REGIONALISM AND REALISM IN LAND-USE PLANNING*

Charles M. Haar †

Decentralization and decay—these are the twin scourges of American cities today. The exodus of people, business and industry from the central city, accompanied by the deterioration of vast residential areas, obsolete utility systems, unused school and other community facilities, chaotic traffic conditions, a declining tax base and the necessity of providing a multitude of services to those who work and play in the city but live and pay taxes in the suburbs, are some of the immense problems facing municipal administrators across the nation.

These difficulties are attributed in large part to the fractioning of metropolitan areas into separate corporate jurisdictions. And the answer most readily forthcoming has been that of "regional" planning, whereby Humpty Dumpty would be put together again. This vision of reform has been concentrated on the 168 areas to which the Bureau of the Census has applied the awesome name of "Standard Metropolitan Area," administered by some 16,000 local government units containing nearly two-thirds of the total national population. 1 Thus, to many, the easy solution is passing a metropolitan planning law. 2

How successful has been this movement for urban regional planning? A reference to the law on the books is useful for the purpose of examining what has been the intercommunity acceptance of planning needs. For this type of inquiry the alleged defect of the lawyer's narrow perspective can be accepted temporarily as a potentially useful tool. The famous bad man of Mr. Justice Holmes is a good starting point: from

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† Professor of Law, Harvard Law School. A.B., 1940, New York University; M.A., 1941, University of Wisconsin; LL.B., 1948, Harvard University.

1. Increases in population have been greatest in areas surrounding the city core of the metropolitan area. For instance, in 1950-1954, 81% of the increase in population of the New York metropolitan region occurred not in New York City itself, but in its environs. REGIONAL PLAN ASSOCIATION, BULL. No. 85, at 5 (1954).

2. The favorite illustration here is, as usual, a cartoon from the New Yorker. This one shows a married couple laden with footlockers and trunks rushing on the pier, but, alas, the ocean liner can be seen receding in the distance. Turning to the husband, she says "Harry, do something!"
the point of view of the property owner, and the lawyer who represents him, what types of land-use planning and controls, other than those locally formulated and enforced, need be of concern? How effective has been the answer of regional planning as envisioned and enacted to date by state enabling law and as interpreted by the judiciary; is there some alternative solution—yielding of greater results and productive of richer values—to meet this problem of lack of correspondence between political boundary and functional problem? Finally, does the legal accommodation of regional planning theory raise questions as to the very desirability of the land-planning approach through metropolitan area units?

THE REGIONAL PLANNING ENABLING STATUTES

Some twenty-two states currently authorize regional planning activity.3 "Regional," however, means various things in different statutes. Often it simply refers to county planning. At other times it expresses a realization on the part of the state legislature that the local political units of town and county are often not the most effective planning authorities, and that some type of amalgamation of perspective is necessary in order to achieve the most desirable allocation of land resources.

The Option of Forming a Regional Planning Body

Generally the establishment of a metropolitan region is made purely optional with any number of cities or counties that desire to set up a regional planning body. Thus, in New Jersey, the council or board of any municipality or county may join with other municipalities or counties to set up a regional planning board.4 Similarly, a 1956 amendment to the New York General Municipal Law provides that the governing bodies of cities, towns and villages may collaborate in establishing a regional or metropolitan planning board.5

As to be expected in such purely voluntary formations, the state enabling act also delegates to the constituent members a large degree of discretion as to the composition of such bodies. Thus, the representatives are "to be selected in a manner to be determined by agreement among the participating municipalities."6 Again, the proportion

5. N.Y. GEN. MUNIC. LAW § 239-b. See MICH. STAT. ANN. § 5.3008(3) (Supp. 1955): "The boundaries of the area which are to define the limit of jurisdiction of the regional planning commission shall be established by the resolutions of the participating legislative bodies."
6. N.Y. GEN. MUNIC. LAW § 239-b.
of expenses to be borne by the cooperating units is to be worked out by their own determination.

The major variation of this pattern is the demarcation of regions by a state agency. For example, under the 1956 revision of the Connecticut statutes, the Connecticut Development Commission sets up the regions in that state.\(^7\) And in California the State Planning and Conservation Board is required to divide the state into regional planning districts.\(^8\)

However, in Connecticut the formation of a regional planning body within the regional district created by the state agency is nevertheless still up to the local government units within the region. In California, on the other hand, no further choice is permitted: a regional planning commission is mandatory for each district carved out by the state board. And it is the governor who appoints all members from a slate of nominees selected by the board of supervisors of each county. But with the notable exception of California, the choice of whether or not there is to be a regional planning commission—and with this the implicit determination as to the proper boundaries of the region—is generally left to the local units of government. Thus, whether such a body will come into existence at all, whether the regions constitute the most rational divisions within the state, and, third, whether a proper relationship exists among the different regions are all left purely to activity of local bodies.\(^9\)

Some further check on the wisdom of the particular regional delineation is afforded by those states which require the local units that desire to form a region to first petition the governor of the state and receive his approval. Massachusetts adds its own curlicue: cities and towns may vote to establish a planning district, but such district must be approved by the State Department of Commerce before it can come into being.\(^10\)

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9. Michigan did originally attempt to set up some criteria for the division of the state into regional units: "The boundaries of this area need not be coincident with the boundaries of any single governmental subdivision or group of subdivisions which are to be included in the area, but may include all or such portions of any governmental subdivision as, in the opinion of the Michigan planning commission, comprise a homogeneous region, based on but not limited to, such considerations as topographic and geographic conformations, extent of urban development, the existence of special or acute agricultural, forestry, conservation or other rural problems, uniformity of social or economic interests and values, or the existence of problems of physical, social and economic planning of a regional character." Mich. Stat. Ann. § 5.3008(3) (1949).
Function—A Letter to the World?

