annexed area take such action, Indiana’s statute specifically provides guidelines for judicial review of the municipality’s annexation decision.

In its 2011 legislative session, Indiana’s lawmakers considered Senate Bill 69, which would have required that an annexing town or city submit a petition to the court with the approval of at least 60% of the property owners in an area proposed for annexation, effectively eliminating the involuntary annexation option. The legislation also considered another petition option for municipalities, permitting them to submit owner signatures from more than 75% of the annexed land’s

30. See id. § 36-4-3-3(a).
31. Id. § 36-4-3-1.5. Indiana courts have interpreted contiguity to mean that “the territory or some part of the territory in which [a municipality] seeks to annex must be contiguous at such time prior to the annexation ordinance and not made contiguous contemporaneously by the language of such annexation ordinance.” See id.; 836 N.E.2d at 972.
32. See IND. CODE § 36-4-3-3.1(b).
33. See id. § 36-4-3-13(d)(1) to -13(d)(3).
34. See id. § 36-4-3-11(a).
35. See id. § 36-4-3-11(a).
36. See id. § 36-4-3-13.
assessed value. The proposed legislation would have allowed municipalities to annex noncontiguous territories to build an industrial park, shopping center, or economic development project in the area.\textsuperscript{38} The legislation did not pass, but it signals the existence of forces within the state that seek to curtail the involuntary annexation power currently afforded to municipalities.

Indiana’s backlash to involuntary annexation is seen in citizens’ movements such as the Citizens for Center Grove.\textsuperscript{39} The organization is working toward the incorporation of the Center Grove area as a defense mechanism to their possible annexation. It has also expressed concerns about the impact of involuntary annexation in the state. The organization’s Web site discusses the impact of incorporation and annexation from the aspect of the impact of municipal service delivery on property values. While the Web site’s literature expresses understandable concerns about service delivery, it also reflects concerns about the community’s tax dollars being spent beyond its self-defined community.\textsuperscript{40}

B. Kansas

Involuntary annexation in Kansas is initiated by a municipality’s adoption of a resolution stating its intent to annex land into its borders.\textsuperscript{41} After the adoption of the resolution, notice of the proposed annexation and of a public hearing to address the proposed annexation is published in the official newspaper as well as sent by certified mail to each property owner in the area of proposed annexation.\textsuperscript{42} At the public hearing, a city representative shall present the annexation proposal, and members of the public are given the opportunity to comment.\textsuperscript{43}

Kansas’s annexation statute allows the governing body of any city to annex land by ordinance if any one of seven conditions exists:

1. The land is platted, and some part of the land adjoins the city.
2. The land is owned by or held in trust for the city or any agency thereof.

\textsuperscript{38} See id.
\textsuperscript{40} See id.
\textsuperscript{41} See KAN. STAT. § 12-520a (2012).
\textsuperscript{42} See id. § 12-520a(c).
\textsuperscript{43} See id. § 12-520a(e).
The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county . . . without the express permission of the board of county commissioners of the county.

The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose.

The tract is so situated that 2/3 of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.44

Only the seventh condition facilitates a “consent” annexation.45 The other conditions essentially permit an involuntary annexation through the passage of an ordinance by a city. While most of the provisions place specific restraints on what lands are available for annexation, the first condition simply requires that the land is platted and some part of it adjoins the city. This relatively low bar enables a municipality to annex land in an involuntary manner. Property owners can weigh in on an annexation through the public hearing process, but it is conceivable that a municipality could proceed with an annexation over the objections of property owners.

Under the Kansas statute, the city is directed to consider sixteen factors in determining the advisability of the involuntary annexation, which include:

(3) [the] topography, natural boundaries, . . . transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;

(4) [the] extent and age of residential development in the area to be annexed and adjacent land within the city’s boundaries;

(5) [the] present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;

(6) [the] extent of business, commercial and industrial development in the area;

44. Id. § 12-520(a).

45. See id. § 12-520(a)(7); see also In re Petition of Overland Park for Annexation of Land, 736 P.2d 923, 925 (Kan. 1987) (describing the general application of Kansas’ annexation statute).
(9) [the] tax impact upon property in the city and the area;

(10) [the] extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;

(12) existing petitions for incorporation of the area as a new city or for the creation of a special district;

(13) [the] likelihood of significant growth in the area and in adjacent areas during the next five years;

(15) [the] economic impact on the area; and

(16) [the] wasteful duplication of services.\footnote{See KAN. STAT. § 12-520a(e).}

If the municipality can satisfy these conditions, it can proceed with the unilateral annexation of neighboring territory. Kansas's annexation statutes explicitly prescribe a very narrow scope of judicial review, providing that the wisdom, necessity, or advisability of an annexation is not a matter for consideration by the courts and that the courts' role is limited to determining whether cities possess the statutory authority to annex land and whether they have acted accordingly under that authority.\footnote{See, e.g., Cedar Creek Props., Inc. v. Bd. of Cnty. Comm'rs, 815 P.2d 492, 495 (Kan. 1991).}

While the statutory design of involuntary annexation is typically more avowed, conscious, and deliberate, Kansas's approach is more tacit and incidental. The opportunity for property owners and citizens to be heard at a public hearing prior to the enactment of an annexation ordinance and the sixteen statutory conditions for determining the advisability of an annexation are evidence of considerable opportunities for public sanction of a proposed involuntary annexation as well as meaningful public participation throughout the process. While property owner and citizen input is facilitated and seemingly encouraged throughout the annexation process, it is not required.

C. \textit{Kentucky}

In Kentucky, the limitations imposed on a municipality's annexation authority are tied to the municipality's classification. The state statute assigns every city a classification ranging from First Class, which only contains the state's largest city, Louisville, to Sixth Class,
which includes every city not listed. The First Class consists of cities that have, in effect, a compact with the county. Cities within the Second and Third Classes are granted authority to annex unincorporated territory, with the caveat that the annexation can be denied if a petition in opposition is filed in a timely manner.

Louisville, the only city within the First Class, can only annex territory subject to the consent of the voters in the area proposed for annexation. Other cities can annex territory by ordinance, but are subject to rejection by a petition representing at least 50% of the resident voters or owners of real property in the area to be annexed.

To annex unincorporated territory, the legislative body of cities, other than those within the First Class, must enact an ordinance stating their intent to annex. If the petition is successful, voters in the area to be annexed will be able to vote on the question of annexation. The annexation will be rejected if at least 55% of those persons voting oppose the annexation. In the instance that an annexation is rejected, the city must wait five years before it may attempt to annex the same area or resubmit the question of annexation.

Kentucky’s statute is structured like a consent statute, but unlike the most common consent statutes, property owner or resident approval is not required to initiate the process. The possibility that an ordinance stating the intent to annex could withstand a resident or voter petition against it (one that fails to gain a majority of support) and become law gives it the quality of an involuntary annexation. The petition requirement is effectively a remonstrance, provided it clears the 50% threshold. While this is a weak form of involuntary annexation statute, it is worth mentioning nonetheless.

D. Nebraska

Nebraska’s approach to involuntary annexation is the most straightforward example of a scheme built around leveraging

49. See id. § 81A.005.
50. See id. § 81A.420.
51. See id. § 81A.005(a).
52. See id. § 81A.420(2).
53. See id. § 81A.420(1); see also Louisville/Jefferson Cnty. Metro Gov’t v. City of Prospect, 277 S.W. 3d 227, 228 (Ky. 2009) (holding that the larger city of Louisville had priority over the city of Prospect because it introduced an ordinance of annexation).
54. See KY. REV. STAT. § 81A.420(2).
55. See id. § 81A.420(2)(c).
56. See id. § 81A.460.
metropolitan economies of scale and promoting the continued growth of the largest municipalities and, in turn, the largest metropolitan regions in the state. In Nebraska, involuntary annexation is conditioned upon city size and, like Kentucky, a classification system. Municipalities are classified as Metropolitan Class (containing a population greater than 300,000),57 Primary Class (containing a population greater than 100,000 but less than 300,000),58 First Class (containing a population greater than 5000 but less than 100,000),59 Second Class (containing a population greater than 800 but less than 5000),60 or Village (containing a population of greater than 100 but less than 800).61 Municipalities in all classifications are granted involuntary annexation powers, but only with regard to cities of a lesser class.

Metropolitan Class cities can extend their boundaries over contiguous or adjacent land that includes or annexes a city of the First Class with populations of less than 10,000, any adjoining city of the Second Class, or a Village.62 Primary Class cities can involuntarily annex Villages.63 First Class cities must adopt a specified annexation resolution and plan for the extension of services before annexing land.64 Metropolitan Class cities, on the other hand, can extend their boundaries at any time by ordinance.65 Nebraska’s state constitution provides that the merger or consolidation of municipalities or counties requires the approval of a majority of people voting in each municipality or county to be merged or consolidated but explicitly exempts annexations from such a requirement.66

With regard to annexation by cities of the Metropolitan Class, Nebraska’s statute provides:

The corporate limits of any city of the metropolitan class shall be fixed and determined by ordinance by the council of such city. The city council of any city of the metropolitan class may at any time extend the corporate limits of such city over any contiguous or adjacent lands, lots, tracts, streets, or highways. such distance as may be deemed proper in

58. See id. § 15-101.
59. See id. § 16-101.
60. See id. § 17-101.
61. See id. § 17-312(1).
62. See City of Elkhorn v. City of Omaha, 725 N.W.2d 792, 808 (Neb. 2007) (citing NEB. REV. STAT. § 14-117).
63. See NEB. REV. STAT. § 15-117.
64. See Elkhorn, 725 N.W.2d at 799.
65. See NEB. REV. STAT. § 14-117.
66. See Elkhorn, 25 N.W.2d at 810 (citing NEB. CONST. art. XV, § 18(2)).
any direction, and may include, annex, merge, or consolidate with such city of the metropolitan class, by such extension of its limits, any adjoining city of the first class having less than ten thousand population or any adjoining city of the second class or village. Any other laws and limitations defining the boundaries of cities or villages or the increase of area or extension of limits thereof shall not apply to lots, lands, cities, or villages annexed, consolidated, or merged under this section.67

Nebraska’s annexation statute essentially allows its largest cities to consume smaller cities lying in their paths of expansion without having to obtain the consent of the residents within those smaller cities.

