

## Fordham Law School

# FLASH: The Fordham Law Archive of Scholarship and History

---

### Faculty Scholarship

---

2013

## The Mobility Case for Regionalism

Nestor M. Davidson

*Fordham University School of Law*, [ndavidson@law.fordham.edu](mailto:ndavidson@law.fordham.edu)

Sheila Foster

*Fordham University School of Law*, [sfoster@law.fordham.edu](mailto:sfoster@law.fordham.edu)

Follow this and additional works at: [http://ir.lawnet.fordham.edu/faculty\\_scholarship](http://ir.lawnet.fordham.edu/faculty_scholarship)



Part of the [Civil Law Commons](#), [Politics Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Nestor M. Davidson and Sheila Foster, *The Mobility Case for Regionalism*, 47 U.C. Davis L. Rev. 63 (2013)

Available at: [http://ir.lawnet.fordham.edu/faculty\\_scholarship/524](http://ir.lawnet.fordham.edu/faculty_scholarship/524)

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

---

# The Mobility Case for Regionalism

Nestor M. Davidson<sup>†\*</sup> & Sheila R. Foster<sup>\*\*</sup>

*In the discourse of local government law, the idea that a mobile populace can “vote with its feet” has long served as a justification for devolution and decentralization. Tracing to Charles Tiebout’s seminal work in public finance, the legal-structural prescription that follows is that a diversity of independent and empowered local governments can best satisfy the varied preferences of residents metaphorically shopping for bundles of public services, regulatory environment, and tax burden.*

*This localist paradigm generally presumes that fragmented governments are competing for residents within a given metropolitan area. Contemporary patterns of mobility, however, call into question this foundational assumption. People today move between — and not just within — metropolitan regions, domestically and even internationally. This is particularly so for a subset of residents — high human-capital knowledge workers and the so-called “creative class” — that is prominently coveted in this interregional competition. These modern mobile residents tend to evaluate the policy bundles that drive their locational decisions on a regional scale, weighing the comparative merits of metropolitan areas against each other. And local governments are increasingly recognizing that they need to work together at a regional scale to compete for these residents.*

*This Article argues that this intermetropolitan mobility provides a novel justification for regionalism that counterbalances the strong localist tendency of the traditional Tieboutian view of local governance. Contrary*

---

<sup>†</sup> Copyright © 2013 Nestor M. Davidson and Sheila R. Foster.

<sup>\*</sup> Professor, Fordham University School of Law, and Director, Fordham Urban Law Center.

<sup>\*\*</sup> Albert A. Walsh Professor and Vice Dean, Fordham University School of Law. For their insights and suggestions, the authors wish to thank Michelle Anderson, Annie Decker, Clare Huntington, Aaron Saiger, Rich Schragger, and participants in workshops at Seton Hall Law School, University of Miami Law School, the NYU Colloquium on the Law, Economics and Politics of Urban Affairs, the Tel Aviv University School of Law Private Law Theory Workshop, and the University of Haifa Law School Faculty Seminar. Brittany Robbins, Kim Lehman, Mark Semotiuk, and Robert Sanchez provided excellent research assistance.

to the predominant assumption in the legal literature, competition for mobile residents is as much an argument for regionalism as it has been for devolution and decentralization. In an era of global cities vying for talent, the mobility case for regionalism has significant doctrinal consequences for debates in local government law and public finance, including the scope of local authority, the nature of regional equity, and the structure of metropolitan collaboration.

#### TABLE OF CONTENTS

INTRODUCTION .....	65
I. RESIDENTIAL MOBILITY AND DEVOLUTION IN LOCAL GOVERNANCE .....	71
A. <i>Tiebout's Legal-Structural Consequences</i> .....	71
B. <i>Critiques of Sorting's Devolutionary Implications</i> .....	77
1. Internal Critiques .....	77
2. Consequentialist Critiques .....	79
II. INTERREGIONAL MOBILITY AND CONTEMPORARY HUMAN CAPITAL .....	81
A. <i>The Salience of Metropolitan Regions for Mobility</i> .....	82
1. The Empirics of Interregional Mobility .....	83
2. The Role of Metropolitan Regions in Mobility Decisions .....	84
B. <i>Regional-Scale Demand: The Role of Agglomeration Economies and Urban Amenities</i> .....	88
1. The Importance of Human Capital in Understanding Mobility .....	89
2. The "Creative Class" and Contemporary Mobility Patterns .....	94
3. Agglomeration, Amenities, and Interregional Mobility .....	100
III. TIEBOUTIAN REGIONALISM .....	103
A. <i>Tiebout's Regions</i> .....	103
1. Regional-Scale Demand as a Rationale for Regional Governance .....	103
2. Interregional Localists? .....	108
3. Inverting Tieboutian Localism .....	110
B. <i>Revisiting the Critiques</i> .....	113
1. Internal Critiques .....	114
2. Consequentialist Critiques .....	114
C. <i>Coda: Regional Mobility in a World of Global Cities</i> .....	117
CONCLUSION: THE VIEW FROM TIEBOUT'S BEACH .....	119

## INTRODUCTION

A foundational concept in the discourse of local government law — and federalism more broadly — is that a mobile populace will tend to move to places that best reflect their preferences for the proffered mix of local government services, regulatory environment, and tax burden. This idea, which traces back to Charles Tiebout’s influential 1956 article on public finance, *A Pure Theory of Local Expenditures*,<sup>1</sup> is regularly invoked by legal scholars to argue for devolving authority to decentralized local governments. In a quasi-marketplace of metropolitan governance, the theory holds, a relatively greater variety of local governments will tend to match better the preferences of what Tiebout called “consumer-voters.”<sup>2</sup> Local governments should thus be empowered with relatively robust legal autonomy and even free to secede from their metropolitan region.<sup>3</sup>

This model of residential sorting and its legal-structural implications are predicated on a particular conception of mobility. On the demand side of Tiebout’s metaphorical marketplace, people choose among residential options in a given metropolitan area by evaluating the bundle of public goods offered at the local level. Correspondingly, the type of government the model contemplates to supply this targeted bundle is paradigmatically a local government of general jurisdiction.<sup>4</sup>

---

<sup>1</sup> Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

<sup>2</sup> *Id.* at 417-18. For an overview of the reception of mobility theory in local government legal scholarship, see Richard Briffault, *Our Localism: Part II — Localism and Legal Theory*, 90 COLUM. L. REV. 346, 399-435 (1989) [hereinafter *Our Localism*]. For Tiebout’s influence on the broader discourse of federalism, see Todd E. Pettys, *The Mobility Paradox*, 92 GEO. L.J. 481, 481 (2003) (“Nearly half a century ago, in an article spanning a mere nine pages, Charles Tiebout revolutionized the way many think about American federalism.”).

<sup>3</sup> See David Schleicher, *The City as a Law Economic Subject*, 2010 U. ILL. L. REV. 1507, 1508-09 (2010) (“The normative takeaway from the Tiebout model literature is clear: metropolitan regions should be divided into many local governments that are free to provide local public services in an unrestricted way.”); see also Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1124 (1996) [hereinafter *The Local Government*] (observing that the Tiebout model assumes that a “multiplicity of localities” will “enhanc[e] the likelihood that one locality will approximate the mobile ‘consumer-voter’s’ preferences”).

<sup>4</sup> See discussion *infra* Part I.A. As discussed below, Tiebout’s hypothesis was about not only a quasi-market mechanism for the efficient provision of local public goods, but also about the scale at which those public goods should be provided. See *infra* text accompanying notes 39-41. In essence, one of Tiebout’s assumptions was that there was an optimally efficient community size, and one aspect of Tiebout sorting on the supply side would be local governments’ desire to attract residents to reach that optimal size.

In short, Tieboutian localism depends on local governments competing for mobile residents in a defined metro area.<sup>5</sup>

The competition for mobile residents, however, is quite different now than it might have appeared to Tiebout in the mid-1950s. Today, when many people move, they are choosing — at least at certain critical junctures in their lives — not among local governments in a single metropolitan area, but among different regions altogether.<sup>6</sup> College graduates, entrepreneurs starting new companies, employees in technology or finance, and other people who have the resources to relocate are no longer limited to one metro region. Instead, they are as likely to weigh moving to greater New York versus the San Francisco Bay Area, or even London or Beijing, as they are to be deciding whether to live in Denver versus Boulder or Cass Corridor in downtown Detroit versus Grosse Pointe.<sup>7</sup>

There is evidence — primarily from the literature on human capital — that these interregional movers are making their locational choices based, in some measure, on comparing bundles of regional-scale public goods.<sup>8</sup> Scholars have long identified regional job and housing

---

<sup>5</sup> See Wallace E. Oates, *The Many Faces of the Tiebout Model*, in *THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES* 35 (2006) [hereinafter *TIEBOUT AT FIFTY*] (noting that “[t]he conventional wisdom is that Tiebout sorting is most likely in a metropolitan setting where an individual who works in the center city (or elsewhere in the area) will have a wide choice among communities in which to live”).

<sup>6</sup> By some estimates, roughly 16 percent of the U.S. population has moved across metropolitan area boundaries in the last five years, despite this being a period of relatively low overall mobility as a result of the current economic downturn. See discussion *infra* Part III.A.

<sup>7</sup> This Article focuses on regionalism at the metropolitan scale, recognizing that definitions of what might constitute a “region” vary significantly. Other scales of governance — notably state and federal — can be relevant, but this Article is concerned primarily with local governments and metropolitan regions.

<sup>8</sup> Many movers who are choosing between metropolitan regions are relatively better educated, higher skilled, and more attuned to the information economy. Richard Florida famously called this segment of the populace the “Creative Class.” See RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* 8 (2002) [hereinafter *FLORIDA, RISE*]; see also RICHARD FLORIDA, *CITIES AND THE CREATIVE CLASS* 34 (2004) [hereinafter *FLORIDA, CITIES*]; RICHARD FLORIDA, *THE FLIGHT OF THE CREATIVE CLASS* 5-8 (2007). This description has drawn a fair share of criticism. See, e.g., Ann Markusen, *Urban Development and the Politics of a Creative Class: Evidence from the Study of Artists*, 38 *ENV'T & PLAN. A* 1921, 1924 (2006) (challenging the purported causal link between creative classes and high-tech industry clusters). See generally Jamie Peck, *Struggling with the Creative Class*, 29 *INT'L J. URB. & REG. RES.* 740 (2005) (arguing that creative class strategies have little real impact on “urban policy orthodoxies” and may even entrench urban inequalities). But this description does capture the essence of people involved in “design, education, arts, music and entertainment, whose economic

markets, and natural amenities, as drivers of regional growth. Increasingly, however, regional mobility is animated by the kinds of amenities — a variety of public goods among them — that are supplied at a regional level. When a recent college engineering graduate is deciding where to locate, she is apt to think as much about regional job and housing markets as she is about any given set of local conditions.<sup>9</sup> And the broad-scale infrastructure that supports an attractive metro-level knowledge and innovation ecosystem, such as universities, medical centers, and cultural institutions, can require the critical mass only available at a regional scale.<sup>10</sup>

Not surprisingly, local governments competing for economic growth in a knowledge-based economy — all the more so in the aftermath of the global financial crisis — are increasingly responding to the preferences of this segment of the mobile populace.<sup>11</sup> Competition

---

function is to create new ideas, new technology and/or creative content.” FLORIDA, RISE, *supra* at 8.

<sup>9</sup> This is not to argue that knowledge workers are the only interregional movers. Intermetropolitan mobility involves an array of movers, including retirees and workers in traditional economic sectors. *See* discussion *infra* Part II.A. That said, people associated with “high human capital” seem to play an outsized role in the contemporary public dialogue about interregional mobility.

<sup>10</sup> Separating those aspects of why and where people choose to move that relate to governance from those aspects that focus on other aspects of locational choice is a difficult task, given that public goods can influence other motivations. The literature on mobility suggests a variety of explanations for the relative importance of various factors, including the advantages of proximity to other people — what economists call “agglomeration” — but the Tiebout model assumes that the preferences of marginal movers for public goods is a meaningful aspect of locational choice (and meaningfully influences governance). This Article accordingly begins with the same assumption. *See* discussion *infra* Part II.B.

<sup>11</sup> *See, e.g.,* Jennifer Collins, *Detroit Pushes Back with Young Muscles*, N.Y. TIMES (July 3, 2011), [http://www.nytimes.com/2011/07/03/fashion/the-young-and-entrepreneurial-move-to-downtown-detroit-pushing-its-economic-recovery.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/07/03/fashion/the-young-and-entrepreneurial-move-to-downtown-detroit-pushing-its-economic-recovery.html?pagewanted=all&_r=0) (“Detroit’s revival is also being attributed to the city’s ‘15 by 15’ initiative, started in 2008. With a goal of getting 15,000 young talented households to downtown by 2015, government workers, entrepreneurs, philanthropists, business leaders and individuals, along with nonprofit groups, have been working to entice the 94 percent of college graduates who initially migrate to cities, according to recent census figures.”); *see also* COLUMBUS COLLEGE OF ART & DESIGN, CREATIVE COLUMBUS: A PICTURE OF THE CREATIVE ECONOMY OF CENTRAL OHIO 6-3 (2009), *available at* <http://www.ccad.edu/files/about-ccad/communications/ccfullreport.pdf> (describing efforts to nurture the “creative economy” of the Columbus region to attract “young professionals or creative talent”); *How Now Brown Town: A Former Steel City Is Now Proclaiming Its Cleaner Land and Clever Minds*, THE ECONOMIST (Sept. 14, 2006), <http://www.economist.com/node/7914950> (describing Pittsburgh’s efforts to clean up industrial land for uses that suit the modern economy in an effort to attract creative or knowledge-intensive workers and firms).

---

---

between metro areas now spurs calls for investment in a variety of regional institutions and amenities.<sup>12</sup> Indeed, there is a frequent refrain in current discussions of local economic development that captures the animating principle behind this dynamic precisely: “capital follows talent.”<sup>13</sup> And attracting talent is increasingly a regional undertaking.

This competition for interregional mobile residents, and particularly for “high human capital” movers who value regional amenities, has important consequences for the structure of metropolitan governance. The same confluence of demand for particular bundles of public goods and the ability of fragmented local governments to supply them that has been at the heart of the Tieboutian argument for localism can be inverted in the context of interregional mobility. Interregional mobility that creates competitive demand for regional-scale public goods justifies empowering the regional-scale supply of those public goods. Simply put, just as traditional intraregional mobility supports devolution, the need to compete in a marketplace of interregional consumer-voters creates a mobility case for regional governance.<sup>14</sup>

This new normative justification for regionalism has clear legal-structural consequences. Just as legal scholars have invoked the traditional Tiebout paradigm to undergird decentralization,

---

<sup>12</sup> See, e.g., JONATHAN ROTHWELL ET AL., PATENTING PROSPERITY: INVENTION AND ECONOMIC PERFORMANCE IN THE UNITED STATES AND ITS METROPOLITAN AREA 36 (2013), available at <http://www.brookings.edu/~media/Research/Files/Reports/2013/02/patenting%20prosperity%20rothwell/patenting%20prosperity%20rothwell.pdf> (discussing how mayors and governors have started investing in higher education and research to encourage regional goals and industry).

<sup>13</sup> See, e.g., Michael Bloomberg, *Cities Must be Cool, Creative and In Control*, FIN. TIMES (Mar. 27, 2012), <http://www.ft.com/cms/s/0/c09235b6-72ac-11e1-ae73-00144feab49a.html#axzz2dXxg6XZ9> (“I have long believed that talent attracts capital far more effectively and consistently than capital attracts talent. The most creative individuals want to live in places that protect personal freedoms, prize diversity and offer an abundance of cultural opportunities. A city that wants to attract creators must offer a fertile breeding ground for new ideas and innovations.”). This view up-ends the traditional focus of much local economic development on capturing factories and other hard capital investments to then attract or support human capital.

<sup>14</sup> The majority of actual residential moves in any given year are still made by people within given metropolitan regions. See discussion *infra* Part II.A. But Tiebout was proposing a market mechanism for the efficient allocation of public goods, which assumes that the preferences of the marginal consumer will predominate. Accordingly, the types of high human capital interregional movers who have a broad array of locational options are likely to be more salient in that quasi-marketplace. This cross-metropolitan mobility, domestically and internationally, gives these mobile residents an outsized role in demanding governance that corresponds to their sensitivity to regional public goods. This regional perspective thus adds a significant centrifugal counterweight to the overwhelming centripetal force that intraregional mobility has exerted in arguments for local governance.

interregional mobility can correspondingly bolster doctrinal and legislative support for regionalism. This does not mean that any particular regional institution or mechanism will necessarily respond best to regional-scale demand — consolidation, inter-local cooperation, or a host of other governance structures might be appropriate.<sup>15</sup> But it does suggest that the law should facilitate the ability of savvy “suppliers” to follow where that demand leads. Thus, in core areas of local government law such as land use, education, taxation, and other local functions, interregional competition justifies state-level legislative efforts to promote regionalism. It also bolsters judicial recognition of the necessity, in some contexts, of ceding local authority to regional concerns. Likewise, municipal annexation and dissolution might be facilitated legislatively and doctrinally, and there might correspondingly be need for greater caution when it comes to the relative ease of municipal secession and incorporation.

It bears noting at the outset that the Tiebout model has long been criticized for the distributional consequences of local residential sorting and the paradigm’s tendency to commodify governance.<sup>16</sup> A regionalist version of the model does not necessarily mitigate these critiques, and in some respects may exacerbate them. Thus, it is possible — and there is some evidence to support this — that the spatial distributional problems that intraregional sorting generates are simply being replicated at a larger scale.<sup>17</sup> Likewise, the effort, energy, and focus that local governments at a regional scale might put into policies targeting mobile members of the information economy are arguably just a variation of the kind of governance-as-marketplace that has concerned so many scholars about Tiebout’s influence. That said, regional mobility’s counterbalance to the devolutionary tendencies of the traditional paradigm might mitigate distributional concerns within

---

<sup>15</sup> See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2028 (2000) (discussing “new regionalism” as “any attempt to develop regional governance structures or interlocal cooperative arrangements that better distribute regional benefits and burdens”); see also H. V. Savitch & Ronald K. Vogel, *Paths to New Regionalism*, 32 ST. & LOC. GOV’T. REV. 158, 161 (2000) (contrasting governmental approaches to regionalism through formal institutional mechanisms with “governance” approaches that recognize that “existing institutions can be harnessed in new ways”).

<sup>16</sup> See discussion *infra* Part I.B. The Tiebout model has also been criticized for the practical policy consequences of metropolitan fragmentation and devolution’s tendency to exacerbate local externalities problems, among other concerns.

<sup>17</sup> See *infra* text accompanying notes 209-11.



regions and could promote public investments that, by recognizing shared regional fate, pose less threat to community.<sup>18</sup>

In sum, mobility is almost always associated with structural fragmentation and strong localism in the discourse of local government law. Despite the limitations of the Tiebout model's admittedly simplifying assumptions,<sup>19</sup> and sustained criticism of its consequences, the paradigm retains a great deal of intuitive appeal because it seems to capture an important element of local governance.<sup>20</sup> But the legal literature on localism that has relied on the Tiebout model fails to acknowledge sufficiently that the scale of locational choice implicates the scale of governance. If metropolitan regions are increasingly competing against each other for residents who choose their location in many respects based on regional-scale public goods, then the appropriate scale of governance is regional.<sup>21</sup>

The Article proceeds as follows. Part I explains the traditional Tiebout model and canvasses its reception in legal literature. It then outlines recurring critiques of the influence of residential sorting as an argument for localism. Part II turns to the empirics of interregional mobility and alternative conceptions of the role that mobility might play in the scale of local governance. The conceptions contrast the

---

<sup>18</sup> See discussion *infra* Part III.B.