When and if finally constituted, what are these regional planning bodies supposed to do? This basic problem has hardly been explored—even tentatively—by the enabling legislation. Obviously they ought to plan—although what, where, and to whom the plan is to be addressed are questions generally left unresolved. Close examination of the enabling legislation, nevertheless, permits one to ferret out a sort of regional planning philosophy that can be said to underlie the conferring of function on the regional planning body.

Research and Surveys

The gathering of information about a region is, of course, a prerequisite to other aspects of planning. The acts usually list data collection as a function of the regional planning board. Apparently this is regarded as an important and safe job—though the end of the research is left vague and unexplored. The Michigan act, for example, blandly states that the regional planning commission “may conduct all types of research studies, collect and analyze data, prepare maps, charts and tables.” 11 Perhaps this is as far as the matter can be pressed in view of the uncertain nature and the tenuous position of the regional agency.

The Making of Plans

The drafting of a regional master plan is a commonly allotted function. Thus, New York empowers its metropolitan planning boards to prepare and adopt a comprehensive master plan for the development of the entire area of the participating municipalities; 12 Michigan authorizes plans “for the physical, social and economic development of the region.” 13 California again attempts greater detail. 14 The regional master plan, prepared by the regional planning commission, is required to include, if necessary:

1. conservation plans, including water and all natural resources, flood control, water shed protection;
2. a land-use plan for the most desirable utilization of land of the region;
3. recreation plans for parks, playgrounds, beaches and other recreation areas;

4. street and highway plans;
5. transportation and transit plans;
6. public services and facilities plan;
7. public buildings; community design, including a sub-
division plan;
8. housing plans; and
9. any other plans the commission thinks applicable.

Sometimes an intermediate position is spelled out by the legisla-
tion. Connecticut specifically includes in the plan "principal highways
and freeways, bridges, airports, parks, playgrounds, recreational areas,
schools, public institutions, public utilities, and such other matters as,
in the opinion of the authority, will be beneficial to the area." 15 Again,
the notion that regional planning should concentrate upon large-scale
public facilities is spelled out in the Illinois mandate that the plan
provide for harmonious development of the region and of "public im-
provements and utilities therein." 16 These direct the focus of the
regional plan to the public developers within the region; the idea is that
large scale public undertakings should be coordinated in order to be
more effective, and to avoid duplication of efforts. Occasionally, as in
Massachusetts, 17 there is a provision that in addition to highways,
recreation areas, parks and public places, the regional plan should also
include building and zoning districts, but this concern with the private
developer is rare.

Thus, the enumeration of criteria and the guidance to the adminis-
trative agency of what the legislature conceives as the master planning
function have not yet been successfully achieved by legislation. True,
the California act wrestles with this difficulty, but notice that it simply
repeats the scope given the local master plan; its major contribution
consists of inserting the word "regional" in place of the word "city."
Prima facie it would seem that the needs, means and objectives of a
region differ in many respects from those of a locality, and that more
thought needs to be given to the unique uses, and to the type of decision-
maker, to which the regional plan is directed. The intermediate states,
like Illinois, reveal a philosophy of dealing with coordination of public
expenditures and finances. Both these approaches, limited as they may
be, seem more desirable than leaving the whole problem up in the air.
Consider, for example, the amount of guidance you would have as a

15. CONN. GEN. STAT. § 868 (1949).
16. ILL. ANN. STAT. c. 34, § 152a (1935), Galt v. Cook County, 405 Ill. 396,
91 N.E.2d 395 (1950).
member of the New Jersey Regional Planning Board: “Such master plan shall include all the elements of physical development that may be locally important and desirable.”

Servicing of Local Planning Agencies

An important function often delegated to the regional agencies is the consulting and servicing of constituent members on planning matters. Financially stronger than the small local units of government, and also involved in a continuing job which justifies the retention of permanent planning staff, this can be a real contribution of regional planning personnel.

Education

Although ignored by most enabling acts, some legislation attempts to exploit the educational potential of the regional master plan. If it is to function on the basis of voluntary creation and continued voluntary acceptance of its activities by local units, perhaps the most useful function of a metropolitan planning agency is simply that of educating its members and citizens. This would underline land-use problems which require joint action and alternative solutions made feasible through co-ordinated effort in place of isolated attempts of separate units on an ad hoc basis. Yet, peculiarly enough, few of the statutes attempt rudimentary public relations in this area. Thus, rarely do they require a public hearing; even where it is, the forms of notice and who is the public to be invited are not listed. Perhaps some procedures should be spelled out whereby the planners consult with the citizens of the region: equally as important as educating citizens is learning their conception of the regional problems and their formulation of regional land objectives. No doubt some of this interaction does go on in practice, but further encouragement and direction by the legislature would serve a useful purpose; there is need for informal hearings, dissemination of information, and consultation with all types of interest groups.

Effectuation of the Regional Plan

The moral and educational impact of metropolitan planning, on both the citizens and the planners, is a potential contribution of the regional master plan. Yet to inject reality into this educational process, and to call forth the necessary intense concentration and determination, the plans must have some influence on land development.