Cities smaller than those in the Metropolitan Class have the same right to involuntarily annex, but those rights are limited according to certain threshold requirements. For cities in the Primary Class, the city council may annex, by ordinance, any contiguous or adjacent lands that (1) are within the city’s limits and that (2) the city serves with water service, sanitary sewerage, or both.68 For cities of the First Class, the requirements are even more specific. The mayor and the city council must both consent to the annexation ordinance, and they may annex any adjacent or contiguous lands that are urban or suburban in character, but not any agricultural lands.69 Cities of the First Class are also subject to certain procedural requirements, such as developing a plan for the extension of city services to the area to be annexed and holding a public hearing.70

Nebraska’s annexation regime effectively allows every class of city the opportunity to extend its borders without the consent of those in the areas to be annexed. This policy was challenged by Citizens for a Free Nebraska, a statewide movement of citizens organized against forced annexation.71 The organization, which was dissolved in November of 2010, sought to enact a law that would prevent the annexation of a city without the majority vote from the residents in the area to be annexed.72 They also sought to enact a law that would allow annexed cities to deannex themselves by a vote of the residents in the annexed area within five years of the annexation.73 The group

68. See id. § 15-104.
69. See id. § 16-117(1).
70. See id. § 16-117(3)-(5).
73. See Ballot Question Committees, supra note 72.
characterized involuntary annexation as a taking and established the movement to override the state's involuntary annexation provisions as related to principles of fairness, democracy, and representation.\footnote{74. See Statewide Implications, supra note 71.}

\textit{E. North Carolina}

North Carolina no longer has involuntary annexation, but up until the state's 2012 legislative session, North Carolina was the blueprint for involuntary annexation. For more than forty years, North Carolina has had one of the nation's most comprehensive state land use policies. North Carolina's annexation laws have been hailed as a model urban policy that has been essential to the growth and economic development of the state's metropolitan regions during the second half of the twentieth century.\footnote{75. See generally Elizabeth R. Connolly, \textit{Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws}, 29 N.C. CENT. L.J. 77 (2006) (discussing the inequalities that were inherent in North Carolina's involuntary annexation laws); Rob Christensen, \textit{Many Hail North Carolina Annexation Law}, NEWS & OBSERVER, http://www.newsobserver.com/2011/03/27/1085023/many-hail-NCS-annexation-law.html (last modified Mar. 27, 2011, 09:18 AM) (attributing the growth and economic health of many North Carolina cities to the state's annexation laws). For instance, between 1960 and 2010, Raleigh, North Carolina, saw its population more than triple. Neighboring state capitals, however, did not see similar growth. Columbia, South Carolina, had a slight population increase, while Richmond, Virginia, shrank. \textit{See id}.} Annexation in North Carolina stretches back to the formation of the state's Municipal Government Study Commission in 1958, which was convened by the state's leading municipalities following calls for a new statewide land use policy.\footnote{76. See Connolly, supra note 75, at 81 (discussing the history of the Municipal Government Study Commission).} Its most progressive feature had been its very permissive involuntary annexation provisions.

In the past several years, North Carolinians have been engaged in a fight over involuntary annexation. The saga produced legislative developments and litigation that culminated during the state's 2012 legislative session. The original statute incorporated broad provisions for involuntary annexation. Any municipality with a population of over 5000 could annex territory unilaterally.\footnote{77. See N.C. GEN. STAT. § 160A-46 (2010) (repealed 2011).} The statutory provisions took into consideration the impact of boundary expansion on affected property owners and exhibited considerable regard for their freedom of location choice by building into the statute a number of constraints on the ability of municipalities to extend their boundaries unilaterally.\footnote{78. See id. § 160A-47 (repealed 2011).}
The original statute provided strict geographical and developmental criteria and procedures for involuntary annexation. North Carolina courts have emphasized, “[M]unicipal services must be extended to newly annexed areas in a nondiscriminatory manner, meaning that annexed residents and property owners must receive substantially the same services that existing [municipal] residents and property owners receive.”

In 2011, the state legislature passed An Act To Reform the Involuntary Annexation Laws of North Carolina, which brought about several changes to the annexation process. First, the legislation required that a municipality annexing under the involuntary annexation provisions wait one year after filing a Resolution of Consideration identifying the area under consideration for annexation before it could adopt a Resolution of Intent to proceed with the annexation. Second, the legislation introduced a Petition to Deny Annexation Ordinance provision whereby eligible property owners opposing the annexation would have 130 days from the date that the annexation ordinance would be adopted to sign and obtain signatures representing 60% of the property owners in the affected area. Upon timely delivery of the petition to the municipal governing board, the annexation would be terminated and the municipality would be prohibited from adopting another annexation ordinance for the same area for at least three years.

The changes enacted by the 2011 legislation essentially allowed a majority of property owners in an annexed area to veto an involuntary annexation. The portion of the 2011 legislation establishing the Petition to Deny Annexation Ordinance process was ultimately struck down as unconstitutional because it allowed only landowners to participate in the petition as opposed to all voters. In City of Goldsboro v. North Carolina, the North Carolina Superior Court held that provisions providing for the Petition to Deny Annexation Ordinance violated the sections of the North Carolina Constitution that

80. Id. (citing Greene v. Town of Valdese, 291 S.E.2d 630, 635 (N.C. 1982)).
86. See id.
provide that political rights are not dependent on property,87 equal protection of the laws,88 the ban on exclusive privileges,89 and the statute's prohibition on the incorporation of a municipality within one mile of the corporate limits of a municipality having a population of 5000 or more.90

In the 2012 legislative session, involuntary annexation suffered a deathblow. North Carolina House Bill 925 was enrolled May 30, 2012.91 The legislation proposed changing the annexation process to a referendum vote (during a municipal election) of those residing in the annexation area. Only registered voters of the proposed annexation area would be allowed to vote on the referendum. A simple majority of all registered voters who actually voted in the referendum would be able to kill any proposed annexation. If the proposed annexation was denied, that proposed annexation area could not be annexed for at least three years from the date of the referendum.92 North Carolina Governor Beverly Purdue committed to neither signing nor vetoing the bill, stating that while she “recognize[d] the need for some changes in the annexation process, . . . reform should neither stifle the natural growth—nor limit the role—of local governments.”93 In the absence of a ratification or veto, the bill automatically became law.94

The 2012 legislative session also produced North Carolina House Bill 5, which was ratified on May 30, 2012.95 The legislation targeted specific communities for deannexation. House Bill 5 deannexed legal, pending, or completed annexations in Asheville, Fayetteville, Goldsboro, Kinston, Lexington, Marvin, Rocky Mountain, Southport, and Wilmington.96 House Bill 5 also contained a provision that imposed a twelve-year prohibition on any annexation attempt of the enumerated areas.97

87. See N.C. CONST. art. I, § 11.
88. See id. art. I, § 19.
89. See id. art. I, § 32.
90. See id. art. VII, § 1.
92. Id.
94. See id.
96. See id.
97. See id.
House Bill 5 and the other pieces of legislation are the result of actions by citizens’ groups like the Biltmore Lake Community Action Committee and the residents of The Gates Four community near Fayetteville, North Carolina.98 These groups and others have channeled their strong opposition to involuntary annexation into local and state politics. They have also pursued litigation. Over the past fifteen years, at least seven cases involving disputes over involuntary annexation proceedings have been litigated in North Carolina courts.99 Their focus on involuntary annexation, however, is arguably disproportionate to the extent to which such annexations actually occur. As previously mentioned, of the more than 14,000 annexations conducted in North Carolina between 1990 and 2009, only 1321, or 9%, were involuntary annexations.100

F. Tennessee

Involuntary annexation in Tennessee is part of a broad and comprehensive statewide land use policy focused on encouraging governance uniformity across a metropolitan region.101 Tennessee municipalities may unilaterally annex adjoining territory by ordinance when doing so will advance the state’s concern for the growth, development, public safety, and welfare of its metropolitan regions.102 If a municipality has a population greater than 10,000, its ability to annex new territory unilaterally is limited to within a two-year time frame.103 Tennessee’s annexation statute provides, in relevant part, that an annexation will be deemed necessary under two conditions: when a

98. For a more in-depth discussion of the efforts of these groups and others, see Tyson, supra note 2.
100. See Smith, supra note 7, at 170 tbl.1.
101. TENN. CODE § 6-51-102 (2012) (“With this chapter, the general assembly intends to establish a comprehensive growth policy for this state that: (1) Eliminates annexation or incorporation out of fear; (2) Establishes incentives to annex or incorporate where appropriate; (3) More closely matches the timing of development and the provision of public services; (4) Stabilizes each county’s education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and (5) Minimizes urban sprawl.”).
102. See id. § 6-51-102.
103. Id. § 6-51-102(a)(3)(A).
majority of residents and property owners in the affected area present a petition or when it appears the "prosperity of such municipality and territory will be materially retarded" without the annexation. 104 This approach explicitly provides for both property owner petitions and municipality determinations on the need for annexation.

Tennessee’s current annexation statute is the result of the invalidation of a 1997 annexation law that made it easier for small towns located in the fringe areas of adjacent cities to incorporate themselves rather than be annexed by the metropolitan region’s central city. 105 The 1997 law was struck down by the Tennessee Supreme Court in Tennessee Municipal League v. Thompson, 106 after which the state legislature created a committee to rewrite the state’s annexation law. 107 The revised annexation law resulted in a broader Comprehensive Growth Plan, whose purpose is “to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of present and future needs, best promote the public health, safety, morals and general welfare.” 108

Tennessee’s annexation statute favors the growth of its largest municipalities by affording them priority in annexation contests. Where two municipalities incorporated in the same county seek to annex the same territory, “the proceedings of the municipality having the larger population shall have precedence and the smaller municipality’s proceedings shall be held in abeyance pending the outcome of the proceedings of the larger municipality.” 109

The Comprehensive Growth Plan directs each city and county to determine an urban growth boundary to guide its development. 110 Under the Comprehensive Growth Plan, “A municipality possesses

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104. Id.
106. 958 S.W.2d at 338.
107. Among other things, the 1997 annexation law significantly lowered the population requirement for the incorporation of a municipality, deleted prohibitions on the incorporation of new municipalities within certain distances of existing municipalities of a certain population, allowed a letter from a single resident to be used in lieu of a petition to incorporate a new municipality, and did not require a plan for municipal services or a five-year budget. See 1997 Tenn. Pub. Acts 165; Thompson, 958 S.W.2d at 334-35.
109. Id. § 6-51-110.
110. See id. § 6-58-104(a)(2).
exclusive authority to annex territory located within its approved urban growth boundaries; therefore, no municipality may annex by ordinance or by referendum any territory located within another municipality's approved urban growth boundaries.\textsuperscript{111} The combined effect of Tennessee's annexation statute and its Comprehensive Growth Plan is to incentivize urban growth planning by tying a municipality's annexation powers to the development of its growth plan.\textsuperscript{112} In addition to incentivizing planning, this approach also puts communities on notice that boundary expansion is possible and thereby manages expectations about the limits of property owners' autonomy over choosing their municipal identity. This reflects the Comprehensive Growth Plan's aim to eliminate annexation or incorporation based on fear.\textsuperscript{113}

