

REGIONALISM, OLD AND NEW:
MPOS* AND THE INTEGRATION OF TRANSPORTATION AND LAND USE PLANNING

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INTRODUCTION

From his vantage point at the federal level, Senator Daniel Patrick Moynihan saw the transportation problems mounting. In 1991, the longtime New York senator outlined the prominent challenges of what he called the post-Interstate era of transportation policy: investment was declining, increased highway capacity did not solve “horrendous congestion problems,” “[a]ir pollution [was] a trans-boundary problem,” and there was a need for “consistency of transportation plans with land use plans.”¹ This he outlined in his introductory statements to the Senate Report accompanying what would become the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA,” commonly pronounced

* Metropolitan Planning Organizations (MPOs) are the federally-required regional transportation policy boards established in each metropolitan region to oversee planning for federal transportation investments.

¹ S. Rep. 102-171 at 4, 6, 28, 29 (1991).

‘ice tea’), for which Senator Moynihan was a principal architect.² That transportation bill represented a dramatic shift in federal transportation policy as it devolved transportation planning to Metropolitan Planning Organizations (“MPOs”) and aimed to address those problems highlighted by Senator Moynihan.³

That same year but at the opposite end of the governmental spectrum, the Local Government Commission⁴ convened a group of notable architects and urban planners to outline a new vision of local land use planning to counter the social, economic, and environmental costs of post-World War II development. The group⁵ echoed Senator Moynihan as they outlined the troublesome symptoms of existing patterns of development: “more congestion and air pollution resulting from our increased dependence on automobiles, the loss of precious open space, the need for costly improvements to roads and public services, the inequitable distribution of economic resources, and the loss of a sense of community.”⁶ Just as the Senator envisioned a dramatic shift in transportation policy through ISTEA, the designers sought a shift in local land use policy and outlined the Ahwahnee Principles, a set of guidelines for community design, regional coordination, and

² See *Why Daniel Patrick Moynihan Mattered for ISTEA*, *Transact: Surface Transportation Policy Partnership’s Electronic Update*, 7:16 (Dec. 19, 2001), available at http://www.transact.org/transfer/trans01/12_19.asp; see also 149 Cong. Rec.H2360-61 (2003) (Representative Maloney, Tribute to the late Daniel Patrick Moynihan).

³ See discussion in Part II.

⁴ The Local Government Commission is a nonprofit, nonpartisan, membership organization (members include local elected officials, city and county staff, planners, architects, and community leaders) that provides technical assistance and networking to local elected officials and other community leaders working to create healthy, walkable, and resource-efficient communities. Local Government Commission, *About the Local Government Commission*, available at <http://www.lgc.org/about/index.html> (last visited Jan. 16, 2008).

⁵ Andres Duany and Elizabeth Plater-Zyberk, notable New Urban architects, designers of Seaside, Florida, and authors of *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* (2000); Stefanos Polyzoides, professor of architecture at the University of Southern California; Elizabeth Moule; Peter Calthorpe, author of *The Regional City: Planning for the End of Sprawl* (2001); and Michael Corbett, former Mayor of the City of Davis, California.

⁶ Local Government Commission, *Preamble to Ahwahnee Principles for Resource-Efficient Communities*, available at <http://www.lgc.org/ahwahnee/principles.html> (last visited Jan. 16, 2008).

local government implementation named for Yosemite's Ahwahnee Hotel where the principles were first presented to local elected officials.⁷ These Ahwahnee Principles—focused on mixed-uses, walkability and transportation alternatives, compact development and environmental protection, and resource efficiency—fell under the broader umbrella of Smart Growth⁸ and provided the blueprint for what the authors would later call New Urbanism.⁹ Parallel to Senator Moynihan's prescription, the first regional guideline of the Ahwahnee Principles stated, "The regional land-use planning structure should be integrated within a larger transportation network built around transit rather than free-ways."¹⁰

From the federal perspective looking down *and* from the local perspective looking up, policymakers saw the troubles of post-War development patterns and outlined visions for reform. Yet after almost two decades, including subsequent federal transportation authorizations and countless local efforts at land use reform, traffic congestion is worse, environmental degradation continues, and transportation planning has limited if any relation to land use plans. Every city, town, and village still copes with that ubiquitous

⁷ See Judith Corbett & Joe Velasquez, *The Ahwahnee Principles: Toward More Livable Communities*, *Western City Magazine* (Sept. 1994) available at http://www.lgc.org/freepub/land_use/articles/ahwahnee_article/page01.html (last visited Jan. 16, 2008); see also Chad Emerson, *The SmartCode Solution to Sprawl* 15-16 (2007).

⁸ Generally, proponents of Smart Growth promote: concentrating development in developed areas and compact greenfield development when necessary; protecting open space and farmland; providing transportation options (transit, bicycle, pedestrian, and automobile); historic preservation; mixed-use developments; housing choice; and efficient use of infrastructure. See generally F. Kaid Benfield, Jutka Terris & Nancy Vorsanger, *Solving Sprawl: Models of Smart Growth in Communities Across America* (2001); Anthony Flint, *This Land: The Battle over Sprawl and the Future of America* 80-103 (2006); Robert H. Freilich, *From Sprawl to Smart Growth: Successful Legal, Planning, and Environmental Systems* (2000); Edward T. McMahon with Sara S. Hollberg & Shelley Mastran, *Better Models for Development in Virginia: Ideas for Creating, Maintaining and Enhancing Livable Communities* (2000).

⁹ An approach to development, as outlined in *Congress for the New Urbanism, Charter of the New Urbanism* (2000), that focuses on compact development and mixed-use neighborhood centers. The New Urbanists are an organized group of architects, planners, lawyers, and others who promote this style.

¹⁰ Local Government Commission, *Ahwahnee Principles for Resource-Efficient Communities*, available at <http://www.lgc.org/ahwahnee/principles.html> (last visited Jan. 16, 2008).

American landscape: fast food restaurants and hotel chains, shiny new retailers and deteriorating commercial strips, all abutting a wide swath of highway with crawling traffic.

The framework for this common landscape is part land use law and part transportation policy. For decades low-density zoning and highway-centric transportation investment fostered the typical suburban sprawl, and today any effort to turn the tide must address that essential but difficult relationship between land use and transportation planning. Federal efforts are impotent if every federal step forward (increased highway capacity) is matched with two local steps back (new developments and increased congestion). Similarly, local efforts at transit-oriented development or walkable community centers are ineffective without the necessary support of federal and state transportation policy. But the current system is characterized by fragmentation—horizontally among municipalities and vertically between local, state, and federal—that institutionally separates land use and transportation planning. This Note proposes to mend that fragmentation by empowering MPOs as regional forums for integrated transportation and land use planning.

The Note proceeds as follows: For context, Part I overviews metropolitan concerns including exclusion, externalities, and sustainability, as well as highlighting the changing realities of contemporary metropolitan life (metropolitan regions are the units of modern American life, suburbs are diverse and evolving, and suburban built environments face decline and/or drastic redevelopment). Part I then considers the theoretical context of local government law, including localism and regionalism, and extending to vertical complexities of our federal system. Part II identifies the Metropolitan Planning Organization, a long-existing institution, as a good model for resolving municipal frag-

mentation and vertical complexities given its place between federal, state, and local government. These federally-required, regional transportation policy boards get only passing attention from legal academics, so Part II investigates the history of MPOs in light of the underlying theories of local government. The fragmentation between transportation planning and land use has hindered MPO success, but the institution is an apt forum for bridging the divide. Thus, Part III outlines a practical proposal drawn from the recent experiences of innovative MPOs: conditional federal funding should empower MPOs to coordinate Regional Corridor Plans which integrate transportation and land use components. Such planning requires a balance between centralized technical and financial assistance and localized flexibility and implementation. And, as highlighted in Part III, increased authority and funding requires increased accountability including strong public participation in administrative processes and proper democratic representation on decisionmaking boards.

Back in 1991, Senator Moynihan and the authors of the Ahwahnee Principles separately saw the challenges facing the American metropolis. They offered visions for remedying those problems, but they did not bridge the institutional fragmentation between land use and transportation. Now the rising concerns of our metropolitan regions demand an institutional shift to integrate land use and transportation planning and align local and federal solutions.

I. LOCAL GOVERNMENT, REGIONAL GOVERNANCE, AND THE MODERN METROPOLIS

A. Externalities and Evolving Suburbia

Commentators are critical of contemporary forms of development, and these complaints go beyond mere aesthetics.¹¹ Critics note, for instance, that municipal boundaries, restrictive land use zoning, and limited transportation allow local “communities”¹² to capture the wealth of residents while restricting access to low-income individuals. Such localities avoid internalizing their share of regional costs of social services.¹³ In 1971 with regard to plans for rail transit in the Atlanta region, a suburban state legislator bluntly proclaimed, “The suburbanite says to himself, ‘The reason I worked for so many years was to get away from pollution, bad schools, and crime, and I’ll be damned if I’ll see it all follow me.’”¹⁴ Just as in other regions, Atlanta’s suburbanites restricted access and avoided burden-sharing by rejecting city annexation, rail transit (MARTA), and fair share housing, and the legacy of such policies continues.¹⁵ Suburban municipalities have also captured state and federal infrastructure subsidies.¹⁶ One author laments that top-down, highway-focused transportation decisions have “produced clear winners and losers

¹¹ See generally, William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *Fordham L. Rev.* 57, Part I (1999) [hereinafter Buzbee, *Institutional Complexity*] (“Urban sprawl’s causes are part social, part market-driven, and part the result of current legal structures and divisions of political authority.” *Id.* at 60); Pietro Nivola, *Laws of the Landscape: How Policies Shape Cities in Europe and America* (1999); Oliver Gillham, *The Limitless City: A Primer on the Urban Sprawl Debate* (2002); *Urban Sprawl: Causes, Consequences, and Policy Responses* (Gregory Squires ed., 2002); Robert Bruegmann, *Sprawl: A Compact History* (2005).

¹² As Professor Richard Schragger notes, “Instead of an inclusionary concept, community has become a mechanism for building high normative and literal walls in legal, social, and physical space. The rhetoric of community has been employed to defend the current allocation of resources, and for the most part that rhetoric has been extremely successful for those who live in the vast Green Zones outside the inner city.” Richard C. Schragger, *The Limits of Localism*, 100 *Mich. L. Rev.* 371, 471 (2001).

¹³ Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 *Va. L. Rev.* 959, 1024 (2007).

¹⁴ Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* 247 (2005).

¹⁵ *Id.* at 247-51.

¹⁶ William W. Buzbee, *Sprawl’s Dynamics: A Comparative Institutional Analysis Critique*, 35 *Wake Forest L. Rev.* 509, 524 (2000) [hereinafter Buzbee, *Sprawl’s Dynamics*]; Buzbee, *Institutional Complexity*, *supra* note 11, at 84-85.

in metropolitan resource allocation, not only in transportation infrastructure, but in vital access to education, employment, health care, affordable housing, job training, and civic participation.”¹⁷

Rising traffic and sustainability concerns spill past any municipal boundary. “Owing in part to low-density development patterns and insufficient transportation options in major metro areas, vehicle miles traveled in the 100 largest metropolitan areas increased 28 percent between 1992 and 2002—twice as fast as population.”¹⁸ According to the *2007 Urban Mobility Report*, traffic congestion continues to choke cities large and small, and it is only getting worse.¹⁹ Moreover, scholars highlight that the inseparable components of sprawl—personal automobiles and low-density development—consume great resources and create vast pollution.²⁰ The transportation sector leads all U.S. end-use sectors in emission of carbon dioxide.²¹ The costs of these many challenges—from social exclusion to worsening traffic to environmental degradation—spill across the imaginary lines that we call municipal boundaries, and solutions demand an institutional shift.

¹⁷ Thomas W. Sanchez, *An Inherent Bias? Geographic and Racial-Ethnic Patterns of Metropolitan Planning Organization Boards 1*, The Brookings Institution Series on Transportation Reform (Jan. 2006) available at http://www.brookings.edu/reports/2006/01transportation_sanchez.aspx.

¹⁸ Brookings Institution Metropolitan Policy Program, *MetroNation: How U.S. Metropolitan Areas Fuel American Prosperity* 51 (2007)

¹⁹ The annual delay per peak traveler grew from 14 hours in 1982 to 38 hours in 2005, resulting in lost worker productivity, wasted fuel, and large congestion costs. David Schrank & Tim Lomaz, Texas Transportation Institute, *The 2007 Urban Mobility Report 1* (Sept. 2007), available at http://tti.tamu.edu/documents/mobility_report_2007_wappx.pdf. (last visited Jan. 9, 2008). Such congestion endangers economic sustainability as relocating businesses shy away from congested metropolises like Atlanta. Ariel Hart, Consultant: Atlanta’s Traffic Is Endangering Its Growth, *Atlanta Journal-Constitution* (Dec. 12, 2007).