To have bite in the world of reality, in other words, the plan needs some sort of legal compulsion. An examination of the various regional planning enabling acts thus far devised in this country is important for ascertaining the application conceded to these laws.

As developed thus far in this country, however, effectuation of the regional plan is relegated to a backward position. Most acts simply provide that the regional planning commission is to prepare a plan. As to what happens thereafter, there is a resounding silence.

Sometimes further steps are indicated, as in New York, where the planning board was given the additional authority in 1956 of recommending a comprehensive zoning plan to the governing body of its constituent units. Of course, this is simply a recommendation that need not be accepted. There is some slight encouragement—although again not very strongly or affirmatively phrased—in the New Jersey enabling act. There the legislative body of the municipality or county may give to the regional planning board any of the powers of the municipal or county planning board; this presumably includes the making of official master plans and the adoption of regulations governing the approval of plats and subdivision of land. Conceivably, this might be interpreted to include zoning; but this seems to be a power that cannot be passed on to the regional planning board, since it is not a function of the municipal or town planning board, but rather, of the local legislative body.

California does attempt to give the regional master plan a role in the active field of land development. County and city master plans within each region are to be co-ordinated “so as to fit properly into the master plan of the region.” Further, the county and city planning commissions in the region are required to “accept and embody” in their master plans the features and findings of the regional planning commissions in matters pertaining to the regional and state welfare. Thereafter, when so accepted and embodied, and adopted by the local legislature, they are deemed to have the same effect as the master plan. But who is to do the co-ordinating, and the consequences of failure to fit properly are matters left tantalizingly quiet. And adoption or rejection of the master plan is the province of the local legislative body. Furthermore, the effect of adoption of the regional master

19. N.Y. GEN. MUNIC. LAW § 239-d 5. It “shall designate suitable areas to be zoned for residential, commercial and industrial uses, taking into consideration, but not limited to, such factors as existing and projected highways, parks, parkways, public works, public utilities, public transportation facilities, population trends, topography and geologic structure.”


22. Id. § 65500.
plan—even of a local master plan—is limited to requiring reports by the planning commission on location of streets and squares, proposed public improvements and street improvements. Since it only furnishes an outlet for reports, with no legal teeth given to the planning board's recommendation, the ensuing limitation on the activity of local authorities is indeed slight.

**Evaluation**

Only half of the states make some provision for regional planning agencies. Of these only a rare act makes the very existence of the regional body independent of the desires of the local governmental units. A planned, state-wide coordination of regions, or even an enumeration of criteria for demarcating the different metropolitan areas in order to found land planning on a more rational basis than existing political boundaries, is rarely encountered.

Largely unanswered by the legislation are basic issues, lacking which area-wide planning becomes meaningless. What are the state legislatures aiming at by prescribing the writing of a "regional plan?" What are the purposes for which it is invoked? What are the strategic points of decision-making the legislatures are seeking to influence by the plan? Although not unfair, it is perhaps unkind to characterize these regional planning enabling statutes as high sounding but hollow moral victories. As presently formulated they are directed to making a regional plan, but not one fashioned to an end; nor is there a bridge by which the plan can influence land development. Even the very process of preparation is not drawn up so as to elicit public support, nor to be illuminating either to the general citizenry or to the planning staffs and boards. Certainly the procedures for adoption are not devised with the thought of stimulating discussion, of awakening wide public response, and of having the final acceptance of the plan, which after all sets basic goals that affect the lives of the citizens in many intimate ways, a matter of public concern. Without such clarification, there is small hope for a reconciliation of divergent interests, without which planning becomes simply a pleasant intellectual hobby.

That the real clash of interests comes to the surface when the plan begins to bite on property rights focuses attention on the implementation of a plan. But as now conceived, the regional plans' recommendations do not lead to action. They dangle loosely in the middle of the firmament of local government units. There is scarcely a formal delineation of the legislative body to adopt and enact such plans and subsequently implement the objectives through the normal
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Land-use enactments—zoning, subdivision, streets and building laws. They may be ignored by the local government units which comprise the region.

Even in California, where the enabling act contains the ringing mandate of requiring the incorporation of the regional master plan into any local master plan, the local legislature still has the final option of not adopting the master plan in this form; more significant, adoption even of the local master plan has but limited effect on the subsequent legislation that is the primary concern of the private property developer.

Thus the regional plan is again largely a didactic exercise. While the usefulness denoted by its very existence should not be minimized, it must be recognized that the effect of such regional plans in directing the application of human energies in land development is indeed small. Perhaps this is all, however, that one can realistically expect in the present state of local government development.

THE COURTS AND REGIONAL LAND-USE PLANNING

Since many of the concrete problems not dealt with by the legislature in the field of metropolitan planning are dumped willy-nilly into the laps of the courts, the judiciary has early been made aware of these issues. The words of the very first decision of the United States Supreme Court upholding the constitutionality of zoning are apt. In this grandfather case, the court referred to the position of the village of Euclid in the Cleveland metropolitan area and fore-shadowed "the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." 24

The metropolitan planning problem as it comes to the judiciary has pivoted about zoning; this is a natural evolution in view of zoning's position as the most widely used land-use control. The first issue is whether the local zoning ordinance fits into a comprehensive (meaning thereby, regional) zoning system. A second, and corollary, problem involves a zoning inconsistency along municipal boundary lines; this situation gradates to the extreme case where one municipality has adopted a comprehensive zoning ordinance, while a neighboring municipality has not bothered to zone at all. 25

24. Id. at 390.
25. See Pomeroy, County Zoning Under the California Planning Act, 155 Annals 47 (1931), for a discussion of the problem of objectionable uses cluttering about the fringes of zoned cities.
These two problems are of course intimately intertwined. If an effective system is devised for zoning an area wider than the boundaries of one municipality, border inconsistencies are not likely to arise. But somehow this clash of conflicting ordinance sections is a more vivid presentation of the general dilemma of metropolitan government, and therefore has more readily received judicial attention.

