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Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution

In Dissolving Cities, Professor Michelle Wilde Anderson suggests that municipal dissolution could enable counties to serve regionalist goals. This Essay argues that, on balance, municipal dissolution will not trigger the emergence of counties as agents of regional reform. Modern metropolitan regions span city, county, and state borders. As the scale of the region expands, state and local governments, including counties, will increasingly lack the territorial jurisdiction and regulatory capacity to respond to complex metropolitan problems. The Essay concludes by considering the role that the federal government can play, and has historically played, in facilitating regional collaboration at the appropriate scale.

INTRODUCTION

In her recent article *Dissolving Cities*, Professor Michelle Wilde Anderson provides the first comprehensive academic account of municipal dissolution.¹ As both an empirical project and a theoretical undertaking, *Dissolving Cities* is an extraordinary piece of scholarship that is certain to become a cornerstone of local-government law.²

At several points in the article, Professor Anderson draws a connection between municipal dissolution and regionalism.³ Professor Anderson suggests that by consolidating land under the exclusive jurisdiction of the county, municipal dissolution could enable counties “to serve goals associated with

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1. Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364 (2012).
 2. The article creates an impressive national database of municipal dissolution. *Id.* app. A, http://www.yalelawjournal.org/images/documents/121.5.anderson_appendices.pdf (compiling data on municipal dissolution, including the municipal name, state, and year of dissolution or proposed dissolution).
 3. See, e.g., *id.* at 1408, 1419, 1428, 1431 & n.286, 1432-35, 1439-43.

regional government, such as land-use coordination, reduced interlocal conflict, and service consolidation.”⁴

To be sure, dissolution reduces local fragmentation, eliminating a layer of government with its attendant administrative and political costs.⁵ But defragmentation, a worthy goal in its own right, is not necessarily regionalism. And although county boundaries encompass a geographic region, county governments do not necessarily act as regional governments.

Instead, the very characteristics that Professor Anderson contends make dissolution an attractive mode of regionalism—that it is voluntary on the part of the dissolving municipality and does not require the consent of adjacent municipalities or of the surrounding county⁶—virtually guarantee that it will promote the welfare of the dissolving city rather than the welfare of the region as a whole.

This Essay argues that, on balance, municipal dissolution is unlikely to trigger the emergence of counties as strong agents of regional reform.⁷ Part I situates municipal dissolution within the broader debate over regionalism. This Part then demonstrates that dissolution is likely to function as a form of “cherry-picking” regionalism that enables incorporated municipalities to manipulate local boundaries at the expense of the region.⁸ Part II draws upon Professor Anderson’s conception of the city-county loop to suggest that in many states counties are too weak and too small to function as regional governments. Part III addresses a paradox of regionalism: effective regional structures are not politically viable, and politically viable regional structures are not effective. The problems of metropolitan governance seem hopelessly circular. This Essay thus looks beyond the region to consider the potential role of the federal government in breaking the cycle.

4. *Id.* at 1419. *Dissolving Cities* fits within the larger arc of Professor Anderson’s ambitious and important research into the nature of county governments. See, e.g., Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) [hereinafter Anderson, *Cities Inside Out*]; Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931 (2010) [hereinafter Anderson, *Mapped Out*]; Michelle Wilde Anderson, *Sprawl’s Shepherd: The Rural County*, 100 CALIF. L. REV. 365 (2012).

5. Anderson, *supra* note 1, at 1432-33.

6. *Id.* at 1433, 1439 (identifying key features of dissolution as a means of achieving regionalism or consolidation).

7. As Professor Anderson herself observes, in the context of county governance, “bigger need not mean stronger.” *Id.* at 1432.

8. See Laurie Reynolds, *Local Governments and Regional Governance*, 39 URB. LAW. 483, 517 (2007).

I. DISSOLUTION AS A MODE OF REGIONALISM?

Professor Anderson describes dissolution as “offer[ing] an unusual and noncoercive mode of regionalism.”⁹ She identifies three key characteristics of municipal dissolution that in her view create a unique opportunity for regional reform. Critically, dissolution (1) removes a layer of municipal government rather than superimposing a new regional government on existing municipalities, (2) is voluntary on the part of the municipality to be dissolved, and (3) rarely requires the consent of surrounding or adjacent municipalities.¹⁰

This Part argues that so long as the decision to dissolve is unilateral on the part of the dissolving municipality, it will rarely further the twin values of economic efficiency and distributional equity traditionally associated with regionalism. Section I.A describes the goals and reform strategies of the regionalist movements that surfaced during the second half of the twentieth century. Section I.B argues that, for cities that choose to dissolve in response to economic decline, municipal dissolution is likely to function as a beneficial form of efficiency-oriented regionalism. For the surrounding county, however, dissolution is more accurately characterized as an involuntary (and perhaps undesirable) mode of consolidation.

A. Defining the Regionalist Agenda: Efficiency and Equity

Although it is rare to see the term “regionalism” defined with precision,¹¹ the regionalist movements of the past fifty years typically have been motivated by a desire to increase economic efficiency *and* distributional equity within the metropolitan region.¹² From the 1960s through the 1970s, metropolitan reformers advocated the establishment of formal metropolitan-scale municipal

9. Anderson, *supra* note 1, at 1428.

10. *Id.* at 1433, 1439.

11. See Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1786-87 (2002) (“It is hard to pin down exactly what new regionalism is.”); Donald F. Norris, *Prospects for Regional Governance Under the New Regionalism: Economic Imperatives Versus Political Impediments*, 23 J. URB. AFF. 557, 559 (2001) (noting that new regionalists resist a definition of “regionalism”).