\textit{G. Texas}

The unilateral authority to annex territory in Texas traces back to 1913 legislation, which implemented the 1912 Home Rule Amendment to the Texas Constitution, and gave home rule cities the ability to annex adjacent territory.\textsuperscript{114} Annexation legislation was infrequent until the enactment of the Municipal Annexation Act of 1963, which set forth the procedures for annexation, established the concept of extraterritorial jurisdiction (ETJ),\textsuperscript{115} and granted cities the unilateral authority to annex areas within their ETJs.\textsuperscript{116} ETJ is defined as the area of land extending beyond the city limits over which the city maintains some control.\textsuperscript{117} When a city annexes additional areas, its ETJ is also extended.\textsuperscript{118} A city's annexation authority is limited to the area within its ETJ.\textsuperscript{119}

\textsuperscript{111} Id. § 6-58-111(a).
\textsuperscript{112} See id. ("Within a municipality's approved urban growth boundaries, a municipality may use any of the methods in chapter 51 [the annexation statute] of this title to annex territory; provided, that if a quo warranto action is filed to challenge the annexation, the party filing the action has the burden of proving that: (1) An annexation ordinance is unreasonable for the overall well-being of the communities involved; or (2) The health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation.").
\textsuperscript{113} Id. § 6-58-102(1).
\textsuperscript{115} See TEX. LOC. GOV’T CODE §§ 42.001, .021 (2011).
\textsuperscript{117} See TEX. LOC. GOV’T CODE § 42.001.
\textsuperscript{118} Id. § 42.022.
\textsuperscript{119} See id. § 43.051.
Although all Texas municipalities are granted the authority to annex territory unilaterally, “general law” municipalities may only unilaterally annex under very limited circumstances.\textsuperscript{120} Home rule municipalities, which usually have a population over 5000,\textsuperscript{121} may do anything permitted by their charter.\textsuperscript{122} Most home rule charters authorize involuntary annexation. Unless the home rule municipality owns the area to be annexed, the municipality may only annex territory that lies within its ETJ.\textsuperscript{123}

In general, a municipality is permitted to annex a total area equivalent to 10\% of its incorporated area in one year.\textsuperscript{124} Any unused portion of that allocation may be carried over for use in the following years.\textsuperscript{125} However, a municipality carrying over an allocation cannot annex a total area more than the equivalent to 30\% of its incorporated area for that year.\textsuperscript{126}

Notwithstanding a few exemptions,\textsuperscript{127} every municipality must prepare an annexation plan identifying the annexations that may occur.\textsuperscript{128} Any annexation plan must be maintained on the municipality’s Web site.\textsuperscript{129} Once the annexation plan is adopted, there is a three-year waiting period before it may be carried out.\textsuperscript{130} During this waiting period, a city may amend its annexation plan to remove territory. If an area is removed from the annexation plan within eighteen months of being placed on the plan, there is a one-year waiting period before the area may be re-added to the annexation plan.\textsuperscript{131} If the area is removed from the annexation plan eighteen months or later from the date it was added, there is a two-year waiting period before the area may be re-added to the annexation plan.\textsuperscript{132}

Within ninety days of the adoption or amendment of a municipality’s annexation plan, the municipality must give written notice to property owners in the affected area, certain public and private entities that service the affected area, and certain railroad

\textsuperscript{120} See id § 43.033.
\textsuperscript{121} See TEX. CONST. art. XI, § 5; TEX. LOC. GOV’T CODE § 5.004.
\textsuperscript{122} See TEX. LOC. GOV’T CODE § 43.021.
\textsuperscript{123} See id § 43.051.
\textsuperscript{124} See id § 43.055(a).
\textsuperscript{125} See id § 43.055(b).
\textsuperscript{126} See id § 43.055(c).
\textsuperscript{127} See id § 43.052(h).
\textsuperscript{128} See id § 43.052(c).
\textsuperscript{129} See id § 43.052(j).
\textsuperscript{130} See id § 43.052(c).
\textsuperscript{131} See id § 43.052(e).
\textsuperscript{132} See id.
companies. Any territory contained in the annexation plan must be annexed within thirty-one days after the expiration of the three-year waiting period. Otherwise, the city will be prohibited from annexing the territory for five years. Other procedural requirements include the preparation of an inventory of services and facilities in the territory proposed for annexation. Two public hearings must be held within ninety days after the inventory of services and facilities has been prepared. In addition, the municipality must complete a service plan for the provision of municipal services to the area to be annexed.

While North Carolina only recently experienced sweeping legislative changes that fundamentally altered the opportunity for involuntary annexation, Texas weathered the same backlash more than ten years ago. Houston's annexation of the Kingwood community ultimately precipitated a movement to change the state's involuntary annexation provisions and a revision to the annexation regime altogether. The suburb of Kingwood fell within Houston's ETJ at the time of its proposed annexation in 1996. Houston's population at the time was approximately 1.8 million. Kingwood's population in 1996 was approximately 53,000, falling within the 10% population threshold established by the Municipal Annexation Act.

Houston's population growth can be attributed to job creation, immigration, and low cost of living, but its territorial expansion is largely attributable to involuntary annexation. Houston took full

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133. See id. § 43.052(f).
134. See id. § 43.052(g).
135. See id.
136. See id. § 43.053.
137. See id. § 43.0561(a).
138. See id. § 43.056.
139. See Harris v. City of Houston (Harris I), 10 F. Supp. 2d 721, 723 (S.D. Tex. 1997), vacated, Harris v. City of Houston (Harris II), 151 F.3d 186 (5th Cir. 1998).
143. See generally Scott Houston, Municipal Annexation in Texas: "Is It Really That Complicated?" TEX. MUN. LEAGUE, http://www.tml.org/legal_pdf/ANNEXATION.pdf (last updated Mar. 2011) (describing the operation of involuntary annexation in Texas). The Houston metropolitan area is the fourth largest in the nation behind New York, Los Angeles, and Chicago. Unlike those cities, however, Houston is largely a late-twentieth-century city whose identity and territory have increased substantially over a relatively short period of time. Houston is the result of a number of forces, developments, and phenomena in late-twentieth-
advantage of this authority by aggressively annexing areas within its ETJ. In August of 1996, Houston's then-Mayor Bob Lanier proposed that the city of Kingwood be annexed into Houston's city limits in order to generate annual revenues for Houston of approximately $4 million. The timing of Lanier's proposal was intentional because he feared state lawmakers might strip cities of their annexation powers during the January legislative session. Furthermore, annexing Kingwood in December would allow Houston to collect taxes from Kingwood residents for the entire year in 1997.

Houston's attempt to annex Kingwood was met with considerable resistance by Kingwood, which argued that its annexation would result in increased taxation and a decrease in the quality of municipal services. Some residents of Houston countered that Houston's strength lay in its collective, regionalized effort to attract business. In an article reflecting the attitudes of those supporting the proposed Kingwood annexation, Imad Abdullah asserted:

If each community is allowed to shelter itself, we will have a war of enclaves, lobbying and stifling Houston's growth to divert it elsewhere. Newly formed municipalities will begin to develop their own city halls, their own convention centers and facilities. And sooner or later outlying communities will compete with Houston for convention business. Negative advertising will appear, contrasting the 'Livable Forest' with the 'Home of the Homeless' downtown Houston, with unhealthy consequences for all parties.

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146. See id.
148. Abdullah, supra note 140.
Abdullah went on to write that Kingwood owed its success to its proximity to Houston, not because Kingwood itself was a center of employment.\textsuperscript{149} Those in favor of Kingwood's annexation also mentioned the need to keep Houston from becoming a "donut city."\textsuperscript{150} Despite massive protests by Kingwood residents, on December 11, 1996, the Houston City Council voted to annex the city of Kingwood.\textsuperscript{151} The annexation took full effect the following day.\textsuperscript{152} On December 23, 1996, the city requested preclearance of the annexation from the United States Department of Justice pursuant to section 5 of the Voting Rights Act of 1965.\textsuperscript{153}

Residents of Kingwood, residents of Houston, and utility districts joined together as plaintiffs in a federal lawsuit against the city of Houston. Although the parties' claims differed, they each sought the same remedy: a preliminary injunction of Kingwood's annexation. The lawsuit was filed in October of 1996, before the city actually accomplished the annexation.\textsuperscript{154} The claimants argued that the annexation violated constitutionally protected rights under the Fourteenth and Fifteenth Amendments.\textsuperscript{155} Harris, a white resident of Kingwood, brought claims under the Voting Rights Act of 1965, alleging that permitting the annexation to go forward before the January election would deprive him of his right to vote in violation of the Fourteenth and Fifteenth Amendments to the United States

\textsuperscript{149} See id.


\textsuperscript{151} See Harris I, 10 F. Supp. 2d 721, 723-25 (S.D. Tex. 1997), vacated, Harris II, 151 F.3d 186 (5th Cir. 1998).

\textsuperscript{152} See id.

\textsuperscript{153} See id. Preclearance is a standard requirement in the annexation process for states falling under the purview of the Voting Rights Act. In any covered jurisdiction, section 5 of the Act requires preclearance of any attempt to change "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" by either the United States Department of Justice (through an administrative procedure) or a three-judge panel of the United States District Court for the District of Columbia (through a declaratory judgment action). See 42 U.S.C. § 1973c (2006). Section 2 contains a general prohibition on voting discrimination, enforced through federal district court litigation. See id. §§ 1973-1973a. Under section 2, any voting practice or procedure that has a discriminatory result is prohibited. See id. § 1973. The test to determine if a voting practice or procedure has a discriminatory result is not whether the discriminatory effect is intentional. Rather, the test is whether the electoral processes are equally accessible to minority voters. See id. The Supreme Court has interpreted the words "any voting qualification or prerequisite to voting" to have a broad meaning. Allen v. State Bd. of Elections, 393 U.S. 544, 563-67 (1969); see Voting Rights Act of 1965, §§ 2, 3, 42 U.S.C. §§ 1973-1976.

\textsuperscript{154} See Harris II, 151 F.3d at 188.

\textsuperscript{155} See Harris I, 10 F. Supp. 2d at 723.
Constitution. The United States District Court for the Southern District of Texas held that his rights were not violated because he had no right to vote in the January 18th election; voting changes that have not been cleared under section 5 have no effect until preclearance has been granted. Because he was not deemed to have been denied any existing right to vote, his Fourteenth and Fifteenth Amendment claims failed.

The plaintiffs’ section 2 claim was also denied on the basis that, under the totality of the circumstances, the plaintiffs did not prove that the annexation diluted minorities’ opportunities to participate in the city political process and to elect representatives of their choice as was enjoyed by white voters. The court further found that partisan affiliation, not race, was a better explanation for divergent voting patterns. On appeal, the United States Court of Appeals for the Fifth Circuit ruled that because the plaintiffs only prayed for injunctive relief, and at the time of the decision the annexation had already taken place, the plaintiffs’ argument was moot and judgment was entered in favor of the defendant. Judge Harold DeMoss dissented with respect to Harris’ Fourteenth Amendment claim, however, and decried the court’s decision to allow Houston to tax the Kingwood residents without representation. Judge DeMoss’s point of view was echoed the following year when Senate Bill 89 was introduced during the 1999 legislative session.