Upholding Land-Use Legislation on Regional Considerations

A limited type of "regionalism" has been invoked in some cases—but for the purpose of saving a regulation under attack. In the past, and likely to prove an accelerated trend due to the more refined districting which newer planning theory is suggesting, communities have attempted to ban uses such as hospitals, sanitaria or jails from their boundaries. All agree on the necessity of such institutions in an industrialized civilization, but most prefer their being located outside their own immediate borders. Frequently such attempts at exclusion by means of zoning have been stricken down by the courts. However, if there is some regional distribution of land available for such uses, so that the institution will not be excluded from a large geographical area, such local prohibitions have been upheld. The most striking language is perhaps that of Duffcon Concrete Products v. Borough of Cresskill. In that case the exclusion of all heavy industry from the local corporate bounds was sustained. The New Jersey court took notice of the fact that there were extensive lands within the region, although outside the particular municipal corporate area, which were available for industrial use. In ringing terms, which may be said to set a mandate for the injection of metropolitan planning considerations, the court announced:

"What may be the most appropriate use of any particular property depends not only on all the conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also on the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously. The effective development of a region should not and cannot be made to depend upon the adventitious location of municipal boundaries, often prescribed decades or even centuries ago, and based


in many instances on considerations of geography, of commerce, or of politics that are no longer significant with respect to zoning. The direction of growth of residential areas on the one hand and of industrial concentration on the other refuses to be governed by such artificial lines. Changes in methods of transportation as well as in living conditions have served only to accentuate the unreality in dealing with zoning problems on the basis of the territorial limits of a municipality. Improved highways and new transportation facilities have made possible the concentration of industry at places best suited to its development to a degree not contemplated in the earlier stages of zoning. The same forces make practicable the presently existing and currently developing suburban and rural sections given over solely to residential purposes and local retail business services coextensive with the needs of the community. The resulting advantages enure alike to industry and residential properties and, at the same time, advance the general welfare of the entire region." 29

And in the recent case of Valley View Village, Inc. v. Proffett,30 the court upheld a zoning of an entire municipal corporation for residential uses only. This was held valid so long as the business and industrial needs are supplied "by other accessible areas in the community at large." "Traditional concepts of zoning," the court added, "envision a municipality as a self-centered community with its own residential, business and industrial areas." Being "an adventitious fragment of the economic and social whole," the village was entitled to look to the pattern of community life beyond its own borders.31 Thus, the court is ruling that the local unit need not be a microcosm of all possible uses—not every type of facility must find some accommodation within its borders.

That a general proposition does not solve concrete cases is reflected here too. For example, there has been some dispute over the judicial application of this regionalism doctrine in order to sustain the regulation involved in Lionshead Lake, Inc. v. Township of Wayne.32 In upholding the constitutionality of a zoning ordinance prescribing minimum size requirements for houses in the township, the court pointed out that the permissible restriction of property use depends not only upon local conditions, but also upon the nature of the

29. Id. at 513, 64 A.2d at 349-50.
30. 221 F.2d 412 (6th Cir. 1955).
31. Id. at 418.
entire region of which the municipality forms a part. The court
drew from this the conclusion that, since "obviously it lies in the path
of the next onward wave of suburban development," the township
could anticipate and prevent "suburban blight." To some extent
then, the regionalism doctrine as applied by the court might be branded
localism—not an evaluation of the interests of the broader region as
a whole. It might even be regarded as an "isolationist" view used
in the guise of "regionalism," for the ordinance was motivated by a
fear of the city population spilling over to the environs of the township.

Invalidating a Zoning Ordinance on Regional Grounds

A more recent development is the invalidating of an ordinance
on the ground that it is not in harmony with the "regional master plan"
or the regional zoning ordinances. This attack has succeeded even
though, had the blinders of particular municipal boundaries been
applied, the zoning ordinance might have been found to be a proper
exercise of legislative authority.

The most striking litigation involving this issue is that of Borough
of Cresskill v. Borough of Dumont. This involved a set of facts
which, presented on a law school examination, would be regarded as
the professor's pipe-dream. One block was bounded by no less than
four independent municipal boroughs. The amendment to the zoning
ordinance under review changed its zoning from residential to business.
This was challenged, among other grounds, because it failed to accord
with the regional zoning plans of the four neighboring boroughs.
The planning expert for the plaintiffs, who testified as to the un-
desirability of the amendment, stated that considering the physical,
economic and social conditions prevailing through the area as a whole,
the zoning change was not in accordance with a comprehensive plan
in an inter-community sense. In invalidating the ordinance, the lower
court held "it is almost inevitable that an adjoining municipality will
be affected in some degree by the zoning regulations along its border
adopted by its next-door neighbor." Therefore it becomes a "legal
requirement" that zoning restrictions be made with reasonable con-
sideration to the character of the land and of the neighborhood lying
along the boundary. That local perspective must give way to a
broader regional approach was also implicit in its holding an adjoining
municipality a proper party for the purpose of attacking zoning legis-