<sup>19</sup> See discussion *infra* Part I.B.1.

<sup>20</sup> The existence of Tiebout sorting at the local government level has a fair amount of empirical support. See, e.g., Vicki Been, "Exit" as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine, 91 COLUM. L. REV. 473, 521-23 (1991) (summarizing much of the evidence); Keith Dowding, Peter John & Stephen Biggs, *Tiebout: A Survey of the Empirical Literature*, 31 URB. STUD. 767, 775-79 (1994) (surveying over 200 articles on empirical tests of Tiebout sorting). But see William W. Bratton & Joseph A. McCahery, *The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World*, 86 GEO. L.J. 201, 239-43 (1997) (arguing that while the studies, taken together, support the demand side of the Tiebout model, they fail to directly support the supply side assertion that local government actors actively compete for residents with tax/public goods packages). For a general survey of the broader evidence of intergovernmental competition beyond the context of residential mobility, see Albert Bretton, *The Existence and Stability of Interjurisdictional Competition*, in COMPETITION AMONG STATES AND LOCAL GOVERNMENTS: EFFICIENCY AND EQUITY IN AMERICAN FEDERALISM 37, 38-48 (Daphne A. Kenyon & John Kincaid eds., 1991).

<sup>21</sup> The fact that metropolitan regions increasingly compete at a regional scale has been recognized in the legal literature. See, e.g., Richard Briffault, *Beyond City and Suburb: Thinking Regionally*, 116 YALE L.J. POCKET PART 203, 205 (2006) [hereinafter *Beyond City and Suburb*] (discussing regional governance as a strategy to improve economic competitiveness in a global economy where metropolitan regions are the "units of economic competition"). But the dynamics and implications of the link between interregional residential mobility and the legal structure of local governance have not been sufficiently explored.

types of movers that local governments court in the modern economy as well as the interests that drive those movers' locational decisions. Part III, in turn, argues that this interregional perspective on residential mobility generates a conceptual and practical counterweight to the devolutionary tendency of the traditional Tieboutian paradigm. It then explores the implications of this counterweight for the doctrine of regionalism. Finally, the Part revisits critiques of sorting and suggests avenues for further research on mobility in an era of global cities.

#### I. RESIDENTIAL MOBILITY AND DEVOLUTION IN LOCAL GOVERNANCE

As noted, an important concept in the local government legal literature derives from the Tiebout model of local governance as a quasi-market for mobile residents. This Part explains the underlying paradigm, explores how legal scholars have invoked it to justify localism, and then outlines the primary critiques of this devolutionary argument.<sup>22</sup>

##### A. Tiebout's Legal-Structural Consequences

In his *A Pure Theory of Local Expenditures*, Charles Tiebout set out to solve the basic problem in public finance of how to get the public to reveal its preferences for public goods.<sup>23</sup> Paul Samuelson famously

---

<sup>22</sup> In the legal literature, as in economics, tropes of interjurisdictional competition are also invoked for a variety of non-devolutionary arguments, such as the discipline of exit as a constraint on governmental rent seeking. *See, e.g.*, Been, *supra* note 20, at 478 (noting that various bodies of law assume that interjurisdictional competition would provide sufficient constraints to state and local government from overreaching); Abraham Bell & Gideon Parchomovsky, *Of Property and Federalism*, 115 *YALE L.J.* 72 (2005) (contending that interjurisdictional competition produces efficient law); *see also* Pettys, *supra* note 2, at 484-87 (canvassing the broad array of topics on which arguments about interjurisdictional competition have been deployed). This Article does not engage directly with this larger discourse on the intersection of mobility and governance, instead focusing on mobility's consequences for governance scale.

<sup>23</sup> *See generally* William A. Fischel, *An Introduction to the Tiebout Anniversary Essays*, in *TIEBOUT AT FIFTY*, *supra* note 5. The Tieboutian paradigm is only one example of a set of rational-choice explanations for local government behavior. Another approach argues that local governments, rather than competing for the marginal mobile resident, will set the level of public goods in a way that seeks to maximize the utility of the median voter. A contemporary example of this view can be found in William Fischel's argument that because many households hold a large proportion of their wealth in homeownership, and the asset value of the home reflects the bundle of local public goods and taxes, local governments will tend to be particularly sensitive to these "homevoters." WILLIAM FISCHEL, *THE HOMEVOTER*

argued that there was no decentralized pricing mechanism through which collective preferences for public goods (which he called “collective consumption goods”) could be revealed.<sup>24</sup> The problem of free riding, Samuelson argued, would tend to cause people to signal less interest in public goods than they would under competitive conditions.<sup>25</sup>

Tiebout responded, however, that a way exists to get individuals to reveal their preferences for public goods, at least on certain simplifying assumptions. If residents can choose among a variety of local jurisdictions that each offer a distinctive bundle of taxation, spending, and regulatory environments, then those consumer-voters could metaphorically shop by relocating.<sup>26</sup> People would thus reveal their preferences for a given level of output of public goods by choosing the jurisdiction that best fit their preferences.<sup>27</sup> In this way, the possibility of entrance (and, of course, exit) creates a kind of market for public goods and, assuming a sufficient variety of

---

HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 96-98 (2005). A third approach in this vein emphasizes the public-choice imperatives of local officials seeking to maximize their preferences, particularly around expenditures. *See, e.g.*, William A. Niskanen, *The Peculiar Economics of Bureaucracy*, 58 AM. ECON. REV. 293 (1968) (setting forth a model for government expenditures informed by demand conditions).

<sup>24</sup> Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387, 388 (1954). Tiebout was also responding to Richard Musgrave’s similar argument that there was, as Tiebout put it, “no ‘market type’ solution” to determine the optimal level of public goods. Tiebout, *supra* note 1, at 416.

<sup>25</sup> Samuelson, *supra* note 24, at 388.

<sup>26</sup> *See* Tiebout, *supra* note 1, at 418.

<sup>27</sup> It is almost obligatory in articles about Tiebout to attempt a definition of the notoriously tricky concept of “public goods,” most of which repeat the basic proposition that such goods (in the sense economists use the term) are non-excludable and non-rivalrous. *See, e.g.*, Aaron J. Saiger, *Local Government Without Tiebout*, 41 URB. LAW. 93, 94 n.1 (2009) (citing ROBERT S. PINDYCK & DANIEL L. RUBINFELD, MICROECONOMICS 665-66 (6th ed. 2005)). This certainly makes sense as far as it goes. As the Tiebout hypothesis has filtered into the legal literature, however, strict definitions of public goods have become less important, given that the efficiency of the sorting mechanism is thought to apply to almost any kind of preference for public policies. *See, e.g.*, Anup Malani, *Valuing Laws as Local Amenities*, 121 HARV. L. REV. 1273 (2008) (positing that local laws can be an amenity that influences locational decisions); Christopher Serkin, *Local Property Law: Adjusting the Scales of Property Protection*, 107 COLUM. L. REV. 883, 898-903 (2007) (arguing for a Tieboutian mechanism of sorting responsive to varying levels of local government protection for property rights); *see also* Nicole Stelle Garnett, *The People Paradox*, 2012 U. ILL. L. REV. 43, 65 (2012) (describing “safety” as a public good in the context of Tiebout sorting). It is this broader sense of the work of local governments — the mix of public services, regulatory environment, and tax burden — that this Article deploys.

locational choices and a lack of constraints on mobility, the public resource allocation that results from this sorting process should tend to be efficient.<sup>28</sup>

Tiebout was primarily concerned with mechanisms for setting the optimal supply of public goods.<sup>29</sup> As Roderick Hills has pointed out, however, the Tiebout model is most often invoked in the legal literature to assess horizontal and vertical divisions of authority among various levels of government.<sup>30</sup> In particular, scholars regularly invoke the Tiebout model to support arguments for devolution and decentralization.<sup>31</sup> This argument is fairly straightforward, focusing on

---

<sup>28</sup> See Oates, *supra* note 5, at 23 (Tiebout “tries to establish a kind of equivalence between the local public sector and a competitive market so that he can invoke the various properties of a competitive equilibrium to show that local finance induces individuals to reveal their preferences for local public goods and does so in such a way as to promote an efficient use of resources”). Tiebout was focused on allocative efficiency (how close are the outputs of local governments approximating consumer-voter preferences), but the distinct question of productive efficiency (how much output comes from a given input) is often raised in discussions of mobility and metropolitan fragmentation. See Keith Dowling & Thanos Mergoupis, *Fragmentation, Fiscal Mobility, and Efficiency*, 65 J. POL. 1190, 1190 (2003).

<sup>29</sup> Since the Tiebout hypothesis began to gain traction through the work of Wallace Oates, scholars have debated whether Tiebout was concerned only with preference revelation, or was also interested directly in decentralization. See Oates, *supra* note 5, at 22 (citing Paul Seabright’s argument that Tiebout’s model was not “saying anything about the decentralization of power in government”). Oates has argued that decentralization is still efficiency-enhancing even in the absence of sorting. See generally WALLACE E. OATES, *THE DECENTRALIZATION THEOREM* (1972).

<sup>30</sup> See Roderick M. Hills, Jr., *Compared to What? Tiebout and the Comparative Merits of Congress and the States in Constitutional Federalism*, in TIEBOUT AT FIFTY, *supra* note 5, at 239, 240.

<sup>31</sup> The proliferation of structural prescriptions associated with Tieboutian localism is akin to the outgrowth of a kind of normative Coaseanism that is arguably removed from Ronald Coase’s actual work — what Robert Ellickson contrasted as the cardboard Coase and the real Coase. See Robert C. Ellickson, *The Case for Coase and Against “Coaseanism,”* 99 YALE L.J. 611, 612-13 (1989). We do not mean to create a cardboard (localist) Tiebout here, but rather highlight the frequent invocation of Tieboutian sorting as an argument in the legal literature for fragmentation and local empowerment.

Interestingly, Tiebout himself may have been more open to regionalism than the devolutionary reception his market-based theory of local governments would suggest. In a 1961 article he co-authored with Vincent Ostrom and Robert Warren, Tiebout argued that market discipline for determining the level of public goods was only appropriate “for those public goods which are internalized within the boundaries of a given political jurisdiction.” Vincent Ostrom et al., *The Organization of Government in Metropolitan Areas: A Theoretical Inquiry*, 55 AM. POL. SCI. REV. 831, 838 (1961). For many other public services, Tiebout, Ostrom, and Warren argued that a more appropriate scale might be what they described as the polycentric political system at the metropolitan level. *Id.* at 838-42 (arguing that metropolitan areas operate for many

---

local governments of general jurisdiction as the suppliers of public goods within the Tieboutian quasi-market.<sup>32</sup> The legal-structural prescription from the supply side is that metropolitan regions should have relatively more of these jurisdictions with relatively greater local autonomy to facilitate “consumer” choice.<sup>33</sup> This means that it should be relatively easier for communities to form local governments or secede from larger governmental units. It also means that, all things being equal, these fragmented localities should enjoy more legal authority — through home rule, preemption, scope of delegation, and other doctrines — to carve out their own niches in the metropolitan marketplace.<sup>34</sup>

---

public services in a rich and intricate framework of intraregional cooperation and negotiation, and using that as a frame against which to compare more localized public goods).

<sup>32</sup> The influence of mobility on local governments emerges in very different ways depending on the kind of mobile “asset” that is at issue. Tiebout focused on residential mobility, but other scholars have applied the idea of interjurisdictional competition to capital investment decisions, regulatory environments, fungible capital, and other fluid “resources.” See, e.g., Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the “Race-to-the-Bottom” Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210 (1992) (discussing the impact of regulatory environments on interjurisdictional competition). Moreover, paradigms of entrance and exit and their influence on the output of public goods play out in very different ways depending on the particular type of fluid resource at issue — residents, capital investments, new industry, mobile capital — even if the idea of competition for mobile residents tends to collapse into a more general proposition that any kind of mobile resource might be subject to this kind of competition. See, e.g., Been, *supra* note 20, at 478 (arguing that interlocal competition for development will serve as a check on local protectionism); Serkin, *supra* note 27, at 886 (describing a real-estate-developer-oriented view of Tieboutian competition and noting that developers “often choose among a package of incentives offered, or fees demanded, by competing municipalities, depending on the desirability of the development and the costs and benefits it is expected to create”). This Article’s discussion of interregional mobility follows Tiebout’s lead by focusing on the particular confluence of governance and residential mobility.

<sup>33</sup> See Schleicher, *supra* note 3, at 1508-09 (summarizing this proposition).

<sup>34</sup> The idea that mobility supports devolution has been applied in the broader discourse of federalism as one way of supporting arguments for relatively greater recognition of state-level interests over federal authority. See, e.g., Hills, *supra* note 30.

Despite its prominence, a devolutionary prescription is by no means the only logical conclusion to be reached from the Tiebout paradigm. Todd Pettys has offered the intriguing counterargument in the national context — which is theoretically applicable at any intermediate scale — that one ironic consequence of mobility may be that it creates incentives for consumer-voters to seek *federal* policy on issues of their preference. To Pettys, mobile citizens might want uniform, or favorable, regulatory conditions no matter where they may eventually move, may want to influence people in other jurisdictions, and may seek to control interstate externalities. All of this might actually spur mobile residents to prefer policymaking be situated at the highest level available to satisfy their preferences. See Pettys, *supra* note 2, at 497-518. This

Two points bear noting at this juncture about the devolutionary tendencies of residential sorting. First, Tiebout did not disaggregate different types of mobile residents, given that his model situates at its core the fact of heterogeneous preferences across the mobile population. Tiebout, for example, made the stylized assumption that residents were unconstrained by employment because they all lived on dividend income.<sup>35</sup> The paradigmatic mobile resident in the Tiebout model is thus not individuated in any way; it is the nature of the bundle of local public goods and tax burden, rather than any individual circumstances, that drives locational choice.<sup>36</sup> In other words, because Tiebout's consumer-voters are presumed to be moving primarily for the comparative advantages of a given governmental context, these mobile consumer-voters are presumed to span the range of potential preferences. For Tiebout, then, there is nothing distinctive about any given mobile resident, and all mobile residents equally participate in the same preference-sorting mechanism.<sup>37</sup> In practice, however, some mobile residents tend to have greater influence in the interaction between mobility and governance, as we explain below.<sup>38</sup>

Second, underlying the Tiebout hypothesis is a set of assumptions about the *scale* of public goods — both in terms of demand and supply. Tiebout himself used the example of a public beach — arguing that a community of a certain size might have a certain demand for a given size of beachfront.<sup>39</sup> This is about as local a public good as can be imagined, as Tiebout describes it as a fixed feature of the local landscape within the boundaries of a single jurisdiction.<sup>40</sup> Put another way, these public goods — and the broader mix of governmental services, taxation, and regulation that might attract consumer-voters — are assumed to be “local” for intuitive reasons that vaguely invoke some notion of the appropriate scale of governmental entity to provide that particular good.<sup>41</sup>

---

argument has intuitive appeal, but does not obviate the structural prescriptions normally associated with mobility.

<sup>35</sup> See Tiebout, *supra* note 1, at 419.

<sup>36</sup> Tiebout made this assumption to isolate the effect of governmental policy on mobility and, of course, the effect of mobility on governmental policy.

<sup>37</sup> This ignores the distinction between willingness to pay and ability to pay, among other simplifying assumptions discussed below. See discussion *infra* Part I.B.2.

<sup>38</sup> See discussion *infra* Part II.B.

<sup>39</sup> Tiebout, *supra* note 1, at 419.

<sup>40</sup> The fact that a public beach is classically congestible does not mean that the Tiebout model applies only to such public goods. As noted, the paradigm has been applied to a broad array of governmental outputs. See sources cited *supra* note 27.

<sup>41</sup> Cf. Hannah Wiseman, *Public Communities, Private Rules*, 98 GEO. L.J. 697, 727

But the scale of both demand and supply in the Tiebout model need not be local at all. This aspect of sorting is most often simply assumed. Many public goods that the literature tends to assume are “local” have no inherent fixed scale. Public safety, education, land use regulation — indeed, the entire range of classic local government functions — have been and are today supplied to some extent by regional-scale public entities.<sup>42</sup> There are reasons, independent of responding to the preferences of mobile residents, in terms of accountability, effectiveness, and efficiency, to supply any given public good at the most local level at which it can be provided. But there are countervailing arguments in terms of inclusion, economies of scale, the scope of impact for regional supply, and network effects.<sup>43</sup> The argument in this Article will hold these countervailing propositions constant, given that the appropriate level of government to supply any given public good is an empirical question, in order to focus instead on the influence of mobility on governance.

In sum, for Tiebout, mobility was decidedly a metropolitan-scale phenomenon, and the basic intersection of supply and demand of public goods in the model focused on local-level concerns. Legal scholars have drawn on this framework to argue for devolution and decentralization in governmental authority and structure, but the link between scale and the metaphorical transaction of Tieboutian mobility can be shifted if the scale of residential choice is not simply local. Before we turn to that shift, it is important to pause and consider some critiques of the basic paradigm and its potential consequences.

---

(2010) (noting that consumer-voter preference sorting can be sub-local as well as local).

<sup>42</sup> School districts, for example, often transcend the boundaries of the local governments of general jurisdiction they serve, and some school districts even encompass regional scale. See Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolve into its Suburbs*, 112 COLUM. L. REV. SIDEBAR 47, 48-49 (2012).

<sup>43</sup> See Roger B. Parks & Ronald J. Oakerson, *Regionalism, Localism, and Metropolitan Governance: Suggestions from the Research Program on Local Public Economies*, 32 ST. & LOC. GOV'T REV. 169, 170-71 (2000); see also Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 109-11 (2003) (discussing regionalist arguments). Economists have developed a literature on the scale of public goods, focusing on a variety of supply-side questions, such as economies of scale and scope for particular public goods and, in the institutional economics literature, on the structure of local service providers. The literature on localism and regionalism has also disaggregated, on the supply side, between the production of public goods and the provision of those goods, noting that arguments for regional supply need not imply any particular institutional arrangement for that supply. See Parks & Oakerson, *supra*, at 170-71.

### B. Critiques of Sorting's Devolutionary Implications

There are two general lines of criticism that have emerged to the paradigm of mobility influencing local governance. The first set of critiques, which we label internal, challenges the assumptions and the functioning of the model itself. The second, which we label consequential, raises instrumental and conceptual concerns about the results of privileging transactional entrance (and exit) in local decision-making, notably around distributional concerns and the perils of commodification. We address these concerns here to assess their relevance to a perspective on mobility that shifts from localist to regionalist.<sup>44</sup>

#### 1. Internal Critiques

There are several basic grounds on which the Tiebout model has been challenged in terms of the mechanism it describes.<sup>45</sup> First, some commentators have argued against the plausibility of consumer-voters making locational choices based on the packet of available public services, regulation, and taxation.<sup>46</sup> People move for a variety of reasons, so the argument goes, whether for employment opportunities, housing preferences, or familial obligations.<sup>47</sup> These choices have little to do — at least directly — with local governance and the “noise” from these determinants of locational choice will almost always drown out the “signal” of the effect of governance. The best that can be said on this point is that there is empirical evidence of Tiebout sorting,<sup>48</sup> that people may have ways (perhaps indirect) to cut through the informational clutter,<sup>49</sup> and many aspects of locational choice that

---

<sup>44</sup> See discussion *infra* Part III.B.