²⁰ See generally Adam Rome, *The Bulldozer in the Countryside: Suburban Sprawl and the Rise of American Environmentalism* (2001); Gillham, *supra* note 11; Urban Sprawl, *supra* note 11.

²¹ U.S. Dept. of Energy, Energy Information Administration, *Emission of Greenhouse Gases in the United States 2006* 15 (Nov. 2007), available at <ftp://ftp.eia.doe.gov/pub/oiaf/1605/cdrom/pdf/ggprt/057306.pdf> (last visited Jan. 9, 2008).

Scholars also emphasize the facts of modern life. Eighty percent of the American population lives within metropolitan regions,²² and daily life (social and economic) exists not within a single locality but across a broad metropolitan region. Romantic ideals of “community” are challenged when the local teacher, postman, and fireman all live in different municipalities. Labor and housing markets, cultural and educational institutions, and water supply and air quality all function at the regional level, crossing municipal boundaries.²³ Moreover, the region is a clear economic unit:

American metropolitan areas . . . function as more than the sum of their parts. By bringing together clusters of related firms, deep pools of skilled workers, and infrastructure that connects us to one another and to the rest of the global economy, our major metro areas help stimulate the innovation that fuels economic growth, advance our workers and families, and preserve our abundant natural resources.²⁴

As part of the global economy, these metropolitan regions, not localities, face global competition.²⁵

Within our metropolitan regions, scholars find social and physical change. In *American Metropolitics*, Professor Myron Orfield asserts that “[c]ompelling evidence . . . challenges the notion of a homogeneous monolith known as ‘the suburbs,’”²⁶ and indeed scholars have begun to differentiate among various types of suburbs.²⁷ Suburbs are now

²² See Refining Urban & Suburban America: Evidence from Census 2000 4 (Bruce Katz & Robert Lang eds., 2003).

²³ Briffault, Localism and Regionalism, 48 Buff. L. Rev. 1, 3 (2000).

²⁴ Brookings Institution Metropolitan Policy Program, MetroNation: How U.S. Metropolitan Areas Fuel American Prosperity 9 (2007)

²⁵ Id. at 10-21.

²⁶ Myron Orfield, American Metropolitics: The New Suburban Reality 2 (2002) (Orfield finds three suburban types: at-risk suburbs, bedroom-developing suburbs, and affluent job centers.).

²⁷ Robert Puentes and David Warren, One-Fifth of America: A Comprehensive Guide to America’s First Suburbs (February 2006) (Puentes and Warren give an extended discussion of “first suburbs”: “those places that developed first after their center city, before or during the rapid suburban expansion right after World War II”); William H. Lucy and David L. Phillips, Tomorrow’s Cities, Tomorrow’s Suburbs 296-312 (2006) (Lucy and Phillips focus on the “small house neighborhoods” in middle-aged suburbs that arose

twenty-seven percent minority and there are few entirely white census tracts.²⁸ Certain suburbs have experienced economic diversity as suburban poverty has increased in recent years.²⁹ But, “in some critical ways, it appears that the experience of today’s minorities in first suburbs may not represent the same upward mobility transitions that it did for whites in earlier decades.”³⁰ Scholars identify an increasing disparity between poor and affluent suburbs, and the flight of wealthy residents from poorer suburbs to wealthier suburbs echoes the white flight of past decades.³¹ For wealthier suburbs zoning and limited transportation continue to limit access.³²

Beyond the demographics, we all witness the physical changes occurring. Every city and town has those same strips of worn out malls and shopping centers, boarded up restaurants, and vacant parking lots. As highlighted by Professors William Lucy and David Phillips in *Tomorrow’s Cities, Tomorrow’s Suburbs*, behind those commercial strips older suburban residential neighborhoods are falling prey to disinvestment,³³ especially when mortgage markets tighten.³⁴ Meanwhile some neighborhoods feel the opposite

during the 1950s, 1960s, and 1970s); Robert Lang & Meghan Zimmerman Gough, Growth Counties: Home to America’s New Suburban Metropolis, in *Redefining Urban and Suburban America: Evidence from Census 2000*, Vol. 3 (Alan Berube et al., eds. 2006) (Lang & Gough breakdown growing areas into three types of growth counties: “MEGA (Massively Enlarged, Growth Accelerated) counties, mid-metro counties, and fringe counties.”)

²⁸ David Fasenfest, Jason Booza, and Kurt Metzger, Living Together: A New Look at Racial and Ethnic Integration in Metropolitan Neighborhoods, 1990–2000, in *Redefining Urban and Suburban America*, supra note 27 at 93; Puentes & Warren, supra note 27, at 7.

²⁹ Lucy & Phillips, supra note 27, at 77; Puentes & Warren, supra note 27, at 9; Xavier de Souza Briggs, Introduction in *The Geography of Opportunity: Race and Housing Choice in Metropolitan America* 8 (Xavier de Souza Briggs ed., 2005).

³⁰ Puentes & Warren, supra note 27, at 8-9.

³¹ Todd Swanstrom et al., Pulling Apart: Economic Segregation in Suburbs and Central Cities in Major Metropolitan Areas, 1980–2000, in *Redefining Urban and Suburban America*, supra note 27 at 156. (“It seems that higher-income individuals and families may increasingly be relocating to suburban jurisdictions where conditions are different from those in poor suburbs.” Id. at 154)

³² Beyond the Picket Fence, *The Economist* (Dec. 6, 2007).

³³ Lucy & Phillips, *Tomorrow’s Cities*, supra note 27.

³⁴ Liz Chandler & Stella M. Hopkins, Suburban Decay Stuns City Leaders, *Charlotte Observer* (NC) 1A (Dec. 12, 2007)

pressure as a rising tide of redevelopment attempts to wedge dense new development into low-density, suburban neighborhoods.³⁵

At the root of the many problems—exclusion, sustainability, disinvestment—is the disconnect between transportation and land use, a disconnect facilitated by municipal fragmentation and vertical complexity. If we are to face our declining suburbs and preserve our resources, we must bridge the divide.

B. Localist Perspectives

Among legal scholars, the related discussion focuses largely on scale of government. The American debate between central and local control government has a rich history, reaching back to James Madison,³⁶ but the contemporary debate can be framed (generally) between localism³⁷ and regionalism.³⁸ On the localist side, and following in the tradition of Professor Charles Tiebout, some scholars embrace the efficiency of localities competing for residents. In his seminal work, *A Pure Theory of Local Expenditures*, Tiebout outlined a public choice model whereby local governments offer varying levels of taxes and services as they compete to meet public demands and avoid the exit of

³⁵ Scott Henry, *Deconstructing Dekalb, Creative Loafing* (Atlanta, Ga.) (Oct. 24, 2007).

³⁶ Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 *Wash. L. Rev.* 93, 101 n. 29 (2003) [hereinafter Reynolds, *Intergovernmental Cooperation*].

³⁷ Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 *Col. L. Rev.* 1, 1 (1990) (“The scholarly proponents of greater local power—what I will call ‘localism’—make their case in terms of economic efficiency, education for public life and popular political empowerment”); see also Briffault, *Localism and Regionalism*, supra note 23 at 1, 15-17 (“Localism in this context refers to the view that the existing system of a large number of relatively small governments wielding power over such critical matters as local land use regulation, local taxation, and the financing of local public services ought to be preserved.”).

³⁸ For more summary of the two camps, see generally, Reynolds, *Intergovernmental Cooperation*, supra note 36, Part II; Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 *Geo. L.J.* 1985, Part I (1999).

residents.³⁹ Along those lines, scholars highlight benefits of localism such as government responsiveness, better-tailored policies, and appropriate resource allocation.⁴⁰ Professor William Fischel argues from his economist perspective for Tiebotian efficiency and introduces to the localist lexicon the “homevoter,” resident homeowners who vote with particular concern for the value of their main investments—their homes.⁴¹ Fischel connects this voting bloc to preferences for low-density, suburban development.⁴²

In the legal literature, scholars such as Professor Clayton Gillette promote the localist ideal of efficiency through interlocal competition.⁴³ Gillette argues that “local autonomy is both desirable and consistent with regional prosperity.”⁴⁴ He claims that “[i]f [inter-regional] bargains are underutilized . . . the cause is not exploitation, but the presence of contracting costs that make otherwise efficient bargains too costly to negotiate and implement.”⁴⁵ Gillette highlights transaction costs and institutional barriers such as legal principles (non-delegation and public purpose doctrine), organizational structures (municipal boundaries), and the challenges of information and verification.⁴⁶

Other scholars embrace localism based on ideals of representation and democratic participation. Professor Gerald Frug, a central figure in this camp, defends what he con-

³⁹ See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. Pol. Econ.* 416 (1956); see also Reynolds, *Intergovernmental Cooperation*, *supra* note 36, at 103-04.

⁴⁰ Robert C. Ellickson, *Cities and Homeowners Associations*, 130 *U. Pa. L. Rev.* 1519 (1982).

⁴¹ William A. Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (2001).

⁴² *Id.* at 230. “Homeowners’ preference for low-density zoning in the remainder of their community is not irrational. Suburban homeowners believe that such zoning will maximize the value of their homes. . . . Open space may be a substitute for parks and viewscapes. Low density may keep congestion down, at least within one’s own community. Larger lots may price out supposedly undesirable residents and promote own-lot privacy. Less development means fewer substitutes for existing housing and thus the possibility of larger capital gains when the home is sold.”

⁴³ See generally Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 *N.Y.U. L. REV.* 190 (2001).

⁴⁴ *Id.* at 190.

⁴⁵ *Id.* at 192.

⁴⁶ *Id.* at 212-31.

siders “the values of decentralization: the freedom gained from the ability to participate in the basic societal decisions that affect one’s life, the creativity generated by the capacity to experiment in solving public problems, and the energy derived from democratic forms of organization.”⁴⁷

C. Regional Views

Despite the ideals of localism, some scholars argue for solutions at the regional level. Regionalists see the “favored quarter” of metropolitan regions—the wealthy, outer-ring suburbs—experiencing rapid growth and disproportionate fiscal resources and infrastructure investment, but not bearing a fair share of social burdens like housing and education.⁴⁸ The supposed efficiencies of municipal fragmentation are actually just exclusion and externalities, they say, and any gains in democratic participation are trumped by inequitable realities.⁴⁹ The regionalist argument is rooted in contemporary metropolitan America. As discussed above, a metropolitan region is a real economic, social, and ecological unit, despite the fragmentation of localities. So for regionalists, efficiency, economic interdependence, participatory democracy, and equity demand regional governance.⁵⁰

The American attachment to small municipalities, then, creates what Professor Laurie Reynolds calls the “localism paradox”: “those who express a strong preference for and live within the borders of small municipalities are also likely to live in heavily popu-

⁴⁷ Gerald E. Frug, *Citymaking: Building Communities without Building Walls* 10 (1999).

⁴⁸ See Cashin, *supra* note 38, at 2003-15 (with reference to Myron Orfield, *Metropolitics: A Regional Agenda for Community and Stability* (1997)).

⁴⁹ See generally Briffault, *Localism and Regionalism*, *supra* note 23; Cashin *supra* note 38; Reynolds, *Intergovernmental Cooperation*, *supra* note 36.

⁵⁰ Reynolds, *Intergovernmental Cooperation*, *supra* note 36, at 113-16.

lated areas and to experience many of the living conditions (such as congestion, widely dispersed and strictly separated uses, and long commutes) that their taste for ‘small government’ implicitly rejects.”⁵¹ In the end, as Professor Richard Briffault argues, “Localism in practice is often less about efficiency, democracy, or community than about preserving existing political control over local resources, protecting residents of high-wealth localities from the needs of their lower-wealth neighbors, and providing opportunities for businesses to take advantage of the interlocal competition for tax base.”⁵²

In response to the failure of political institutions to address regional issues, reformers call for a variety of regional governance structures and regional policies.⁵³ Although past generations of regionalists, especially in the 1960s and 1970s, sought general-purpose regional governments and/or consolidation of city and county governments, calls for all-purpose regional governments are rare.⁵⁴ The so-called New Regionalist agenda “attempts to bridge metropolitan social and fiscal inequities with regional *governance* structures, or fora for robust regional cooperation, that do not supplant local governments.”⁵⁵ Within that agenda, reformers take a holistic approach to include concerns like concentrated poverty, economics, and the environment.⁵⁶

Regionalist commentators believe it unlikely that localities will voluntarily assume regional responsibilities.⁵⁷ Contracts for services between localities could create a

⁵¹ Laurie Reynolds, *Local Governments and Regional Governance*, 39 *Urb. Law.* 483, 484 (2007).

⁵² Briffault, *Localism and Regionalism*, *supra* note 23, at 27.

⁵³ *Id.* at 5 (“regionalism is less clearly defined and proposals for regional governance vary widely” *Id.* at 1).

⁵⁴ See *id.* at 6; Gillham, *supra* note 11; Myron Orfield, *Politics and Regionalism in Urban Sprawl*, *supra* note 11.