33. 10 N.J. at 173, 89 A.2d at 697.
34. 15 N.J. 238, 104 A.2d 441 (1954).
A.2d 182, 191 (1953).
lation of another municipality. On appeal, the Supreme Court, however, reserved the question of a neighboring municipality’s standing to sue. It then proceeded to invalidate the ordinance on the grounds of spot zoning within the terms of the local zoning ordinance. Thus, it did not base its holding of invalidity on the regional perspective. However, there is considerable language in the opinion supporting the view that comprehensive zoning may require the enacting municipality to consider the land lying outside its borders:

"Knickerbocker Road and Massachusetts Avenue are not Chinese walls separating Dumont from the adjoining boroughs. At the very least Dumont owes a duty to hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes and to give as much consideration to their rights as they would to those of residents and taxpayers of Dumont. To do less would be to make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning."

The impact of the Dumont case is likely to grow as this conflict of regional and local interests comes increasingly to the fore—absent some other agency for the resolution of this type of dispute. For example, in Schwartz v. Congregation Powolei Zeduck, the court, like the Dumont one, feared "to make a fetish out of invisible municipal boundary lines." It went on to the conclusion that "it is not unreasonable to base zoning regulations for one municipality upon the conditions or character of an adjoining municipality." In Hamelin v. Borough of Wallingford, none of the plaintiffs were resident landowners or taxpayers of the borough, the validity of whose ordinance they were attacking. Defendants claimed that the plaintiffs were not "aggrieved persons" for this reason, even though one of them owned property directly across from the re-zoned land. The court ruled that since a zoning appeal is a process for invoking judicial power to determine legal injury, the plaintiffs were entitled to bring the action.

This line of cases stemming from Dumont raises a crucial question that had been hinted at earlier in a series of decisions dealing with extraterritorial land-use legislation.

As a way of avoiding the fringe problem, the power to zone extraterritorially has sometimes been granted outright. An example is the city of Omaha, which has the power to zone over a territory within three miles of its limits. Two cases have come up under this provision.

36. 15 N.J. at 247, 104 A.2d at 445-46.
37. 8 Ill. App. 2d 438, 131 N.E.2d 785 (1956).
38. Id. at 441, 131 N.E.2d at 786.
In *Omaha v. Glissmann*\(^40\) the city brought an action enjoining the construction of a tourist camp on land outside the city limits which it had zoned as residential. Interestingly enough, while the case turned on the constitutional point of whether the zoning ordinance was reasonable, that the land was outside the city boundaries was not even a bone of contention. The majority opinion, sustaining the reasonableness, did not even mention the fact that the land was located outside the city. And while the minority opinion makes reference to the location, it is not used as a basis for dissent. Thus, it would seem that at least sub silentio all the justices agreed that the fact that zoning was extraterritorial made no difference. Again, in the recent case of *Peterson v. Vasak*,\(^41\) while the zoning ordinance of the city was attacked as unconstitutional, it was not on the extraterritorial ground but rather on technical objections concerning statutory drafting.\(^42\) Hence, lawyers and the court all seemed to assume that extraterritorial land-use powers, once conferred by the state legislature, are valid.

This conclusion by all sides may not be wholly warranted. At least, one line of Kentucky cases induces some interesting reflections. Kentucky allows cities of a certain class to adopt a plan for the physical development of the municipality and the municipal area. “Municipal area” is defined as “the surrounding territory which bears relation to the planning and zoning of the city.”\(^43\) The legislation then provides that such commission “shall make and adopt a master plan for the physical development of a city and the municipal area.”\(^44\) The statute thus refers specifically only to planning. And in the case of *Smeltzer v. Messer*,\(^45\) appellees argued that whereas the city may plan beyond its borders, it cannot zone beyond them; in other words, that the enabling act distinguished between the authority of the city planning commission to plan and the power of the local legislature to zone—with only planning allowed to extend beyond the city limits. The court declined to consider the constitutionality of the statute; even assuming that a city may zone beyond its limits, this particular property was located in a county other than the one in which the city itself was situated. Since an earlier Kentucky decision had ruled a city powerless to annex territory lying in another county, the court interpreted the legislative intent to likewise withhold the power of zoning such territory.


\(^{41}\) 162 Neb. 498, 76 N.W.2d 420 (1956).

\(^{42}\) That the statute contained more than one subject matter, and that it embodied matter different from that expressed in its title.


\(^{44}\) Id. § 100.010.

\(^{45}\) 311 Ky. 692, 225 S.W.2d 96 (1949).
The court stated:

"While it may be said that any municipality has an interest in its approaches, we can find nothing in the statute which grants the power to control the use of such overlying territory unless it may reasonably be contemplated that such territory will eventually become a part of the city. The future expansion of its territorial limits is the basic consideration the legislature apparently had in mind when enacting the planning and zoning statutes."¹⁴⁶

While the court advanced its reasons in terms of strict interpretation of the granted powers of city and of the limited scope of the police power, it did contribute a significant basis for its decision: to permit such extraterritorial zoning would impair the rights of a non-resident person, one who has no voice in the legislative process by which the decision to zone is taken.

In a later decision, *American Sign Corp. v. Fowler*,¹⁴⁷ the court followed a similar interpretation of a statute dealing with second-class cities.¹⁴⁸ Here the city had been given definite powers to zone for the municipal area and the only question was how far this "municipal area" extended. Although the land was in the same county as the city, and therefore the rationale with respect to annexation could not be utilized, the court concluded that the city could not zone for any area except such that might in the foreseeable future be made part of the city.