12. See, e.g., Norris, *supra* note 11, at 558 (noting that new regionalists “believe that mechanisms of regional governance are necessitated by issues of efficiency and equity”); Hal Wolman, *The Present State of the “Regionalism Debate,”* in BRIDGING THE DIVIDE 259, 259 (Susan M. Wachter, Leo R. Penne & Arthur C. Nelson eds., 2000) (stating that regionalists are motivated by concerns of equity and efficiency).

governments, with general taxing and regulatory authority.¹³ These proposals faced insurmountable political opposition and consistently failed to yield results,¹⁴ causing policymakers to lose interest in regionalism as a practical policy objective.¹⁵

By the 1990s, however, mounting concerns over multijurisdictional problems such as urban sprawl prompted scholars and policymakers to focus again on the welfare of the region.¹⁶ The new regionalists abandoned the hope of creating general-purpose regional governments¹⁷ and instead encouraged the formation of cooperative agreements among a broad range of public and private actors on matters of regional concern.¹⁸

To induce such cooperation, the new regionalists argued that intraregional social and economic inequities would render metropolitan regions incapable of competing economically.¹⁹ In this view, inequalities should be addressed “not just because they are unfair but also because they will harm regional economic

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13. See Norris, *supra* note 11, at 558-59 (noting that, in the first three decades following World War II, metropolitan reformers urged the creation of area-wide, general-purpose governments).
 14. See Lisa T. Alexander, *The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities*, 38 FORDHAM URB. L.J. 629, 641-42 (2011); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1117 (1996); Frug, *supra* note 11, at 1780 (noting that no regional government in the United States “actually has jurisdiction over the entire metropolitan region”); Norris, *supra* note 11, at 561 (highlighting local resistance to authoritative regional governance); Reynolds, *supra* note 8, at 489 (noting that Americans seem “inalterably opposed to creating general purpose regional governments”).
 15. See, e.g., Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 7 (2000); Janice C. Griffith, *Regional Governance Reconsidered*, 21 J.L. & POL. 505, 505 (2005).
 16. Griffith, *supra* note 15, at 513 (identifying three elements of new regionalism: “(1) efficiency-oriented regionalism to minimize transactional costs and spur economic development, (2) environmental regionalism to improve livability, and (3) equity-oriented regionalism to foster community-based employment and the implementation of anti-poverty measures”).
 17. See Alexander, *supra* note 14, at 643 (noting that, unlike earlier regionalism proponents, new regionalism advocates do not wish to establish general-purpose regional governments); Todd Swannstrom, *What We Argue About When We Argue About Regionalism*, 23 J. URB. AFF. 479, 492 (2001) (“The new regionalists have for the most part given up the ideal of forming powerful general-purpose regional governments.”).
 18. See, e.g., Alexander, *supra* note 14, at 643; Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2028 (2000) (defining new regionalism as “any attempt to develop regional governance structures or interlocal cooperative arrangements that better distribute regional benefits and burdens”); Norris, *supra* note 11, at 559 (“For the new regionalists, by contrast, the principal mechanisms for achieving regional governance involve forms of voluntary cooperation.”).
 19. Briffault, *supra* note 15, at 7-8.

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competitiveness.”²⁰ By emphasizing the interdependence of the city and suburbs, new regionalists hoped to persuade suburbanites that regional reforms were in their own best interest.

The new regionalists’ hope for robust voluntary regional collaboration has produced predictably skewed results. Localities only participate when it promotes their own social and economic welfare.²¹ Thus, localities have stubbornly resisted equitable initiatives that redistribute resources, promote racial and economic integration,²² or constrain local land-use authority.²³ At the same time, they have been willing to cooperate in efficiency-oriented initiatives that create economies of scale, improve the quality of municipal services, or decrease local taxes.²⁴ As Professor Laurie Reynolds has observed, in practice “regionalism” has meant the creation of a regional special district “to address a regionwide need for an infrastructure-intensive service, such as transit, drainage, sewers, and waste disposal.”²⁵

The widespread use of regional special districts effectively separates efficiency-oriented regionalism from equity-oriented regionalism. Regional special districts rarely have the plenary taxing and regulatory authority that

20. Swanstrom, *supra* note 17, at 482.

21. See, e.g., WILLIAM J. MALLET, CONG. RESEARCH SERV., R41068, METROPOLITAN TRANSPORTATION PLANNING 8 (2010) (noting, in the context of regional transportation planning, that local officials “will find it hard to make decisions that while good for the region may be detrimental to the interests of their home jurisdiction”).

22. Norris, *supra* note 11, at 561 (noting that regional “cooperation generally occurs around system maintenance issues, not around really tough lifestyle issues like housing, education and social equity”); cf. HENRY CISNEROS, U.S. DEP’T OF HOUS. & URBAN DEV., REGIONALISM: THE NEW GEOGRAPHY OF OPPORTUNITY 8-9 (1995) (distinguishing “things-regionalism” aimed at systems maintenance and efficiency from “people-regionalism” aimed at lifestyle issues and equity).

23. See, e.g., Sara C. Bronin, *The Quiet Revolution Revived: Sustainable Design, Land Use Regulation, and the States*, 93 MINN. L. REV. 231, 265-66 (2008) (noting that regional governance for land use is impracticable and “unviable”); Cashin, *supra* note 18, at 2030 (“[M]ost localities resist regional cooperation on land use.”); Griffith, *supra* note 15, at 522; Wolman, *supra* note 12, at 261 (“Problems of social disadvantage, equal opportunity, race, social access, equity and redistribution, problems that characterize the central city-suburban division, have not proven very susceptible to voluntary regional solutions among collaborating partners.”).

24. See Briffault, *supra* note 14, at 1149 (stating that regional cooperation is more likely when local governments are faced with an infrastructure need that they cannot meet without cooperating with other local governments). See generally Reynolds, *supra* note 8, at 490-92 (summarizing economic-efficiency arguments in support of regionalism).