<sup>45</sup> Wallace Oates pointedly noted that the Tiebout model relies on “a set of assumptions so patently unrealistic as to verge on the outrageous.” Wallace E. Oates, *On Local Finance and the Tiebout Model*, 71 AM. ECON. REV. 93, 93 (1981). That has, however, hardly diminished the model’s influence.

<sup>46</sup> Cf. Robert C. Ellickson, *Legal Sources of Residential Lock-Ins: Why French Households Move Half as Often As U.S. Households*, 2012 U. ILL. L. REV. 373, 378-93 (surveying motivations for relocation and legal constraints on mobility).

<sup>47</sup> See, e.g., *id.* at 394-98; Barry Friedman, *Valuing Federalism*, 82 MINN. L. REV. 317, 387-88 (1997) (“People can and do move, but inertia is a large factor in why each of us lives where we do. Even when moves occur, they tend to be for reasons largely unrelated to government policy decisions: We move because our work takes us elsewhere, or because of marriage or some other personal need, or perhaps because of climate and health.”).

<sup>48</sup> See sources cited *supra* note 20.

<sup>49</sup> See generally Kenneth N. Bickers & Robert M. Stein, *The Microfoundations of the Tiebout Model*, 34 URB. AFF. REV. 76 (1998) (discussing informational heuristics and



might seem endogenous actually do reflect the effects of local policies.<sup>50</sup>

Second, commentators have argued that there is no clear mechanism for channeling the threat of exit and the promise of entrance into the political process, at least at the level of salience that the Tiebout paradigm assumes. Tiebout was largely silent about the actual process through which the local political system would operate to produce a mix of local public goods that would appeal to a given set of mobile residents.<sup>51</sup> Many scholars have accordingly critiqued the absence of politics in the Tiebout model,<sup>52</sup> as well as the lack of consideration for how consumer-voters might actually evaluate (and influence) the political process through entrance and exit, rather than through “voice” and “loyalty,” to continue with the Hirschman frame.<sup>53</sup>

Some scholars have offered ways to reconcile the Tieboutian quasi-market with more realistic assumptions about the local political process and the governance-related information that might be available to Tiebout’s footloose residents.<sup>54</sup> For present purposes, however, it is only necessary to acknowledge Tiebout’s assumption that there would be *some* mechanism — which was not necessary to define — for the local political process to create a bundle of public goods that allowed competition for mobile residents.<sup>55</sup> This

---

proxies as a tool to foster Tieboutian sorting by consumer-voters).

<sup>50</sup> See Pettys, *supra* note 2, at 505.

<sup>51</sup> Tiebout merely said, taking an oddly agnostic view of the line between public and private entities, that “communities below the optimum size, through chambers of commerce or other agencies seek to attract new residents.” Tiebout, *supra* note 1, at 419.

<sup>52</sup> See, e.g., Susan Rose-Ackerman, *Tiebout Models and the Competitive Ideal: An Essay on the Political Economy of Local Government*, in 1 PERSPECTIVES ON LOCAL PUBLIC FINANCE AND PUBLIC POLICY 23 (John M. Quigley ed., 1983) (discussing models of local government behavior and arguing in favor of incorporating realism in assumptions about that behavior).

<sup>53</sup> See, e.g., Bratton & McCahery, *supra* note 20, at 234. Albert O. Hirschman famously contrasted methods through which stakeholders could respond to negative conditions in various institutions: “exit” (leaving the institution) and “voice” (participation). Hirschman argued that “loyalty” would influence the relative valence of exit and voice. See generally ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).

<sup>54</sup> See Saiger, *supra* note 27, at 98-102 (discussing the literature).

<sup>55</sup> Urban theory and some strains of local government legal theory have long focused on the limits of local authority in the face of mobile capital and labor. See Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 489-91 (2009). The Tieboutian framework, by contrast, assumes as a baseline at least some ability to compete and a corresponding view of local governments as empowered entities. See Briffault, *Our Localism*, *supra* note 2, at 399-419, 426. Of course, there are significant differences in kinds of mobile factors

simplifying assumption can still pertain even if institutions at different scales of governance are the locus of intergovernmental competition, although there may be greater practical barriers to regional governance.<sup>56</sup>

These internal critiques — and other challenges to Tiebout’s basic hypothesis<sup>57</sup> — may have validity, but we are generally assuming for the sake of argument that the overall paradigm works roughly in the way Tiebout proposed. Those who assert that governance is not influenced by mobility should, as a default matter, be inclined to be skeptical of that mechanism at whatever scale it plays out.<sup>58</sup>

## 2. Consequentialist Critiques

For all of its undoubted influence in the legal literature, the devolutionary tendencies of the Tiebout model have raised significant consequential concerns.<sup>59</sup> These primarily focus on the tendency of sorting to exacerbate socio-economic, racial, and ethnic segregation and, more conceptually, on the threat that a theoretical “marketplace” of local governance poses to local democracy and community.<sup>60</sup>

---

that might influence local politics. See sources cited *supra* note 32.

<sup>56</sup> See *infra* text accompanying notes 176-180.

<sup>57</sup> See generally John D. Donahue, *Tiebout? Or Not Tiebout? The Market Metaphor and America’s Devolution Debate*, 11 J. ECON. PERSP. 73 (1997) (arguing that devolution will do more to hinder government than improve it). These critiques focus, for example, on the potential distorting effects in practice of the simplifying assumptions that Tiebout made to model mobility as a driver for the output of public goods. See, e.g., Oates, *supra* note 45 (discussing the simplifying assumptions inherent to Tiebout’s model). To note again, this Article does not focus primarily on these technical responses to Tiebout’s original stylized model, but rather on the reception of the model in the discourse in legal literature on vertical division of governmental authority.

<sup>58</sup> See discussion *infra* Part III.B.1.

<sup>59</sup> Aaron Saiger has perceptively argued that it is important to disaggregate critiques of localism from more particular concerns about the consequences of the Tieboutian mechanism of sorting. See Saiger, *supra* note 27, at 95. We accept this proposition for purposes of this discussion and focus particularly on critiques of arguments derived from the devolutionary implications of Tiebout’s quasi-market, not on the nature of local government itself or the problems that might arise from fragmentation, such as an increase in negative externalities. See Briffault, *Our Localism*, *supra* note 2, at 433-34.

<sup>60</sup> Some legal scholars have also critiqued the devolutionary tendencies of the Tiebout model for the challenges that its resulting fragmentation pose for solving complex, regional-scale problems. William Buzbee, for example, has argued that municipal fragmentation can create a regulatory tragedy of the commons, where collective action problems create incentives for regulatory inattention that prevent appropriate intervention. See William W. Buzbee, *Recognizing the Regulatory*

The first, and perhaps most powerful, consequentialist critique of Tieboutian sorting highlights the distributional consequences that flow from fragmentation and the competition for mobile residents. The heart of this critique focuses on the reality that ability to pay is not the same as willingness to pay — in other words, many consumer-voters, given their financial constraints, are simply not able to choose the mix of public amenities that they would genuinely prefer.<sup>61</sup> This limitation may be acceptable for many market transactions, indeed it is inherent to the nature of most markets, but is objectionable when applied to education, public safety, local environmental quality, and other aspects of the Tieboutian bundle of public goods. It also ignores the reality that jurisdictions do not compete passively in this model (and in real life) by simply proffering a bundle of local public goods and seeing who responds. Rather, local governments use their authority to constrain entrance in ways that skew the “market” in favor of more desirable residents.<sup>62</sup>

Indeed, one of the most important assumptions in the Tiebout model is that mobility is unconstrained. This assumption is not only false as a general matter,<sup>63</sup> but becomes particularly troubling when mobility is constrained because of discrimination and the legacy of segregation. Thus, some scholars argue that the distributional consequences of Tiebout sorting have a pernicious racial and ethnic component in addition to a basic tendency toward economic segregation.<sup>64</sup>

---

*Commons: A Theory of Regulatory Gaps*, 89 IOWA L. REV. 1, 49-52 (2003). This is a valid concern but applies to devolution more generally and is not particular to the quasi-marketing *sorting* mechanism itself that Tiebout posited.

<sup>61</sup> See Saiger, *supra* note 27, at 94 (noting that because the Tieboutian argument for “efficiency assumes a budget constraint — goods are efficiently allocated if they go to those most willing to pay for them — efficiency in the distribution of public goods helps the rich more than the poor”).

<sup>62</sup> As a number of scholars have noted, if locational preferences reflected in Tiebout sorting correlate with wealth, then Tiebout’s method of achieving allocative efficiency can encourage the wealthy to seek communities — and communities to respond to this preference — that privilege exclusion. See, e.g., Lee Anne Fennell, *Exclusion’s Attraction: Land Use Controls in Tieboutian Perspective*, in TIEBOUT AT FIFTY, *supra* note 5, at 163; Saiger, *supra* note 27, at 122, 134, 140 (asserting that if local governments are given more flexibility, they would likely draw discriminatory boundaries).

<sup>63</sup> See Gerald Frug, *City Services*, 73 N.Y.U. L. REV. 23, 33 (1998) (noting that when exclusionary zoning is incorporated into the Tiebout model, communities have both the incentive and the means to calve off in order to compete for the wealthiest residents and exclude the poorest, in order to enlarge their tax base and avoid the costs of providing for the neediest citizens).

<sup>64</sup> See, e.g., Cashin, *supra* note 15, at 2016-19 (discussing the role race plays in

A second source of concern about Tieboutian sorting in the legal literature comes from commentators who criticize what it means conceptually, and in practice, to conceptualize local governments as firms competing for customers. These scholars contend that this kind of commodification of local governance undermines community and warps the public nature of what local governments are actually about. Gerald Frug argues, for example, that focusing on competition treats the kinds of services that cities provide as “objects of consumption,” rather than elements of common interest.<sup>65</sup> It also tends to reinforce the idea that people choose a place “in the way they choose a country club,” that is, to be with other like-minded people.<sup>66</sup> Similarly, Richard Schragger asserts that the Tieboutian quasi-marketplace generates a privatized conception of local government in which ability to pay drives local decision-making, and the consumptive ideal creates a distorted sense of entitlement in exclusion.<sup>67</sup>

These closely related concerns about the distributional and commodifying consequences of Tieboutian mobility can be counterbalanced by defenses of the value of localism.<sup>68</sup> For our purposes, however, it is not necessary here to take a position on what has been a more than fifty-year-long debate. Rather, these concerns are worth rehearsing for the light they shed on alternative conceptions of the role of mobility that highlight locational choice-based levels of governance beyond the purely local. It is to those conceptions that we now turn.<sup>69</sup>

## II. INTERREGIONAL MOBILITY AND CONTEMPORARY HUMAN CAPITAL

Despite important critiques, the Tiebout model retains its explanatory power in support of strong norms of localism. The paradigm, as noted, assumes that residential sorting and jurisdictional

---

locational sorting in American metropolitan regions); *see also* Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365, 1366 (1997); Alexandra M. Greene, *An Examination of Tiebout Sorting and Residential Segregation Through A Racialized Lens*, 8 CONN. PUB. INT. L.J. 135, 136 (2008).

<sup>65</sup> Frug, *supra* note 63, at 28-29.

<sup>66</sup> *Id.*

<sup>67</sup> *See* Richard Schragger, *Consuming Government*, 101 MICH. L. REV. 1824, 1848 (2003).

<sup>68</sup> *See, e.g.,* Saiger, *supra* note 27 (discussing the many advantages of Tieboutian localism and efficiency).

<sup>69</sup> We will return to these critiques below to examine the extent to which a regionalist perspective on Tieboutian mobility alters their parameters. *See* discussion *infra* Part III.B.

---

---

competition takes place among local governments within a region, and does so with some empirical support. This conception is incomplete, however, as sorting and competition for mobile residents occurs among metropolitan regions, *qua regions*, not just the localities within them.

To understand this proposition, this Part evaluates the empirical evidence that a significant portion of the population moves interregionally. It then canvasses the proposition that these mobile residents are attuned to regional-scale amenities and that metropolitan regions are, as an economic and social unit, as salient as local governments. The Part concludes by considering the relevance of recent debates about what motivates mobility — particularly the balance between agglomeration economies and amenities in the competition for human capital — for the light these debates shed on the regional scale of the preferences of many mobile residents.

#### A. *The Salience of Metropolitan Regions for Mobility*

Much residential mobility in the United States is intraregional, with the majority of moves occurring within the same county and/or within the same state.<sup>70</sup> It is therefore easy to assume that the prototypical Tieboutian consumer-voter “shops” only between communities within a given metropolitan region.<sup>71</sup> This assumption, however, ignores the fact that a significant portion of residential moves every year are from region to region. These movers are, in essence, engaged in a process of *regional* comparison shopping. At least some — and an increasingly important subset of — mobile residents are thus expressing their preference for regional goods and services, not simply comparing local governments. Not surprisingly, then, regions are competing for mobile residents. This is evidenced by economic development policies aimed at attracting and retaining these residents.

---

<sup>70</sup> See, e.g., JASON P. SCHACTER, U.S. CENSUS BUREAU, GEOGRAPHICAL MOBILITY: 1990–1995 1 (2000) [hereinafter SCHACTER, 1990–95], available at <http://www.census.gov/prod/2000pubs/p23-200.pdf> (listing the five-year moving rates, in the period between 1975 and 1995, which demonstrate that the majority of moves, over 50 percent, are within the same county; approximately 20 percent occur between counties within the same state; approximately 20 percent occur between counties in different states; and about 5 percent of moves are from abroad); JASON P. SCHACTER, U.S. CENSUS BUREAU, GEOGRAPHICAL MOBILITY: 2002–2003 2 (2004), available at <http://www.census.gov/prod/2004pubs/p20-549.pdf> (finding that, similarly, in the period between 1993 and 2003, approximately 59 percent of moves were within the same county; approximately 19 percent were between counties within the same state; approximately 19 percent were between counties in different states; and about 3 percent of moves are from abroad).

<sup>71</sup> See Oates, *supra* note 5, at 34–35.

### 1. The Empirics of Interregional Mobility

Significant portions of the population make interregional moves each year, moving from one metropolitan area to another.<sup>72</sup> Census data reflects this regional movement by tracking net in-migration and out-migration for the largest metropolitan areas in the country.<sup>73</sup> There are other sources of mobility data that fill out the picture on how and where the population moves in a given year, including IRS data and the Current Population Survey data, but all are flawed to some extent.<sup>74</sup> One study, for example, estimated that over an average five-year period about 15 percent of the United States population moves across metropolitan area boundaries, although the study noted that it was only able to capture a subset of moves from another identified metropolitan area or across state or county lines.<sup>75</sup>

---

<sup>72</sup> This interregional and interstate mobility is significant given that, according to the most recent U.S. Census data, as of 2010 over four-fifths of the population (roughly 83 percent) lived in the nation's 366 major metro areas. See PAUL MACKUN & STEVEN WILSON, U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010, 4 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf>.

As discussed below, interregional metropolitan competition is no longer simply a domestic phenomenon, instead playing out increasingly as an international competition between so-called "global" cities and the regions that support them. This also has consequences for conceptions of the relationship between mobility and governance, as we shall see. See discussion *infra* Part III.C.

<sup>73</sup> See, e.g., SCHACTER, 1990–95, *supra* note 70, at 2 (reporting five-year net domestic migration for the top 20 metropolitan areas). This same Census series also tracks mobility among the broader regional sections of the Northeast, Midwest, South and West. See *id.* at 4-6 (reporting five-year net migration for these major regions).

<sup>74</sup> See Raven Molloy et al., *Internal Migration in the United States*, 25 J. ECON. PERSP. 173, 178-79 (2011) (explaining the different sources of migration data and drawbacks of each). As Malloy et al. acknowledge, it is very difficult to capture with much precision the fraction of the population that crosses metropolitan area boundaries because of limitations in the scope of the data and how it is collected. *Id.* at 175-76 (explaining that metro areas do not cover the entire U.S., especially rural areas; that metro area boundaries are revised every few years; and that metro area identifiers are not available in many public datasets). Given these limitations, researchers often use state and county lines to provide a reasonable proxy of intermetropolitan migration because those lines best approximate local labor and housing markets. See *id.* at 179.

<sup>75</sup> See *id.* (using Census and American Community Survey data and averaging across the 1980, 1990, and 2000 Censuses). "According to five-year migration statistics from the Census and one-year migration statistics from ACS, virtually all (97 percent) of cross-state migrants also changed metropolitan areas, while only 60 to 70 percent of migrants across metropolitan areas also changed states." *Id.* This suggests, according to these researchers, that interstate migration underestimates the number of people that move across local labor and housing market boundaries, and intercounty migration overstates metro area migration, as only three-quarters of cross-county

Given these challenges, we examined county-to-county migration data from the Internal Revenue Service as well as the Census Bureau's five-year American Community Survey.<sup>76</sup> Examining the ten largest metropolitan areas in 2009 and 2010,<sup>77</sup> the data indicate that about 16.5 percent and 16.2 percent, respectively, of all residential moves represented immigration from outside the metro region.<sup>78</sup> These results are broadly consonant with other research and reinforce the proposition that, although there has been a general downward trend in migration over the past 25 years or so,<sup>79</sup> of those who do migrate, a significant fraction choose to move to new metropolitan regions.

## 2. The Role of Metropolitan Regions in Mobility Decisions

Population growth patterns across the United States suggest that large metropolitan regions are a destination for the most mobile of residents. The vast majority of Americans live in major metropolitan

---

migrants changed metro areas. *Id.* at 180.

<sup>76</sup> The Internal Revenue Service data was the County-to-County Migration Inflow Dataset from the IRS's Statistics of Income Division ("SOI"), extracted from the IRS Individual Master File, which contains administrative data collected for every Form 1040, 1040A, and 1040EZ processed by the IRS. Each return is geocoded with a five digit number that tracks state and county, and migration status can be determined by matching subsequent returns over a two-year period. See generally INTERNAL REVENUE SERVICE, SUPPLEMENTAL DOCUMENTATION FOR MIGRATION DATA PRODUCTS, 2009-2010, [http://www.irs.gov/file\\_source/pub/irs-soi/0910inpublicmigdoc.doc](http://www.irs.gov/file_source/pub/irs-soi/0910inpublicmigdoc.doc) (providing details on how IRS migration data was collected) (last visited Sept. 22, 2013).

