

Pace Law Review

Volume 13
Issue 2 Fall 1993

Article 7

September 1993

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Recommended Citation

John Kincaid, *Regulatory Regionalism in Metropolitan Areas: Voter Resistance and Reform Persistence*,
13 Pace L. Rev. 449 (1993)

Available at: <http://digitalcommons.pace.edu/plr/vol13/iss2/7>

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Regulatory Regionalism in Metropolitan Areas: Voter Resistance and Reform Persistence

John Kincaid*

I. Introduction

“There is no denying,” wrote Lord Bryce 100 years ago, “that the government of cities is the one conspicuous failure of the United States.”¹ This indictment still rings true for reformers and residents of many large cities, despite more than a century of reform efforts by civic movements, states, and the federal government.²

Reforms of urban governance have generally followed two lines of action: (1) internal restructuring of municipal government (e.g., nonpartisan elections and city manager systems) and (2) external restructuring of municipal boundaries and service areas (e.g., annexation, consolidation, and regional authorities). It is to the latter that we turn in this article, arguing that long-standing voter resistance to authoritative metropolitan government, such as a single government formed by multijurisdictional consolidation, has given rise to greater reform efforts to employ “top-down” regulatory tools to create more comprehensive metropolitan governance arrangements through such devices as federal or state-mandated transportation planning, environmental protection, and growth management. A major reform critique today is that the state and federal governments have not sufficiently used their fiscal and regulatory clout to compel regional solutions to metropolitan-wide problems.³

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1. JAMES BRYCE, I *THE AMERICAN COMMONWEALTH* 637 (1896).

2. *E.g.*, CITIES IN STRESS: A NEW LOOK AT THE URBAN CRISIS (Mark Gottdiener ed., 1986).

3. *E.g.*, NEAL R. PEIRCE, *CITISTATES: HOW URBAN AMERICA CAN PROSPER IN A COM-*

In most cases, regional land-use management of any potent, comprehensive nature acceptable to its advocates is unlikely to spring from local voters in most metropolitan areas; instead, it is more likely to be established by federal and state legislative action. Land-use management on a metropolitan scale will, in most cases, require a reversal of the historic pattern of state delegations of land-use powers to local governments.⁴ A state-mandated regulatory approach to land-use policy, perhaps with federal incentives for such action, would be consistent with the emergence since the 1960s of "regulatory"⁵ or "coercive"⁶ federalism; however, state-mandated land-use regulation on a metropolitan scale is vulnerable to voter backlashes. These conclusions are suggested by historical experiences with various reform approaches to metropolitan regional governance. These approaches are reviewed below in the context of the following background on metropolitan differentiation.

II. Accelerating Metropolitan Differentiation

The existence of 86,692 units of local government in the United States⁷ is the principal sociopolitical reality underlying efforts to consolidate local governments in metropolitan areas. Although, from 1952 to 1992, the number of county governments decreased from 3,052 to 3,043, township governments declined from 17,202 to 16,666, and school districts dropped sharply from 67,355 to 14,556, the number of municipal governments increased by fifteen percent from 16,807 in 1952 to 19,296 in 1992, and the number of special districts increased by a phenomenal 168 percent from 12,340 to 33,131 during the same period.⁸ Fur-

PETITIVE WORLD (1993); DAVID RUSK, *CITIES WITHOUT SUBURBS* (1993).

4. R. ROBERT LINOWES AND DON T. ALLENSWORTH, *THE STATES AND LAND USE CONTROL* (1975); Ernest J.T. Loo, Comment, *State Land Use Statutes: A Comparative Analysis*, 45 *FORDHAM L. REV.* 1154 (1977).

5. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *REGULATORY FEDERALISM: POLICY, PROCESS, IMPACT AND REFORM* 1-54 (1984).

6. John Kincaid, *From Cooperation to Coercion in American Federalism: Housing, Fragmentation and Preemption, 1780-1992*, 9 *J. L. & POL.* 333 (1993) [hereinafter Kincaid, *Housing, Fragmentation and Preemption*]; John Kincaid, *From Cooperative to Coercive Federalism*, 509 *ANNALS AM. ACAD. POL. & SOC. SCI.* 139 (1990).

7. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *PRELIMINARY REPORT: 1992 CENSUS OF GOVERNMENTS (GC92-1(P), 1992)*.

8. *Id.* at 3.

thermore, most of the decreases in units of local government occurred in rural areas, while most of the increases occurred in urban metropolitan areas. Hence, metropolitan areas are becoming more, not less, differentiated governmentally. For example, the six-county Chicago region, "referred to by the local media as 'Chicagoland,' has . . . more than 1,200 jurisdictions with authority to levy property taxes."⁹ Illinois has the largest number of local governments (6,810); Pennsylvania has the next largest number (5,397). New York, with 3,319 local governments, is in ninth place among the fifty states. Hawaii, with twenty-one, has the smallest number of local governments.¹⁰ There is even more differentiation than is revealed by these data. Not included in the Census data are more than 130,000 residential community associations (RCAs), which are, in effect, private government communities governed by restrictive deed covenants, financed by mandatory dues assessments, and ranging in size from a few households to communities of as many as 68,000 people, such as Reston, Virginia, and Columbia, Maryland. Nearly twelve percent of the nation's population live in RCAs.¹¹ Although these non-municipal communities have limited powers, they engage in land-use management and public service provision, and they are located mostly in metropolitan areas. Given the private property rights, including private streets and roads, attached to these communities, plus the voting power of RCA residents in general local, state, and federal elections, RCAs can pose additional barriers to comprehensive metropolitan integration and coordination.

The trend toward metropolitan differentiation became evident soon after World War II, when federal and state housing, transportation, tax, and land-use policies aided low-density suburbanization around old high-density cities as well as low-density urbanization in the so-called Sunbelt.¹² Seeking sun,

9. Robert W. Rafuse, Jr., *Fiscal Disparities in Chicagoland*, INTERGOVERNMENTAL PERSP., Summer 1991, at 14.

10. BUREAU OF THE CENSUS, *supra* note 7, at 4.

11. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, RESIDENTIAL COMMUNITY ASSOCIATIONS: PRIVATE GOVERNMENTS IN THE INTERGOVERNMENTAL SYSTEM? 3-4 (1989).

12. DENNIS R. JUDD, THE POLITICS OF AMERICAN CITIES: PRIVATE POWER AND PUBLIC POLICY 257-372 (2d ed. 1984); THE RISE OF THE SUNBELT CITIES (David C. Perry & Alfred

space, savings, and satisfaction, millions of Americans took advantage of improved highways and of housing programs operated by the Federal Housing Administration¹³ and the Veterans' Administration¹⁴ to abandon inner city "neighborhoods to settle somewhere in the commuter belt."¹⁵ As early as 1950, "less than half the population of forty metropolitan areas lived downtown, and in over three-fifths of metropolitan United States the growing suburbs showed a greater numerical increase as well as a higher percentage growth than the central city."¹⁶

In the face of these policies and developments, many urban reformers began to advocate forms of metropolitan government.¹⁷ To facilitate public acceptance of reform, the massive suburbanization that followed World War II was usually described in negative terms, such as "fragmentation" and "urban sprawl," not in more neutral terms, such as "differentiation," "diversity," or "multiplicity." These negative labels were accompanied by hostility on the part of many intellectuals to the suburban way of life.¹⁸ In turn, small suburban municipalities were often labeled as "toy" or "peanut" governments.

At the same time, advocates of metropolitan government pointed to the deterioration of central-city economic bases, particularly in the Snowbelt, and to the growing concentration of poor and minority populations in many central cities. These developments, coupled with the emergence of metropolitan interdependence (aptly symbolized by city-suburb commuting) seemed to strengthen the case for metropolitan consolidation. Central cities, it was argued, needed to capture the human resources and tax bases of their surrounding suburbs in order to revitalize themselves. In addition, legislative reapportionment mandated by the U.S. Supreme Court¹⁹ had shattered the politi-

J. Watkins eds., 1977).

13. Authorized by the National Housing Act, ch. 847, 48 Stat. 1246 (1934).

14. Serviceman's Readjustment Act, ch. 268, § 501, 58 Stat. 284, 292 (1944).

15. FREDERICK M. WIRT ET AL., *ON THE CITY'S RIM: POLITICS AND POLICY IN SUBURBIA* 20 (1972).

16. ROBERT C. WOOD, *SUBURBIA: ITS PEOPLE AND THEIR POLITICS* 62-63 (1958).

17. *E.g.*, LUTHER HALSEY GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* (1966).