⁵⁵ See Cashin, *supra* note 38, at 2027 (emphasis original); see also Reynolds, *Intergovernmental Cooperation*, *supra* note 36, at 96; David K. Hamilton, *Regimes and Regional Governance: The Case of Chicago*, 24 *Journal of Urban Affairs* 403 (2002).

⁵⁶ Orfield, *Politics and Regionalism*, in *Urban Sprawl*, *supra* note 11.

⁵⁷ Reynolds, *Local Governments*, *supra* note 51, at 496-99 (2007) (citing Cashin, *supra* note 38, at 2030-33; Briffault, *Boundary Problem*, *supra* note, at 1149; and others).

level of cooperation, but Professor Reynolds argues that such agreements do little for regional well-being.⁵⁸ Regional tax-base sharing is another option, although it is rarely used.⁵⁹

Joint provision of services is a common means of bridging between localities, especially for issues like transportation, parks and recreation, sewage treatment, and large-scale facilities like airports.⁶⁰ Consolidating such services is often accomplished by creating new authorities or special districts.⁶¹ These new entities are embraced by some as a “cost-free win-win,” allowing services to be provided at the regional level without disrupting the local government landscape,⁶² and indeed single-purpose districts have blossomed in recent decades.⁶³ Critics argue, however, that they are unaccountable, invisible, and allow local governments to duck responsibility.⁶⁴ A strong criticism is that such limited-purpose entities “generally do not provide an opportunity to integrate different public concerns, for example connecting location of new roads or sewer lines with the location and affordability of housing.”⁶⁵ Suburban localities only buy into regional entities for parochial reasons, so such entities, by their nature, will not improve broader re-

⁵⁸ Reynolds, *Intergovernmental Cooperation*, supra note 36, at 127. Contracts for services can allow “wealthy enclaves to incorporate without having to face the costs associated with producing services for their constituents,” and allows them “to capture their high property value for their own municipal taxation purposes.” Moreover, the severance of municipal services from local government undermines the local government’s importance to the citizenry and its role as community builder.

⁵⁹ Cashin, supra note 38, at 2028.

⁶⁰ *Id.* at 2030.

⁶¹ Buzbee, *Institutional Complexity*, supra note 11, at 94-96.

⁶² *Id.* at 144.

⁶³ Reynolds, *Intergovernmental Cooperation*, supra note 36, at 138-41.

⁶⁴ *Id.* at 138-41; Buzbee, *Institutional Complexity*, supra note 11, at 97 (“such quasi-governmental entities are subject to few democratic constraints”).

⁶⁵ Briffault, *Localism and Regionalism*, supra note 23, at 5.

gional welfare. Indeed, such entities rarely address touchy topics like revenue-sharing, affordable housing, social services, or land use.⁶⁶

D. Concessions and Overlap

While starting points are quite different, the lines between localism and regionalism have blurred. Localists acknowledge the externalities and inequities of the current model of local government and offer some level of remediation. Tiebout is clear that his efficiency argument depends on the premise of “no external economies or diseconomies between communities.”⁶⁷ Furthermore, “[m]obility is the ‘crucial lever’ of the Tiebout model,” but in reality mobility is often limited by lack of transportation, exclusionary zoning, and unaffordable housing.⁶⁸ Professor Fischel’s homevoter is admittedly imperfect, so he offers state- and regional-level reforms to account for local imperfections including state-funded “public school supplement” to subsidize poorer students, state or metropolitan review of land use decisions, and state court oversight of exclusionary zoning.⁶⁹ Professor Frug advocates for a regional legislature authorized to define and allocate legal entitlements among local governments. Representatives for Frug’s regional

⁶⁶ Cashin, *supra* note 38, at 2030-33; Reynolds, *Intergovernmental Cooperation*, *supra* note 36, at 145-49. (“Generally, joint services agreements involve, not an attempt to implement a grand joint vision for improving the overall welfare of the constituents . . . , but rather a carefully delineated description of specific ways in which joint action will complement pre-existing local government policy.” *Id.* at 137).

⁶⁷ Tiebout, *supra* note 39, at 419.

⁶⁸ Briffault, *Localism and Regionalism*, *supra* note 23, at 18 (quoting Gordon Clark, *Judges and the Cities: Interpreting Local Autonomy* 164 (1985)); see also Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 *Colum. L. Rev.* 346, 420 (1990); Reynolds, *Intergovernmental Cooperation*, *supra* note 36, at 104; Davidson, *supra* note 13, at 1011-12.

⁶⁹ Fischel, *supra* note, at 279-85; for a critique, see Richard Schragger, *Consuming Government*, 101 *Mich. L. Rev.* 1824, 1852-55 (2003).

body are elected from neighborhood-level districts by citizens with multiple votes and allowed to vote across boundaries.⁷⁰

For Professor Gillette, it is a “truism” that local governments affect their neighbors.⁷¹ But he attributes any failure of cooperation to contracting costs. While he seeks to retain the current structure and background rules of local government, he acknowledges the barriers: “[T]here remains a legitimate fear that without some mechanism for internalizing the externalities of local decisionmaking, intraregional inequities will remain unaddressed and opportunities for more productive regional service provision will be unrealized.”⁷²

On the regionalist side, Professor Briffault allows that “[r]egionalism need not wholly displace localism, but the efficiency argument for localism suggests the desirability for some form of regionalism to assure that in metropolitan setting local policies actually promote efficiency.”⁷³ He goes on to say that “in the metropolitan areas . . . regionalism is not simply the enemy of localism; it is also localism’s logical extension.”⁷⁴ Given the economic, social, and ecological reach of the contemporary metropolis, the localist’s argument for efficiency,⁷⁵ democracy,⁷⁶ and community⁷⁷ might, in fact, lead one

⁷⁰ Frug, *Citymaking*, *supra* note 47, at 85-89, 106-09; see also Gerald E. Frug, *Beyond Regional Government*, 115 *Harv. L. Rev.* 1763 (2002).

⁷¹ Gillette, *supra* note 46, at 190.

⁷² *Id.* at 209.

⁷³ Briffault, *Localism and Regionalism*, *supra* note 23, at 20.

⁷⁴ *Id.* at 1-2.

⁷⁵ “The pervasive externalities that undermine the efficiency case for localism, however, mean that many people affected by a local government’s action live outside the locality’s borders.” *Id.* at 21.

⁷⁶ “The individual may have a larger role in the formulation of local policies, but in the metropolitan context purely local decisions may be powerless to solve many critical problems.” *Id.*

⁷⁷ The localist argument for “community” is based on some sense of common interests and concerns; but individuals in metropolitan areas often live, work, play, and shop in many different localities, lacking geographic commonalities to create the traditional notion of community. *Id.* at 22-23.

to regional governance.⁷⁸ For Briffault, the efficiency and democracy arguments demand a mix of local and regional governance.⁷⁹

E. Vertical Complexities

While the local-regional debate of horizontal fragmentation is crucial, it can fail to account for the equally important vertical complexities created by the intricate relationships of federal, state, and local government.⁸⁰ The federal-state relationship captures much scholarly attention, but as Professor Nestor Davidson explains, conceiving our federal structure as “dual federalism”—with federal and state governments operating in separate spheres—masks two distinct realities of our governmental system, both of which are essential to this discussion. First, a notion of dual federalism ignores the extensive regime of cooperative federalism, and second, it limits the discussion to two sovereigns, ignoring the broad and influential role of local government.⁸¹ Granted, local governments are traditionally subject to the state authority, but direct federal-local cooperation is apparent (education standards, transportation and infrastructure funding, environmental protections, urban aid, and housing policy) and creates a complex terrain of government authority.⁸²

While their broader discussions of democratic and constitutional theory are beyond the scope of this Note, Professors Michael Dorf and Charles Sabel’s perspective on democratic experimentalism—a form of government based on centralized goal-setting

⁷⁸ Id. at 2.

⁷⁹ Id. at 22. Professor Reynolds accepts some balance between the local and the regional: “I hope that this article will add to the normative, doctrinal, and pragmatic case that regionalism can best be accomplished through localism.” Reynolds, *Local Governments*, supra note 51, at 528.

⁸⁰ Buzbee, *Sprawl’s Dynamics*, supra note 16, at 518 (the “tiered federal, state and local authority to deal with public policy is an unavoidable reality.”).

⁸¹ Davidson, supra note 13, at 964-65.

⁸² Id. at 965, 968-75, 1027.

and information-sharing but localized experimentation and implementation⁸³—is insightful for the vertical complexities of transportation policy. Dorf and Sabel begin with processes adopted from the private sector: benchmarking, concurrent experimentation (engineering), and continuous learning by monitoring.⁸⁴ Applied as a model for the public sector, Dorf and Sabel propose what they call a *directly deliberative polyarchy* based on “linked systems of local and inter-local or federal pooling of information,” whereby “citizens in each locale participate directly in determining and assessing the utility of the services local government provides, given the possibility of comparing the performance of their jurisdiction to the performance of similar settings.”⁸⁵ Under this model, the federal government, generally, encourages and coordinates decentralized decisionmaking,⁸⁶ Congress authorizes and funds experimentation;⁸⁷ and administrative agencies assist state and local governments with benchmarking and regulatory standards.⁸⁸

Professor William Buzbee offers a comparative institutional analysis for the sprawl debate.⁸⁹ He asks how sprawl “matches with existing institutions’ jurisdictions or turf,” and finds “pervasive problems of jurisdictional mismatch and the absence of ob-

⁸³ Michael C. Dorf & Charles F. Sabel, A Constitution of Democratic Experimentalism, 98 Colum. L. Rev. 267, 283-84 (1998) (“[W]e need a new model of institutionalized democratic deliberation that responds to the conditions of modern life. . . . The foundation of this architecture would be a new connection between the broad pronouncements of the legislature and the courts, and applications of these pronouncements to particular situations. This connection would have to leave room for experimental elaboration and revision to accommodate varied and changing circumstances, yet credibly limit the opportunities for self-dealing that this very openness of necessity seems to create.”).

⁸⁴ Id. at 287. *Benchmarking* is “an exacting survey of current or promising products and processes which identifies those products and processes superior to those the company presently uses, yet are within its capacity to emulate and eventually surpass.” *Simultaneous* or *concurrent engineering* is a process by which “distinct and effectively independent operating units of the firm, each responsible for one component of the overall project, propose changes to the provisional design based on the units’ respective capacities and take account of implications for their own activities of the changes proposed by others.”

⁸⁵ Id. at 287.

⁸⁶ Id. at 340.

⁸⁷ Id. at 341.

⁸⁸ Id. at 345.

⁸⁹ Buzbee, *Sprawl’s Dynamics*, supra note 16, at 511. Comparative institutional analysis considers, among other things, (1) collective action costs, (2) risks of minority or majority bias in decision-making, (3) constituent goals, and (4) strategic position of stakeholders. Id. at 513-15.

vious policy tools.”⁹⁰ He resolves that we cannot focus on the particular harms or a single institution; rather, we must compare institutions and choose between imperfect alternatives.⁹¹ Rather than wring our hands over determining second-level institutional questions (“who decides who decides”), we should accept that different stakeholders “will fasten upon different goals and institutional preferences, [so] typically no single ‘decider’ will exist. Instead, rational stakeholders will engage in a complex game of action and reaction, with institutions acting as arbiters”⁹²

Policy tools to address sprawl, Buzbee notes, are not easy to find. Technology based regulation such as those used for federal environmental regulation is inappropriate, taxes are politically unpalatable, and the established patterns of development mean that change will not come quickly.⁹³ Buzbee concludes that given the “complex institutional terrain” of sprawl, we must “rel[y] on regulatory strategies that entice participants, rather than prescribe a particular urban form or seek to punish or coerce regulatory targets.”⁹⁴ He calls for a targeted transportation funding scheme to reward regions with land use planning that encourages redevelopment rather than greenfield development, development strategies that encourage transit alternatives, and rewards for regions that decrease vehicle miles traveled per capita.⁹⁵

These policy recommendations offer incremental positive steps that appear workable within the complex federal-state-local terrain. Buzbee’s acceptance of institution-

⁹⁰ Id. at 526.

⁹¹ Id. at 512-13.

⁹² Id. at 520.

⁹³ Id. at 526-27.

⁹⁴ Buzbee, *Institutional Complexity*, *supra* note 11, at 61.

⁹⁵ Id. at 125.

al/jurisdictional mismatch, however, falls short.⁹⁶ The balance of this Note identifies the Metropolitan Planning Organization as an appropriate and existing institutional match for sprawl and proposes to empower MPOs to integrate land use and transportation planning.