Senate Bill 89 was a substantial revision to the Municipal Annexation Act of 1963. Under the revised law, large municipalities are required to draft annexation plans specifically identifying annexations that may occur. Any area proposed to be annexed is subject to a three-year waiting period from the time the area is

156. See id.
157. See id. at 729.
158. See id.
159. See id. at 724-25. There was substantial evidence showing an established record of the city’s minority citizens successfully electing representatives of their choice. The court looked at past election results between minority and nonminority candidates and determined that in one case, even if all 40,000 of Kingwood’s residents of voting age voted for the nonminority candidate, the minority still would have won. The court went on to say, “The Voting Rights Act ‘does not purport to guarantee or to compel minority representation in publicly elected bodies that is proportional to the racial makeup of the political unit.’” Id. at 727 (quoting Seastrunk v. Burns, 772 F.2d 143, 153 (5th Cir. 1985)).
160. See Harris II, 151 F.3d at 187.
161. See id. at 191 (DeMoss, J., dissenting).
163. See Houston, supra note 143, at 21.
164. See TEX. LOC. GOV’T CODE § 43.052(c) (2011).
included in the municipalities' annexation plan. Senate Bill 89 also mandated new requirements for notice, giving residents of communities at risk of being annexed a significant opportunity to be heard. The most significant revision was the requirement that a service plan be implemented, giving residents of communities to be annexed an expectation of the quality and quantity of municipal services they could expect after the annexation. Rather than unilaterally deciding to annex an area within a city's ETJ, city officials must now initially determine whether an area they wish to annex falls under one of the exemptions from the annexation plan requirement.

The Municipal Annexation Act still affords extra protection to large municipalities such as Houston. The Act provides for negotiation for the provision of services and contracting for services in lieu of annexation, but only for municipalities with populations of less than 1.6 million. Thus, even if the 1999 revisions had been in effect when Kingwood was annexed, Kingwood would not have been able to negotiate with Houston for services. Kingwood did try to contract with the city of Houston for services by offering $4 million per year in lieu of annexation, but was ultimately unsuccessful. In the annexation's aftermath, the sentiments of Kingwood residents varied between those who were indifferent and those who claimed they would remain "bitter about it until the day [they die]." It is noteworthy that few Kingwood residents felt that the annexation provided them with any significant benefit.

165. Id.
166. See id. § 43.052(f).
167. See id. § 43.053.
168. See id. § 43.052(h) ("This section does not apply to an area proposed for annexation if: (1) the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract; (2) the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners as provided by Subchapter B; (3) the area is or was the subject of: (A) an industrial district contract under Section 42.044; or (B) a strategic partnership agreement under Section 43.0751; (4) the area is located in a colonia, as that term is defined by Section 2306.581, Government Code; (5) the area is annexed under Section 43.026, 43.027, 43.029, or 43.031; (6) the area is located completely within the boundaries of a closed military installation; or (7) the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from: (A) imminent destruction of property or injury to persons; or (B) a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.").
169. See id. §§ 43.0562(a)(1), 43.0563(a).
170. See Lee, supra note 141.
171. See id.
172. See id.
A study of the Kingwood annexation provides valuable insight into the arguments for and against involuntary annexation as well as the verifiable links between a central city's boundary elasticity and regional economic growth. The Kingwood residents' rejection of involuntary annexation underscored their sense of entitlement to a separate municipal identity. They understood it and expressed that entitlement in the rhetoric of property rights.

III. INVOLUNTARY ANNEXATION UNDER ATTACK: WHY?

With involuntary annexations making up only 9% of the total annexations in North Carolina over the past twenty years, and with, presumably, similarly low levels in other states, it is hard to fathom how the issue has managed to generate such strong opposition. It has objectively aided central cities in maintaining the boundary elasticity necessary to keep up with urban sprawl and spread the benefits of a uniform governance regime across the ever-expanding territory of the modern metropolis. There are complex and varied reasons why involuntary annexation is so controversial and incites such passion among those who oppose it. These reasons extend far beyond very reasonable concerns about public service provisions. They implicate issues like taxation, which, while seemingly innocuous, is connected to broader sentiments about the role of government and social and economic redistribution that has animated American political debate for some decades. To a considerable degree, the staunch opposition to involuntary annexation is rooted in a complex set of beliefs, historic currents, and sociopolitical realities, all related to the meaning of municipal boundaries in the contemporary, American metropolitan experience.

Involuntary annexation essentially subordinates local prerogatives on the formation and reformation of municipal boundaries to larger state-centric land use and development needs. The favoring of state-centric organization as opposed to locally driven organization reflects the state's essential role in safeguarding the interests of all citizens and thereby accounting for the externalities produced through the local land use decisions of one community vis-à-vis another. While the representative structure of state government allows local communities to impact state legislation, localism casts state government and local government as inherently disconnected and oppositional forums. In today's political culture, the exercise of state government autonomy over land use and boundary management—expressed through involuntary annexation—is popularly understood as an overreach of
government, a breach of property rights, and a suppression of voting rights.173

Such interpretations reflect both the historical and symbolic import of municipal boundaries in American society and in popular conceptions of the role of government in defining and enabling community. They reflect the manner in which localism has become entrenched in the public consciousness as well as the growing antistatist sentiment in American political culture that has undermined government legitimacy and, in turn, the ability of governments to safeguard the public welfare.174

The backlash against involuntary annexation is not driven solely by impassioned lay folk or misguided notions about constitutional rights, however. There are valid and objective concerns with the design and operation of some involuntary annexation regimes that implicate the same issues of equity and fairness at the core of the reasons in support of such laws. For instance, critics of involuntary annexation argue that such provisions fuel a bottom-line approach to annexation that leads municipalities to target wealthy areas for involuntary annexation while overlooking poorer areas where the cost to extend municipal services would exceed the amount of tax revenue received.175 Also at issue are real concerns over the extension of municipal services into newly annexed areas and the ability of the annexing municipalities to deliver and maintain comparable services immediately upon annexation. Communities in areas slated for annexation have a right to question the ability of a municipality to deliver services it either fails to provide within its current jurisdiction or for which it has a poor track record of managing.

There are other currents in the resistance to involuntary annexation, however, that are much less objective and rational. They


174. Antistatism is in many ways connected to broader questions of federalism and states' rights. Modern conservatism is guided by a belief in limited government that is increasingly adopting libertarian positions on the role of state and federal governments in all aspects of society and the economy. Most recently, groups with ties to the Tea Party have been involved in mobilizing opposition to land use policies at the local level. See, e.g., Leslie Kaufman & Kate Zemike, Activists Fight Green Projects, Seeing U.N. Plot, N.Y. TIMES, Feb 4, 2012, at A1.

175. See Connolly, supra note 75, at 85-95 (discussing the communities of southern Moore County and the disparities between the affluent, predominately white areas that have been annexed by the municipalities of Aberdeen, Southern Pines, and Pinehurst and the predominately black communities that comprise the unincorporated areas of the county).
reflect several ideological and historical undercurrents that have profoundly affected local government law and urban politics. They revolve around concerns about the bundle of rights that are perceived to be threatened by annexation. They are tied to the manner in which twentieth-century social, political, and cultural developments have been expressed through spatial organization, territorial expansion, and the cultural significance of both local government and metropolitan space. Those developments can be broadly organized into three groupings of social and political phenomena.

First, localism has long shaped the scope of autonomy granted to municipalities by state legislatures, and the sociocultural drivers of localism have created the urgency and perceived high-consequence nature of the decision to leave central cities, or to locate anywhere, for that matter. Second, annexation is viewed as a tool for the expansion of government power through the expansion of local government boundaries. Consequently, much of the angst over involuntary annexation reflects a broader antistatist sentiment. The suspicion about centralized government has a delegitimating effect on the very role of government and, by extension, the role of public, redistributive, and collectivist institutions in regulating social life.

Third, antistatism and localism have both influenced the growth of the notion of a property-right-based interest in municipal identity. The various movements against involuntary annexation implicate legal and policy issues at the intersection of local government law and property law theory. Laws affecting both private property and the organization of local government are largely the province of the states, subject to certain federal constitutional limitations. These two legal constructs—private property rights and autonomous local government—converge in the issue of localism and its enabling legal and policy underpinning, annexation. Together these political and popular understandings have developed into what can be viewed as a perceived right to municipal location—the belief that one is entitled to have their property located in a particular municipal jurisdiction and, consequently, that the infringement of that right through the adjustment of municipal boundaries is akin to an infringement of vested rights in private property.

A. Localism in Context and the Sociocultural Drivers of Flight

Localism encompasses the legal, scholarly, and political arguments in favor of greater local power and autonomy as well as the belief that democracy requires that governing power should be
devolved to the smallest territorial unit possible.\textsuperscript{176} Localism reflects concerns over the sovereignty of local governments and the processes through which that sovereignty is protected from unwanted state intrusion. Local legal autonomy is organized around local boundaries that delineate the reach of local tax policy pertaining to local property in service of local needs.\textsuperscript{177}

For several key reasons, localism looms large in the discourse around involuntary annexation. First, there are the aims of liberty, freedom, and autonomy as expressed through the ability of citizens to band together in voluntary and mutual associations with their neighbors to form communities through which democratic aims and a vision of the good life can be achieved. This dynamic of localism has significant cultural roots and reflects the legacy of civic republicanism and its ties to democratic citizenship, participation, and territory.

Second, localism is chiefly concerned with scale—the ratio of democratic access and participatory experience to spatial and territorial proximity. Beyond a certain scale, the experience of democracy becomes more attenuated and the virtues of small government are arguably compromised in a practical sense. Regionally based associations of individuals allow for the convenient operation of democratic self-government. Localism posits that the appropriate scale for vesting authority over local and metropolitan affairs is the municipal government unit, as determined by boundaries set by a specific, self-defined community.

The role that scale plays in the ideology of localism is easily understood through the example of a town hall or city council meeting. In that forum there are several dynamics at play: (1) the desire of citizens to enjoy meaningful participation and the very real time constraints within which that participation must be achieved, (2) the ability of elected representatives to manage constituent needs within a defined geographic area and within time and resource constraints, (3) the tension between group camaraderie and individual identity in the expression of community needs and values, and (4) the role of law, rules, process, and a shared regard for the sanctity of the forum that facilitate the local government experience. With each of those dynamics, there is a limit beyond which it is difficult, if not

\textsuperscript{176} The philosophical and methodological forces behind metropolitan fragmentation in particular and the development of local government law in general are commonly understood as localism. See, e.g., Briffault, supra note 12, at 444; Briffault, supra note 3, at 1-6.

\textsuperscript{177} See Briffault, supra note 3, at 349.
impossible, for the aims of effective, responsive, and efficient government to be realized.