18. *E.g.*, JOHN KEATS, *THE CRACK IN THE PICTURE WINDOW* (1956).

19. *See Reynolds v. Sims*, 377 U.S. 533, 586-87 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 6-7 (1964).

cal bases of big-city political machines, reduced the political bases of rural political bosses, and enhanced the representation of suburbs in state legislatures. Then, the emergence of environmental protection as a public value in the 1970s added another rationale for metropolitan government. The idea that the suburban "growth juggernaut"²⁰ entails horrendous environmental costs is now an integral element of the regional reform critique of "urban sprawl."

III. Obstacles to Consolidation

Advocates of such reform have encountered numerous obstacles, however—barriers rooted ultimately in American history and culture. For one, never in the history of the United States has more than a third of the American people lived in urban places having populations of 100,000 or more.²¹ As Figure 1 indicates, the high point of big-city life in American history occurred in 1930 when thirty percent of Americans lived in urban places having 100,000 or more residents.²² Thus, even though the United States is overwhelmingly urban, it is not a nation of cities in the classical European sense;²³ it is a nation of small and medium-size communities, most of which place a high value on self-government. More than seventy-five percent of America's municipalities have less than 5,000 residents. Prior to the 1930s, these communities were dispersed on the nation's vast rural frontier; since the 1930s, these communities have become more concentrated in metropolitan areas, but nevertheless still dispersed along the crabgrass frontier outside of big cities.

Second, metropolitan consolidation runs against the grain of the agrarian tradition in American life and evokes the ambivalence, sometimes hostility, that many Americans harbor toward large cities.²⁴ Echoes of Thomas Jefferson's opinion of city life still resonate for many Americans: "I view great cities as pesti-

20. PEIRCE, *supra* note 3, at 28.

21. Calculated from BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, Part 1, Series A 57-72, 11-12 (1975).

22. *Id.*

23. Daniel J. Elazar, *Are We A Nation of Cities?* in A NATION OF CITIES: ESSAYS ON AMERICA'S URBAN PROBLEMS 89, 106-09 (Robert A. Goldwin ed., 1968).

24. MORTON WHITE AND LUCIA WHITE, *THE INTELLECTUAL VERSUS THE CITY* (1962).

lential to the morals, the health and the liberties of man.”²⁵ Public opinion polls since the 1950s have regularly shown that most Americans prefer to live in suburbs, small towns, and rural areas rather than in cities. Like their patterns of urban settlement, Americans tend to desire the urban amenities available in suburbs, while rejecting city life in its classic, cosmopolitan sense.

Third, suburbanization has been a long-emerging phenomenon, beginning in the Northeast in the nineteenth century when affluent urbanites sought to escape what they regarded as the deleterious conditions of cities created by industrialization, immigration, and political corruption. Later, the construction of streetcar lines made suburban living accessible to less affluent middle-class residents.²⁶ Thus, suburbanization for many Americans became associated not only with country living but also with upward mobility. Consequently, when post-World War II economic growth, public policies, and assembly-line housing construction made suburbs accessible even to lower middle-class families,²⁷ suburbanization quickly emerged as the dominant and most preferred pattern of human settlement in the United States. Although Lewis Mumford labeled Levittown, Long Island, “an instant slum” littered with a “multitude of uniform, unidentifiable houses, lined up inflexibly, at uniform distances, on uniform roads, in a treeless communal waste,” the Levitts built and sold more than 17,000 homes there between 1947 and 1951, “along with seven village greens and shopping centers, fourteen playgrounds, nine swimming pools, two bowling alleys, and a town hall.”²⁸

Fourth, for better or worse, suburbanization reflects the human tendency to differentiate communities along economic, racial, ethnic, religious, and other social lines. Although contemporary suburbanization is often attributed to racism, this is only

25. Letter from Thomas Jefferson to Doctor Benjamin Rush (Sept. 23, 1800), in 9 THE WORKS OF THOMAS JEFFERSON 146, 147 (Paul L. Ford ed., 1905).

26. SAM B. WARNER, JR., STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900, at 34 (1962).

27. E.g., HERBERT J. GANS, THE LEVITTOWNERS: HOW PEOPLE LIVE AND POLITIC IN SUBURBIA (1967).

28. Alexander O. Boulton, *The Buy of the Century*, AM. HERITAGE, July/Aug. 1993, at 62.

partly true. The origins of suburbanization predate the massive migration of African Americans and other people of color into northern cities. Historically, suburbanization has usually appealed to upwardly mobile urbanites, including members of inner city ethnic groups (e.g., the lace-curtain Irish) who moved away from their poorer cousins. As Samuel Lubell noted:

To map the growth of almost any of our larger cities since the turn of the century is to map [an] upward, outward push of the masses toward the greener suburbs, propelling the older residents before them. And the story of the Democratic party in the big cities is really the story of the social and political revolution which marched along with this exodus from the slums.²⁹

Lubell predicted that many African Americans, still moving into northern cities in large numbers during the 1950s, would also follow "the old tenement trail" out to the suburbs.³⁰ Indeed, African American migration to the suburbs has increased significantly, with, for example, as many as 75,000 African Americans moving from the city of Los Angeles to surrounding suburbs during the 1980s.³¹ In addition, low-cost land, among other factors, rather than white flight has been a salient factor in Sunbelt suburbanization. Suburbanization did not become massive nationwide until it became affordable and accessible to most Americans after the Second World War.

In some respects, suburban differentiation has reproduced the neighborhood differentiation long found in central cities: rich and poor; black, brown, and white; Protestant, Catholic, and Jewish; Irish, Italian, Polish, Russian, Puerto Rican, and so on. However, neighborhood differentiation within central cities is still often drawn more sharply along such lines than is suburban differentiation. Within most central cities, even one portion of a city, such as Manhattan, neighborhoods range from the wretchedly poor to enormously rich. Religious and ethnic distinctions between many suburbs have been reduced significantly compared to continuing central-city neighborhood distinctions, thus leaving class and race as the two predominant patterns of subur-

29. SAMUEL LUBELL, *THE FUTURE OF AMERICAN POLITICS* 64 (2d ed. 1956).

30. *Id.* at 96-97.

31. Miles Corwin, *L.A.'s Loss: "Black Flight"*, *L.A. TIMES*, Aug. 13, 1992, at 26A.

ban differentiation.³² In central cities, neighborhood turf is defended by civic associations, ward politicians, and gangs. In the suburbs, neighborhood turf is defended, in effect, by municipalizing neighborhoods, that is, preserving or creating small and medium-size local governments. Yet, the suburbs may prove to be hotter melting pots than central cities. Indeed, perceptions of a drab sameness and homogeneity, compared to the diversity of central-city life, have long been a staple of social criticism of suburbia.

Even race and class lines are beginning to blur in the suburbs because affordability and accessibility have increasingly diversified suburbs along economic and racial lines.³³ Although income differences between central cities and suburbs are commonly noted in the literature, the reality is often more complex. For example, while 16.9 percent of Washington, D.C.'s residents live below the poverty line compared to a range of only 3.1 percent to 7.1 percent in the surrounding suburban counties, sixty-one percent of the poor people in the metropolitan area live in the suburbs.

As more lower income persons and minority groups move into suburbs, moreover, they may be no less resistant to metropolitan government than their white and more affluent predecessors. Furthermore, minority groups that constitute majorities or powerful voting blocs in central cities have not been eager to see their voting power diluted by city-suburb consolidation, an issue now made more salient and complex by rules against minority vote dilution under the U.S. Voting Rights Act.³⁴ For example,

32. See generally BENNETT M. BERGER, *WORKING-CLASS SUBURB: A STUDY OF AUTO WORKERS IN SUBURBIA* (1960); WILLIAM M. DOBRINER, *CLASS IN SUBURBIA* (1963); RUSK, *supra* note 3.