II. THE MPO: A NEXUS OF THE VERTICAL AND HORIZONTAL

The modern Metropolitan Planning Organization bridges sprawl's horizontal and vertical complexities. The federally-created regional bodies enjoy devolved decision-making authority for federal transportation funding, facilitate cooperation among local governments and states, and foster federal environmental and planning goals. The basic charge to MPOs is to "develop transportation plans for urbanized areas of the State" that "shall provide for the development of . . . an intermodal transportation system for the State, the metropolitan areas, and the Nation."⁹⁷ To that end, MPOs draft and update long-range (20 year) transportation plans⁹⁸ and shorter-range (3-4 year) project wish-lists, called Transportation Improvement Plans ("TIPs") consistent with the long-range plan.⁹⁹

⁹⁶ Buzbee, *Sprawl's Dynamics*, supra note 16, at 527. Interestingly, Buzbee does discuss the policy of ISTEA and TEA-21 as examples of shifting federal funds away from highways, but he does not discuss the institution of MPOs. *Id.* at 530.

⁹⁷ ISTEA § 134(a); see also TEA-21 § 134 (a)(2)-(3); SAFETEA-LU § 134(c)(1)-(2). For clarity, this Note references the various transportation authorizations according to their common names (ISTEA, TEA-21, and SAFETEA-LU). For more direct reference, however, please see Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA"), Pub. L. No. 102-240, Title I, § 1024(a), 105 Stat. 1955 (1991); Transportation Equity Act for the 21st Century ("TEA-21"), Pub. L. No. 105-178, Title I, § 1203(a) to (m), (o), 112 Stat. 170 to 179 (1998); Pub. L. No. 105-206, Title IX, § 9003(c), 112 Stat. 839 (1998); and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"), Pub. L. No. 109-59, Title VI, § 6001(a), 119 Stat. 1839 (2005).

⁹⁸ ISTEA § 134(g)(2); TEA-21 § 134 (g)(2); SAFETEA-LU § 134(i)(2); As written in SAFETEA-LU, long-range plans are:

An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

⁹⁹ SAFETEA-LU § 134(j).

Federal transportation funds, then, may only go to projects from the TIP.¹⁰⁰ MPOs were formed in the mold of cooperative localism and in line with democratic experimentalism, and thus MPOs attempt to balance the experimentalism and local autonomy of decentralization with the central coordination of federal control.¹⁰¹ Their current existence follows from the normative arguments for devolution: Tieboutian efficiency, pluralism and experimentalism (“laboratories of democracy”), limiting federal power, and promoting democratic engagement.¹⁰²

A. Brief History

One historian traces the lineage of MPOs back to “Progressive Era” New York and efforts such as the formation in 1921 of the Port of New York Authority (now the Port Authority of New York and New Jersey) and the “Regional Plan for New York and Its Environs.”¹⁰³ Through the Great Depression local governments had other things to worry about, but New Deal programs encouraged regional planning for flood control and soil conservation as well as large-scale infrastructure projects.¹⁰⁴ The post-War building boom brought renewed interest in regional planning. Section 701 of the Housing Act of 1954 provided funding for councils of governments and similar regional planning bodies, but while intergovernmental cooperation improved, “many local officials supported re-

¹⁰⁰ ISTEA § 134(h)(3); TEA-21 § 134 (h)(5); SAFETEA-LU § 134(j)(5).

¹⁰¹ See Davidson, *supra* note 13, at 967.

¹⁰² See Davidson, *supra* note 13, at 1006-08.

¹⁰³ Mark Solof, *History of Metropolitan Planning Organizations 7-9* (North Jersey Transportation Planning Authority, 1998) available at http://www.njtpa.org/Pub/report/hist_mpo/documents/MPOhistory1998.pdf (last visited Dec. 11, 2007) [hereinafter *History of MPOs*]; see also Robert D. Yaro, *Growing and Governing Smart: A Case Study of the New York Region* 43, in *Reflections on Regionalism* (Bruce Katz ed., 2000).

¹⁰⁴ Orfield, *American Metropolitcs*, *supra* note 26, at 140-41; *History of MPOs*, *supra* note 103, at 9.

gional planning only to the extent that it would sustain their capacity to accommodate the windfall of development projects coming their way.”¹⁰⁵

With the 1956 Federal Aid Highway Act and its vision for an interstate highway system, there was a need to match federal policy with local input. Thus, the Highway Act of 1962 “made federal highway aid to areas with populations over 50,000 contingent on the ‘establishment of a continuing and comprehensive transportation planning process carried out cooperatively by state and local communities.’”¹⁰⁶ The statutes have retained that language for a “continuing, cooperative, and comprehensive” planning process.¹⁰⁷ The Act initially garnered optimism as a new model for transportation planning, but subsequent years revealed weaknesses in implementation, and highway construction barreled on.¹⁰⁸ Meanwhile, federal urban policies of the 1960s gave regional bodies new responsibilities such as environmental and transportation planning. In larger metro areas, regional bodies strengthened, but in smaller regions, power remained in state capitals.¹⁰⁹

In the wake of urban renewal and suburban expansion, a coalition formed to revise federal highway funding. The 1973 Highway Act¹¹⁰ allocated funds from the Highway Trust Fund to the new “Metropolitan Planning Organizations” to be established for urbanized areas with more than 50,000 residents.¹¹¹ Newly created MPOs had to include local elected officials but took a variety of forms including “extensions of existing regional bodies, newly created freestanding agencies or, in the smallest urban areas, com-

¹⁰⁵ History of MPOs, *supra* note 103, at 14; see also Orfield, *American Metropolitcs*, *supra* note 26, at 140-41.

¹⁰⁶ Orfield, *American Metropolitcs*, *supra* note 26, at 142; History of MPOs, *supra* note 103, at 15; Goldman & Deakin, *supra* note 140, at 49.

¹⁰⁷ ISTEA § 134(a); TEA-21 § 134 (a)(4); SAFETEA-LU § 134(c)(3).

¹⁰⁸ History of MPOs, *supra* note 103, at 16.

¹⁰⁹ See Orfield, *American Metropolitcs*, *supra* note 26, at 142-44; History of MPOs, *supra* note 103, at 17.

¹¹⁰ Federal Aid Highway Act of 1973, Pub. L. No. 93-87 (1973).

¹¹¹ Orfield, *American Metropolitcs* *supra* note 26, at 141, 144; History of MPOs, *supra* note 103, at 21.

mittees staffed by state or county employees.”¹¹² The central responsibility of these new MPOs was to formulate the Transportation Improvement Program, the three- to five-year agenda of transportation projects for the region. Notably, “[f]or the first time, both highway and transit projects had to be included in a single planning document and state and local agencies were required to gain approval of regional agencies—MPOs—to obtain federal transportation funds.”¹¹³

MPOs were met with opposition from state and local governments who disliked the shift of power, transportation officials who already faced budget shortfalls and project backlogs, and the public who often opted for road-building projects over multimodal alternatives.¹¹⁴ With the Reagan administration came cuts to regional planning requirements and funding. MPOs survived, but many were relegated to “rubberstamping the decisions of state agencies.”¹¹⁵ Withering federal support forced MPOs to shift priorities and strengthen relationships within their regions.¹¹⁶

B. Shift in Transportation Planning

Through the 1980s, as MPOs languished, America’s metropolitan areas exploded with a suburban housing boom. Related traffic congestion and poor air quality raised concerns about the pace and form of development.¹¹⁷ In 1991 with the Intermodal Surface Transportation Efficiency Act, or ISTEA, Congress marked the end of the Interstate

¹¹² History of MPOs, *supra* note 103, at 23.

¹¹³ *Id.* at 23-24.

¹¹⁴ *Id.* at 24.

¹¹⁵ *Id.* at 26; U.S. Advisory Commission on Intergovernmental Relations, *MPO Capacity: Improving the Capacity of Metropolitan Planning Organizations to Help Implement National Transportation Policies*, Commission Report A-130, 15 (May 1995) [hereinafter *MPO Capacity*].

¹¹⁶ Orfield, *American Metropolitcs*, *supra* note 26, at 146.

¹¹⁷ History of MPOs, *supra* note 103, at 29.

era¹¹⁸ and charted a new course of transportation policy. ISTEA acknowledged the regional nature of certain problems and the need for centralized accountability, it addressed the vertical complexities of transportation, and it embraced ideals of localism with devolution that allowed flexibility, efficiency, and participation in implementation. It echoed some of the underlying ideas of Dorf and Sabel's democratic experimentalism: central coordination, local experimentation. As stated in the House Report:

The process is designed to achieve the goals and objectives of the Federal surface transportation program and other important Federal programs, recognizes the central role that the states play in administering the Federal program, recognizes the special needs and expertise of urbanized areas, and is designed to be flexible enough to accommodate the different needs and circumstances that exist among the states.¹¹⁹

Senator Moynihan's Introductory Statement to the Senate Report that accompanied ISTEA accepted the regional nature of transportation problems: "[E]mployment and activity centers are often spread throughout metropolitan areas and no longer concentrated in the central city. More trips now are generated from the less dense portion of metropolitan regions."¹²⁰ With regard to sustainability and emissions, he acknowledged that "[a]ir pollution is a trans-boundary problem, and often involves areas much beyond the traditional urbanized area . . . [and,] it is imperative that air quality attainment and transportation planning be coordinated in these metropolitan regions."¹²¹ Thus, ISTEA

¹¹⁸ S. Rep. 102-171 at 4 (1991).

¹¹⁹ H.R. Rep. 102-171(I) at 25 (1991).

¹²⁰ S. Rep. 102-171 at 28 (1991).

¹²¹ *Id.*

reflected the regionalist perspective of matching an issue to the level of government that can encompass the issue.¹²²

The House Report highlighted national concerns including energy efficiency, energy independence, and air pollution.¹²³ Economic vitality was another central concern: “Just as the Interstate Highway System fueled the economic growth of our Nation over the last 35 years, so this national intermodal transportation policy will do the same in the next century.”¹²⁴ Given the nature of these issues—regional, if not national—ISTEA set goals centrally.

Recognizing the vertical complexities of transportation policy in our federal system, ISTEA created an institutional form to balance between centralized authority and local autonomy.¹²⁵ As Senator Moynihan pointed out, ISTEA “acknowledge[d] the need for careful oversight and review of decisions made through such enhanced authority to ensure that the intent of the legislation's planning requirements are fulfilled.”¹²⁶ ISTEA authorized several sticks to coerce compliance with new planning requirements. If an MPO planning process failed to be certified, for instance, the Secretary could withhold up to 20 percent of transportation funds attributable to that metropolitan planning area.¹²⁷ In

¹²² Paul Stephen Dempsey, *Transportation: A Legal History*, 30 *Transp. L.J.* 235, 319 (2003) (“All this gave transportation planning a new perspective. The interstate and inter-regional ‘top-down’ highway planning process of the federal and state governments, respectively, and the localized ‘bottom-up’ street and road planning process of the cities and counties, would now be coupled with a third regional process which was a bit of both, expanded beyond highways, streets and roads into a comprehensive transportation process that took into account all modes, as well as a number of related social, economic, and environmental issues.”)

¹²³ H.R. Rep. 102-171(I) at 8 (1991).

¹²⁴ *Id.* at 16.

¹²⁵ “Rather than removing all national focus from the program and permitting balkanization among the states, the Committee believes that the right balance between these competing concerns is to have a national focus in the bill in order to most effectively advance the national goals of integrating the nation and moving goods and people in interstate and foreign commerce, while providing states sufficient flexibility to meet their unique problems.” H.R. Rep. 102-171(I) at 6 (1991).

¹²⁶ S. Rep. 102-171 at 31 (1991).

¹²⁷ ISTEA § 134(i)(5); retained at TEA-21 § 134 (i)(5)(c); and then SAFETEA-LU § 134(k)(5)(C).

regions designated nonattainment areas under the Clean Air Act (“CAA”), federal funds could be barred for projects promoting single-occupancy vehicle use.¹²⁸

Balancing against that central authority, ISTEA took a striking new direction in transportation policy, incorporating localist ideals and devolving decisionmaking authority.¹²⁹ In his statement upon signing ISTEA, President George H.W. Bush highlighted the devolution: “The day has clearly come for the Federal government to step back and let its partners play the lead role, as this law provides.”¹³⁰ The House Committee, too, was clear about its support, writing that “one of the most important things this legislation can do is give state and local officials the flexibility to make the crucial decisions on how their funds should be used. They will have the ability to choose the best transportation solution without the artificial constraints of funding categories.”¹³¹ The House Report went on to highlight concerns about “the increased responsibilities being placed on planners in light of new Federal requirements regarding air quality and accessibility of transportation systems to the disabled, and the expanded expertise planners would need to handle these new mandates.”¹³²

¹²⁸ The statute reads: “Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single-occupant vehicles unless the project is part of an approved congestion management system.” ISTEA § 134(l); TEA-21 § 134 (l); SAFETEA-LU § 134(m).

