
ARTICLE

OUR REGIONALISM

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This Article provides an account of Our Regionalism to supplement the many accounts of Our Federalism. After describing the legal forms regions assume in the United States—through interstate cooperation, organization of federal administrative agencies, and hybrid state–federal efforts—it explores how regions have shaped American governance across the twentieth and early twenty-first centuries.

In the years leading up to the New Deal, commentators invoked regions to resist centralization, arguing that state coordination could forestall expansion of the federal government. But regions were soon deployed to a different end, as the federal government relied on regional administration to develop its bureaucracy. Incorporating regional accommodations and regional organization into new programs allowed the federal government to expand its role in domestic policymaking. As interstate regionalism yielded to federal regionalism, the administrative state was propelled forward by a strategy that had arisen to resist it. Even as regions facilitated the expansion of the New Deal administrative state, however, the regional organization and argument that underpinned this development left room for state influence within federal programs and for new projects of multistate and joint state–federal governance. The century’s next regional moment brought this potential to the fore, with regions brokering the resurgence of the states in Great Society programs.

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In the early twenty-first century, new regional undertakings have been celebrated as fluid, nonhierarchical networks. Although the network metaphor has been exhausted, this characterization anticipates the emergence of “regionalism without regions”: collaborations among multiple state and federal actors that need not involve contiguous areas. Just as regional improvisation has responded to governance challenges of past decades, this nascent development responds to today’s polarized partisanship. It betokens both the revival and the transformation of the political sectionalism that has always informed American regionalism, even as it slipped behind an administrative veneer for much of the twentieth century.

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INTRODUCTION

One Sunday in the spring of 2016, newspaper readers awoke to a new map of the United States. A country of seven brightly colored regions spread across two pages of the *New York Times*.¹ Although “American policy making remains wedded to an antiquated political structure of 50 distinct states,”

¹ Parag Khanna, *A New Map for America*, N.Y. TIMES (Apr. 15, 2016), <https://www.nytimes.com/2016/04/17/opinion/sunday/a-new-map-for-america.html> (last visited Oct. 19, 2017).

Parag Khanna wrote, the “reality” of the United States is regional.² Instead of focusing on Massachusetts, Kansas, and California, we should attend to the “natural” geographical and economic divisions of the country, including the Great Northeast, the Great Plains, and the Pacific Coast.³

One Sunday in the winter of 1930, newspaper readers likewise awoke to a new map of the United States. Announcing the winners of a contest to redraw the country’s internal boundaries to be more “logical and scientific,” the *Chicago Daily Tribune* published four regional renderings of the country.⁴ Like Khanna nearly ninety years later, the prize winners argued that regions, not the extant forty-eight states, were the “natural” areas of geographical, economic, and civic unity around which to orient American governance.

The potential, and peril, of regionalism is periodically rediscovered in the United States.⁵ Long after Founding-era proposals to have a tripartite sectional executive⁶ and some sixty years after the Civil War, interest in the regional composition of the United States revived in the 1920s and 1930s. Policymakers, scholars, and artists lavished attention on regions—areas of the country encompassing all or part of multiple states that were understood to possess geographical, cultural, or political identity. Following a few decades of waning enthusiasm, regionalism reemerged in the 1960s and 1970s.

In the early twenty-first century, commentators and public officials are once more turning to regions. From environmental regionalism to immigration regionalism, education regionalism to economic regionalism, a range of proposals advocate new institutions or collaborations that would occupy the space “between state and nation.”⁷ Still others call to rehabilitate

² *Id.*

³ Ana Swanson, *Six Maps that Will Make You Rethink the World*, WASH. POST: WONKBLOG (Apr. 29, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/04/29/six-maps-that-will-make-you-rethink-the-world/> [<https://perma.cc/9RBF-9Q2X>] (quoting Khanna describing the seven regions as “the natural topography and economic geography of the United States”). See generally PARAG KHANNA, *CONNECTOGRAPHY* (2016).

⁴ William Shinnick, *Select Grand Prize Winners in Map Contest*, CHI. DAILY TRIB., Jan. 5, 1930, at A5.

⁵ See, e.g., EDWARD L. AYERS ET AL., *ALL OVER THE MAP 2* (1996) (discussing “a cyclical process of forgetfulness and rediscovery of the idea of region” in the United States); MARTHA A. DERTHICK, *BETWEEN STATE AND NATION: REGIONAL ORGANIZATIONS OF THE UNITED STATES 3* (1974) (describing regionalism as being “subject to intellectual fad and fashion”).

⁶ James Madison, *Proceedings of Committee of the Whole House, May 30–June 19, in 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787*, at 88 (Max Farrand ed., 1911) (reporting that Edmund Randolph advocated “three members of the Executive to be drawn from different portions of the Country”).

⁷ E.g., Keith Aoki & John Shuford, *Welcome to Amerizona—Immigrants Out!: Assessing “Dystopian Dreams” and “Usable Futures” of Immigration Reform, and Considering Whether “Immigration Regionalism” Is an Idea Whose Time Has Come*, 38 *FORDHAM URB. L.J.* 1 (2010) (advocating immigration regionalism); Kirsten H. Engel, *Mitigating Global Climate Change in the United States: A Regional Approach*, 14 *N.Y.U. ENVTL. L.J.* 54 (2005) (environmental regionalism); Douglas R. Williams, *Toward Regional Governance in Environmental Law*, 46 *AKRON L. REV.* 1047 (2013) (environmental regionalism); Hannah Wiseman, *Expanding Regional Renewable Governance*, 35 *HARV. ENVTL. L. REV.*

existing regional arrangements.⁸ In regions, some find the possibility of solutions more comprehensive than those generally offered by states, while others find the possibility of solutions more diverse than those generally offered by the federal government.

Coexisting with these regional proposals are concerns about regionalism's "bad twin," sectionalism, and rancorous divisions within the country.⁹ In the age of Brexit and serious (if still implausible) secessionist talk in the United States,¹⁰ renewed anxiety about the divisive power of sectionalism haunts renewed excitement about the governance possibilities of regionalism.¹¹

Such renewed interest makes this a fitting time to consider regionalism and the law. In many academic disciplines, regions have pride of place. They, more than the states, underlie American elegy, nostalgia, and expectation, as well as critical responses to these impulses.¹² In the law, we tend instead to

477 (2011) (environmental regionalism); Gary Beach, *Is it Time To Restructure the Education Department?*, EDUC. WEEK (Nov. 15, 2016), <http://www.edweek.org/ew/articles/2016/11/16/is-it-time-to-restructure-the-education.html> (last visited Oct. 13, 2017) (education regionalism); Stephen C. Fehr, *The United Regions of America*, PEW CHARITABLE TR. (Apr. 22, 2010), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2010/04/22/the-united-regions-of-america> [<https://perma.cc/9HP8-RSFT>] (economic regionalism); David Robinson, *Multi-State Regionalism: The Future of Economic Development*, PA TIMES (May 22, 2015), <http://patimes.org/multistate-regionalism-future-economic-development/> [<https://perma.cc/Y7JS-4LBA>] (economic regionalism). "Between state and nation" is Martha Derthick's phrase. DERTHICK, *supra* note 5.

⁸ See, e.g., Dave Owen, *Regional Federal Administration*, 63 UCLA L. REV. 58, 115 (2016); Yishai Blank & Issachar Rosen-Zvi, *Reviving Federal Regions*, 70 STAN. L. REV. (forthcoming 2018).

⁹ Patricia Nelson Limerick, *Region and Reason*, in AYERS ET AL., *supra* note 5, at 83. Limerick pithily captures the distinct connotations of the two terms: "Regions . . . unite, while sections divide. Regions can both complement and compliment one another; sections can only compete. Regions have their roots in a warm and hearty connection between distinctive people and distinctive places; sections have their roots in political and economic struggles for dominance . . . Regions coexist; sections cause civil wars." *Id.*; see *infra* Section II.C (discussing New Deal era distinctions between "sectionalism" and "regionalism"); *infra* Section IV.B (discussing contemporary political sectionalism).

¹⁰ E.g., Doug Bandow, *With Britain Voting on Brexit, Is It Time for an American Exit, or Amexit, from the Union?*, FORBES (June 6, 2016, 6:00 AM), <https://www.forbes.com/sites/dougbandow/2016/06/06/with-britain-voting-on-brexit-is-it-time-for-an-american-exit-or-amexit-from-the-union/#5ad765a66280> [<https://perma.cc/LJW6-TE65>]; Dennis Romero, *California's Attempt to Exit Trump's America Is Officially Here*, LA WEEKLY (Jan. 30, 2017, 7:46 AM), <http://www.laweekly.com/news/californias-attempt-to-exit-trumps-america-is-officially-here-7870678> (last visited Oct. 13, 2017).

¹¹ This, too, is old. See, e.g., JAMES W. FESLER, AREA AND ADMINISTRATION 123 (1949) ("The coin bearing 'regionalism' on its face carries 'sectionalism' on its reverse side.").

¹² Compare, e.g., WALLACE STEGNER, WHERE THE BLUEBIRD SINGS TO THE LEMONADE SPRINGS, at xv (1992) ("[T]he West at large is hope's native home, the youngest and freshest of America's regions, magnificently endowed and with the chance to become something unprecedented and unmatched in the world."), *with id.* at 98 ("[N]either nostalgia nor boosterism can any longer make a case for [the West] as the geography of hope."). For a sampling of recent inquiries into regional culture, identity, and psychology, see AYERS ET AL., *supra* note 5; JAMES C. COBB, AWAY DOWN SOUTH (2005); JOSEPH A. CONFORTI, IMAGINING NEW ENGLAND (2001); PATRICIA NELSON LIMERICK, SOMETHING IN THE SOIL: LEGACIES AND RECKONINGS IN THE NEW WEST (2001); NICOLE MELLOW, THE STATE OF DISUNION: REGIONAL SOURCES OF MODERN AMERICAN PARTISANSHIP (2008); COLIN WOODARD, AMERICAN NATIONS: A HISTORY OF THE

focus on “Our Federalism,” with its polarity of “State and National Government.”¹³ There is good reason for this. Regions captivate other disciplines in part because they lack precise institutional form. Without fixed boundaries, regions may seem more “real” than the artificial states, and the common tally of between three and twelve regions offers a more manageable way to parse the country than a fifty-state division. But without fixed boundaries, regions are hard places for law.¹⁴

And yet, regionalism has critically informed legal developments. Lacking set institutional form, but possessing cultural resonance as well as administrative utility, regions have been a resource for projects of state-building and for resistance to such projects. They have influenced how power flows to and within the federal government. In the words of Justice Felix Frankfurter, regionalism has perpetually posed—and variously answered—the question of “how a country that is a continent can be governed by organs that fairly represent its disciplined will and at the same time adequately evoke the diverse civilized potentialities of its people.”¹⁵

This Article provides an account of “Our Regionalism,” describing the legal forms regions assume in the United States and exploring how these forms have shaped American government over the past century. Regionalism has long been associated with state resistance to the federal government, but it has also been a potent tool of federal bureaucracy. If regional coordination has sometimes enabled states to compete with, or to repel the expansion of, federal administration, the federal government’s own reliance on regional accommodation and organization has facilitated its entry into new

ELEVEN RIVAL REGIONAL CULTURES OF NORTH AMERICA (2011); Peter J. Rentfrow et al., *Divided We Stand: Three Psychological Regions of the United States and Their Political, Economic, Social, and Health Correlates*, 105 J. PERS. & SOC. PSYCHOL. 996 (2013).

¹³ See *Younger v. Harris*, 401 U.S. 37, 44 (1971) (stating that “Our Federalism” represents “a system in which there is sensitivity to the legitimate interests of both State and National Governments”).

¹⁴ See, e.g., Ernest A. Young, *The Volk of New Jersey? State Identity, Distinctiveness, and Political Culture in the American Federal System* 7 (Feb. 24, 2015) (unpublished manuscript), http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6121&context=faculty_scholarship (“[S]tates provide an *institutional* reference point that neither regions nor localities can match.”). There is a rich literature on regionalism at the local government level. See, e.g., GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* (2d ed. 2001); HENRY R. RICHMOND ET AL., *REFLECTIONS ON REGIONALISM* (Bruce Katz ed., 2000); Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1 (2000); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994); Laurie Reynolds, *Local Governments and Regional Governance*, 39 URB. LAW. 483 (2007). Although my focus in this Article is on multistate regionalism, there is a significant relationship between multistate and local regionalism. Metropolitan regionalism often encompasses multiple states given the locations of large cities like New York and Chicago, and the foundations of multistate regionalism may lie in local projects. See, e.g., Howard W. Odum, *The Promise of Regionalism*, in REGIONALISM IN AMERICA 395, 395 (Merrill Jensen ed., 1951) (“Both planning and regionalism had their beginning in localism.”).

¹⁵ Felix Frankfurter, *Foreword to REGIONALISM IN AMERICA*, *supra* note 14, at xv.

policymaking spaces. Moreover, the relationship between states and the federal government within regions is dynamic: multistate collaborations frequently invite federal intervention, while regional federal administration gives states leverage in federal programs. When considering the critical influence of regionalism on *Our Federalism*, then, regions cannot be placed on either the state or the federal side of the balance.

The Article begins with an overview of contemporary regional governance. The perpetual rediscovery of regionalism might suggest that the regional form is scarce in the United States, but regions are already prominent in state, federal, and joint state–federal undertakings. To substantiate this claim, Part I provides examples as well as a simple taxonomy of interstate, federal, and hybrid regional governance.

Before returning to the present day, Parts II and III explore the twentieth century's two leading regional moments to show how the region was a critical resource for negotiating American federalism in times of administrative change. Part II describes regionalism's contribution to the New Deal administrative state. In the 1920s and early 1930s, regions were invoked to resist centralization. Commentators insisted that regions were authentic, organic divisions of the country as well as governance units that might repel expansion of the federal bureaucracy: if regional solutions could address problems that exceeded individual states' capacity, Washington would not need to intervene. But regions were soon deployed to a different end, as the federal government relied on regional administration to develop its bureaucracy. Incorporating both regional substantive accommodations and regional management structures into new programs allowed the federal government to expand its role in domestic policymaking.

The story was not a simple one of cooptation, however. Even as regions facilitated the expansion of the New Deal administrative state, the regional organization and argument that underpinned this development left room for state influence within federal programs as well as for new projects of multistate and joint state–federal governance. As Part III explains, the century's next regional moment brought this potential to the fore, with regions brokering the resurgence of the states in Great Society programs.

Part IV considers contemporary regionalism. In keeping with the reigning metaphor at the turn of the twenty-first century, recent regional projects have been celebrated as networks—flexible, nonhierarchical partnerships crossing jurisdictional lines. Although the metaphor has been overused, this characterization of regionalism anticipates a development we might term “regionalism without regions”: collaborations among state and federal actors that need not involve contiguous areas. Just as regional improvisation has responded to governance challenges of past decades, “regionalism without

regions” suggests that a new politics of space is developing in response to today’s main governance challenge, our polarized partisanship. We are witnessing both the revival and the transformation of the political sectionalism that has long lurked behind administrative regionalism.

I. A TAXONOMY

For purposes of this project, I define the region as a subnational area encompassing all or part of multiple states. Many accounts of regionalism would require more—ecological, cultural, or economic homogeneity that would differentiate a particular area.¹⁶ The discernment, and occasional projection, of a distinct identity frequently lends force to regional argument, even when the impetus for regional organization is more administrative in nature. But an appreciation of the role regionalism has played in shaping American government requires a stripped-down understanding. The distinguishing feature of the region, on this view, is that it departs from established state and federal jurisdictional lines to form a suprastate yet subnational area.¹⁷

This Part offers an overview of existing regional governance in the United States. Some regional forms emerge from interstate collaborations, while others are purely federal in character, and still others involve both state and federal actors. To be sure, there are ways to approach this taxonomic project without focusing on the actors involved. For example, one might consider whether a regional scheme involves a single area or instead partitions the entire country. Is the region oriented around some particular areal concern,

¹⁶ See, e.g., U.S. NAT. RES. COMM., REGIONAL FACTORS IN NATIONAL PLANNING 138 (1935) [hereinafter NRC REPORT] (“[R]egionalism’ is a clustering of environmental, economic, social, and governmental factors to such an extent that a distinct consciousness of separate identity within the whole, a need for autonomous planning, a manifestation of cultural peculiarities, and a desire for administrative freedom are theoretically recognized and actually put into effect.”); Matthew McKinney et al., *Regionalism in the West: An Inventory and Assessment*, 23 PUB. LAND & RESOURCES L. REV. 101, 101 (2002) (“‘Region’ is defined as ‘a broad geographic area containing a population whose members possess sufficient historical, cultural, economic, or social homogeneity to distinguish them from others’ (quoting WEBSTER’S UNABRIDGED THIRD NEW INTERNATIONAL DICTIONARY (3d ed. 1993))”); William B. Munro, *Regional Governments for Regional Problems*, 185 ANNALS AM. ACAD. POL. & SOC. SCI. 123, 130 (1936) (“A region . . . is any area within which the geographic conditions, the economic ambitions, the social texture, and the political traditions have established a consciousness of a common interest different from that of other areas in the Nation.”).

¹⁷ This definition tracks those of some classic studies. See, e.g., DERTHICK, *supra* note 5, at 2 (“The organizations described are ‘regional’ in the sense that their jurisdictions cover all or parts of several states.”); HOWARD W. ODUM & HARRY E. MOORE, AMERICAN REGIONALISM: A CULTURAL-HISTORICAL APPROACH TO NATIONAL INTEGRATION 29 (1938) (studying “natural regions” and sections alongside “the region for convenience” and “the group-of-states region”); see also *id.* at 23 (“Whether regionalism results from the growth of a sense of community, in turn dependent upon common traditions, interests and aspirations, or whether it results from man’s rational analysis of economic and governmental problems needing solution, it is none the less regionalism.” (quoting Marshall E. Dimock, unpublished manuscript)).

or is it a managerial approach to governing a “country the size of a continent”? Although different in the questions it foregrounds, this categorization would overlap substantially with the one I offer here: interstate regionalism tends to be partial, while federal regionalism tends to parse the entire nation. There are, however, some notable exceptions to this pattern that I will flag.

Another approach might focus on whether regions follow or depart from state boundaries. If regions are ecological or cultural areas, they need not conform to the arbitrary rectangles that often define our states,¹⁸ and regions that transect state lines might be particularly attractive to federal actors seeking to supplant state authority. Notwithstanding salient examples, including the Federal Reserve Districts and the Tennessee Valley Authority, however, federal regions rarely depart from state lines. Moreover, while a variety of interstate agreements focus on particular portions of the states involved—for instance, a river basin or a metropolitan area—they largely rely on established state political and administrative structures. In brief, whether created by state actors, federal actors, or both, most regional schemes do not redraw boundaries to circumvent states.

In outlining existing regional forms, this Part seeks to demonstrate that regional organization pervades state and federal administration. It also begins to lay the foundation for an overarching claim of this project, namely that state and federal regionalism must be examined together. Although state and federal regional forms can be distinguished both practically and conceptually—as they are in what follows—their histories and current workings are deeply intertwined.

A. Interstate Collaboration

The oldest device for regional governance—and the only one expressly provided for by the Constitution—is the interstate compact. Article I, Section 10 provides, “No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power.”¹⁹ Since the late nineteenth century, however, the Supreme Court has held that congressional consent is not required for all interstate agreements, but only

¹⁸ See Samuel H. Beer, *Federalism, Nationalism, and Democracy in America*, 72 AM. POL. SCI. REV. 9, 16 (1978) (“None of these rationales, administrative, economic or cultural, makes sense of the American states, except occasionally and accidentally. Look at the map. It must make you wonder whether there could have been a United States, if the rectangle had not been invented.”); see also FESLER, *supra* note 11, at 2 (“When we speak of the administrative problem of area, therefore, we must not visualize the country as a flat, monotonous plane to be neatly cut into rectangles by a governmental Paul Bunyan armed with a giant cookie cutter.”).

¹⁹ U.S. CONST. art I, § 10.

for those “tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.”²⁰

Between the nation’s founding and the early twentieth century, states entered into thirty-six compacts, all of which addressed state boundaries in some respect (including providing for the separation of West Virginia from Virginia).²¹ In the 1920s, new interest arose in the compact as a regional form that might address ongoing problems through institutions such as commissions or agencies.²² The Port Authority of New York and New Jersey was established in 1921 to administer transportation and port activities and was the first compact to establish a permanent administrative body. Other important regional compacts of the era addressed energy and the environment.²³

Today, more than 150 interstate compacts are in effect,²⁴ and the regional form remains dominant.²⁵ Regional compacts address a range of issues, including the

²⁰ *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893). The Court has also recognized that congressional consent may be implied rather than express. *See id.* at 521. In light of the Court’s interpretation of the Compact Clause, many interstate agreements do not involve the federal government at all. *See, e.g.*, *U.S. Steel Corp. v. Multistate Tax Comm’n* 434 U.S. 452, 468-69 (1978); *Star Scientific v. Beales* 278 F.3d 339, 359-60 (4th Cir. 2002); *McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991); *Tichenor v. Missouri State Lottery Comm’n*, 742 S.W.2d 170, 177 (Mo. 1988).

²¹ JOSEPH F. ZIMMERMAN, HORIZONTAL FEDERALISM: INTERSTATE RELATIONS 45 (2011) [hereinafter ZIMMERMAN, HORIZONTAL FEDERALISM].

²² As I will elaborate in Section II.A, in the early twentieth century, compacts were particularly attractive to state officials and commentators who wanted to hold off federal regulation and preserve a greater scope of action for states. To this day, commentators continue to celebrate the ability of compacts to enhance states’ capacity to respond to pressing problems without the federal government’s intervention. *See, e.g.*, Matthew S. Tripolitsiotis, *Bridge Over Troubled Waters: The Application of State Law to Compact Clause Entities*, 23 YALE L. & POL’Y REV. 163, 211 (2005) (“Compact entities are clearly a vital tool to deal with problems that are too big for any single state but do not rise to a national concern.”); *see also* ZIMMERMAN, HORIZONTAL FEDERALISM *supra* note 21, at 231.

²³ *See, e.g.*, JOSEPH F. ZIMMERMAN, INTERSTATE COOPERATION: COMPACTS & ADMINISTRATIVE AGREEMENTS 44 (2d ed. 2012) [hereinafter ZIMMERMAN, INTERSTATE COOPERATION]; Tripolitsiotis, *supra* note 22, at 171.

²⁴ Although some estimates indicate more than 200 compacts, many are not in effect. One hundred fifty is a relatively conservative estimate. *See* CAROLINE N. BROUN ET AL., AM. BAR ASS’N, THE EVOLVING USE AND THE CHANGING ROLE OF INTERSTATE COMPACTS: A PRACTITIONER’S GUIDE 178 (2006); ZIMMERMAN, HORIZONTAL FEDERALISM, *supra* note 21, at 45-46; ZIMMERMAN, INTERSTATE COOPERATION, *supra* note 23, at 237-58 app.A; Ann O’M. Bowman, *Horizontal Federalism: Exploring Interstate Interactions*, 14 J. PUB. ADMIN. RES. & THEORY 535, 539 (2004).

²⁵ Many compacts are not regional, however. Some of those that involve all fifty states include the Interstate Compact for Adult Offender Supervision, the Interstate Compact on the Placement of Children, and the Emergency Management Assistance Compact. *See About the Commission*, INTERSTATE COMM’N FOR ADULT OFFENDER SUPERVISION, <http://www.interstatecompact.org/About> [https://perma.cc/D36C-6AY5]; *About: Who We Are*, INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, <http://www.aphsa.org/content/AAICPC/en/about.html> [https://perma.cc/E4ZD-YDTB]; *What is EMAC?*, EMERGENCY MGMT. ASSISTANCE COMPACT, <https://www.emacweb.org/index.php/learn-about-emac/what-is-emac> [https://perma.cc/S9G7-TKCB]. Other compacts fall short of fifty-state membership but include states from across the country. *See, e.g.*, *Compact on Mental Health*, NAT’L CTR. FOR INTERSTATE COMPACTS (2011), <http://apps.csg.org/ncic/Compact.aspx?id=42> [https://

management of environmental resources such as river basins, lakes, and fisheries;²⁶ geographically tailored approaches to pollution²⁷ and waste disposal;²⁸ as well as education,²⁹ criminal justice,³⁰ and energy,³¹ among other topics.³²

States have also entered into less formal regional agreements. In contrast to compacts, which involve a cession of state sovereignty and bind each state party, interstate agreements are more flexible alignments that allow for

perma.cc/3S7G-3HBZ]; *Driver License Compact*, NAT'L CTR. FOR INTERSTATE COMPACTS (2011), <http://apps.csg.org/ncic/Compact.aspx?id=56> [https://perma.cc/KC2J-KMX9]; OFFICES OF THE U.S. ATTORNEYS, *Interstate Agreement on Detainers*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/usam/criminal-resource-manual-534-interstate-agreement-detainers> [https://perma.cc/ZS4P-HHR2]; *Interstate Wildlife Violator Compact*, NAT'L ASS'N OF CONSERVATION LAW ENF'T CHIEFS (2014), <https://www.naclec.org/landing/> [https://perma.cc/JFZ9-2SRD]. See generally Ann O'M. Bowman & Neal D. Woods, *Expanding the Scope of Conflict: Interest Groups and Interstate Compacts*, 91 SOC. SCI. Q. 669, 671 (2010) ("In their fullest flowering, interstate compacts possess the potential for nationwide policy making without the active involvement of national institutions.").