<sup>77</sup> The analysis was limited to these two years based on data availability, as the SOI data is not yet available for 2011 and the ACS survey only began providing information on a county level (in the five-year data series) in 2009. See AMERICAN COMMUNITY SURVEY, U.S. CENSUS BUREAU, DESIGN AND METHODOLOGY 2-4 (2009), available at [http://www.census.gov/acs/www/Downloads/survey\\_methodology/acs\\_design\\_methodology.pdf](http://www.census.gov/acs/www/Downloads/survey_methodology/acs_design_methodology.pdf). The analysis used the U.S. Office of Management and Budget's (OMB) metropolitan statistical area (MSA) delineations as the basis for determining relevant metro regions. See 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas, 75 Fed. Reg. 37,246 (June 28, 2010).

<sup>78</sup> The population of the top 10 MSAs in 2009 and 2010 was 58,725,300 and 58,971,589, respectively, per the SOI data. A total of 9,706,525 and 9,527,372 people migrated, using a combination of SOI and CPS data. Of these migrants, 6,690,500 and 6,579,031 moved within their county of origin, according to CPS data. The SOI indicates that 1,443,157 and 1,466,089 migrants stayed within the MSA, but moved to a county other than their county of origin. Finally, 1,572,868 and 1,482,252 people moved into the MSA from outside of the MSA (SOI), which provides an estimate for interregional migration.

<sup>79</sup> See Molloy et al., *supra* note 74, at 173, 180-81 (noting the puzzling decline in migration from 1980-2009; that interstate and interregional moves reached their "inflection point" in 1980; and that migration rates, including across short distances, are currently lower than at any point in post-War period).

areas consisting of a core urban population of 50,000 or more, and such areas grew almost twice as fast as smaller urban areas in the last 10 years.<sup>80</sup> Moreover, the fate of smaller urban areas seems to be inextricably tied to the fate of the largest nearby major metropolitan areas.<sup>81</sup> In fact, large metropolitan regions are responsible for a significant portion of the population growth in their respective states<sup>82</sup> and many of the fastest growing counties in the United States are part of these large, integrated metro regions.<sup>83</sup> Therefore, both as a geographic unit and as a destination, metropolitan regions are a destination for many Americans, and current urban growth patterns increasingly bear this out.<sup>84</sup>

Metropolitan regions are important for understanding a key aspect of contemporary domestic mobility for at least two reasons. First, regions are increasingly integrated social and economic units and not simply a set of distinct counties and local municipalities.<sup>85</sup>

---

<sup>80</sup> See MACKUN & WILSON, *supra* note 72, at 4-6 (noting that over four-fifths, or 83.7 percent, of the U.S. population in 2010 lived in the nation's 366 major metropolitan areas consisting of a core urban population of at least 50,000 and that one-tenth, or 10 percent, of the population lived in the nation's 576 "micro" areas consisting of a core urban population between 10,000 and 50,000). According to the latest Census, the most populous metropolitan regions include New York-Northern New Jersey-Long Island; Los Angeles-Long Beach-Santa Ana; Chicago-Joliet-Naperville; Dallas-Fort Worth-Arlington; Philadelphia-Camden-Wilmington; Houston-Sugar Land-Baytown; Washington-Arlington-Alexandria; Miami-Fort Lauderdale-Pompano Beach; Atlanta-Sandy-Springs-Marietta; and Boston-Cambridge-Quincy. The fastest growing metro regions include quite populous (1 million or more) metro regions such as Las-Vegas-Paradise; Raleigh-Cary; and Austin-Round Rock-San Marcos. *Id.* at 4.

<sup>81</sup> *Id.* at 5 (noting that "[m]any of the fastest growing 'micro' areas were located near fast-growing metro areas" and, "[l]ikewise, many of the micro areas that were slow-growing" or in decline were located near slow-growing or declining major metropolitan areas).

<sup>82</sup> As an example, the Atlanta metro region accounted for over two-thirds (68 percent) of Georgia's population growth during the last decade; the Houston and Dallas-Fort Worth metro regions together accounted for over one-half (56.9 percent) of Texas' population growth over the same period; and the Las Vegas metro area accounted for almost four-fifths (81.9 percent) of Nevada's growth. *Id.* at 4-5.

<sup>83</sup> See *id.* at 8-9 (giving as examples counties in the metro Chicago, Palm Coast, Washington, D.C., Dallas-Fort Worth, among others, which more than doubled their population between 2000 and 2010).

<sup>84</sup> There is an identity element to this as well. People within metropolitan areas may jealously guard the distinction between neighborhoods, but ask any American traveler abroad where they're from and chances are that they will at least start by answering with the metro area where they live.

<sup>85</sup> See ZACHARY NEAL, THE CONNECTED CITY: HOW NETWORKS ARE SHAPING THE MODERN METROPOLIS 111 (2012) (noting that "metropolitan character comes from the fact that the independent parts of these regions — cities, suburbs, towns — are really



Metropolitan regions traverse many counties, and sometimes more than one state, and are generally composed of a core urban area and adjacent counties that have a “high degree of social and economic integration (as measured by commuting to work) with the urban core.”<sup>86</sup>

Traditional commuter patterns of suburb-to-suburb and suburb-to-city illustrate this integration as metro areas move from core-and-periphery models to increasingly interconnected networked regions.<sup>87</sup> So too does the increased rate of “reverse commuting,” in which people increasingly live in the central city and work in one of the surrounding suburbs.<sup>88</sup> The increase in reverse commuting over the past twenty years or so reflects not only the decentralization of employment within metropolitan areas, but also mobility trends into large urban markets and, more particularly, into core cities to take advantage of the consumption value of those cities.<sup>89</sup> All of these patterns underscore increasing metropolitan functional integration.

Second, and to underscore the first point, it seems apparent that *regions* attract residents, not simply individual municipalities or even counties.<sup>90</sup> Metropolitan regions — that is, core cities and their

---

not independent at all, but are closely linked to one another in a wide variety of ways”); see also BERNADETTE HANLON, JOHN RENNIE SHORT & THOMAS J. VICINO, CITIES AND SUBURBS: NEW METROPOLITAN REALITIES IN THE U.S. 3-6 (2010).

<sup>86</sup> See MACKUN & WILSON, *supra* note 72, at 4.

<sup>87</sup> OMB’s broad definition of metropolitan areas — “Core Based Statistical Areas” — underscores the view of metro regions as central cores and peripheral areas, which also resonates with historical views of metropolitan regions, such as Von Thunen’s “city and hinterland” view and the Chicago-school concentric-circle model. See NEAL, *supra* note 85, at 111-12. Increasingly, however, scholars are recognizing the networked nature of metro regions in ways that emphasize functional interconnection across a region over the center/periphery paradigm. See *id.* at 112-13.

<sup>88</sup> See Edward Glaeser et al., *The Consumer City*, 1 J. ECON. GEOGRAPHY 27, 33-34 (2001) [hereinafter *Consumer City*] (noting that city-to-suburb commutes almost tripled between 1960 and 1990). As an example, Glaeser measured the relative rise in population of employed workers in the Bay Area relative to the rise of employment in the area. Central San Francisco was one of only three counties where population rose faster than employment between 1960 and 1990. This rise reflects the increase in San Francisco residents who work outside of the city and presumably live in the city for consumption reasons. *Id.* at 34.

<sup>89</sup> See Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 URB. STUD. 1275, 1284-85 (2006) [hereinafter *Urban Resurgence*].

<sup>90</sup> Nicole Garnett has argued that the link that regionalists make between cities and suburbs ignores the reality that for many suburban residents, “central cities likely play only a small role in [their] economic lives,” and that because some residents have had “decidedly anti-urban experiences,” they “may lack the aesthetic and cultural affinities that would lead them to take advantage of urban amenities” in their center cities. Nicole Stelle Garnett, *Suburbs as Exit, Suburbs as Entrance*, 106 MICH. L. REV.

surrounding suburbs — are attractive to consumers because of the presence of goods and services which have regional-scale economies dependent on large audiences (e.g., sports teams, large opera companies, comprehensive arts museums, and the like).<sup>91</sup> Even more salient in the modern economy, regional urban scale supports institutions such as medical centers, large universities, networks of entrepreneurs, and other aspects of an ecosystem of innovation that depend on a certain critical mass.<sup>92</sup> And, of course, housing and labor markets in most metropolitan areas tend to operate on a regional scale.<sup>93</sup> Location decisions are accordingly likely to account for the social and economic amenities and assets of the metropolitan region, not simply its constituent parts. As Richard Briffault has argued, given the high correlation between city and suburban growth in employment, income, and population, localities within a region “tend to rise and fall together.”<sup>94</sup>

It is true that the social and economic health of the central city often drives the perception of the region as a whole, in part because “central cities continue to be the setting of many specialized activities, business services, and cultural amenities that serve the surrounding metropolitan region.”<sup>95</sup> However, even when commercial activity is concentrated in suburban nodes or edge cities, the attractiveness of those parts of the region are driven by what its constituent parts offer to incoming industry and workers.<sup>96</sup> To the extent that one or more localities in those commercial nodes are unable to provide the type and level of public goods and amenities that appeal to the desired

---

277, 295 (2007). That does not belie the reality that regional movers — even if they move, as many surely do, from a suburb in one region to a suburb in another — are still making regional-scale decisions.

<sup>91</sup> See Glaeser et al., *Consumer City*, *supra* note 88, at 32-34 (noting that scale economies meant that specialized retail can only be supported in places large enough to have a critical mass of customers).

<sup>92</sup> See generally ALAN BERUBE, *METRONATION: HOW U.S. METROPOLITAN AREAS FUEL AMERICAN PROSPERITY* (2007) (discussing metropolitan-scale drivers of economic growth).

<sup>93</sup> Ironically, intraregional mobility in the traditional Tieboutian paradigm actually underscores the reality that both labor markets and housing markets are increasingly regional in scale. People within a region have options as to where to move and where to work — often constrained, it is true — but make those decisions in the context of a metropolitan area.

<sup>94</sup> Briffault, *The Local Government*, *supra* note 3, at 1138-39.

<sup>95</sup> *Id.* at 1139.

<sup>96</sup> See David L. McKee & Yosra A. McKee, *Edge Cities and the Viability of Metropolitan Economies: Contributions to Flexibility and External Linkages by New Urban Service Environments*, 60 AM. J. ECON. & SOC. 171, 177-78 (2001).

---

---

industry and mobile residents, the attractiveness of the region suffers.<sup>97</sup> It is thus the amenities and features of the region itself that often make it a distinct “place” — features that can transcend any particular local government within a metropolitan area, even if they can in some respects be a product of the aggregation of the region’s local amenities.<sup>98</sup> In short, for interregional moves, much of what lends salience to the choice of one metropolitan area over another is inherently regional in scale.<sup>99</sup>

*B. Regional-Scale Demand: The Role of Agglomeration Economies and Urban Amenities*

It is not simply that metropolitan regions fundamentally matter as economic and social units for purposes of understanding current patterns of residential mobility. It is also that certain *types* of movers are particularly salient to understanding contemporary interregional mobility. This section explores two contemporary understandings of metropolitan mobility and growth in a knowledge-based economy, each of which links what attracts human capital to the scale of governance. These debates provide telling evidence that many interregional movers do, in fact, make locational choices based in part on a comparative evaluation of regional-scale institutions.

---

<sup>97</sup> Briffault, *The Local Government*, *supra* note 3, at 1140 (noting that “the consequences of inadequate local schools, unsafe local streets and homes, unaffordable local housing, and unreliable local transportation networks in some localities may be borne by all localities throughout the region, including those localities providing high-quality services to their own residents”).

<sup>98</sup> Local governments’ ability to fully control the quality or availability of amenities for its residents is limited as a result of interlocal and regional spillovers. As Richard Schragger has astutely noted, the full costs and benefits of local amenities are borne not just by residents within the local jurisdiction, but also by neighboring users who “regularly cross borders” across localities. Schragger, *supra* note 67, at 1830-31. Thus the quality and availability of even “local” amenities are determined as much by local residents as by residents throughout the region. These interlocal or regional effects, in turn, affect home values within a region, reducing the ability of local governments to fully control those values within their own borders. *Id.* at 1830 (pointing to evidence that “much of the value of one’s housing investment — negative or positive — might very well turn on the specific decisions, activities, or fiscal health of neighboring jurisdictions”).

<sup>99</sup> It is fair to ask at this juncture whether interregional movers may simply be localists seeking their preferred Tieboutian local government bundle of public goods in metropolitan regions other than their own. We bracket this question for the moment and return to it in depth below. *See* discussion *infra* Part III.A.2.

### 1. The Importance of Human Capital in Understanding Mobility

As noted, the traditional Tiebout framework assumes the heterogeneity of mobile residents and the agnosticism of local governments to the range of consumer-voters.<sup>100</sup> It is increasingly clear, however, that some potentially mobile residents are more salient than others in driving contemporary metropolitan growth. The geographic sorting of people by education and by skill is well recognized, with the higher skilled and the better educated becoming increasingly mobile, but also more concentrated in certain metropolitan regions.<sup>101</sup> Education and skill level, in particular, are strongly correlated with the most populous and fastest-growing metropolitan regions.<sup>102</sup> Not only are the most educated and most skilled most likely to pick up and move, but they tend to move longer distances than people with fewer skills and a lower level of education.<sup>103</sup>

The traditional twentieth-century understanding of urban regional growth posited that the dominant factors in county and city population expansion were due to the natural advantages of certain locations. Since World War II, strong predictors of urban growth have included a region's temperature and climate, dryness, and proximity to the coast and natural resources.<sup>104</sup> However, over roughly the past

---

<sup>100</sup> See *supra* Part I.A.

<sup>101</sup> See ENRICO MORETTI, *THE NEW GEOGRAPHY OF JOBS* 164 (2012); Richard Florida, *Where the Brains Are*, *THE ATLANTIC* (Oct. 1, 2006), <http://www.theatlantic.com/magazine/archive/2006/10/where-the-brains-are/305202/>; see, e.g., Christopher R. Berry & Edward L. Glaeser, *The Divergence of Human Capital Levels Across Cities*, 84 *PAPERS IN REG. SCI.* 407 (2005) (documenting that places with higher levels of human capital have attracted more skilled people over the last decade).

<sup>102</sup> See, e.g., RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS, REVISITED* 203-18 (2012) [hereinafter FLORIDA, *RISE REVISITED*] (the "creative class" is concentrated geographically in specific regions); Edward L. Glaeser & Albert Saiz, *Rise of the Skilled City*, 5 *BROOKINGS-WHARTON PAPERS ON URB. AFF.* 47 (2003) (aside from climate, skill composition may be the most powerful predictor of urban growth).

<sup>103</sup> See JASON SCHACTER, U.S. CENSUS BUREAU, *WHY PEOPLE MOVE: EXPLORING THE MARCH 2000 CURRENT POPULATION SURVEY 1* (2001), available at <http://www.census.gov/prod/2001pubs/p23-204.pdf> (noting that research shows that increases in age reduce the likelihood of moving until retirement age and that long distance moves are most common among the highly educated); see also SCHACTER, 1990-95, *supra* note 70, at 3 (25-29 year olds have highest moving rates; reporting that 74.5 percent of them moved during 1990-1995; further reporting that 63 percent of 20-24 and 30-34 year olds moved during this period).

<sup>104</sup> See, e.g., Glaeser et al., *Consumer City*, *supra* note 88, at 35-36 (explaining that "results of multivariate regression show that county population growth shows the power of these natural variables to predict growth"); Glaeser & Gottlieb, *Urban Resurgence*, *supra* note 89, at 1280 (noting that the urban agglomerations that once

twenty years, there has been a notable shift away from this understanding and towards the recognition that what drives urban growth today, after the decline of major American cities in the 1970s and 1980s, is the attraction of highly skilled, highly educated mobile residents to major cities and their surrounding regions. This is not to say that the natural amenities of some metropolitan regions do not continue to attract residents.<sup>105</sup> Rather, it is that other factors have as much, if not more, explanatory and predictive power in understanding why particular regions attract residents.<sup>106</sup>

Human capital theories that focus on the migration of workers with high levels of talent to amenities-rich locations are now the dominant explanation in urban economics for why some regions grow and others remain stagnant or decline.<sup>107</sup> These theories trace to seminal works by Robert Lucas, Edward Glaeser, and Jane Jacobs, all of whom argue that human capital externalities are the basic mechanism of economic growth in cities.<sup>108</sup> Since the 1980s, economists had explored the idea that positive externalities from industry clusters are the cause of increased productivity of firms and individuals. Positive externalities occur when the “net benefits to being in a location together with other firms increase with the number of firms in the

---

lined the great lakes and northern rivers of the U.S. had the great advantages in that they were close to basic resources like coal and lumber and could access cheap waterborne transport).

<sup>105</sup> Sunbelt cities and metropolitan areas such as Phoenix, Atlanta, Dallas, and Houston, for example, have seen dramatic population growth in recent decades. Glaeser & Gottlieb, *Urban Resurgence*, *supra* note 89, at 1284-85 (noting that “the general trend to ‘sun and sprawl’ has continued relatively unabated over the past 20 years”).

<sup>106</sup> For example, the elasticity of housing supply explains some of the rise of Sunbelt cities in the 1990s. The housing supply, in turn, reflects the combination of abundant land, freeways, and pro-growth permitting. Edward L. Glaeser & Joshua D. Gottlieb, *The Wealth of Cities: Agglomeration Economies and Spatial Equilibrium in the United States*, 47 J. ECON. LITERATURE 983, 998 (2009) [hereinafter *Wealth of Cities*] (arguing that the urban growth literature has paid little attention to differences in housing supply that are critical to understanding the growth of metropolitan areas with high growth levels, moderate prices and moderate incomes like Houston and Atlanta).

<sup>107</sup> See FLORIDA, CITIES, *supra* note 8, at 35-36, 45; Todd M. Gabe, *The Value of Creativity*, in HANDBOOK OF CREATIVE CITIES 128-45 (David Emanuel Andersson et al. eds., 2011); Glaeser & Gottlieb, *Urban Resurgence*, *supra* note 89, at 1276-80.

<sup>108</sup> See JANE JACOBS, THE ECONOMY OF CITIES 233-34 (1969); Edward L. Glaeser et al., *Growth in Cities*, 100 J. POL. ECON. 1126, 1151 (1992) [hereinafter *Growth in Cities*]; Robert E. Lucas, *On the Mechanics of Economic Development*, 22 J. MONETARY ECON. 3, 36, 40 (1988).

location.”<sup>109</sup> As first suggested by Alfred Marshall in *Principles of Economics*,<sup>110</sup> industrial agglomerations exist in part because firms benefit from the higher productivity that results when skilled workers are located in the same region, thereby reducing labor search costs.<sup>111</sup> Clustered firms also benefit from economies of specialization, allowing the production of non-tradable specialized inputs, reduced costs of transporting materials from suppliers to customers, and informational spillovers that can stimulate growth and innovation in an industry. Industry clusters are found in Detroit’s automotive sector, New York City’s theater and garment industries, and technology firms in Silicon Valley, among others.<sup>112</sup>

Based on this literature, urban economists like Glaeser have found similarly that individuals move to cities not only to increase their wages, but also to capitalize on the concentration of others from whom they can learn and increase their human capital.<sup>113</sup> In this view, certain individuals move to cities and surrounding suburbs to increase their human capital gains by living close to people from whom they

---

<sup>109</sup> See W. Brian Arthur, ‘Silicon Valley’ Locational Clusters: When Do Increasing Returns Imply Monopoly?, 19 MATHEMATICAL SOC. SCI. 235, 237 (1990).