33. Mark Schneider and John R. Logan, *Fiscal Implications of Class Segregation: Inequalities in the Distribution of Public Goods and Services in Suburban Municipalities*, 17 *URB. AFF. Q.* 23 (1981).

34. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965), amended by Pub. L. No. 90-284, 82 Stat. 73 (1968); Pub. L. No. 91-285, 84 Stat. 314 (1970); Pub. L. No. 91-405, 84 Stat. 845 (1970); Pub. L. No. 94-73, 89 Stat. 400 (1975); Pub. L. No. 97-205, 96 Stat. 131 (1982); Pub. L. No. 102-344, 106 Stat. 921 (1992); see also, Binny Miller, *Who Shall Rule and Govern? Local Legislative Delegations, Racial Politics, and the Voting Rights Act*, 102 *YALE L. J.* 105, 131-37 (1992), a case study of white efforts to consolidate the city of Augusta and Richmond County, Georgia, in order to defeat black majority power in Augusta. Voters approved the consolidation, but it was vetoed by the U.S. Department of Justice.

white Republican Richard Riordan, who won Los Angeles's 1993 mayoral election, received overwhelming support from the city's in-town suburb, San Fernando Valley, which accounted for forty-four percent of the city's vote. Only thirty-seven percent of the city's residents are white Anglos.³⁵

Historically, moreover, separations of central cities from suburbs were sometimes initiated by central-city residents. Beginning in the 1840s, for example, residents of the City of St. Louis, Missouri, agitated for a separation of the city from the county largely because city residents objected to paying county taxes on top of city taxes to support services for residents of the sparsely populated county. After Missouri made home rule available in 1875, city voters approved a separation of St. Louis city from St. Louis county in 1876.³⁶ Non-city voters opposed the separation by three to one. In later years, as the number of suburban municipalities increased in the county from nine in 1910 to ninety-eight by 1959, majorities of suburban county residents voted against proposals to reunite the city and county. Similarly, voters have usually resisted municipal consolidations within the suburban St. Louis county.³⁷

For these and other particularistic reasons, attempts to use various tools, such as annexation and city-county consolidation, to establish metropolitan governments or otherwise consolidate central cities and suburbs have not been very successful, especially since World War I. However, to argue that resistance to metropolitan government is merely a function of race and class is too simple. As the St. Louis example suggests, voters are motivated by considerations of self-interest and local self-government that may or may not be related to race or class interests. Consolidations of suburban municipalities themselves are often resisted as strenuously as consolidations of central cities and suburbs.

35. John O. Calmore, *Metropolitan America and Racism*, 2 POVERTY & RACE 9 (1993).

36. Home rule is defined as a "[c]onstitutional provision or type of legislative action which results in providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation." BLACK'S LAW DICTIONARY 660 (5th ed. 1979).

37. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN ORGANIZATION: THE ST. LOUIS CASE 15-17 (1988).

IV. Metropolitan Consolidation

A number of devices are available, and have been used, to effect forms of metropolitan-wide government. These include annexation, city-county consolidation, metropolitan federation, transfers of functions, boundary review commissions, and regional councils. In the face of massive suburbanization and metropolitan differentiation, however, use of these devices has met with limited success.

A. *Annexation*

Annexation was widely used in the nineteenth century to increase the territorial size of cities as immigration and industrialization swelled urban areas. The emergence of large and successful industrial combines also provided a model for good city government in the late nineteenth century when bigger was widely regarded as better. Many cities competed with each other to become bigger and also to rival the great cities of Europe. In addition, communities adjacent to cities sometimes sought annexation in order to obtain city services.³⁸ City politicians also had an interest in capturing resources, especially voters, because most city political organizations (i.e., machines) were county-based party organizations. Given that legislative and congressional apportionments were largely drawn along county lines prior to 1964,³⁹ the roots of political power lay in county party organizations, thus giving city politicians incentives to capture populated inner suburbs along their borders.

However, the spreading of the home-rule movement, which began in Missouri in 1875, coupled with rural and, later, suburban reactions against city growth, slowed annexation by the turn of the century. The principles associated with home rule had two significant dampening effects on annexation. First, home-rule principles limited state legislative interference in municipal affairs, thereby restraining unilateral legislative consolidations of jurisdictions. Second, home-rule principles increased the ability

38. JON C. TEAFORD, *CITY AND SUBURB: THE POLITICAL FRAGMENTATION OF METROPOLITAN AMERICA, 1850-1970*, at 32-63 (1979).

39. See *Reynolds v. Sims*, 377 U.S. 533, 586-87 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 6-7 (1964).

of rural and suburban local governments to defend their territories against annexation or consolidation.

Of the forty-four states that authorize municipal annexation of unincorporated territory by general law, thirty-four allow annexation to be initiated by petition of a percentage of the property owners living in the area to be annexed; thirty-two allow annexation procedures to be initiated by a municipal ordinance or resolution; twenty-seven require at least a public hearing; fourteen require majority approval of the proposed annexation in a referendum in the annexing city; nineteen require majority approval of the proposed annexation in a referendum in the territory to be annexed; and eleven require approval of the county governing authority. In a number of states, however, especially in the Northeast, the authority to annex is moot because the entire territory of the state is already incorporated (e.g., New Jersey). Of the forty-two states that authorize consolidations of cities, two states (South Dakota and Wyoming) require majority approval in a referendum in only one city; thirty-four states require majority approval in a referendum in each city to be consolidated; and six states require no referendum, although they may impose other requirements, such as judicial review.⁴⁰

Although many state legislatures retain authority to annex jurisdictions unilaterally by special acts, this authority is rarely used to effect municipal annexations. Instead, to the extent that it has been employed, this authority has been used to consolidate counties, townships, and school districts, mostly in rural areas experiencing population losses, not in metropolitan areas experiencing "sprawl."

Municipal authority to engage in annexation varies among and, sometimes, within states. Liberal annexation powers can be found in Idaho, Nebraska, North Carolina, Oklahoma, and Texas where certain municipalities can engage in unilateral annexations, usually over adjacent, unincorporated communities. The power to annex, however, is not always utilized by cities. In Texas, for example, Houston used its annexation powers aggressively, while Dallas and Ft. Worth did not follow suit. Operating under the same state rules, citizens and politicians in Houston

40. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION 24-25 (1993).

and Dallas/Ft. Worth chose to organize their systems of metropolitan governments quite differently.⁴¹ Houston's aggressive annexation, however, has had little benefit for comprehensive land-use management because the city still has no zoning ordinance. Voters rejected zoning in 1948, 1962, and again in 1993.⁴²

In Georgia, South Dakota, and Wisconsin, municipalities may initiate annexation, but voters in the territory to be annexed must accept or reject the annexation. In Indiana and Tennessee, residents of a territory to be annexed have a right to seek judicial review to block annexation, while in Kentucky and Virginia,⁴³ state courts approve or disapprove proposed annexations. In Alaska, California, Iowa, Michigan, Minnesota, Oregon, and Washington, a boundary review commission plays a more or less important role in determining annexations.⁴⁴

Given the distribution of the states cited above, it is evident that there is a mismatch between liberal powers of municipal annexation and the perceived need for annexation as a tool for incrementally achieving more areawide governance. Rather than being available to the metropolitan areas widely regarded as most in need of consolidation, especially in the greater Northeast, more liberal annexation powers tend to be found in (1) states with substantial rural, unincorporated territory; (2) southern states more accustomed at least to areawide county governance; and (3) to some extent, states having a moralistic or progressive political culture⁴⁵ receptive to metropolitan reform ideas. Given that voters are not likely to relinquish their power to vote on annexations and that state legislatures are not likely to override these local preferences, annexation is not available to

41. Robert D. Thomas and Suphamong Boonyapratuang, *Local Government Complexity: Consequences for County Property-Tax and Debt Policies*, 23 PUBLIS: J. FEDERALISM 1 (1993).

42. R. A. Dyer, *Zoning Defeated By Narrow Margin*, Hous. CHRON., Nov. 3, 1993, at A1; Roger K. Lewis, *Land-Use Rules Are Key In Houston Zoning Plan*, WASH. POST, June 5, 1993, at E13.