25. Reynolds, *supra* note 8, at 486; see also Briffault, *supra* note 14, at 1117-18, 1145-46 (noting that regional governments have taken the form of special governments or special districts for limited purposes).

enables general-purpose governments to implement policies that redistribute wealth.²⁶ Instead, regional special districts rely upon user fees and assessments to raise revenue, which is used strictly to further the entity's limited purpose.²⁷ In this model, citizens receive services in proportion to their ability to pay, exacerbating existing inequalities in service provision, to the detriment of the region as a whole.²⁸

Of course, there are instances of regional reform that redistribute resources within the region. For example, in March 2011, Memphis voters approved a merger of the city and county school systems, overcoming strong suburban opposition.²⁹

Yet, for every successful merger, there are countless others that fail.³⁰ According to David Rusk, a well-known proponent of regional consolidation, only 27 of the 105 referenda on city-county consolidation held since 1902 have passed.³¹ Indeed, one year before the Memphis school-district merger was approved, voters vetoed a proposal to merge the city of Memphis with Shelby County.³² Moreover, the redistributive effect of the Memphis school-district merger is far from clear. In the wake of the referendum, the county board of education has sued to block the merger, and five of the six Shelby County

26. Briffault, *supra* note 14, at 1117 (stating that, unlike general-purpose governments, regional governments generally lack plenary taxing and regulatory authority).

27. Reynolds, *supra* note 8, at 516-17 (observing that regional special districts do not work to correct broad social, educational, or economic issues, but rather are limited to narrow purposes and derive their revenue solely for their specific purpose).

28. *Id.* at 508-09.

29. Zack McMillin & Jane Roberts, *Memphis Voters OK School Charter Surrender*, COM. APPEAL (Memphis, Tenn.), Mar. 8, 2011, <http://www.commercialappeal.com/news/2011/mar/08/memphis-school-charter-approval>.

30. See, e.g., Carmen Cusido, *Mecklenburg Commissioners Cool to City, County Merger*, CHARLOTTE OBSERVER, Aug. 7, 2012, <http://www.charlotteobserver.com/2012/08/07/3435758/mecklenburg-commissioners-cool.html> (describing opposition to political consolidation of the city of Charlotte and Mecklenburg County, even though the two "already coordinate a number of services, including police, fire, parks and tax collection"); Editorial, *Who Will Help Find Common Ground and Cooperation To Tackle Birmingham Community's Biggest Problems?*, BIRMINGHAM NEWS, Aug. 21, 2011, http://blog.al.com/birmingham-news-commentary/2011/08/our_view_who_will_help_find_co.html (highlighting racial mistrust and suburban political protectionism as obstacles to a merger of Birmingham, Alabama, with Jefferson County).

31. Kate Linebaugh, *Threats to Town Halls Stir Voter Backlash*, WALL ST. J., June 8, 2011, <http://online.wsj.com/article/SB10001424052702304066504576341332888910372.html>.

32. *Id.*

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suburbs are considering forming independent school districts.³³ Indeed, more than anything, the Memphis city-county school-district merger seems to be an exception that proves the rule.

For the most part, the new regionalism is a “cherry-picking” regionalism that enables affluent communities to participate in efficiency-oriented regional entities that increase the level of services received or reduce taxes,³⁴ but to reject measures that would address problems of inequality including “schools, crime, housing, jobs, and taxes.”³⁵ Because regional equity is far more difficult to achieve, many regionalists consider it, rather than efficiency, to be the primary goal of regionalism.³⁶

B. Dissolution and Regionalism

Municipal dissolution removes a layer of local government and consolidates territory under the exclusive jurisdiction of a single county or county subdivision. Does this consolidation further the values of efficiency and equity that have been traditionally associated with regionalism? This Section suggests it does not: first, consolidation targets only a small section of the modern metropolitan region, and, second, consolidation is likely to serve the interests of the disincorporating municipality at the expense of the region.

1. Dissolution and the Region

According to Professor Anderson, dissolution “offers a backdoor way of achieving regionalism and defragmentation in suburban and rural areas.”³⁷ The modern region, however, is metropolitan, encompassing major cities, inner and outer rings of suburbs, edge cities, and unincorporated rural areas.³⁸ Both the metropolitan reformers and the new regionalists have treated the region as

33. Sam Dillon, *Merger of Memphis and County School Districts Revives Race and Class Challenges*, N.Y. TIMES, Nov. 5, 2011, <http://www.nytimes.com/2011/11/06/education/merger-of-memphis-and-county-school-districts-revives-challenges.html>.

34. Reynolds, *supra* note 8, at 517.

35. Frug, *supra* note 11, at 1787-88 (arguing that “voluntary agreements and special purpose governments are not stepping stones toward comprehensive regional solutions but successful methods of avoiding them”).

36. *Id.* at 1776.

37. Anderson, *supra* note 1, at 1431.

38. Alan Berube, *MetroNation: How U.S. Metropolitan Areas Fuel American Prosperity*, BROOKINGS INSTITUTION 9 (2007), <http://www.brookings.edu/~media/research/files/reports/2007/11/06%20metronation%20berube/metronationbp>.

a whole. Both sought to reduce social and economic disparities within the region by redistributing wealth from the suburbs to the cities.

In contrast, rather than try to compel the suburbs to subsidize the inner city, a task that has proven to be nearly impossible, municipal dissolution disaggregates the region.³⁹ Professor Anderson notes:

This form of regionalism differs significantly from the aspirations that came before, as it recognizes unification of territory outside the urban core as a form of consolidation, even if it leaves the inner-city borders intact. Such an approach fails to address the problems of a big inner city directly, though it might improve things that are important to the metropolitan area as a whole, like service coordination and cost control.⁴⁰

Dissolution abandons equitable distribution as a normative policy goal. It abandons the urban core and, in so doing, abandons the region.