<sup>110</sup> Adam Smith had much earlier famously observed that economic specialization is fostered by the kind of density that prevails in urban environments. See ADAM SMITH, THE WEALTH OF NATIONS 121-22 (Andrew Skinner ed., Penguin Books 1999) (1776) (noting that the division of labor, limited by the extent of the market, means that certain trades can be carried on “nowhere but in a great town,” and people are required to be generalists in “so desert a country as the Highlands of Scotland”).

<sup>111</sup> ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 332-33 (1890) (noting that “so great are the advantages which people following the same skilled trade get from near neighbourhood to one another”); Paul Krugman, *Increasing Returns and Economic Geography*, 99 J. POL. ECON. 483, 484-85 (1991).

<sup>112</sup> FLORIDA, RISE REVISITED, *supra* note 102, at 220 (also citing the maquiladora electronic and auto-parts districts in Mexico, the clusters of disk-drive manufacturers in Singapore, the flat-panel display industry in Japan, clusters of insurance companies in Hartford, casinos in Las Vegas, furniture manufactures in High Point N.C., and advanced imaging laboratories in Rochester, NY); see also PAUL KRUGMAN, GEOGRAPHY AND TRADE 35 (1991) (finding that most manufacturing sectors and many producer-service industries have a large presence in a few geographical locations and very little going on elsewhere); Glenn Ellison & Edward L. Glaeser, *Geographic Concentration in U.S. Manufacturing Industries: A Dartboard Approach*, 105 J. POL. ECON. 889, 891-92 (1997) (discussing Silicon Valley-style localizations of individual manufacturing industries in the United States).

<sup>113</sup> See, e.g., Edward L. Glaeser, *Are Cities Dying?*, 12 J. ECON. PERSP. 139, 148 (1998) (suggesting that the externality of knowledge spillovers in agglomeration economies may be more important at the individual level than at the firm level); Edward L. Glaeser, *Learning in Cities*, 46 J. URB. ECON. 254 (1999) (arguing that urbanization rises when returns to skills rise, the ability to learn by imitation rises, and the level of health in the economy rises).

can learn and with whom they can interact. Migration itself can be a form of human capital investment — a project that individuals can undertake to raise the returns on their labor.<sup>114</sup> In addition to capturing returns on their labor, individuals also move to capture the benefits of agglomeration in cities and metropolitan regions. Agglomeration economics suggests that individuals more efficiently acquire skills in urban metropolitan areas because of the greater opportunities to interact with other highly educated and skilled people, thus increasing the rates of human capital accumulation, technological innovation, and ultimately, urban growth.<sup>115</sup>

Economists have found tangible payoffs, in the form of higher wages and wage growth, for migrants to areas with a higher density of highly educated and skilled people. Not only do they earn more than their nonurban counterparts, but evidence suggests this urban wage premium stays with them when they leave urban areas.<sup>116</sup> The core claim of agglomeration scholars is thus that individuals seeking efficiency and productivity gains make location decisions on the basis of where other individuals cluster. These agglomeration gains can include the ability to learn from other workers and gain additional skills through information spillovers, thereby increasing human capital and productivity.<sup>117</sup> Undergirding these dynamics is the move

---

<sup>114</sup> Molloy et al., *supra* note 74, at 181. For example, a standard human capital explanation for the propensity of the young to migrate is that migration is an investment and “if a higher income stream is available elsewhere, then the sooner a move is made, the sooner the gain is realized.” John Kennan & James R. Walker, *Effect of Expected Income on Individual Migration Decisions*, 79 *ECONOMETRICA* 211, 239 (2011). Conversely, when returns to working in particular occupations become less geographically dispersed, as one study shows they have, this can help explain the falling migration rates in the past decade. See Greg Kaplan & Sam Schulhofer-Wohl, *Understanding the Long-Run Decline in Interstate Migration* 50 (Nat’l Bureau of Econ. Research, Working Paper No. 18507, 2012), available at <http://www.nber.org/papers/w18507>.

<sup>115</sup> Edward L. Glaeser & Matthew G. Resseger, *The Complementarity Between Cities and Skills*, 50 *J. REGIONAL SCI.* 221, 242 (2010), available at <http://www.nber.org/papers/w15103> (finding that some human capital accumulation is faster in metropolitan areas, that workers learn more quickly in metropolitan areas, and speculating that as a result the rate of technology change in cities is faster); see also Glaeser et al., *Growth in Cities*, *supra* note 108, at 1127-34 (reviewing recent theories of economic growth which stress the role of technological and knowledge spillovers in generating urban growth).

<sup>116</sup> Edward Glaeser & David Mare, *Cities and Skills*, 19 *J. LAB. ECON.* 316, 340 (2001).

<sup>117</sup> Giovanni Peri, *Young Workers, Learning and Agglomeration*, 52 *J. URB. ECON.* 582, 594, 603 (2002); James E. Rauch, *Productivity Gains from Geographic Concentration of Human Capital: Evidence from the Cities*, 34 *J. URB. ECON.* 380, 399

from a manufacturing to a knowledge-based economy over the past half-century, which has raised the return on investments in human capital and influenced the growth of technology and innovation industries in urban areas.<sup>118</sup>

Another important possible gain from agglomeration of high human capital is “matching,” a form of labor market pooling where workers have a greater likelihood of obtaining a better match between their skills and an employer and thereby increasing productivity and wages.<sup>119</sup> While the proximity strain of agglomeration economics highlights the immediate benefits of smart people being near each other, matching supports the advantages of a broad diversity of opportunities. One advantage of being in an urban environment, then, is being able to trade across specialties — whether in employment or in the goods and services one offers.<sup>120</sup> The greater the variety of

---

(1993). Although it is not clear exactly how the relationship works between workers' higher level of productivity and their presence in high skilled cities — that is, whether it is through “learning, innovation, both or neither.” Glaeser & Resseger, *supra* note 115, at 222.

Some scholars have even argued that highly educated and skilled individuals move to cities and metropolitan areas to increase the likelihood of finding a spouse or, if already married, to increase the likelihood that both spouses will find employment commensurate with the skills of each spouse. See Dora L. Costa & Matthew E. Kahn, *Power Couples: Changes in the Locational Choice of the College Educated, 1940–1990*, 115 Q. J. OF ECON. 1287, 1307 (2000); Lena Edlund, *Sex and the City*, 107 SCANDINAVIAN J. OF ECON. 25, 40 (2005).

<sup>118</sup> See FLORIDA, RISE REVISITED, *supra* note 102, at 193-94; EDWARD GLAESER, TRIUMPH OF THE CITY 28 (2011); Glaeser & Saiz, *supra* note 102, at 38, 42. Places with high numbers of well educated and highly skilled people tend to grow faster, generate higher incomes for their residents, and are generally better able to attract similar kinds of people to them. Glaeser & Saiz, *supra* note 102, at 42; John M. Quigley, *Urban Diversity and Economic Growth*, 12 J. ECON. PERSP. 127, 134-35 (1998); Edward L. Glaeser et al., *Cities, Skills, and Regional Change* 12 (Nat'l Bureau of Econ. Research, Working Paper No. 16934, 2011), available at <http://www.nber.org/papers/w16934>.

<sup>119</sup> Fredrik Andersson et al., *Cities, Matching, and the Productivity Gains of Agglomeration*, 61 J. URB. ECON. 112, 127 (2007); see also James R. Baumgardner, *The Division of Labor, Local Markets, and Worker Organization*, 96 J. POL. ECON. 509, 518 (1988); Sunwoong Kim, *Labor Specialization and the Extent of the Market*, 97 J. POL. ECON. 692, 704 (1989).

<sup>120</sup> Urban economists distinguish between the effects of *urbanization* (or diversification) economies, associated with a city's population and employment levels and the diversity of its productive structure, and *localization* (or specialization) economies, associated with a city's specialization in one specific sector. See Edward L. Glaeser et al., *Growth in Cities*, *supra* note 108, at 1129-30. Jane Jacobs, for example, believed that the most important knowledge transfers come from outside the core industry and, as a result, variety and diversity of geographically proximate industries rather than geographical specialization promote innovation and growth. See JACOBS, *supra* note 108, at 50-51.



---

---

possible matches, the more specialization is fostered. These advantages require a certain critical mass, and metropolitan regions as a whole have a much easier time providing the requisite diversity than do small local governments.

## 2. The “Creative Class” and Contemporary Mobility Patterns

Richard Florida famously expanded on the human capital approach by arguing that attraction of the “creative class,” a category that includes the well educated and others with particular skills and interests suited to the modern knowledge-based economy, is essential to regional economic development.<sup>121</sup> Florida focused on people working in intensely creative occupations such as science, the arts, architecture, writing, and in knowledge-intensive fields like financial services and high technology.<sup>122</sup>

Providing the kind of urban amenities that will attract highly mobile creative types, Florida argues, is fundamental to the growth of cities and regions.<sup>123</sup> To attract them, cities should offer amenities like the arts and a cultural climate that appeals to young, upwardly and geographically mobile professionals.<sup>124</sup> Two key amenities that will

---

<sup>121</sup> See generally FLORIDA, RISE REVISITED, *supra* note 102 (arguing that the creative class is a vital part of regional economic development). According to Florida, the creative class goes beyond highly educated people (degree holders) to highly skilled people. While there is overlap between conventional measures of human capital (i.e., college degrees) and the creative class, they are not the same. Four in ten members of the creative class — or 16.6 million workers (out of estimated 41 million creative class workers; roughly one-third of U.S. workforce) — do not have college degrees. *Id.* at 40-41, 45.

<sup>122</sup> *Id.* at 42.

<sup>123</sup> *Id.* at 280-82. Florida is not alone in contending that metropolitan consumption amenities are strongly correlated with the growth of cities and metropolitan areas. See, e.g., Terry Nichols Clark et al., *Amenities Drive Urban Growth*, 24 J. URB. AFF. 493 (2002) (arguing that amenities play a larger role in driving growth in cities than is reflected in the growth machine model); Glaeser et al., *Consumer City*, *supra* note 88 (finding that high amenity cities grow faster than low amenity cities); Jordan Rappaport, *Consumption Amenities and City Population Density*, 38 REGIONAL SCI. & URB. ECON. 553 (2008) [hereinafter *Consumption*] (finding that amenities support high population density and that moderate differences in consumption amenities can create vast differences in population density).

<sup>124</sup> According to Florida, creative people do not move for traditional reasons. The physical attractions that most cities focus on building — sports stadiums, freeways, urban malls, and tourism and entertainment districts that resemble theme parks — are irrelevant, insufficient, or unattractive to them. What they look for instead are abundant high-quality amenities and experiences, openness to diversity of all kinds, and above all else the opportunity to validate their identities as creative people. The communities that the creative class are attracted to thrive because they are places where

draw this class to a particular place are “tolerance” and diversity, the measure of which is the concentration of bohemians (artists), gays, and foreign-born populations, as well as the degree of racial integration.<sup>125</sup> Many of the most populous and fastest growing regions, according to Florida, are distinguished by a new model of economic development that takes shape around what he calls the “3Ts” of development — technology, talent, and tolerance — with the most successful metropolitan areas excelling at all three.<sup>126</sup>

For Florida, creative-class mobility is regional in its dynamics and its implications. The attraction of the creative class to a city or county has significant positive spillovers to the entire region, as the concentration and interaction of creative people spurs high levels of innovation and the expansion of technology-intensive sectors in the region.<sup>127</sup> Regions that attract the creative class also tend to provide an environment that is more open to innovation, entrepreneurship, and new firm formation.<sup>128</sup> The presence of the creative class in a city or region, in turn, will attract the kind of firms that rely upon these workers.<sup>129</sup> The growth of the creative class in a region leads directly

---

creative people want to live. Creative centers provide the integrated ecosystems or habitat where all forms of creativity — artistic and cultural, technological and economic — can take root and flourish. FLORIDA, RISE REVISITED, *supra* note 102, at 186.

<sup>125</sup> This combination is tracked in what Florida calls the “Tolerance Index.” He has found (as have others) that there is a positive relationship between tolerance and economic growth. *Id.* at 244-49.

<sup>126</sup> *Id.* at 228-36. Florida estimates that, as of 2010, the creative class composed more than 40 percent of the workforce in 11 metropolitan regions, 35 to 40 percent of the workforce in another 34 metropolitan regions, 30 to 35 percent of the workforce in 105 metropolitan areas, and 25 to 30 percent in 162 metropolitan areas. *Id.* at 206-07. On the flip side, there is only one metro where the creative class makes up less than 20 percent of the workforce and 48 where it accounts for between 20 and 25 percent of workforce. *Id.* The 11 regions where the creative class makes up more than 40 percent of the workforce include San Jose, Silicon Valley, greater Washington D.C., and Boston; as well as smaller college towns such as Durham, Ithaca, Boulder, and Ann Arbor. *Id.* at 11, 206. The creative class is even more concentrated by county than by larger metro regions. *Id.* at 210-11; *see also id.* at 213-14 (distribution of creative class by skill/industry type), 218-19 (working class enclaves), and 222-23 (service class centers).

<sup>127</sup> *Id.* at 232-33.

<sup>128</sup> *See id.* at 245. *See also* Haifeng Qian et al., *Regional Systems of Entrepreneurship: The Nexus of Human Capital, Knowledge, and New Firm Formation*, 13 J. ECON. GEOGRAPHY 559, 560, 583 (2012) (reviewing studies finding positive relationship between human capital and start-up firms, and finding in their study that tolerance is a significant determinant of both human capital and new firm formation as it exerts the strongest total effect on entrepreneurship).

<sup>129</sup> *See, e.g.,* Edward L. Glaeser, *The New Economics of Urban and Regional Growth*, in THE OXFORD HANDBOOK OF ECONOMIC GEOGRAPHY 83-98 (2000) (firms will follow

to the growth of the “service class,” since the service economy is, in large measure, a response to the demands of the creative economy.<sup>130</sup> This multiplier effect from the growth of the creative class arguably makes these regions more economically resilient over the long term.<sup>131</sup>

Florida has his share of critics,<sup>132</sup> some of whom question the causal relationship between the presence of the creative class and economic growth.<sup>133</sup> Nevertheless, many cities and counties have embraced economic development policies that provide cultural amenities and high levels of local service to attract and retain these mobile residents. Such approaches range from branding cities “creative” places<sup>134</sup> to adopting tax increment financing and other development strategies that will attract creative firms to cities.<sup>135</sup> Even more common are

---

human capital to some degree, locating in areas of high human capital concentration to gain competitive advantages); Ric Kolenda & Cathy Yang Liu, *Are Central Cities More Creative?: The Intrametropolitan Geography of Creative Industries*, 34 J. URB. AFF. 487, 506-08 (2012) (finding central cities host a greater share of creative industries and that creative jobs are more likely to be in central cities than other industries).

<sup>130</sup> See FLORIDA, RISE REVISITED, *supra* note 102, at 47-48. Service workers are typically low-wage, low-autonomy occupations such as food-service workers, janitors/cleaners and groundskeepers, personal care attendants, secretaries and clerical workers, and security guards. Florida notes that the economic gap between these two classes underpins widening economic inequalities in America. There is also the traditional “working class,” which is in decline — by his estimates, down from 33 to 26 million — and includes workers in production, transportation, repair and maintenance, and construction. *Id.* at 46-48.

<sup>131</sup> See FLORIDA, RISE REVISITED, *supra* note 102, at 50-51 (discussing studies showing the presence of a large creative class in a region lowering the unemployment rate); MORETTI, *supra* note 101, at 58-63 (noting that for every innovation job added, another five jobs are added to local service economy, three times the multiplier effect of manufacturing jobs).

<sup>132</sup> These critics include Glaeser, who contends that Florida’s work is derivative of other human capital theories of economic development, including his own. Edward L. Glaeser, *Review of Richard Florida’s The Rise of the Creative Class*, CREATIVE CLASS GROUP 2 (2004), <http://www.creativeclass.com/rfcgdb/articles/GlaeserReview.pdf>; see also Richard Florida, *Response to Edward Glaeser’s Review of the Rise of the Creative Class*, CREATIVE CLASS GROUP 2 (2004), <http://creativeclass.com/rfcgdb/articles/ResponsetoGlaeser.pdf>.

<sup>133</sup> See, e.g., Stephen Rausch & Cynthia Negrey, *Does the Creative Engine Run? A Consideration of the Effect of Creative Class on Economic Strength and Growth*, 28 J. URB. AFF. 473 (2006) (arguing that high human capital, high technology, culture, and immigration predict current and future growth).

<sup>134</sup> For example, Austin, Texas proclaims itself a “creative city” where locally driven creativity and innovation thrive, notably the convergence of “music, film and gaming into a digital media sector” as well as “clean energy advances,” are the drivers of economic prosperity in the region. See Will Wynn, *Creative Cities*, <http://www.willwynn.com/creative-cities/> (last visited Sept. 10, 2013).

<sup>135</sup> See, e.g., David N. Cicilline, *Creative Providence: A Cultural Plan for the Creative*

cities that have targeted the development and cultivation of cultural amenities as part of their urban revitalization plans.<sup>136</sup> There is evidence to suggest that these kinds of campaigns are working. Mobility patterns indicate that the educated, skilled, and talented class is disproportionately drawn to a small number of “cool” cities and have concentrated in those surrounding regions.<sup>137</sup>

Edward Glaeser’s work on resurgent, large, dense metropolitan areas similarly underscores the role of regional amenities in attracting the kinds of high human capital and knowledge workers on which Florida has focused.<sup>138</sup> Consider the transformation of the most “resurgent”

---

*Sector*, CITY OF PROVIDENCE 12 (June 2009), <http://www.providenceri.gov/ArtCultureTourism/reports-publications> (contemplating ways for the city to provide financial assistance to new start ups).

<sup>136</sup> See, e.g., Mark J. Stern & Susan C. Seifert, *Cultivating “Natural” Cultural Districts*, THE REINVESTMENT FUND, PHILADELPHIA 1 (2007), <http://www.trfund.com/wp-content/uploads/2013/06/NaturalCulturalDistricts.pdf> (arguing that clusters of cultural assets can lead to the revitalization of neighborhoods); see also Arthur Brooks & Roland Kushner, *Cultural Districts and Urban Development*, 3 INT’L J. ARTS MGMT. 4, 4, 8 (2001) (surveying cities that have adopted special tax measures for cultural funding with the goal of urban renewal); Michael Rushton, *Earmarked Taxes for the Arts: U.S. Experience and Policy Implications*, 6 INT’L J. ARTS MGMT. 38, 38-48 (2004) (survey of earmarking of revenues for arts and culture in the local and state governments); Elizabeth Strom, *Converting Pork into Porcelain: Cultural Institutions and Downtown Development*, 38 URB. AFF. REV. 3, 3, 5 (2002) (noting that so many new facilities have been built in a relatively short time span and as part of an economic revitalization program). But not all places have had success. In November 2002, voters in metro Detroit’s Wayne and Oakland counties defeated a proposed property tax increase earmarked for arts and culture. Michael Rushton, *Support for Earmarked Public Spending on Culture: Evidence from a Referendum in Metropolitan Detroit*, 25 PUB. BUDGETING & FIN. 72, 72 (2005).