43. JACK D. EDWARDS, NEIGHBORS AND SOMETIMES FRIENDS: MUNICIPAL ANNEXATION IN MODERN VIRGINIA 15 (1992).

44. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, LOCAL BOUNDARY COMMISSIONS: STATUS AND ROLES IN FORMING, ADJUSTING AND DISSOLVING LOCAL GOVERNMENT BOUNDARIES 10-11 (1992).

45. See generally DANIEL J. ELAZAR, AMERICAN FEDERALISM: A VIEW FROM THE STATES 112-142 (3d ed. 1984); POLITICAL CULTURE, PUBLIC POLICY AND THE AMERICAN STATES (John Kincaid ed., 1982).

address the problems customarily associated with most big cities.

B. *City-County Consolidation*

During the nineteenth century and early twentieth century, city-county consolidations produced seven of today's great central cities: Boston, Denver, Honolulu, New Orleans, New York, Philadelphia, and San Francisco. As Table 1 indicates, however, city-county consolidations came to a halt in 1907 and did not resume until 1947, forty years later. Furthermore, after 1947, state legislatures virtually ceased enacting city-county consolidations unilaterally. Since 1947, only the 1969 "Unigov" consolidation of Indianapolis and Marion County was effected by special state legislation unaccompanied by local voter approval. However, this consolidation was limited rather than comprehensive. "Unigov, can best be described as a partially overlapping series of special districts with interior independent cities [rather] than as a completely consolidated government."⁴⁶

Only about fourteen states explicitly allow city-county consolidations: California, Florida, Georgia, Indiana, Minnesota, Montana, New Mexico, North Carolina, Ohio, Oregon, South Carolina, Utah, Virginia, and Washington. Of these states, Georgia, Minnesota, Montana, New Mexico, Ohio, and Oregon require majority approval in a referendum in each city to be affected by the consolidation. Florida, Georgia, Montana, North Carolina, Oregon, South Carolina, and Washington require majority approval of the consolidation in a county-wide referendum alone or in addition to referenda in each city.⁴⁷

Despite the availability of legal authorization for city-county consolidation in fourteen states today, and more so in the past, consolidation has not been used widely and has rarely been used to address big-city problems. Furthermore, the number of states authorizing city-county consolidation has decreased in recent decades.

46. JOHN L. MIKESSELL, *CITY FINANCES, CITY FUTURES* 24 (1993).

47. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION*, *supra* note 40.

Table 1
 CONSOLIDATED CITY-COUNTY GOVERNMENTS IN THE UNITED STATES, 1993

Consolidated Government, State	1990 Population	Consolidation Method	Merger Date(s)
New Orleans-Orleans Parish, LA	494,928	Special Legislative Act	1805
Boston-Suffolk County, MA	663,906	Special Legislative Act	1821
Nantucket Town-Nantucket County, MA	6,012	Special Legislative Act	1821
Philadelphia-Philadelphia County, PA	1,585,577	Special Legislative Act	1854
San Francisco-San Francisco County, CA	723,959	Special Legislative Act	1856
New York City (5 Boroughs), NY	7,332,564	Special Legislative Act	1874/1894/1898
Denver-Denver County, CO	467,610	Constitutional Amendment	1902
Honolulu-Honolulu County, HI	836,131	Special Legislative Act	1907
Baton Rouge-East Baton Rouge Parish, LA	380,105	Local Voter Referendum	1947
Newport News-Warwick City, VA	170,045	Referenda & Special Act	1952/1958
Hampton-Elizabeth City County, VA	133,793	Referendum & Special Act	1952
Nashville-Davidson County, TN	510,784	Local Voter Referendum	1962
Virginia Beach-Princess Ann County, VA	393,069	Referendum & Special Act	1962
Chesapeake: So. Norfolk-Norfolk County, VA	151,976	Referendum & Special Act	1962
Jacksonville-Duval County, FL	672,971	Local Voter Referendum	1967
Indianapolis-Marion County, IN	397,159	Special Legislative Act	1969
Carson City-Ormsby County, NV	40,443	Local Voter Referendum	1969
Juneau-Greater Juneau, AK	26,751	Local Voter Referendum	1969
Columbus-Muscogee County, GA	179,278	Local Voter Referendum	1970
Sitka-Greater Sitka Borough, AK	8,588	Local Voter Referendum	1971
Lexington-Fayette County, KY	189,719	Local Voter Referendum	1972
Suffolk-Nansemond City, VA	52,141	Referenda & Special Acts	1974
Anchorage-Greater Anchorage Borough, AK	226,338	Local Voter Referendum	1975
Butte-Silver Bow County, MT	33,941	Local Voter Referendum	1976
Anaconda-Deer Lodge County, MT	10,278	Local Voter Referendum	1976
Houma-Terrebonne Parish, LA	96,982	Local Voter Referendum	1984
Lynchburg City-Moore County, TN	4,721	Local Voter Referendum	1988
Athens-Clarke County, GA	87,594	Local Voter Referendum	1990

Sources: U.S. Bureau of the Census, 1990; National Association of Counties, Research Department, 1993.

- There have been only twenty-seven city-county consolidations from 1805-1977.⁴⁸
- City-county consolidations account for 0.9 percent of the nation's counties and 0.1 percent of the nation's municipalities.⁴⁹
- Of eighty-three city-county consolidation referendums held from 1921 to 1979, only seventeen (twenty percent) were approved by voters.⁵⁰
- No county having a population of 500,000 or more residents has ever gained the approval of its voters for consolidation.⁵¹
- Most city-county consolidations, at the time of consolidation, involved counties having populations of less than 100,000 residents.⁵²
- Most city-county consolidations (approximately eighty-two percent) have occurred in the South and West, not in the more densely populated and jurisdictionally diverse metropolitan areas of the Northeast and Midwest.⁵³
- Not all consolidations are comprehensive; instead, some entail the establishment of service districts involving different mechanisms of integration of the personnel and structures of the city and county governments.⁵⁴

Thus, like annexation, city-county consolidation is not realistically available as a mechanism for metropolitan governmental integration, nor are voters likely to relinquish their right to vote on consolidations and, thereby, their tendency to vote against city-county consolidations. Furthermore, New York City, one of the early models for consolidation, is now facing agitation for secession from Staten Island. Voters in Staten Island voted in favor of secession in November 1993.⁵⁵

48. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE AND LOCAL ROLES IN THE FEDERAL SYSTEM 396 (1982).

49. These figures represent the proportion of city-county consolidations to the number of counties and municipalities, respectively, that existed in 1992. See text accompanying note 8.

50. *Id.* at 397.

51. *Id.*

52. *Id.*

53. *Id.* at 396.

54. *Id.* at 400-01.

55. William Bunch, *Staten Island Wants Its Own Way*, NEWSDAY, Nov. 3, 1993, at 18E; James Dao, *Secession is Approved; Next Move is Albany's*, N.Y. TIMES, Nov. 3,

C. *Metropolitan Federation*

Another approach to regional governance is metropolitan federation, a somewhat broad term covering relationships between local governments and a regional government having certain metropolitan powers. This approach to metropolitan governance, often called a two-level system,⁵⁶ attempts to institutionalize the principle of fiscal equivalence by assigning to a regional government functions appropriate for areawide performance while leaving to local governments functions appropriate to smaller jurisdictions.⁵⁷

Toronto, Canada, is the premier example of a metropolitan federation, consisting of six local governments and the areawide Municipality of Metropolitan Toronto. This federation was instituted by the Parliament of Ontario in 1953 upon the recommendation of the Municipal Board of Ontario, a boundary review body, after the board was pressured to reject Toronto's application to annex surrounding municipalities. The federation's boundaries have not kept pace with population growth, however. Metropolitan Toronto's share of the population of the greater Toronto area dropped from seventy-seven percent in 1961 to fifty-four percent in 1991.⁵⁸

A limited two-tier system was authorized by Michigan in 1990.⁵⁹ The statute permits a group of cities having a combined population of less than one million to establish a metropolitan council, which may levy 0.5 mills⁶⁰ on the value of taxable real and personal property within its jurisdiction and/or require each member city to pay 0.2 mills for operating costs. To create a council, five percent or more of the registered voters in the proposed council's jurisdiction must sign a petition, and a majority

1993, at B4.