And perhaps that is acceptable. Indeed, as Professor Anderson notes, it corresponds with the contemporary shrinking-cities movement in urban planning that similarly disaggregates the region and approaches the city on its own terms.⁴¹ In that sense, dissolution as regionalism recognizes that the key question in the regionalism debate is not whether redistributive goals can be achieved through dissolution, special-purpose districts, or metropolitan governments, but rather whether redistribution should be undertaken at the local level at all.⁴²

2. *Dissolution and the City*

In the era following World War II, dissolution is, as Professor Anderson notes, a “voluntary, active choice by a living community” in which “residents or city councils choose to eliminate their city government.”⁴³ Why would

39. Anderson, *supra* note 1, at 1431.

40. *Id.*

41. *Id.* at 1430-31.

42. Swanstrom, *supra* note 17, at 481 (noting that “[t]he debate over regionalism in the United States” has focused on “whether higher levels of government should intervene into the intergovernmental marketplace for public goods in regions”); see also Kirk J. Stark, *Fiscal Federalism and Tax Progressivity: Should the Federal Income Tax Encourage State and Local Redistribution?*, 51 UCLA L. REV. 1389, 1408-09 & n.71 (2004) (noting that economists believe that redistribution should not occur at the state and local levels because it leads to adverse migration of both rich and poor). For further discussion, see *infra* Part III.

43. Anderson, *supra* note 1, at 1368.

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residents make that choice? Simply put, cities dissolve in response to decline and economic distress⁴⁴:

The Graveyard of American Cities leads us to remember places of great hardship and disappointment . . . [W]e find river port cities that once throbbled with industry and growth; black colonies for recently emancipated slaves yearning to own land and live beyond southern racial violence; casino and resort boomtowns that busted; and corrupt, family-run fiefdoms. All thrived in their day; most dwindled in population and grew in despair.⁴⁵

In each case, the residents of the city, or their political representatives, concluded that the costs of maintaining an independent local government exceeded the benefits of local autonomy.⁴⁶

For these shrinking cities, dissolution offers an opportunity to cut taxes and spending dramatically and to shift responsibility to the surrounding county. This opportunity is, in Professor Anderson's words, "unusual and noncoercive."⁴⁷ It is also unilateral. Although the county and residents of its unincorporated area are profoundly affected by dissolving cities,⁴⁸ county consent is rarely, if ever, required.⁴⁹ Very few states even require that counties receive notice of an impending dissolution.⁵⁰ Thus, for the surrounding county, municipal dissolution is involuntary. To the extent that it increases the

44. See *id.* at 1408 (“[P]roponents across dissolving cities seem to agree on two things: in times of local economic crisis, cutting taxes and spending is necessary, and dissolution may offer a dramatic way to do just that.”).

45. *Id.* at 1400.

46. See *id.* at 1366.

47. *Id.* at 1428.

48. Professor Anderson notes:

Dissolution has important consequences for the county or county subdivision into which a city is dissolving. It expands the unincorporated territory of the county, thus affecting counties' budgets (both revenue and costs); bringing new territory and residents into the administrative and land-use planning responsibility of county staff; potentially expanding the territory of county service providers like law enforcement and street maintenance; bringing new properties, assets, and records under county management; and more.

Id. at 1379.

49. *Id.* (“Very few states give counties a right to notice regarding a pending dissolution; even fewer states give counties any rights to influence the outcome of a proposed dissolution.”).

50. *Id.*

net burden on the county government and excludes an important constituency from the decisionmaking process, it may also be undesirable.

II. OF CITIES AND COUNTIES

Although counties are generally passive partners in the dissolution process, they need not be passive rulers of their unincorporated territory. Traditionally, county governments have served as an arm of the state, performing state-mandated duties at the local level.⁵¹ Today, county governments wear multiple hats: “They serve as the only general purpose local government for unincorporated areas, the second level of general purpose local government for incorporated areas, administrative subdivisions of state government, and bureaucratic units for the delivery of federal services.”⁵²

This Part tries an additional hat on for size: counties as regional governments, particularly in the context of land-use planning.⁵³ The diverse nature of counties across the nation makes it difficult to generalize about the way that counties behave.⁵⁴ Nonetheless, I believe that there is reason to doubt that counties will, on average, assume a strong regional role. First, in states where counties lack the authority to engage in regional governance, any effort to empower counties to serve as regional governments will surely confront the same political opposition that has plagued prior proposals for the formation of regional governments. Second, in modern metropolitan areas, counties rarely, if ever, constitute the entirety of a region.

51. RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 9 (2009); Roger L. Kemp, *County Government: Past, Present and Future*, NAT'L CIVIC REV., Winter 2008, at 52, 53.

52. Anderson, *Mapped Out*, *supra* note 4, at 994.

53. This Part thus moves beyond Professor Anderson's focus on the unincorporated county to consider whether counties have the capacity to function as true regional governments. See Anderson, *supra* note 1, at 1432 (expressing hope that dissolution “can strengthen counties as rational, responsive governments capable of strategic land-use control across larger areas of suburban and rural land”).

54. *Id.* (“Counties vary dramatically in their capacity to provide urban services, engage in serious land-use planning, and foster civic engagement.”); *County Planning*, AM. PLANNING ASS'N, <http://www.planning.org/divisions/countyplanning> (last visited Nov. 29, 2012) (describing diversity in counties' “geography, population, statutory authority, and development philosophies”). For a state-by-state overview of county government, see Matthew Sellers, *County Authority: A State by State Report*, NAT'L ASS'N OF COUNTIES (Dec. 2010), <http://www.naco.org/research/pubs/documents/county%20management%20and%20structure/research%20county%20management%20and%20structure/county%20authority%20a%20state%20by%20state%20report.pdf>.