Concerns about the appropriate scale of government reflect the values of competition, choice, experimentalism, and the decentralization of power that are sacrosanct in the American experience. What is often underestimated when considering the appropriate scale for effective local government, however, is the inherent spillovers and externalities of the regulatory decisions about land use, which are at the core of local government's functional purpose. Local governments are chiefly concerned with regulating land use because of the belief that the development and use of land can only be determined by those who live in close proximity to one another and therefore share the same territory. The location of broad regulatory authority over land use within the province of discrete municipal units of government does not appreciate this fundamental characteristic of land use policy. There is a fundamental indeterminacy in the relationship between externality management and the need for discrete boundaries to define and delineate the limits of community and local power. The larger the territorial footprint, the greater the spillover of land use decisions within formal boundaries will be into areas outside of formal boundaries. Involuntary annexation addresses this head-on by providing the central cities in metropolitan regions the ability to extend boundaries to account more accurately for the distribution of metropolitan area burdens throughout the region.

The third force at the core of localism's role in the controversy over involuntary annexation is the manner in which localism—specifically through boundary policy—has served to operationalize and reinforce a social order organized around race and economic class. Race and class disparities color conceptions of the legitimacy of the redistributory functions of a centralized government. Because municipal boundaries have functioned to reinforce existing racialized and class-based systems of privilege and disadvantage, notions of the benefit and value to be derived from the annexation of one's land into a municipality involve assessments about the race and class identity of the annexing municipality itself and the potential impact that annexation might have on one's real or perceived property value. While increasing wealth and income inequality in the United States is a growing area of popular and political concern, it is in metropolitan areas that inequality is negotiated, and it is metropolitan areas that are
chiefly responsible for addressing wealth and income inequality and stratification.\textsuperscript{178}

While municipal boundaries do not restrict the flow of goods, services, and ideas within a metropolitan area, they demarcate first-class citizenship from more subordinate tiers. These particular aspects of municipal boundaries have added stigma to residence and place, signaling to the market those areas for investment and isolation.\textsuperscript{179} Annexation law is central to these processes and has, in effect, given a geographic character to race- and class-based politics. Additionally, past motives for annexation often have intentionally served to reproduce existing race and class inequality, resulting in metropolitan regions carved into racially and socioeconomically defined local government units.\textsuperscript{180} Scholars have addressed the processes of "municipal underbounding," which are those annexation practices in which cities grow around or away from low-income minority communities in an effort to exclude them from municipal services and curtail their voting rights.\textsuperscript{181}

With respect to economic class, there is an emerging intellectual and political discourse about growing income and wealth inequality in America. "[I]n 1928 the richest 1 percent of Americans received 23.9

\textsuperscript{178} See Richard H. McAdams, \textit{Economic Costs of Inequality}, 2010 U. CHI. LEGAL F. 23, 31-33 (noting that more affluent populations are likely to segregate themselves into homogenous communities and inherently increase violent crime because of decreased funding for police protection in less-affluent localities); Colloquium, \textit{Wealth Inequality and the Eroding Middle Class: A Conference of the University of North Carolina Center on Poverty, Work and Opportunity and the American Constitution Society for Law and Policy}, 15 GEO. J. ON POVERTY L. & POL'Y 411 (2008) (noting a variety of factors in income inequality including nonpayment of estate taxes, racial history, minimum wage reform, and social entitlement reform); Rana Foroohar, \textit{Stuck in the Middle}, TIME (Aug. 15, 2011), http://www.time.com/time/magazine/article/0,9171,2086853,00.html (noting that affluent individuals are able to escape taxation while impoverished individuals are thrown into greater poverty as a result of reductions in social benefits).

\textsuperscript{179} See, e.g., Kenneth A. Stahl, \textit{The Suburb as a Legal Concept: The Problem of Organization and the Fate of Municipalities in American Law}, 29 CARDozo L. REV. 1193, 1208-09 (2008) (discussing the exclusionary ethos of constitutionalizing zoning laws and the manner in which municipalities gained power chiefly for the purpose of shaping their demographic makeup through exclusionary practices).

\textsuperscript{180} See, e.g., Anderson, \textit{supra} note 2, at 938-42 (discussing "municipal underbounding" as a motivation for annexation and as a reflection of the race and class dimensions of municipal-boundary construction and reconstruction); Gillette, \textit{supra} note 1 (discussing different theories and approaches to understanding the methodology of annexation and specifically promoting concurrent majorities as a method for conducting annexations).

\textsuperscript{181} For a broader discussion on municipal underbounding, see, for example, Anderson, \textit{supra} note 2, at 937-42.
percent of the nation’s total income.\textsuperscript{182} Those levels declined as New Deal reforms, the G.I. Bill, government support of homeownership and the Great Society programs expanded the circle of prosperity. By the late 1970s, the top 1% earned 8% to 9% of America’s total annual income. But after that, inequality began to widen again, and income reconcentrated at the top. “By 2007 the richest 1 percent were back to where they were in 1928—with 23.5 percent of [total income earned].”\textsuperscript{183}

Income inequality breeds social inequality, which increases social distance. When considering the growth of municipal fragmentation and the manner in which it replicates social inequality along race and class lines, the social distance created by income inequality takes on a territorial dimension. Many scholars argue that increased social distance reduces trust, which leads to provincial notions of community and linked fate.\textsuperscript{184} Furthermore, scholars have found that “the more a region is broken up into multiple governments [or municipal identities], the more racially and economically segregated its housing market is and the slower its rate of regional economic growth.”\textsuperscript{185}

Intraregional fragmentation both originates from and exacerbates existing social stratification and weak economic growth profiles.\textsuperscript{186}

The rise in income inequality corresponds with the spread of localism and municipal fragmentation. The laws affecting the formation and reformation of municipal boundaries are one of the many, seemingly neutral, legal regimes that ultimately reinforce geographic segregation and the maldistribution of income, wealth, and resources within metropolitan regions.\textsuperscript{187} The cultural legitimacy associated with localism casts the long history of these government-created and legally legitimized devices as an unfortunate but inevitable condition of the liberty associated with private property. The consequences of the historic racial barriers to property ownership, the property value premium placed on white neighborhoods, and the racialized allocation of locational equity are transferred intergenera-

\begin{itemize}
\item\textsuperscript{183} Id.
\item\textsuperscript{184} See, e.g., id. at 665 (discussing the role of trust in economic exchanges and the role of social distance in the erosion of the trust relationships necessary to prevent predatory behavior in economic exchanges).
\item\textsuperscript{185} Rusk, supra note 16, at 2 (citing David Y. Miller, The Regional Governing of Metropolitan America 126-28 (2002)).
\item\textsuperscript{186} See, e.g., Tyson, supra note 2.
\end{itemize}
tionally, and their impacts are cumulative. These race and class divisions are not just descriptive facets of localism’s effects—they are essential components to the social investment in localism and its resilience as the logic driving the organization and methodology of metropolitan politics.

It is certainly possible to overstate the influence of localism as the sole driver of location preferences of individuals and firms and of the desire to manipulate boundary law in service of those preferences. Increasingly, urban scholars are highlighting the role that “agglomeration economics” plays in shaping these preferences and the resulting decisions. While the agglomeration economics analysis offers much toward understanding the logic of location in cities, agglomeration processes are reflecting, to some degree, imbedded social and cultural dynamics that operate subconsciously and unconsciously.

Localism does not only benefit those with the most economic, social, or political power, either. For instance, the rise of black mayors in American cities at the end of the civil rights era was facilitated by majority-minority voting coalitions built around the racial redistribution of population in metropolitan areas. Black communities, and disfavored minorities in general, have benefited politically when municipal-boundary law allows them to create voting majorities within defined territories. The resulting electoral power facilitates meaningful, albeit short-term, progress and provides black citizens job opportunities in municipal government that are otherwise unavailable in areas where they lack meaningful majorities. The very worthy aims of increasing minority political power and undermining the fragmentation that contributes to minority economic disempowerment are often in conflict. Ultimately, the manner in which the redistributionary import of local tax policy magnifies long-standing racial disparities in wealth and resources renders the voting majorities

189. The manner in which race, class, religion, and sexual identity operate subconsciously in a manner that drives decision making both at the individual level and at the firm level deserves more consideration in the agglomeration economics discourse. For an understanding of how unconscious bias operates in the racial context, see, for example, Charles R. Lawrence III, The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism, 39 Stan. L. Rev. 317 (1987).
190. See generally Kristen Clarke, Voting Rights & City-County Consolidations, 43 Hous. L. Rev. 621 (2006) (arguing that city-county consolidations do not take into account the dilution of minority voting strength).
created from this racial localism a hollow prize for minority communities.

B. Antistatism and the Local Government Legitimacy Crisis

Involuntary annexation is popularly understood as a direct threat to the freedom associated with location choice and the manner in which annexation law facilitates that choice. What many find so offensive and threatening about involuntary annexation is that it grants a government body unilateral or near-unilateral power to reshape the legal boundaries of communities not under its control. That not only offends the communitarian spirit at the heart of localism, but also its libertarian leanings. Opponents of involuntary annexation view it as an egregious example of government overreach. A local paper in North Carolina captured this sentiment when Keith Bost, an opponent of involuntary annexation, stated: “Forced annexation is against every principle and idea of our Founding Fathers and our Constitution... We have to pay taxes to people we were never allowed to vote for or against.”191 His comments capture both the depth of conviction and the misconceptions at the heart of the backlash to involuntary annexation. They rely heavily on a mythology about American democracy that over-simplifies and misunderstands the ever-present dynamics of scale, jurisdiction, and the primacy of the police power as constant influences on the meaning of private liberty. They underestimate the relative constructedness of municipal boundaries, the position of localities as state instrumentalities, and their relationship to voting rights.

The notion of government as an expression of collective liberty and as having legitimate authority to regulate and redistribute has, to some degree, always existed as a controversial and contested position in American life. Debates about the proper role and scope of government, primarily at the federal level, but also at the state and local level, have been present in every phase of the development of American democracy. The healthy suspicion of centralized government dates back to the arguments surrounding the ratification of the Constitution.192 Prior to World War II, twentieth-century progressivism emphasized the role of the state in creating institutions

191. See Christensen, supra note 75 (internal quotation marks omitted).
192. In Federalist Number 10, James Madison argued in favor of a strong, centralized national government to counterbalance the tendencies in state and local governments to discriminate against and oppress disfavored minority groups. See, e.g., THE FEDERALIST NO. 10 (James Madison).
that would promote the public interest. In the face of growing totalitarianism abroad, however, progressivism after World War II was curbed amidst concerns that an expanded and strengthened central government created the preconditions for totalitarianism. This has degenerated considerably, however, and the movements to oppose involuntary annexation reflect, in some measure, a broader, deeper, antistatist chord in contemporary American society.

In 2003, 39% of Americans polled responded that the federal government had too much power, and that number increased to 51% in 2009. A 2010 study found that more than seven out of ten Americans "use a word or phrase that is clearly negative when providing a top-of-mind reaction to the federal government." These views reflect the unstable prism through which the public conceptualizes the balance between central government authority and individual liberty and how that conception colors their view of the legitimacy of government altogether.

