Kommentare

Gerald Frug
The Emergence of Private Cities in America

In seinem Essay verknüpft der Autor den Strukturwandel der Städte in den Vereinigten Staaten von prototypischen öffentlichen Räumen zu privaten »communities« mit der Entwicklung von drei, auf kommunaler Ebene wirksamen eigentumsrechtlichen Doktrinen, die im Bauplanungsrecht, im Recht des kommunalen Eigentums und als Schutz vor Eingliederung zu einer Abschottung der Vororte und zu einer neuen Sozialgeographie führen – einer Einteilung der großstädtischen Gebiete nach Reichtums- und Marktkategorien. Die Privatisierung der Städte zeigt sich insbesondere an der Autonomisierung der Vororte gegenüber den Stadtzentren sowie der Gründung von mehr oder weniger exklusiven, privatrechtlich organisierten »communities« innerhalb und außerhalb der Städte. Frug kritisiert die rechtlichen Voraussetzungen und die psychologischen, soziologischen und politischen Folgen der Kommodifizierung des Stadtlebens und der Verdrängung des Aktivbürgers durch den Konsumenten. *Die Red.*

I suspect that most people, when they hear the word city, think of a public place. By public I mean a place that is diverse and open – open to anyone who decides to move there. Public cities are full of different types of people, and the experience of living in them has therefore involved learning how to interact with whoever else is in town. Traditional cities, in other words, are examples of what I call a fortuitous association: a group of people within which you happen to find yourself – a group that you have to learn to get along with whether you like it or not. I use the term fortuitous association in order to make a contrast with a voluntary association – a group of chosen friends and acquaintances, like a club or a chat group. Learning how to live in a fortuitous association is a very different experience than learning how to get along with a few chosen people – the people that make one feel comfortable, the people one likes, the people one calls friends. Cities have long promoted this alternative vision of collective life. To be sure, it is important not to overstate the kind of relationship with strangers that city residents have. I am not referring here to the romantic notion often associated with the word community. Cities have not required anyone to bond with strangers; they have not necessitated the generation of feelings of connection or affection. They have required no more than learning how to be comfortable in a world of unfamiliar strangers – how to survive in a world of difference. Cities have traditionally taught this lesson; indeed, it seems to me, they have been the primary place where it could be learned.

This public conception of cities is very much under attack in the United States. It may be under attack in Europe as well. I hope that you will tell me after this talk whether it is. What I would like to do today is to describe the process by which public cities in America have begun to be replaced by private cities. This process has had a long history, but much of the development has taken place in the last fifty years. A good deal of it has taken place in the last decade. The first step was suburbanization.

By suburbanization I mean something quite specific: the creation of separate cities – separate legally-created governmental entities – in the same metropolitan area. This phenomenon is not new, but the way it has developed in the United States in the last fifty years has had a major impact on urban life. To understand why, one should focus on the reason that it is important for the cities that constitute a single metropolitan area to be separately incorporated rather than simply be neighborhoods of a larger city. In the early years of suburbanization – the nineteenth century – it did not make that much of a difference. People who lived in the suburbs were still tied to the central city in a multitude of ways: the men worked there, everyone shopped there, the cultural center was located there, friends and acquaintances lived there. Different governments were sometimes administratively convenient, but they did not divide the urban region into separate, autonomous zones. On the contrary – it was very common for small suburbs, once they reached a certain size, to be annexed by the central city – often with the consent, even enthusiasm, of those who lived there. People were so connected to the central city that strengthening it seemed to make a lot of sense for everyone. Of course, these suburbs – like neighborhoods within the cities – commonly developed different characteristics. Many were readily identifiable in terms of class differences, as well as differences of race or ethnicity. But the people who lived in these neighborhoods regularly came into contact with each other – in the city center, in the public parks, in the streets.