¹²⁹ As outlined in MPO Capacity, supra note 115, at iii:

“ISTEA brought *three new, far-reaching philosophies* to the administration of federal surface transportation programs:

1. Decentralization of decisionmaking to the state and local governments, and particularly to the MPOs in the larger metropolitan areas of 200,000 population or more;
2. Stronger environmental connections, especially to the Clean Air Act; and
3. Elevation of nontraditional goals and stakeholders to new prominence in the planning and decisionmaking processes.”

¹³⁰ 1991 U.S.C.C.A.N. 1865 (Dec. 18, 1991) (Statement by President George H.W. Bush upon signing H.R. 2950).

¹³¹ H.R. Rep. 102-171(I) at 6 (1991).

¹³² H.R. Rep. 102-171(I) at 25 (1991).

At its root the discussion of flexibility goes back to the localist arguments for participation, government responsiveness, tailored policies, and appropriate resource allocation at the local level.¹³³ “When the federal highway program began, road funds were spent solely by state DOTs, which received federal apportionments directly. Beginning with ISTEA, however, metropolitan decisionmakers were given direct authority over a portion of these funds.”¹³⁴ Through the newly empowered MPOs, Congress hoped for increased participation.¹³⁵ And, efficiency of investments was a central concern: “If we will learn from the past and think about the future we must get more for our money. Given that investment is declining, and that it is not likely to rise anytime soon, it follows that the surpassing theme of the post-Interstate period must be efficiency.”¹³⁶

For all of the theoretical underpinnings, though, there were questions of MPO capacity. ISTEA greatly expanded the role of MPOs with new organization, new processes, and new implementation.¹³⁷ ISTEA doubled funding for MPO operations, broadened public participation,¹³⁸ and sought to put MPOs on equal footing with state DOTs.¹³⁹ And yet, many MPOs had no substantial authority from state or local governments, they

¹³³ Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. Pa. L. Rev. 1519 (1982).

¹³⁴ Sanchez, *supra* note 17, at 2.

¹³⁵ S. Rep. 102-171 at 28 (1991) (“Local governments not previously involved in the planning process will have the opportunity to participate.”).

¹³⁶ S. Rep. 102-171 at 6 (1991).

¹³⁷ Again, as outlined in MPO Capacity, *supra* note 115, at iii:

“ISTEA *greatly expanded the responsibilities* of MPOs in three fundamental respects:

1. The MPO organization must be more inclusive and linked more strongly with other organizations and the public.
2. The MPO planning process must be considerably broader in scope, fully intermodal, more advanced technologically, more outcome oriented, and more open to interaction with decisionmakers and affected parties.
3. A new implementation role is established for MPOs that are designated as Transportation Management Areas. These MPOs (about 137 of them, mostly with populations over 200,000) will determine how to spend about 20 percent of ISTEA funds, making them more responsible for planning results (outcomes). They must be federally certified every three years.”

¹³⁸ ISTEA § 134(g)(3); TEA-21 § 134 (g)(3); SAFETEA-LU § 134(i)(3).

¹³⁹ Bruce McDowell, *Improving Regional Transportation: MPOs and Certification* 12 (1999); *History of MPOs*, *supra* note 103, at 30-31; Goldman & Deakin, *supra* note 140, at 47.

lacked the technical expertise necessary to carry out ISTEA requirements, and the limited scope of MPOs (transportation planning with little consideration of land use, housing, and economic development) meant limited effectiveness at reaching true regional solutions.¹⁴⁰

Nevertheless MPOs had to evolve into their new roles. The 1998 reauthorization, the Transportation Equity Act for the 21st Century (“TEA-21”), retained the basic decision-making framework from ISTEA with some efforts to streamline. TEA-21 increased accountability through more public participation requirements, but it also lessened the planning factors for MPOs to consider in transportation planning and stripped some judicial review of planning decisions.¹⁴¹ Criticisms continued regarding excessive state control¹⁴² and MPO capacity,¹⁴³ but MPO legislation remained.

C. Toward Integrated Planning

ISTEA was noteworthy for its new balance between federal, state, and local interests, and its shift toward intermodal transportation planning. A strong criticism, though, was the failure to address and coordinate land use with transportation.¹⁴⁴ From the start

¹⁴⁰ Todd Goldman & Elizabeth Deakin, *Regionalism Through Partnerships? Metropolitan Planning Since ISTEA*, 14 *Berkeley Planning J.* 46, 47 (2000); *MPO Capacity*, *supra* note 115, at 16.

¹⁴¹ Benjamin K. Olson, *The Transportation Equity Act for the 21st Century: The Failure of Metropolitan Planning Organizations to Reform Federal Transportation Policy in Metropolitan Areas*, 28 *Transp. L.J.* 147, 156, 161-64 (2000-01).

¹⁴² Goldman & Deakin, *supra* note 140, at 56, note that it took time for MPOs and SDOTs to adjust to the new power arrangement. Indeed, some states overtly undercut the new role of MPOs. Olson, *supra* note 143, at 147-48, argued that efforts under ISTEA and TEA-21 to reform transportation planning failed because “they failed to provide MPOs with sufficient independence from state governments and failed to impose strong planning requirements and federal oversight, which could have counteracted the dependence of MPOs on state governments.”

¹⁴³ Goldman & Deakin, *supra* note 140, at 52, point out that MPOs still had limited capacity and were left to build partnerships to accomplish anything. As pointed out by Janice C. Griffith, *Regional Governance Reconsidered*, 21 *J.L. & Policy* 505, 536 (2005), MPOs cannot effectuate their plans; the Atlanta Regional Commission’s plans to expand Atlanta’s mass transit system (MARTA) was never implemented.

¹⁴⁴ Orfield, *American Metropolitcs*, *supra* note 26, at 149-50

Senator Moynihan emphasized the need to “assur[e] the consistency of transportation plans with land use plans.”¹⁴⁵ And ISTEA actually included a requirement to “*consider . . . the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans,*”¹⁴⁶ but the requirement was weak and the language was removed in TEA-21.¹⁴⁷ A mid-1990s study of MPO capacity found the connection between land use and transportation as a key topic, but the report stopped short of a proposal to integrate, settling instead on relationship-building and further research.¹⁴⁸ A 2002 report by the Government Accountability Office found that “[m]any MPOs and state air quality managers do not participate in land use assessments principally because they are not required to do so and because most believe they have limited influence, since land use decisions fall under the jurisdiction of local governments.”¹⁴⁹ The link between land use and transportation “remain[ed] elusive.”¹⁵⁰

Even without federal requirements some MPOs have attempted to link transportation and land use, but “few regions can point to more than the occasional collaborative land use-transportation planning effort.”¹⁵¹ MPOs have been relegated to mere “facilitators” rather than “leaders” for coordinated planning.¹⁵² They were limited to educational or reactive efforts: increasing awareness, supporting larger community-based initiatives, and capitalizing on (already) available opportunities.¹⁵³ And, some MPOs have been li-

¹⁴⁵ S. Rep. 102-171 at 29 (1991).

¹⁴⁶ ISTEA § 134(f)(4) (emphasis added).

¹⁴⁷ Goldman & Deakin, *supra* note 140, at 60-61.

¹⁴⁸ MPO Capacity, *supra* note 115, at 19(Box 4), 23 (Box 11), & 59-60 (Appendix B).

¹⁴⁹ U.S. General Accounting Office, Environmental Protection: Federal Incentives Could Help Promote Land Use That Protects Air and Water Quality, GAO-02-12, SUPRA NOTE 151, 35 (October 2001).

¹⁵⁰ MPO Capacity, *supra* note 115, at 50.

¹⁵¹ Goldman & Deakin, *supra* note 140, at 62.

¹⁵² Association of Metropolitan Planning Organizations (AMPO), Noteworthy MPO Practices in Transportation-Land Use Planning Integration, 1 (April 2004, prepared by Wilbur Smith Associates).

¹⁵³ *Id.* at 10-13.

mitted to small projects rather than regional-level efforts.¹⁵⁴ Even in Portland, an oft-cited region for innovative planning, efforts were limited by fragmentation: “[the] directly elected metropolitan government has land use responsibilities, [but] the region’s MPO is a separate functional body with a COG [council of governments] structure.”¹⁵⁵

TEA-21 expired in September 2003, but the Federal-aid program continued through a series of short-term extensions.¹⁵⁶ The Senate Report accompanying reauthorization legislation acknowledged the lingering problems of transportation efficiency, but testimony indicated that overall TEA-21 worked,¹⁵⁷ and Congress did not seek wholesale changes to the existing program.¹⁵⁸ In 2005, President George W. Bush signed the clumsily named Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU,” pronounced ‘safety lu’), a transportation act that retained much of the structures and processes for MPOs.

To an extent SAFETEA-LU sought more integrated transportation planning. In addition to the ubiquitous policy goals found in ISTEA and TEA-21 (“promote safe and efficient . . . surface transportation systems”), SAFETEA-LU includes the goal to “en-

¹⁵⁴ Id. supra note, at 20 (“In some cases, [Atlanta Regional Commission] stakeholders felt that [the Livable Communities Initiative] gave inappropriate amounts of time and attention to small transportation improvement projects that did not directly support or enhance the wider system.”).

¹⁵⁵ Goldman & Deakin, supra note 140, at 61.

¹⁵⁶ S. Rep. No. 109-53, at 2 (2005)

¹⁵⁷ The statement on behalf of the National League of Cities expressed support of relationships established by ISTEA and TEA-21: “The empowerment of Metropolitan Planning Organizations (MPOs) in ISTEA in 1991 created new partnerships among federal, state and local governments. MPOs ensure a more equal relationship between local and state governments in both the planning and funding decisions for transportation projects. We seek to preserve and strengthen this partnership in the process of TEA 21 reauthorization. It is important that all levels of government, no matter how small, play a part in the process.” Programs Reauthorization: Testimony, Before the Subcomm. on Highways and Transit of the H. Comm. on Transportation and Infrastructure, __th Cong. (September 19, 2002) (statement of John DeStefano, Mayor, New Haven, Connecticut, on behalf of the National League of Cities) 2002 WL 31097747 (F.D.C.H.)

¹⁵⁸ S. Rep. No. 109-53, at 2, 3 (2005). “Despite the historic increase in highways investment following enactment of TEA-21, operational performance has declined. For example, a trip that would have taken 25 minutes during congested periods in 1987 now [in 2005] takes an additional 5 minutes. While increased capital investment is one way to address this issue, we must also consider ways to better manage the existing system.” The report encouraged alternatives such as traffic information technology, intercity bus service, and HOT Lanes (charging single occupants a toll to use High Occupancy Lanes). Id. at 3.

courage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators.”¹⁵⁹ Following existing language about inter-state and inter-MPO planning coordination, SAFETEA-LU adds notable new coordinating language:

The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area¹⁶⁰

Importantly, and distinct from previous versions, SAFETEA-LU requires long-range plans to consider types of and locations for environmental mitigation, in consultation with related wildlife, land management, and regulatory agencies.¹⁶¹

With reauthorization approaching, land use integration remained a topic of interest. In March 2003, the Brookings Institution Series on Transportation Reform identified

¹⁵⁹ SAFETEA-LU § 134(a)(2).

¹⁶⁰ Id. at § 134(g)(3).

¹⁶¹ Id. at § 134(i)(2)(B):

“(i) Mitigation activities.--A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

“(ii) Consultation.--The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

reauthorization as a “special chance” to leverage federal investment and recommended two policy changes:

First, metropolitan long-range planning requirements should contain a provision requiring the consideration of alternative regional land use scenarios incorporating policy goals or regional visions rather than simply extrapolating from past trends. Secondly, a key criterion for allocating transit funding should be the consistency of local land use plans and zoning codes with transit-supportive land uses.¹⁶²

Continuing, the report recommended “that federal funds for the provision of key infrastructure (such as transit facilities or bridges) be tied to requirements for transit-supportive design, and should provide guidelines on the functional integration of transit and the surrounding uses.”

While SAFETEA-LU did take steps toward integration of transportation and land use, it stopped short of any substantial change. SAFETEA-LU includes a consistency requirement similar to what was in ISTEA but cut by TEA-21; the current law calls simply for transportation plans to “promote consistency between transportation improvements and State and local planned growth and economic development patterns.”¹⁶³ In outlining the requirements for developing long-range transportation plans, SAFETEA-LU adds requirements for consultation with “State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.”¹⁶⁴ “Consultation,” though, is limited in effect. To sufficiently integrate plan-

¹⁶² Bruce Katz, Robert Puentes, and Scott Bernstein, TEA-21 Reauthorization: Getting Transportation Right for Metropolitan America, The Brookings Institution Series on Transportation Reform 13 (March 2003), available at http://www.brookings.edu/reports/2003/03transportation_katz.aspx.

¹⁶³ SAFETEA-LU § 134(h)(1)(E).

¹⁶⁴ SAFETEA-LU § 134(i)(4).

ning, federal legislation must broaden the role of MPOs to include land use as well as transportation planning.