56. RESEARCH AND POLICY COMM., COMMITTEE FOR ECONOMIC DEV., *RESHAPING GOVERNMENT IN METROPOLITAN AREAS* 19-20, 44-46 (1970).

57. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, III *THE CHALLENGE OF LOCAL GOVERNMENTAL REORGANIZATION* 4-27 (1974).

58. Frances Frisken, *Planning and Servicing the Greater Toronto Area: The Interplay of Provincial and Municipal Interests*, in *METROPOLITAN GOVERNANCE: AMERICAN/CANADIAN INTERGOVERNMENTAL PERSPECTIVES* 157 (Donald N. Rothblatt and Andrew Sanction eds., 1993).

59. 1989 Mich. Pub. Acts 292.

60. A mill is "one-tenth of one cent." BLACK'S LAW DICTIONARY 993 (6th ed. 1990).

of voters in the jurisdiction must approve the council in a referendum. The functions that may be performed by a metropolitan council include land and water use and development, economic development and planning, solid waste collection, recycling, water and sewerage services, transportation, recreation, and some support for public institutions of higher education. To date, only the Grand Rapids metropolitan area has established a council.

Another type of federated arrangement is the "comprehensive urban county,"⁶¹ of which Miami-Dade County, first formed in 1957 to embrace twenty-six municipalities and made more comprehensive in 1973, is the principal example. This approach allocates to the county responsibilities for a wide range of municipal functions for incorporated and unincorporated areas. The comprehensive urban county may be created by voter approval in a referendum, state legislation, county charter provisions, transfers of functions to the county government, or all of these procedures. Under this arrangement, municipalities within the county retain their independent corporate status. Such an arrangement is not truly metropolitan, however, because the territorial limits of the overarching government are the county's boundaries. This approach has met with little acceptance across the nation, although in some states, such as California, Maryland, and New York, some counties have gradually acquired sufficient municipal powers to become *de facto* comprehensive urban counties.

Miami-Dade, moreover, has not been an unqualified success, as evidenced by Miami's increased social problems and by the devastating impact of Hurricane Andrew in 1992. Significant factors in the destruction caused by Hurricane Andrew were lax building codes and code inspections. Building codes requiring structures to withstand 150 mile-per-hour hurricane-force winds would have substantially reduced home destruction. Yet, since its establishment in 1957, the Metro Dade Commission, which has building code jurisdiction over all municipalities in the county, steadily weakened what had been one of the strongest hurricane codes in the nation. The commission also compro-

61. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, III THE CHALLENGE OF LOCAL GOVERNMENT, *supra* note 57, at 96.

mised on building code inspection rules and practices.⁶²

A third variation of the federated approach is a metropolitan or regional multi-purpose service district.⁶³ In this case, local governments create a special district to provide multiple services or exercise various powers across a metropolitan area. The governing body of the district is ordinarily appointed by its constituent local government bodies. However, even where state legislation has authorized local governments to create such districts (e.g., California, Colorado, Oregon, and Washington), few multi-purpose districts have been created, and those brought into existence have generally not exercised the full range of their authorized functions. Although there are many single-purpose districts that perform metropolitan functions in the United States, only 8.1 percent (2,674) of the nation's 33,131 special district governments perform more than one function.⁶⁴

D. *Transfers of Functions*

Limited forms of metropolitan or sub-metropolitan governance and service provision can be accomplished through transfers of functions, especially from local governments to a larger entity. Some eighteen states provide constitutional or statutory authorization for voluntary transfers of functions from one government to another: Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Michigan, Montana, New York, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia, and West Virginia.⁶⁵ Only half of these states (Alaska, California, Hawaii, Illinois, Michigan, Montana, Pennsylvania, Virginia, and West Virginia) allow functional transfers without voter approval.

Transfers of functions are not the same as inter-local service agreements. Transfers ordinarily shift a function or power per-

62. Lisa Getter, *Building Code Eroded Over Years: Watered-Down Rules Meant Weaker Homes*, MIAMI HERALD, Oct. 11, 1992 at 1A; Luis Feldstein Soto and Lisa Getter, *Panels Faulted Dade's Building Inspections*, MIAMI HERALD, Sept. 13, 1992, at 1A.

63. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, III CHALLENGE OF LOCAL GOVERNMENT, *supra* note 57, at 97.

64. BUREAU OF THE CENSUS, *supra* note 7, at 3.

65. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, INTERGOVERNMENTAL SERVICE ARRANGEMENTS FOR DELIVERING LOCAL PUBLIC SERVICES: UPDATE 1983, at 18-19 (1985).

manently from one government to another. A transfer also shifts political, policy, and fiscal authority, as well as operational responsibility, from one government to another.

Although data on transfers are not available, it appears unlikely that voluntary transfers of functions to metropolitan-wide entities, including counties, are a viable option for significantly advancing local governmental reorganization or metropolitan land-use management. For city-counties, such as New York City and Philadelphia, there is no larger county to which functions can be transferred. For central cities located within larger counties, county voters and officials are likely to resist transfers of functions that would significantly increase county fiscal burdens or reduce important local municipal powers. More likely are transfers of selected functions to single-purpose, area-wide special districts and to state government itself. Otherwise, local governments are more likely to make use of inter-local service agreements, which are authorized by general law or the constitution in forty-two states.⁶⁶

E. *Boundary Review Commissions*

In still another, albeit limited, approach to metropolitan governance, twelve states have created either statewide or sub-state boundary review commissions (BRCs): Alaska (1959), California (1963), Iowa (1968, 1972), Michigan (1972), Minnesota (1959), Missouri (1989), Nevada (1967), New Mexico (1965), Oregon (1969), Utah (1979), Virginia (1980), and Washington (1967). Only six of the BRCs are statewide; the other six are limited to one (e.g., St. Louis County, Missouri) or several (e.g., Eugene, Portland, and Salem, Oregon, although the Salem BRC was abolished in 1980) metropolitan areas. Three of the BRCs (Nevada, New Mexico, and Utah) may consider only annexations. Eleven of the BRCs may approve or disapprove boundary-change proposals, subject to judicial appeal or popular referendum. Virginia's BRC is only advisory.⁶⁷

66. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION, *supra* note 40, at 26-27.

67. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, LOCAL BOUNDARY COMMISSIONS: STATUS AND ROLES IN FORMING, ADJUSTING AND DISSOLVING LOCAL GOVERNMENT BOUNDARIES, *supra* note 44, at 21.

The objectives of these commissions, as set forth in their enabling laws, have generally been to (1) encourage orderly metropolitan development and discourage "sprawl"; (2) promote comprehensive, area-wide land-use planning; (3) enhance the quality and quantity of public services; (4) limit inter-local competition; and (5) help ensure the fiscal viability of local governments, in part by discouraging the creation of "peanut" governments. These are classic objectives of metropolitan reform, objectives that were prevalent during the decade (1959-1969) when eight of the twelve BRCs were created; however, in a recent study by the U.S. Advisory Commission on Intergovernmental Relations, the BRCs were unable to provide empirical evidence of meeting these objectives.⁶⁸ Critics have charged that BRCs are (1) undemocratic, especially insofar as they prevent municipal incorporation desired by residents of unincorporated communities; (2) biased toward promoting bigger government; and (3) oligopolistic insofar as existing local governments may use a BRC to resist competition from new entrants into the local government marketplace. However, just as it is difficult to verify BRC successes, it is also difficult to verify these criticisms.⁶⁹ Essentially, local officials and citizens have tamed most of the BRCs so that they perform useful but largely unobtrusive functions. This primarily includes: (1) studying proposed boundary changes in order to provide information to local officials and residents, and (2) engaging in mediation and dispute resolution over proposed boundary changes.⁷⁰

F. *Regional Councils*

The most widespread effort to create forms of metropolitan governance has been the movement to create regional councils of governments and areawide planning commissions. These councils serve multiple jurisdictions, but are not formal governments because they do not possess independent political authority and taxing power. Generally, there are two types of regional councils: (1) general-purpose councils, which engage in planning, coordination, information dissemination, and policy formulation in va-

68. *Id.* at 29-31.