²⁶ E.g., Colorado River Compact, ARIZ. REV. STAT. ANN. § 45-1311 (2017); Arkansas River Basin Compact of 1970, Pub. L. No. 93-152, 87 Stat. 569 (1973); Bear River Compact, Pub. L. No. 96-189, 94 Stat. 4 (1980); Connecticut River Flood Control Compact, CONN. GEN. STAT. § 25-99 (1953); Great Lakes Basin Compact Act, 45 ILL. COMPILED STAT. 145/1 (2016); Potomac River Compact of 1958, MD. CODE ANN., NATURAL RESOURCES § 4-306 (2016); Atlantic States Marine Fisheries Compact, MD. CODE ANN., NATURAL RESOURCES § 4-305 (2016); Yellowstone River Compact, MONT. CODE ANN. § 85-20-101 (1950); California-Nevada Interstate Compact, NEV. REV. STAT. § 538.600 (2016); Red River Compact, OKLA. STAT. tit. 82, § 1431 (2016); Columbia River Gorge Compact, OR. REV. STAT. § 196.150 (2016); Rio Grande Compact, TEX. WATER CODE ANN. § 41.009 (1971).

²⁷ E.g., Ohio River Valley Water Sanitation Compact, 45 ILL. COMP. STAT. 60/1 (2016); New England Interstate Water Pollution Control Compact, MASS. GEN. LAWS ch. 21, § 1-1 (2016); Interstate Environmental Compact, MISS. CODE ANN. § 49-21-1 (2017).

²⁸ E.g., Atlantic Interstate Low-Level Radioactive Waste Mgmt. Compact (2017), <http://www.atlanticcompact.org/> [https://perma.cc/K4B5-AEVD]; Central Interstate Low-Level Radioactive Waste Compact, NEB. REV. STAT. § 81-1599 (2016); Northwest Compact on Low-Level Radioactive Waste Management, OR. REV. STAT. § 469.930 (2016); Southeast Interstate Low-Level Radioactive Waste Compact, TENN. CODE ANN. § 68-202-701 (2016); Southwestern Low-Level Radioactive Waste Disposal Compact, ARIZ. REV. STAT. ANN. § 30-722 (2016).

²⁹ New England Higher Education Compact, VT. STAT. ANN. tit. 16, § 2691 (2016); New Hampshire-Maine Interstate School District Compact, N.H. REV. STAT. ANN. § 200-F:1 (2016); New Hampshire-Vermont Interstate School District Compact, N.H. REV. STAT. ANN. § 200-B:1 (2016); Western Regional Education Compact, CAL. EDUC. CODE § 99001 (West 2016); Southern Regional Education Compact, MD. CODE ANN., EDUC. § 25-202 (West 2016).

³⁰ New England Interstate Corrections Compact, ME. STAT. tit. 34, § 9201 (2016); Western Interstate Corrections Compact, UTAH CODE ANN. § 77-28-1 (West 2016).

³¹ Compact to Conserve Oil and Gas, S.C. CODE ANN. § 48-41-10 (2017); Southern States Energy Compact, LA. STAT. ANN. § 51:1001 (2016); Midwest Energy Compact, IOWA CODE § 473A.1 (2016); Western Interstate Nuclear Compact, CAL. GOV'T CODE § 67401 (West 2016).

³² See generally BROUN ET AL., *supra* note 24, at 197-492 (providing a survey of contemporary compacts); ZIMMERMAN, INTERSTATE COOPERATION, *supra* note 23, at 237-48 app.A. States have also entered into international compacts with Canadian provinces on a regional basis. See, e.g., Northeastern Forest Fire Protection Compact, VT. STAT. ANN. tit. 10, § 2511 (2016); International Emergency Management Assistance Compact, VT. STAT. ANN. tit. 20, § 201 (2016); *About the GLFCC*, GREAT LAKES FOREST FIRE COMPACT, <http://www.glfcc.com/information/about-the-glfcc/> (last visited Sept. 3, 2017).

unilateral withdrawal. Like compacts, agreements may be national in scope, but most are regional,³³ and they too span a range of subjects, including agriculture, law enforcement, education, emergency assistance, transportation, and the environment.³⁴ For instance, the Regional Greenhouse Gas Initiative was created by a memorandum of understanding among the governors of Connecticut, Delaware, Maine, New Hampshire, New York, and Vermont (and previously New Jersey, which will likely rejoin soon); each participating state has adopted legislation or regulations consistent with a model rule to establish a mandatory cap and trade system, and a regional organization offers support.³⁵ On the opposite coast, the governors of California, Nevada, Utah, and Wyoming adopted a memorandum of understanding seeking to facilitate electric transmission in the region.³⁶ Other administrative agreements are more informal, even ad hoc.³⁷

A final, less common form of state-based regional coordination—and one that falls at the periphery of the category—involves the synchronized adoption of substantially similar laws. Despite the ubiquity of uniform state laws, frequently drafted by the national-yet-not-federal³⁸ Uniform Law Commission, these laws are rarely adopted on a regional basis.³⁹ Yet states sometimes seek to prod other states to adopt similar legislation. In particular, smaller states recognizing that they lack power to shape national markets

33 ZIMMERMAN, INTERSTATE COOPERATION, *supra* note 23, at 174.

34 *See id.* at 171–215 (describing the nature and scope of administrative agreements).

35 *See* REGIONAL GREENHOUSE GAS INITIATIVE, <https://www.rggi.org> [<https://perma.cc/2X28-ZD7Z>]. New Jersey withdrew in 2011. *See* Letter from Bob Martin, Comm'r., N.J. Dep't of Env't Prot., to the governors of RGGI signatory states (Nov. 29, 2011) (providing “Notice of Withdrawal of Agreement to the RGGI Memorandum of Understanding from State of New Jersey to Signatory States”).

36 Memorandum of Understanding Among the Governors of California, Nevada, Utah and Wyoming Concerning Electric Transmission Development (Apr. 4, 2005).

37 *See* ZIMMERMAN, INTERSTATE COOPERATION, *supra* note 23, at 230 (describing informal administrative agreements).

38 *Cf.* Judith Resnik et al., *Ratifying Kyoto at the Local Level: Sovereignism, Federalism, and Translocal Organizations of Government Actors (TOGAs)*, 50 ARIZ. L. REV. 709, 784 (2008) (“Translocal organizations like the National League of Cities, the U.S. Conference of Mayors, and the collectives of state attorneys general, governors, and state legislators are all exemplary of the multiplication of ‘national’ players, rooted in states and localities yet reaching across them.”); *see also* Cristina M. Rodríguez, *Negotiating Conflict Through Federalism: Institutional and Popular Perspectives*, 123 YALE L.J. 2094, 2100 (2014) (arguing that “‘national’ issues—those whose salience cuts across state lines and constituencies—are not always or necessarily best served by a federal monopoly”).

39 Some are adopted nationwide—for instance, the Uniform Commercial Code, the Uniform Trade Secrets Act, and the Uniform Child Custody Jurisdiction and Enforcement Act. *Acts*, UNIF. L. COMM’N, <http://www.uniformlaws.org/Acts.aspx> [<https://perma.cc/XUT8-YPA4>]. Even though many proposed uniform laws are taken up selectively, they are rarely adopted in a regional fashion. At the same time, there is some evidence of regional diffusion of state law more generally. *See, e.g.*, Christopher Z. Mooney, *Modeling Regional Effects on State Policy Diffusion*, 54 POL’Y RES. Q. 103 (2001).

through regulatory standards⁴⁰ have sometimes conditioned the force of a new state law on consistent action in neighboring jurisdictions.⁴¹ Most recently, several northeastern states have sought to impose a regional requirement to label genetically modified foods, with Connecticut conditioning its labeling law on the passage of substantially similar legislation by its neighbors.⁴²

B. Federal Administrative Divisions

If compacts, agreements, and synchronized laws are common state-based forms of regional governance, another prevalent form is something of the inverse: the division of purely federal administrative agencies into regional offices.⁴³ In contrast to bottom-up, interstate collaborations, federal regional administration is top-down in its approach, and it almost always parses the entire nation into regions. This bottom-up/top-down framing is an oversimplification—for instance, many regional compacts have been not only approved but affirmatively instigated by the federal government, while regional divisions of federal agencies respond to and foster state interests—but it is useful in beginning to distinguish among regional forms.

Looking for regions within federal agencies yields two inescapable conclusions. First, regional organization pervades federal administration. Although this point has been largely overlooked in the recent slew of

⁴⁰ In contrast, large states like California may unilaterally alter the conduct of national market participants. See generally DAVID VOGEL, *TRADING UP: CONSUMER AND ENVIRONMENTAL REGULATION IN A GLOBAL ECONOMY* (1995).

⁴¹ See, e.g., Samuel McCune Lindsay, *Reciprocal Legislation*, 25 POL. SCI. Q. 435, 454 (1910) (describing a New Jersey act for the protection of sturgeon on the Delaware River that provided it “shall take effect when similar acts shall have been passed by the legislatures of Delaware and Pennsylvania” and ensuing similar acts by Pennsylvania and Delaware); see also Patrick Cronin, *The Historical Origins of the Conflict Between Copyright and the First Amendment*, 35 COLUM. J.L. & ARTS 221, 234 (2012) (noting that some “States tried to solve the obvious problem of piracy of their works in neighboring States by passing copyright laws which would only take effect when every other State passed similar laws,” but that because “Delaware failed to pass a copyright statute, the statutes with this provision never went into effect”).

⁴² An Act Concerning Genetically-Engineered Food § 3(a), 2013 CONN. ACTS 775 (Reg. Sess.) (conditioning the Act’s effectiveness on the adoption of similar labeling laws for genetically-engineered foods by states in the northeast—defined as Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey and Pennsylvania—at least one of which borders Connecticut and the aggregate population of which is 20 million); see also An Act to Protect Maine Food Consumers’ Right to Know About Genetically Engineered Food § 2(1), 2014 ME. LAWS 1 (making the effective date contingent upon the adoption of mandatory labeling laws by at least five other states). These state efforts seem likely to be preempted by recent amendments to the Agricultural Marketing Act. See Agricultural Marketing Act of 1946, ch. 7, § 1621, 1639(i), 130 Stat. 834, 834-39 (2016) (“[N]o State . . . may . . . establish . . . any requirement relating to the labeling of whether a food . . . or seed is genetically engineered . . .”).

⁴³ See Owen, *supra* note 8.

proposals to move federal agencies outside of the Washington metropolis,⁴⁴ eighty-five percent of federal employees work in offices outside the D.C. area.⁴⁵ Second, there is substantial divergence in federal agencies' regional organization. The closest thing to a standard regional approach is a ten-region scheme introduced by President Richard Nixon in 1969.⁴⁶ Today, this scheme is used by the Department of Housing and Urban Development,⁴⁷ the Department of Health and Human Services,⁴⁸ the Environmental Protection Agency,⁴⁹ and the Small Business Administration,⁵⁰ as well as by particular

44 See H.R. 2112, 115th Cong. § 2 (2017) (proposing a commission to study relocating executive agencies outside of D.C.); H.R. 826, 115th Cong. § 3 (2017) (proposing to move executive agencies outside of the D.C. area); H.R. Res. 38, 115th Cong. (1st Sess. 2017) (expressing the sense of the House that federal agencies should relocate outside of D.C.). The stated rationales for these proposals sound in both redistribution and local knowledge. See H.R. 2112, § 6 (suggesting agency "relocation to a low-income community" or "to areas with expertise"); H.R. Res. 38 (noting that "Federal agencies employ thousands of individuals and provide jobs and economic benefits to the areas in which the agencies are located" and that "the impact of regulations can be perceived more easily by those who are proximate to the affected industries").

45 *About Us*, FED. EXEC. BDS., <https://feb.gov> [<https://perma.cc/QV52-BMT4>].

46 Richard M. Nixon, Statement on Establishing Common Regional Boundaries for Agencies Providing Social and Economic Services, PUB. PAPERS 255, 256 (Mar. 27, 1969) (issuing "a directive which streamlines the field operations of five agencies by establishing, for the first time, common regional boundaries and regional office locations") [hereinafter Nixon, Common Regional Boundaries]; see OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, CIRCULAR NO. A-105, STANDARD FEDERAL REGIONS (1974) [hereinafter OMB, CIRCULAR NO. A-105] ("This Circular formally establishes ten standard Federal regions, uniform regulation boundaries, and common regional office headquarters locations . . ."); *infra* Section III.B (considering Nixon's creation of standard regions).

The standard regions are as follows, with the headquarter city noted in parentheses:

1. Conn., Me., Mass., N.H., R.I., Vt. (Boston)
2. N.J., N.Y. (New York City)
3. Del., Md., Pa., Va., D.C., W.V. (Philadelphia)
4. Ala., Fla., Ga., Ky., Miss., N.C., S.C., Tenn. (Atlanta)
5. Ill., Ind., Mich., Minn., Ohio, Wis. (Chicago)
6. Ark., La., N.M., Okla., Tex. (Dallas-Fort Worth)
7. Iowa, Kan., Mo., Neb. (Kansas City)
8. Colo., Mont., N.D., S.D., Utah, Wyo. (Denver)
9. Ariz., Cal., Haw., Nev. (San Francisco)
10. Alaska, Idaho, Or., Wash. (Seattle)

OMB, CIRCULAR NO. A-105. Puerto Rico and the U.S. Virgin Islands are sometimes placed in Region Two and sometimes in Region Four. Compare *About EPA*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/aboutepa> [<https://perma.cc/PCR7-2FRV>] (including Puerto Rico and the Virgin Islands in Region Two), with *HUD's Regions*, U.S. DEP'T OF HOUSING & URB. DEV., <https://portal.hud.gov/hudportal/HUD?src=/localoffices/regions> [<https://perma.cc/ALW2-5448>] (including Puerto Rico and the Virgin Islands in Region Four).

47 U.S. DEP'T OF HOUSING & URB. DEV., *supra* note 46.

48 *Regional Offices*, U.S. DEP'T OF HEALTH & HUM. SERV., <https://www.hhs.gov/about/agencies/regional-offices/index.html> [<https://perma.cc/HG2N-D9H2>].

49 U.S. ENVTL. PROTECTION AGENCY, *supra* note 46.

50 *Regional Offices*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/tools/local-assistance/regionaloffices> [<https://perma.cc/F8MT-EXHP>].

agencies within the Department of Homeland Security,⁵¹ the Department of Labor,⁵² and the Department of Transportation,⁵³ and by public-facing offices within the Department of Education⁵⁴ and the Department of Justice.⁵⁵

While this ten-region scheme was a deliberate attempt to standardize federal regions, thereby facilitating interagency coordination and presidential supervision, it remains a minority approach, and the “chaos” of various regional configurations that past Presidents have sought to quell remains.⁵⁶ Even within single cabinet departments, various agencies employ different regional forms. For instance, within the Department of Transportation, the Federal Transit Administration uses the common ten-region scheme, but the Maritime Administration uses ten different regions,⁵⁷ the Federal Railroad Administration relies on eight regions,⁵⁸ the Federal Aviation Administration divides its property operations into nine regional offices,⁵⁹ and the Federal Highway Administration uses four regions for its field services and three for its federal lands highway divisions.⁶⁰ So too, within the Department of Agriculture, the Forest Service uses nine regions, while the Food and Nutrition Service uses seven, neither of which align with the standard ten-region plan.⁶¹ Other executive agencies use still other regional configurations.⁶²

⁵¹ See, e.g., *FEMA Regional Offices*, FED. EMERGENCY MGMT. AGENCY, <https://emilms.fema.gov/IS101c/DEP0101150text.htm> [<https://perma.cc/YU6Z-JH4W>].

⁵² See, e.g., *OSHA Offices by State*, OCCUPATIONAL SAFETY & HEALTH ADMIN., <https://www.osha.gov/html/RAMap.html> [<https://perma.cc/EW8P-YPPU>].

⁵³ See, e.g., *Regional Offices*, FED. TRANSIT ADMIN., <https://www.transit.dot.gov/about/regional-offices/regional-offices> [<https://perma.cc/RPT4-8R48>].

⁵⁴ See, e.g., *U.S. Department of Education Regional Office Contact Information*, U.S. DEP'T EDUC., <https://www2.ed.gov/policy/elsec/guid/secletter/o20207enc.html> [<https://perma.cc/CFH9-CRVU>].

⁵⁵ *Regional and Field Offices*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crs/about-crs/regional-and-field-offices> [<https://perma.cc/U94M-WCMQ>].

⁵⁶ NRC REPORT, *supra* note 16, at 81; see *infra* Section III.B (discussing past attempts to standardize federal regions).

⁵⁷ *Gateway Offices*, MAR. ADMIN., <https://www.marad.dot.gov/about-us/gateway-offices/> [<https://perma.cc/BF67-GWS8>].

⁵⁸ *Regional Offices*, FED. R.R. ADMIN., <http://www.fra.dot.gov/Page/Po244> [<https://perma.cc/A6G5-EUX9>].

⁵⁹ *Regions and Property Operations*, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/arc/ [<https://perma.cc/2UJE-K8XH>].

⁶⁰ *Field Offices*, FED. HIGHWAY ADMIN., <https://www.fhwa.dot.gov/about/field.cfm> [<https://perma.cc/3RX7-CQ75>].

⁶¹ *FNS Regional Offices*, U.S. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/fns-regional-offices> [<https://perma.cc/6ZGC-8JAM>]; *Forest Service Regions*, U.S. FOREST SERV., <https://www.fs.fed.us/wildflowers/regions/> [<https://perma.cc/EEH5-BMDB>].

⁶² E.g., *Regional Offices*, U.S. OFF. ENVTL. POL'Y & COMPLIANCE, <https://www.doi.gov/oepc/regional-offices> [<https://perma.cc/GG8W-8XS2>] (showing eight regional offices). The Department of Interior generally uses eight regions. *The Regions*, U.S. DEP'T INTERIOR OFF. SOLIC., <https://www.doi.gov/solicitor/regions> [<https://perma.cc/85CF-EMJT>]. But see *CSC Regions*, U.S. CLIMATE SCI. CTRS., <https://www.doi.gov/csc/centers> [<https://perma.cc/9B2V-ZUHT>]. The Solicitor in the Department of Labor uses seven regions. *SOL Regional Offices*, U.S. DEPT. LAB. OFF.

Many independent agencies also rely on regional organization, and also use a variety of regional forms. Perhaps most famously, the Federal Reserve System relies on twelve districts that were established in 1913; these districts surround the twelve Federal Reserve Bank cities and do not track state lines.⁶³ The Federal Trade Commission uses seven regional offices,⁶⁴ the Federal Communications Commission relies on three enforcement regions,⁶⁵ the Federal Energy Regulatory Commission has five regional offices focused principally on hydropower projects,⁶⁶ the Consumer Financial Protection Bureau has four supervision regions,⁶⁷ and the Securities and Exchange Commission has eleven regional offices.⁶⁸ Unlike the Fed, most of these agencies' regions follow state lines, although the SEC splits Northern and Southern California into two different regions.⁶⁹

A variety of federal corporations are also organized in a regional manner. Most distinctively, the Tennessee Valley Authority (TVA), which was created as a public–private hybrid in 1933, is a federal regional body that exists in only one area of the country.⁷⁰ Drawn around the Tennessee River Valley, the TVA encompasses portions of seven states instead of tracking state lines. Other federal corporations, including the FDIC, the Postal Service, and the

SOLIC., <https://www.dol.gov/sol/regions/> [<https://perma.cc/FX4F-FEWP>]. The Department of State Office of Foreign Missions uses six regions. *Regional Offices*, U.S. DEP'T ST. OFF. FOREIGN MISSIONS, <https://www.state.gov/ofm/ro/> [<https://perma.cc/QF9H-NQS4>]. The Veterans Benefits Administration uses five regions. *Locations*, DEP'T OF VETERANS AFF., <https://www.va.gov/directory/guide/division.asp?dnum=3> [<https://perma.cc/HU4F-7JAA>].

Agencies' regional organization continues to change. For example, the census recently closed half of its twelve regional offices and now uses six regions. *Regional Offices*, U.S. CENSUS BUREAU, <https://www.census.gov/regions/> [<https://perma.cc/Q3VP-Q9UB>] (showing the six regions); see also Robert Groves, *A Restructuring of Census Bureau Regional Offices*, CENSUS DIRECTOR'S BLOG (Jun. 29, 2011), <https://www.census.gov/newsroom/blogs/director/2011/06/a-restructuring-of-census-bureau-regional-offices.html> [<https://perma.cc/THW8-72X6>]. These regional offices differ from the four regions the Bureau uses to present census data. See *Census Regions and Divisions of the United States*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf [<https://perma.cc/9KQV-68F2>].

⁶³ *The Twelve Federal Reserve Districts*, BD. OF GOVERNORS OF THE FED. RESERVE SYS., <https://www.federalreserve.gov/otherfrb.htm> [<https://perma.cc/CUP7-FDCT>].

⁶⁴ *Regional Offices*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc/bureaus-offices/regional-offices> [<https://perma.cc/DP44-7DWG>].

⁶⁵ *Regional & Field Offices*, FCC, <http://transition.fcc.gov/eb/rfo/> [<https://perma.cc/GB9T-NLNP>].

⁶⁶ *Regional Office Hydropower Contacts*, FED. ENERGY REG. COMMISSION, <https://www.ferc.gov/contact-us/tel-num/regional.asp> [<https://perma.cc/U9NM-XFWW>].

⁶⁷ Paul Sanford, *Meet Our Regional Directors*, CONSUMER FIN. PROTECTION BUREAU (Mar. 12, 2013), <https://www.consumerfinance.gov/about-us/blog/meet-our-regional-directors/> [<https://perma.cc/779C-4UXX>].

⁶⁸ SEC REGIONAL OFFICES, SEC, <https://www.sec.gov/page/sec-regional-offices> [<https://perma.cc/2DJP-XKMW>].

⁶⁹ *Id.*

⁷⁰ See *infra* notes 156–162 and accompanying text (describing the creation and organization of the TVA).

Export–Import Bank divide their nationwide operations into regions in a way similar to executive and independent agencies.⁷¹

Finally, Federal Executive Boards were created by President John F. Kennedy in 1961 to provide a “forum for communication and collaboration among Federal agencies outside of Washington, DC.”⁷² The ten original boards have become twenty-eight over time. Less ambitious than the Federal Regional Councils that President Nixon established (and President Ronald Reagan abolished),⁷³ the Federal Executive Boards are overseen by the Office of Personnel Management, and though they focus on emergency preparedness, they have addressed diverse subjects including access to food stamps and the use of wind power.⁷⁴

C. Joint Federal–State Organization

If interstate agreements are principally bottom-up and federal administrative regions are principally top-down, perhaps the most distinctively regional form is the joint state–federal regional body.⁷⁵ As Anne Joseph O’Connell has illuminated, there are a variety of organizations “at the boundary” of the federal government and other governments.⁷⁶ At the state–federal boundary, these organizations are frequently regional. For instance, the first joint state–federal compact created the Delaware River Basin Commission (DRBC) in 1961.⁷⁷ Comprising the governors of Delaware, New Jersey, New York, and Pennsylvania and the commander of the U.S. Army Corps of Engineers North Atlantic Division, the DRBC is charged with planning, conserving, and allocating water resources in the Delaware River Basin and has recently found

⁷¹ E.g., *Organization Directory and Office Contacts*, FDIC, https://www.fdic.gov/about/contact/directory/#Field_Offices [<https://perma.cc/EzSM-WTKL>] (listing the eight regional offices); *Regional Export Finance Centers*, EXPORT–IMPORT BANK U.S., <http://www.exim.gov/contact/regional-export-finance-centers> [<https://perma.cc/J7PQ-LK5H>] (listing three regions).

⁷² FED. EXEC. BDS., *supra* note 45.

⁷³ See *infra* Section III.B (describing the Federal Regional Councils). The Federal Executive Boards and Federal Regional Councils never developed a good working relationship. See, e.g., AM. SOC’Y FOR PUB. ADMIN., *THE ADMINISTRATION OF THE NEW FEDERALISM* 63 (Leigh E. Grosenick ed., 1973) [hereinafter *ASPA, NEW FEDERALISM*] (quoting William H. Kolberg, former Associate Director for Program Coordination for OMB, who described this relationship as “[u]ncomfortable”).

⁷⁴ See, e.g., William A. Galston & Geoffrey L. Tibbetts, *Reinventing Federalism: The Clinton/Gore Program for a New Partnership Among State, Local, and Tribal Governments*, 24 *PUBLIUS* 23, 32 (1994); Wallace O. Keene, *New Directions for Federal Executive Boards and Associations*, 30 *PUB. MANAGER* 23, 23 (2001).

⁷⁵ See generally DERTHICK, *supra* note 5 (exploring several state–federal regional organizations).

⁷⁶ Anne Joseph O’Connell, *Bureaucracy at the Boundary*, 162 *U. PA. L. REV.* 841, 861–63 (2014) (noting that the National Guard, Social Security Administration, Metropolitan Washington Airport Authority, Delaware River Basin Commission, Appalachian Regional Commission, and Financial Stability Oversight Council operate at the boundary between state and federal government).