The problem, though, is that land use authority remains stubbornly within the purview of local governments.¹⁶⁵ Used to enclose desired “communities” and exclude undesirables, the use of zoning in fragmented regions has created strong financial and political interests in preserving the current system. Concentrated interests and influence of real estate, transportation, and construction industries, combined with the desire of most elected officials to provide new services, generally ensures sprawling development patterns.¹⁶⁶ Any change to the current entitlements (legal, political, or market-based) will be met with strong opposition.¹⁶⁷ In a word, the problem is parochialism.

While entrenched local interests have little incentive to alter the current land use regime, many parties (federal, state, and citizen) have strong incentives to address the ills of sprawl and create a more efficient transportation system. As it is, federal law already influences metropolitan growth patterns: “[A]n increased federal role seeking to address or to deter sprawl or its ills would constitute a change in federal policy, but would not constitute a wholly new entry into field of law and regulation influencing urban form.”¹⁶⁸ Professor Davidson suggests the role of the federal judiciary in remedying parochialism for issues such as land use problem;¹⁶⁹ *Hills v. Gautreaux* in particular is offered as a template of judicial imposition of regional solutions for parochialism.¹⁷⁰ Alternatively,

¹⁶⁵ Buzbee, *Sprawl’s Dynamics*, supra note 16, at 531.

¹⁶⁶ Buzbee, *Institutional Complexity*, supra note 11, at 79-84.

¹⁶⁷ Buzbee, *Sprawl’s Dynamics*, supra note 16, at 525.

¹⁶⁸ Buzbee, *Institutional Complexity*, supra note 11, at 98.

¹⁶⁹ “There is a distinct national interest in fostering regional policymaking for areas of policy best addressed below the state level and above the purely local, or those involving regional issues that transcend state-created local boundaries.” Davidson, supra note 13, at 1028-29.

¹⁷⁰ 425 U.S. 284 (1976); Davidson, supra note 13, at 1029 (In that case, public housing had been systematically constructed exclusively in Chicago’s African-American wards for years. The Supreme Court upheld

while the U.S. Supreme Court is no longer a rubber stamp for Commerce Clause justifications, conditional federal spending is still a useful tool for federal policy.¹⁷¹ As an institution, the MPO already addresses the inherent vertical complexities of transportation and land use and fosters the balance between central goal-setting and local experimentation and implementation. The MPO thus is “a natural candidate” for broader regional governance.¹⁷²

III. A NEW VISION FOR THE MPO

Given the mounting challenges for our metropolitan regions and the need to integrate transportation and land use planning, this Part outlines a proposal for federal incentives to strengthen MPOs to be forums for regional land use and transportation policy. Rather than create a new institution as recommended by Professor Frug,¹⁷³ this proposal builds off of the existing regional institution, the MPO, to form a practical solution. In particular, the proposal calls for collaboratively-created Regional Corridor Plans to integrate transportation investments with local land use planning. Increased authority and funding, though, requires increased accountability. Thus, the proposal includes reforms for public participation in administrative processes and proportional representation for MPO boards.

Such a proposal will, no doubt, garner criticism. Localists, regionalists, and critics of MPOs have their reservations, and I address each in turn. Broadly, though, the

a metropolitan-wide, judicially-supervised remedy, and because the federal department of Housing and Urban Development was involved, local boundaries were less relevant.)

¹⁷¹ Buzbee, *Institutional Complexity*, supra note 11, at 99-103. “[M]any safety, health, and environmental-oriented laws use the coercive clout of highway funding cutoffs . . . to enlist state and local governments in working to achieve goals first articulated in the federal legislature.” *Id.* at 109.

¹⁷² Orfield, *American Metropolitcs*, supra note 26, at 149.

¹⁷³ Frug, *Citymaking*, supra note 47, at 85-89, 106-09; see also Frug, *Beyond Regional Government*, supra note 76.

mounting challenges of metropolitan areas demand solutions, and federal incentives to strengthen MPOs will be a significant and practical step in the right direction.

A. Shoring Up MPOs

Before delving into specific changes, a more general look at the institutional structure is appropriate. MPOs are “designated for each urbanized area with a population of more than 50,000 individuals,” and established by agreement between the Governor and local governments representing at least 75 percent of the affected population, including the largest (central) city, or in accordance with local or State procedures.¹⁷⁴ The boundaries of each metropolitan planning area are determined by agreement between the MPO and the Governor and must encompass “at least the existing urbanized area [designated by the Census Bureau] and the contiguous area expected to become urbanized within a 20-year forecast for the transportation plan.”¹⁷⁵ Under SAFETEA-LU, designation of new “urbanized” areas by the Census Bureau does not require redesignation of the MPO.¹⁷⁶ An effort is made to prevent multiple MPOs within a region—designation of more than one is allowed “only if the Governor and existing [MPO] determine that the size and complexity” of the metropolitan area demand more than one MPO.¹⁷⁷ Nevertheless, some metropolitan regions have multiple MPOs, particularly in Florida.¹⁷⁸ Interstate coordination is encouraged, but predictably difficult.¹⁷⁹ Because regional coverage

¹⁷⁴ ISTEA § 134(b)(1); TEA-21 § 134 (b)(1); SAFETEA-LU § 134(d)(1).

¹⁷⁵ SAFETEA-LU § 134(e); ISTEA § 134(c); TEA-21 § 134 (c)

¹⁷⁶ *Id.* at § 134 (e)(3).

¹⁷⁷ *Id.* at § 134(d)(6); ISTEA § 134(b)(6); TEA-21 § 134 (b)(6)

¹⁷⁸ Goldman & Deakin, *supra* note 140, at 57-58; Interview with Harrison Rue, Executive Director, Thomas Jefferson Planning District Commission [Charlottesville MPO], (Dec. 17, 2007).

¹⁷⁹ SAFETEA-LU § 134 (f).

is essential for MPOs to bridge horizontal fragmentation and effectively integrate transportation and land use planning, incentives should encourage a single MPO for a region.

The role of state departments of transportation (“SDOTs”) remains contentious; some critics complain that although ISTEA aimed to devolve transportation decisionmaking, SDOTs retain ultimate authority.¹⁸⁰ At the heart of the power struggle, unsurprisingly, is money (funds filter through the states to MPOs).¹⁸¹ In California, the SDOT directs 75 percent of its federal and state transportation funds directly to MPOs; other SDOTs retain much more control.¹⁸² And various SDOT biases “penalize metropolitan areas in the allocation of transportation money.”¹⁸³ To circumvent state interference, some federal funds should flow directly to the MPO and funds should be set aside for larger MPOs.¹⁸⁴

In addition to money, other state actions have significant impacts on MPO planning. States can and should play a constructive role in coordinating transportation and land use. California has taken steps to tie MPO planning with state-level investments.¹⁸⁵ In contrast, some states impose distinct state planning requirements creating inefficiencies in the planning process. Virginia’s required six-year plan does not match the five-year revisions required for the federal TIP, and Texas requires separate, state-created au-

¹⁸⁰ Katz et al., TEA-21 Reauthorization, *supra* note, at 5 (“Although ISTEA and TEA-21 were designed to move transportation decisionmaking out of the back rooms and board rooms of the highway establishment, many state DOTs still wield considerable formal and informal power, and retain authority over substantial state transportation funds.”)

¹⁸¹ Interview with Harrison Rue, *supra* note 178.

¹⁸² Sanchez, *supra* note 17, at 3.

¹⁸³ Katz et al., TEA-21 Reauthorization, *supra* note 164, at 6.

¹⁸⁴ Interview with Harrison Rue, *supra* note 178.

¹⁸⁵ *Id.*

thorities to do work comparable to the MPOs.¹⁸⁶ Such inefficiencies hurt the whole system and deserve further investigation.

B. Greater Authority: A Proposal for Land Use Integration

So how might transportation and land use be integrated? For this discussion I borrow a framework for institutional analysis from Professor Arthur Nelson. He outlined five elements of institutions that effectively make land use decisions consistent with broader state interests: (1) presence of clear objectives, (2) provision of technical assistance, (3) allowance of local experimentation for appropriate and innovative solutions, and (4) incentives and sanctions.¹⁸⁷ That framework guides my proposal for integrating land use and transportation in a strengthened MPO.

1. Clear Objectives

The simple objective is to coordinate land use and transportation. Certain localities have taken small steps in that direction and offer models for broader application.¹⁸⁸ Officials in the Denver metropolitan region use growth boundaries, urban centers, and transit-oriented development, as well as official compacts among local governments.¹⁸⁹

¹⁸⁶ Id.

¹⁸⁷ Arthur C. Nelson, *New Kid in Town: The Georgia Regional Transportation Authority and Its Role in Managing Growth in Metropolitan Georgia*, 35 *Wake Forest L. Rev.* 625, 637 (2000). Professor Nelson outlined this framework with regard to the Georgia Regional Transportation Authority, state-level transportation body created in 1999 amid concerns of sprawl and funding cuts due to CAA noncompliance.

¹⁸⁸ Communities across the country have pursued, to varying extents, integration of land use and transportation. See, e.g., Southern California Association of Government, *Major Regional Corridor Planning*, available at <http://www.scag.ca.gov/corridor/> (last visited Jan. 29, 2007); Northern Colorado Regional Communities, *I-25 Corridor Plan*, available at <http://www.i25corridorplan.com/index.html> (last visited Jan. 29, 2007); Greater Portland (Me.) Council of Government, *Regional Corridor Coalitions*, available at http://www.gpcog.org/Transportation_and_Land_Use/Regional_Corridor_Coalitions.php (last visited Jan. 29, 2007).

¹⁸⁹ George J. Scheuernstuhel, *Land Use and Transportation in the Denver Region 48*, in *Transportation Research Board of the National Academies, Conference Proceedings 39: The Metropolitan Planning Organi-*

The Mile High Compact is an agreement among (most) local governments in the region to align local comprehensive planning with the regional land use plan (Metro Vision Plan), to adopt the growth boundary, and to use dispute resolution for land use conflicts.¹⁹⁰ The Metro Vision Plan is supported by a Regional Transportation Planing the types and levels of service provided to various areas. The TIP, then, outlines the transportation projects identified by the regional planning process.¹⁹¹

In the region around Charlottesville, Virginia, the MPO makes efforts to work with local governments to coordinate land use and transportation planning. Places29 is a planning process undertaken as a joint project between Albemarle County, the Virginia Department of Transportation, and the Thomas Jefferson Planning District Commission (the MPO) to redevelop the typical suburban sprawl and redesign the transportation corridor along U.S. Route 29, north of Charlottesville.¹⁹² The process includes transportation studies, charrettes (public forums for planning), and stakeholder meetings,¹⁹³ and the resulting plan will be incorporated into both the county's Comprehensive Plan and the MPO's Transportation Improvement Program.¹⁹⁴

zation, Present and Future 48, available at <http://onlinepubs.trb.org/onlinepubs/conf/CP39.pdf> (last visited Dec. 11, 2007).

¹⁹⁰ Id. at 49.

¹⁹¹ Id. at 49.

¹⁹² Albemarle County Department of Community Development, Info Sheets 1: Places29 Overview, available at <http://www.albemarle.org/departments.asp?department=planning&relpage=6916> (last visited Apr. 10, 2007) [hereinafter Info Sheet].

¹⁹³ Info Sheet 1: Places29 Overview, *supra* note 203; Albemarle County Board of Supervisors Agenda, Executive Summary, Update on Places29, Endorsement of Vision and Guiding, Feb. 1, 2006, available at http://www.co.albemarle.va.us/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Agenda/2006Files/20060201/Places29execsummary.htm.

¹⁹⁴ Info Sheet 9: Implementation, *supra* note 203.

Just as Denver’s regional plans outline types and levels of transportation service, Places29 ties certain road designs to certain land use districts (see Places29 image at right). The plan explicitly states that “parkways” are rural thoroughfares designed for long-distance travel in rural areas and to connect separate neighborhoods. In the more urban districts, “streets”



are intended for local, slow movement, and “boulevards” are appropriate for thoroughfares.¹⁹⁵ The Charlottesville MPO only covers a small metropolitan region and Places29 does not address horizontal fragmentation; nevertheless, the match between local zoning and regional transportation planning offers an important model for other MPOs, large and small.

In order to support and replicate the innovation of places like Denver and Charlottesville, I propose that federal legislation and funding should facilitate each MPO, in coordination with local governments, to create what I will call Regional Corridor Plans (“RCPs”)¹⁹⁶—integrated plans to coordinate local land use, TIPs, and long-range transportation plans. These Corridors should be identified on the long-range transportation plan as the major transportation arteries supported by federal funds and the surrounding land likely to undergo new development or redevelopment. RCPs will not specify the exact location or land uses, but through a collaborative process, will broadly identify areas appropriate for (re)development as activity centers. Activity centers, or urban centers,

¹⁹⁵ Info Sheet 2: Transportation, *supra* note 203.