Hence, there are rumblings with respect to the constitutionality of extraterritorial zoning, and apparently no case has passed directly on the constitutionality of this power. The Kentucky court has bypassed one reason for extraterritorial zoning—the weakness of annexation laws, from which one might argue that the legislature intended the extraterritorial zoning power not to be similarly diluted. At any rate, what is important in these cases is an indication that the courts will not readily allow the city to extend its jurisdiction via zoning laws into surrounding areas. The consideration emphasized in the *Smeltzer* case, that the citizen in the fringe area has no voice in deciding the legislative policies of the city, underlines the question of democratic participation in the regional planning process. If this reasoning be extended, it means that there may be in the future an unfavorable decision on the validity of this kind of legislation.⁴⁹

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¹⁴⁶ Id. at 695, 225 S.W.2d at 97.
¹⁴⁷ 276 S.W.2d 651 (Ky. 1955). In general, see Bouwsma, *The Validity of Extraterritorial Municipal Zoning*, 8 VAND. L. REV. 806 (1955).
⁴⁹ To the extent that recent cases give standing to sue to people not resident in the enacting community, this objection is diminished—but it should be noted that this is only the right to object, for he still does not have the positive power to use the political process to foster decisions affirmatively.
Evaluation

Whether the dicta of the *Dumont* case will be applied to other situations presents a fascinating twist in the development of zoning in this country. Obviously the implications of the requirement that the municipal zoning ordinance must accord with a regional comprehensive plan are numerous. To the property owner, another arrow is added to his bow, since he may claim that a particular zoning restriction—even conceding that it is in accord with the local municipality’s plan—is contrary to the general course of the land-use of the region. To local governments, it underlines a crucial consideration of the metropolitanism issue. This in a sense re-echoes the *Smeltzer* concern—the lack of political participation by an individual who may be most directly impacted.\(^5\) When it becomes clear to the court that extra-territorial implementation of zoning may mean that a man’s property rights are adversely affected by an agency in which he has no political representation, it will either attempt to so construe the statutes as to permit him to at least contest the validity of the ordinance, or, failing that, perhaps even conclude that the ordinance lacks the ethical and moral base to render it constitutionally valid.

The increased participation of the court in resolving metropolitan land problems, reflected by the *Dumont* case, is another significant issue. The limitations of the adversary process and the specialization of courts evoke serious doubts as to judicial competence in deciding the proper regional allocation of land resources. Indeed, the court may find itself interjected into the troubling and difficult aspects of metropolitan relations and becoming the center of controversy between the white collar, upper-middle-class suburb and the increasingly minority group, lower-income people of the central city. For serious racial and class cleavages are involved in the movement of slum dwellers to the suburban fringe.

Moreover, the court may be cast in a novel role of drafting, in effect, a regional plan for the contending municipalities. This would mean, then, that to the lawyers, and ultimately to the court to whom these arguments will be addressed, comes the job of piecing together from separate ordinances enacted at different times by the various municipalities a common comprehensive regional plan. Since under the present system such a plan is not one document, nor even a published document, it may require intricate planning interpretation of

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50. In the case of annexation there is also a question of which is the "truer" democracy—the electorate of the annexee or of the annexor. And there always looms the Burkean question of different majority choices as between the present and the future generations.
different ordinances to find common threads; it also requires reexamination of various governmental decisions in order to ascertain whether or not local enactments accord with the comprehensive trend. This difficulty was foreshadowed in the easier job the court undertook of validating an ordinance on regional grounds, involving a relatively simple decision as to whether there is territory available for a particular use within a region.

Unless the courts are far more adept and skillful than claimed, or the adversary system lends itself to such analysis, or regionalism is not a job that requires scientific, planning and engineering techniques, there is a patent need for further state legislation as to who should be the ultimate resolver of regional disputes. For the fact remains that no presently constituted agency can adequately meet this issue. The court lacks the staff, the time or the ability to prepare a rational regional plan. This kind of decision making seems eminently suited for the administrative process. If, however, the other governmental agencies default, certainty as well as the need to come to a final decision may be as important as the merits of the particular decision.

**Regional Planning and the Role of the State**

Clearly the problems with which city planners deal can transcend local boundaries. But it must be recalled that this is a characteristic of the American federal system. Much of the apparent confusion, waste and irrationality are in a sense inevitable: different functions, be they water, schools or transport, have different geographical grasps; hence any one political boundary tends to be arbitrary with respect to some activities. To those who regard the division of powers as a great contribution of the American political system, the expense of such inefficiency is a price well paid for the advantages of decentralized government. Through diffusion of power, Lord Acton’s maxim is forestalled and the reach of arbitrary state force shortened. Or, again, it may mean that different types of consumer wants are being satisfied and a greater range of choice for the individual as to types and costs of governmental services preserved. Thus, while any examination of land-use planning must perforce concentrate on removal of the more

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51. The assumption could be more readily made due to the increased use of presumptions for validity of land-use controls that are increasingly being invoked by the state courts.

52. Nor is the problem obviated, say, in a national system such as that of England. There, under the Town and Country Planning Act, 1947, 10 & 11 Geo. 6, c. 51, there was an attempt at greater centralization of local authorities, with statutory lip-service being given to the need to local participation in the decisions. There has been much delegation to local units even by the larger local units because of the administrative and local public relations tasks.
obvious frictions of intergovernmental units, it is well to remember that making planning easier is not necessarily the only goal, nor even the most important goal. Many values enter into the decision as to the extent of transfer of the functions of local government.