⁷⁷ Delaware River Basin Compact, Pub. L. No. 87–328, § 2, 75 Stat. 688, 692 (1961); see *infra* Section III.A (describing the creation and structure of the DRBC).

itself at the center of contentious debates, including whether to allow fracking in the basin.⁷⁸ In the decades since the DRBC was formed, federal–state compacts have been adopted for additional river basins, including the Susquehanna and the Alabama-Coosa-Tallapoosa.⁷⁹

Other joint state–federal bodies have been formed by interstate compact or by federal legislation. For example, the Metropolitan Washington Airports Authority created by interstate compact includes board members appointed by the Governor of Maryland, the Governor of Virginia, the Mayor of D.C., and the President.⁸⁰ The Appalachian Regional Commission (ARC) created by federal law comprises the governors of the thirteen Appalachian states as well as a federal co-chair appointed by the President with the advice and consent of the Senate.⁸¹

Recent regional projects have emphasized the role of interagency, as well as intergovernmental, coordination through joint state–federal efforts. Instead of selecting a single federal representative, these bodies tend to include a variety of federal agency officials. For instance, the Gulf Coast Ecosystem Restoration Council, which is responding to the Deepwater Horizon oil spill of April 2010, comprises the Secretaries of the Army, Interior, Commerce, Agriculture, and Homeland Security, and the Administrator of the EPA, as well as the governors of Alabama, Florida, Louisiana, Mississippi, and Texas.⁸² The Great Lakes Restoration Initiative Task Force, the Chesapeake Bay Federal Leadership Committee, and the Hurricane Sandy Rebuilding Task Force similarly rely on the region for interagency and intergovernmental coordination.⁸³

Finally, federal agencies have turned to regional groups of state, local, and private actors to further their regulatory agendas. The EPA has relied on regional associations of states to advise it with respect to haze caused by ozone

⁷⁸ See *Natural Gas Drilling Index Page*, DEL. RIVER BASIN COMM'N (Sept. 13, 2017), <http://www.nj.gov/drbc/programs/natural/> (last updated Nov. 30, 2017).

⁷⁹ ZIMMERMAN, *supra* note 21, at 249.

⁸⁰ 32 D.C. Reg. 7393 (Dec. 20, 1985); 1985 Va. Acts 1095; see 49 U.S.C. § 49106(a) (2012) (describing the Authority).

⁸¹ 40 U.S.C. § 14301(b)(1) (2012); see *infra* Section III.A (describing the history and structure of the ARC).

⁸² A 2010 executive order created the Gulf Coast Ecosystem Restoration Task Force. Exec. Order No. 13,554, 75 Fed. Reg. 62,313, 62,313-14 (Oct. 8, 2010). This Task Force was dissolved and its work was taken on by the newly formed the Gulf Coast Ecosystem Restoration Council two years later. Exec. Order No. 13,626, 77 Fed. Reg. 56,749, 56,749-50 (Sept. 13, 2012).

⁸³ Exec. Order No. 13,340, 69 Fed. Reg. 29,043 (May 20, 2004); Exec. Order No. 13,632, 77 Fed. Reg. 74,341 (Dec. 14, 2012); Exec. Order No. 13,508, 74 Fed. Reg. 23,099 (May 15, 2009); GREAT LAKES RESTORATION INITIATIVE, ACTION PLAN II (2014), <https://www.glri.us/actionplan/pdfs/glri-action-plan-2.pdf> [<https://perma.cc/6NBE-77SC>] (observing that the Great Lakes Restoration Initiative has been a catalyst for federal agency coordination); see *infra* Section IV.A (discussing the Chesapeake Bay Program).

and other pollutants,⁸⁴ and it built regional, multistate responses to climate change into the Clean Power Plan.⁸⁵ The DOT has focused on “megaregions,” with working groups of state, local, and private actors engaging in regional planning across jurisdictional lines.⁸⁶ And EPA, DOT, and HUD formed an interagency Partnership for Sustainable Communities that collaborates with state and local governments on a regional basis to foster affordable housing and transportation and reduce pollution.⁸⁷

* * *

As this brief overview suggests, regional governance assumes many different forms. One might well ask whether it is productive, or even reasonable, to consider interstate collaborations, federal divisions, and joint undertakings all as parts of our regionalism. Before returning to the present, the Article surveys the work of various approaches to regionalism across the twentieth century. In broad strokes, regional governance has progressed in accordance with the taxonomy above: although no regional form fully replaces its predecessors, interstate collaboration has given way to federal regionalism, which has in turn given way to state–federal hybridity. Together, these three regional forms have mediated American federalism and forged the distinctive shape of our administrative state.

II. FROM STATE TO NATION: PLANNING THE NEW DEAL

Throughout American history, regions—usually traveling under the label “sections”⁸⁸—have been sites of resistance to the federal government. Regional interests and identities have given force to arguments for states’ rights, with commentators noting that state sovereignty has “never been a vital issue except when a whole section stood behind the challenging state.”⁸⁹ In the extreme case,

⁸⁴ *Visibility–Regional Planning Organizations*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/visibility/visibility-regional-planning-organizations> [<https://perma.cc/B4KK-BJSZ>]; see also *What is the Ozone Transport Commission*, OZONE TRANSP. COMM’N, <http://www.otcair.org/> [<https://perma.cc/6MCF-45CV>].

⁸⁵ See Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662, 64,838–40 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).

⁸⁶ *Megaregions and Multi-Jurisdictional Planning*, U.S. DEP’T OF TRANSP., <https://www.fhwa.dot.gov/planning/megaregions/> [<https://perma.cc/JS2E-9VU4>] [hereinafter DOT, *Megaregions*] (“Megaregion planning involves transportation planning and decision making that is executed across boundaries for mutual benefit.”); see *infra* Section IV.A.

⁸⁷ *About Us*, PARTNERSHIP FOR SUSTAINABLE COMMUNITIES, <https://www.sustainablecommunities.gov/mission/about-us> [<http://perma.cc/H587-3862>]; see also, e.g., Regional Innovation Program, 82 Fed. Reg. 3131 (Jan. 11, 2017) (to be codified at 13 C.F.R. pt. 312).

⁸⁸ See Limerick, *supra* note 9 (describing the different connotations of “regions” and “sections”).

⁸⁹ FREDERICK JACKSON TURNER, *THE SIGNIFICANCE OF SECTIONS IN AMERICAN HISTORY* 39 (1932); see also *id.* at 194 (“[T]here was hardly a case of the serious assertion of state

sectional alliances have yielded threats of secession, from New England and the Hartford Convention to the Confederacy and the Civil War. On a more quotidian plane, multistate efforts have forestalled federal regulation. Yet despite the well-grounded understanding that regions bolster state power against the center, regions have also facilitated the growth of the federal government.

A complete history of American regionalism's competing centrifugal and centripetal tendencies would begin long before the twentieth century, but an account of regionalism's influence on the contemporary administrative state can fruitfully pick up in the 1920s, when a regionalist movement began to celebrate the "promise of regionalism."⁹⁰ For members of this movement, regions were at once organic communities and governance units that might stave off federal intervention. Resisting cultural homogenization, artists, sociologists, historians, lawyers, and others located the "real" United States in its regions. Resisting the expansion of federal bureaucracy, these critics advocated regional solutions for problems exceeding individual states' capacity.

If particular interest in regions sprang from their perceived utility in resisting centralization, however, regionalism soon became a tool of the New Deal. Both regional accommodations within and regional administration of new federal programs facilitated a substantial expansion of federal bureaucracy. The twentieth-century administrative state was thus propelled forward by strategies designed to resist it. By the 1940s, commentators were voicing a new understanding of regionalism as constitutive of nationalism, and early stirrings of regionalism as resistance to centralization persisted principally within rather than outside of federal administration.

A. *Regions Against the Federal Government*

Widespread belief in "the promise of regionalism" arose in the 1920s and 1930s.⁹¹ Geographers surveyed topography to discover the nation's natural divisions, while geologists searched beneath, climatologists looked above, and ecologists studied flora and fauna to ascertain areal units.⁹² Anthropologists,

sovereignty except where sectional cooperation gave it force."); WILLIAM B. MUNRO, *THE INVISIBLE GOVERNMENT* 140 (1928) ("Books relating to American history and government are full of references to states' rights and state sovereignty, but find me an instance in American history where either issue has ever been raised by a single state, or otherwise than by a group of states!").

⁹⁰ LEWIS MUMFORD, *THE GOLDEN DAY* 158 (1926).

⁹¹ See generally ROBERT L. DORMAN, *REVOLT OF THE PROVINCES: THE REGIONALIST MOVEMENT IN AMERICA, 1920–1945* (2003) (exploring the regionalist movement of the 1920s and 1930s); Michael C. Steiner, *Regionalism in the Great Depression*, 73 *GEOGRAPHICAL REV.* 430, 430 (1983) (discussing regionalism across a variety of fields, including political science, art, sociology, architecture, and history).

⁹² E.g., ODUM & MOORE, *supra* note 17, at 29; CHARLES O. PAULLIN, *ATLAS OF THE HISTORICAL GEOGRAPHY OF THE UNITED STATES* (1932) (describing the division of the United States into regions based on factors such as physical landforms, climate, soil, and natural resources).

sociologists, and linguists measured dialect, race, religion, occupation, and other characteristics to define regional populations.⁹³ Historians retold the nation's past as a story of sectional struggle,⁹⁴ while artists, critics, and folklorists celebrated, revived, and sometimes invented local culture and traditions.⁹⁵ Economists and political scientists proposed industrial, political, and economic regions, and elected officials and administrators took up the idea of regional planning, beginning at the metropolitan level.⁹⁶ The zest for regionalism—an enthusiasm some came to understand as tantamount to “a cult”⁹⁷—resulted in part from the conjunction of these many undertakings, as a “new science of the region” was born.⁹⁸

The passion of the regional movement also reflected a reaction against perceived government centralization and cultural homogenization. During World War I, the federal government had assumed a variety of new responsibilities, from managing railroads to managing labor relations,⁹⁹ and the 1920s saw the rise of national media, including radio, newsreels, and magazines like *Time*.¹⁰⁰ For some, it was a “paradox that the development of regional analysis has paralleled the growth of world-wide communication and trade, the

⁹³ E.g., ODUM & MOORE, *supra* note 17, at 23; HOWARD W. ODUM, SOUTHERN REGIONS OF THE UNITED STATES (1936); RUPERT B. VANCE, HUMAN GEOGRAPHY OF THE SOUTH: A STUDY IN REGIONAL RESOURCES AND HUMAN ADEQUACY (1935); WALTER PRESCOTT WEBB, THE GREAT PLAINS (1931).

⁹⁴ E.g., VERNON L. PARRINGTON, MAIN CURRENTS IN AMERICAN THOUGHT (1927); TURNER, *supra* note 89; WEBB, *supra* note 93.

⁹⁵ E.g., LUCY LOCKWOOD HAZARD, THE FRONTIER IN AMERICAN LITERATURE (1927); RALPH L. RUSK, THE LITERATURE OF THE MIDDLE WESTERN FRONTIER (1925); Mary Austin, *Regionalism in American Fiction*, 21 ENGL. J. 97, 99-100 (1932); see also Earl H. Rovit, *The Regions Versus the Nation: Critical Battle of the Thirties*, 13 MISS. Q. 89, 91-95 (1960) (describing interest in regionalism across a variety of disciplines in the 1920s and 1930s); Steiner, *supra* note 91, at 430 (“During [the 1930s] regionalism was widely and urgently discussed by artists, folklorists, social scientists, planners, architects, and engineers.”).

⁹⁶ E.g., COMM. ON REG’L PLAN OF N.Y. & ITS ENVIRONS, I REGIONAL PLAN OF NEW YORK AND ITS ENVIRONS (1929) (providing a development plan for the New York City region); BENTON MACKEYE, THE NEW EXPLORATION: A PHILOSOPHY OF REGIONAL PLANNING (1928) (advocating regional planning).

⁹⁷ Louis Wirth, *The Limitations of Regionalism*, in REGIONALISM IN AMERICA, *supra* note 14, at 381, 391-92.

⁹⁸ ODUM, *supra* note 93; ODUM & MOORE, *supra* note 17, at 4; see also DORMAN, *supra* note 91, at 276 (“Regionalists themselves aspired self-consciously to become a movement.”).

⁹⁹ BARRY D. KARL, THE UNEASY STATE: THE UNITED STATES FROM 1915 TO 1945, 52 (1983).

¹⁰⁰ *Id.* at 78 (“What gives the decade of the twenties its particular cast is the rapid development of the new communications media, which made people conscious that their society was in transition.”); MUNRO, *supra* note 89, at 160-61 (“The same magazines are read, the same radio music listened to, the same movies looked at . . . They are insidiously nationalizing the cut of our clothes, the interior decoration of our homes, the brands of food that we consume, and even the varieties of slang that our youngsters use.”).

emergence of cosmopolitan culture, and the ideology of One World.”¹⁰¹ But many commentators regarded the interest in regionalism as directly responsive to “the nationalizing, homogenizing urban-industrial complex.”¹⁰² A variety of proponents self-consciously embraced regionalism as an answer to looming “vaster and vaster federal bureaucracies” and a “centralizing state.”¹⁰³

Looking to regionalism as a response to threats of government centralization and cultural homogenization, proponents made a series of claims about regions both in their own right and, especially, vis-à-vis the states and federal government. Most relevant here, they argued that regions were natural, organic units of the country and that regional governance could empower the states and forestall centralization by addressing problems that exceeded individual states’ capacity without resort to federal intervention.

First, many posited regions as the “real” internal divisions of the vast United States.¹⁰⁴ The country as a whole could not be understood without

¹⁰¹ Rupert B. Vance, *The Regional Concept as a Tool for Social Research*, in REGIONALISM IN AMERICA, *supra* note 14, at 119.

¹⁰² DORMAN, *supra* note 91, at xii.

¹⁰³ *Id.* at 129 (quoting Vernon Parrington and J. Frank Dobie); Barry D. Karl, *Constitution and Central Planning: The Third New Deal Revisited*, 1988 SUP. CT. REV. 163, 170 (“If the experience of World War I had emboldened planners eager to use the federal government to manage nationwide programs, it nonetheless increased the fears of those who saw in the federal government a threat to local autonomy and individual control.”).

Southern Agrarian Donald Davidson, for instance, diagnosed regionalism as “an American expression of dissatisfaction with the culture, or pseudo-culture that has accompanied the diffusion of industrialism.” DONALD DAVIDSON, THE ATTACK ON LEVIATHAN: REGIONALISM AND NATIONALISM IN THE UNITED STATES 10-11 (1938); *see also* DONALD DAVIDSON ET AL., I’LL TAKE MY STAND: THE SOUTH AND THE AGRARIAN TRADITION (1930) (defending a Southern agrarian culture and tradition). From a different vantage point, social critic Lewis Mumford argued that, in “a period when the uniformities of the machine civilization were being overstressed, regionalism served to emphasize compensatory organic elements: above all, those differences that arise out of geographic, historic, and cultural peculiarities.” LEWIS MUMFORD, THE CULTURE OF CITIES, 305-06 (1970). *See generally* ODUM & MOORE, *supra* note 17, at 630 (“[M]any observers . . . conclude[d] that the chief dilemma of the time was that of society’s ability to accommodate its natural capacities and institutions to the artificial demands of bigness, speed, technology, change.”); TURNER, *supra* note 89, at 325 (“[T]oday it may fairly be asked whether all these forces of centralization of power in Washington have promoted national unity and consolidation, or on the other hand have increased sectional expression.”); Michael C. Steiner, *The Significance of Turner’s Sectional Thesis*, 10 W. HIST. Q. 437, 440 (1979) (“[A]s the sectional thesis reached its fullest expression in the 1920s, memories of what seemed to be a stable community with a distinctive sense of place provided an image of order and security in the face of rapid social change.”).

¹⁰⁴ *See, e.g.*, Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution*, 34 YALE L.J. 685, 729 (1925) (“Our regions are realities. Political thinking must respond to these realities.”); Munro, *supra* note 16, at 123 (“We think of the states as the component parts of the Nation because they are recognized political entities; [but] we persistently overlook those sections or regions of the country which are our real economic units even though they are not given recognition as such by constitutions and laws.”); *see also* FESLER, *supra* note 11, at 33 (“In a sense, the South is more real than Alabama, the Middle West more real than Kansas, New England more real than Vermont.”); DAVID LILIENTHAL, TVA: DEMOCRACY ON THE MARCH 155 (1944) (suggesting

appreciating its component parts, these commentators argued, yet state borders were largely artificial.¹⁰⁵ Regions, not states, reflected natural geographical or cultural unities and were the true building blocks of American history, politics, and contemporary society. Famous for his 1893 study of the frontier, historian Frederick Jackson Turner began in the early twentieth century to describe the frontier as a “moving section,” and he posited the now-closed frontier and the section as “two of the most fundamental factors in American history.”¹⁰⁶ Turner argued that the United States was in fact a “congeries of sections” and that the country’s past could only be understood in sectional terms.¹⁰⁷ For him and others, including Southern Agrarian Donald Davidson, both states and the federal government were merely institutional vehicles, even masks, for sectional interests.¹⁰⁸ Other commentators who focused on the deep reality of regions recast Turner’s divisive sectionalism as a more harmonious, pluralistic regionalism: a nation as large as the United States necessarily comprised distinct cultures, but they could be mutually enriching if all were allowed to flourish. Regionalists like Lewis Mumford thus anticipated a New Deal governance paradigm by insisting that the proper stance was to recognize and celebrate regional diversity, rather than to deny it in the service of a monolithic nationalism or to fear it as a prelude to renewed sectional conflict.¹⁰⁹

newspapers are more “realistic” than the Congressional Record because they report on regions rather than states in Congress).

¹⁰⁵ Or, if not artificial, problematic. *See, e.g.,* Wirth, *supra* note 97, at 385 (describing how the use of rivers as both state boundary lines and arteries of transportation “create[d] complicated interstate problems of administration” as major cities emerged on state boundaries).

¹⁰⁶ TURNER, *supra* note 89, at 183.

¹⁰⁷ *Id.* at 39, 183; *see also id.* at 194 (“As soon as we cease to be dominated by the political map, divided into rectangular states, and by the form of the Constitution in contrast with the actualities, groups of states and geographic provinces, rather than individual states, press upon the historian’s attention.”).

¹⁰⁸ *See id.* at 321 (“[S]tate sovereignty was never influential except as a constitutional shield for the section.”); *see also* DAVIDSON, *supra* note 103, at 26 (“[T]he mask of state sovereignty is less important in national history, because it is less efficacious than the other great mask: the mask of national pretensions, or the use of the Federal mechanism itself as the disguise of a sectional program.”); TURNER, *supra* note 89, at 39, 287-88.

¹⁰⁹ Mumford, for instance, called for “intercourse and reciprocity” among various regions, arguing that appreciating the “diversity of regional cultures” would eschew universalizing “the parochialism” of one particular place. Lewis Mumford, *Toward a New Regionalism*, NEW REPUBLIC, Mar. 25, 1931, at 158. John Neihardt similarly argued that it would be “idiotic” to “attempt to fuse our various sectional cultures . . . into a common national culture” and the nation should instead “emphasize . . . the vital significance of what each section has to offer.” DORMAN, *supra* note 91, at 116-17. Even Davidson and Turner gestured to this possibility. *See* DAVIDSON, *supra* note 103, at 107 (explaining that regionalism is “not an anti-national force but the condition itself of nationalism in a country as large and as notably diverse in its geographic divisions as our country is”); TURNER, *supra* note 89, at 338 (arguing that “sections serve as restraints upon a deadly uniformity” and “cross-fertilize each other” and that a “national vision must take account of the existence of these varied sections; otherwise the national vision will be only a sectional mirage”).

Second, commentators began to argue that, if regions were in a cultural or political sense more “real” than states or the federal government, then regions were useful, underutilized sites of governance. Lying between too-small states and the too-big nation, regions seemed to offer a Goldilocks solution to a variety of problems. For many, regionalism held out the particularly notable promise of fending off federal bureaucracy: even as industrialization underscored the limits of state governance, regional organization might forestall otherwise-inevitable centralization. Some went so far as to press for the establishment of regional governments. William Munro, for instance, argued for “full-fledged governmental entities standing midway between the states and the nation.”¹¹⁰ These “regional governments” would not be mere administrative districts. Instead, so that they might offer “a buffer of protection against all-pervading national centralization,” they would “be given a definite endowment of autonomous power and equipped with both executive and legislative organs of government.”¹¹¹

More modestly, many commentators advocated forms of interstate cooperation that might yield regional governance without regional governments. The interstate compact received particular attention, and newfound uses.¹¹² Although authorized from the Founding, interstate compacts had been used sparingly until the twentieth century, and the overwhelming majority had settled boundary disputes. In the 1920s, however, a burst of compacting activity suggested new scope for the device. Administrative arrangements like the Port Authority of New York and the Colorado River Compact “reflect[ed] the emphasis on a positive provision for

¹¹⁰ MUNRO, *supra* note 89, at 157; *see also id.* at 156 (“Problems which are sectional in character cannot be contracted into state or enlarged into national problems by mere dicta of constitutions and courts.”).

¹¹¹ *Id.* at 130-32; *see also* Munro, *supra* note 16, at 128 (arguing that “[p]eople will not starve or suffer continued injustice or forever tolerate economic inequities in the name of checks and balances, states’ rights, or reserved powers” and that the alternative to regional governance would be “a gradual enlargement of Federal jurisdiction, with all the dangers that such expansion may eventually involve”). Others advocating regional government in this period saw it as a replacement for states. *See, e.g.*, WILLIAM Y. ELLIOT, *THE NEED FOR CONSTITUTIONAL REFORM* (1935) (suggesting that regions should replace states as political units); W. Brooke Graves, *The Future of the American States*, 30 *AM. POL. SCI. REV.* 24, 32-33 (1936) (describing the growth of scholarly support for regionalism as an alternative to state and federal government); Edward M. Barrows, *U.R.A.—A New American Nation*, *NEW OUTLOOK* (May 1933), at 17 (“Today most of us live and work together as units of a geographic region, and only secondarily as citizens of a state.”); *see also* Burdette G. Lewis, *Regionalism: A Plan for Uniting the States More Effectively*, *FORUM* (Mar. 1933), at 138 (proposing that the states “should be organized through the Compact Clause of our Federal Constitution” into six regions, with representative regional councils and courts).

¹¹² *See* James W. Fesler, *Federal Administrative Regions*, 30 *AM. POL. SCI. REV.* 257, 259 (1936) (“Unwilling to further the aggrandizement of power by the federal government, many states have organized regionally for the consideration of regional problems. Interstate compacts represent the most formalized method of regional cooperation.”).

continuing and flexible adjustment of public services to needs that cannot be adequately met or dealt with at all by ordinary State or Federal Action.”¹¹³

Elaborating this potential, Felix Frankfurter and James Landis argued in a 1925 *Yale Law Journal* article that regional “interstate adjustments” were a means of meeting emerging problems without aggrandizing the federal government.¹¹⁴ While state attempts to resolve questions of interstate concern would be inadequate, and national action would be “either unavailable or excessive,”¹¹⁵ regions might provide the solution.¹¹⁶ For Frankfurter and Landis, administrative government was required but should rely on “inventive powers exacted from modern State legislatures” rather than an accretion of federal bureaucracy.¹¹⁷ Creative uses of the interstate compact, especially, seemed to portend the states might retain vitality through regional collaboration: “The imaginative adaptation of the compact idea should add considerably to resources available to statesmen in the solution of problems presented by the growing interdependence, social and economic, of groups of States forming distinct regions,” they argued.¹¹⁸ In particular, they suggested that “the New England States, the Middle Atlantic States, the Pacific Coast States, and similar groupings” might “each evolve, through compact, common industrial standards, thereby recognizing diversities not coincident with the capricious boundaries of forty-eight States nor yet to be resolved by a flat common denominator nation-wide in its operation.”¹¹⁹

¹¹³ NRC REPORT, *supra* note 16, at 36; *see also id.* at 41, 70 (discussing the Port Authority and Colorado River compacts).

¹¹⁴ Frankfurter & Landis, *supra* note 104, at 708. Their legal argument was in dialogue with Turner’s historical work. They cited his essays on regional interests, *id.*, and he approvingly noted their proposal for interstate collaboration, TURNER, *supra* note 89, at 201-02.

¹¹⁵ Frankfurter & Landis, *supra* note 104, at 707; *see also* ODUM & MOORE, *supra* note 17, at 243 (“The states, too small, too historically incidental, too artificially set apart, manifestly are inadequate units for measurement or administration. Yet historically, legally, constitutionally, statistically, they are organic divisions which it is not possible to ignore as fundamental units of both appraisal and administration. The states, then, represent one horn of the national dilemma. The other extreme is the federal centralization of control, which is equally as realistic a trend as the states are historical fact.”).

¹¹⁶ In this sense, Frankfurter’s regionalism was of a piece with his view of a pluralistic administrative state. *See* Jeremy K. Kessler, *The Administrative Origins of Modern Civil Liberties Law*, 114 COLUM. L. REV. 1083, 1115-18 (2014) (describing Frankfurter’s statist yet pluralistic ideology with respect to conscientious objectors); Jeremy K. Kessler, *The Struggle for Administrative Legitimacy*, 129 HARV. L. REV. 718, 736 (2016) (book review) [hereinafter Kessler, *Administrative Legitimacy*] (“Frankfurter’s legal advocacy on behalf of critics of American power was in keeping with his own thoroughly nationalist and statist ideology. Frankfurter simply believed that the legal accommodation of dissenters was one aspect of building a strong state in a diverse, conflict-ridden nation.”).