<sup>137</sup> See, e.g., CEOs FOR CITIES, *THE YOUNG AND RESTLESS IN A KNOWLEDGE ECONOMY 1* (2011), <http://www.ceosforcities.org/research/the-young-and-restless-in-a-knowledge-economy/> (noting that over the last decade urban centers have increasingly become the residential destination of choice for young college graduates); William Frey, *Young Adults Choose “Cool Cities” During Recession*, BROOKINGS INSTITUTION 1-2 (Oct. 28, 2011), <http://www.brookings.edu/blogs/up-front/posts/2011/10/28-young-adults-frey> (noting that, to the extent they are moving, young adults are headed to metro areas which are known to have a certain vibe — college towns, high-tech centers, and so-called “cool cities”).

<sup>138</sup> These places have been undergoing a renaissance over the past few decades as places of consumption, not production. Glaeser & Gottlieb, *Urban Resurgence*, *supra* note 89, at 1276. As the authors explain, evidence suggests that when cost of living is adjusted for, real wages have been falling in dense urban areas and are now lower in big cities than in small ones. Thus, urban resurgence is not primarily the result of rising urban productivity, and falling relative wages are better viewed as evidence of people’s increased desire to live in urban areas in part because of the increasing value they place on social amenities (reflected by rising prices in large metro areas, particularly dense ones, and the willingness to pay those prices). See *id.* at 1275-76,

urban metropolitan regions — those that surround cities such as New York, San Francisco, Boston, and Chicago. These regions and their core cities have a number of attributes in common. They have attracted successful industries that have done well in the information economy, have high levels of educated and skilled residents, and provide a rich set of consumption activities (theater, museum, restaurants), among other attributes.<sup>139</sup> While the populations of these cities and regions have not grown considerably, in net terms, they have nevertheless been transformed by the mobility of high-income and high-skilled individuals into the region and the exodus of low human capital manufacturing from the region.<sup>140</sup>

In contrast, many older, dense, urban regions surrounding cities, such as Detroit and St. Louis, have industries that have done poorly, have lower levels of highly educated and skilled workers, and few consumption advantages.<sup>141</sup> These regions are being kept alive largely by long-lived housing stocks that are slowly depreciating. Cities like this, with less skilled workers, have suffered a dramatic urban decline.<sup>142</sup> Some have bounced back, to be sure, and have done so through a strategy aimed at providing the type of amenities that attract the creative class. Pittsburgh's remarkable renaissance over the past two decades is a telling example. After the steel industry collapse in the 1980s, Pittsburg halted what might have been an inevitable and unstoppable decline by pursuing an economic development strategy aimed at attracting high-tech industry, investing in large, regional-scale arts institutions and sports venues, and transforming its old

---

1281-83; see also Rappaport, *Consumption*, *supra* note 123, at 551 (finding that moderate differences in consumption amenities can cause large differences in population density and such amenities are more strongly capitalized into housing prices than wages); Jordan Rappaport, *The Increasing Importance of Quality of Life*, 9 J. ECON. GEOGRAPHY 779, 801 (2009) (finding strong relationship between local quality of life and relative urban population density).

<sup>139</sup> Glaeser et al., *Consumer City*, *supra* note 88, at 46; see also William Frey, *Demographic Reversal: Cities Thrive, Suburbs Sputter*, BROOKINGS INSTITUTION 1-2 (June 19, 2012) [hereinafter *Demographic Reversal*], <http://www.brookings.edu/research/opinions/2012/06/29-cities-suburbs-frey> (noting that “core primary cities” such as Atlanta, Denver, and Washington, D.C. have been growing faster than their surrounding suburbs; what these core cities have in common are important urban amenities and economic bases that are attractive to young people and other households now clustering in their cities).

<sup>140</sup> Glaeser et al., *Consumer City*, *supra* note 88, at 46. The same phenomenon also characterizes many European cities such as London, Paris and Barcelona. *Id.*

<sup>141</sup> *Id.* at 47 (also noting the European counterparts to Detroit and St. Louis, such as Manchester, that similarly have lower levels of human capital and few consumption advantages).

<sup>142</sup> Glaeser & Saiz, *supra* note 102, at 42.

industrial area into an entertainment and shopping destination.<sup>143</sup> Moreover, many companies in the region today were formed from the intellectual capital concentrated in the Pittsburgh region's twenty-five colleges and universities.<sup>144</sup> The Pittsburgh region was rated one of the five best places for the "creative class," among other accolades it has received in recent years.<sup>145</sup>

This suggests that a particularly important subset of interregional movers is attuned to certain regional-scale amenities, including the regional human capital market (such as how many people have advanced degrees, the number and quality of universities in the region, and the like) and regional housing and job markets. These movers are also assessing and responding to regional-scale public goods, given that such public goods — the regional context of public services, regulatory environment, and tax burden — are indirectly reflected in regional amenities and regional markets. The argument that interregional residential movers in general, and high human capital individuals in particular, value regional-scale amenities may be somewhat inferential, but there is much logic to the proposition.

---

<sup>143</sup> See *Pittsburgh's Renaissance*, POPULAR PITTSBURGH 1-3, <http://www.popularpittsburgh.com/pittsburgh-info/pittsburgh-history/renaissance.aspx> (last visited Sept. 10, 2013) (recounting history of Pittsburgh's renaissance); see also *Martin Prosperity Insights: Is Your Region . . . Creative, Innovative, Productive, . . . or Just Populated?* MARTIN PROSPERITY INSTITUTE 1, 2 (2012), [http://martinprosperity.org/media/MSA%20Patents%20Insight\\_v01.pdf](http://martinprosperity.org/media/MSA%20Patents%20Insight_v01.pdf).

<sup>144</sup> Frank Giarratani et al., *Dynamics of Growth and Restructuring in the Pittsburgh Metropolitan Region*, UNIV. OF PITTSBURGH 12 (1999), <http://www.briem.com/papers/duisburg.PDF>.

<sup>145</sup> *Pittsburgh's Renaissance*, *supra* note 143, at 1. Just as highly skilled, creative class types are migrating to metropolitan areas which offer them density, agglomeration knowledge economies, and consumption amenities, many other regional movers are sorting themselves into different metropolitan markets. These interregional movers are also attracted to regional-scale factors, but of a different nature than those that seem to appeal to creative class types. The factors at work in the densest urban regions, for example, do not seem to explain the rise of the "Sunbelt" metropolitan regions — which include cities such as Houston, Dallas, Atlanta, and Phoenix — characterized by high growth levels, moderate prices, and moderate incomes. Glaeser and Gottlieb's explanation for the trend over the last few decades toward "sun and sprawl" is elastic housing supply due to abundant land, freeways, and pro-growth land use policy, rather than rising consumer amenity values or productivity. Glaeser & Gottlieb, *Urban Resurgence*, *supra* note 89, at 1284-85; Glaeser & Gottlieb, *Wealth of Cities*, *supra* note 106, at 998-99. Thus, the presence of these regional amenities (both natural and governmental) permitted those attracted to the region to satisfy their preferences for cheap suburban housing and a warm climate. Edward L. Glaeser & Kristina Tobio, *The Rise of the Sunbelt*, 74 S. ECON. J. 609, 641 (2008).

### 3. Agglomeration, Amenities, and Interregional Mobility

The distinction between the explanation for interregional mobility offered by agglomeration economics and the “amenities” approach represented most prominently by Florida has generated an ongoing debate.<sup>146</sup> Both share a focus on mobility and what attracts high human capital individuals, but they differ on what draws this class to a particular locality or region, and thus what role policymakers can play in attracting them. The amenities approach is arguably consistent with a Tieboutian approach if local governments or metro regions see themselves as competing for this class of mobile residents by offering the kind of public goods that would attract educated, skilled, and creative residents. Agglomeration economies, however, more directly spring up as a market through individual location choices (albeit in a context influenced by local policies). Although it is possible to view agglomeration economies themselves as a local public good,<sup>147</sup> such economies are not as clearly a direct product of government policy.<sup>148</sup>

In fact, as David Schleicher has argued, there may be a tension between Tieboutian sorting and agglomeration effects in that local

---

<sup>146</sup> See, e.g., Yong Chen & Stuart S. Rosenthal, *Local Amenities and Life-Cycle Migration: Do People Move for Jobs or Fun?*, 64 J. URB. ECON. 519 (2008) (1970–2000 Census data indicates that cities with improving business environments acquire increasing shares of workers, especially with high human capital; cities with improving consumer amenities become relatively more populated by retirees; and that regardless of marital status, young, highly educated households tend to move towards places with higher quality business environments); Richard Florida et al., *Inside the Black Box of Regional Development: Human Capital, the Creative Class and Tolerance*, 8 J. ECON. GEOGRAPHY 615 (2008) (finding that “cultural economy” has both a direct and indirect relationship to regional development); Allen Scott, *Jobs or Amenities? Destination Choices of Migrant Engineers in the USA*, 89 PAPERS IN REGIONAL SCI. 43 (2009) (finding that local employment opportunities and not amenities guide the migratory shifts of migrant engineers); Jesse M. Shapiro, *Smart Cities: Quality of Life, Productivity, and the Growth Effects of Human Capital*, 88 REV. ECON. & STAT. 324 (2006) (concluding that roughly 60 percent of college graduates’ effect on employment growth is due to productivity, the rest from the concentrations of skill and growth in quality of life); Michael Storper & Allen J. Scott, *Rethinking Human Capital, Creativity and Urban Growth*, 9 J. ECON. GEOGRAPHY 147 (2009) (arguing that claims to the effect that consumers cities have now supplanted producer cities are greatly exaggerated).

<sup>147</sup> Robert W. Helsley & William C. Strange, *Matching and Agglomeration Economies in a System of Cities*, 20 REGIONAL SCI. & URB. ECON. 189, 189 (1990) (arguing that an agglomeration economy in the labor market has the characteristics of a local public good).

<sup>148</sup> Cf. Charles J. Ten Brink, *Gayborhoods: Intersections of Land Use Regulation, Sexual Minorities, and the Creative Class*, 28 GA. ST. U. L. REV. 789, 813 (2012) (arguing that diversity “is clearly a public good in the Tieboutian sense”).

policies designed to attract mobile residents can interfere with the efficiency of location choices in an agglomerative model.<sup>149</sup> Where mobile residents are tempted to move in response to local government policies, this creates incentives to give up “the lost transactions between people who would have lived near one another absent government intervention.”<sup>150</sup> Moreover, Tieboutian localism empowers local land use policies that disfavor density in a way that pushes residents further apart from each other, discouraging beneficial local connections.<sup>151</sup> Agglomeration economies exist beyond local government boundaries through various positive spillovers within a region, particularly knowledge spillovers.<sup>152</sup> The existence of network externalities within a region, in which cities and towns are linked by transportation and telecommunication infrastructures that generate and diffuse knowledge, also cuts against a strong norm of Tieboutian localism.<sup>153</sup>

Notwithstanding the tension between agglomeration economics and Tieboutian sorting, these two explanations are not necessarily independent of one another. Indeed, it is more likely that they exist in a fairly dynamic relationship. As Glaeser and Gottlieb have argued, given the difficulty of estimating and measuring human capital externalities, even small changes in public policy can potentially have a significant effect on agglomeration economies.<sup>154</sup> In other words, because agglomeration economies exist, local leaders will want to support and foster the conditions that help to produce and sustain them by offering the kinds of policies and amenities that are attractive to high human capital migrants. As one commentator put it, “[a] concentration of highly skilled workers will likely lead to the development of amenities as much as amenities drive the

---

<sup>149</sup> See Schleicher, *supra* note 3, at 1511-12, 1541 (explaining that “Tiebout sorting encourages individuals and businesses to scatter, moving around a metropolitan area away from where they would have located if local governments did not affect the market for property”).

<sup>150</sup> *Id.* at 1512.

<sup>151</sup> See Daniel B. Rodriguez & David Schleicher, *The Location Market*, 19 *GEO. MASON L. REV.* 637, 645-46 (2012).

<sup>152</sup> See, e.g., Schleicher, *supra* note 3, at 1544 (arguing that the policies of individual towns likely do not maximize the combined efficiency of agglomeration).

<sup>153</sup> See Rafael Boix & Joan Trullén, *Knowledge, Networks of Cities and Growth in Regional Urban Systems*, 86 *PAPERS IN REGIONAL SCI.* 551, 555 (2007).

<sup>154</sup> See Glaeser & Gottlieb, *Wealth of Cities*, *supra* note 106, at 1005, 1014-15 (noting that the existence of human capital externalities does not suggest which policies will attract such workers, but does suggest that there are costs associated with policies that repel highly skilled workers, such as progressive taxation at the local level).



concentration of these same workers.”<sup>155</sup> Even Schleicher acknowledges that there may be a role for government policy in helping to create the conditions for agglomeration economies, although he argues that it is best, for efficiency reasons, to leave such economies to the “location market.”<sup>156</sup>

Finally, although contemporary human capital theories provide some evidence of regional-scale demand, the approach of such theories to mobility itself may seem in tension with the animating idea of Tiebout sorting. If people are moving for regional “amenities” or to capture the gains from proximity and breadth that agglomeration assumes, then they would not seem to be moving to satisfy their preferences for a mix of public goods and tax burden.<sup>157</sup> But the reality is that many amenities commonly cited as motivating factors for mobility and many of the aspects of agglomeration that emphasize the density and diversity of inputs over immediate proximity are indirect reflections of the kinds of public goods at the heart of the Tiebout paradigm.<sup>158</sup> Admittedly, there are important divergences in the consequences of each frame — particularly the proximity strand of agglomeration theory and traditional Tiebout sorting<sup>159</sup> — but given that Tiebout sought to isolate the signal of public goods from the noise of the variety of motivations that actually drive mobility, the same kind of simplification can provide a bridge here as well.

---

<sup>155</sup> W. Mark Brown & Darren M. Scott, *Human Capital Location Choice: Accounting for Amenities and Thick Labour Markets*, 52 J. REGIONAL SCI. 787, 789 (2012).

<sup>156</sup> Rodriguez & Schleicher, *supra* note 151, at 639-40 (noting that governmental policies can improve on the decisions of individuals to cluster or sort into an agglomeration economy, but that such policies are difficult to devise given the high gains associated with choosing where to live and the ability of individuals to negotiate relatively effectively).

<sup>157</sup> Tiebout, as noted, seemed to assume away motivations for residential moves at the heart of both the amenity and agglomeration approaches. See discussion *supra* Part I.A.

<sup>158</sup> Cf. Malani, *supra* note 27 (discussing legal regimes as local amenities). For example, a regression analysis of Internal Revenue Service data found that six factors (climate variability, personal income taxes, private sector membership, housing prices, and public schools/education) account for two-thirds of the net migration among states from 2004–2008. Other than climate, these factors are all shaped by government policy. See W. Michael Cox & Richard Alm, *Looking for the New New World*, O’NEILL CTR. FOR GLOBAL MARKETS & FREEDOM, SMU COX SCH. OF BUS. 6, 10, 12, 17 (2010), <http://oneildocs.cox.smu.edu/annualreports/2010oneilreport.pdf>.

<sup>159</sup> See Schleicher, *supra* note 3, at 1511.

## III. TIEBOUTIAN REGIONALISM

The phenomenon of interregional mobility has implications for the traditional link between Tieboutian sorting and localism. As this Part argues, if an important aspect of intergovernmental competition for mobile residents is regional in scale — in terms of the preferences that residents are seeking to satisfy and the institutions that can most appropriately respond — then the devolutionary apparatus of the Tiebout model can be inverted to support a range of regionalist arguments. This Part lays out these structural implications and then revisits the primary critiques of the Tiebout model for their variance in the context of interregional mobility. The Part concludes with reflections on the intersection of Tieboutian regionalism and the rise of international competition between increasingly global cities.

A. *Tiebout's Regions*

## 1. Regional-Scale Demand as a Rationale for Regional Governance

Contemporary patterns of interregional mobility are consonant with the idea that people are responding to regional-scale elements of demand as high human capital individuals increasingly sort themselves among a handful of core cities and their metropolitan areas. Growing regions are characterized by increases in highly skilled knowledge workers, income levels, and housing prices that are consistently and rapidly outpacing average national increases, due in part to limited housing supply.<sup>160</sup> These regions tend to have important urban amenities attractive to highly skilled professionals and the creative class and many have made special efforts to attract and retain this critical subset of movers.<sup>161</sup>

That a significant strand of contemporary residential mobility is being driven, at least in part, by demand for regional-scale public goods implies the need for a similar conceptual frame on the supply

---

<sup>160</sup> MORETTI, *supra* note 101, at 13-14; Glaeser & Saiz, *supra* note 102, at 42; Florida, *supra* note 101.

<sup>161</sup> See, e.g., Frey, *Demographic Reversal*, *supra* note 139 (based on analysis of 2010 Census data, metropolitan areas with “core primary cities” saw rapid growth; city growth outpaced suburban growth in these areas); see also FLORIDA, RISE REVISITED, *supra* note 102, at 186 (finding that economic activity is concentrated in particular places that are growing bigger and bigger with the concentration of the creative class and that these cities do better than others at luring creative people to their environments by offering cultural amenities and a cultural climate that appeals to them).

side of the Tieboutian quasi-market.<sup>162</sup> In other words, if the attraction for many mobile residents is not merely the governance of an immediate neighborhood, but rather a particular metropolitan context, then the relevant scale of the mix of public goods, regulatory environment, and tax burden reflected in that locational choice is in many important respects inherently regional.<sup>163</sup> It is thus possible to think about regional governance as a supply-side phenomenon that responds to the particular demand of residents whose mobility is across metropolitan areas.<sup>164</sup>

As noted, the universe of public goods that today's regionally mobile residents find attractive include many types of outputs that are best supplied at regional scale. This holds true even if such residents are also attracted to public goods that have traditionally been thought of

---

<sup>162</sup> Cf. Theodore Hershberg, *The Case for Regional Cooperation*, in FORMS OF LOCAL GOVERNMENT: A HANDBOOK ON CITY, COUNTY, AND REGIONAL OPTIONS 297, 297-98 (Roger L. Kemp ed., 1999) (discussing interregional economic competition as a justification for regional cooperation).

<sup>163</sup> Geographers and demographic scholars increasingly argue that the appropriate scale of regionalism is not metropolitan but, to use a term that sounds like it comes from an old science fiction movie, "megapolitan." See ROBERT E. LANG & DAWN DHAVALA, METROPOLITAN INSTITUTE CENSUS REPORT SERIES, BEYOND MEGALOPOLIS: EXPLORING AMERICA'S NEW "MEGAPOLITAN" GEOGRAPHY 2 (2005); see also Margaret Dewar & David Epstein, *Planning for "Megaregions" in the United States*, 22 J. PLAN. LITERATURE 108, 110 (2007). In this view, economic, social, and environmental issues that have traditionally been the staple of metro-scale regionalism should now be filtered through a lens that recognizes that increasing urbanization is linking regions that span a much larger scale, such as the southern California conurbation, a Front Range urban area that stretches along I-25 from Cheyenne past Denver down to Pueblo, the greater Chicagoland region, southern Florida, the northeast Acela corridor, and a handful of others around the country. LANG & DHAVALA, *supra*, at 2.