In the twentieth century, American suburbs have been given legal powers that have increasingly separated them not only from the central city but from each other. These legal powers have shaped the pattern of suburbanization in the United States. Although the legal powers I have in mind are many and complex, I want to mention only three. The first is the zoning power. Suburban residents have the power to design what their city looks like, and this power has enabled them to exclude the kind of people they consider undesirable. This kind of exclusionary zoning is widespread in the United States and it is very easy to accomplish. The easiest way to do so is to specify the kind of housing that will be permitted in the city and to do so in a way that makes it very expensive: limiting housing to single-family residences, requiring large lots on which they can be built, increasing the amount of space between houses, and so forth. If no apartments or houses suitable for the poor are allowed, the poor are not able to move to town. The town can therefore become what is often called an exclusive community. This zoning power is normally accompanied by a second very important legal power: the ability of suburban residents to treat the property within their city limits as their own property, as a resource that can be used to support the people who live within city boundaries and no one else. Since local government financing is largely dependent on the property tax in the United States, prosperous communities, once they exclude the poor, can therefore support their services in a much more lavish way than can their poorer neighbors. Indeed, if their property is worth a lot, they can raise a lot of money even with a low tax rate. In cities with low property values, on the other hand, it is impossible to raise much money even if the tax rate is very high. This inequality results from the fact that cities are entitled to exclude the poor not only as residents but as beneficiaries of public spending. The third legal power I want to mention is immunity from annexation. The suburbs I have been describing usually cannot be annexed without their consent. By preventing the big city from incorporating them into the larger community, this legal rule protects the suburban entitlements I have just mentioned – the rights to exclude and to allocate resources solely to local residents.

It is important to understand why I think that giving these three legal powers to the suburbs privatizes the nature of these cities. The reason is that all three powers are

derived from the legal rules that define private property. The first power – the right to exclude undesirables – is, in fact, often thought of as the very essence of the property right. To have private property, it is frequently said, means the ability to prevent uninvited people from entering one's property – let alone moving in. The second power – the basis of local finance – is equally associated with the notion of private property. The idea that you can treat the property located within the city boundaries as a resource available only to city residents analogizes it to property that is jointly owned by the residents. That is why any suggestion that taxes raised on the property located within a city's boundaries should be spent elsewhere is so often experienced as the reallocation of wealth. Finally, the third power – the immunity from annexation – is derived from the notion that the state cannot take my property without my consent. The reason for the protection in both contexts is that the property is mine: to annex my city – like taking my property – would mean taking from me things (income, privilege) that are rightfully mine. So powerful are these property-based images that it is easy to forget that the legal rules I am describing define an aspect of governmental power – they define what cities are and what they can do.

Once the three legal rules are in place, another privatized conception of cities follows rather readily. This is the notion that the way to think about where to live in a metropolitan area is to shop for cities in the same way that one shops for any consumer good. This framework – often associated with the work of the economist Charles Tiebout – presents thinking about where to live in terms of a calculation about how much a particular package of city services costs in city taxes.[1] As American metropolitan areas have become divided into cities with different amount of wealth – and with the wealth spent only on residents – people who think in this way move to wealthy communities, if they can afford it, because they thereby save the money that they would have spent on the poor had they remained in a class-integrated jurisdiction. The reason they can avoid taxes paid by those they leave behind is that they can exclude the poor through exclusionary zoning and limit their schools and other services to city residents. As the wealthy move to their suburbs with this cost-consciousness in mind, taking their resources with them, the cities they abandon begin to decline. As a result, people in the middle class move to their own suburbs and exclude those poorer than they are, and the central cities decline even further. Ultimately, the central cities and some suburbs where the poor also live become very poor (even though some retain pockets of rich people living in their own isolated neighborhoods). What I am describing here is a self-perpetuating cycle: the more the metropolitan is divided into categories of wealth, the more suburbs are built on ideas of private property and consumer choice, the more the metropolitan area becomes divided into spaces readily identifiable in terms of the income level of their inhabitants. Indeed, by dividing metropolitan areas into areas of privilege and want, this dynamic is, in my opinion, the single most important factor in the currently increasing gap between the rich and poor in the United States.

I want to emphasize at this point that there is nothing automatic about adopting the legal rules that have put this dynamic into effect. Start first with the notion of exclusionary zoning. There is no reason to assume that local land-use decisions need to be made in way that fragments metropolitan areas by class or race. Some courts in America – most importantly in New Jersey – have refused to allow zoning decisions to be made in this way.[2] Instead, they have required cities to take the entire

1 Charles Tiebout, »A Pure Theory of Local Expenditures,« *64 J Pol. Econ.* 416 (1956).

2 See, e.g., *Southern Burlington Township N A. A. C. P v. Township of Mt. Laurel*, 92 N. J. 158, 456 A.2d 390 (1983); *Southern Burlington Township N. A A C P. v. Township of Mt. Laurel*, 67 N. J. 151, 336 A.2d 713 (1975).

regional area's needs for housing into account when they make land-use decisions. In this way, they have denied cities the power to make apartments or other lower-cost housing impossible to build. One way to understand this alternative rule system is to see it as treating cities in the same way that American law treats the fifty states that make up the United States. No one thinks that a state can organize itself to exclude the poor. It is a fundamental right in the United States to travel and settle wherever one desires. If that is true for states, why shouldn't it also be true for cities?