¹¹⁷ Frankfurter & Landis, *supra* note 104, at 708.

¹¹⁸ *Id.* at 729.

¹¹⁹ *Id.*; *see also id.* at 708 (“Collective legislative action through the instrumentality of compact by States constituting a region furnishes the answer.”). Justice Frankfurter subsequently celebrated the regional compact from the bench. *See* *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27-28 (1951) (noting the Court’s previous suggestion that “a problem such as that involved here is ‘more likely to be wisely

Frankfurter and Landis were not alone in seeing both regulatory potential and an evolving role for states through collaboration. An issue of *State Government* magazine, for example, cited the “chaos” of states “functioning as forty-eight sovereign nations” and argued that “[e]ither many of the remaining functions of the states will rapidly pass into federal control, or else the states must hasten to cooperate with each other as they have never cooperated before.”¹²⁰ W. Brooke Graves was blunter: “The states must, in the slang phrase, ‘put up or shut up’”¹²¹

B. *Regions Within the Federal Government*

Although commentators in the 1920s and 1930s argued that regions were places where problems exceeding state competence could be addressed without federal intervention, regionalism soon proved congenial to the burgeoning project of federal administration itself. Interstate regionalism persisted, but with the New Deal it came to be overshadowed by regional projects involving the federal government. As the federal government “moved uncertainly and threateningly into positions of control over the distribution of the nation’s resources” in the 1930s,¹²² the region became a critical administrative tool.

The turn to regionalism was deliberate. As contemporary commentators appreciated, while the Roosevelt Administration had federal regional precedents to draw on,¹²³ it was “the first to take a consciously regional

solved by cooperative study and by conference and mutual concession on the part of representatives of the States so vitally interested in it than by proceedings in any court however constituted” and recognizing that “[t]he growing interdependence of regional interests, calling for regional adjustments, has brought extensive use of compacts” (quoting *New York v. New Jersey*, 256 U.S. 296, 297 (1920)).

¹²⁰ Graves, *supra* note 111, at 49-50 (quoting the March 1935 issue of *State Government*).

¹²¹ *Id.* at 45; *see also id.* at 46 (“Informal cooperation between neighboring states may accomplish much; where a more formal agreement is required, there is the possibility of the interstate compact”); FESLER, *supra* note 11, at 39 (noting that “comprehensive inter-area cooperation” is often “a method of lobbying against accretion of powers by the next higher level of government”); JON C. TEAFORD, *THE RISE OF THE STATES: EVOLUTION OF AMERICAN STATE GOVERNMENT* 144 (2002) (“During the 1930s . . . [t]he states faced a dynamic federal government, and in response they closed ranks to a degree unprecedented in the nation’s history.”).

¹²² Karl, *supra* note 103, at 171.

¹²³ Precedents for federal regional organization included field offices for federal departments such as Interior, Justice, Treasury, and War and the Progressive Era Federal Reserve Districts. *See, e.g.*, ELIZABETH M. SANDERS, *ROOTS OF REFORM: FARMERS, WORKERS, AND THE AMERICAN STATE, 1877-1917*, at 238-39, 258 (1999) (discussing the creation of the Federal Reserve System); *Federal Reserve Districts*, FED. RES. BANK OF S.F. (May 2001), <http://www.frbsf.org/education/publications/doctor-econ/2001/may/federal-reserve-districts/> [https://perma.cc/CXZ4-LR2R] (describing the placement of twelve Federal Reserve District Banks in 1913). But the New Deal deployed federal regionalism on an unprecedented scale. Just as much recent scholarship has documented the long history of the American administrative state without denying particularly expansive and formative New Deal developments, so too the precursors of regionalism as a tool of the federal government do not gainsay the New Deal’s pronounced deployment of regionalism.

approach,” popularizing “the term *regional* to such an extent that it appears almost as often on the lips of the populace as in the blueprints of the experts.”¹²⁴ This federal regionalism manifested in two main respects: substantive provisions and administrative organization. Many of the most ambitious new federal programs were either written or executed in a regionally differentiated manner, and they were also administered through regionally dispersed offices of federal agencies. Regional accommodation and regional administration were intertwined, if often differently motivated: decentralized regional administration eased regional variation in the substance of federal programs, while regional demands for accommodation justified regional administration as a procedural matter. Together, these regional approaches facilitated the New Deal’s significant expansion of federal regulation.

1. Accommodation

Major New Deal programs were designed to look different in different regions of the country. In particular, they were designed to leave untouched the South’s racial order.¹²⁵ To appease southern members of Congress, laws touching labor relations ensured “that southern employers could continue to draw without hindrance on the still-enormous supply of inexpensive and vulnerable black labor.”¹²⁶ Significant new federal programs created by the Agricultural Adjustment Act, the National Industrial Recovery Act, the National Labor Relations Act, and the Social Security Act accommodated Jim Crow but in so doing also embraced regionalism more generally. Relying in part on the new science of regional studies that transformed the South “analytically into a more ordinary, if poor, region that could be melded within a larger American sectional mosaic,”¹²⁷ New Deal programs both subsidized a brutal caste system and normalized a regional approach to federal law.

New Deal legislation accommodated regional interests in three principal ways. Most straightforwardly—but also least commonly—federal legislation itself sometimes provided directly or indirectly for regional variances. For

¹²⁴ DAVIDSON, *supra* note 103, at 58-59.

¹²⁵ See RICHARD FRANKLIN BENDEL, SECTIONALISM AND AMERICAN POLITICAL DEVELOPMENT 1880-1980, at 147-55 (1984). See generally Ira KATZNELSON, FEAR ITSELF (2013); ROBERT C. LIEBERMAN, SHIFTING THE COLOR LINE (1998).

¹²⁶ KATZNELSON, *supra* note 125, at 163 (describing how southern Congressmen “ensur[ed] that key New Deal bills on subjects sensitive for the South . . . would be adapted to meet the test of not disturbing the region’s racial structure”).

¹²⁷ *Id.* at 168; see also, e.g., DAVID M. POTTER, THE SOUTH AND THE SECTIONAL CONFLICT 7-8 (1968) (noting that Odum’s *Southern Regions of the United States* “mapped, measured, and charted the plight of the agricultural South” without showing the particular plight of black Americans, so that “the most careful reader of this encyclopedic survey of Southern economic and social conditions could almost have overlooked the fact that a biracial system prevailed in the South”).

example, in recognition of the fact that two-thirds of southern black employees were farmworkers or domestic workers, the National Labor Relations Act excluded “any individual employed as an agricultural laborer,” with the committee report adding that “domestic servant[s]” were also excluded from protection as “employees.”¹²⁸

Second and more common, federal legislation was silent about regional accommodations but shifted decisionmaking authority to federal executive officials, who in turn provided for regional adjustments. Some of the most significant regional variation during the New Deal accordingly came from the federal executive branch, marking an important change in how sectional tensions might be resolved in the United States: instead of hashing out regional interests on the floor of Congress or leaving matters entirely to the states, open-ended federal laws left regional implications to be resolved by the executive branch. No longer did regional interests need to prevail as a matter of uniform national policy within Congress; instead, regional interests could be pressed in the course of execution, with the President or federal agencies recognizing a variety of discrete regional differences.¹²⁹ Once again, the white South was the primary beneficiary of this administrative flexibility throughout the New Deal period. For instance, the National Industrial Recovery Act delegated to the President the ability to define which industries would receive the protections of industrial codes and to recognize regional wage differentials, and FDR’s executive orders recognized “traditional differentials” so as not “to impair southern industry.”¹³⁰

A third approach to regional accommodation was the delegation of policy formulation to state and local officials.¹³¹ Cooperative federalism twinned substantive accommodation of regional interests with decentralized administration. For example, the states were given authority to determine support levels for both unemployment insurance and Aid to Dependent

128 JAMES R. WATSON, CONG. RESEARCH SERV., LEGISLATIVE HISTORY OF THE EXCLUSION OF AGRICULTURAL EMPLOYEES FROM THE NATIONAL LABOR ACT OF 1935 AND THE FAIR LABOR STANDARDS ACT OF 1938, 1, 4 (1966); see KATZNELSON, *supra* note 125, at 260.

129 See BENSEL, *supra* note 125, at 148-49.

130 KATZNELSON, *supra* note 125, at 241-42; see also RICHARD PARKER, JOHN KENNETH GALBRAITH 65 (2005) (“Section 7 was ‘reinterpreted’ so that no more allotment checks would go to sharecroppers directly.”).

131 See BENSEL, *supra* note 125, at 149 (identifying “cooperative federalism” as a form of decentralization that “allowed national policies to vary widely in response to differences in regional politics”); KATZNELSON, *supra* note 125, at 163 (describing how New Deal policies were implemented with “decentralization of responsibility that placed administrative discretion in the hands of state and local officials whenever possible”). See generally JERRY L. MASHAW, CREATING THE ADMINISTRATIVE CONSTITUTION 299 (2012) (noting that “federal regulation, welfare-state provision, and central government expenditures have grown exponentially” without a corresponding growth in the federal bureaucracy because state and local officials are used as “the ground-level implementers of federal statutes”).

Children pursuant to the Social Security Act.¹³² States also assumed a dominant role under the Agricultural Adjustment Administration,¹³³ the Civil Works Administration,¹³⁴ the Federal Emergency Relief Administration,¹³⁵ the National Recovery Administration and Public Works Administration,¹³⁶ the Home Owners' Loan Corporation,¹³⁷ and the Works Progress Administration.¹³⁸ Through these cooperative federalism programs, regional variances emerged within federal law. As with the shift within the federal government from Congress to the executive branch as the locus of regional accommodation, the embrace of cooperative federalism facilitated the adoption of federal policy in the first instance, but it also conditioned the federal government's entry into new domestic policy domains on the possibility of continuing regional disuniformity.

2. Administration

Alongside substantive accommodations designed to expand federal governance without threatening powerful regional interests, New Deal programs were also marked by regional administration. This was linked to substantive regional accommodations—decentralized administration was one way of facilitating substantive differentiation—but it was driven by other concerns as well. The sheer administrative difficulty of carrying out national programs across “a country that is a continent”¹³⁹ and quickly creating a large number of new federal bodies with an even larger number of new federal responsibilities necessitated some sort of dispersed administrative apparatus. Many of the academics and state and local officials populating the Roosevelt Administration, and FDR himself to a degree, had been swept up in the previous decade's

¹³² See KATZNELSON, *supra* note 125, at 260 (describing how Southern states provided “much needed funding to their poverty-stricken region while protecting the character of its racial arrangements”); LIEBERMAN, *supra* note 125, at 7 (examining the history of unemployment insurance and Aid to Dependent Children).

¹³³ EDWIN G. NOURSE ET AL., THREE YEARS OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION 73, 77 (1937).

¹³⁴ See generally FORREST A. WALKER, THE CIVIL WORKS ADMINISTRATION, 1933-1934 (1979).

¹³⁵ See generally HARRY L. HOPKINS, U.S. FED. EMERGENCY RELIEF ADMIN., MONTHLY REPORT OF THE FEDERAL EMERGENCY RELIEF ADMINISTRATION: JANUARY 1 THROUGH JANUARY 31, 1935 (1935).

¹³⁶ See generally JACK F. ISAKOFF, THE PUBLIC WORKS ADMINISTRATION 30 (1938); NAT'L RECOVERY ADMIN., REPORT OF THE PRESIDENT'S COMMITTEE OF INDUSTRIAL ANALYSIS (1937).

¹³⁷ See generally C. LOWELL HARRISS, HISTORY AND POLICIES OF THE HOME OWNERS' LOAN CORPORATION, 140-141 (1951).

¹³⁸ See generally FED. WORKS AGENCY, REPORT ON PROGRESS OF THE WPA PROGRAM (1939); Graves, *supra* note 111, at 38.

¹³⁹ Frankfurter, *supra* note 15, at xv.

regionally focused “furore as to planning.”¹⁴⁰ And the desire to decouple the expansion of federal administration (and, especially, presidential power) from the “toxic . . . nationalism”¹⁴¹ and “totalitarian specter”¹⁴² emerging from Europe, made regions useful vehicles of decentralization.¹⁴³

Given the various forces pushing federal administration toward regional organization—not to mention the hasty manner in which New Deal agencies were being commissioned—it is perhaps unsurprising that there was no single template for federal regional organization. As more than 100 different federal regional schemes came into use by the mid-1930s, the absence of a unified regional model became a concern of government officials and remained a preoccupation of subsequent administrations.¹⁴⁴ Notwithstanding the lack of a unified model, however, three broad approaches to federal regionalism did emerge during this period: regionalism as administrative decentralization of purely federal programs; regionalism as a vehicle for intergovernmental coordination of cooperative federalism programs; and regionalism as an approach to development and planning for particular geographic areas.

First, a good number of New Deal agencies relied on a regional structure in a manner long used by federal agencies: to facilitate the efficient and effective administration of federal law across a vast nation. Instead of turning to state governments, agencies including the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Farm Credit Administration divided the country into regions, with field offices overseen

140 Stuart Chase, *The Concept of Planning*, Address at Round Table on Regionalism (July 11, 1931) (on file with the University of Virginia Institute of Public Affairs) (“Not many days ago I was discussing the current furore as to planning with the dean of the Yale Law School. ‘Why,’ he said, ‘it is getting so that one is as loath to appear on the street without a Five Year Plan as without his trousers!’”). FDR attended this roundtable and, in introducing the proceedings, stated that he did “not know what ‘regionalism’ means” before going on to extol the virtues of regional planning. Address by Gov. Franklin D. Roosevelt of New York on State Planning, *in id.* Some of the many regionalists populating the Roosevelt Administration included Benjamin Botkin, Marshall Dimock, David Lilienthal, Benton MacKaye, Charles Merriam, and Arthur Morgan. *See generally* DORMAN, *supra* note 91, at 292 (noting a “convergence of sorts” between the regionalist movement and the New Deal).

141 Steiner, *supra* note 103, at 458.

142 Kessler, *Administrative Legitimacy*, *supra* note 116, at 733 n.65.

143 *See id.*; Steiner, *supra* note 103, at 458. To be sure, regional organization threatened the opposite effect: the fascist dictator of Sinclair Lewis’s 1935 novel, *It Can’t Happen Here*, replaced the states with eight provinces, echoing contemporary media reports that Hitler was planning the abolition of state lines in favor of federally determined regions in Germany. SINCLAIR LEWIS, *IT CAN’T HAPPEN HERE* 143 (1935); *see also* Graves, *supra* note 111, at 32 (“[R]ecent newspaper reports indicate that Hitler plans the abolition of state lines in Germany.”). But regional governance as a departure from monolithic nationalism—rather than as a replacement for states—potentially rendered the expansion of federal administration less threatening.

144 NRC REPORT, *supra* note 16, at 71 (finding “approximately 108 separate regional schemes employed by Federal administrative agencies”); *see* Fesler, *supra* note 112, at 260 (comparing federal regional schemes); Graves, *supra* note 111, at 35-38 (same); *infra* Section III.B.

by regional administrators.¹⁴⁵ This form of federal regionalism sometimes entailed deliberate decentralization—for instance, the regional outposts of the Farm Credit Administration had significant authority to make decisions¹⁴⁶—but often it was a purely administrative tool designed to leave decisional authority in Washington.

A second, more significant way that regional organization came to pervade the federal government followed from the dramatic growth of cooperative federalism programs during this period. As the federal government relied on states to carry out a range of new domestic welfare programs, regions were thought to ease intergovernmental coordination. For nearly every New Deal cooperative federalism program, the federal government established a distinct regional supervisory structure. The Social Security Board was divided into twelve regions “to effect the utmost feasible decentralization of administration” while retaining ties to Washington.¹⁴⁷ The Works Progress Administration and National Recovery Administration came to use nine regional offices to “coordinate the work of the WPA in the states of their respective regions.”¹⁴⁸ And the Civil Works Administration created seven regional representatives who “traveled constantly, in a specific number of states assigned to each, with the object of promoting a more effective operational relationship among federal, state, and local organizations.”¹⁴⁹ Other agencies similarly superintended cooperative federalism with regional administrative offices.¹⁵⁰

In these programs, regional organization was understood to mediate state and federal administration, furnishing a federal presence in the field while allowing federal policy to be tailored to local demands or conditions.

¹⁴⁵ See AM. INST. OF BANKING, FARM CREDIT ADMINISTRATION 126-128 (1934) (describing the establishment of twelve “farm credit” districts”); FED. DEPOSIT INS. CORP., FEDERAL DEPOSIT INSURANCE CORPORATION: THE FIRST FIFTY YEARS 74 (1984) (discussing FDIC regional offices); SEC, FIRST ANNUAL REPORT OF THE SECURITIES AND EXCHANGE COMMISSION 6-7 (1935) (reporting the establishment of eight regional administrative zones).

¹⁴⁶ See, e.g., NRC REPORT, *supra* note 16, at 31 (noting that the Farm Credit Administration referred all personnel problems and job applications received in Washington to the regional offices for handling). FDR’s Executive Order 6084 consolidated a variety of federal programs governing lending to farmers into the Farm Credit Administration, which created twelve regional boards that operated with significant autonomy. Exec. Order No. 6084 (Mar. 27, 1933), *reprinted in* 12 U.S.C. § 636 (1934). Although this twelve-region, decentralized structure echoed the Federal Reserve System’s structure, the two agencies pursued opposite paths to regional boundaries: The Federal Reserve sought “economic unity” within districts, while the Farm Credit Administration sought agricultural heterogeneity “so that no district would be completely dependent on the success or failure of one . . . crop.” NRC REPORT, *supra* note 16, at 74.

¹⁴⁷ SOC. SEC. BD., SIXTH ANN. REP. 15 (1941).

¹⁴⁸ FED. WORKS AGENCY, *supra* note 138, at 81; NAT’L RECOVERY ADMIN., REPORT OF THE PRESIDENT’S COMMITTEE OF INDUSTRIAL ANALYSIS 62 (1937) (reporting the appointment of nine regional directors).

¹⁴⁹ WALKER, *supra* note 134, at 72.

¹⁵⁰ See, e.g., NRC REPORT, *supra* note 16, at 221-23 (depicting regions used by federal agencies).

Although the schemes generally furnished leverage for states within federal programs, in a few instances regional offices came to supplant the states. Thus, the Home Owners' Loan Corporation, a state–federal venture, established eleven regional offices in 1934 upon finding that supervision of nationwide activity in Washington “proved inadequate.”¹⁵¹ At first states retained substantial independence, subject to regional oversight, but regional offices gradually assumed greater operating responsibility, and between 1940 and 1942 the state offices were abolished and regional offices took over their functions.¹⁵²

A final approach to regional administration involved government commissions and authorities that reflected the era's preoccupation with planning. These New Deal organizations were the most distinctively regional of regional administrative forms—not nationwide divisions of federal agencies, but bodies located in particular suprapstate areas and charged with attending specifically to development in those areas. Some were instigated by the federal government but governed by state officials. For instance, in 1934, with the support of the National Planning Board (subsequently the National Resources Committee¹⁵³), the New England Regional Planning Commission and the Pacific Northwest Regional Planning Commission were established to capitalize on regional identity, culture, and environmental unities in furtherance of a national planning agenda.¹⁵⁴ Other approaches to regional

¹⁵¹ HARRISS, *supra* note 137, at 141 (“Before many months had passed . . . the centralized collection arrangement proved inadequate, especially for directing loan servicing on an individual basis. In 1934, therefore, eleven regional offices were established, staffed in part with headquarters' personnel familiar with the problems of the individual regions.”).

¹⁵² *Id.* at 141.

¹⁵³ In 1934, the National Planning Board was replaced by the National Resources Board, which included members of the cabinet. Exec. Order No. 6777 (1934). Then, in 1935, the National Resources Board became the National Resources Committee. Exec. Order No. 7065 (1935). Because the NIRA had been declared unconstitutional in *Schechter Poultry*, this committee derived its authority from the Emergency Relief Appropriations Act of 1935. Ultimately, pursuant to the Reorganization Act of 1939, FDR reconstituted the National Resources Committee as the National Resources Planning Board, which persisted until congressional termination in 1943. Notwithstanding these many title changes, the committee's mandate remained fairly consistent. It was to create reports and programs for national planning with respect to both natural resources and human concerns and to facilitate coordination of federal, state, and local government. *See* Exec. Order No. 6777 (1934) (“The functions of the Board shall be to prepare and present to the President a program and plan of procedure dealing with the physical, social, governmental, and economic aspects of public policies The program and plan shall include the coordination of projects of Federal, State, and local governments”); Exec. Order No. 7065 (1935) (“[The Committee shall] collect, prepare and make available to the President, with recommendations, such plans, data and information as may be helpful to a planned development and use of land, water, and other national resources, . . . [and shall] consult and cooperate with agencies of the Federal Government, with the States and municipalities or agencies thereof”).

¹⁵⁴ NRC REPORT, *supra* note 16, at 117-35; *see, e.g., id.* at 121 (discussing New England as the “geographical region east of the Hudson Valley,” the “historical region of the Yankee,” the “ethical

planning unfolded within particular federal agencies. The Agricultural Adjustment Administration began to emphasize a “regional approach” to planning given “variation in soils, climate, and surface features, crop and livestock combinations, income by source, relative productivity, accessibility to markets, and other minor factors,” and the Federal Emergency Relief Administration established a Division of Sectional Economic Research in recognition of the fact that “the Nation consists of many economic sections, each of which possesses definite interests and a unique sectional economy.”¹⁵⁵

The period’s most celebrated regional “[p]lanning and [d]evelopment [a]gency” was the Tennessee Valley Authority.¹⁵⁶ Created as a public-private hybrid—a government corporation “clothed with the power of Government but possessed of the flexibility and initiative of a private enterprise,” as FDR put it to Congress¹⁵⁷—the TVA was also a regional novelty, a federal entity that existed in only one area of the country. Moreover, the region was drawn around the Tennessee River Valley and encompassed portions of seven states instead of tracking state lines.¹⁵⁸ Charged with a variety of functions, including water control, power development, and agricultural and industrial development, the TVA was granted substantial autonomy. It was understood to mark a “reversal of the proposition that the incompetence of local government in performing even local area functions justifies much of the transference of power to higher levels of government” and to stand instead for the proposition that “incompetent coordination of functions at Washington forces devolution of powers to quasi-autonomous regional authorities.”¹⁵⁹ If certain local ends required federal intervention, so too might national ends require local intervention.¹⁶⁰ TVA Chairman David Lilienthal thus argued that “[m]odern regionalism . . . rests squarely upon the supremacy of the *national* interest.”¹⁶¹ Recognizing geographical, political, and cultural difference but insisting that “the solution of regional problems and the development of regional resources are *matters of concern to the whole*

region of the New England conscience and of Puritanism,” and the “recreational region of rugged coast, tumbled mountains, crystal streams and lakes, sloping orchards, and white-pine forests”).

¹⁵⁵ *Id.* at 78-79.

¹⁵⁶ *Id.* at 83.

¹⁵⁷ President Franklin D. Roosevelt, President’s Message to Congress Suggesting the Tennessee Valley Authority (April 10, 1933).

¹⁵⁸ NRC REPORT, *supra* note 16, at 84.

¹⁵⁹ FESLER, *supra* note 11, at 96.

¹⁶⁰ For its own self-preservation, moreover, the TVA sought to use a “grass-roots” approach, utilizing “the services of state and local agencies, supplementing and stimulating, not duplicating, their staff or equipment.” DERTHICK, *supra* note 5, at 34.

¹⁶¹ LILIENTHAL, *supra* note 104, at 155.

country,” New Deal regionalism would look to “harmonize regional advancement with the national welfare.”¹⁶²

C. Sectionalism Versus Regionalism

By the time the United States entered World War II, regionalism had gone from being a creed of resistance to “vaster and vaster federal bureaucracies” and the “powers of a centralizing state”¹⁶³ to serving as a tool for expanding the reach of the federal government. If 1920s regionalism was a *cri de coeur* against a growing federal bureaucracy and nationalist impulses, the New Deal’s regionalism was congenial to these developments. As early as the mid-1930s, the limits of interstate cooperation had become apparent; the National Resources Committee, which generally favored multistate collaboration, described the interstate compact as a device sometimes urged by those “who are attempting to avoid any public action at all.”¹⁶⁴ Meanwhile, the federal government was deploying regional accommodations and regional organization to expand its reach.

Regionalism therefore came to exist largely as an aspect of federal governance rather than an exception to it. As Lilienthal’s comments about the TVA and “modern regionalism” suggest, this development entailed both a governance paradigm of regionalism as a component of federal administration and a more theoretical recasting of regionalism as a component of nationalism. The transformation was not a mere inversion of early regionalist impulses, however. If regionalism now served the “national interest,” the national interest was itself understood to be more plural than early regionalists supposed. Moreover, rather than displace the states, the marked expansion of the federal government had gone hand-in-hand with the growth of government more generally. Cooperative federalism pervaded new federal programs, so that the pluralism celebrated within federal administration continued to be filtered through the states.

¹⁶² *Id.*; see also Gordon R. Clapp, *The Tennessee Valley Authority*, in REGIONALISM IN AMERICA, *supra* note 14, at 317, 326 (“The very essence of the TVA idea is a strong faith in this thesis: The whole country benefits as each region builds a stronger economy upon the native characteristics and resources that mark it as a region.”).