69. *Id.*

70. *Id.* at 25.

rious policy fields; and (2) special-purpose councils, which carry out one program or policy responsibility for multiple jurisdictions (e.g., regional health planning and coordination). General-purpose councils are created by state and/or local governments and are usually governed by the council's constituent local governments. Special-purpose councils are most often created in response to federal government mandates, and are often governed by appointed non-governmental representatives of the people served by the councils rather than by local governments per se. In 1977, there were 675 general-purpose councils and 1,257 special-purpose councils employing, together, about 148,000 persons and spending some \$1.3 billion.⁷¹ About forty-three states had systems of regional councils that covered the state, and nineteen states authorized the establishment of regional councils across state lines.

The movement to create regional councils gained significant momentum during the late 1950s, and then accelerated during the 1960s and 1970s due largely to incentives and requirements promulgated by the federal government. The first important federal action was the enactment of section 701 of the Housing Act of 1954,⁷² which provided fifty-fifty matching grants for urban area planning by regional, metropolitan, or state agencies. Section 701 was soon broadened by the Housing Act of 1959⁷³ to substitute "comprehensive" for "urban" planning, to require planning to encompass entire urban areas having common or related problems, to make more areas eligible for federal funds, and to require intergovernmentally coordinated planning.⁷⁴ These enactments were then followed, for example, by federal incentives and requirements for metropolitan planning organizations (MPOs) and regional conservation and development districts in 1961;⁷⁵ economic development districts in 1968;⁷⁶ crimi-

71. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CENSUS OF GOVERNMENTS (1977).

72. Housing Act of 1954, ch. 649, § 701, 68 Stat. 590, 640 (1954).

73. Housing Act of 1959, Pub. L. No. 86-372, § 419, 73 Stat. 654, 678-679 (1959).

74. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, REGIONAL DECISION MAKING: NEW STRATEGIES FOR SUBSTATE DISTRICTS 57 (1973).

75. Housing Act of 1961, Pub. L. No. 87-70, § 310, 75 Stat. 149, 170-71 (1961).

76. Housing and Urban Development Act, Pub. L. No. 90-448, 82 Stat. 476 (1968).

nal justice coordination councils in 1970;⁷⁷ area-wide agencies on aging in 1973;⁷⁸ health systems agencies in 1975;⁷⁹ and air quality control regions in 1977.⁸⁰ In turn, many states established and supported state-wide systems of substate regional councils. Consequently, the number of general-purpose regional councils increased from about 39 in 1954, to 585 in 1970, and to 675 in 1977, then dropped to 632 in 1980.⁸¹

The election of Ronald Reagan to the presidency in 1980, however, brought a sharp reversal of federal policy toward regionalism. In 1981, the administration

'decommissioned' the eight active and three still-born economic development regions established at the request of the governors under Title V of the Public Works and Economic Development Act of 1965. The administration also closed down the six federal-state river basin commissions that had been established under Title II of the Water Resources Planning Act of 1965.⁸²

In 1982, President Reagan rescinded the Office of Management and Budget's Circular A-95, which had been promulgated pursuant to the Intergovernmental Cooperation Act of 1968.⁸³ Circular A-95 promoted regional and metropolitan coordination by requiring regional and state reviews and comments on most federal grant applications prepared by local governments. The circular was replaced by Executive Order 12372, which "left virtually all procedural and implementation issues up to the discretion of the individual states."⁸⁴ In 1983, Reagan also abolished the ten federal regional councils that had been established

77. Omnibus Crime Control Act, Pub. L. No. 91-644, § 4(2), 84 Stat. 1881, 1882 (1971).

78. Older Americans Comprehensive Services Amendments, Pub. L. No. 93-29, §§ 303, 304, 87 Stat. 30, 37-41 (1973).

79. National Health Planning & Resources Development Act, Pub. L. No. 93-641, § 1512, 88 Stat. 2225, 2232-35 (1975).

80. Clean Air Act Amendments, Pub. L. No. 95-95, § 103, 91 Stat. 685, 687-688 (1977).

81. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AND NONMETROPOLITAN REGIONAL COUNCILS IN THE 1990'S: AN UPDATE (forthcoming 1994).

82. Bruce McDowell, *Regional Organizations Hang On*, INTERGOVERNMENTAL PERSP., Winter 1983, at 15.

83. Intergovernmental Cooperation Act, Pub. L. No. 90-577, 82 Stat. 1098 (1968) (codified at 31 U.S.C. § 6501-08 and 40 U.S.C. § 531-35 (1988)).

84. TIMOTHY CONLAN, *NEW FEDERALISM: INTERGOVERNMENTAL REFORM FROM NIXON TO REAGAN* 211 (1988).

by President Richard M. Nixon in 1969.⁸⁵

In addition, the regional councils in the states experienced a decline in federal financial support during the 1980s. In 1979, there were about forty-eight federally funded planning programs that helped to support regional councils by giving them preference as eligible funding recipients, requiring local governments to have a regional planning agency in order to receive funds, or requiring the existence of a regional plan. By 1991, only thirteen of these programs remained both funded and targeted toward regional councils. There are, however, still some thirty-six federal planning grants for which regional councils are eligible, although they are merely one of several types of eligible recipients. In 1979, there were only three such grant programs. In addition, federal service-delivery grants for which regional councils are eligible increased from twenty-one in 1979 to thirty-seven in 1991.⁸⁶ Thus, while regional councils remain eligible for at least eighty-six of the federal government's 557 funded grant programs, they enjoy preferred recipient status in only thirteen programs. Otherwise, regional councils must compete for federal funds on an equal footing with many other service-delivery aspirants. Consequently, the federal fiscal share of regional-council budgets fell from seventy-six percent in 1977 to forty-five percent in 1988, and the average staff size of regional councils dropped from twenty-one persons in 1977 to seventeen in 1988.⁸⁷ In turn, the number of councils decreased from 632 in 1980 to 529 in 1991.⁸⁸

Although Reagan's opposition to regional entities was an important factor in reducing federal support during the 1980s, regional councils also lost federal funds because of the general shift of federal intergovernmental aid from places to persons—a shift that began in 1978.⁸⁹ That is, federal aid to state and local governments dedicated for payments to individuals increased from 31.8% of all federal grants-in-aid in 1978 to 55.2% in 1989

85. *Id.* at 210.

86. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AND NONMETROPOLITAN REGIONAL COUNCILS IN THE 1990'S: AN UPDATE, *supra* note 81.

87. *Id.*

88. *Id.*

89. Kincaid, *Housing, Fragmentation and Preemption*, *supra* note 6, at 418-19.

and then to about 61.7% by 1992.⁹⁰ Given that states administer most of the federal-aid programs targeted for persons (e.g., Aid to Families with Dependent Children and Medicaid), regional councils were not the only fiscal losers. Federal aid to local governments declined sharply as well. Neither regional councils nor local governments are likely to receive substantial infusions of federal funds for the foreseeable future because: (1) federal aid to state and local governments is increasingly driven and dominated by aid-to-persons entitlement programs; (2) persistent federal deficits are further crowding out federal aid to places; and (3) suburban voters now dominate the electorate.

Nevertheless, regional councils appear to have established themselves as enduring entities. Councils continue to operate in forty-seven states, and thirty states have regional councils covering their entire territory.⁹¹ In addition, President George Bush did support a new regional initiative in 1990: the creation of rural development councils in eight states.⁹² In 1991, twenty-three states appropriated \$20.5 million for regional councils (compared to twenty-seven states that appropriated \$12.4 million in 1978).⁹³ On average in 1988, regional councils received forty-five percent of their funding from the federal government, nineteen percent from their state government, and thirty-six percent from local governments (compared to seventy-six percent federal, ten percent state, and twelve percent local in 1977).

For the most part, however, regional councils, somewhat like BRCs, have become information and service providers — a change due, in part, to the growing dependence of councils on local funding. As such, most regional councils have become governmental entrepreneurs,⁹⁴ providing information and services

90. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, II SIGNIFICANT FEATURES OF FISCAL FEDERALISM 60 (1993).

91. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AND NONMETROPOLITAN REGIONAL COUNCILS IN THE 1990'S: AN UPDATE, *supra* note 81.