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A. *The Nature of County Governments*

Virtually all of the land in the United States lies within the jurisdictional borders of a county.⁵⁵ Unlike municipal borders, which regularly expand and contract, county borders rarely change.⁵⁶ Professor Anderson quite helpfully conceptualizes municipal boundary change as a loop—a cycle that begins with urban growth and incorporation and ends with urban decline and dissolution.⁵⁷ On the upswing, territory is removed from counties in bits and pieces, leading to fragmentation across metropolitan regions. On the downswing, territory is added back to the county, eliminating a layer of local government and consolidating land under the exclusive jurisdiction of the county government.⁵⁸

The city-county loop reveals two key characteristics of counties: (1) the residual nature of county land and (2) the relative powerlessness of county governments.

1. *The Residual Nature of County Land*

Municipal boundaries are notoriously drawn along socioeconomic and racial lines to exclude low-income residents and racial minorities.⁵⁹ The unincorporated area of counties consists of the territory that is left over after the valuable land has been removed from the county through incorporation and annexation.⁶⁰ As a result, in metropolitan regions large and small, the residual, unincorporated territory represents a net fiscal loss for counties.⁶¹

Cities that dissolve in response to economic decline increase the burden on county governments. The county becomes directly responsible for providing a range of services to the returning territory and its residents, including law enforcement, street maintenance, and administrative functions involved in

55. See Anderson, *Cities Inside Out*, *supra* note 4, at 1141; Anderson, *supra* note 1, at 1420. Counties are called boroughs in Alaska and parishes in Louisiana. See Kemp, *supra* note 51, at 52; *About Counties*, NAT'L ASS'N OF COUNTIES, <http://www.naco.org/counties/Pages/default.aspx> (last visited Nov. 29, 2012).

56. BRIFFAULT & REYNOLDS, *supra* note 51, at 10; Anderson, *Cities Inside Out*, *supra* note 4, at 1140-41.

57. See Anderson, *supra* note 1, at 1420-21.

58. See *id.*

59. Anderson, *Cities Inside Out*, *supra* note 4, at 1143.

60. *Id.* at 1142-43; see also Anderson, *Mapped Out*, *supra* note 4, at 981-82 (noting that the residual land includes land “left over after cities have cherry-picked” the high-value land).

61. Anderson, *Mapped Out*, *supra* note 4, at 981-82.

land-use planning and record management.⁶² Yet, as noted above, counties do not have the opportunity to participate in the dissolution process.⁶³ In that sense, the law governing vertical dissolution (the downward swing) is parallel to the law governing municipal incorporation (the upward swing), which is also voluntary on the part of the residents of the territory to be incorporated and rarely requires county consent.⁶⁴ In contrast, the law governing horizontal boundary changes—for example, a merger between two adjacent cities—nearly always requires bilateral consent.⁶⁵

2. *The Powerlessness of County Governments*

The consent requirements highlight the second key feature of county governments: they are relatively powerless. Where a boundary change affects two incorporated political bodies, each must consent to the proposed change. In contrast, where a boundary change involves an incorporated municipality, such as a city, and the unincorporated county that surrounds it, the city alone is treated as a political unit whose boundaries may not be altered without its consent.⁶⁶ In Professor Anderson's words, the legal system "treats municipalities as voluntary democracies with rights to include and exclude territory, and counties as a primordial state with weak or absent rights to shape their unincorporated territory."⁶⁷

Although the role of counties has expanded over time to include some policymaking functions, counties rarely regulate municipal land use. In some states, counties engage in countywide land-use planning, but by and large

62. Anderson, *supra* note 1, at 1379.

63. *Id.*

64. *Id.* at 1424 ("Only a few states let counties negotiate incorporations and annexations (but never veto or redraw city lines against the proposed city's will)."); see also 1 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 3:34 (3d ed. 2011) (noting that state statutes generally require consent of residents of the proposed municipality and may require consent of adjacent municipalities but that county consent is rarely required).

65. Anderson, *supra* note 1, at 1433.

66. See *id.* at 1425 ("Counties are involuntary at their origin in that their first borders are created by decisions at the state level, rather than by local constituencies making democratic decisions. They remain involuntary over time, in that county governments . . . serve as the residual tier of general-purpose local government for any land that has not incorporated or been annexed."); see also MCQUILLIN, *supra* note 64, § 2:54 ("Counties are often distinguished from municipal corporations in that counties are created without the consent of the inhabitants, whereas the existence of municipal corporations ordinarily depends on the consent of the inhabitants.").

67. Anderson, *supra* note 1, at 1426.

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counties lack the authority to compel localities to comply with those plans.⁶⁸ Of course, states have the power to enable counties to regulate more broadly⁶⁹—to transform counties into general-purpose municipal governments with taxing and regulatory authority, or to empower counties to act authoritatively on matters of regional concern, including land use, affordable housing, and so on. But any proposal to strengthen counties to act in this manner is likely to confront the same political opposition to the formation of general-purpose regional governments that has defeated the last half-century of similar proposals.⁷⁰

B. The Scale of the Region

In addition to the legal and political impediments that prevent counties from serving as regional governments, counties are often but a fraction of the relevant region.⁷¹ The modern economy operates on metropolitan, even “megapolitan,” scale.⁷² This was not always the case. Before the twentieth century, life functioned on a smaller, city-centric scale.⁷³ Most people lived, worked, and played in the same neighborhood; businesses “operated in compact urban areas.”⁷⁴

Times have changed. Modern metropolitan regions span city, county, and state borders.⁷⁵ For federal statistical purposes, a metropolitan region consists of “one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and

68. 2 PATRICIA E. SALKIN, *AMERICAN LAW OF ZONING* § 10:1 (5th ed. 2012) (noting that county authority to regulate land is generally limited to unincorporated areas).