¹⁶³ DORMAN, *supra* note 91, at 129 (quoting Vernon Parrington).

¹⁶⁴ NRC REPORT, *supra* note 16, at 48; see *id.* at 51 (suggesting that compacts should not be used when a problem is continuing and there is a need for new administrative “machinery” and “independent planning and autonomous execution”); HAROLD J. LASKI, THE AMERICAN DEMOCRACY 156 (1948) (“[T]he Compact Clause requires something like geological time to achieve results that are desirable.”). Moreover, interest in compacts had followed in part from a restrictive view of the Commerce Clause, see, e.g., NRC REPORT, *supra* note 16, at 48; Frankfurter & Landis, *supra* note 104, which more or less disappeared as a concern following *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

As the New Deal unfolded, a variety of supportive commentators reframed regionalism. Seizing on early suggestions that regions could harmoniously coexist and enrich one another,¹⁶⁵ scholars and public officials began to argue that regionalism might be constitutive of a plural nationalism. If in the 1920s regionalists had responded to perceived centralization and homogenization by valorizing regions over the nation, some regionalists in the 1930s began instead to fold regional pluralism into nationalism. At once advancing and justifying New Deal regionalism, Howard Odum, Harry Moore, Rupert Vance and others insisted on a semantic distinction between “sectionalism” and “regionalism”: while “sectionalism” was a divisive force, “regionalism” was instead integrative and union-bolstering.¹⁶⁶

The fullest expression of this regional aspiration was offered by Odum and Moore after the New Deal was well underway and their studies of the South had contributed to a variety of federal programs.¹⁶⁷ In their 1938 tome, *American Regionalism: A Cultural-Historical Approach to National Integration*, Odum and Moore argued that “regionalism is in reality the opposite of its most common interpretation, namely, localism, sectionalism, or provincialism.”¹⁶⁸ Whereas “sectionalism sees the region first and the nation afterwards,” “regionalism envisages the nation first, making the national culture and welfare the final arbiter.”¹⁶⁹ Regionalism was the cooperative, integrative doppelganger to competitive, divisive sectionalism.¹⁷⁰ Regionalism was also, however, distinct from “‘toxic’ European nationalism.”¹⁷¹ It held out the prospect of national unity while avoiding the specter of totalitarianism or fascism, on the one hand, and the destructive sectionalism of the Civil War, on the other.¹⁷² For Odum and

¹⁶⁵ See *supra* note 109 and accompanying text.

¹⁶⁶ See generally Limerick, *supra* note 9; cf. DANIEL J. ELAZAR, AMERICAN FEDERALISM 137-38 (3d ed. 1984) (distinguishing sectionalism from regionalism on different lines).

¹⁶⁷ See ODUM & MOORE, *supra* note 17.

¹⁶⁸ *Id.* at 14 (emphasis omitted).

¹⁶⁹ *Id.* at 42; see also, e.g., Hedwig Hintze, *Regionalism*, in 13 ENCYCLOPAEDIA OF THE SOC. SCI. 208-09 (1934) (distinguishing regionalism from sectionalism).

¹⁷⁰ Not all contemporaries accepted the distinction:

In discussing the sectional problem, the social scientist is reluctant to use the vocabulary of the historian. The terms *section* and *sectionalism* seem to him too schismatic and contentious for complete acceptance. The scientist wants a scientific term. He wants to escape the taint of war and confusion that hangs about the older words. The words *region* and *regionalism* suit his purpose better.

DAVIDSON, *supra* note 103, at 41. Others embraced the idea but not the vocabulary. For instance, in 1938, the National Folk Festival came to Washington, D.C. with an “Every Section Contributes” header. DORMAN, *supra* note 91, at 253; see also *id.* (quoting FDR’s comment on the festival, “In binding these elements into a national fabric of beauty and strength, let us keep the original fibers intact”).

¹⁷¹ Steiner, *supra* note 91, at 458.

¹⁷² See e.g., ODUM & MOORE, *supra* note 17, at 640 (describing regionalism in part as a motivation to resist the “natural danger of dictatorships”). See generally Kessler, *Administrative Legitimacy*, *supra* note

Moore, regionalism was therefore the best hope of nationalism in a plural society. Whereas Turner had looked backward and cast national development as a story of sectional conflict, Odum and Moore suggested the further development of the country lay in embracing regionalism.¹⁷³

Other commentators similarly found in the New Deal a regionalism that gave the nation pride of place. Lilienthal, for example, argued for a national regionalism that celebrated substantive decentralization and pluralism: “[C]oncern for and supremacy of the national interest distinguishes ‘regionalism’ from ‘sectionalism.’ Under the banner of sectionalism, states throughout our history have combined to support or to oppose federal action. Under the modern concept of regionalism, the federal government acts to meet regional needs to the end that the entire nation may profit.”¹⁷⁴ Odum’s student Rupert Vance reflected that “the regional approach to social analysis has an integrative rather than a divisive function . . . for the region gains its significance only from its relation to a total structure. The relation that regionalism presumes to study is that of parts to wholes.”¹⁷⁵ Not only was the nation logically prior to the region, but regional projects had to be evaluated from a national perspective.

The National Resources Committee’s 1935 report, *Regional Factors in National Planning and Development*—hailed by Donald Davidson as “one of the most amazing reports ever issued by any bureau or committee of the United States government” insofar as it took up “a systematic consideration of the taboo question of sectional stress and conflict”¹⁷⁶—likewise reframed divisive sectionalism as nation-bolstering regionalism.¹⁷⁷ As Davidson’s description

116, at 733 n.65 (“The use of the totalitarian specter both to explain and justify mid-twentieth-century political moderation is something of a leitmotif in recent American historiography.”).

173 ODUM & MOORE, *supra* note 17, at 35 (“The thesis of this volume is that the promise and prospect of the nation in the future is, in another sense, to be found in the substitution of a realistic and comprehensive regionalism for the older historical sectionalism.”); *id.* at 39 (“Here the distinctions are clear between the divisive power of self-seeking sections and the integrating power of co-ordinate regions fabricated into a united whole. The premise of the new regionalism . . . assumes that the United States must not . . . become a federation of conflicting sections but a homogeneity of varying regions.” (emphases omitted)); *see also* THEODORE C. BLEGEN, GRASS ROOTS HISTORY 12 (1947) (“Adding up nonentities, someone has said, is like adding a column of zeros; the result remains zero. Add up regions that lack cultural richness and strength, and you cannot achieve an impressive total in terms of national culture.”).

174 LILIENTHAL, *supra* note 104, at 155-56; *see also id.* at 147 (suggesting that decentralization must entail decisionmaking and not simply “errand boys” in the field); *id.* at 142 (noting the “hazards of overcentralized administration of . . . central powers”).

175 Vance, *The Regional Concept*, *supra* note 101, at 119; *see also* VANCE, HUMAN GEOGRAPHY, *supra* note 93 (arguing that regions allow authentic American cultures to develop).

176 DAVIDSON, *supra* note 103, at 59; *see id.* at 60 (“It is as if the Federal government had given its official sanction to the New Regionalism, and allied itself with that doctrine as a working philosophy in its approach to domestic affairs.”).

177 NRC REPORT, *supra* note 16, at viii (“[T]he ‘Regionalism’ here discussed is not a Balkanization of the United States, but a better organization of our American national purposes—a more effective promotion of the public welfare.”).

suggested, sectionalism haunted the account. The Committee saw regional difference as irrepressible, such that the federal government could either harness the power of regionalism or be undone by it.¹⁷⁸ But the Committee also affirmatively embraced regionalism as constitutive of a richer nationalism. It suggested that regionalism had recently been “recognized as a factor of value and importance in the encouragement of a more varied and richer life for the Nation” and that “the peculiar characteristics, resources, and contributions of the major sections of the country” should be “protected from invasion and suppression by ill-considered and hasty national policies.”¹⁷⁹

Indeed, the Committee disavowed centralization as such; regionalism pressed into the service of such nationalism would be, on its account, “pseudo” regionalism.¹⁸⁰ Even as the report understood regionalism as an instrument of the federal government, it sought to discern regions that might inspire political identity and independent governance. The NRC appreciated that “[n]o citizen of Iowa would . . . readily identify himself with a region consisting of a combination of States such as Louisiana, Oklahoma, Iowa, and Missouri; no Californian ever boasted of living within the Twelfth Federal Reserve District; no Washingtonian of being a resident of the Fourth Procurement Zone.”¹⁸¹ But it insisted that “people do already identify themselves with certain broad sections or regions of the country such as the South, or the Middle West” and regional “divisions can be made so as to delineate areas of such uniqueness that such identifications and areal consciousness will be wellnigh impelling.”¹⁸²

The report’s identification of these individuals by their state citizenship (“no citizen of Iowa,” “no Californian,” “no Washingtonian”) was telling: in embracing Odum’s integrative regionalism, the NRC report also underscored the region’s persistent connection to the states. While many members of the regionalist movement had sought to shore up state power against the federal government, presenting “[g]overnment in the United States . . . as a conflict between the National Government and the States, an encroachment of one upon the other,”¹⁸³ the NRC disavowed this framing. It favored federal

¹⁷⁸ *See id.* at 178 (expressing hope that regional arrangements would “utilize that general sectional loyalty and consciousness which now exists by turning it directly into planning activity” rather than allowing it to develop “into violent back-eddies and swirls of Federal distrust or jealousy”); *see also id.* at ix (noting that fixed regional boundaries might generate conflict while “interlocking regions” might have a “welding effect” and “promote the national solution of intersectional maladjustments”).

¹⁷⁹ *Id.* at 8.

¹⁸⁰ *Id.* at 153-54.

¹⁸¹ *Id.* at 157.

¹⁸² *Id.*; *see also id.* (suggesting that regions for planning should “conform to existing regional consciousness and sentiments”).

¹⁸³ *Id.* at vii.

responses to regional problems but insisted that these must be undertaken in coordination with the states and that the “National and State Governments should supplement, rather than supplant, each other.”¹⁸⁴ Like other planning documents of the era, *Regional Factors in National Planning and Development* advocated state as well as federal action and sought to boost capacity at both levels of government.¹⁸⁵ In addition to suggesting that state, regional, and national identity might be mutually enriching, the report called for federal aid to state planning boards, the encouragement of interstate compacts, and other federal support of interstate collaboration, as well as federal administrative cooperation with the states.¹⁸⁶

* * *

Like much of the New Deal’s regionalism, the NRC’s proposals for full-fledged regional planning never came to fruition. Congress killed the NRC altogether in the early 1940s; well before the Supreme Court handed down *Schechter Poultry* and *Butler*, the National Recovery Administration and the Agricultural Adjustment Administration had been largely disavowed; many other alphabet soup agencies did not long survive; and even the most successful of the regional experiments, the TVA, did not spawn other regional federal corporations despite repeated proposals.¹⁸⁷

If particular regional programs did not last, however, the New Deal’s regional model for extending federal government into new areas of domestic policy persisted. To this day, many federal agencies are organized along regional lines, including the major social welfare and environmental agencies established in the decades after the New Deal.¹⁸⁸ Moreover, the regional offices of federal agencies continue to furnish regional accommodation and to implement federal law in different ways.¹⁸⁹ Especially insofar as this reflects the relatively greater

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 7.

¹⁸⁶ *E.g., id.* at x-xi; see JAMES T. PATTERSON, *THE NEW DEAL AND THE STATES: FEDERALISM IN TRANSITION* 119 (1969) (noting that, by 1937, every state had set up a planning board to receive federal funds, and that this was “a neat example of federalism, with Washington giving the money and states joyfully and inexpensively cooperating”).

¹⁸⁷ *E.g.*, President Franklin D. Roosevelt, Message to Congress on National Planning and Development of Natural Resources (June 3, 1937) (proposing seven regional river basin authorities); see also DERTHICK, *supra* note 5, at 42 (“Almost every year for nearly twenty years after passage of the TVA act, bills were introduced in Congress for authorities in other valleys.”).

¹⁸⁸ See *supra* Section I.B (noting the regional organization of federal agencies including the Department of Health and Human Services, the Department of Housing and Urban Development, and the Environmental Protection Agency).

¹⁸⁹ For example, the EPA’s regional offices differ substantially in the number and type of inspections they make, the enforcement citations they issue, the number and size of penalties they assess, and the manner in which they audit state compliance with laws including the Clean Air Act,

impact of state actors in the field as compared to in Washington, it is as much a legacy of the Great Society as of the New Deal. When federal programs burgeoned again in the 1960s, regional improvisation demonstrated the continuing utility of regions to projects of federal administration but also underscored limits of using regions to transcend federalism.

the Clean Water Act, and the Surface Mining Reclamation Control Act. *See, e.g.*, U.S. GEN. ACCOUNTING OFF., GAO-00-108, ENVIRONMENTAL PROTECTION: MORE CONSISTENCY NEEDED AMONG EPA REGIONS IN APPROACH TO ENFORCEMENT 23 (2000) (“[F]or fiscal year 1998, regional and state inspection coverage for Clean Air Act–related programs ranged from a low of 27 percent of facilities . . . in the Chicago region to a high of 74 percent for facilities in the Philadelphia region.”); SUSAN HUNTER & RICHARD W. WATERMAN, ENFORCING THE LAW 157-98 (1996) (explaining EPA regional offices enforce the National Pollution Discharge System differently); John Brehm & James T. Hamilton, *Noncompliance in Environmental Reporting: Are Violators Ignorant, or Evasive, of the Law?*, 40 AM. J. POL. SCI. 444, 449 n.5 (1996) (finding that accurate Toxics Release Inventory reporting to the EPA varied by region); Daniel A. Farber, *Taking Slippage Seriously: Noncompliance and Creative Compliance in Environmental Law*, 23 HARV. ENVTL. L. REV. 297, 305 (1999) (noting differences in enforcement of federal environmental statutes across states); Art Fraas et al., *EPA’s New Source Review Program: Time for Reform?*, 47 ENVTL. L. REP. 10,026, 10,030 (2017) (discussing regional variation in granting permission to operate electric generating units); Susan Hunter & Richard W. Waterman, *Determining an Agency’s Regulatory Style: How Does the EPA Water Office Enforce the Law?*, 45 W. POL. Q. 403, 415 (1992) (“There are considerable differences in the enforcement vigor of EPA’s 10 regional offices.”); David L. Markell, *The Role of Deterrence-Based Enforcement in a “Reinvented” State/Federal Relationship: The Divide Between Theory and Reality*, 24 HARV. ENVTL. L. REV. 1, 54 (2000) (suggesting that the EPA has not worked to standardize expectations and demands within its regions); Clifford Rechtschaffen, *Promoting Pragmatic Risk Regulation: Is Enforcement Discretion the Answer?*, 52 U. KAN. L. REV. 1327, 1331 (2004) (describing regional differences in EPA enforcement of the Surface Mining Reclamation Control Act during the 1970s); William W. Sapp, *Field Citation Programs: The “Ticket” to Better Environmental Compliance*, 20 COLUM. J. ENVTL. L. 1, 12 (1995) (noting “considerable variation” in regional field citation programs). The Army Corps of Engineers also issues permits in a regionally differentiated manner. *See Owen, supra* note 8, at 97-99 (“[T]he Corps goes to great lengths to tailor . . . permits to state preferences and regional conditions.”). The Department of Homeland Security’s detainer program has been carried out differently across ICE’s field offices, and its Office of Citizenship and Immigration Services regions recognize asylum claims at different rates. *See* Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 374-75 (2007) (finding “dramatic differences” across regions); *Targeting of ICE Detainers Varies Widely by State and by Facility*, SYRACUSE U.: TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, (Feb. 11, 2014), <http://trac.syr.edu/immigration/reports/343/> [<https://perma.cc/55LC-ZER9>] (finding disparities in the number of detainers issued against individuals who had not been convicted of any offense). OSHA regions impose different penalties on employers. *See* U.S. GEN. ACCOUNTING OFF., OCCUPATIONAL SAFETY AND HEALTH: PENALTIES FOR VIOLATIONS ARE WELL BELOW MAXIMUM ALLOWABLE PENALTIES 26 tbl. III.6 (1992) (“Overall, 27 percent of all inspections with a violation had no penalty, but among regions this proportion ranged from 18 to 47 percent.”). And the regional offices of the Centers for Medicaid and Medicare vary in their approaches to investigations and enforcement actions with respect to emergency room treatment, nursing home care, and other matters. *See* OFFICE OF INSPECTOR GEN., DEP’T HEALTH & HUMAN SERVS., THE EMERGENCY MEDICAL TREATMENT AND LABOR ACT 13 (2001) (“The number of EMTALA investigations and their ultimate disposition vary widely by HCFA region”); Charlene Harrington et al., *State Nursing Home Enforcement Systems*, 29 J. HEALTH POL., POL’Y & L. 43, 69 (2004) (observing differences in enforcement patterns among Centers for Medicaid and Medicare regional offices).

III. FROM NATION TO STATE: MANAGING THE GREAT SOCIETY

In the 1930s, regionalism facilitated the development of a substantial federal bureaucracy in a country skeptical of centralization and administrative governance. As the New Deal responded to the political precariousness of federal administration with regional accommodation and organization, however, it embraced territorial pluralism within national policy and created channels for state influence within federal programs. In enabling the federal government to expand its reach, regions also served as conduits for the periphery to influence the center and, more specifically, for state actors to shape federal administration. The regional idea further left open the possibility of new projects of multistate and joint state–federal governance.

During the next regional moment of the twentieth century, the possibilities of state influence within national regionalism emerged more clearly. As in the 1920s and 1930s, regionalism “gained renewed prominence”¹⁹⁰ in the 1960s as states worked together to respond to new challenges and promote shared interests, and the federal government turned to regional organization to manage federal programs. While the regionalism of the 1960s continued to ease the development of a still-burgeoning federal bureaucracy, however, its role in bolstering state resources and capacity became more pronounced. State and federal actors created hybrid regional forms, such as the joint state–federal compact, and the federal government sought to orient its own regional apparatus more deliberately around the states. The federal regionalism that had partially supplanted interstate collaboration during the New Deal yielded in turn to joint state–federal undertakings.

Great Society regionalism was marked by a new appreciation of state–federal integration. Much as they had in the 1920s and 1930s, a variety of state actors advocated regional organization as a means of preserving state power, but now their regional projects sought federal participation; instead of describing the region as a place to forestall federal administration, states treated it as a place to harness federal assistance, particularly grants-in-aid. Consistent with this view of jointness as potentially state-empowering, the constitutional concerns about regional state–federal administration flipped from their New Deal versions: detractors no longer questioned whether the federal government was exceeding its powers, but instead asked whether state–federal hybridity gave too much control to the states at the expense of the federal government.

¹⁹⁰ U.S. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, MULTISTATE REGIONALISM 7 (1978) [hereinafter ACIR, MULTISTATE REGIONALISM].

A. Hybrid Administration

Looking back over the 1960s, the Advisory Commission on Intergovernmental Relations (ACIR) argued that it had been “an era of experimentation with new institutional forms to meet broad development problems transcending State and substate jurisdictional boundaries.”¹⁹¹ Although this period is probably better recognized for the most significant expansion of federal administration since the New Deal, ACIR called attention to the “unprecedented reliance on Federal–multistate regional instrumentalities.”¹⁹² In response to “administrative, political and fiscal difficulties” concerning economic development and natural resources, in particular, government officials and commentators regarded distinct state and federal solutions as inadequate, and “the Federal–multistate partnership concept emerged as a popular formula.”¹⁹³

This partnership appeared most prominently in the DRBC, which was created in 1961 to settle disputes over the allocation of the river’s water and to develop the river’s resources,¹⁹⁴ and the Appalachian Regional Commission (ARC), which was created in 1965 to foster economic development in a depressed region.¹⁹⁵ Each commission joined a single federal representative with the governors of each affected state to form a hybrid state–federal body.¹⁹⁶

¹⁹¹ *Id.* at 209.

¹⁹² *Id.*

¹⁹³ *Id.* at 169; *see id.* (“Common to all of these recent regional efforts was the view that the traditional interstate compact approach involving only the participating States was inappropriate or inadequate for certain program purposes, and that the Federal–single State relationship did not cover sufficiently the interstate ramifications of these functional concerns.”).

¹⁹⁴ Delaware River Basin Compact, Pub. L. No. 87-328, 75 Stat. 688, 688 (1961).

¹⁹⁵ Appalachian Regional Development Act of 1965, Pub. L. No. 89-4, § 2, 79 Stat. 5, 6.

¹⁹⁶ The DRBC includes the governors of Delaware, New Jersey, New York, and Pennsylvania. § 14.22, 75 Stat. at 713. The ARC includes the governors of Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. § 403, 79 Stat. at 22.

Regional commissions for river basin planning and economic development were also adopted on a nationwide basis in 1965. The Public Works and Economic Development Act of 1965 created Title V Commissions, loosely based on the Appalachian Regional Commission, to enable “the Federal government, in cooperation with the States, [to] help areas characterized by substantial and persistent unemployment and underemployment and relatively low income levels to take effective steps in planning and financing their public works projects and economic development.” ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 59; Public Works and Economic Development Act of 1965, Pub. L. No. 89-136, § 101, 79 Stat. 552, 552-53. The same year, Congress also created Title II River Basin Commissions operating on a regional basis through state–federal cooperation. Water Resources Planning Act of 1965, Pub. L. 89-80, 79 Stat. 244, 246-47. *See generally* ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 53-136 (discussing Title V and Title II Commissions); DERTHICK, *supra* note 5, at 108-56 (same). Neither the Title V nor Title II Commissions garnered the support or funding of the DRBC or ARC, and President Reagan ultimately disbanded both.

The impetus for both the DRBC and the ARC came from governors, whose proposals can fruitfully be seen as post–New Deal variants of Frankfurter and Landis’s argument for interstate adjustments.¹⁹⁷ Regionalists of the 1920s and 1930s had called for state collaboration to preserve state power, insisting that if the states did not work together, they would inevitably cede their governance prerogatives to the federal government.¹⁹⁸ By the 1960s, it was indisputable that the federal government had assumed these prerogatives. Now, the region promised continued vitality for the states insofar as they joined not only with one another but also with the federal government.¹⁹⁹ If state–federal cooperation had a decidedly federal–power–enhancing flavor in the 1930s, by the 1960s it could be turned toward state survival. Updating the “states must put up or shut up” logic of W. Brook Graves,²⁰⁰ Frank Grad argued in 1963:

An emphasis on “states’ rights” and a narrow emphasis on “local home rule” misses the mark entirely. An approach to problems of regional dimensions can only be in terms of larger units—and this leaves only two major alternatives: federal action, or interstate action with federal participation when necessary. The choice is largely up to the states.²⁰¹

In their place, more discrete regional commissions modeled on the DRC and ARC have emerged. Federal–state compacts have been adopted for the Susquehanna and Alabama-Coosa-Tallapoosa river basins, *see* ZIMMERMAN, *supra* note 21, at 249, and economic development commissions have been charted for the Lower Mississippi Delta and the Northern Great Plains, *see* EUGENE BOYD, CONG. RESEARCH SERV., RL33076, FEDERAL REGIONAL AUTHORITIES AND COMMISSIONS: THEIR FUNCTION AND DESIGN 15–17, 25–26 (2006). More recently, the Food Conservation and Energy Act of 2008, Pub. L. No. 110–234, 122 Stat. 923, 1481, created a new group of regional development bodies. *See* 40 U.S.C. §§ 15731– 5733 (2012) (establishing the membership of the Northern Border Regional Commission, the Southeast Crescent Regional Commission, and the Southwest Border Regional Commission).

¹⁹⁷ *See supra* notes 114–119 and accompanying text.

¹⁹⁸ *See supra* Section II.A.

¹⁹⁹ *See, e.g.*, Edmund G. Brown, *How to Put the States Back in Business*, HARPER’S MAG., Sept. 1964, at 99, 99–100 (arguing, as Governor of California, that the state’s interest “requires preservation of the power and mechanics of federal cooperative activity” and calling for “federal legislation creating formal regional structures within which states may take joint action”).

²⁰⁰ *Supra* note 121 and accompanying text.

²⁰¹ Frank P. Grad, *Federal-State Compact: A New Experiment in Cooperative Federalism*, 63 COLUM. L. REV. 825, 851 (1963); *see also id.* at 851–52 (noting that Frankfurter and Landis wrongly anticipated a vast array of regional interstate compact machinery for electric power but had been correct to regard compacts as the most flexible device for addressing regional problems). If Grad echoed Frankfurter and Landis’s belief that interstate adjustments could preserve a role for states, he also gestured to a state-centric view of Odum and Moore’s nationalist regionalism:

Whether such a system of federal-state compacts will succeed in the effective resolution of broad, region-wide problems, while bridging the gap in effective state participation in the formulation of policy, will depend on the states’ maturity to assume this new role. The states will fail in this effort if they regard compacts like the Delaware River Basin Compact as an affirmation of a narrow concept of state

Governors in the Delaware River Basin and Appalachia recognized “interstate action with federal participation” as a way to preserve state authority while channeling federal resources to their areas. The DRBC founders’ concerns were principally administrative. They had been frustrated by the need both to resort to litigation over water rights among the states and to work with a number of different federal agencies with jurisdiction over the area.²⁰² Wanting to ensure a state role in any regional development body—in contrast to the purely federal TVA—but also to have federal representation so that the body would have complete control over water resources development in the area—in contrast to a traditional interstate compact, like the Colorado River Compact—these officials proposed a novel joint state–federal compact.²⁰³ The ARC was likewise initiated by governors who appreciated that a continuing role for state government depended on integration with the federal government. For these Appalachian governors, such integration meant, specifically, increasing federal aid to their depressed region.²⁰⁴ Regional development, the governors argued, was impossible without federal aid, but states wanted to distribute the federal funds.²⁰⁵

The constitutional discourse around regionalism shifted during this period in a manner consistent with governors’ advocacy for state–federal

sovereignty. They may succeed if, along with the assertion of legitimate interests of their own, they regard their role as historic, independently functioning parts of a regional polity and of a national union.