The decision over the appropriate scope or scale for centralized government may indeed result in a contraction of governmental authority or purview. This does not constitute a rejection of the legitimacy of government, however. It is this distinction that separates the debates about the appropriate scope of government in the early part of the twentieth century from the rhetoric and ideology of late-twentieth-century society that reject the legitimacy of government that is based, in part, on an overreliance on individualism, property rights, and laissez-faire economics as fixed, essential, and unchanging or unchanging components of the American experience.

While localism expresses a preference for small-scale government as the most legitimate forum for democracy, antistatism is

193. Many of the legislative reforms enacted during the New Deal substantially regulated the free market in unprecedented ways for the American economy. The result was the development of a robust social safety net that continues to characterize American life today—specifically for the American middle class. The most important legislation from the period was the 1935 Social Security Act, which established a system of insurance for old age, unemployment insurance, and welfare benefits for such protected groups as dependent children and the handicapped. This legislation formed the basis for the modern welfare state. See Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (1935).


highly suspicious of any government action and sees the collective liberty expressed through democratic government largely as an illegitimate infringement upon private liberty and the free working of private markets. As is the case in traditional federalism debates, at issue is where decision-making power should lie among competing, interrelated, and, in some cases, overlapping governmental units. The decision to locate decision-making authority in one forum or the other engenders sharp sentiments not only against the selected forum, but against the notion of divided government altogether. With regard to local governments, involuntary annexation is one answer to the question of what is the proper decision-making forum for municipal-boundary decisions and which autonomous entity or being—the municipal government or the individual property owner—state law should privilege in decisions about the placement of municipal boundaries. Like so many others, this choice about the appropriate governmental forum for decision-making authority is germane to the democratic system, as opposed to being in violation of its letter or spirit as involuntary annexation opponents might suggest.

The fight against involuntary annexation in many ways mirrors the ideological positions and historical interpretation anchoring antistatism. Both can be understood as part of the cumulative, ideological fallout resulting from the way certain twentieth-century sociopolitical developments have been politicized in the popular consciousness. In post-World War II America, support for a strong central government eroded due to two defining events in American political, economic, and social life: the federal government's intervention in the financial markets and economic sphere through the Great Society-era reforms and initiatives and the federal government's intervention in the social sphere through its involvement in race relations. The latter set of events—the intervention of federal courts in securing civil rights—is the most controversial and set the stage for decades of antistatist political rhetoric and systematic withdrawal of the federal government's presence in American life.197

197. There is an extensive body of literature on the manner in which the civil rights era backlash shaped the public's perception of the role, effectiveness, and legitimacy of the federal government. The 1960s civil rights legislation and jurisprudence generated a backlash that organized itself into a political movement and rhetorical regime that began framing its race, class, and economic agenda in the context of a federal government, whose reach and expansive power limited individual freedom and choice. Known popularly as "states' rights," profederalism movements in the twentieth century were largely spurred by former Confederate states' commitment to maintaining Jim Crow legal regimes free from the interference of the federal government, especially the federal courts. The courts' expansive
Conservative political theorists have called into question many twentieth-century reforms and institutions that have expanded the scope of government in service of the aims of collective liberty.\(^{198}\) These reforms include zoning, rent control, workers' compensation, and progressive taxation.\(^{199}\) Zoning and progressive taxation go to the heart of local government's functions and its real and perceived impacts on individual liberty. They shape the composition of local communities in a way that trumps the preferences of groups of people desiring to order bounded communities and the built environment according to their personal tastes, preferences, and biases, as well as prior patterns of inequality and social stratification.

Just as suburbanization was aided by the devolution of boundary policy to local governments from state hands in states that abandoned involuntary and involuntariesque modes of annexation policy, it also spurred the increased privatization of community as an even further-reaching method of protest. This has operated to spur what has been termed the "secession of the successful": the self-alienation, of those who can afford to do so, from public institutions, namely public schools, public parks, public services, and public government.\(^{200}\) These communities are united by income, consumer preferences, and a concern for the preservation and the continued growth of property values. Through the use of state and local government-boundary policy, they create enclaves where their tax dollars can go to support

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\(^{199}\) See Epstein, supra note 198.

their specific needs. Given that their income allows for a reduction in the government services required by less-affluent segments of society, their governments are relatively lean and their communities have few unmet needs. In the minds of many, this dynamic only validates the widely held belief in the ineptness of traditional public institutions.

Privatization encompasses the processes and policies that devolve traditionally publicly owned and operated sectors of the economy and civil life to private hands, as a method for organizing civil society. In the latter quarter of the twentieth century, there was a rise in the number of private communities and in the development of legal innovations at the local level to effect those changes. The rise in common-interest communities reflects these developments as well as the decreasing ability of municipal governments to provide services and community amenities. Privatization has spurred a retreat from investment in the public sphere, while the specter of that disinvestment unfairly undermines the public’s faith in the role of government. There exists today a considerably high level of confidence in consumer choice as a means of identifying value in spheres long thought to be distinctly public. Public goods are increasingly being transferred into private hands, and, as such, are becoming chiefly the province of those who support and, in turn, enjoy the benefit. The movement toward privatization in state and local government reflects not only persistent inefficiencies in the delivery of government services but also a guiding logic that public institutions as a rule are inferior to private, market-based ones. The logic of privatization serves as a powerful stimulant to the current antistatist disposition of Americans vis-à-vis democratic public institutions.

201. See id.

202. The primary form of privatization involves, for instance, electric companies or airlines being sold by government agencies to private bidders.

203. For a broader discussion on privatization in local government law, see generally Craig Anthony (Tony) Arnold, Water Privatization Trends in the United States: Human Rights, National Security, and Public Stewardship, 33 Wm. & Mary Envtl. L. & Pol'y Rev. 785 (2009) (arguing that privatization of water and public water systems pose underappreciated risks to both public rights and national security in the United States, and suggesting limiting private control over water sources and systems, encouraging regulation of privatization processes, and recommending more accountability from local governments as trustees of water resources for the public). See also Celeste Pagano, Proceed with Caution: Avoiding Hazards in Toll Road Privatizations, 83 St. John’s L. Rev. 351 (2009) (discussing the trends leading to the modern movement toward privatization and discussing the benefits and drawbacks of privatized toll roads).

204. Identifying the logic of privatization as a threat to public institutions does not undermine the value of private, market-driven forces in public life. It does not even require the invalidation of certain market principles in the operation of government.
The attack on involuntary annexation reflects many currents in the contemporary, national, conventional wisdom regarding the role of government, abstract (and at times confused) notions of constitutional rights and "freedom," and the role of taxation as income and wealth redistribution for the maintenance of the public good. Suburban communities view themselves as independent sovereigns whose freedom to govern is oppositional to that of the central city. This mirrors debates occurring in the context of federalism. In our collective imagination, federalism envisions states as independent sovereigns against a separate central government. Scholars are challenging this view, contending instead that states are less like sovereigns and more like servants that operate as part of a complex system of "national, state, and local actors implementing federal policy."205 Outside of scholarly circles, however, there is little appreciation for the nation's system of state and local government interdependence and integration. Many view state and local governments as functioning solely to provide minorities a distinct and separate sphere of autonomy and power apart from the center. The intergovernmental relationships under this conception are inherently oppositional and confrontational. When matched with widely held notions of freedom as being synonymous with autonomy and exclusivity, it is possible to conceptualize the role antistatism plays in deepening the commitment of many to devolving control over boundary policy to the smallest unit of government possible.

Current debates about the nature of federalism further illuminate our understanding of the presence of antistatism in the involuntary annexation context by exposing the flawed premises undergirding notions of sovereignty in the first place. The autonomy gained from the formation of separate government or the resistance to the expansion of the territory of another government does not in any meaningful way trump the realities of federal, state, and local interconnectedness. As Heather Gerken has observed, local governments are not outsiders but rather insiders and parties to the implementation of state and federal policy.206 Their ability to break off into separate communities does not effect a rejection of the central government, but rather only shifts the dynamics of their operation

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205. Heather K. Gerken, Our Federalism(s), 53 Wm. & MARY L. Rev. 1549, 1557 (2012); see also Heather K. Gerken, Federalism All the Way Down, 124 HARV. L. Rev. 4 (2010) [hereinafter Gerken, Federalism] ("[E]ven as scholars reject a sovereignty account, sovereignty continues to shape the way we think about Our Federalism.").

206. See Gerken, Federalism, supra note 205, at 13-14.
within a complex apparatus wherein the central government is, well, at the center.

C. Property Rights Theory of Municipal Identity

The outrage over involuntary annexation is essentially outrage over the taking of the choice to express individual identity, group identity, status, and ownership through municipal identity. While there is no right to local self-government, localism is expressed in the moral, rhetorical, and methodological framework of property rights. As has been the case in the involuntary annexation battles cited in Part II of this Article, most arguments against involuntary annexation are anchored in property rights frameworks that equate the freedom to join with others and organize into new municipalities with fundamental notions of land-based property rights. Central to the opposition to involuntary annexation is the notion that annexation regimes pose a substantive threat to individual property rights.

Unlike eminent domain, zoning, or other legal regimes that impact the use or the rights associated with private land ownership, annexation does not impact private property rights in any meaningful way. All land is and has always been subject to regulation by a number of governing bodies, and land located within the governmental subunits of state government is subject to the powers of the state, however they are delegated and enforced.207 States empower their municipalities to regulate and tax the land within their borders. Whether that land lies within an incorporated city or within the unincorporated areas of a county or parish, it ultimately falls under the province of the state. The change in classification of land from being located within the unincorporated areas of a county or parish to being located within the boundaries of a city or other municipality simply does not alter the fundamental relationship between the land and the state, which has uncontested authority, either directly or indirectly, through its subunits to regulate and tax the land.208

207. See generally WILLIAM J. NOVAK, THE PEOPLE'S WELFARE: LAW & REGULATION IN NINETEENTH-CENTURY AMERICA 1-19 (1996) (rebuttering the misconception that pervasive regulations were not present in nineteenth-century America).

208. Those who oppose involuntary annexation argue that involuntary annexation somehow represents an overextension of the historic manner in which property rights have been regulated. This mythology undergirds much of conservative thought and rhetoric regarding property rights but misrepresents the regulatory ethos of pre-New Deal American life. For a broader discussion, see generally NOVAK, supra note 207 (describing the laws and regulations of nineteenth-century America).
The movement to repeal involuntary annexation statutes has as much to do with substantive disagreements over the scope and operation of annexation regimes as it does with longstanding and deeply culturally embedded conceptions of private property rights. Just as private property boundaries grant the individual the right to exclude others from the bundle of rights and social, political, and economic benefits tied to private property, municipal boundaries serve an exclusionary function by determining who gets to participate in the redistribution of a community’s resources. When considering the role municipal boundaries play in shaping notions of community, the exclusionary features of private property ownership are elevated as the essential features worthy of attention and protection. This leads to a crisis of political discourse where notions of private property rights are expressed through the formation and reformation of municipal boundaries.