69. Ashira Pelman Ostrow, *Land Law Federalism*, 61 *EMORY L.J.* 1397, 1437-38 (2012).

70. See *supra* note 14.

71. See Robert E. Lang & Dawn Dhavale, *Beyond Megalopolis: Exploring America’s New “Megapolitan” Geography*, *METRO. INST. AT VA. TECH* 12-13 (2005), <http://america2050.org/pdf/beyondmegalopolislang.pdf> (identifying ten “megapolitan” areas encompassing multiple counties).

72. See Berube, *supra* note 38, at 4; Lang & Dhavale, *supra* note 71, at 12-13.

73. William A. Fischel, *The Evolution of Zoning Since the 1980s: The Persistence of Localism* 20-21 (Sept. 1, 2010) (unpublished manuscript), <http://ssrn.com/abstract=1686009>.

74. Griffith, *supra* note 15, at 506-07.

75. See MALLETT, *supra* note 21, at 1 (noting that “metropolitan economies transcend local government and sometimes state boundaries”).

economic integration (as measured by commuting to work) with the urban core.”⁷⁶

Over the next few decades, the vast amount of growth in the United States is predicted to be concentrated within ten interstate megaregions.⁷⁷ As the scale of the region continues to expand, state and local governments, including counties, will increasingly lack the territorial jurisdiction and regulatory capacity to respond to complex metropolitan problems.⁷⁸

In 2008, a report by the Brookings Institution called upon public and private actors at the federal, state, and local levels of government to work together to address metropolitan problems:

Metropolitan areas cannot resolve their challenges alone. Counties, cities, and suburbs operate within a national policy framework, and face challenges [bigger] than their own capacities. What’s needed is a new partnership between federal, state, local, and private-sector players to help metropolitan areas build on their economic strengths, foster a strong and diverse middle class, and grow in environmentally sustainable ways.⁷⁹

In response to that call, this Essay turns toward the federal government to create a national policy framework that facilitates regional collaboration at the appropriate scale. From an institutional perspective, the federal government is uniquely situated to encourage regional collaboration.⁸⁰ First, compared with state and local governments, the federal government has a far greater capacity to pursue welfare policies that redistribute wealth.⁸¹ Specifically, the federal

76. *Metropolitan and Micropolitan Statistical Areas Main*, U.S. CENSUS BUREAU, <http://www.census.gov/population/metro> (last visited Sept. 4, 2012).

77. See Lang & Dhavale, *supra* note 71, at 12–13.

78. MALLET, *supra* note 21, at 1 (noting difficulties states face in overseeing metropolitan areas, particularly those that cross state boundaries); Ostrow, *supra* note 69, at 1438–39.

79. Berube, *supra* note 38, at 53.

80. Nestor M. Davidson, *Fostering Regionalism: Comment on The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities*, 38 *FORDHAM URB. L.J.* 675, 676 (2011) (arguing that the federal government’s distance and independence enable it to approach regionalism more objectively than can states or local institutions); Ostrow, *supra* note 69, at 1438–40 (discussing national capacity to address multijurisdictional problems).

81. Ashira Pelman Ostrow, *Process Preemption in Federal Siting Regimes*, 48 *HARV. J. ON LEGIS.* 289, 306–07 (2011) (emphasizing the relative capacity of the federal government to engage in redistribution of wealth); see also PAUL E. PETERSON, *CITY LIMITS* 183 (1981) (arguing that the free flow of capital and credit allows the federal government to pursue redistributive policies that are not politically viable at the local level); Brian Galle & Kirk J. Stark, *Beyond Bailouts: Federal Tools for Preventing State Budget Crises*, 87 *IND. L.J.* 599, 624 (2012).

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government has the distinctive luxury of drawing upon a “captured tax base” as well as a “facility for logrolling arrangements that tend to equalize power between representatives of affluent and poor districts.”⁸²

In addition, when the federal government facilitates regional collaboration, it can create a platform for groups that would otherwise be marginalized by local majoritarianism. In contrast to state and local governments, the federal government has less interest in preserving the intrastate balance of power and is not bound to act within existing geopolitical boundaries.⁸³ That is not to say that local political units should be ignored—but rather that they should be considered in the context of the metropolitan region. The federal government’s distance from state and local politics allows it to approach the region as a whole and to engage alternative political majorities within the region.⁸⁴

III. A HYBRID APPROACH TO REGIONALISM: FEDERAL FUNDING, REGIONAL PLANNING

Scholars and policymakers have long wrestled with the problem of regional governance. Informal regional collaborations are incapable of effectively addressing regional problems. Formal regional governments with the capacity to effectively address regional problems are politically unviable.⁸⁵ The solution, it seems, must come from beyond the region.

This Part suggests that a hybrid federal-regional approach has the potential to transform the entrenched political and economic dynamics that make it so difficult to pursue regionalism from within the region.⁸⁶ To that end, this Part evaluates two national planning frameworks that integrate top-down federal

(observing that advocates of redistributive policies at the local level have limited power because of fears that local redistributive programs both drive out the wealthy and attract the poor).

82. Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 594 (1999).

83. Davidson, *supra* note 80, at 677 (arguing that “resistance to meaningful regional collaboration” can stem from “an entrenched state and local political economy”).

84. *Id.* at 679 (“The scale of federal involvement thus widens the range of official interests and provides a platform for alternative political majorities.”).

85. Norris, *supra* note 11, at 561 (“Nowhere do local governments in American metropolitan areas, or their constituents, show a willingness to forego their independence and autonomy, even at the margins, to produce regional governance capable of addressing area wide issues authoritatively.”).