It is certainly possible that the mobility-based arguments for regionalism we explore in this Article could be applied to a level of governance one step more expansive than the metropolitan-scale regions on which we focus. See Richard J. Cebula & Usha Nair-Reichert, *Migration and Public Policies: A Further Empirical Analysis*, 36 J. ECON. & FIN. 238, 238 (2012) (finding evidence of Tieboutian sorting at the state level, with migrants appearing to prefer lower state income tax burdens, lower state plus local property tax burdens, and higher per pupil outlays on primary and secondary public education). But the paradigmatic mover this Article focuses on is an individual with greater sensitivity to local government policies than state-level policies. For present purposes, it is sufficient to recognize the centrifugal potential of mobility and bracket for now a fuller exploration of its application to larger-scale regions.

<sup>164</sup> Cf. Briffault, *Beyond City and Suburb*, *supra* note 21, at 205 ("Cultural, educational, and health institutions — museums, orchestras, universities, and hospitals — serve their regions and play an important role in interregional competition. Infrastructure, environmental, and natural resource issues such as airports, transit systems, air and water quality, water supply, waste removal, and open space transcend local boundaries and affect interregional competition as well.").

as local. The arts provide one example. In some regions across the country, major arts institutions and activities are funded and supported on a regional basis and serve as important regional markers of cultural identity.<sup>165</sup> Similarly, major sports stadiums are increasingly being financed and maintained on a metropolitan regional basis.<sup>166</sup>

Regional-scale public goods also encompass regulatory choices, such as tax incentives and economic development policies, that drive important aspects of regional labor and housing markets, and that can significantly influence the ecosystem in which innovation may occur. They also include regional institutions that foster an overall climate of growth, such as universities and regional health care facilities. Regional policy outputs also include the facilitation of amenities such as open space, regional transit, and other markers of the quality of urban life across a metropolitan area that attract the kind of mobile resident for whom many regions are competing. Though these public goods are not necessarily inherently regional, many, if not most, have important regional components; therefore, even where supplied by individual local governments, these goods may still be crucial to attract knowledgeable and creative mobile residents.<sup>167</sup>

Beyond elevating the kinds of public goods that might garner local political attention, inter-metropolitan Tieboutian sorting can provide a new conceptual basis for regional governance beyond the traditional arguments well-rehearsed in the literature. Regionalism has long been

---

<sup>165</sup> Some states and their metro regions, such as Missouri, Colorado, Minnesota, Kentucky, and Washington, have created cultural asset, or overlay, districts to fund regional scale institutions such as museums, theaters, and other cultural and civil institutions through sales taxes and tax incentives or credits. See generally VANDERBILT CTR. FOR NASHVILLE STUDIES, *CULTURAL TAX DISTRICT: A REVIEW AND ANALYSIS OF CURRENT IMPLICATIONS* (2010) (comparing cultural tax districts and non-tax alternative models). The designated boundaries of many of these districts include the central or core cities and the surrounding localities in the region; some were created in response to declining tax bases due to suburban flight even as those who fled the central city continued to use these regional assets. See Matthew Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49, 82 (2012).

<sup>166</sup> Parlow, *supra* note 165, at 83-84 (noting that Colorado, Louisiana, Arizona, and other states have passed statutes enabling and supporting the creation of sports stadium districts).

<sup>167</sup> It has long been recognized that the reality of metropolitan service provision contains strong elements of collaboration and cooperation among local governments on some aspects of regional governance. See Elinor Ostrom & Robert B. Parks, *Neither Gargantua nor the Land of the Lilliputs: Conjectures on Mixed Systems of Metropolitan Organization*, in POLYCENTRICITY AND LOCAL PUBLIC ECONOMIES: READINGS FROM THE WORKSHOP IN POLITICAL THEORY AND POLICY ANALYSIS 284, 285 (Michael D. McGinnis ed., 1999).

grounded in a series of basic propositions.<sup>168</sup> First, regionalists argue that economies of scale suggest that a number of public goods that local governments now provide can be more efficiently produced at a higher level of governance.<sup>169</sup> Second, and closely related, is the argument that the appropriate scale for many regulatory challenges is inherently regional. In essence, this argument holds that when the provision of certain goods involves regional watersheds, transportation networks, housing markets, or similar concerns that require collective action at a regional scale, the scope of governance should match the scope of the regulatory concern.<sup>170</sup> Indeed, because there is empirical support for a strong relationship between core-city and regional income and poverty,<sup>171</sup> economic development policy and regulatory authority in these areas have inherently regional aspects. Finally, for commentators and scholars concerned with the capacity of local governments to respond to inequity, regionalism has been a means to overcome the artificial constraints of local government structure by limiting a variety of welfare-enhancing transfers between localities.<sup>172</sup>

Tieboutian sorting at the level of metropolitan areas provides an argument for regionalism that is distinct from these traditional rationales, albeit reflecting some of the elements of the argument from interdependence. Rather than focusing on the inherent scope of common regional concerns, economies of scale, or communitarian or regional equity arguments, positing a “quasi-marketplace” between metropolitan regions privileges the shared imperative of all local governments in a region to facilitate collective competitiveness. While concerns of community, accountability, and efficiency might parse out toward localism or regionalism depending on the existence of interlocal spillovers and the like, regional-level mobility offers an independent, direct argument for regional governance. If residents

---

<sup>168</sup> See Laurie Reynolds, *Local Governments and Regional Governance*, 39 URB. LAW. 483, 489-90 (2007).

<sup>169</sup> See *id.* at 490-91.

<sup>170</sup> See *id.* at 498.

<sup>171</sup> Manuel Pastor and his co-authors, for example, have found a negative relationship between concentrated poverty and regional income growth. See MANUEL PASTOR JR., PETER DREIER, J. EUGENE GRIGSBY III & MARTA LÓPEZ-GARZA, *REGIONS THAT WORK: HOW CITIES AND SUBURBS CAN GROW TOGETHER* 13 (2000). Another study examined decades of data for over 250 metropolitan statistical areas and found a strong relationship for cities and their suburbs in terms of levels and growth of population, income, and home values. Andrew Haughwout & Robert Inman, *Should Suburbs Help Their Central City?*, BROOKINGS-WHARTON PAPERS ON URB. AFF. 45, 47, 55 (2002).

<sup>172</sup> See Reynolds, *supra* note 168, at 493. As Professor Reynolds notes, there is also an argument for regionalism from democratic participation grounds. *Id.* at 492-93.

evaluating interregional moves are looking to, and attracted by, regional-scale amenities and the regional ecosystem for agglomeration, then some form of regional governance or collective action more often than not seems necessary to provide such goods.

As a practical matter, it is more difficult to operationalize Tieboutian regionalism to meet inter-metropolitan demand through regional-scale public goods than traditional localism. Indeed, it is possible to analogize the relevant regional-scale “supply” of the relevant bundles of public goods, regulation, and taxation, which, again, may come from multiple local governments, to the production of other outputs that likewise require assembly. One way to think about the practical barriers to that collective action, which is to say to some form of regional governance, is through the lens of the so-called “anticommons.” Michael Heller has argued that fragmentation of rights may cause the supply of a variety of goods — public and private — to be sub-optimal.<sup>173</sup> According to Heller, and modeled more formally in economics literature,<sup>174</sup> when multiple rights holders have the ability to block coordination, whether through the exercise of a fractional owner’s right to exclude in property or through similar veto powers, resources can be undersupplied.<sup>175</sup>

Although primarily focused on property law, Heller has applied this theory to governance challenges, such as the over-proliferation of tollbooths on the Rhine River and fragmented authority in the issuance of urban building permits.<sup>176</sup> The same conceptual frame can explain why regional-scale goods are generally under-supplied in the Tieboutian localism framework.<sup>177</sup> Local governments in a metropolitan region are empowered by the basic structure of state law

---

<sup>173</sup> See generally MICHAEL HELLER, *THE GRIDLOCK ECONOMY: HOW TOO MUCH OWNERSHIP WRECKS MARKETS, STOPS INNOVATION, AND COSTS LIVES* (2008) (arguing that fragmentation of rights may result in wasteful underuse of resources).

<sup>174</sup> James M. Buchanan & Yong J. Yoon, *Symmetric Tragedies: Commons and Anticommons*, 43 J. L. & ECON. 1, 1 (2000); Francesco Parisi, Norbert Schulz & Ben Depoorter, *Fragmentation in Property: Towards a General Model*, 159 J. INST. & THEORETICAL ECON. 594, 594 (2003).

<sup>175</sup> HELLER, *supra* note 173, at 18. As Heller notes, fragmentation of rights can also be a beneficial source of protection for scarce resources. *Id.* at 67.

<sup>176</sup> *Id.* at 3, 20-21, 109-10.

<sup>177</sup> A few scholars have made this connection, albeit through the lens of the more commonly discussed tragedy of the commons, rather than explicitly approaching regionalism failures as an example of an anticommons. See, e.g., Buzbee, *supra* note 60, at 8-36 (arguing that regulatory commons problems can arise outside the common pool resource setting). It is clearer to think of this as an anticommons problem, as there are competing rights that operate as vetoes, if regional-scale demand is the conceptual baseline.

---

---

to exercise a kind of direct veto right — the right to secede from involvement in regional-scale governance. To the extent that factors external to the state-created structure of local governments might suggest the need for a regional approach (and in this Article we focus on regional-scale demand by mobile residents as one particular external driver of governance scale), state-granted veto rights can just as paradigmatically yield under-production as any other kind of legal fragmentation. All of this underscores the practical challenge of implementing a regional-scale response to comparative metropolitan demand, but does not undermine the imperative to do so.<sup>178</sup>

## 2. Interregional Localists?

One counterargument to the proposition that regional-scale mobile demand has implications for the supply of Tieboutian bundles through regional-scale governance is that, theoretically, it would be possible for traditional local competition to satisfy regional demand most optimally. Thus, even if a mobile resident is evaluating the greater Atlanta metro area against the Miami-Dade metro region, once that person decides to move, they still have to make an intraregional choice of residence (and work, and school) and that traditional choice then generates the traditional Tieboutian argument for localism.<sup>179</sup> Moreover, people moving from one metropolitan area to another may have an affirmative attraction to devolution itself as a public good if they believe that their specific policy preferences are best supplied by fragmented, relatively exclusionary local governments within the region to which they are relocating.<sup>180</sup>

---

<sup>178</sup> To be clear, our argument is not that interregional mobility undermines the process of Tiebout sorting as it has been traditionally invoked by legal scholars. Rather, it is that a balance must be recognized between types of mobility that conceptually support devolution and an increasingly important strain of mobility that can conceptually support regionalism. These are not mutually exclusive and the real question is the balance in any given instance.

<sup>179</sup> Indeed, there is evidence that some mobile residents move outside of their region to find the ideal package of localized public policies, services, and taxes. See, e.g., Martin Farnham & Purvi Sevak, *State Fiscal Institutions and Empty-Nest Migration: Are Tiebout Voters Hobbled?*, 90 J. PUB. ECON. 407 (2006) (fiscal adjustment among cross-state movers suggests that, given the opportunity, households will choose communities that offer a tax and service bundle suited to their demands even across state lines).

<sup>180</sup> Cf. Malani, *supra* note 27 (discussing legal structures as amenities). Thus, if a person believes that public schools operate best at the most local level, the fact that a region has multi-jurisdictional (and particularly center-city and suburb-spanning) school districts would be an affirmative disincentive to move to that region compared to a region that privileged localism in schools.

This is a serious proposition, and we are not assuming that even the most die-hard regionalist will ignore intraregional differences when making their ultimate locational choice.<sup>181</sup> Indeed, once residents decide to move to a region it is very likely that they will compare the region's constituent counties and municipalities to find the right package of local goods and taxes. Notwithstanding the likelihood of Tieboutian sorting in interregional moves, our point is that such moves reflect a balance between the influence of purely local public goods and the kinds of regional-scale public goods that attract interregional movers in the first place. Both must be considered when evaluating the structural consequences of mobility on governance.

In practice, moreover, it is very difficult to test the traditional Tiebout hypothesis on an interregional basis without controlling for differences in regional labor markets and regional amenities that are not within the control of any one local government unit.<sup>182</sup> Because localities within a metropolitan region tend to be socially and economically interdependent, interregional mobility patterns have an inherent tendency to reflect regional goods and amenities. As such, when mobile residents migrate from one region to another, it is as important to examine the mix of regional public goods, services, and amenities as it is to look at the particular mix of locally-bounded public goods and services within the region.

On the supply side, it is an empirical question as well whether regional governance is actually responding to regional demand. Unlike Tieboutian localism, significant empirical work — direct or indirect — has not been done on issues such as comparative capitalization rates and the other indicia of the effect of sorting at the regional level.<sup>183</sup> There is a second-order indication that regional sorting may have the

---

<sup>181</sup> Although information costs are undoubtedly higher for residents when Tieboutian competition is interregional, these costs have been reduced considerably with modern technology. See, e.g., Kaplan & Schulhofer-Wohl, *supra* note 114 (finding costs of information about job opportunities has decreased over time, contributing to some flattening out of interstate mobility rates between 1991 and 2011).

<sup>182</sup> Georg Grassmueck, *What Drives Intra-county Migration: The Impact of Local Fiscal Factors on Tiebout Sorting*, 41 REV. REGIONAL STUD. 119, 121-22 (2011) (citing studies which attempt to test for Tieboutian interregional sorting and noting that intraregional testing is more accurate because the “independence from regional labor markets and regional natural amenities allows the researcher to focus on the differences at the local level, such as local taxes, expenditures, housing, and schooling, testing a Tiebout-like mechanism at work”).

<sup>183</sup> See *supra* note 20 (on the empirics of Tieboutian sorting at the local level); cf. Farnham & Sevak, *supra* note 179 (noting evidence of interregional local preference satisfaction).



same kind of impact on property valuation that local sorting seems to have, given the comparative variation of property values among metropolitan areas.<sup>184</sup>

Moreover, it is not entirely clear that local government officials are necessarily aware of, or directly attending to, demand for regional-scale public goods in a Tieboutian marketplace. There is certainly anecdotal evidence of this in explicitly regional efforts to attract talent,<sup>185</sup> and this has become a more important (if often implicit) aspect of regionalism arguments in the popular literature.<sup>186</sup> But the logic inherent in sorting should provide an incentive for local government officials to do just that.<sup>187</sup>

### 3. Inverting Tieboutian Localism

To shift from theory to doctrine, Tieboutian regionalism has implications for several core debates in local government law. As noted, Tieboutian sorting has long been invoked in opposition to regionalism in the legal literature.<sup>188</sup> However, a Tieboutian perspective on regional mobility, while not necessarily generating any specific prescription for governance at a regional scale, provides a new, and in this context, perhaps ironic, justification for a range of supply-side governance responses to regional demand. This regional-scale supply could embrace everything from traditional metropolitan consolidation to special-purpose regional entities, such as arts overlay

---

<sup>184</sup> Cf. David Albouy & Gabriel Ehrlich, *Metropolitan Land Values and Housing Productivity* 14 & tbl.2 (Nat'l Bureau of Econ. Research, Working Paper No. 18110, 2012), available at <http://www-personal.umich.edu/~albouy/Land/landvalues.pdf> (noting the variability in land value by metropolitan region).

<sup>185</sup> See sources cited *supra* note 11.

<sup>186</sup> See sources cited *supra* note 13.

<sup>187</sup> Much of the literature on Tiebout emphasizes entrance, which is to say attracting new residents, but in a competitive environment, governance is also influenced by the threat of exit. Policies might theoretically vary if a region (or local government) is trying to keep a current resident than attract a new resident, although arguments about the kinds of environments that attract high human capital workers in particular tend to dovetail with what keeps those people in a given place once they relocate.

<sup>188</sup> In the legal literature, the typical juxtaposition has been between Tieboutian localism and regionalism. See, e.g., Lee Anne Fennell & Julie A. Roin, *Controlling Residential Stakes*, 77 U. CHI. L. REV. 143, 173 (2010) (arguing that regionalism “diminishes the potential for useful interlocal variation and competition along the lines suggested by the Tiebout hypothesis”); Edward J. Huck, *Tiebout or Samuelson: The 21st Century Deserves More*, 88 MARQ. L. REV. 185 (2004) (contrasting Tieboutian localism with a kind of regional consolidation approach associated with Paul Samuelson’s work in public finance).

districts, to the kind of intraregional local cooperation that Clayton Gillette has highlighted.<sup>189</sup>

To begin, responding to regional demand requires greater cooperation and coordination on the regional supply side.<sup>190</sup> As such, interregional competition for mobile residents might justify creating more legal room for moderating the formal aspects of state and local government law that can stand as impediments to regional action. At the same time, as David Barron has argued, there may be areas where local government authority can be strengthened to foster the capacity for regional undertakings.<sup>191</sup> This rebalancing is a matter in the first instance for state legislative reform, but can also play out in doctrinal conflicts involving local government authority as well as invocations of home-rule immunity in the face of contrary state-level directives or preemption.<sup>192</sup>

In doctrinal areas that shape local government practice — which can involve questions of taxation, regulatory authority, service provision, and other staples of local government law<sup>193</sup> — interregional competition does not inherently undermine mobility-based arguments for devolution. But it does provide a rationale for state-level efforts to promote regionalism and judicial recognition of the necessity, in some contexts, to cede local authority to regional concerns. Courts often balance a range of normative considerations in evaluating the balance between local government authority and efforts to moderate the consequences of local parochialism, whether in terms of immediate externalities or in terms of regional-scale problems.<sup>194</sup> The dynamics of

---

<sup>189</sup> See *infra* text accompanying notes 198-199.

<sup>190</sup> See *supra* text accompanying notes 173-177.

<sup>191</sup> David Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2352-62 (2003) (discussing antidiscrimination and inclusionary zoning as examples); see also Reynolds, *supra* note 168, at 524-28 (discussing ways that strengthening localism might facilitate regionalism).

<sup>192</sup> Cf. Barron, *supra* note 191, at 2367 (noting that the range of options available to local governments “is a function not only of the powers that state law confers upon it in isolation, but also of the powers that state law confers upon its neighbors”).

<sup>193</sup> Among the areas where the scope of local authority — often in the face of contrary regional-scale alternatives — is most salient are land use, education, taxation, and the structure and operation of local governments themselves. See, e.g., Briffault, *Our Localism*, *supra* note 2, at 346 (stating that local autonomy is critical in shaping the law of school funding, land use, and local government formation and preservation).

<sup>194</sup> See, e.g., Ashira Pelman Ostrow, *Process Preemption in Federal Siting Regimes*, 48 HARV. J. ON LEGIS. 289, 298-99 (2011) (discussing local authority over land use regulation as a barrier to responding to regional needs); see also Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA.

interregional competition may provide an additional factor for courts to evaluate in that balance.

Tieboutian regionalism also provides an argument, albeit perhaps at the margins, for reducing barriers to municipal annexation and for caution when it comes to the relative ease of municipal incorporation. The jurisprudence of local boundary setting has long been recognized as a core ground for debates about localism,<sup>195</sup> with legal scholars recognizing that the legal construction of authority over city-county consolidation, annexation, secession, dissolution, and other questions of local government entity formation and definition play an important role in the scale of governance.<sup>196</sup> In all of these areas, the reality of interregional competition for mobile residents underscores doctrines that facilitate regional scale and impede the erection of institutional barriers to regional governance.<sup>197</sup>

Beyond these particular legal-structural implications, regional mobility can help facilitate collaboration by local governments within a metropolitan area. Clayton Gillette has argued that local governments have under-appreciated incentives to cooperate on a host of issues.<sup>198</sup> To Gillette, the relative lack of interlocal cooperation is

---

L. REV. 959, 1024 (2007) (noting that a variety of local decisions “have external effects on neighboring communities, shaping regional economies without any imperative that the extraterritorial consequences of local decision-making be taken into account”).