Further, the picture in operation is not as bleak as often portrayed. One may suspect that underneath the facade of anarchy, the market mechanism is in play as between the local units of government. Different solutions are improvised to fit the going situation. Bargaining goes on between political, as well as human, units. More direct mechanisms are also available and sometimes employed.\(^5\)

What is the role of the regional master plan? The question to be asked is what ends the plan is designed to meet; from this, perhaps, can be ascertained the unit of government to be charged with that function and also the proper contents of the plan. For much of the stress on regionalism represents a flight from the realities of planning difficulties. Too much is pinned on the transfer of function to a broader authority. There is a need to isolate and distinguish those land-use problems directly attributable to the Balkanization of local governments.

The primary purpose of the regional plan seems to be twofold: first, the shaping of public activities of a regional nature; second, the setting of a framework for local master plans, and through the shaping of such local plans, to help determine the local legislation and administration of land-use controls. If this be the case, distinction needs to be drawn between the furnishing of public facilities that affect regional land uses, and direct controls through legislation aimed at directing and guiding land uses. To achieve this in a satisfactory fashion, the intellectual job of the city planners becomes that of precipitating out those land-use elements that are primarily regional, remembering that the audience to whom these criteria are aimed consist of local legislatures, planning boards and administrators, private decision makers and state reviewing courts.

Prominent among public investments which ought to be considered by the regional plan are the state and regional highways. These strategically influence regional land uses and should be delineated in the regional plan; local plans and implementing legislation would thereby be required to conform. (Indeed the tendency today is towards

\(^5\) E.g., annexation, county-city consolidation and the other mechanisms discussed in this symposium. Less formally, larger cities, through the control of essential services, may impose terms on growth. It is common for central cities to supply water, sewage disposal and emergency fire protection to their suburbs. See Tableman, Governmental Organization in Metropolitan Areas 33-40 (1951). Extraterritorial control over subdivisions is common. E.g., Iowa Code Ann. § 409.14 (1951); Mich. Comp. Laws § 125.36 (1948); Ore. Rev. Stat. § 92.042 (1955) (jurisdiction extended for six miles).
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direct state zoning and controls over intercity highways and mass transport routes. 54) Other services whose location is of regional concern—and increasingly dealt with on that basis—are water supply, sewage disposal and flood control. 55 While the federal legislation has tended to encourage direct dealing between Washington and the city, public housing and urban renewal seem to be matters of state-wide concern on which a metropolitan perspective is requisite to a rational distribution of populations and land uses. 56 A fourth category—although this is not an attempt at a comprehensive listing—of logical decision-making by the state are services such as schools, large parks and broad recreational areas that draw on more than one community. 57

In addition to the public supply of key metropolitan facilities and services, a regional planning system has to deal with land legislation affecting the private developer. The planning of facilities necessary for the metropolitan plan inevitably affects local land-use controls. Conversely the land-use controls effect the manner in which these facilities can locate and discharge their functions. Where controls have strategic impact on the industrial and population distributions in the region, they cannot be left solely to a myriad of self-interested local authorities, answerable only to themselves. While the drafting of ordinances initially—and many local aspects of the ordinance exclusively—should be relegated to the local units, some executive review of the more general aspects of the regulation seems necessary. For example, the density issue in the Wayne Township case conceivably could be illuminated by a review by a state zoning commission; a possible conclusion could be that the interest of a majority of the state population requires that inhabitants of the central city should be able to find low-cost dwellings in the suburbs, the dictates of the satellite communities to the contrary notwithstanding. But, in order for administrative review to be rational it must be based on a comprehensive plan in which the goals and values have been worked out by the citizens. For purposes of gauging the

54. At least two states require any subdivision along a state road or street to conform to the state plan for such road or street. Mich. Stat. Ann. § 26.451 (1953); Wis. Stat. § 84.09 (1947); cf. Collier v. Baker, 160 Tenn. 571, 27 S.W.2d 1085 (1930). See Town of Bloomfield v. New Jersey Highway Authority, 18 N.J. 237, 113 A.2d 658 (1955) (a municipal zoning ordinance does not govern the service areas along the state parkway although state law was silent on the matter).

55. See 21 J. Am. Inst. Planners 3 (1955), for an instance of a state controlled and directed regional authority that handled sewage disposal and water pollution.

56. See the discussion by Judge Heher of Regional Planning and Zoning in 6 Munic. Law Service Letter, March 1956, p. 2. See also Bettman, City and Regional Planning Papers 135-49 (1946).

validity of the legislation, a regional plan is necessary for guidance to local legislatures, to property owners who may wish to appeal from local determinations, for the reviewing agency itself, and finally, to the courts to assure that the agency is acting within a clearly formulated policy that is being impartially administered.

In short, this system dons the form of a series of constitutions: the local master plan acts as a local constitution against which to measure the local implementing legislation; and the regional plan, in turn, as a guide for the local plans and legislation, bears to them much the same relationships as does the Federal Constitution to the state constitutions.