86. See Davidson, *supra* note 80, at 679 (“[I]n asserting a national interest in meaningful regional collaboration, the federal government has much greater latitude to act notwithstanding any parochial political economy.”).

funding with bottom-up regional planning: (a) the New Deal's Federal-County Planning Program and (b) the Department of Housing and Urban Development's recently launched competitive Sustainable Communities Regional Planning (SCRIP) Grant Program.⁸⁷

A. Lessons from the Federal-County Planning Program, 1938-1942

The Federal-County Planning Program provides an early example of federally funded regional land-use planning. During the New Deal, Congress enacted a wide array of federal programs to provide aid to farmers.⁸⁸ To coordinate the numerous New Deal farming programs, the federal government devised a multijurisdictional Federal-County Planning Program that was administered by the U.S. Department of Agriculture (USDA).⁸⁹

The basic building block of the Federal-County Planning Program was the county planning committee. Each local community formed its own planning committee, which fed into a countywide committee.⁹⁰ Local farmers served on these committees, bringing their local knowledge to the planning process.⁹¹ Planning professionals served as expert advisors.⁹² State and federal agents participated at the county level to coordinate their programs with the county

87. See Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Sustainable Communities Regional Planning Grant Program, 75 Fed. Reg. 37,458 (June 23, 2010).

88. Todd A. Wildermuth, *National Land Use Planning in America, Briefly*, 26 J. LAND RESOURCES & ENVTL. L. 73, 74 & n.6 (2005) (listing a variety of New Deal farming programs).

89. Jess Gilbert, *Democratic Planning in Agricultural Policy: The Federal-County Land Use Program, 1938-1942*, 70 AGRIC. HIST. 233, 239-41 (1996).

90. Wildermuth, *supra* note 88, at 75.

91. Gilbert, *supra* note 89, at 236-40. Professor Gilbert explains that local participation was crucial for a number of reasons:

One reason was the extreme regional diversity of American agriculture. Technical experts from Washington, D.C., could hardly know all of the significant variations between, say, the Corn Belt and the Cotton Belt, or hilly New England and California's Central Valley. In addition to farmers' local knowledge, their interests and legitimation were also important to the success of the action agencies. Undoubtedly another major reason for farmer participation was to help smooth and correlate the operations of the various, often conflicting, action agencies at the local level.

Id. at 236.

92. *Id.* at 237-40.

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planning committees.⁹³ Each county committee was charged with developing a countywide map of existing land use and a second map depicting desired changes in land use.⁹⁴ USDA funds were only provided for uses that were consistent with the county land-use map.⁹⁵

By 1942, two-thirds of all counties in the United States had established planning committees.⁹⁶ That same year, Congress eliminated funding for the program, abruptly ending the experiment in federal-county planning.⁹⁷

Nonetheless, in just four years, the Federal-County Planning Program produced an astounding array of activities and programs specifically tailored to the needs and preferences of individual counties:

In an Alabama county where 75 percent of the farmers were tenants, most of whom had only oral leases with their landlords, the planning committee encouraged the use of written leases. In Washington state, a county committee decided that farms were too small and convinced the Farm Security Administration to make loans for clearing “stump land” for enlargement. In New Hampshire, pasture quality was a key issue; a local committee undertook a ten-year pasture improvement plan. In Kootenai County, Idaho, much of the farmland was erosive and infertile, so the planning committee got the Soil Conservation Service to work on the problem.⁹⁸

In addition, the county plans were not limited exclusively to land use. Several southern counties focused on access to health care services for poor

93. *Id.* at 239-41 (“A typical county committee consisted of seventeen farm men, five farm women, the county agricultural and home agents, the [Farm Security Administration] supervisor, an [Agricultural Adjustment Administration] official, a Soil Conservation Service technician, a Farm Credit Administration specialist, an agricultural teacher, a local government official, and one to three representatives of other public bodies.”).

94. Wildermuth, *supra* note 88, at 75 (“The local farmers on committees contributed their first-hand knowledge, the state and federal agents added what they could, and a map was drawn. Once existing land use was mapped, the local committees discussed desired changes in land use and translated those changes onto a second county map.”).

95. *Id.*

96. Gilbert, *supra* note 89, at 240.

97. The program’s termination has been attributed to a variety of factors, including growing opposition from wealthier farmers and the start of World War II. See Wildermuth, *supra* note 88, at 76.

98. Gilbert, *supra* note 89, at 243-44.

farmers. These counties worked with the USDA to establish a federally subsidized county medical plan.⁹⁹

The Federal-County Planning Program showed great potential for coordinating regional land-use planning. Yet, its broader application to metropolitan regionalism is limited by a number of factors. First, the program targeted agricultural policy, presumably affecting the more rural, unincorporated parts of counties. In contrast, modern metropolitan planning must contend with the entrenched city/suburb divide across a range of policy areas, including housing, transportation, economic growth, and urban sprawl. Second, as discussed above, the scale of the region has grown so that modern counties rarely, if ever, constitute the entirety of a metropolitan region.

Finally, it is difficult to predict how the program would have fared over time. Most counties did not get past the planning stage before the funding for the program was cut. In the long run, the county planning committees may have faced challenges similar to those faced by later federally funded regional entities, such as the largely ineffective metropolitan planning organizations of the 1960s and 1970s.¹⁰⁰

Alternatively, had the Federal-County Planning Program been fully established before the start of World War II, it might have created a precedent for regional planning that could have avoided, or perhaps mitigated, some of the more deleterious effects of suburbanization.