Id. at 854–55.

²⁰² See ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 101 (noting litigation among New Jersey, New York, and Pennsylvania over water rights); DERTHICK, *supra* note 5, at 47–53.

²⁰³ Federal officials had participated in interstate agreements previously, as Justice Frankfurter noted in *West Virginia ex rel. Dyer v. Sims*. See 341 U.S. 22, 27–28 (1951) (“Not only was congressional consent required, as for all compacts; direct participation by the Federal Government was provided in the President’s appointment of three members of the Compact Commission.”). But the DRBC was the first joint state–federal compact and was widely understood to mark something new. In the words of two contemporary commentators, “For the first time anywhere in the United States, a major interstate basin is to be served by a governmental agency which is at once a part of the government of each of the affected states and the United States Government.” DERTHICK, *supra* note 5, at 47 (quoting Frederick L. Zimmerman & Mitchell Wendell, *New Horizons on the Delaware*, 36 ST. GOV’T 157, 157 (1963)). These commentators celebrated the unified program that would replace “the competition, overlapping, duplication and jurisdictional no man’s lands which have characterized the separate efforts of a multitude of local, state and federal agencies.” *Id.*

²⁰⁴ See DERTHICK, *supra* note 5, at 76 (noting that while the founders of the DRBC “set out to create an organization,” the founders of the ARC “set out to create a program of federal spending for a depressed region,” although their organization ultimately came “to be valued for its own sake”).

²⁰⁵ See ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 17–24. See generally Andrew Isserman & Terance Rephann, *The Economic Effects of the Appalachian Regional Commission: An Empirical Assessment of 26 Years of Regional Development Planning*, 61 J. AM. PLAN. ASS’N 345 (1995) (measuring the effects of ARC programs on 391 counties and suggesting that these programs facilitated regional economic development, with Appalachia growing significantly faster than its control group in income, earnings, population, and per capita income).

hybridity. When the National Resources Committee advocated joint state–federal compacts in 1935,²⁰⁶ there was considerable uncertainty about whether the Commerce Clause would support a federal role in such agreements. Indeed, the NRC advocated interstate compacts (without federal participation) to work around limitations on federal power in areas of national and regional concern: “The interstate compact may be a useful instrument when the Federal Government finds itself with insufficient authority to deal with a regional or national problem . . . [When] the commerce clause is held not to cover the situation, the interstate compact may be the way out.”²⁰⁷ In the intervening years, however, dual federalism had been firmly interred, the commerce power appeared more or less plenary, and a constitutional federalism objection was no longer salient.²⁰⁸

Instead, in the 1960s, concerns about the constitutionality of hybrid bodies came from federal executive agencies worried about the diminishment of federal authority. For instance, the Department of the Interior argued that the proposed DRBC was unconstitutional because it would require the federal government to yield some of its powers to “a third form of government” and would operate river basins “under sort of an Articles of Confederacy.”²⁰⁹ Although the Department of Justice concluded that the arrangement was likely constitutional, it suggested that the President and Congress should cautiously evaluate “the scheme contemplated by the Compact in the light of the political scheme envisioned by the Constitution itself.”²¹⁰ And the Bureau of the Budget objected that the proposed ARC

²⁰⁶ See NRC REPORT, *supra* note 16, at x (“It is suggested, for serious consideration, that in some classes of compacts requiring continuous administration there should be Federal participation.”); see also JANE PERRY CLARK, *THE RISE OF A NEW FEDERALISM: FEDERAL-STATE COOPERATION IN THE UNITED STATES* 72 (1938) (“If the interest of the federal government is important enough, it may even enter a compact itself as a full-fledged participant.”).

²⁰⁷ NRC REPORT, *supra* note 16, at 50.

²⁰⁸ See, e.g., Edward S. Corwin, *The Passing of Dual Federalism*, 36 VA. L. REV. 1 (1950).

²⁰⁹ DERTHICK, *supra* note 5, at 51 (quoting Secretary of the Interior Stewart Udall).

²¹⁰ As the Office of Legal Counsel observed:

[T]he Compact does not clearly violate any specific provisions of the Federal Constitution. The Constitution is silent with regard to federal adherence to an interstate compact; it neither endorses nor proscribes a hybrid commission as a mechanism for achieving joint federal-state objectives In short, if Congress and the President find this compact an appropriate means for promoting and protecting the national interest, we believe it unlikely that the federal government would find itself barred by a judicial finding of unconstitutionality. But, the President and the Congress have constitutional responsibilities also, and it is incumbent upon them to consider the scheme contemplated by the Compact in the light of the political scheme envisioned by the Constitution itself.

Memorandum from Nicholas deB. Katzenbach, Assistant Att’y Gen., Office of Legal Counsel, to the Honorable Frederick G. Dutton (Apr. 25, 1961), *quoted in* DERTHICK, *supra* note 5, at 51 n.10.

would be unconstitutional insofar as it allowed governors, not subject to presidential direction and control, to “participate in the direction and control of a Federal agency.”²¹¹ Although many of these constitutional objections were met with administrative fixes, the authority of the state commissioners expanded over time. The ARC, especially, grew more state-focused as initial compromises designed to assuage federal executive officials wilted in practice and were ultimately removed in legislative reauthorizations.²¹²

That the objections to the DRBC and ARC proposals came from federal executive officials, in particular, suggested a final feature of the era’s regionalism: regions were perceived as tools for allocating authority not only between state and federal governments, but also within the states or, especially, the federal government. When governors proposed the DRBC, for instance, they recognized joint state–federal action as a means of disciplining the federal executive branch as well as ensuring a continuing role for the states. State officials had been frustrated by the multiplicity of federal agency jurisdiction, and the attendant multiplicity of federal agency views, when it came to managing the river basin. Believing that “the Federal Government

Subsequent Department of Justice opinions showed greater comfort with federal–state compacts. *See, e.g.*, *Applicability of Compact Clause to Use of Multiple State Entities Under the Water Resources Planning Act*, 4B Op. O.L.C. 828, 830 (1980) (concluding that agreements between the federal government and the states do not require congressional consent under the Compact Clause). The hybrid form nonetheless continues to raise constitutional and administrative law questions. *See, e.g.*, *New York v. U.S. Army Corps of Eng’rs*, 896 F. Supp. 2d 180, 197–98 (E.D.N.Y. 2012) (noting “multiple difficult issues, including . . . whether the DRBC is a federal agency . . . [or] the presence of a federal officer on the DRBC, and the support and assistance federal agencies give to the DRBC, are sufficient to ‘federalize’ the DRBC’s actions”); O’Connell, *supra* note 76, at 896 (discussing *New York v. U.S. Army Corps of Engineers*).

²¹¹ Jill M. Fraley, *Stealth Constitutional Change and the Geography of Law*, 4 DREXEL L. REV. 467, 477 (2012) (quoting Harold Seidman, Assistant Director for Management and Organization); *see also id.* (quoting Seidman’s objection that “a limited number of State governors would be accorded authority with respect to Federal programs for which they could not be held responsible or accountable”). *But cf.* *Officers of the United States Within the Meaning of the Appointments Clause*, Op. O.L.C., 2007 WL 1405459, at *20 (“[S]tate officers ordinarily do not possess delegated sovereign authority of the federal Government, even when they assist in the administration of federal law. Thus, the Appointments Clause ordinarily does not apply to them.”).

²¹² Most notably, the ARC was not initially authorized to make expenditures; it was an advisory and planning body that would propose spending projects to federal agencies. In the 1967 amendments, however, the ARC was made a grant-in-aid administrator and was authorized to make expenditures, although as a lingering constitutional safeguard, funds were appropriated to the President (who would provide them to the federal cochairman) rather than directly to the Commission. *Appalachian Regional Development Act Amendments of 1967*, Pub. L. No. 90-103, § 214, 81 Stat. 257, 263. In 1998, this presidential role was removed and funds were authorized to be appropriated directly to the ARC. *Economic Development Administration and Appalachian Regional Development Reform Act of 1998*, Pub. L. No. 105-393, § 217, 112 Stat. 3596, 3622.

can be controlled only by itself,” they insisted on federal participation in the compact to “coordinate and integrate the programs of the Federal agencies.”²¹³

This gubernatorial proposal of regional interagency coordination had roots in the work of the National Resource Committee, which had argued that there was “a special responsibility on the Federal Government to set its own house in order by insuring the careful coordination of its own agencies . . . in any area, so that the Federal powers can more effectively mesh in with those of the other governments in the area.”²¹⁴ And interagency coordination would become a prominent theme of the federal government’s more instrumental turn to regionalism in the ensuing years, particularly during the Nixon Administration.²¹⁵ But here, in the proposal for a joint state–federal compact, it was the states that expressed concern about a lack of federal agency coordination. And their proposal for getting the federal government’s “house in order” was to have a single federal representative who might speak for Washington, rather than joining together various agency officials in the field. Although federal multiplicity persisted, the states counted it a victory when nineteen federal agencies relinquished authority over the river basin upon the creation of the DRBC.²¹⁶

If the DRBC suggested that regional organization might coordinate federal agency action through consolidation, the ARC suggested it might also redistribute authority within the states. As Martha Derthick noted in 1974, “The commission has emphasized the importance of enhancing the governor’s power, consistent with theories of governmental reform that have prevailed in Washington in the 1960s and early 1970s Elected chief executives are widely believed to need strengthening in relation to functional specialists”²¹⁷ Governors themselves were not necessarily as interested in the

²¹³ DERTHICK, *supra* note 5, at 65 (quoting Delaware River Basin Compact, H.R. 310, 87th Cong. 7 (1st Sess. 1961)). As New Jersey Governor Robert B. Meyner put it:

If you leave us as four states in a Compact, you are leaving us chasing around from [federal] agency to [federal] agency to get the job done. We think . . . that if you adopt this Compact, there will be one person appointed by the President who can coordinate these agencies, and at least get them to take a position.

Id.

²¹⁴ NRC REPORT, *supra* note 16, at vii.

²¹⁵ See *infra* notes 226–238 and accompanying text.

²¹⁶ O’Connell, *supra* note 76, at 872; see *About DRBC*, DELAWARE RIVER BASIN COMM’N, <http://nj.gov/drbc/about/> (last visited Oct. 13, 2017) (noting that the DRBC was intended to replace “some 43 state agencies, 14 interstate agencies, and 19 federal agencies [that] exercised a multiplicity of splintered powers and duties within the watershed”).

²¹⁷ DERTHICK, *supra* note 5, at 102; see also ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 49 (noting the limited role of state legislatures).

commission form as such proponents hoped,²¹⁸ but the ARC's vision of state–federal executive collaboration in the region anticipated further developments.

B. *In Search of Intergovernmental and Interagency Coordination*

When President Lyndon Johnson signed the ARC into law, as the first Great Society program enacted by the 89th Congress, he celebrated it as “the truest example of creative federalism in our times.”²¹⁹ Although Johnson was likely more skeptical of the ARC than this endorsement let on,²²⁰ his association of the region with successful intergovernmental relations was suggestive. The ARC showcased regional organization as a means of negotiating increasingly complex relations between the federal government and the states, an issue that preoccupied both the Johnson and Nixon Administrations.

State–federal relations had become particularly complicated given the dramatic increase in grants-in-aid in the 1960s. As the Great Society extended the federal presence in areas including education, welfare, health, and the environment, federal programs tended to confer funds on states to achieve

²¹⁸ See DERTHICK, *supra* note 5, at 102 (“The commission’s own evaluation found . . . the Governors have not fully capitalized on the general management potential of the program.”). *But see* U.S. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, IMPROVING FEDERAL GRANTS MANAGEMENT A-53 44 (1977) [hereinafter ACIR, FEDERAL GRANTS] (“A number of governors were quoted as particularly valuing the gubernatorial control over Appalachian funds.”).

²¹⁹ President Lyndon B. Johnson, Remarks upon Signing the Appalachia Bill, 1 PUB. PAPERS 271 (Mar. 9, 1965) (“Originated by the Governors of the Appalachian States, formed in close cooperation with the Federal Executive, approved and enacted by the Congress of all the people, this is the truest example of creative federalism in our times.”).

²²⁰ See Fraley, *supra* note 211, at 477-80. The ARC concept first found support from President Kennedy following his primary victory in West Virginia. After Kennedy’s assassination, President Johnson was persuaded that “here was a good way for him to get into the South, a way to find common ground with Southern governors and do something for the South, completely outside the racial issue.” DAVID M. WELBORN & JESSE BURKHEAD, INTERGOVERNMENTAL RELATIONS IN THE AMERICAN ADMINISTRATIVE STATE: THE JOHNSON PRESIDENCY 138 (1989) (quoting William L. Batt, Jr., head of the Area Redevelopment Administration). Johnson also worried that Pennsylvania’s Governor William Scranton, a potential Republican presidential candidate, might use the administration’s failure to act to his advantage. *See id.* at 138-40.

The political forces pushing for a regional commission in Appalachia have ensured the ARC’s survival. When President Reagan attempted to eliminate the ARC, arguing that it served “no national economic purpose but instead cater[ed], at taxpayer’s expense, to local and regional political interests,” those same political interests—represented in part by conservative Republican senators from the region—thwarted his plan. Ben A. Franklin, *Despite 20 Years of Federal Aid, Poverty Still Reigns in Appalachia*, N.Y. TIMES (Aug. 11, 1985), <http://www.nytimes.com/1985/08/11/us/despite-20-years-of-federal-aid-poverty-still-reigns-in-appalachia.html?pagewanted=all> (last visited Oct. 18, 2017). President Donald Trump’s proposal to kill the ARC will likely continue to meet a similar fate. *See, e.g.*, Alana Abramson, *President Trump’s Budget Proposes Eliminating This Commission. 95% of Counties It Helps Voted for Him*, TIME (May 24, 2017), <http://time.com/4793315/donald-trump-budget-appalachian-regional-commission/> [https://perma.cc/WV9J-KS8Z] (discussing Trump’s budget proposal to eliminate the ARC).

their objectives. Grants-in-aid increased roughly threefold in both number and amount during this decade.²²¹ The programs were also administratively complex: “Creative federalism . . . required several federal agencies to cooperate among themselves and jointly with state and local governments on a single project.” Moreover, “considerable overlapping and duplication existed within functional areas: HUD, USDA, and EDA provided grants and loans for water and sewer work; HEW, Labor, HUD, Agriculture, Commerce, and OEO all made education and training grants”²²² The heavy reliance on grants-in-aid therefore gave rise to new coordination difficulties not only between the federal government and state and local governments, but also within the federal government itself.

Regions appeared to offer new hope for interagency and intergovernmental coordination alike. Just as states had proposed hybrid commissions, recognizing that successful state governance depended on federal assistance, the federal government likewise recognized that the success of its programs hinged on collaboration with, and capacity-building within, the states.²²³ Moreover, ties between the federal government and individual states often appeared inadequate. Like his New Deal predecessors, President Johnson was struck by the “irrationalities of present State and local jurisdictional boundaries” when it came to “problems of unusual magnitude: mass education, hard core poverty . . . , air and water pollution, transportation.”²²⁴ Because such jurisdictional irrationality was also manifest within federal administration, the Johnson Administration’s advocacy for a “creative federalism” that would more flexibly

²²¹ See TIMOTHY CONLAN, FROM NEW FEDERALISM TO DEVOLUTION: TWENTY-FIVE YEARS OF INTERGOVERNMENTAL REFORM 6 (1998) (noting that the number of federal grant programs increased from 132 to 379 and federal aid dollars increased from \$7 billion to \$24 billion); Deil S. Wright, *Intergovernmental Relations: An Analytical Overview*, 416 ANNALS AM. ACAD. POL. & SOC. SCI. 1, 10 (1974) (“Federal grants jumped in dollar magnitude from \$4.9 billion in 1958 to \$23.9 billion in 1970.”). Some of these funds bypassed the states and went directly to local governments.

²²² LARRY BERMAN, THE OFFICE OF MANAGEMENT AND BUDGET AND THE PRESIDENCY, 1921–1979, at 80–81 (1979); see also DERTHICK, *supra* note 5, at 158–59 (quoting Bureau of Budget Deputy Director Phillip S. Hughes as informing Congress that the federal government was playing “a role in many communities and most States which did not exist 10 or even 5 years ago: it acts as a catalyst for joint attacks on common problems” and it “becomes an active partner in these cooperative programs, through the common effort of several Federal agencies on a specific project within an individual community”).

²²³ See, e.g., Intergovernmental Cooperation Act of 1968, Pub. L. No. 90-577, 82 Stat. 1098 (1968) (offering assistance to states to “achieve the fullest cooperation and coordination of activities among the levels of government”); WELBORN & BURKHEAD, *supra* note 220, at 199–207 (discussing the federal government’s emphasis on strengthening state and local government); cf. Beer, *supra* note 18, at 18 (suggesting that “the programs of the professional bureaucratic complex . . . created the intergovernmental lobby” as state politicians became aware of the programs’ value).

²²⁴ Fraley, *supra* note 211, at 469 (quoting President Johnson and Budget Director Charles Schultze).

respond to cross-jurisdictional problems²²⁵ envisioned, among other things, a change to the federal bureaucracy: the harmonization of federal regions.

Federal regional harmonization was not a new proposal. Recognizing that more than 100 different regional schemes for federal agencies had come into use by 1935, the National Resources Committee had suggested unifying the federal government's regional approach, and the Brownlow Committee that led to the creation of the Executive Office of the Presidency likewise endorsed such regional streamlining.²²⁶ As this lineage suggests, and as I explore elsewhere, the project of regional alignment was central to arguments for presidential control over the bureaucracy.²²⁷ Yet this project had fallen to the side as other aspects of the executive reorganization were adopted.²²⁸ When the Johnson Administration revived the proposal, it had devolutionary import even as it retained its utility with respect to presidential control.²²⁹ Instead of treating the federal region as a place to transcend the states, the proposed regional realignment sought to tailor federal regions more consistently to state borders. If a creative federalism was necessary to achieving the national ends of the Great Society, the proposal implied, federal administration would have to bend more toward the states.²³⁰

Although federal regions were not reconfigured under Johnson, President Nixon instructed in 1969 that the agencies responsible for most of the nation's grants-in-aid should adopt common regional boundaries and regional office

225 See President Lyndon B. Johnson, Remarks at the University of Michigan, 1 PUB. PAPERS 704, 706 (May 23, 1964) (arguing that the solution to problems such as poverty "does not rest on a massive program in Washington, nor can it rely solely on the strained resources of local authority" but instead requires "new concepts of cooperation, a creative federalism, between the National Capital and the leaders of local communities").

226 See NRC REPORT, *supra* note 16, at vii, 29; PRESIDENT'S COMM. ON ADMIN. MGMT., REPORT OF THE COMMITTEE WITH STUDIES OF THE ADMINISTRATIVE MANAGEMENT IN THE FEDERAL GOVERNMENT 30 (1937).

227 See Jessica Bulman-Pozen, Area and Presidential Administration (unpublished manuscript) (on file with author).

228 See Reorganization Act of 1939, Pub. L. No. 76-19, §§ 1-12, 53 Stat. 561, 561-64 (1939) (creating the Executive Office of the President), *superseded by* Act of Sept. 6, 1966, Pub. L. No. 554, §§ 901-906, 80 Stat. 378, 394-96 (1966).

229 See, e.g., A Final Report by the President's Task Force on Government Organization, The Organization and Management of Great Society Programs 5 (June 15, 1967) (Indiana University Libraries) (on file with author) (proposing standardized regions, with regional offices run by "strong regional line executives" responsible for "the full range of functions commanded by the corresponding Presidential deputy in Washington" and suggesting that "[l]ines of operating authority and responsibility should run directly between the Presidential deputy in Washington and his general regional executive subordinates, and not between the functional representatives of specialized bureaus, as is now so frequently the pattern").

230 See generally WELBORN & BURKHEAD, *supra* note 220, at 237-38 (considering "why the Johnson presidency did not administer more Great Society programs as national programs, without attempting to involve the states and local government").

locations.²³¹ Justifying this reorganization as a matter of “rationalization, coordination, and decentralization,” the presidential statement suggested that regional standardization would facilitate the devolution of power from the federal government to the states.²³² In addition, Nixon created Federal Regional Councils, comprising agency representatives, to coordinate federal efforts in the field.²³³ He argued that these councils would “make it possible for the Federal Government to speak consistently and with a single voice in its dealings with States and localities, with private organizations, and with the public.”²³⁴ This single voice would not come from a lone federal representative, as in the hybrid ARC and DRBC bodies, but would emerge from the integration of multiple agencies in the field. The structure of the Federal Regional Councils, in particular, suggested a different agenda not lost on contemporary commentators: Nixon’s attempt to amplify the power of the White House vis-à-vis the bureaucracy. Much of the regional “coordination” that was sought was “the insertion of the presidency” into agency operations.²³⁵

231 Nixon, Common Regional Boundaries, *supra* note 46, at 256 (creating common boundaries for “the Department of Labor; the Department of Health, Education, and Welfare; the Department of Housing and Urban Development; the Office of Economic Opportunity; and the Small Business Administration”). Nixon originally described eight regions, but he added two more a few months later. Richard M. Nixon, Statement on the Realignment of Regional Boundaries of Certain Federal Agencies (May 21, 1969). The Office of Management and Budget, which was charged with implementing the directive, codified the ten regions in a circular in 1974. OMB, CIRCULAR NO. A-105, *supra* note 46. Although OMB rescinded the Circular in 1995, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, RESCISSION OF OMB CIRCULARS, 60 Fed. Reg. 15,171 (Mar. 22, 1995), a number of agencies continue to use the standard regions, *see supra* Section I.B.

232 Nixon, Common Regional Boundaries, *supra* note 46, at 256; *cf.* ACIR, MULTISTATE REGIONALISM, *supra* note 190, at 3-4 (noting that “the proliferated pattern of field administration under the Roosevelt Administration bespoke a different philosophy of Federal power than the ten uniform Federal regions being utilized by the Nixon Administration” insofar as the former approach “tends to compartmentalize Federal agencies, fracture consistent Federal field administration and discourage uniform State-local inputs into Federal programs while the latter tends to do the opposite”).

233 Exec. Order No. 11,647, 37 Fed. Reg. 3167 (Feb. 10, 1972). The 1972 executive order formally established Federal Regional Councils for each of the ten standard regions; the councils included the regional directors of relevant domestic agencies, which controlled roughly 90% of grants-in-aid, with representatives from OMB authorized to participate in any deliberations, and a chairman chosen by the President. *See* William H. Kolberg, *The New Federalism: Regional Councils and Program Coordination Efforts*, in ASPA, NEW FEDERALISM, *supra* note 73, at 52. Subsequent executive orders expanded both the membership and mandate of the Federal Regional Councils. Exec. Order No. 12,149, 44 Fed. Reg. 43247 (July 20, 1979); Exec. Order No. 11,892, 41 Fed. Reg. 751 (Dec. 31, 1975); Exec. Order No. 11,731, 38 Fed. Reg. 19903 (July 23, 1973).

234 Nixon, Common Regional Boundaries, *supra* note 46, at 257; *see also* Exec. Order No. 11,647, *supra* note 233 (“The proper functioning of Government requires the development of closer working relationships between major Federal grant-making agencies and State and local government and improved coordination of the categorical grant system.”).

235 Kolberg, *supra* note 233, at 54; *see, e.g.*, Harry N. Scheiber, *Redesigning the Architecture of Federalism—An American Tradition: Modern Devolution Policies in Perspective*, 14 YALE L. & POL’Y REV. 227, 289 (1996) (“[T]he so-called Nixon reforms . . . consisted of a set of strong executive initiatives to effect concentration and centralization of power in the hands of the President and his immediate circle.”).

Even in this, however, the proposal depended rather heavily on federalism and devolution. Recognizing that the President needed allies, the regional realignment sought to form a “vertical alliance of generalists from Washington down through the federal regional offices to statehouses and city halls.”²³⁶ By empowering state executives, the Administration might achieve ends frustrated by Congress and agency specialists. That Nixon’s regional plan cast the states as instrumental to presidential ambition underscored the enduring, though evolving, relationship between regionalism and federalism across the twentieth century. While the Federal Regional Councils failed in relatively short order and were disbanded,²³⁷ the state-focused approach to federal regions persisted, and states have continued to exercise greater influence on federal agencies’ regional offices than on D.C. headquarters.²³⁸

If interstate collaboration had largely yielded to federal action in the New Deal era, Great Society projects revealed just how much the federal turn to regionalism relied upon the states. As new pressures were placed on administration in the 1960s, the region was used to integrate the states more fully into federal programs. The dominant prior approaches to regional governance—interstate coordination and federal administrative divisions—were also partially

236 DERTHICK, *supra* note 5, at 180; *see* Kolberg, *supra* note 233, at 52 (arguing the Federal Regional Council system was established to “better coordinate and relate the objectives of these [federal] programs to the general ends of governors, mayors, and executives of the other units of general purpose local government”); Richard M. Nixon, Letter About the Formation of Federal Regional Councils, Jan. 22, 1971, PUB. PAPERS 49, 50 (1971) (“[O]ne of my priority aims is to establish a more effective partnership between the States and the Federal Government.”); *cf. supra* notes 217–218 and accompanying text (noting the governor-empowering aspiration of the ARC).