Where this reviewing executive agency should be located varies from state to state. The suggestion is that more consideration should be given to the use of a state agency, and less to the formation of a new metropolitan government. The function to be performed is more that of a supervisory or review nature over local activities in order to lend perspective for dealing with land-use problems that cross political boundaries. If regional planning, furthermore, is conceived of not as the making of the master plan, but as the submission (with weights) of alternatives and the selection of goals and objectives by the public, the state apparatus is in existence, unlike the usually envisioned regional legislature. At the worst it can provide a holding operation until the public reaches that point of regional consciousness which is prerequisite to any regional legislature.

Of the two regional planning functions here enumerated, that of planning metropolitan facilities is not novel. That of reviewing local implementation may sound more startling; but this is simply a recognition that the basic police power over land uses lies with the state, and that a review of land regulations for consonance with previously accepted regional ends can be as effective as initial promulgation. True, land-use controls, developing at a time of a municipal home rule movement reaction to the reputedly extensive corruption existing in state governments, were usually relegated to local governments. But with the growing interdependence of metropolitan life, and the burgeoning of local land problems into broader impacts, only through the prisms

58. But note that existing provisions in at least six states permit appeals to the state public service commission to relieve public utilities from local zoning. See 56 PUB. UTIL. FOR. 792 (1955). See also Borough of Carlstadt v. Public Utility Co., 41 N.J. Super. 408, 125 A.2d 281 (1956). State building codes are also sometimes alternatives, so that a municipality cannot refuse a permit on local building code grounds if it conforms to the state code. E.g., MASS. ANN. LAWS c. 143, § 3(j) (Supp. 1955).

59. See McBAIN, THE LAW AND PRACTICE OF MUNICIPAL HOME RULE (1911).
of a regional perspective can zoning, subdivision and land-use controls achieve what they purport to do—a more rational distribution of land resources. When the regional plan is recognized as not simply a duplication on a higher level of the local master plan, but as a general constitutional guide, its potential contributions may win more ready acceptance.

Conclusions

The strong American tradition of local self-government makes difficult any attempted shift of land-use planning from a local to a regional or state government. This explains why the quantity of writing compares to the slender accomplishments to date as the library on *Hamlet* to the play itself. Indeed, unlike the prince, there is little accomplishment that an appraisal of regional planning experience in this country can point to with certitude. In the past thirty years some ninety major surveys of metropolitan areas have occurred, but in only three cases is there any claim that they led to change—much less as to whether* these changes constitute improvement from a particular perspective.

But drastic growth of and changes within the standard metropolitan areas prompt a closer examination of the allocation of land-use controls, especially of the role that can be played by the regional master plan. In the interdependent economic and social clusters of investments and populations around the center city, municipal corporations cannot long endure, each its own sovereign. At least, there is a need for state governments to re-examine the very allocation of authority over land-use controls, for the purpose of effectuating the regional master plan.

Advocates of a single metropolitan government may have overstated their case. And by stressing the need to integrate planning and political area have failed to achieve the possible. If proposals for metropolitan planning are avowedly based on the assumption that local units will continue to dominate the land-use area in the foreseeable future, then regional legislation can be directed towards achieving a possible coordination between regional and local planning and legislation. More important in the short run, the regional plan can be shaped so as to perform most usefully its function of permitting the broader notions of metropolitanism to enter the world of land reality—the local ordinances, property owners and courts.

State enabling legislation needs to be rewritten to delineate the process by which regional master plans can be formulated, as well as
the means by which such plans can achieve realization. Such legislation should: clarify the use of the regional plan as a source of information; contain a summary of the land-use and development problems; and provide for technical assistance and guidance to the smaller units of government which cannot afford proper planning staffs. Above all, the process of mutual education—an interaction between planning staff and citizens of the region—needs restatement, as does the encouragement of public participation in goal choosing. Only in this slow fashion, can a regional plan gain public acceptance and awareness of the implications of interdependence.

To imbue this educational process with reality—let alone the basic purport of affecting land uses—it is necessary to articulate the impact of the regional master plan on the local land ordinances which bite upon property rights. The analogy of national to state constitution seems fruitful in the drafting of provisions dealing with the effect of regional master plans on local plans. The formulation of general relationships against which local master plans can be tested—both initially by the administrators and ultimately by the courts—seems also useful as a guard against the arbitrary in local ordinances by furnishing a more rational basis for restriction, as well as a comprehensive picture of how and why the market forces are being reshaped.

There can be no uniformity in the choice of agency to which can be given this regional plan formulation and review of local ordinances. The suggestion in this paper is that some state reviewing agency may be an answer. With the increased role of state governments in matters associated with regional development—flood control, highways, schools—and inter-community disputes over land-use controls being increasingly thrust upon the state judiciary, some solution short of the long-run metropolitan government needs to be devised. Courts—which have been plunged into the vacuum of power—do not seem the most desirable focus for resolving inter-community conflicts or promoting regional land development.

As an overreaction to the commonly advanced new metropolitan government unit, this paper may have overstressed the role of the state. There is no single solution to the variegated problems lumped together under the label of metropolitanism. Each local area is to some extent unique; each must live with its own problems. The question needs always to be asked, which governmental body in a particular situation is best qualified to effectively accomplish the job—meaning the elimination of the frictions and maldistributions directly traceable to conflicting political units, but also maintaining values of local sponsorship and in-
creased consumer choice. While the different metropolitan areas will necessarily come to individual conclusions, the role of the regional master plan here suggested may help achieve more effective social engineering, whether its formulation and review activities be undertaken by some state agency or a regional unit especially devised for that purpose. Fancies are less fruitful than realities; therefore the more modest goal of a re-oriented regional plan may provide a better focus for reform energies.