92. Beryl A. Radin, *Rural Development Councils: An Intergovernmental Coordination Experiment*, 22 PUBLIUS: J. FEDERALISM 111 (1992).

93. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AND NONMETROPOLITAN REGIONAL COUNCILS IN THE 1990'S: AN UPDATE, *supra* note 81. Some states provide general and contract funds.

94. Robert W. Gage, *Regional Councils of Governments at the Crossroads: Implications for Intergovernmental Management and Networks*, 11 INT'L J. PUB. ADMIN. 467 (1988).

on such matters as local government payroll management, landfills, police firing ranges, fingerprint and ID systems, street maintenance, purchase and operation of snow-removal equipment, counseling services, and emergency communications.⁹⁵ Otherwise, citizens and local government officials have been averse to investing regional councils with any significant authority.

V. Some Lessons of History

Despite more than a half century of efforts to create metropolitan governments, voters have not been enthusiastic. Voters will often support the creation of specific metropolitan service entities, particularly special districts, but rarely support consolidation to create general-purpose metropolitan government or multi-purpose regional bodies. Where state law permits local residents to vote on such matters, citizens are not likely to relinquish those voting rights. Where state law permits unilateral municipal annexation of unincorporated areas, residents often engage in defensive incorporation to block annexation. As a result, gun-shy legislatures are very reluctant to impose their will on the local government organizational preferences of their citizens. Most local government officials also tend to oppose jurisdictional mergers, not only city-suburb consolidations but also suburb-suburb consolidations. Although the federal government mounted significant efforts from the 1950s to the 1980s to promote regional and metropolitan governance, primarily through financial incentives, those efforts were curtailed during the 1980s not only because of opposition from President Reagan but also because of the substantial shift of federal aid from places to persons and because of rising budget deficits.

Consequently, advocates of metropolitan government or areawide land-use management will need to find new tools. Given that the carrots of federal and state financial incentives are likely to be in short supply, the most available tools will be the sticks of federal and state regulation. What Professor Mark I. Gelfand concluded in a recent case study of Boston is indica-

95. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN AND NONMETROPOLITAN REGIONAL COUNCILS IN THE 1990'S: AN UPDATE, *supra* note 81.

tive of the metropolitan reform movement's turn toward inter-governmental regulation: "Metropolitan government for Boston in the absence of an absolute federal mandate is not likely during the foreseeable future, but federal planning regulations might act as the catalyst to bring the region's development under areawide control."⁹⁶

The election of President Bill Clinton has given advocates of metropolitan government new encouragement after twelve years of hostility to regionalism from Presidents Reagan and Bush: "if Clinton and Gore are really serious about reinventing government, there is a genuinely revolutionary idea they might try: abolish the suburbs."⁹⁷ David Rusk, former mayor of Albuquerque, New Mexico, has proposed an ambitious "new regionalism" campaign to (1) allow municipalities to override voter objections to annexation by municipalities, especially by central cities; (2) encourage state legislatures to mandate city-county consolidations; (3) raise requirements for municipal incorporation; (4) establish zones around existing municipalities within which they could veto municipal incorporation; (5) invest county governments with full municipal powers; and (6) require tax sharing and "fair share" low-income housing arrangements among all local governments in metropolitan areas.⁹⁸ Advocates of regional councils also see in the new presidential administration opportunities to revive councils and invest them with authoritative planning and regulatory powers that would allow them to play a more directive rather than merely participative or supportive role in metropolitan governance.⁹⁹ The National Association of Regional Councils is encouraging role redefinition

96. MARK I. GELFAND, *Development Policy in Boston*, in METROPOLITAN GOVERNANCE, *supra* note 58, at 13, 49.

97. Mickey Kaus, *City Limits*, THE NEW REPUBLIC, May 3, 1993, at 6; *see also*, Allan D. Wallis, *New Life for Regionalism? Maybe*. 81 NAT'L CIVIC REV. 19 (1992).

98. RUSK, *supra* note 3, at 123-24. One indicator of possible voter reaction to such proposals is reflected in the results of a national public opinion poll which asked, among other things, whether the federal government or local governments should regulate the location and building of low-income housing in communities. Some 20.4 percent of the respondents chose the federal government, while 72.2 percent picked local government. U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, FEDERAL STATUTORY PREEMPTION OF STATE AND LOCAL AUTHORITY: HISTORY, INVENTORY, AND ISSUES 39 (1992).

99. Robert W. Gage, *Leadership and Regional Councils: A Mismatch Between Leadership Styles Today and Future Roles*, 25 STATE & LOC. GOV'T REV. 9 (1993).

and considering establishing a National Institute of Regional Studies. Such a role change could be effected by federal mandates and by conditions attached to federal grants-in-aid to state and local governments. The two most recent federal enactments seen as being supportive of a new regionalism are the Clean Air Act Amendments of 1990¹⁰⁰ and the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991,¹⁰¹ both of which established new metropolitan planning requirements.

The impact of the Clean Air Amendments is mostly regulatory because little money has been provided for Air Pollution Control Assistance grants. ISTEA, however, gives metropolitan planning organizations significant authority to plan and allocate billions of federal highway and transit dollars. Nevertheless, the Clean Air Amendments may have the most transformative effects on county, municipal, school, and special-district governments because the regulatory regime required to meet air-quality standards in some metropolitan areas may suck up key powers of local governments over population growth (e.g., housing and schools), economic development (e.g., infrastructure), land use (e.g., zoning), and other matters. In short, the new regionalism being proposed for the 1990s is primarily a regulatory regionalism that would rely greatly on intergovernmental mandates to establish regional institutions and achieve regional objectives that might otherwise be rejected by voters and by local elected officials. This approach, therefore, raises critical questions about long-run political feasibility and democracy.

Unlike the successful progressive reform tradition associated with the internal restructuring of municipal government, which generally sought to empower voters against political bosses and machines, the reform tradition associated with the external restructuring of municipal boundaries and service areas has generally emphasized the bypassing of voters. Whereas advocates of internal municipal reform saw a vigorous and educated electorate as the key to success, advocates of external municipal reform have tended to see voters as obstacles to success. Advocates of regionalism, therefore, have encouraged voter dis-

100. Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399 (1990).

101. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991).

enfranchisement in three respects: (1) by relying on federal and state legislation to establish regional entities and to impose regional rules on local governments; (2) by establishing regional bodies that are not elected by the voters; and (3) by using regional rules and bodies to implement policies likely to be rejected by voters. Of course, advocates of regionalism have been driven in a regulatory direction precisely because voters have been hostile to authoritative and consolidationist regional arrangements. Nevertheless, voters have spoken rather clearly and consistently on matters of metropolitan regionalism in the twentieth century, and the requisites of democracy require some deference to their preferences.

Consequently, efforts to use regulatory tools to achieve regional objectives may be construed by voters as attempts to hammer them into submission to "big government." A California county supervisor termed this approach "an attempt to impose unelected master governments on elected local governments." In an era when many citizens already believe that government is too big, remote, and beyond their control, voters are likely to cling to their local self-governance prerogatives. This fact may be all the more salient today because the United States is now a suburban nation, with most citizens living in small and medium-size communities. This development may also make it more difficult to enact regulatory regionalism to achieve land-use and growth-management policies because gubernatorial, state legislative, congressional, and presidential elections are increasingly shaped by suburban interests. Although these interests are quite diverse and far from monolithic or simply Republican on most issues, they are likely to cohere on questions of community control and local self-government. As a result, supporters of regionalism may need to turn more to the courts for relief from voter resistance.