237 President Reagan disbanded the FRCs in 1983 after restructuring them. Exec. Order No. 12,314, 46 Fed. Reg. 38,329 (Jul. 22, 1981) (reorganizing the FRCs); Exec. Order No. 12,407, 48 Fed. Reg. 7717 (1983) (eliminating “a mechanism for interagency and intergovernmental coordination which is no longer needed”).

238 *See, e.g.,* HUNTER & WATERMAN, *supra* note 189, at 161 (suggesting that state governments exert an independent impact on NPDES enforcement); DENISE SCHEBERLE, FEDERALISM AND ENVIRONMENTAL POLICY 193–98 (rev. ed. 2004) (exploring the relationship between state and regional officials in the implementation of six environmental programs); David M. Hedge, *A Spatial Model of Regulation*, 21 AM. POL. Q. 387, 405 (1993) (“[S]tate actors are able to significantly influence the actions of federal authorities and, in doing so, limit federal control.”); David M. Hedge & Saba Jallow, *The Federal Context of Regulation: The Spatial Allocation of Federal Enforcement*, 71 SOC. SCI. Q. 786, 789 (1990) (“Within a federal system, federal regulation will vary geographically as regulatory officials fashion enforcement strategies that respond to each state’s political and economic milieu as well as regional differences in the federal agency’s internal dynamics.”); Owen, *supra* note 8, at 97–99 (documenting how state preferences inform Clean Water Act permitting decisions); John T. Scholz & Cheng-Lung Wang, *Cooptation or Transformation? Local Policy Networks and Federal Regulatory Enforcement*, 50 AM. J. POL. SCI. 81, 93 (2006) (concluding that local institutions “transform” the enforcement of NPDES water permits); John T. Scholz & Feng Heng Wei, *Regulatory Enforcement in a Federalist System*, 80 AM. POL. SCI. REV. 1249, 1262 (1986) (finding OSHA enforcement procedures respond significantly to state-level political differences); John T. Scholz et al., *Street-Level Political Controls Over Federal Bureaucracy*, 85 AM. POL. SCI. REV. 829, 830 (1991) (investigating the influence of state elected officials on federal bureaucracies).

supplanted by hybrid state–federal undertakings, which have assumed renewed importance, and new shape, in the early years of the twenty-first century.

IV. TOWARD A NEW POLITICS OF AREA

The legacy of New Deal and Great Society regionalism remains strong today. Federal administration is largely regional in structure, and particular innovations of each period, including the TVA and the ARC, live on.²³⁹ New regional approaches have also emerged. In response to some of the concerns that have long motivated regional argument—fragmentation, jurisdictional mismatch, and the attendant quest for greater intergovernmental and interagency coordination—contemporary regional solutions largely eschew formal organization and instead posit the region as a site of nonhierarchical, flexible collaboration among state, federal, and other actors. In brief, today’s regionalism has been assimilated to the day’s reigning governance concept: the network.

Although the network metaphor has been exhausted, it anticipates a development we might term “regionalism without regions”: collaborations among state and federal actors that need not involve contiguous areas. Just as regional improvisation has responded to governance challenges of past decades, nascent developments suggest a new variant responsive to today’s polarized partisanship. Regionalism without regions represents both the revival and transformation of the political sectionalism that has always informed American regionalism but that slipped behind an administrative veneer for much of the twentieth century.

A. *A Space for the Network*

In the early years of the twenty-first century, the network metaphor pervades writing about government and governance.²⁴⁰ Instead of hierarchical, formal

²³⁹ See *supra* Part I (cataloging contemporary regional forms); *supra* notes 189, 238 (noting variation among, and state influence on, regional divisions of federal agencies).

²⁴⁰ For examples of the governance network metaphor in the public administration literature, see ROBERT AGRANOFF, *MANAGING WITHIN NETWORKS* 23–34 (2007); Hugh Hecl, *Issue Networks and the Executive Establishment*, in *THE NEW AMERICAN POLITICAL SYSTEM* 87 (Anthony King ed., 1978); and CHRISTOPHER KOLIBA ET AL., *GOVERNANCE NETWORKS IN PUBLIC ADMINISTRATION AND PUBLIC POLICY* (2010). In legal writing, the governance network is associated with democratic experimentalism and new governance. See, e.g., Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998); Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342 (2004). Networks also feature prominently in writing about global governance, e.g., ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004); the European Union, e.g., *EXPERIMENTALIST GOVERNANCE IN THE EUROPEAN UNION: TOWARDS A NEW ARCHITECTURE* (Charles F. Sabel & Jonathan Zeitlin eds., 2010); and much else, see David A. Bell, *This is What Happens When Historians Overuse the Idea of the Network*, *NEW REPUBLIC* (Oct. 25, 2013), <https://newrepublic.com/>

organizations, commentators focus on more voluntary coordination among interdependent actors from all levels of government as well as the private and nonprofit sectors.²⁴¹ Insofar as the network metaphor pervades contemporary writing, it is unsurprising that it appears in studies of regionalism.²⁴² But the region also does particular work for the network idea. In its very lack of constitutional and institutional determinacy, the region provides a home for the network. With territorial form but no necessary connection to either state or federal government, the region offers areal concreteness with jurisdictional openness.

The state–federal hybridity of past regional developments persists in this space, but it aspires to greater fluidity. While the Great Society’s revival of regionalism sought to integrate state and federal actors through joint commissions, for example, contemporary scholars and officials have grown more skeptical of autonomous regional entities.²⁴³ Still in search of “the elusive goal”²⁴⁴ of intergovernmental and interagency coordination, they instead tend to advocate—and to celebrate in existing projects—flexible, modular, interjurisdictional cooperation.²⁴⁵

article/114709/world-connecting-reviewed-historians-overuse-network-metaphor [https://perma.cc/368H-9JFS] (discussing the prevalence of “the controlling metaphor of the digital age: the ‘network’”).

²⁴¹ See, e.g., Laurence J. O’Toole, Jr., *Treating Networks Seriously: Practical and Research-Based Agendas in Public Administration*, 57 PUB. ADMIN. REV. 45, 45 (1997) (“Networks are structures of interdependence involving multiple organizations or parts thereof, where one unit is not merely the formal subordinate of the others in some larger hierarchical arrangement.”).

²⁴² See, e.g., Jonathan Cannon, *Checking in on the Chesapeake: Some Questions of Design*, 40 U. RICH. L. REV. 1131, 1131 (2006) (noting the “decentralized network character” of the Chesapeake Bay Program); Jody Freeman & Daniel A. Farber, *Modular Environmental Regulation*, 54 DUKE L.J. 795, 837 (2005) (suggesting a modular conception of the agency as “embedded in a network of relationships with other agencies”); Bradley C. Karkkainen, *Collaborative Ecosystem Governance: Scale, Complexity, and Dynamism*, 21 VA. ENVTL. L.J. 189, 242 (2002) (arguing that the Chesapeake Bay Program includes “less formal networks of interpersonal and interagency relationships, and rich patterns of coordinated activity that cross and re-cross formal institutional lines”); cf. DOUGLAS REICHERT POWELL, CRITICAL REGIONALISM 4 (2007) (“[R]egion must refer not to a specific site but to a larger network of sites.”).

²⁴³ See, e.g., Freeman & Farber, *supra* note 242, at 910 (“One could imagine . . . the formation of a collection of new, autonomous legal entities, correctly geared to the scale of a given environmental problem or geographic area and designed to replace existing agencies The political, legal, and economic costs of replacing existing bureaucratic structures with such entities seem overwhelming.”).

²⁴⁴ ACIR, FEDERAL GRANTS, *supra* note 218, at 146.

²⁴⁵ Freeman and Farber’s modular conception, explored in their study of the CalFed Bay-Delta Program, entails: (1) seeking to “overcome regulatory fracture through flexible coordination within and across government, and between public agencies and private actors”; (2) adapting form to function; (3) relying on agreement-based decisionmaking; (4) facilitating social learning through collaborative processes; (5) using an adaptive process that generates new information and integrates it into decisionmaking; and (6) promoting accountability through “informal controls and broad stakeholder participation.” Freeman & Farber, *supra* note 242, at 798-800; see also Dorf & Sabel, *supra* note 240.

The integration of public and private actors is an important, and fraught, aspect of these networks that I do not address in this Article. See, e.g., Richard B. Stewart, *Administrative Law in the Twenty-First Century*, 78 N.Y.U. L. REV. 437, 451-52 (2003) (“The network strategy deliberately blurs the traditional distinction between public and private in favor of a cooperative fusion The network is not a legally accountable entity.”); cf. *infra* notes 304-306 and accompanying text.

The most ambitious regional network to date, the Chesapeake Bay restoration effort, illustrates the contrast to past regional approaches. If the TVA and the DRBC exemplify commitments of New Deal and Great Society regionalism, respectively, the Chesapeake is an early twenty-first century analog. Like its predecessors, it is a regional response to a body of water that runs through multiple states and to some attendant problems of fragmentation and overlapping jurisdiction. But while the TVA is a federal instrumentality,²⁴⁶ and the DRBC is a hybrid state–federal commission,²⁴⁷ the Chesapeake program is a continually changing partnership among a large number of federal, state, and local government actors, as well as nongovernmental institutions. Both the composition and the approach of the Chesapeake project distinguish it from its regional progenitors.

First, the Chesapeake program’s participants are far more numerous and diverse than those of bodies like the DRBC or ARC. This “highly elaborated, networked form”²⁴⁸ combines not only governors, the D.C. mayor, and the EPA Administrator in an echo of Great Society commissions, but also twenty additional “federal agency partners,” twenty-one state legislators, a citizens advisory committee, a local government advisory committee, a scientific advisory committee, state administrative officials, and numerous other NGO and academic institutions, which are “organized into committees, goal implementation teams, workgroups, and action teams.”²⁴⁹

Second, all participants in the Chesapeake effort take for granted the overlap of state and federal jurisdiction (largely because of the cooperative federalism structure of the Clean Water Act), even though particular responsibilities may be lodged with one government or the other.²⁵⁰ But they

²⁴⁶ See *supra* notes 156–162 and accompanying text.

²⁴⁷ See *supra* Section III.A.

²⁴⁸ Cannon, *supra* note 242, at 1132.

²⁴⁹ See *How We’re Organized*, CHESAPEAKE BAY PROGRAM, <http://www.chesapeakebay.net/about/organized> [<https://perma.cc/NUZ9-UZFC>]. In its earliest days, the program more closely resembled a Great Society regional body. The governors of Maryland, Pennsylvania, and Virginia, the mayor of D.C., the EPA Administrator, and the chair of the Chesapeake Bay Commission (comprising twenty-one state legislators) signed a bare-bones agreement in 1983 to protect the Bay. See *Chesapeake 2000*, CHESAPEAKE BAY PROGRAM (June 28, 2000), http://www.chesapeakebay.net/channel_files/19193/chesapeake_2000.pdf [<https://perma.cc/C7UP-Q4LZ>]. This group, which became the Chesapeake Executive Council, largely replicated the structure of regional precedents like the DRBC—a hybrid regional body composed of state and federal actors. But it subsequently created various advisory committees to incorporate private expertise and mechanisms of public representation and accountability into its partnership, as well as adding new member states (Delaware, New York, and West Virginia).

²⁵⁰ Trade groups, however, argued that the EPA was exceeding its powers. The Third Circuit rejected their arguments. See *Am. Farm Bureau Fed’n v. EPA*, 792 F.3d 281, 304 (3d Cir. 2015) (“[A]s here, once an agency is operating in the weeds of a statute that obviously requires federal oversight of some state functions, we will not require subordinate clear statements of congressional intent every time an interpretation arguably varies the usual balance of responsibilities between federal

do not equate jurisdiction with capacity. The program was therefore designed from the start as a flexible, “institutionally fungible, overtly experimental effort,” and, as it has developed, the roles and responsibilities of the actors involved have changed.²⁵¹ States have responded to prompts from local, federal, and private actors, and vice versa; new working groups and committees have been generated; and each iteration of planning has gotten more specific as participants seek to implement lessons from past experience. The federal government, in particular, has grown more involved over time, but with the support of the states.²⁵² In 2009, President Obama signed an executive order creating a Federal Leadership Committee to coordinate the efforts of various federal agencies participating in Bay restoration,²⁵³ and the Committee’s strategy report was later adopted by the six Bay states in a new agreement.²⁵⁴ The EPA also promulgated a Bay-wide Total Maximum Daily Load rule that built on existing state watershed implementation plans while also requiring a new round of such state plans to be developed in collaboration with EPA’s Region 3.²⁵⁵ Although the Chesapeake program has precipitated a more substantial role for the federal government over time, then, this role continues to depend heavily on state and local actors and to continually shift decisionmaking among these actors.²⁵⁶

A related example of the contemporary regional network is the “megaregion,” though it remains more an analytic concept than a regulatory tool. In contrast to the Chesapeake Bay Program, megaregions—“networks

and state sovereigns.”); *id.* at 310 (“Congress made a judgment in the Clean Water Act that the states and the EPA could, working together, best allocate the benefits and burdens of lowering pollution.”).

²⁵¹ Jamison E. Colburn, *Coercing Collaboration: The Chesapeake Bay Experience*, 40 WM. & MARY ENVTL. L. & POL’Y REV. 677, 698-99 (2016).

²⁵² See Oliver A. Houck, *The Clean Water Act Returns (Again): Part I, TDMLS and the Chesapeake Bay*, 41 ENVTL. L. REP. 10208, 10216 (2011) (“The first thing to strike the eye about the Obama Administration’s approach to the Chesapeake Bay is the extent to which the federal government assumes responsibility One cannot imagine such a shift in tone and tactics without at least tacit support from the states in the equation.”).

²⁵³ The Federal Leadership Committee is chaired by the EPA Administrator and includes representatives from the Departments of Agriculture, Commerce, Defense, Homeland Security, the Interior, and Transportation. Exec. Order No. 13,508, 3 C.F.R. § 201 (2009). It is required to consult with the Bay states “to ensure that Federal actions to protect and restore the Chesapeake Bay are closely coordinated with actions by State and local agencies in the watershed.” *Id.* at § 204.

²⁵⁴ *Chesapeake Watershed Agreement*, CHESAPEAKE BAY PROGRAM (June 16, 2014), http://www.chesapeakebay.net/documents/FINAL_Ches_Bay_Watershed_Agreement.withsignatur-es-HIres.pdf [https://perma.cc/T7B8-3659].

²⁵⁵ See, e.g., Letter from Shawn M. Garvin, Reg’l Adm’r, EPA Region 3, to L. Preston Bryant, Va. Sec’y of Nat. Resources & Chair of Principals’ Staff Comm. of the Chesapeake Exec. Council (Dec. 29, 2009), https://www.epa.gov/sites/production/files/2015-07/documents/bay_letter_1209.pdf [https://perma.cc/KV99-Q8PW] (discussing the EPA’s accountability framework for state watershed implementation plans).

²⁵⁶ See, e.g., CHESAPEAKE BAY PROGRAM EXEC. COUNCIL, STATE OF THE CHESAPEAKE BAY PROGRAM 16-17 (2017), http://www.chesapeakebay.net/documents/25110/cbp_biennial_strategy_review_system_state_of_the_program_report_6.5.17.pdf [https://perma.cc/8SX6-PGW2].

of metropolitan centers and their surrounding areas, connected by existing environmental, economic, cultural, and infrastructure relationships”²⁵⁷—exist across the country rather than in one particular area (though the distinction should not be overstated given that each megaregion exists in only one location and the Chesapeake approach finds analogs elsewhere in the country, including the Great Lakes region).²⁵⁸ Most accounts suggest approximately ten megaregions in the United States today.²⁵⁹ As with the Chesapeake collaboration, in the megaregion, commentators and some government officials find the possibility of cooperation and mutual learning among federal, state, local, and nongovernmental actors concerning a variety of issues.²⁶⁰

Though it is often presented as a novelty,²⁶¹ the megaregion has deep roots in regionalist thought. In the 1920s, the *Regional Plan of New York and its Environs* argued that the growth of the city demanded a movement away from a single metropolis toward a larger, integrated area,²⁶² and in 1967, following the publication of Jean Gottmann’s, *Megalopolis*, the Regional Plan Association sought to orient planning around the chain of cities running from Boston to Washington.²⁶³ A half-century on, the Regional Plan Association is again at the forefront of the push to recognize megaregions.²⁶⁴ In its contemporary guise, however, the megaregion includes two twenty-first century

257 CATHERINE L. ROSS, CTR. FOR QUALITY GROWTH AND REG’L DEV., MEGAREGIONS: LITERATURE REVIEW OF THE IMPLICATIONS FOR U.S. INFRASTRUCTURE INVESTMENT AND TRANSPORTATION PLANNING 1 (2008), https://www.fhwa.dot.gov/planning/megaregions/reports/megaregions_report_2008/megaregions.pdf [<https://perma.cc/6BSK-G2DG>].

258 See *GLRI Action Plan II*, GREAT LAKES RESTORATION INITIATIVE, <https://www.glr.us/actionplan/index.html> [<https://perma.cc/BC35-YLA3>].

259 See, e.g., *Megaregions*, AMERICA 2050, <http://www.america2050.org/content/megaregions.html> [<https://perma.cc/2CMA-ZQDK>] (“Most of the nation’s rapid population growth, and an even larger share of its economic expansion, is expected to occur in 11 megaregions: large networks of metropolitan regions, each megaregion covering thousands of square miles and located in every part of the country.”).

260 See, e.g., *id.* (“The recognition of megaregions enables cooperation across jurisdictional borders to address specific challenges experienced at this scale.”).

261 For instance, the megaregion is the sort of region Khanna celebrates in his “new map of America.” Khanna, *supra* note 3.

262 COMM. ON REG’L PLAN OF N.Y. & ITS ENVIRONS, *supra* note 96. Some contemporary regionalists, including Lewis Mumford, objected to the urban focus of such regionalism. See, e.g., Elizabeth Baigent, *Patrick Geddes, Lewis Mumford and Jean Gottmann: Divisions over “Megalopolis”*, 28 PROGRESS HUM. GEOGRAPHY 687 (2004); John L. Thomas, *Holding the Middle Ground*, in THE AMERICAN PLANNING TRADITION 33, 33-35 (Robert Fishman ed., 2000).

263 REG’L PLAN ASS’N, THE REGION’S GROWTH 26-37 (1967); see *id.* at 36 (“[T]he urban region has lost its boundaries and should be considered an open-ended system, consisting of multi-centered, overlapping, and partially autonomous subunits.”); see also JEAN GOTTMANN, MEGALOPOLIS: THE URBANIZED NORTHEASTERN SEABORD OF THE UNITED STATES 560 (1961) (proposing a megalopolis running from Washington to Boston); Rupert Vance, *Regions*, in REGIONALISM AND THE SOUTH: SELECTED PAPERS OF RUPERT VANCE 312 (1982) (arguing in 1968 that “the high population density of the megalopolis” demands “regional-urban planning of a type as yet undeveloped”).

264 See, e.g., REG’L PLAN ASS’N, *supra* note 263.

modifications: it is situated in the global economy, and it relies upon federal participation.²⁶⁵ In an echo of Great Society regionalism, commentators frame the federal government's participation not as a threat but as a necessary spur to local capacity-building and coordination.²⁶⁶ Suggesting their own appreciation of this role, various federal actors, including particularly the Department of Transportation, have embraced the megaregion as a planning and development tool.²⁶⁷ Going forward, megaregions could assume a more prominent role in policymaking, or they could be dismissed as a passing fad. Much depends on the politics of today's regionalism.

B. *Regionalism without Regions*

Both the Chesapeake Bay program's current workings and the federal government's interest in megaregions can be traced to Barack Obama's presidency, our most regionalist presidency since FDR's tenure. Although the Obama Administration's regional focus followed from a variety of sources, a critical factor was partisan polarization, which has pushed state and federal actors alike into new alliances. The regional sorting of the Democratic and Republican Parties over the past half century has, ironically, allowed party to supersede region, so that today's most powerful collaborations among state and federal actors need not involve contiguous areas. As partisanship overshadows place in contemporary governance, regionalism has begun to appear without regions.

²⁶⁵ See, e.g., DOT, *Megaregions*, *supra* note 86 ("Megaregions are the infrastructure and economic footprint in the global economy. Megaregions provide a sustainable future through multi-scalar, cross-boundary solutions. Megaregions allow us to think globally, coordinate regionally and act locally.")

²⁶⁶ This is of a piece with a broader recognition in the localism literature that the federal government may facilitate regional collaboration. See, e.g., Nestor M. Davidson, *Fostering Regionalism: Comment on The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities*, 38 FORDHAM URB. L.J. 675, 676 (2011) (arguing that the federal government may foster regionalism); Asha Pelman Ostrow, *Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution*, 122 YALE L.J. ONLINE 187, 200 (2013), <https://www.yalelawjournal.org/forum/emerging-counties-prospects-for-regional-governance-in-the-wake-of-municipal-dissolution> [<https://perma.cc/X648-PUDB>] ("[T]he federal government is uniquely situated to encourage regional collaboration."); cf. Lisa T. Alexander, *The Promise and Perils of "New Regionalist" Approaches to Sustainable Communities*, 38 FORDHAM URB. L.J. 629, 633 (2011) (discussing a federal program's "efforts to incentivize voluntary forms of participation and collaboration between multijurisdictional stakeholders" in facilitating regional planning).

²⁶⁷ See DOT, *Megaregions*, *supra* note 86. In embracing the megaregion, these federal actors have also adopted the network approach, with "peer exchange" among representatives of federal agencies (including federal regional offices), state and local governments, planning commissions, and nongovernmental institutions driving the work thus far. See, e.g., TRANSP. PLANNING CAPACITY BUILDING PEER PROGRAM, U.S. DEP'T OF TRANSP., *Megaregions Planning for MPOs and Partners: A TPCB Peer Exchange* (2012), https://www.planning.dot.gov/documents/MAG_Megaregions_Planning_for_MPOs_TPCB_Peer_Report_May%202012.pdf [<https://perma.cc/PY34-DMVL>].

1. Contemporary Partnerships

Although the term “regional” may not have not been “on the lips of the populace” during President Obama’s tenure, as Donald Davidson suggested of the New Deal years, it figured quite prominently “in the blue prints of the experts” and in executive orders.²⁶⁸ In addition to expressly regional undertakings like the Chesapeake Bay and Great Lakes restoration initiatives, a number of the Obama Administration’s most ambitious national projects involved regional components. The Clean Power Plan effectively incorporated the northeastern Regional Greenhouse Gas Initiative (“RGGI”) and encouraged additional regional cooperation among multiple states;²⁶⁹ the Affordable Care Act provided for states to create regional health exchanges (although states have not done so);²⁷⁰ and the Race to the Top program funded groups of states in their efforts to assess student learning.²⁷¹ Less high-profile initiatives, like the Sustainable Communities interagency partnership, likewise adopted regional approaches.²⁷²

As during past regional moments,²⁷³ the regional impulses of the Obama Administration likely flowed from many sources, including new thinking about governance, the need to work within the interstices of existing complicated federalism arrangements, and a desire to quell opposition and claims of presidential overreach. But the significance of political polarization demands particular attention. Facing stiff Republican opposition in D.C., the federal executive branch sought allies where it could, and this generally meant Democratic states.²⁷⁴ The jurisdictional indeterminacy and interdependence captured by the network metaphor found partisan instantiation: by coordinating with ideologically aligned groups of states, the President and federal agencies could govern more successfully than they could through purely federal approaches.²⁷⁵ Even projects like the Chesapeake Bay

²⁶⁸ DAVIDSON, *supra* note 103, at 58-59.

²⁶⁹ See Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662, 64,838 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60) (explaining the “particular value of multi-state plans and multi-state coordination, which allow states to implement a plan in a coordinated fashion with other states”).

²⁷⁰ 42 U.S.C. § 18031(f)(1) (2012).

²⁷¹ See DEP’T OF EDUC., Overview Information; Race to the Top Fund Assessment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010, 75 Fed. Reg. 18,171, 18,171 (Apr. 9, 2010) (inviting consortia of states to develop assessments to track student progress).

²⁷² See *supra* note 87 and accompanying text.

²⁷³ See, e.g., *supra* notes 139-143 and accompanying text (noting various sources of New Deal regionalism).

²⁷⁴ See generally Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 VA. L. REV. 953 (2016).