There are a number of social constructs that, through their development and popular understanding over time, have assumed characteristics similar to property rights. The idea of property in the public consciousness is rooted in “popularly understood and instinctive notions of both personal identity and the inviolability of ownership.”209 While local sovereignty is not recognized in our constitutionalism, there has emerged a species of property rights borne of human experience. Since the nation’s founding, there has existed the notion that property and citizenship are intrinsically linked. This is the ethos of civil republicanism and the theory of property rights and liberty held by the nation’s Founders.210 The relationship between private property rights and the perceived right to autonomous local government has taken on popular meanings that are not always grounded in actual law but have a real impact on politics. These perceived rights form the ideological basis for that which is essentially a socially constructed right to municipal identity.

210. During the early years of the nation, there existed the belief that property provided not just a stake in the action but also a sense of responsibility, a concern about the stability of government, and a lack of dependence on others that were essential for an intelligent, voting population. Land ownership was tied to civic identity—the right to vote and hold elected office were tied to property ownership, which is the essence of civic republicanism. Parts of this theory began to break down in the early years of the nineteenth century, particularly those parts dealing with the political rights of nonlandholding men. See, e.g., RICHARD H. CHUSED, CASES, MATERIALS AND PROBLEMS IN PROPERTY 17-19 (3d ed. 2010).
Legal scholars have theorized the manner in which several social constructs, identities, and institutions have acquired the characteristics of property with regard to their social meanings. The framework of these analyses is applicable to understanding municipal identity as property. Municipal identity as property confers upon a community the legal legitimation of expectations of power and control that have been enshrined in state law without regard for the impact of that power. If the right to municipal location has, in the public’s consciousness, developed into a constructive set of property rights, then it follows that the corresponding sociopolitical context and legal meaning requires it be afforded the most important and exalted constitutional protection—or something close to it. When we understand municipal identity in this vein, we can see more clearly the lengths to which individuals and society as a whole are willing to go to protect and preserve what they perceive to be a set of property rights.

Elevating involuntary annexation to a threat to the personal liberty associated with location choice requires the construction of a right to location choice that has the force and legitimacy of law. The idea of municipal identity as property, therefore, lies at the intersection of the manner in which the protection of private property rights and the development of suburban identity has organized around and is culturally understood as the protection of the American home. Socially and culturally, the home is the most intimate and the most private sphere of human activity. The family is thought to anchor American society, and the family is organized around the home. The sanctity of the home and its durability as a vehicle for family wealth creation hinge on the security and stability that flows from property rights.

Courts have reinforced the primacy of the home through the manner in which they have legitimated and given constitutional cover to local zoning and land use regulations. In Village of Euclid v. Ambler Realty, the United States Supreme Court opined that the separation of residential, business, and industrial uses would increase the safety and security of the home. The Court went on to comment specifically on the development of apartments, characterizing them as

211. See, e.g., Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1707 (1993) (exploring the development of whiteness as a property right and presenting a framework for how property rights are socially constructed even if not formally recognized in law); Goutam U. Jois, Marital Status as Property: Toward a New Jurisprudence for Gay Rights, 41 Harv. C.R.-C.L. L. Rev. 509 (2006) (arguing that marriage should be afforded the same degree of constitutional protection as property rights).

parasitic to the residential character of a district. In *Village of Belle Terre v. Boraas*, the Supreme Court again singled out the private, single-family residence for special protection by articulating the sanctity of family values in a manner that implicitly favors the traditional, nuclear family ideal.

The residence-centric underpinnings of municipal identity as property fundamentally reject the reality of interdependence and the complex interplays between social and economic spheres of life—particularly at the local level. Acknowledging this interdependence does not require undermining private property as a normative position, nor is socioeconomic equity or redistributive policy necessarily at odds with private property. There are multiple characterizations of government and its manifestation or representation of the public interest. What is clear, however, is that government, by its very nature, is designed to socially and economically redistribute individual property and welfare for the advancement of the broader community. In the context of local government, that redistribution occurs through the development of infrastructure and the delivery of public services that make not only community possible but social and economic relations as well. The home and family values are the primary beneficiaries of these redistributive processes, for they benefit most from the stability and consistency that result from these redistributive systems.

Just as society protects the owner’s interests in land, so too does society curtail the absoluteness of property rights for the promotion of the best interests of society. This axiom has been acknowledged by courts, and the necessity of basing judgments on the physical and social facts of a particular time and place warrants reconsideration of

213. See id.
214. See *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (“The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.”).
216. See id. at 565-66 (discussing the various models of public-private interaction between governments and the market and governments and private citizens).
the line between individual and collective rights in regulating property.218

Opponents of involuntary annexation frame their opposition in terms of liberty and the lack of liberty; however, the consideration of involuntary annexation does not involve a zero-sum conception of liberty. Rather, it is inherently an issue of which type of liberty we are favoring, understanding that both collective liberty and individual liberty are compromised in the involuntary annexation regime.

The control of land uses at the macro scale has evolved to be understood as a valid “exercise of the public police power [as opposed to the] exercise of private liberty by neighboring landowners acting together, out to control the landscapes that they inhabit.”219 Municipal fragmentation, however, begs the question of whether the private liberty expression of municipal location choice should be subject to the public police power to prevent the negative impact of municipal fragmentation on metropolitan political organization and operation. The liberty traditionally associated with property rights lies on both sides of the argument. Determining where the line is drawn—like all other laws and policies that support a property rights regime—is a matter of lawmaking.220

If one subscribes to the view that property rights result from utilitarian calculations as to what can be owned, what it means to own, and the relationship between private ownership and collective liberty, then the right to form essentially private communities through municipal incorporation should be subject to evaluation against the metropolitan community’s right to stem the negative effects of municipal fragmentation.221 If a key value of a property rights system is to fulfill social needs, then involuntary annexation’s ability to limit fragmentation must be considered an equally important, if not more important, social need.

To quote property theorist Eric Freyfogle, “[E]ach landowner’s power requires testing independently, to see whether it brings overall social benefits.”222 Private property rights are good when they yield overall benefits that are widely spread for people generally.223

218. See id.
220. Id.
221. See id. at 113-14.
222. See id. at 115 n.151.
223. See id. at 114-15.
Freyfogle’s analysis of property rights is instructive for understanding the value of involuntary annexation. If one accepts that central cities are the anchors for land use management, sociocultural identity, and economic development needs of the metropolitan region and that the ability to pursue the necessary redistributive aims critical to tending to these and other issues requires that the central city have a privileged prerogative over boundary formation and reformation throughout the metropolitan area, then accordingly, one must acknowledge that the absence of a meaningful ability to involuntarily annex land is a massive restriction on the liberty of the metropolitan community.

The localist motivations for municipal autonomy are often dressed up in libertarian garb, but these pretentions are easily dismissed when considered in the context of the municipal formation that is pursued. The reality is that localists seeking municipal autonomy from central cities are not rejecting centralized government per se, but rather they are rejecting the current composition of the spaces they flee. They seek to express property rights in municipal identity through the exclusionary conception of property. This exclusionary conception, or the boundary approach, is by itself inadequate because it says nothing about the owner’s rights of use in a thing.224 It risks conflating exclusive rights with the right to exclude.225

Central to annexation law and annexation battles is the self-determination of the residents in the area to be annexed. The self-determination trope is seductive even for the courts; its legitimacy is grounded in local government law. In City of Jackson v. City of Ridgeland, decided by the Mississippi Supreme Court, the dissenting opinion painted a picture of annexation power that distorts that which is established constitutional jurisprudence.226 Writing for the dissent, Mississippi Supreme Court Justice William Joel Blass stated:

There is much discussion about the path of the city’s growth, but I have not seen a decision which adequately explains why cities have the right to grow by absorbing those who do not wish to be absorbed. These hapless souls are not consulted. They are merely selected to provide additional revenues to be expended by those who have been elected by others and for purposes which probably will benefit, primarily, those who took them in. When cities are concerned we abandon the hallowed concept of democracy that the just powers of the

225. See id.
226. 551 So. 2d 861, 869-70 (Miss. 1989) (Blass, J., dissenting).
government are derived from the consent of the governed. Nations which extend their boundaries without the consent of the occupants of the new territory are condemned as aggressors. Cities are merely vibrant and growing, even if every citizen brought in is screaming in protest.\textsuperscript{227}

The \textit{Ridgeland} dissent hinges upon reconceptualizing the municipality as a nation-state and, accordingly, endowing it with the inviolable rights of sovereignty that are commonly associated with the nation-state. It is easy to expose the manner in which this runs counter to long-standing jurisprudence on the identity of local governments,\textsuperscript{228} but the impulse for attempting to reconstruct the legal status of local governments in this manner illustrates the cultural draw of municipal identity as property.

Several state courts have affirmed that the extension or contraction of a municipality's boundaries is, without exception, purely a political matter entirely within the power of the legislature of the state to regulate. Furthermore, these courts have clarified that the question of due process of law or the taking of property without compensation has no application to the annexation of territory to a municipality.\textsuperscript{229} Those who contend that involuntary annexation power abridges the right to vote of those living in an area proposed for annexation have also been rebuffed by state courts. Several courts have held that "the right to vote does not include a right to compel the state to provide any electoral mechanism whatever for changes of municipal organization."\textsuperscript{230}

\begin{quote}
\textsuperscript{227} \textit{Id.}
\textsuperscript{228} See \textit{Hunter v. City of Pittsburgh}, 207 U.S. 161 (1907) (discussing the nature of the relationship between municipal corporations and their residents).
\textsuperscript{230} See \textit{Bd. of Supervisors v. Local Agency Formation Comm'n}, 838 P.2d 1198, 1204 (Cal. 1992) ("[W]hen the state has provided for the voters' direct input, the equal protection clause requires that those similarly situated not be treated differently unless the disparity is justified."); see also \textit{Green v. City of Tucson}, 340 F.3d 891, 896-97 (9th Cir. 2003) ("[T]here is no inherent right to vote on municipal incorporation under the federal constitution. However, once a state grants its citizens the right to vote on a particular matter, such as municipal incorporation, that right is protected by the Equal Protection Clause."); \textit{Hardin County v. City of Adamsville}, No. 02A01-9203 -CH-00084, 1993 Tenn. App. LEXIS 60, at *13-14 (Ct. App. Jan. 20, 1993) ("The state, therefore at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its
The notion of municipal identity as property weakens any conception of local government as a collective enterprise as opposed to a privatized one. Municipal boundaries implicate interests that are too fundamental to the fate of communities, the environment, and the distribution of resources within metropolitan regions to be left to the self-interest-driven ethos of localism. Likewise, the consequences of municipal-boundary policy in the hands of local interests render metropolitan development and equity in too fragile a state. “Property rights serve human values.”231 Likewise, municipal-boundary policy is the lynchpin in the expression of human values through spatial organization and redistributive government. Just as property rights law has long embraced the inherent tension between individual and collective liberty in regulating property, localism must yield to statewide boundary policy that seeks governance-regime uniformity over the largest territorial footprint reasonably possible to ensure that the redistributitional impact of local government tax policy and power is equitably shared.