A change in cities' zoning power, simply by itself, would have a substantial impact on the maldistribution of resources in metropolitan areas: the poor could no longer be segregated into their own cities. Changing either of the other two entitlements would have an equally important impact. Consider next the idea that the taxation derived from the property located within a city's boundary can be spent solely on city residents. These days, the major challenge to this legal rule in the United States has concerned school funding. Because the schools located in rich communities have many times more resources than those located in poor communities, school financing in metropolitan areas throughout the country has become scandalously unequal. Some state courts have therefore declared the current property-based financing system unconstitutional.[3] But there are reasons other than its impact on equality that make the current rule system seem unfair. It is wrong, for example, to think that city residents and the people who pay the property tax are the same people. Non-resident property owners pay property taxes to cities yet cannot send their children to their schools because residency, not ownership, is the test for inclusion. And some city residents own no property and thus pay no property taxes (at least directly) but can send their children to the schools. Moreover, there is considerable state and federal funding of local schools – taxes raised from everyone. Yet the schools are organized to exclude people who do not live within city lines even if they help support them.

Finally, we turn to the third legal rule I mentioned above – the protection against annexation. Nothing in democratic theory requires that each suburb be entitled to decide for itself whether it should be a separate, autonomous jurisdiction. Majority rule may well be the proper way to decide such an issue, but the difficult issue involves determining who should be included in the electorate. One answer could be the population of the region as a whole. Why should a small number people be able to frustrate the will of the majority of metropolitan residents when everyone is significantly affected by a decision to make certain parts of the region separate cities? A regional vote on annexation decisions would limit the ability of individual suburbs to isolate themselves from their neighbors; restricting the vote solely to those who live in these suburbs promotes such isolation. Each of these alternative annexation rules exists somewhere in the United States, and both have been declared constitutional.[4]

I have described these alternative local government law rules so that the current privatization of American suburbs can be properly understood. The prevailing legal rules are not necessary, natural, or obvious. They represent an urban policy, one built right into local government law. Because of this urban policy, the growth of privatized suburbs has had a major impact on the development of American metropolitan areas. Current legal rules have undermined the public feel of cities not only by fostering the growth of privatized suburbs but also by contributing to the decline of America's large central cities. This dynamic has been fueled as well by the ability of the suburbs to associate themselves with privatized notions other than private property. Suburbs

3 See, e.g., *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Sup.Ct. Texas 1989).

4 *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907); *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259 (1977).

in America have become associated with the ideal of home and family – the desire to protect the private sphere from the hustle and bustle of modernity. They have nurtured a sense of the importance of physical space as the best mechanism for isolating oneself from what have come to be known as city problems. And this sense of space has, in turn, led to an increasing dependence on cars as the only possible means of transportation (cars being yet another privatized space when contrasted to public transportation). This increased emphasis on the private sphere – like the feeling of discomfort when one is surrounded with people that seem different from oneself – feeds on itself. As houses become further apart, as riding on public transportation becomes more unusual, as the streets become useful only for cars rather than for walking, as nature is redefined as private yards rather than public parks or open space, the sense of the public – the value of having public space at all – begins to disappear.

This leads us to the next stage of the development of metropolitan life in America: the growth of private, often gated, communities. These private communities are the fastest growing part of the American housing market. The first thing to note about them is that although many of them look like cities and are as large as cities – many of them have tens of thousands of inhabitants – they are organized not as cities but as homeowners associations. Homeowners collectively run the territory where these developments are located through contract and property law. Entering the community – buying one's house – is a decision made by signing a contract. And under the contract, the streets, clubhouses, security guards, and the like are governed by a board of directors that enforces the covenants and servitudes that specify how the development operates. Moreover, the governance rules that determine who sits on the board of directors resemble those that govern private corporations rather than those that govern cities. The prevailing conception of democracy in homeowners association, if democracy is the right word, is control by property owners, not residents. Indeed, the usual rule is one dollar-one vote, not one person-one vote: each household gets a vote – with the votes weighted according to the value of the house. But whether or not it is weighted in this way, the basic idea underlying homeowners associations is control by property owners rather than residents (the owner, not the tenant, has the vote). As everyone knows, democracies used to have this rule too: only property owners – that is, men – were entitled to vote. But in the public sector, this rule has almost everywhere given way to a broader definition of democracy.