¹⁹⁶ I do not claim to coin this term. A similar corridor plan is discussed in Scheuernstuhl, *supra* note, at 200, and Robert D. Vander Lugt & Salil Virkar (Virginia Transportation Research Council), *Coordination of Transportation Planning and Land Use Control: A Challenge for Virginia in the 21st Century*, Report No. VTRC 91-R10, 33 (June 1991). See also, *infra* note 188.

shall be understood as mixed-use districts where development patterns allow transit, pedestrian, and bicycle alternatives.¹⁹⁷ Such developments—following the Ahwahnee Principles discussed in the Introduction—represent a shift from traditional suburban development. They can and are happening in various communities, but such developments depend on the complementary transportation alternatives. For RCPs, exact design guidelines will be left to the community. Accompanying transportation plans will reflect appropriate types and levels of transportation service for those uses identified on the corridor plan.¹⁹⁸

The planning process for the RCPs, I suggest, should match the timing of long-range transportation planning, incorporate public participation, foster consultation with localities and major stakeholders, and allow formal public comment. The RCP shall receive comments from the MPO Technical Board and approval from the Policy Board, and every four years the planning process shall be certified by the federal Secretary of Transportation, along with the transportation planning process.¹⁹⁹

Once approved by the MPO Policy Board, the Regional Corridor Plan will provide the framework for more specific Local Corridor Plans, created by the local governments (individually or in coordination). These local plans, in turn, shall be recommended by the MPO Technical Committee and certified by the MPO Policy Board as compliant with the Regional Corridor Plan. Substantively, Local Corridor Plans will identify the land use framework for for transit-oriented developments and/or transit-ready develop-

¹⁹⁷ Scheuernstuhl, *supra* note 200, at 48.

¹⁹⁸ Denver's Regional Transportation Plan offers similar outlines. *Id.* at 49.

¹⁹⁹ SAFETEA-LU § 134(k)(5).

ments: mixed-uses, diverse housing types, pedestrian-friendly plans, an urban-type street grid, and allowance for future accommodation of transit.²⁰⁰

2. Technical Assistance

The proposed integrated planning requires significant community participation, technical expertise, and resources. Assistance is required at two levels: from federal/state to regional bodies and from regional to local bodies. Given the variety of needs and the diversity of MPOs, federal support can and should take several forms. For MPOs with smaller capacity, federal agencies (EPA, DOT, etc.) should provide technical support to facilitate community workshops and technical modeling for the regional corridor planning process.²⁰¹ For larger MPOs with greater technical staff and resources, straight financial support may be more appropriate. Support must also flow from MPOs to localities, so MPOs must be empowered to assist localities with participatory planning for Local Corridor Plans and legal and regulatory reforms to facilitate implementation.²⁰²

²⁰⁰ Harrison B. Rue, *Creating an Agency Action Agenda: Linking Land Use, Transportation, Economy, and Environment*, in *Transportation Research Board of the National Academies, Conference Proceedings 39: The Metropolitan Planning Organization, Present and Future* 50, 52-53, available at <http://onlinepubs.trb.org/onlinepubs/conf/CP39.pdf> (last visited Dec. 11, 2007).

²⁰¹ Interview with Harrison Rue, *supra* note 178; see also U.S. GAO-02-12, *supra* note 151, at 78 (proposing federal action promote consideration of land use on environmental protection efforts: "(1) financial incentives to promote collaboration among transportation, environmental, and land use decisionmakers on protective land management strategies; (2) technical assistance, such as access to staff, data, methods, and models, to assess and mitigate the impacts of different land uses on air and water quality; and (3) the education of local governments and the public on ways to limit these impacts.")

²⁰² U.S. GAO-02-12, *supra* note 151, at 80-81. "The panel of experts identified an additional role for the federal government in promoting protective land use strategies.

- *Legal and regulatory reforms.* The federal government could encourage states and localities to reform outdated planning laws that hinder efforts to conduct comprehensive land use planning, especially planning that considers environmental impacts.
- *Support for comprehensive planning.* Agencies could also help to promote comprehensive land use planning that considers environmental impacts and involves all key stakeholders, such as local government officials and the public. Furthermore, agencies could encourage communities, as they devise comprehensive watershed plans, to incorporate measures to gauge actual progress in reducing pollution rather than focusing on the number of activities accomplished, such as the number of permits issued."

3. Allowance of Local Experimentation for Appropriate and Innovative Solutions

Echoing Professors Dorf and Sabel's notions of democratic experimentalism and following ISTEA's balance between central authority and local autonomy, I propose that any measure of integrating land use and transportation planning should allow flexibility for local implementation. And, just like the technical assistance, flexibility must be provided at the regional and local level. Through the RCP process general goals are set, but regions guide their own planning, public participation is essential, and exact outcomes are not prescribed. Similarly, municipalities produce Local Corridor Plans within a regionally-determined framework, but the details are left to the locality. At both levels, solutions are contextual and driven by public participation.²⁰³

4. Incentives & Sanctions

Any federal foray into land use will, no doubt, be met with strong opposition.²⁰⁴ Local flexibility is not enough; a system of incentives and sanctions is necessary to facilitate local participation. The sticks and carrots, I believe, should parallel those currently used for MPO planning and Clean Air Act compliance. Incentives could include competitive grants for creative planning and awards for exceptional performers.²⁰⁵ To facilitate technical and financial support of integrated planning, legislation must set aside funds to carry out the planning requirements and enhance technical advisory capacity.²⁰⁶ Just as

Id.

²⁰³ Interview with Harrison Rue, supra note 178.

²⁰⁴ U.S. GAO-02-12, supra note 151, at 80-81.

²⁰⁵ Interview with Harrison Rue, supra note 178; Katz et al., TEA-21 Reauthorization, supra note, at 12.

²⁰⁶ ISTEA § 134(n); TEA-21 § 134 (n); SAFETEA-LU § 134(o); Katz et al., TEA-21 Reauthorization, supra note, at 12.

with current CAA sanctions, if an MPO planning process failed to be certified, the Secretary shall withhold up to 20 percent of transportation funds attributable to that metropolitan planning area.²⁰⁷ Such sanctions appear effective at jumpstarting regional efforts; the cutoff of federal funding to Georgia created political space for the creation of Georgia Regional Transportation Authority (GRTA) for the Atlanta region.²⁰⁸ Additionally, in order to spark inter-regional cooperation and compromise, federal legislation could provide that all (or most) member localities must agree to a plan to receive funding for projects.²⁰⁹

Although it is not a direct sanction, judicial review can offer another avenue of sanctions. TEA-21 barred judicial review of any MPO's failure to consider the stated factors in the transportation planning process, and SAFETEA-LU retains that bar.²¹⁰ Professor Buzbee, however, with an eye toward the federal environmental laws, argues that "[a] weakness in many federal programs . . . is their minimal usage of citizen litigation to ensure that these laws are effective and implemented in accordance with their terms at both the state and federal level."²¹¹ The role of judicial review deserves further consideration.

5. Critics

Now consider the critics. The localist, no doubt, longs to preserve power with the local government with hopes of furthering the ideals of efficiency and accountability. Note, though, that "[m]obility is the 'crucial lever' of the Tiebout model," but many met-

²⁰⁷ ISTEA § 134(i)(5); retained at TEA-21 § 134 (i)(5)(c); and then SAFETEA-LU § 134(k)(5)(C).

²⁰⁸ Buzbee, *Sprawl's Dynamics*, supra note 16, at 533.

²⁰⁹ Interview with Harrison Rue, supra note ; Katz et al., TEA-21 Reauthorization, supra note, at 12.

²¹⁰ TEA-21 § 134 (f)(2) SAFETEA-LU § 134(h)(2);

²¹¹ Buzbee, *Institutional Complexity*, supra note 11, at 115.

ropolitan residents have limited mobility due to transportation and exclusionary zoning.²¹² A stronger MPO could increase mobility and actually promote a pure localist argument. Moreover, as Professor Briffault argues, the localist ideals do not forbid regional solutions. Given our contemporary metropolitan areas, goals such as efficiency, democracy, and community can argue for regional governance.²¹³ In fact, MPOs already embrace flexibility and local participation for transportation planning. Granted, some MPOs fall short of the localist ideals of participation and accountability, but that concern is addressed below with regard to accountability.

Regionalists might also harbor criticisms. While MPOs already embrace centralized goal-setting and address transportation at the regional scale, many regionalists argue against such limited-purpose regional authorities. As discussed, critics say that such limited-purpose entities are unaccountable²¹⁴ and allow suburban localities to only buy into regional entities when it serves their self-interest.²¹⁵ While the integration of land use and transportation planning does not directly address affordable housing, education quality, or other social concerns, a strengthened MPO takes a strong and practical step in the direction of equality. A strengthened MPO, as proposed, would in fact integrate, not segregate topics of government. Through federal spending incentives, a strengthened MPO could overcome some of the free-riding, parochial localities. And, improved mobility can increase access for metropolitan citizens, and new processes can prevent inequitable capture of federal transportation dollars.

²¹² Briffault, *Localism and Regionalism*, supra note 23, at 18 (quoting Gordon Clark, *Judges and the Cities: Interpreting Local Autonomy* 164 (1985)); see also Briffault, *Our Localism: Part II*, supra note, at 420; Reynolds, *Intergovernmental Cooperation*, supra note 36, at 104; Davidson, supra note 13, at 1011-12.

²¹³ Briffault, *Localism and Regionalism*, supra note 23, at 2, 21-23.

²¹⁴ Reynolds, *Intergovernmental Cooperation*, supra note 36, at 138-41; Buzbee, *Institutional Complexity*, supra note 11, at 97.

²¹⁵ Cashin, supra note 38, at 2030-33; Reynolds, *Intergovernmental Cooperation*, supra note 36, at 145-49.

While he heralds the virtues of local government, Professor Frug acknowledges the realities of our metropolitan regions, and he carefully proposes a state-created regional legislature of democratically elected representatives from the cities.²¹⁶ In contrast to a traditional two-tier model of regional governance whereby local autonomy and regional authority are presumed to be in conflict, Frug believes his legislature could preserve municipal self-interest and promote regional collective-interest simultaneously.²¹⁷ That balance is not unlike the balance sought with the strengthened MPO proposed here. But for Frug, looking at the transportation-focused MPOs that exist, “the remedy is to replace MPOs with regional legislatures that represent the region as a whole.”²¹⁸ Frug outlines his criticisms of MPOs: they are subservient to the state, organized merely to distribute federal funds, inclusive of transportation officials, and narrowly focused and not equipped to deal with issues of inequality.²¹⁹

These criticisms deserve response. First, the dominance of states is a fair concern, and as argued above, (some) direct funding to MPOs is needed. But, note also that as he criticizes MPOs, Professor Frug is proposing a *state-created* regional legislature.²²⁰ Second, it is true that MPOs are involved with allocation of federal funds to transportation projects, but that is why the institution is a practical forum for change: those federal dollars are the carrots necessary to bring local action (and it does not require reliance on the states).²²¹ Indeed, the GRTA—which Frug points to as evidence of a state-created regional entity—was created largely in response to the withholding of federal transporta-

²¹⁶ Frug, *Beyond Regional Government*, supra note 76, at 1790-91.

²¹⁷ *Id.* at 1790.

²¹⁸ *Id.* at 1819.

²¹⁹ *Id.* at 1818-19.

²²⁰ Briffault, *Boundary Problem*, supra note ___, at 1155 (pointing out that Professor Frug’s “regional legislature proposal, thus, relies covertly on a major, and unlikely, exercise of power by the state.”).

²²¹ U.S. GAO-02-12, supra note 151 at 96.

tion dollars pursuant to Clean Air Act violations.²²² Third, Frug notes that transportation officials are often part of MPO policy boards. As discussed more thoroughly below, MPO representation must account for the vertical complexities and the technical aspects of transportation. Finally, Professor Frug criticizes the MPO for the narrow focus and failure to address issues of inequality. These issues are addressed above in response to the regionalists but deserve expansion here. Certainly, a strengthened MPO is no panacea for the ills of metropolitan America, but my argument is that a strengthened MPO is a practical step to resolving the social, environmental, and economic burdens that our regions face. The MPO is an existing institution; we don't have to create a new one from scratch. As Frug admits, transportation is the logical starting point for regional policy.²²³ And, while land use is traditionally handled at the local level, federal incentives and the attachment to transportation will make the transition more acceptable. Delicate topics like education, revenue sharing, and affordable housing, on the other hand, will not transition to a regional body easily. But, such issues result largely from mobility and access—topics that the strengthened MPO addresses directly.

All that said, Professor Frug suggests that an MPO board and staff could fold into a larger regional legislature. I agree. (Although a strengthened MPO is still a practical step while we are waiting for the elusive regional legislature.) Also, Professor Frug gives insightful consideration to the challenges of proportional representation at the regional level, and his comments inform the discussion below.

²²² Frug, *Beyond Regional Government*, *supra* note 76, at 1831.

²²³ *Id.* at 1766 .