IV. INVOLUNTARY ANNEXATION AND NEW REGIONALISM

The states where involuntary annexation exists are actually the remaining vestiges of an urban policy consensus that acknowledges the essential role boundary law plays in shaping the metropolis. Involuntary annexation policies perform several functions and reflect a specific consciousness about the appropriate location for decision-making authority on boundary management.

First, involuntary annexation expresses a state’s desire to impose regionally directed land use policy on its metropolitan areas in a manner that privileges the growth ambitions of central cities. Some may reject the prioritization of central cities above suburban ones as patently unfair and arbitrary. As central cities and suburban jurisdictions in some cases rival each other in size and character, decisions about central city prioritization may need to be handled on a case-by-case basis. But ultimately history and being first in time

matter. As pro-business interests in the Houston-Kingwood annexation controversy realized, the infrastructural direction, social character, economic logic, and cultural ethos of metropolitan areas are largely driven by the central city.

Second, involuntary annexation de-emphasizes the relationship between private property and municipal identity and favors collectivist, centralized notions of metropolitan land use and development that are more sustainable and produce more equitable arrangements. Land use in the modern metropolis—as with any system of property rights regulation—is defined by the need to identify, contain, and correct for spillover effects. Allowing groups of metropolitan residents the ability to deploy boundary policy for the purpose of limiting their participation in metropolitan area’s wealth redistribution offends the social contract.232 Developing public infrastructure and mitigating spillover effects are at the core of cities’ purpose. Just as zoning limits development by placing restrictions on what can be built where, boundaries perform a regulatory role in determining how taxes and resources will be distributed within discrete segments of the broader metropolis. Allowing residents to opt out of that shared enterprise will undermine the fate of metropolitan areas.

Third, involuntary annexation expresses a conception that local autonomy is less concerned with local government as a territorially defined, autonomous, democratic polis but, rather, as an agent of the state’s broader ambitions regarding land use and metropolitan economic development. This keeps localism in check. Broad, liberal conceptions of local power are appropriate for addressing and resolving any number of local disputes. Zoning schemes, public decency laws, and expression of community needs through local politics are all examples of areas where local governments should have wide autonomy. But the competitive imperatives of cities require that their growth not be interrupted by provincial bands of citizens seeking token separation from central cities.233

Last, involuntary annexation expresses a policy preference regarding the resolution of the competing goals of increasing boundary elasticity, maintaining the pace of economic development, and


233. For more information on the growth and competitive challenges confronting cities, see Tyson, supra note 2.
reducing social inequality. The ability of a municipality to annex land within its metropolitan region can be a key tool in limiting urban sprawl, municipal fragmentation, and mitigating the perpetuation of social divisions and associated stratification within a metropolitan region.\textsuperscript{234} It can also limit the intraregional discord that frustrates the coordination of regional economic development. The approaches to involuntary annexation in states like Kansas, Nebraska, and Tennessee show how concerns over property freedoms and the provision of infrastructure and services can be accommodated into a comprehensive plan.

Despite these objective benefits and the existing state regimes, there is neither the political will nor the scholarly interest to expand or, at the very least, defend involuntary annexation. It has largely fallen out of favor with state and local government actors as the logic of localism has become more ingrained. This is also true in urban studies and with local government law scholars. While “Regionalism” is widely embraced, involuntary annexation is not regarded as part of the regulatory toolbox available to make Regionalism real.

Regionalism has long been offered up as the antidote to localism. Regionalism proposals take many forms and generally can be aligned along a spectrum ranging from voluntary forms to involuntary, coercive forms. The voluntary end of the spectrum includes intergovernmental agreements that facilitate cooperative decision making between and among two or more governments and the development of regional authorities or other entities that manage and control certain local government functions, such as land use planning, transportation planning, and environmental regulation across a number of separate and autonomous local government units.\textsuperscript{235}

On the opposite end of the spectrum are annexation laws, limits on municipal incorporation within established metropolitan areas, consolidations, and other measures that impose Regionalism directives on localities through the force of state law. As a method for achieving regional governance, annexation is thought to exist at the coercive or involuntary extreme. As a creature of state policy, its authority is not derived from local politics but rather state-level politics. Interlocal cooperative agreements, on the other hand, are entered into voluntarily by consenting local governments.\textsuperscript{236}

\textsuperscript{234} See id.
\textsuperscript{235} See discussion supra note 13 (discussing the Twin Cities region).
\textsuperscript{236} Interlocal agreements can take many forms, including regional service-sharing initiatives and regional tax-sharing initiatives. Most major metropolitan areas and many
But these regional cooperative agreements and schemes, in most instances, do not alter the distribution of metropolitan problems and persistent socioeconomic disparities. If states have a vested interest in developing and advancing an urban policy regime that will secure the general welfare and economic fate of their metropolitan regions, then it follows that the delineation of those metropolitan units of government through policies that regulate the formation and reformation of boundaries must be central to the regime. If boundary formation and reformation is not appreciated as a core component of a statewide urban policy regime, or if it is separated out from a broader urban policy regime through the devolution of annexation decisions to local property owners, then the entire urban policy apparatus is weakened because, by its nature, it must exist at the state level as opposed to the local level.

Regionalism has evolved into New Regionalism, which is centered around: (1) equity and inclusion [among] self-defined territorial communities; (2) democratic participation;" and (3) the efficient and transparent delivery of government services and public goods.237 The New Regionalist agenda—like "old" Regionalism and other critiques of local government law and metropolitan governance generally—is concerned chiefly with presenting a methodological and structural counterweight to the tendency toward localism in local government law. In this vein, it is presented as "a law reform strategy that responds to local government law's failure to: (1) resolve cross-border, multi-issue challenges; (2) promote regional equity amongst interdependent localities; and (3) foster participation and collaboration across local boundaries."238

A key tenant of New Regionalist efforts is the establishment of "principally voluntary methods of promoting local government cooperation in metropolitan regions."239 Voluntary cooperation through horizontal governance measures is believed to be a sufficient vehicle for achieving regional objectives without broaching the difficult topic of governmental structure.240 This preference establishes a

237. Alexander, supra note 13, at 632 (citing Cashin, supra note 9, at 2028).
238. Id. at 633.
240. See id.
voluntary/involuntary rubric for understanding Regionalist proposals that overfocuses on the former because of the real and perceived political infeasibility of the latter. Therefore, in the context of New Regionalism, annexation itself has been referred to as a “radical approach.”

The voluntary nature of the alternatives to annexation is the central challenge facing New Regionalist proposals. New Regionalist proposals must always contend with the cultural investment in localism that makes acquiescence to new, voluntary regional governance regimes as dubious as increased popular support for more top-down approaches such as involuntary annexation.

The commitment, both in local government law and New Regionalism, to equity and inclusion among “self-defined territorial communities” is at the core of the crisis existing within local government law. This self-definition aspect of territorial community boundary formation is an intrinsic component to any conception of local autonomy. The inclusion of “self-defined” in the definition of the communities New Regionalists seek to engage necessarily results in the reproduction, rather than the mitigation, of the forces underlying localism and consequently undermines the rationale supporting regional cooperation through structural autonomy-limiting measures.

The overfocus on voluntary approaches seeks to achieve the benefits of centralization while preserving legally sanctioned, decentralized governance patterns. Governance uniformity increases economies of scale, reduces the social costs of fragmentation, limits externalities stemming from parochialism, and provides for greater consideration and provisions for minority and disadvantaged groups. Decentralization is good for many facets of local government law, but boundary management simply does not lend itself well to decentralized forms.

241. See David J. Barron, Reclaiming Home Rule, 116 Harv. L. Rev. 2255, 2262 (2003) (“The most radical approach [to combatting sprawl] would replace existing cities and suburbs with full-fledged regional governments, either through the annexation of outlying areas by the central city or consolidation of all the jurisdictions within a metropolitan region.”).

242. Id.

243. See, e.g., Steven G. Calabresi, “A Government of Limited and Enumerated Powers”: In Defense of United States v. Lopez, 94 Mich. L. Rev. 752, 780-84 (1995). While Calabresi ultimately argues that decentralization poses more benefits than centralization, he notes that national governments are more apt to solve certain problems such as (1) those problems that small units cannot perform due to economies of scale, (2) ensuring uniformity and thus a reduction of social costs, (3) limiting externalities, and (4) protecting minority populations. See id.; see also David L. Shapiro, Federalism: A Dialogue (1995).
State annexation regimes should include provisions that give the central cities within metropolitan regions the unilateral ability to expand their borders when the health, vitality, solvency, economic development, and competitiveness of the metropolitan region is objectively at risk. These provisions must include meaningful opportunities for citizens in the area proposed for annexation to be aware of the proposed annexation, ensure that their service levels and the character of the services presently received are in no way diminished, and present objective reasons why they should be spared annexation within the context of disallowing defensive incorporation or similar preemptive actions and motivations. But these accommodations ultimately should be subordinate to a state's need to ensure the orderly, sustainable, and equitable development of its metropolitan regions.

Central to the question of what the reach and nature of municipal power to annex adjacent and nearby lands should be is whether policy rationales—here, sound urban planning objectives—should play a role in deciding which liberties to protect and which to sacrifice. This requires determining where the line between where private property and liberty, as expressed by community-sanctioned policy aims, is best drawn. It is possible to see involuntary annexation as an antidote to the specter of private municipal developments created under the auspices of individual citizens seeking communities that match their particular needs and profile. Increased municipal fragmentation inevitably means private landowners acting together to create communities that limit the redistributory reach of their tax revenues, as opposed to a broader and more diverse demographic of citizens that may exist in a central city.244

V. CONCLUSION

Involuntary annexation can aid in the establishment of a new, metropolitan localism that recognizes the ability to achieve governance uniformity across the broadest territorial footprint possible as critical to the growth prospects for the metropolitan region. Through the adoption of policies that are conscious of the manner in which

(discussing the need for a strong national authority and the necessity of federalism as a restraint on that authority); David J. Barron, A Localist Critique of the New Federalism, 51 Duke L.J. 377, 378 (2001) (advocating for a more localized form of decision making in light of the rise of "new federalism").

244 See Freyfogle, supra note 219, at 95 (discussing the existence of the private control of land through homeowners' associations and special districts).
municipal identity has been constructed into a property right. Localism’s stranglehold on the future prosperity and vitality of the American metropolis can be dismantled. New Regionalists, therefore, have a vested interest in the defense and maintenance of involuntary annexation. While there are certainly well-reasoned justifications for focusing on more voluntary, bottom-up governance structures, involuntary annexation remains a potent tool for facilitating regional governance and is worthy of defense and preservation.