It is important to recognize that these private homeowners associations are merely an extension of the model of suburbanization I described above. Once one accepts the privatized vision of the rules that define suburban separateness and the consumerist notion of shopping for where to live, it is not that big a move to go one step further and create private cities through contract and property law. After all, the ability to exclude made possible by suburban zoning is simply made easier by the right to exclude embodied in property rights. Homeowners associations can be organized with an explicit right to exclude as well as mimic the indirect method of exclusion adopted by American suburbs through housing design and rule promulgation. In a similar fashion, the assessments levied on property owners to pay for the upkeep of common property can be understood even more easily than suburban property taxes as the collective assets of the residents. There seems little doubt that residents of homeowners associations would treat a suggestion to provide benefits to outsiders as an attempt to reallocate the wealth. Finally, the protection against annexation is even more defensible when one sees it as a protection against an invasion of the rights of a homeowners association by the government.

Large private homeowners associations have provided a private zone in which millions of Americans sleep at night. Other private zones have been created as well. Large

private shopping malls, overwhelmingly in the suburbs, have begun to replace city downtowns as the primary location for America's commercial retail life. Unlike city downtowns, these shopping malls are private property: they are patrolled by security guards, not police, and these guards are able, unlike those who police the public streets, to control who enters the mall's space. It is not surprising, therefore, that the rules of decorum assumed as the norm in these malls contrast markedly with the more open, chaotic nature of public streets. Moreover, office parks have begun to replace the business portions of city downtowns just as shopping malls have replaced the commercial portion. Like shopping malls, these office parks are predominantly located in the suburbs and are run by property rules, not by local government law. Consider, then, how easy it is for someone in America never to enter a public space. He wakes up in the morning in his private homeowners association, gets in his own private car and drives at 60-miles-an-hour to the office park, stops at the shopping mall on the way home for groceries or, perhaps, a movie and meal, and then enters the gates (manned by a security guard) that surround the subdivision in which his home is located.

Well, you might say at this point, at least the great central cities in America remain: New York, Chicago, San Francisco, Boston. Indeed, they do. As more and more of America is being swept up in the trend toward privatization, however, even these vibrant public cities are in trouble, and not only because they are strapped for funds because of the phenomena I have been describing. They too are becoming privatized in various ways. The way I would like to mention here is the phenomenon known as BIDs – Business Improvement Districts. New York now has dozens of these organizational forms (and they are hundred more elsewhere). Let me describe the Grand Central BID so that you can understand how these entities operate. The Grand Central BID is an organization of property owners surrounding Grand Central Station in the heart of mid-town New York City. It is authorized by state law to assess all neighborhood property owners so that it can spend money on extra street cleaning, extra police patrols, dealing with the homeless on the street, improving the quality of street benches and signs, and things of that nature. The area the Grand Central BID covers is big – 75 blocks in midtown Manhattan, with 71 million square feet of office space (as much as in the central business districts of Houston, San Francisco, Denver or Boston). Its governance structure is modeled on the homeowners association – namely, one property owner, one vote, with votes weighted according to assessed value. (Residents of the area – and there are many more residents than property owners – are not entirely disenfranchised, but they are limited by law to only a small minority of the seats on the Board.) Armed with the power to tax and spend, this property-based government is authorized to clean up the area with a particular focus in mind: to raise the level of the area's property values. What image of the good city street – and we are talking about 42nd Street in Manhattan – do you think such a point of view advances? What is the place for the homeless, for street peddlers, for people considered deviant, on such a street? One way to answer these questions, I suggest, is to compare the feel of a shopping mall with the feel of the city street: the object of the BIDs is to make city streets seem more like a shopping mall and, in that way, make the city more attractive.[5]

What is wrong with the developments in American urban life that I have been describing – this organization of urban life in increasingly private terms, ranging from suburbs, through homeowners associations, to BIDs? I suggest that they raise two kinds of problems. The first lies in the notion that one should choose where to

5 The United States Court of Appeals for the Second Circuit recently upheld the constitutionality of the Grand Central BID in *Kessler v. Grand Central District Management Association*, 158 F.3d 92 (1998).

live like one shops for a pair of socks – the idea that moving to a city is a question of deciding the kind of package of city services one wants to buy with city taxes. This consumer-oriented, market-based conception of urban life abandons for public services – by definition – the notion of equality traditionally associated with the public sector, replacing the one-person, one-vote principle associated with democracy with the one-dollar, one-vote rule of the marketplace. It thus has a built-in bias in favor of the rich. Everyone knows that those with more money not only can afford more consumer goods than those with less money but are considered entitled to them. It is because of this inherent bias that market-based allocations are commonly rejected for the public sphere. It is considered unacceptable, for example, to treat voting rights, jury duty, and military service as commodities available for sale, just as it is considered unfair to allocate many city services, such as admission to public schools or public parks, according to the ability to pay. Indeed, it is a crime to pay a police officer to protect oneself rather than someone too poor to make such a payment.