²⁷⁵ *Id.*; see also Jessica Bulman-Pozen & Gillian Metzger, *The President and the States: Patterns of Contestation and Collaboration Under Obama*, 46 PUBLIUS: J. FEDERALISM 308, 309 (2016) (“National

restoration progressed because partisanship facilitated coordination “by the dominance of an idea”²⁷⁶ shared among the federal administration and mid-Atlantic, Democratic states.²⁷⁷ Meanwhile, administrative concessions to partisan-opposed states sought to minimize their resistance.²⁷⁸

Because many of these concessions were unsuccessful, the Obama years gave rise not only to new partnerships between the federal government and groups of blue states, but also to intense joint state efforts to resist federal policy. Recalling the premise of 1920s regionalists that states could forestall federal governance only by aggregating their powers, groups of red states pooled their resources. Unlike their early twentieth century counterparts, these states were not seeking to obviate the need for federal governance through their own regulatory collaborations; their objective was demolition of proposed or extant federal regulation. But to achieve this end, the states banded together, often enlisting the support of ideologically aligned federal actors as well.²⁷⁹ For example, nine states joined a proposed interstate Health Care Compact that would effectively repeal the Affordable Care Act in their jurisdictions by “restor[ing] authority and responsibility for health care regulation to the member states.”²⁸⁰ With greater success, red state attorneys general from across the country brought legal challenges to federal policies concerning health care, immigration, environmental protection, and more.²⁸¹

policy is increasingly determined by presidentially instigated executive branch action, but it is executive action taken in conjunction with the states.”).

276 LUTHER GULICK, *Notes on the Theory of Organization*, in PAPERS ON THE SCIENCE OF ADMINISTRATION 1, 6 (Luther Gulick & L. Urwick eds., 1937).

277 Like other Obama-era initiatives, the partnership is quite vulnerable under the Trump Administration, although the regional structure of the EPA may provide a buffer.

278 See Bulman-Pozen, *supra* note 274.

279 See, e.g., *Frequently Asked Questions*, HEALTH CARE COMPACT, <https://web.archive.org/web/20151129232727/http://www.healthcarecompact.org:80/faq/> [<https://perma.cc/HV9V-XFK4>] (“Why is one compact better? We believe that having the states united in confronting the federal government is better politically.”).

280 *States Consider Health Compacts to Challenge Federal PPACA*, NAT’L CONF. ST. LEGISLATORS, (Dec. 1, 2015), <http://www.ncsl.org/research/health/states-pursue-health-compacts.aspx> [<https://perma.cc/6KC9-7FFC>]. The compact did not receive federal approval, although it sparked an argument about whether interstate compacts require presidential consent or only congressional consent. See Bulman-Pozen, *supra* note 274, at 1026-27. Texas also proposed an Interstate Compact for Border Security. See Terrence Stutz, *Texas Senate Votes for Interstate Compact to Enforce Federal Immigration Laws*, DALL. MORNING NEWS (May 7, 2015), <http://www.dallasnews.com/news/state/headlines/20150506-senate-votes-to-enforce-federal-immigration-laws-with-interstate-compact.ece> [<https://perma.cc/5Y4C-NBSP>] (reporting that the Texas legislature “approved a bill that would be the first step in establishing the Border Security Interstate Compact”).

281 See, e.g., Brief for State Respondents, *United States v. Texas*, 136 S. Ct. 2271 (2016) (No. 15-674) (challenging Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA)); Opening Brief of Petitioners on Core Legal Issues at 29-78, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Feb. 19, 2016) (challenging the Clean Power Plan); PAUL NOLETTE, *FEDERALISM ON TRIAL: STATE ATTORNEYS GENERAL AND NATIONAL POLICYMAKING IN CONTEMPORARY AMERICA* 168-203 (2015).

The partisan valence of multistate opposition to the federal executive has, unsurprisingly, flipped with the inauguration of President Trump. Now blue states are banding together to sue the federal executive over health care, immigration, environmental protection, and more.²⁸² Their collaborations have also begun to extend to multistate governance. When Trump declared that the United States would withdraw from the Paris Climate Agreement, the Democratic governors of California, New York, and Washington immediately announced a partnership to support the global agreement.²⁸³ Additional blue states have since joined the U.S. Climate Alliance, which seeks to uphold U.S. commitments under the Paris Agreement and to meet the targets of Obama's Clean Power Plan,²⁸⁴ and they are working with hundreds of cities, businesses, and nonprofit organizations.²⁸⁵ In addition, blue city mayors have been trying to pool resources with respect to immigration policy,²⁸⁶ and pundits have even floated a progressive version of the Health Care Compact in the event Obamacare is repealed.²⁸⁷ In these and

282 See, e.g., Plaintiffs' Memorandum in Support of a Temporary Restraining Order, *California v. Trump*, No. 4:17-cv-05895-KAW (N.D. Cal. Oct. 18, 2017) (challenging the Trump Administration's decision to discontinue cost-sharing reduction payments pursuant to the Affordable Care Act); *Hawaii v. Trump*, 2017 WL 4639560 (Oct. 17, 2017) (challenging the third iteration of President Trump's travel ban); Petition for Review, *New York v. U.S. Dep't of Energy* (2nd Cir. Mar. 31, 2017), <https://perma.cc/JS5N-V5UV> (challenging the Department of Energy's decision to delay the effective date of an energy conservation rule); Letter from Eric T. Schneiderman, Attorney Gen. of N.Y., to Kevin S. Minoli, Acting Gen. Counsel, U.S. Env't Prot. Agency, Re: Letter from Administrator Pruitt Advising Governors on Legal Effect of Stay of Clean Power Plan (Aug. 30, 2017) (objecting to the EPA Administrator's guidance regarding the Clean Power Plan).

283 See Michael Greshko, *Map Shows Growing U.S. 'Climate Rebellion' Against Trump*, NAT'L GEOGRAPHIC (June 8, 2017), <http://news.nationalgeographic.com/2017/06/states-cities-usa-climate-policy-environment> [<https://perma.cc/4R4L-BBTF>] ("The same day as Trump's announcement, the states of New York, California, and Washington announced the formation of the United States Climate Alliance.")

284 See UNITED STATES CLIMATE ALLIANCE, <https://www.usclimatealliance.org> (listing member states). All the states involved but two—Massachusetts and Vermont—have Democratic governors, although even those two are better understood as blue states (nearly the bluest of them all) given the composition of the state legislatures, their exclusively Democratic congressional delegations, and the state votes in successive presidential elections. Nonetheless, the force of regionalism is apparent here as well—the only Republican governors to sign on are New Englanders. See *infra* text accompanying notes 292–309 (discussing the evolving relationship between regionalism and partisanship).

285 See "We Are Still In" Declaration, WE ARE STILL IN, <https://www.wearestillin.com/we-are-still-declaration> [<https://perma.cc/2F3S-MQDC>] (listing governments, educational institutions, and businesses agreeing to continue to support climate action to meet the Paris Agreement); Cities Adopt the Paris Climate Agreement Goals, CLIMATE MAYORS, <http://climatemayors.org> [<https://perma.cc/8A4R-4B3P>] (noting nearly 400 mayors committing to uphold the Paris goals).

286 J. David Goodman, *De Blasio and Big City Mayors Try Pooling Their Power Against Trump*, N.Y. TIMES (Dec. 29, 2016), <https://www.nytimes.com/2016/12/29/nyregion/bill-de-blasio-donald-trump-mayors.html> (last visited Oct. 15, 2017).

287 See, e.g., Robert Jackel & Alex Green, *How Treaties Between States Could Keep Obamacare Alive*, ATLANTIC (Feb. 4, 2017) <https://www.theatlantic.com/politics/archive/2017/02/interstate-compacts-save-obamacare/515604/> [<https://perma.cc/NVL7-4N5U>] (suggesting that "progressive

other nascent multistate ventures, copartisanship links states (and other actors) without regard to geographical proximity.

This is today's most significant regional development: a regionalism without regions. To be sure, more geographically defined regional projects persist (although even some of these, like RGGI), have been shaped by partisanship,²⁸⁸ and these partisan projects have a distinct territorial logic. But anyone looking for the force of today's regionalism must contend with the significance of party over place.

2. From Sectionalism to Partisanship

If party has come to overshadow place, an objection to the regionalism frame presents itself immediately: geography defines regionalism.²⁸⁹ Take away areal contiguity, and you may have interstate cooperation, cross-jurisdictional networks, or much else, but not regionalism. Although the objection has force, it is productive to consider this latest development as a species of regionalism rather than a distinct phenomenon.

As an initial matter, the departure from geography is only partial: what I am calling "regionalism without regions" still depends on area insofar as it entails collaboration among partisan-aligned jurisdictions. These jurisdictions (usually states) need not be contiguous, but they are defined physical spaces rather than nonterritorial aggregations of individuals or groups based on perceived affinities of class, race, religion, occupation, or the like. Regionalism without regions continues to rely upon geography and to hew to the logic of territorial representation, even if it scrambles the territory.²⁹⁰ Especially because the unified-area region has always been a malleable form,²⁹¹ the departure may be seen as a matter of degree, not kind.

states" could use interstate compacts to "set up their own multistate health-care programs to fill the gaps created by the federal government").

²⁸⁸ Republican Governor Chris Christie withdrew New Jersey from RGGI. *See supra* note 35. Every Democratic candidate in the 2017 New Jersey gubernatorial primary favored rejoining RGGI. Maddie Hanna & Andrew Seidman, *NJ Candidates for Governor 2017: Issue-by-Issue Comparison*, PHILLY.COM (June 1, 2017), <http://www.philly.com/philly/news/politics/nj/Candidates-for-New-Jersey-Governor.html> [<https://perma.cc/FVN3-J8GD>].

²⁸⁹ *See* notes 16–17 and accompanying text (discussing definitions).

²⁹⁰ *Cf.* ANDREW REHFELD, *THE CONCEPT OF CONSTITUENCY: POLITICAL REPRESENTATION, DEMOCRATIC LEGITIMACY, AND INSTITUTIONAL DESIGN* 145–234 (2005) (considering alternatives to territorial constituency).

²⁹¹ *See, e.g.*, Frankfurter, *supra* note 15, at xvi ("No region, whether natural or cultural, is stable."); Limerick, *supra* note 9, at 96 ("While geography plays a role in their definition, regions are much more the creations of human thought and behavior than they are the products of nature."); D.W. Meinig, *The Continuous Shaping of America: A Prospectus for Geographers and Historians*, 83 AM. HIST. REV. 1186, 1202 (1978) ("[R]egions [are] complex, ambiguous, and changing phenomena. Regions are abstractions, they exist in our minds.").

On a more functional note, moreover, regionalism without regions performs some of the critical work that regional projects have consistently aspired to over the past century. Regionalism has been, first, a means of preserving state vitality in the face of perceived need for larger-scale governance. Today, as in the past, the state is most powerful when it stands with others, but there is no need for it to stand next to these others; proximity is not required for mutual identification or for coordination. Regionalism has also diversified exercises of federal power as it has been incorporated into federal programs. In recent years, party-inflected difference has become a more plausible basis than geography for instantiating pluralism in many national programs.

But these are largely defensive observations. The principal rationale for applying a regionalism lens to these noncontiguous alliances among state and federal actors is that they are the contemporary manifestation of sectionalism.²⁹² Administrative regionalism and political sectionalism have always been closely related—from the placing of Federal Reserve Banks in the credit-poor South, to the New Deal’s appeasement of the white South, to President Johnson’s concern with Appalachian states, to the Obama Administration’s attempted accommodation of coal states in the Clean Power Plan, and much else.²⁹³ The linguistic footwork that Odum and his fellow New Deal regionalists performed to submerge antagonistic sectionalism within harmonious regionalism²⁹⁴ and various regional accommodations by federal agencies have suggested that an administrative pluralism might mute the divisiveness of sectionalism. But allowing regional difference within federal programs has always been at least a partial concession to sectionalism’s force.

In today’s state–federal and state-state partisan collaborations, old sectional patterns are readily apparent: the red coalition is centered in the South, while the blue coalition is anchored by New England and the Pacific West.²⁹⁵ This is unsurprising because, as scholars including Richard Bensele and Nicole Mellow have documented, there are deep “regional sources of

²⁹² I agree thus far with Michael Greve’s characterization: “An increasing number of states have become reliably ‘red’ or ‘blue,’ and those blocs divide sharply over highly salient questions of public policy . . . Partisan, ideological polarization in this geographic, state-level dimension is a form of political sectionalism.” Michael Greve, *Our Polarized, Presidential Federalism*, in PARCHMENT BARRIERS: POLITICAL POLARIZATION AND THE LIMITS OF CONSTITUTIONAL ORDER (Zachary C. Courser et al. eds., forthcoming 2017) (manuscript at 3).

²⁹³ See, e.g., Sarah Binder & Mark Spindel, *Monetary Politics: Origins of the Federal Reserve*, *STUD. AM. POL. DEV.* 1, 10–12 (2013) (“[C]ities in the South had a greater chance of being selected to host a reserve bank than cities in the Northeast.”); *supra* notes 125–138, 220 and accompanying text. See generally FESLER, *supra* note 11, at 123 (“The coin bearing ‘regionalism’ on its face carries ‘sectionalism’ on its reverse side.”).

²⁹⁴ See *supra* Section II.C.

²⁹⁵ See, e.g., Greve, *supra* note 292, at 20 (arguing that under Obama, “[t]he dissident states, by and large, are the states of the old confederacy (along with newcomers like Utah)”).

modern American partisanship.”²⁹⁶ Indeed, the power of these sources to continually shape party politics was on prominent display in the Rust Belt during the 2016 presidential election.²⁹⁷

Even as party and section remain closely connected, however, partisanship has assumed greater force in predicting jurisdictional alignments. In the U.S. Climate Alliance, for example, the blue Northeast (Connecticut, Delaware, Massachusetts, New York, Rhode Island, and Vermont) forms a traditional sectional bloc, but it is joined not only by the Pacific Coast states (California, Oregon, and Washington), but also by Virginia (a former Confederate state blueed by its D.C. suburbs), Minnesota (today’s Midwestern Democratic stronghold), Colorado (a more tenuous, Southwestern blue outpost), and Hawaii (a neighborless blue archipelago), as well as Puerto Rico. The alliance has also found support from the Democratic Governors of still-more sectionally incongruous states including Montana and North Carolina. If clear traces of traditional sectionalism remain, partisanship is the more pressing consideration.²⁹⁸

There is an irony at the heart of the shift from sectionalism to partisanship as a dominant political force: the regional sorting of the Democratic and Republican Parties over the past half century has enabled party to supersede region. For much of the twentieth century, the Democratic Party’s strength in the South meant that both parties were loose, ideologically diverse confederations that encompassed diverse regional interests. Although this became most apparent following FDR’s election, as early as the 1920s, Munro and Turner could note the role of the party as an “elastic band” holding the sections of the country

²⁹⁶ MELLOW, *supra* note 12. Bensel’s account focuses on political economy, while Mellow insists on the importance of both material and cultural sources, but both they and other scholars suggest that “party competition and ideological belief-systems are the epiphenomena of inevitable sectional competition” or regional identification. BENSEL, *supra* note 125, at 17; *see* MELLOW, *supra* note 12, at 20 (“Political economists fail to explain the contemporary cultural divisions that are paramount in political debate Regions remain powerful in American politics precisely because they fuse economic and cultural experiences.”); *see also* EARL BLACK & MERLE BLACK, *DIVIDED AMERICA* 145-207 (2007) (exploring the “regional structure” of presidential and congressional elections).

²⁹⁷ Scholars attentive to sectionalism anticipated key developments in the 2016 presidential contest. *See* Richard Bensel, *Sectionalism and Congressional Development*, in *OXFORD HANDBOOK OF THE AMERICAN CONGRESS* 761, 783 (George C. Edwards III et al. eds., 2011) (suggesting that protectionist demands create stresses within each party’s coalition and that Republicans might move toward trade protection “using nationalist arguments as their justification”); *cf.* MELLOW, *supra* note 12, at 174 (suggesting that pressures of globalization and deindustrialization might yield regional realignments).

²⁹⁸ As the U.S. Climate Alliance underscores, collaborations among cities or involving foreign jurisdictions might be considered part of regionalism without regions, even though this Article focuses on states and the federal government. Incorporating cities into the account seems particularly warranted given the urban/rural mapping of partisanship within blue and red states alike. *See supra* notes 285-286 and accompanying text. *See generally* Resnik et al., *supra* note 38 (exploring translocal organizations of government actors); Larazo Gamio, *Urban and Rural America Are Becoming Increasingly Polarized*, WASH. POST (Nov. 17, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/urban-rural-vote-swing/> [<https://perma.cc/CV22-DJR6>] (tracking voting patterns in urban and rural counties).

together.²⁹⁹ Munro further bemoaned the lack of responsible party government that resulted, impliedly recognizing that there was roughly as much diversity within each party as there was between the two parties.³⁰⁰

As conservative Southern Democrats moved to the Republican Party and liberal Northern Republicans moved to the Democratic Party in the latter half of the twentieth century, however, regional partisan difference declined, and partisanship and ideology became more closely aligned.³⁰¹ With the demise of the Southern Democrat and the Rockefeller Republican also came the end of the party as an elastic band for sectional difference. The lingering sectional character of each party is unmistakable, if fully reversed from a century prior: in particular, the South is Republican territory, while the Northeast is strongly Democratic.³⁰² But the very fact that parties are now cohesive, ideologically-driven entities means they have a power that transcends geography.³⁰³ In the policy decisions and chosen alliances of blue Minnesota and Colorado and their red neighbors Wisconsin and Utah, partisanship trumps place.

The upshot of the regional sorting of parties, then, is a regionalism (largely) without regions. Coalitions of blue or red states spread across the country, and because partisanship is the proximate cause of their collaboration, they evince only a partial sectional logic. To add a further irony, the powerful partisanship driving these coalitions is a “partisanship without parties.”³⁰⁴ The strong party organizations of twentieth-century politics have been “hollowed-out.”³⁰⁵ Instead, contemporary parties constitute “networks” of elected representatives, interest groups, issue activists, PACs and Super PACS, consultants, and more.³⁰⁶ Although radically decentralized in some

299 MUNRO, *supra* note 89, at 138; TURNER, *supra* note 89, at 46.

300 See MUNRO, *supra* note 89, at 150-51 (“To make partyism rational in the United States, there ought to be a division between the Right and the Left . . . But this is hardly to be hoped for in our day. Sectionalism as a basis of American party allegiance is too deeply rooted.”).

301 See EARL BLACK & MERLE BLACK, THE RISE OF SOUTHERN REPUBLICANS 72-113 (2002); DONALD GREEN ET AL., PARTISAN HEARTS AND MINDS 140-63 (2002); Paul Frymer, *Debating the Causes of Party Polarization in America*, 99 CALIF. L. REV. 335 (2011); Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CALIF. L. REV. 273, 287-97 (2011).

302 See MELLOW, *supra* note 12, at 35-37.

303 See generally GREEN ET AL., *supra* note 301; Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077 (2014).

304 Sidney M. Milkis, *The Future of Political Parties*, LIBERTY L. & LIBERTY (Jan. 3, 2017), <http://www.libertylawsite.org/liberty-forum/the-future-of-political-parties/> [https://perma.cc/9YWG-FWN5] (“American politics appears to be shaped currently by the paradoxical relationship between the decline of party organizations and angry partisanship—an unfiltered partisanship without parties . . .”).

305 E.g. Samuel Issacharoff, *Outsourcing Politics: The Hostile Takeover of Our Hollowed-Out Political Parties*, 54 HOUS. L. REV. 845, 845 (2017).

306 E.g., Gregory Koger et al., *Partisan Webs: Information Exchange and Party Networks*, 39 BRIT. J. POL. SCI. 633, 636 (2009) (arguing that a party can be “broadly defined to include its candidates and officeholders; its formal apparatus; loyal donors; campaign workers and activists; allied interest groups; and friendly media outlets”); Richard M. Skinner et al., *527 Committees and the Political Party*

respects, these parties remain cohesive and forceful. Their decentralized structure also facilitates connections among jurisdictions that are not geographically close to one another. Regionalism without regions can thus fairly be said to be sponsored by a partisanship without parties.

Although both party and place continue to shape our politics, the relatively greater force of partisanship affects the map in two readily observable ways. First, there are only two main parties, while any plausible map of American regions contains numerous divisions. There remain regional variations in the Democratic and Republican Parties, but the overall sorting of every state into the D or R column presents a different, and less diverse, map than does a multi-region variant. Second, notwithstanding sectional influences, partisan-affiliated states are often far apart. Most notably, the bluest areas of the country fall on opposite coasts. This has consequences, among other things, for the primary specter associated with sectionalism: secession. Insofar as California cannot take along the Northeast in its bid to leave the Union, party may indeed continue to serve as a sort of geographical “elastic band.”

CONCLUSION

As the recurring efforts to draw new maps of the United States underscore, regions seem more natural than states—organic districts that precede the cartographer’s ruler and persist in spite of it. Yet because regions have no established legal form, efforts at regional governance necessarily involve deliberate acts of political construction. If regions arise from a search to overcome artificial jurisdictional lines, they are themselves manufactured. Because they have been constructed differently over time, moreover, regions illuminate shifting anxieties about state and federal government in particular periods. But the region is not only an analytic tool. Regional projects have critically shaped both state and federal government and the relationship between them.

This Article has focused on regionalism as both a source of resistance to the federal government and an enabler of its growth across the twentieth and early twenty-first centuries. Advocates of state power have turned to the region to address complex problems and resist federal intervention, but architects of the administrative state have likewise turned to the region to

Network, 40 AM. POL. RES. 60 (2012) (suggesting that “[p]olitical parties today can best be understood . . . as webs of relationships between political actors”); see also, e.g., DAVID KAROL, PARTY POSITION CHANGE IN AMERICAN POLITICS 2 (2009) (describing parties as “coalitions of groups with intense preferences on particular issues managed by politicians”); SETH E. MASKET, NO MIDDLE GROUND 41 (2009) (suggesting “a theory of parties that accounts for the coordination of various actors both inside and outside the government”); Kathleen Bawn et al., *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, 10 PERSP. ON POL. 571, 571 (2012) (arguing that parties are “best understood as coalitions of interest groups and activists seeking to capture and use government for their particular goals”).

expand federal bureaucracy. Insofar as regionalism has eased the federal government's entry into new areas of domestic policymaking, the centrifugal, state-empowering impulses of many regional proponents have also been folded into federal programs, and new projects of multi-state and joint state-federal regionalism have arisen. If the regional thesis is state power and the antithesis is national power, the rather durable, albeit shape-shifting, synthesis we have arrived at is mutual state and federal influence through regional organization and collaboration.

Today, that accommodation is generating a regionalism without regions. This partisan-inflected variant reminds us of administrative regionalism's roots in political sectionalism and underscores another perpetual regional paradox, that regions have been both feared as the principal threat to national union and celebrated as a needed font of solidarity in a divided polity.³⁰⁷ Given the intensity of contemporary partisan polarization and the territorial distribution of partisans, regionalism without regions may heighten both this threat and this promise. It has the potential to exacerbate already-fever-pitch-level partisan rancor and divisiveness,³⁰⁸ but it may also foster governance and solidarity amid such division. If most states are too small to engage in ambitious governance projects on their own, for instance, party-linked jurisdictions might work together to achieve shared objectives through state-based collective action.³⁰⁹ In so doing, they might also generate both practical models and constituencies for future federal programs and the sense of shared undertaking that helps bind a polity together. To be sure, this would be a partial solidarity, but it might contribute to, rather than threaten, a larger project of national solidarity given underlying territorial diversity.³¹⁰ Moreover, partisan accommodations for groups of states within federal policy could offer a path to policymaking in polarized conditions, giving concrete form to difference without giving up on the project of national governance.³¹¹ These are

³⁰⁷ See, e.g., Limerick, *supra* note 9, at 103 (“The Federalists feared disunion and saw section as union’s principal threat . . . I feared disunion and saw region as union’s principal ally . . . I was able to see in region a form of loyalty and identification that could cross over the barriers of race, ethnicity, gender, and, most astonishing, class.”).

³⁰⁸ Cf. Shanto Iyengar & Sean J. Westwood, *Fear and Loathing Across Party Lines: New Evidence on Group Polarization*, 59 AM. J. POL. SCI. 690 (2015) (documenting consequences of affective polarization, including animus toward members of the opposing party).

³⁰⁹ See Aziz Z. Huq, *Does the Logic of Collective Action Explain Federalism Doctrine?*, 66 STAN. L. REV. 217, 259-69 (2014) (arguing that collective action justifications for federal power tend to overlook possibilities of state collaboration and coordination).

³¹⁰ See generally THE STRAINS OF COMMITMENT: THE POLITICAL SOURCES OF SOLIDARITY IN DIVERSE SOCIETIES (Keith Banting & Will Kymlicka eds., 2017) (considering what kinds of political communities, institutions, and policies may sustain solidarity in contexts of diversity); BERNARD YACK, NATIONALISM AND THE MORAL PSYCHOLOGY OF COMMUNITY 68-95 (2012) (providing a community-based account of nationalism).

³¹¹ See Bulman-Pozen, *supra* note 274.

aspirations, not assumptions. But they are aspirations that begin from the premise of polarized partisanship instead of denying its force.

In celebrating the study of regionalism, Justice Frankfurter called for consideration of “homogeneous diversities within the nation that do not correspond to the division between the Union and the . . . states.”³¹² Suggesting that the Constitution provided for evolving regional arrangements even though it expressly mentioned only state and federal organs, he insisted that “[t]he vast and variegated resources of a nation lying between the Atlantic and the Pacific . . . were not denied opportunities for resourcefulness in making a unity out of diversities apart from the Union of the states.”³¹³ Regionalism without regions is the most significant current attempt to make “a unity out of diversities” in the space between state and nation. A regional frame helps us to grapple with this nascent and uncertain development, even as it underscores that regionalism is sure to assume yet another shape before long.

³¹² Frankfurter, *supra* note 15, at xv.

³¹³ *Id.* at xvi.