<sup>195</sup> See, e.g., Briffault, *The Local Government*, *supra* note 3 (proposing a weakening of the significance of local boundaries coupled with the creation of regional governments); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994) (noting that jurists and legal scholars simultaneously refer to local boundaries as arbitrary while treating local governments as sacrosanct entities).

<sup>196</sup> See Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1369, 1419-28, 1432 (2012) (noting that municipal dissolutions, in which cities dissolve into county structures in times of economic crisis and population loss, offer a way to “achieve progressive modernization of local government law by reducing local fragmentation, and, in particular, by eliminating separate governments for areas that are too small to sustain them efficiently”).

<sup>197</sup> Thus, interregional competition might be invoked as a ground for consolidation or other techniques to provide platforms for scaling up or combining local governments. It is true that there is relatively little practical support for most broad-scale efforts at formal regionalism, as opposed to regional governance, but the ease or difficulty of managing even small-scale efforts to revisit the scale of interlocal boundaries can make a difference.

<sup>198</sup> See, e.g., Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190 (2001) [hereinafter *Regionalization*] (arguing that the interdependence of localities provides an incentive to cooperate through interlocal contracts); Clayton P. Gillette, *The Conditions of Interlocal Competition*, 21 J.L. & POL. 365 (2005) (arguing that localities should be willing to work together in order to create spillover benefits or avoid negative externalities).

less a function of local parochialism and more a function of the high transaction costs associated with current institutional structures, particularly high contracting costs.<sup>199</sup> Accepting this frame, interregional competition may change the cost-benefit analysis that any local government might undertake when assessing the relative merits of interlocal cooperation versus a defection strategy, raising the potential benefits even if not necessarily changing the costs. The results, regardless, should be greater interlocal cooperation, all other factors held equal.

In short, Tieboutian regionalism has implications for the entire legal discourse on localism: it supports a version of home rule that is more attentive to regional spillover effects, bolsters doctrines on jurisdictional borders that make consolidation less costly (looser annexation rules as well as lower legal barriers for small cities to dissolve), and provides a new rationale for facilitating intraregional bargaining and agreements that capture economies of scale.<sup>200</sup> These are not new doctrinal frames, but all merit revisiting through an alternative rationale for familiar regionalist governance prescriptions.<sup>201</sup>

### B. Revisiting the Critiques

The concerns that Tieboutian localism has drawn from a number of scholars, both in terms of the internal operation of the model and its consequences,<sup>202</sup> have parallels and important disjunctions when the mobility-governance link is regional. Some of these concerns may be muted, but others may only be reinforced or even exacerbated in the

---

<sup>199</sup> See Gillette, *Regionalization*, *supra* note 198, at 254.

<sup>200</sup> Here, again, a counterargument might be offered that demand for regional public goods by residents moving between metropolitan areas might as easily be satisfied by traditional fragmented local governments. See *supra* Part III.A.2. That there might be some interregional movers with preferences for localism, however, does not belie the marginal consequences of those mobile residents whose balance between local provision and regional governance implicitly (given that most people are unlikely to make locational choices explicitly on the basis of local or regional policies directly) tends to be more metropolitan in scale.

<sup>201</sup> One additional point about the legal-structural consequences of Tieboutian regionalism bears noting. Governance and mobility are inherently iterative, with individuals and institutions responding over time to dynamics as they develop. It is possible, then, that interregional competition could bolster a sense of shared fate by localities, but it is also possible that local governments could respond by recalibrating the strategies of exclusion for the realities of sorting at that scale or by pushing for greater privatization to secede from regional governance. Cf. Fennell, *supra* note 62 (discussing exclusionary strategies to game Tiebout sorting).

<sup>202</sup> See *supra* Part I.B.

---

---

context of mobility-based regionalism. This section addresses the extent to which concerns about the use of the Tiebout model in local governance scale up.

### 1. Internal Critiques

Critiques that focus on the basic mechanisms of Tiebout sorting, such as the implausibility of mobility actually changing the political process, the information barriers to “consumer-voting,” and the like, at first blush seem equally likely to hold for regional-scale locational choices as they do for a localist quasi-marketplace.<sup>203</sup> There are certainly aspects of regional-scale mobility that may render the model less plausible at an interregional scale. For example, interregional moves arguably entail much higher information costs compared to interlocal moves, making the ability to sort based on public goods less plausible. An argument for the centrifugal force of interregional mobility is thus not likely to convince scholars inclined to argue that the noise of alternative motivations for locational choices will drown out the signal offered by the bundle of public goods. And the reality that, absent full regional consolidation, the link between governance and place is inherently more attenuated in the institutional structure of regionalism makes the argument about political mechanisms for responding to mobility more challenging in the interregional context.

We acknowledge these additional complications to the model, but still argue that the basic mechanism can translate to regional scale. Our aim here is not to plow new conceptual ground about the processes underlying the influence of mobility on governance, many of which are strained at the purely local level to begin with. Rather, we assume for the sake of argument that the basic conceptual framework has merit (and, if nothing else, it certainly has great influence). Accordingly, we accept that the mechanics are sufficiently similar — even for the differences in degree on some measures of how mobility influences governance — but vary the model’s assumptions about the scale of the demand for and supply of public goods and their resulting prescriptions.

### 2. Consequentialist Critiques

As to the more pernicious consequences of mobility’s influence on governance itself, a Tieboutian perspective on regionalism has the potential to both mute and exacerbate disparate elements of the

---

<sup>203</sup> See *supra* Part I.B.1.

distributional and the commodification concerns.<sup>204</sup> To begin, it is possible that regional mobility's counterbalance to the devolutionary tendencies of the traditional mobility paradigm might mitigate the dynamics of regional inequity. The argument would be that the more regional mobility reinforces regional identity and shared governance, the stronger the incentive to recognize the shared fate of disparate communities in a given region, and the greater the likelihood of recognizing that regional inequality is a drag on regional growth.

Further, it appears that policies that promote sustainability and regional equity are themselves selling points for "creative class" knowledge workers attracted to regions of relative cultural tolerance.<sup>205</sup> This dynamic can thus reinforce local policies that seek to respond to regional inequality. Because interlocal collaboration has the potential to resolve fiscal disparities and other intraregional inequities, the openness of the creative class to viewing more equitable regional policies as in the region's collective best-interest has the potential to disrupt "the nativism amongst residents of [discrete geographic communities] that precludes the pursuit of cross-border political alliances."<sup>206</sup>

At the same time, intraregional disparities may be exacerbated if interregionally mobile residents care most about cherry-picking a region's advantages. This harkens back to the concern that interregional movers may revert to traditional Tieboutian sorting once inside the region. That is, mobile residents may end up choosing one metropolitan region over another because of its collective advantages, but then make second-order intraregional locational decisions based on factors that replicate the current dynamics that have given rise to the inequitable patterns existing in many regions today. It is difficult to determine empirically which of these two outcomes is more likely to occur and we admit to misgivings about the ability of any model based on a quasi-market sorting mechanism to solve the very distributional problems that it creates. Nevertheless, intuitively, regional-scale mobility can at least offer a counterweight to the more parochial aspects of localism by fostering a sense of common destiny among disparate interests linked by a concern for overall regional health and competitiveness.

Taking a step back, interregional sorting may also replicate the kinds of spatial distributional problems associated with Tieboutian

---

<sup>204</sup> See *supra* Part I.B.2.

<sup>205</sup> See *supra* text accompanying notes 125-127.

<sup>206</sup> Lisa Alexander, *The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities*, 38 *FORDHAM URB. L.J.* 629, 640 (2011).

localism, but instead among metropolitan regions rather than within them, like fractals that replicate structures at varying scales.<sup>207</sup> There is some evidence that metropolitan regions are, in fact, developing at rates that suggest a kind of regional-scale tiering.<sup>208</sup> The industrial midwest, for example, has regions that, as a whole, are shrinking and losing not just populace, but also economic and governmental resources; while regions in the south, southwest, and northeast have seen relatively greater growth, even through the downturn.<sup>209</sup> This risks a kind of “favored quarter” at an interregional rather than interlocal level — all the more so because contemporary mobility between metropolitan areas is dominated by highly skilled people with high human capital.

In terms of commodification, regional mobility does not mitigate — and arguably reinforces — the concern that mobility paradigms reduce local governance too much to a transactional emphasis on returns on investment rather than shared community. Concerns about the risks posed by an emphasis on intergovernmental competition and market-like mechanisms for governance could easily be replicated at the regional scale. Indeed, the focus of regional entities or collaborations on targeting mobile knowledge workers in order to stimulate innovation-related growth is arguably just a modern twist on the kind of governance-as-marketplace that has concerned so many legal scholars about the Tiebout model’s influence on the nature of local government.<sup>210</sup> The fact, moreover, that local governments are competing less for traditional industrial and blue-collar industrial

---

<sup>207</sup> There is evidence that such sorting can also exacerbate intraregional disparities when regions become attractive for high human capital or creative class types. Evidence suggests that metropolitan areas that rank highest on the “creativity index” also tended to have the highest levels of inequality between the rich and the poor. FLORIDA, RISE REVISITED, *supra* note 102, at 355 (noting that San Jose was the most unequal metro in the nation, followed by New York City, Washington, D.C., Raleigh-Durham, Austin and San Francisco).

<sup>208</sup> Cf. Cashin, *supra* note 15 (noting that suburbs within metropolitan regions capture the largest share of job growth and infrastructure investment, despite containing only a quarter of the population).

<sup>209</sup> William H. Frey, *Population Growth in Metro America Since 1980: Putting the Volatile 2000s in Perspective*, BROOKINGS INST. 16 (2012); Howard Wial & Siddharth Kulkarni, *MetroMonitor: Tracking Economic Recession and Recovery in America’s 100 Largest Metropolitan Areas*, BROOKINGS INST. 3 (2012) (noting that seventy of the one hundred largest metropolitan areas gained both jobs and output in the fourth quarter of 2011).

<sup>210</sup> Richard Florida has suggested that creative class individuals are less civically engaged and are more inclined towards their own interests and socializing in so called “third spaces.” See FLORIDA, RISE REVISITED, *supra* note 102, at 284-87, 290-92.

---

---

goods and more for high human capital workers, regardless of scale, carries a particular risk of commodification that makes it hard for certain “consumers” in the market for local public goods to influence governance.

On the other hand, even if mobile innovators are particularly “market” oriented in their response to locational choice, there is an argument that the kinds of regional-scale policies that are thought to attract these particular residents may have spillover effects that reinforce, rather than undermine, community character and livability. As noted, regional-scale amenities such as vibrant cultural environments, tolerant and racially diverse local cultures, and ecosystems of innovation seem to be attractive to the most prominent of interregional mobile residents.<sup>211</sup> These may, in turn, generate greater civic engagement, as people across a region have more opportunities to engage across sub-communities and interact in public spaces and environments that foster common identity and purpose.<sup>212</sup>

### C. *Coda: Regional Mobility in a World of Global Cities*

To this point, our discussion has focused on the reality that the metropolitan regional scale in the United States is an important locus for interjurisdictional competition for mobile residents. But the contest for human capital is also increasingly occurring among metropolitan regions internationally.<sup>213</sup>

Saskia Sassen has persuasively argued that the world economy has given rise to the dominance of “global cities,” which she defines not simply as particularly large or important cities, but rather as interconnected nodes of post-industrial economic activity.<sup>214</sup> Sassen describes a contemporary economic system that is “spatially dispersed, yet globally integrated,”<sup>215</sup> with a core of large cities (and the metro regions in which they exist) increasingly serving as points of economic concentration, particularly in high human capital sectors such as finance.<sup>216</sup> Sassen focused on three examples — New York, London, and Tokyo (she was originally writing in 1991) — but the

---

<sup>211</sup> See *supra* Part II.B.

<sup>212</sup> Cf. Frug, *supra* note 63 (arguing that city services can be reoriented to promote community building among diverse populations).

<sup>213</sup> See GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION 144 (2008); Briffault, *Beyond City and Suburb*, *supra* note 21, at 205.

<sup>214</sup> See SASKIA SASSEN, THE GLOBAL CITY: NEW YORK, LONDON, TOKYO 124 (2d ed. 2001).

<sup>215</sup> *Id.* at 3.

<sup>216</sup> See *id.* at 330.



phenomenon she describes applies today to a large array of urban regions, including those in rapidly urbanizing areas of China, India, Brazil, and other similar developing nations.<sup>217</sup>

The post-industrial, interconnected urban order that Sassen describes reflects and magnifies the kind of metropolitan interregional competition that is occurring domestically.<sup>218</sup> Greater New York (or Chicagoland, or the San Francisco Bay Area, or really most of the larger metropolitan regions in the United States) now have to pay attention to comparisons in metropolitan financial markets, urban planning, housing conditions, school quality, and amenities in Shanghai, Bangalore, Sao Paulo, Tel Aviv, and similar interconnected economic areas around the world that, even in the current global downturn, are still booming.<sup>219</sup>

If the world is moving to a global economy increasingly driven by knowledge workers competing at the metropolitan level against other metro-level engines of innovation,<sup>220</sup> then competition for this global talent lends further support to inversion of the devolutionary prescriptions of the traditional Tieboutian paradigm.<sup>221</sup> Gerald Frug

---

<sup>217</sup> See *The Global Cities Index 2010*, FOREIGN POLICY (AUG. 16, 2010), [http://www.foreignpolicy.com/articles/2010/08/11/the\\_global\\_cities\\_index\\_2010](http://www.foreignpolicy.com/articles/2010/08/11/the_global_cities_index_2010) (examining sixty-five metropolises around the world for their “influence on and integration with global markets, culture, and innovation”).

<sup>218</sup> Cf. David S. Law, *Globalization and the Future of Constitutional Rights*, 102 Nw. U. L. REV. 1277, 1321-22 (2008) (discussing the global competition for human capital); Ayelet Shachar, *Picking Winners: Olympic Citizenship and the Global Race for Talent*, 120 YALE L.J. 2088, 2090 (2011) (same).

<sup>219</sup> To cite one data point on this phenomenon, the Global Cities Indicators Facility has developed a standardized set of measures of the range of city services and quality of life factors, including governance, education, civic engagement, economy, environment, and a host of others. These are intentionally meant to spur comparisons, even if not (explicitly) competition. See Patricia McCarney, *Cities and Prosperity Series No.1*, GLOBAL CITY INDICATORS FACILITY (Feb. 2012), [http://www.cityindicators.org/Deliverables/GCIF%20Cities%20and%20Prosperity%20Report%20E1\(S\)Final\\_4-24-2013-1213456.pdf](http://www.cityindicators.org/Deliverables/GCIF%20Cities%20and%20Prosperity%20Report%20E1(S)Final_4-24-2013-1213456.pdf) (noting that it “developed a standardized methodology for collecting data on a comprehensive set of indicators, many of which shed light on a variety of factors that can influence a city’s economic performance and its attractiveness . . . to enable smart, evidence-based policy through the analysis of standardized information and the sharing of best practices”).

<sup>220</sup> See Berube, *supra* note 92, at 29 (noting the concentration of economic output among the top 30 metro areas worldwide); Emilia Istrate & Carey Anne Nadeau, *Global Metro Monitor: Slowdown, Recovery, and Interdependence*, BROOKINGS INST. 33-35 (2012) (arguing that metro areas remain the hubs of global output and growth, with the three hundred metro economies analyzed accounting for 19 percent of world population, but 48 percent of world GDP, and 51 percent of world GDP growth from 2011 to 2012).

<sup>221</sup> It should be acknowledged that arguments for regional governance from

and David Barron have argued that state law — by alternately granting and limiting local authority — distorts the ability of cities such as New York that might be inclined to compete with other global cities.<sup>222</sup> The same argument can pertain to regional-scale governance, perhaps even more clearly given the muddle that currently attends to legal authority for regional efforts and the tradition and history of localism.

The legal-structural consequences of the proliferation of global cities as drivers of economic growth — and participants in the competition for mobile human capital — in turn suggests other pathways for future research. For example, global competition at a metropolitan regional scale may have implications not only for local government law, but also for immigration. In a recent, provocative proposal, the economist Brandon Fuller made the argument for city-based visas.<sup>223</sup> As Fuller noted, localities have different preferences — a Tieboutian argument — for increased immigration, and those that prefer to attract immigrants could be given a certain number of visas from the Department of Homeland Security to enable them to sponsor visa holders and their families.<sup>224</sup> The sponsoring localities would be responsible for the immigrants (to allay concerns — however irrational — about immigrants taking advantage of transfer programs and increasing crime) and this could create a path to citizenship.<sup>225</sup> This is not to endorse the proposal, which raises concerns about risks to national uniformity, but simply to note that a global perspective on interregional competition may have intriguing legal consequences.

#### CONCLUSION: THE VIEW FROM TIEBOUT'S BEACH

Over sixty years ago, Charles Tiebout described a simple beach as the paradigm example of a local amenity that might be important in the quasi-market for mobile residents in which he imagined local

---

interregional competition — nationally and globally — could still be considered somewhat devolutionary, in the sense that the theory privileges metropolitan scale and hence regional governance, rather than, for example, state-level or national policymaking. Cf. Pettys, *supra* note 2 (discussing arguments for national-level lawmaking in the face of mobility). The theory thus invokes mobility to situate policymaking at a relatively low level in the federalism hierarchy, although some metropolitan areas are functionally larger than some states.

<sup>222</sup> See FRUG & BARRON, *supra* note 213, at 153.

<sup>223</sup> Brandon Fuller, *City-Based Visas*, URBANIZATION PROJECT (Aug. 1, 2012) [hereinafter *City-Based Visas*], <http://urbanizationproject.org/blog/city-based-visas/>; Brandon Fuller, *More on City-Based Visas*, URBANIZATION PROJECT (Aug. 9, 2012), <http://urbanizationproject.org/blog/more-on-city-based-visas/>.

<sup>224</sup> Fuller, *City-Based Visas*, *supra* note 223.

<sup>225</sup> *Id.*

---

---

governments competing.<sup>226</sup> In an era of regional mobility between metropolitan areas across the country — and, for some residents, around the world — the view from Tiebout's beach now looks very different. Today, public officials in metropolitan areas are increasingly realizing that they share a common fate, not for the traditional reasons that regionalists have long proffered for collaboration, but because they are increasingly aware of the reality of competition between regions for human capital. Concerns about equity and the signals that a marketplace metaphor holds for governance remain as valid as ever, if not more so. But there is no avoiding the reality that for many mobile residents, their locational choice is informed materially by the comparative merits of regional networks and regulatory environments, regional amenities, and regional job, housing, and investment ecosystems. Local governments ignore this reality at their peril, as do scholars who continue to associate Tieboutian sorting entirely with devolution and decentralization.

---

<sup>226</sup> Tiebout, *supra* note 1, at 419.