The implementation of land-use and growth-management policies through regulatory regionalism faces additional obstacles because of the historically close identification of land use with local government prerogatives and private property rights. Current experiences with state growth-management legislation suggest that local control is a potent factor in shaping land-use law. State legislatures have been reluctant to enact stringent rules that centralize authority in state agencies or regional bod-

ies.¹⁰² As a general rule, it appears to be the case that the weaker the regulation and the greater the role of local government, the greater the feasibility of enacting statewide and regional growth-management legislation. Furthermore, in an era of local fiscal constraint and increased federal and state mandating with little or no intergovernmental revenue support, regulatory regionalism is vulnerable to local government and taxpayer revolts. For example, Florida's Local Government Comprehensive Planning and Land Development Regulation Act of 1985 was a key factor in local government and voter support for Proposition Three in November 1990, which amended the Florida Constitution so as to limit the ability of the state legislature to enact unfunded mandates on local governments.¹⁰³ Eleven states now have a constitutional provision limiting unfunded mandates, while six others have a statutory provision.¹⁰⁴

Supporters of regional efforts to override metropolitan "fragmentation" and voter antipathy also tend to look abroad to more centralized political systems for models of regionalism while overlooking other federal systems, such as Switzerland, a sister republic with historically close ties to the United States and many similar political values.¹⁰⁵ If "fragmentation" and voter sovereignty have the deleterious consequences often attributed to them in the United States, then Switzerland should be a balkanized basket case. Swiss voters have a much larger voice in all matters—local, cantonal, and confederal—than do American voters.¹⁰⁶ Furthermore, tiny Switzerland has 6,873,687 citizens living in twenty-six cantons, the smallest (Appenzell Innerrhoden) having 13,870 inhabitants and the largest (Zurich) having 1,179,044 inhabitants. In addition, there are some 3,000 gen-

102. Forster Ndubisi & Mary Dyer, *The Role of Regional Entities in Formulating and Implementing Statewide Growth Policies*, 24 STATE & LOC. GOV'T REV. 117, 117-18 (1992).

103. See generally Susan A. MacManus, *Enough is Enough: Floridians' Support for Proposition Three Limiting State Mandates on Local Government*, 24 STATE & LOC. GOV'T REV. 103 (Fall 1992).

104. *Id.* at 103.

105. JAMES H. HUTSON, *THE SISTER REPUBLICS: SWITZERLAND AND THE UNITED STATES FROM 1776 TO THE PRESENT* (1991).

106. Andre Eschet-Schwarz, *The Role of Semi-Direct Democracy in Shaping Swiss Federalism: The Behavior of Cantons Regarding Revision of the Constitution, 1866-1981*, 19 PUBLIUS: J. FEDERALISM 79 (1989).

eral-purpose local governments. Like American voters, Swiss voters usually reject proposals to consolidate local governments. However, Swiss voters, also like Americans, support many more special-district governments that perform regional functions. The canton of Thurgau, for example, has several hundred overlapping functional jurisdictions with corresponding revenue-raising powers.¹⁰⁷ In the case of minuscule Appenzell Innerrhoden, which cannot self-finance a state university, large hospital, and other major services, the canton enters agreements with neighboring St. Gallen to provide such services.¹⁰⁸

Finally, despite the large literature that has developed on statewide and regional land-use and growth-management legislation, there are few systematic, empirical evaluations of the costs and benefits of such laws. Neither proponents¹⁰⁹ nor opponents¹¹⁰ are able to offer much solid evidence in support of their contentions. In part, the paucity of empirical evidence is due to the normative difficulty of stipulating and then measuring costs and benefits. Land-use and growth-management decisions are preeminently value choices that deeply affect public interests and private rights. Consequently, voter resistance and reform persistence on questions of metropolitan regionalism produce contentious and controversial political battles that cannot be settled easily by rational fact-based discourse.

Given the prevalence of zoning ordinances, however, there is no evidence that voters are inherently hostile to land-use regulation or growth management. Public support for a *laissez-faire* approach to land use seems virtually non-existent. At the same time, twentieth-century history clearly indicates that voters value local control and resist regulatory metropolitan regionalism. Supporters of statewide and regional land-use regulation

107. See generally Alessandra Casella and Bruno Frey, *Federalism and Clubs: Towards an Economic Theory of Overlapping Political Jurisdictions*, 36 EUR. ECON. REV. 639 (1992).

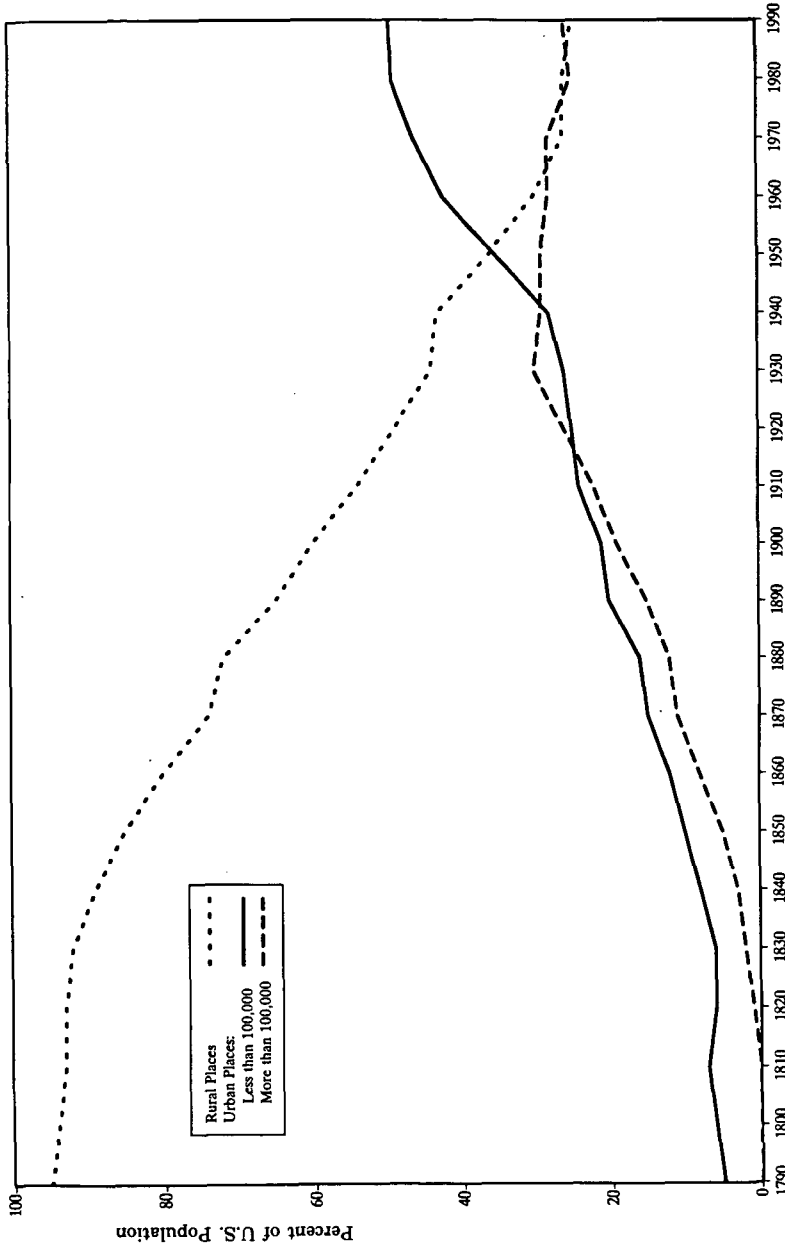
108. Max Frenkel, *The Communal Basis of Swiss Liberty*, 23 PUBLIUS: J. FEDERALISM 61, 65 n.10 (1993).

109. E.g., JOHN M. DEGROVE, *THE NEW FRONTIER FOR LAND POLICY: PLANNING AND GROWTH MANAGEMENT IN THE STATES* 170 (1992).

110. E.g., Randall G. Holcombe, *Growth Management in Florida: Lessons for the National Economy*, 10 CATO J. 109 (1990); Bernard H. Siegan, *Land Use Regulations Should Preserve Only Vital and Pressing Governmental Interests*, 10 CATO J. 127 (1990).

and growth management, therefore, will need to assure voters that they will have a voice in policymaking and that decision-making institutions will be ultimately accountable to local voters, not to a state bureaucracy established by the legislature and/or a federal bureaucracy established by the Congress.

FIGURE 1
Percent of Americans Living in Rural Places, Urban Places Having Less than 100,000 Residents, and Urban Places Having More than 100,000 Residents, 1790-1990



Source: U.S. Department of Commerce, Bureau of the Census (Census), *Historical Statistics of the United States, Colonial Times to 1970, Statistical Abstract of the United States, 1983*, and unpublished 1990 data from Office of Population and Housing Programs, Census.