C. Greater Accountability: Institutional Composition and Representation

The counterbalance to greater MPO authority is greater MPO accountability.²²⁴ Increased participation and accountability might alleviate some localist concerns of representation²²⁵ and regionalist concerns about limited-purpose regional authorities.²²⁶ But, as currently formed, many MPOs lack proportional representation.²²⁷ In the end, I argue, some form of elected proportional representation must accompany the increased MPO authority, but the variety among regions and the necessity of local flexibility prohibit any one-size-fits-all solution.

Two distinct concerns of accountability exist: public participation in administrative processes and democratic representation through elected officials. First consider administrative processes. The current statutes require that MPOs must provide interested parties and affected agencies with “a reasonable opportunity to comment on the transpor-

²²⁴ As outlined in the Brookings Institution’s report on TEA-21 reauthorization, legislation must “give metropolitan areas more powers and greater tools, in exchange for enhanced accountability, to get transportation policy right for their regions.” Katz et al., TEA-21 Reauthorization, *supra* note 164, at 1, 12; Briffault, Boundary Problem, *supra* note, at 1166 (“Local residents who fear loss of control to a regional structure must be assured of a voice in its decisionmaking. The metropolitan structure must provide an opportunity for regional deliberations from the bottom up, rather than simply serve as a vehicle for the imposition of technocratic solutions from the top down.”).

²²⁵ State and Local Perspective on Highway and Transit Needs: Testimony, Before the Subcomm. on Highways, Transit and Pipelines of the H. Comm. on Transportation and Infrastructure, __th Cong. (May 07, 2003) (statement of William Brooks, Mayor, City of Belle Isle, Florida) 2003 WL 21030296 (F.D.C.H.) (“We need more, and earlier input in the transportation planning process. Many MPOs in the country have a wider planning function and have a role in regional land use planning, presenting the opportunity to link transportation policy and planning to land use, conservation and environmental policy and planning. This provides a great opportunity for communities to look at congestion issues from holistic, regional view.”)

²²⁶ Reynolds, Local Governments, *supra* note 51, at 527 (“In fact, the existing governance structures of some regional special districts appear to satisfy some of the concerns I raise, because their commissioners are comprised of elected officials from the constituent local government units, thus establishing a direct and accountable link between multi-purpose municipality and special function enterprise.”).

²²⁷ Goldman & Deakin, *supra* note 140, at 50 (“The lack of representativeness of MPO boards may pose a real obstacle to their ability to acquire strong powers for regional governance. It recently caused the demise of one of the country’s leading multipurpose regional agencies: Seattle’s Metropolitan Municipal Council was disbanded because of a 1990 ruling that its governance structure violated the constitutional principle of one person-one vote.”).

tation plans” and publish or make readily available all transportation plans.²²⁸ Moreover, Transportation Improvement Plans, TIPs, are developed in cooperation with the State and any affected public transportation operator, include public comment, and are approved by MPO and Governor.²²⁹ Beyond the current legislation, I believe participatory planning processes such as charrettes can address some concern, and any process ought to ensure ease of public participation: “If you go to one meeting for a couple of hours, your input should have influence on the plan.”²³⁰

The question of democratic representation is more complex. To start, consider the variety of composition among current MPOs. MPOs for designated Transportation Management Areas must include local elected officials, officials of transportation agencies serving the area, and appropriate State officials,²³¹ but basic decisions of structure and representation are left to the states.²³² Researchers Paul Lewis and Mary Sprague identified four major organizing structures for MPOs:

- *Councils of government* (“COGs”) operate like an association of local governments and are prevalent in large metro areas. Member governments send a representative to serve on the MPO board. Examples include Sacramento, Denver, and Washington, D.C.
- *Freestanding MPOs* are devoted solely to transportation planning without oversight by another governmental body. Boards are appointed by elected local or state officials or are delegates from local governments. Examples include the San Francisco Bay area’s Metropolitan Transportation Commission and Portland, Oregon’s Metro.

²²⁸ SAFETEA-LU § 134(i)(5)-(6).

²²⁹ SAFETEA-LU § 134(j).

²³⁰ Interview with Harrison Rue, *supra* note 178.

²³¹ ISTEPA § 134(b)(2); TEA-21 § 134 (b)(2); SAFETEA-LU § 134(d)(2).

²³² Sanchez, *supra* note 17, at 3.

- *County-level MPOs* were more popular in the 1980s, but are still popular in Florida. They are appropriate when a county line encompasses the entire planning area.
- *State-run MPOs* basically amount to field offices of the state DOT. This is among the older organizational structures for MPOs and examples include Boston and Chicago.²³³

Most MPOs fall into the first two categories and have one-jurisdiction/one-vote representation rather than representation proportional to population.²³⁴ And, as decided in *Education/Instruccion, Inc. et al. v. Moore*, councils of government (which often house MPOs) do not use general government powers and do not perform essential government services, so the one-jurisdiction/one-vote organization does not violate constitutional standards of fair representation. But strengthening MPOs to integrate land use and transportation raises tougher questions about government powers and services. Critics worry that current structures are not accountable to voters or appropriate for the regional nature of the body.²³⁵ Local elected officials, critics argue, are primarily concerned with their home jurisdiction not regional welfare.²³⁶

Scholars outline the limited efforts of MPOs in addressing the representational concerns:

²³³ Paul G. Lewis and Mary Sprague, "Federal Transportation Policy and the Role of Metropolitan Planning Organizations in California" (San Francisco: Public Policy Institute of California, 1997) (cited by Sanchez, *supra* note 17, at 3-4).

²³⁴ Sanchez, *supra* note 17, at 4.

²³⁵ Orfield, *American Metropolitics*, *supra* note 26, at 137-40; Paul G. Lewis, *Regionalism and Representation: Measuring and Assessing Representation in Metropolitan Planning Organizations*, 33 *Urb. Affairs Rev.* 839 (1998) ("In a broadly advisory and consultative voluntary group such as a COG, it may seem natural that each government would send one representative, and the delegates would function as equals. But in the MPO environment under ISTEA, in which MPOs are responsible for programming and selecting many millions of dollars of transportation projects, the policy-making character of MPOs renders the apportionment issue troubling to many observers.").

²³⁶ Griffith, *supra* note 145, at 536; Yaro, *supra* note 105, at 74.

About 18 MPOs compensate for this inequity in full or in part through weighted voting procedures. In California, the two largest MPOs use voting systems that approximate proportional representation (one person-one vote); however, the thirteen smaller California MPOs deviate much more sharply from proportionality. . . . The policy committees for the Albany (NY) and Nashville MPOs overcome concerns about representation by emphasizing consensus-based decision-making.²³⁷

A recent report reviewing 50 large MPOs nationwide found that suburban communities and white residents were overrepresented in MPOs. Urban residents were represented by 29 percent of MPO votes but accounted for 56 percent of the MPO population. By comparison, suburban residents held 55 percent of MPO votes but only comprised 26 percent of the MPO population.²³⁸

Clearly reform is needed. As he outlines his proposed regional legislature, Professor Frug looks to the European Union (“EU”) as a model for proportional representation. His thoughtful discussion applies also to representation for MPOs. The EU implemented a concept of *qualified majority* defined by “allocating votes to individual members very roughly according to their population and, in addition, establishing a minimum number of votes (and sometimes a minimum number of members casting these votes) before a policy can be adopted.” Different rules may apply to different issues (unanimity for some, simple majority for others, or qualified majority for still others).²³⁹ Applied to regional bodies, the allocation of votes to localities according to population approximates proportionality, while the minimum requirement for votes “would prevent the domination of the legislature by small numbers of the largest jurisdictions.”²⁴⁰

²³⁷ Goldman & Deakin, *supra* note 140, at 50 (citations omitted).

²³⁸ Sanchez, *supra* note 17, at 2, 9.

²³⁹ Frug, *Beyond Regional Government*, *supra* note 76, at 1797.

²⁴⁰ *Id.* at 1799.

But this model could create too many or too few representatives, depending on the region. If each municipality is allowed representatives according to population, the MPO board could become unwieldy: Professor Frug notes that a proportionally-allocated regional legislature for the Boston region could require about 4000 representatives.²⁴¹ If, on the other hand, each municipality has only one representative (with weighted votes according to population), many interests could go unrepresented. For instance the representative for a central city may vote for the policies favored by the slim majority that voted her in; the large minority, then, is voiceless. Moreover, while weighted votes can resolve some proportionality concerns, the organization can lose certain dynamics of debate and “the presence of people in the room.”²⁴²

The waters are further muddied by vertical complexities of transportation policy. On one hand, the MPO is an institution with devolved authority and should maximize the participatory ideals of localism; yet on the other hand, the MPO ties together the myriad of vertical and horizontal complexities that must, somehow, be represented in one body. Recall that MPOs are charged to plan “for the development of . . . an intermodal transportation system for *the State, the metropolitan areas, and the Nation.*”²⁴³ Direct election of representatives might resolve questions of proportional representation within the region, but would fail to account for the state and national interests in efficient travel to and through the region. The nation is sufficiently represented: the federal government writes the statutes and regulations and the Secretary of Transportation certifies long-range and

²⁴¹ Id. at 1801.

²⁴² Id. at 1803.

²⁴³ ISTEA § 134(a); see also TEA-21 § 134 (a)(2)-(3); SAFETEA-LU § 134(c)(1)-(2) (emphasis added).

TIP plans. Some balance is provided between the MPO and the State,²⁴⁴ but States' interests should also be represented on the proposed strengthened MPO boards through state appointments or SDOT officials.

The Commonwealth of Virginia implemented a model that balances proportional voting and state involvement for its new regional transportation authorities, the Northern Virginia Transportation Authority ("NVTA") and the Hampton Roads Transportation Authority ("HRTA"). For NVTA, the voting members are as follows: a representative from each of the nine local jurisdictions, three General Assembly representatives, two Gubernatorial appointments. In addition, there are two non-voting members, one from the Virginia Department of Transportation and one from the Department of Rail and Public Transportation. For approval of taxes, fees, and/or projects, votes must pass a three part test: 1) two-thirds of voting members present; *and* 2) two-thirds of local government members present; *and* 3) the local government members voting in favor must represent two-thirds of the region's population.²⁴⁵ Enabling legislation for HRTA outlines similar composition and representation.²⁴⁶

Virginia's model may be appropriate for some regions, particularly those with relatively few municipalities, but for regions with dozens of municipalities another model is needed. I offer one possibility for such regions: Simply for purposes of MPO representa-

²⁴⁴ For instance, as provided by SAFETEA-LU § 134(k)(4)(B), within a TMA, projects funded under the National Highway System and under the bridge program or the Interstate maintenance program are selected from the TIP "by the State in cooperation with the metropolitan planning organization designated for the area." SAFETEA-LU § 134(k)(4)(A), reverses the decision-making: Other federally funded projects within a TMA, including those funded under chapter 53 of title 49, are selected from the TIP "by the metropolitan planning organization . . . in consultation with the State and any affected public transportation operator."

²⁴⁵ The Authority includes the counties of Arlington, Fairfax, Loudoun, and Prince William, as well as the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Northern Virginia Transportation Authority (NVTA), Frequently Asked Questions (Sept. 2007), available at www.TheNoVaAuthority.org (last visited on December 28, 2007).

²⁴⁶ Va. Code Ann. § 33.1-391 (2007).

tion, several municipalities could form a district which would in turn have more than one representative (for instance, 5 municipalities might form one district with 2 representatives). The districts would reduce the number of representative on the board, but having multiple representatives for each district could reflect the diverse views of the district residents.

In the end, there will not likely be a one-size-fits-all solution for MPO representation. The tenets of localism and the variety among MPOs demand flexibility in organization. With expanded land use powers, federal legislation should require proportional representation on MPOs, but leave flexibility for locally-preferred organization and representation.

CONCLUSION

Senator Moynihan and the authors of *Ahwahnee Principles* outlined dramatic shifts in policy, one for transportation and one for land use. They acknowledged the mounting challenges of the current model of development, but nearly two decades later their visions of change remain merely visions because institutional fragmentation separates the two arenas, transportation and land use. In order to rethink our suburban landscapes, we must integrate land use and transportation planning. The proposal outlined above is one option: conditional federal spending to coordinate land use and transportation planning within a strengthened MPO. This idea appreciates the institutional capacity of MPOs to bridge vertical and horizontal fragmentation. The proposal embraces the efficiency and participatory ideals of localism while accepting the scale and integration of the regionalist. Local flexibility, financial incentives, and technical support alleviate

some parochial hesitations. Of course, increased authority necessitates increased accountability, so strengthened MPOs should incorporate stronger participation in administrative processes and more proportional representation for decisionmaking bodies. Congress and local lawmakers alike have acknowledged the growing challenges of our sprawling built environment, challenges that exacerbate with the passing years. If we are to address this myriad of ills and truly implement a new vision for development, we must first bridge institutional fragmentation and integrate land use and transportation planning.