The consumer-oriented vision of city services, again by definition, also equates the concept of freedom of choice with that of freedom of consumer choice. By doing so, it perpetuates a pervasive, but false, justification for the radical differences that now exist between the quality of city services available in different parts of America's metropolitan regions. The urban studies literature is filled with rhetoric about how public services in America are allocated in accordance with differences in people's preferences or tastes. And many suburbanites say that they moved to their particular suburb because they (unlike others?) cared about the quality of education for their children. Yet it seems odd to suggest that the division of America's metropolitan areas into areas with good schools and safe neighborhoods and areas with deteriorating schools and high crime rates is explicable in terms of people's differing tastes. People who live in unsafe neighborhoods or send their children to inadequate schools do not do so because they have taste for them. They do so because they feel they have no other choice. If they had a choice (and I am not using the word to mean consumer choice), they would prefer better schools and less crime.

These two defects in the consumer-model can be understood simply as illustrations of a third, more fundamental, defect in the consumer-oriented vision of city life. Once again by definition, it radically limits the aspect of the self considered relevant in the design of American cities. Consumption is an individual activity: spurred by their own economic interest, people buy consumer goods one by one (or family by family) with little concern about the impact of their purchase on those living nearby. As a result, values commonly associated with democracy – notions of equality, of the importance of collective deliberation and compromise, of the existence of a public interest not reducible to personal economic concerns – are of secondary concern, or no concern at all, to consumers. Yet it is widely recognized, in political theory as well as daily life, that reducing human experience to the act of consumption falsifies it. It is commonly said, for example, that human beings see themselves not simply as consumers but also as citizens – and that they think differently in these two different roles. The consumer-oriented understanding of cities makes this distinction disappear by collapsing citizens into what Charles Tiebout has called consumer-voters.[6] The impact of this disappearance is not simply on the outcome of government decisionmaking, important as that is. It affects the evolution of American society itself and, thereby, the forces which shape and nurture consumer preferences. The consumer-oriented vision of public life strengthens the consumptive aspect of the self over alternatives: consumer preferences help generate a social world that, in turn, shape

6 Charles Tiebout, supra note 1.

consumer preferences. By doing so, it narrows the aspects of human nature that city life has the potential of fostering.

The second problem with the growth of private cities lies in the nature of the self that this form of urban life is nurturing. By saying this, I do not mean to denigrate the importance of having a private realm in one's life. What I am suggesting instead is that there is something of value offered by public life as well. It is important, however, not to romanticize what people get out of living in public, open cities – it is important to recognize the difficulties, annoyances, even fears that big cities generate. But it is equally important not to romanticize the opposite phenomenon – the division of urban spaces, well underway in America, into privatized zones organized to limit contact with outsiders.

I would like to contrast public and private cities in three different ways. The first is psychological. Privatized urban communities, like prosperous suburbs and homeowners associations, promote what Richard Sennett has called the desire for a purified self. The way to defend oneself against the discomfort one feels when confronted with people unlike oneself, under this view, is to organize a community that produces what Sennett has labeled »the 'we' feeling« – the sensation of similarity arising out of the desire to identify with other people, the desire to belong. Public spaces are not built on this kind of purification of the environment. Instead, they require people to find ways to accommodate living with different kinds of people. By doing so, Sennett argues, they provide people with a more secure form of self-protection than purification. They nurture ego strength – a sense of resilience, an ability to cope with whatever surprises and conflicts one encounters, a confidence that one can live with, even learn to enjoy, otherness. Ego strength makes the presence of different types of people less unnerving, less a big deal. And it thereby enables a greater sense of openness to the kind of differences that exist in large metropolitan areas.[7]