B. The Partnership for Sustainable Communities

Though the Federal-County Planning Program was terminated before it truly got off the ground, many of its institutional-design features have been replicated by the Department of Housing and Urban Development in its competitive SCRP Grant Program. The SCRP Grant Program provides financial incentives to regional consortiums to create regional plans “that

99. *Id.* at 240. Under this program, farmers contributed “[six] percent of their last year’s income in exchange for health care, hospitalization, and drugs; the government made up the difference.” *Id.*

100. Mark Solof, *History of Metropolitan Planning Organizations*, N. JERSEY TRANSP. PLANNING AUTH. 17 (1998), http://www.njtpa.org/Pub/Report/hist_mpo/documents/MPOhistory1998.pdf (summarizing federal legislation that required regional planning); see also MALLETT, *supra* note 21, at 1 (noting that metropolitan planning organizations have “generally remained subordinate to state departments of transportation . . . in the planning and selecting of projects using federal surface transportation funds” and have arguably remained subordinate to local governments that own transportation infrastructure and regulate land use).

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integrate housing, land use, economic and workforce development, transportation, and infrastructure investments.”¹⁰¹

To be eligible, a regional consortium must include the principal cities within the region and enough localities so as to represent at least fifty percent of the regional population.¹⁰² In addition, the consortium must include a non-profit organization within the region that can “engage a diverse representation of the general population” and collaborate with the other governmental units.¹⁰³

The SCRIP Grant Program is one initiative of the interagency Partnership for Sustainable Communities—a collaboration between the Department of Housing and Urban Development, the Department of Transportation, and the Environmental Protection Agency created in 2009 to foster regional cooperation around several of the most pressing regional issues: housing, transportation, and the environment.¹⁰⁴

In some ways, the SCRIP Grant Program represents a modern extension of the earlier Federal-County Planning Program. Both involve a devolutionary, bottom-up approach to policymaking that relies heavily on local participation and collaboration and avoids prescribing substantive standards. Both encourage a multijurisdictional, multisectoral approach to address regional problems. Both rely upon federal funds to create an incentive for regional planning.

The SCRIP Grant Program also reflects the vastly expanded scope of modern metropolitan problems. In contrast to the Federal-County Planning Program, which was limited to agricultural policy, the Grant Program targets a

101. Notice of Availability: Notice of Funding Availability (NOFA) for HUD’s Fiscal Year 2010 Sustainable Communities Regional Planning Grant Program, 75 Fed. Reg. 37,458 (June 23, 2010); see also Catalog of Fed. Domestic Assistance, *Sustainable Communities Regional Planning Grant Program*, GEN. SERVS. ADMIN., <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=072306952dfc7d159e4a040efbfobe10> (last visited Nov. 29, 2012) (noting that the grant program is designed to promote “regional planning efforts that integrate housing and transportation decisions, and increase the capacity of communities to modernize land use and zoning plans”).

102. Sustainable Communities Planning Grant Program Advance Notice and Request for Comment, 75 Fed. Reg. 6689, 6690 (Feb. 4, 2010).

103. Notice of Funding Availability (NOFA) for HUD’s Fiscal Year 2010 Sustainable Communities Regional Planning Grant Program (Docket No. FR-5396-N-03), U.S. DEP’T OF HOUS. & URBAN DEV. 19 (June 23, 2010), <http://archives.hud.gov/funding/2010/scrpgsec.pdf>.

104. *About Us*, P’S HIP FOR SUSTAINABLE COMMUNITIES, <http://www.sustainablecommunities.gov/aboutus.html> (last visited Nov. 29, 2012) (noting that the Partnership is intended to “help communities nationwide improve access to affordable housing, increase transportation options, and lower transportation costs while protecting the environment”).

range of policy areas, including housing, transportation, economic growth, and urban sprawl. Moreover, the SCRP Grant Program expressly recognizes the metropolitan scale of the contemporary region and requires the formation of regional consortia representing both a large percentage of the population of the metropolitan region and a diverse array of interest groups.

The SCRP Grant Program's hybrid federal-regional policy framework approaches the region from above. It recognizes and validates existing state and local political institutions and the democratic communities they represent. At the same time, it creates an opportunity for the formation of political majorities independent of state and local geopolitical dynamics. In addition, federal funding enables the federal government to support innovative regional plans, "bolster[] capacity where there are unequal resources,"¹⁰⁵ and replicate successful models.

It is far too soon to know how the SCRP Grant Program will perform. For the program to succeed, each regional consortium must have actual legal authority to implement its plan. Thus, the program's success will depend upon its capacity to provide incentives for the establishment of a meaningful enforcement mechanism within each regional consortium.¹⁰⁶ Nonetheless, its institutional design, which combines federal funding with regional planning, shows tremendous potential for harnessing the strength of the national government and the metropolitan region.

CONCLUSION

Left to their own devices, local entities approach the problems of the region from a parochial perspective.¹⁰⁷ Regardless whether the decision is to dissolve into the surrounding county or to participate in regional special districts, localities will only act if they believe it is in their own best interest to do so.

A hybrid federal-regional collaboration that integrates top-down federal funding with bottom-up regional planning has the potential to break through the entrenched state and local political and economic dynamic, engage a more

¹⁰⁵ Davidson, *supra* note 80, at 679.

¹⁰⁶ See, e.g., *Grant Summaries*, U.S. DEP'T OF HOUS. & URBAN DEV. 3 (2010), <http://portal.hud.gov/hudportal/documents/huddoc?id=FY10RegPlanGrntSum.pdf> (noting, in a summary of SCRP grantees for fiscal year 2010, that one goal of the New York-Connecticut Metropolitan Sustainable Communities Consortium is to "support project planning to engage residents and stakeholders in developing implementation strategies").

¹⁰⁷ See MALLETT, *supra* note 21, at 8 (noting that local officials and single purpose entities will find it difficult "to make decisions that while good for the region may be detrimental to the interests of their home jurisdiction").

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diverse set of interest groups, redistribute resources to produce greater equity throughout the region, and encourage meaningful regional collaboration.

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