This contrast between the impact of public and private space can be stated in sociological terms. Public space, many people have argued, promotes a greater range of tolerance toward different types of people than does private space. Not, of course, unlimited tolerance. What happens in large, diverse cities instead is a shift in the location of the symbolic boundary that bifurcates otherness into the tolerable and the intolerable. Living in a heterogeneous community increases the kinds of otherness found to be bearable. By contrast, as M. P. Baumgartner's analysis of suburban life suggests, privatized environments promote a shift in the opposite direction: almost any stranger not seen as »one of us« is experienced as upsetting, even frightening.[8] Moreover, it is important to recognize that the existence of public space does not require people to spend full time with unfamiliar strangers. Like Jane Jacobs' famous description of a city street, life in diverse cities is a compromise between withdrawal from strangers and engagement with them.[9] The exact nature of this compromise is constantly negotiated and renegotiated. Sometimes, one does not even notice the kinds of people walking down the street that suburban residents find frightening; at other times, one gets pleasure from people watching; at still other times, one crosses the street. In these and many other ways, people become accustomed to being in the same space as different kinds of people. It is this process of give and take that represents the characteristic public alternative to the idea that the proper solution to the problems others present is to escape from them.

7 Richard Sennett, *The Uses of Disorder: Personal Identity and City Life* (1970).
8 M. P. Baumgartner, *The Moral Order of a Suburb* (1988).
9 Jane Jacobs, *The Death and Life of Great American Cities* (1961).

This leads us to a third way to contrast the impact of public and private cities: their effect on politics. I ask people who favor the trend toward privatization in the United States to describe to me what the country will be like, from a political perspective, if more and more segregated communities, and more and more privatized lives, become the norm. How will people located in their own homogenous spaces deal with each other politically once they become increasingly incomprehensible to each other? One way to think about this question is to recognize the extent to which contemporary democratic political theory relies on the development of a public sense of self. Another is to reflect upon the aspects of the self that we ourselves regularly call upon when we engage in political life.

I would like to end this talk with a question. To what extent is what I have said relevant here in Frankfurt and its developing suburbs? To what extent is it relevant to Germany and Europe more generally? I have told my story about America in order to sound a warning about how easily the cycle of privatization can accelerate. To be sure, I do not want to end my talk by leaving the impression that there is no hope for public cities in America. On the contrary, the kind of picture I have been presenting has at last become an important topic in American academic circles – and, much more tentatively, has entered the debates of American politics as well. I think there is a chance to turn it around in the United States.[10] Still, there is more of a chance to confront these issues where the process has not been so well developed. How far has it developed here?

Ilse Staff

Sicherheitsrisiko durch Gesetz

Anmerkung zum Urteil des Bundesverfassungsgerichts zum G 10 – Gesetz

Individuelle Freiheitsverbürgung wird gemeinhin gedanklich verbunden mit Grundrechtsgewährleistung: Grundrechte als Schutz vor staatlicher Machtentfaltung und – auch – als Grundlage freiheitlicher Lebensgestaltung. Das Urteil des Bundesverfassungsgerichts zum G 10 vom 14. Juli 1999[1] sollte Anlaß zur Rückbesinnung auf die Tatsache geben, daß die grundgesetzliche Kompetenzordnung im Hinblick auf den Freiheitsstatus der Individuen von mindestens gleichrangiger Bedeutung ist wie die Grundrechte. Hermann Heller hat die Bedeutung des Staatsorganisationsrechts für die individuelle Rechtsstellung bereits 1927 nachdrücklich unterstrichen[2].

Zu entscheiden hatte das Bundesverfassungsgericht über die Verfassungskonformität des Gesetzes zur Beschränkung des Brief-, Post-und Fernmeldegeheimnisses (G 10) in der Fassung des Gesetzes zur Änderung des Strafgesetzbuches, der Strafprozeßordnung und anderer Gesetze (Verbrechensbekämpfungsgesetz) vom 28. Oktober 1994 (BGBl. I, S. 3186), geändert durch das Begleitgesetz zum Telekommunikationsgesetz vom 17. Dezember 1997 (BGBl. I, S. 3108). Im Einzelnen ging es um die

10 For a fuller statement of my own effort to do so, see Gerald Frug, *City Making: Building Communities without Building Walls* (1999).

1 BvR 2226/94; 1 BvR 2420/95; 1 BvR 2437/95

2 Heller, Hermann, Der Begriff des Gesetzes in der Reichsverfassung, in: ders., Gesammelte Schriften, 3 Bde., hrsg. von Martin Draht, Otto Stammer, Gerhart Niemeyer, Fritz Borinski, Leiden 1971, Bd. 2, S. 203 ff.(219)