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## **Unpacking Municipal Home Rule: Can California Regionalists and Locals Talk to One Another?**

Enrique R. Silva

*This article focuses on the contemporary home rule discourse in California and how it relates to state-level efforts to promote regional governance and regional planning initiatives. The purpose here is to unpack the contemporary home rule discourse, as represented by a series of articles on home rule that appeared between 1997 and 2001 in the League of California Cities' journal Western City. By unpacking the discourse, the major strains of the argument for home rule are identified. Once identified, the article argues that the foundations of the home rule discourse provide opportunities to evaluate and strengthen the discourse on regionalism and regional governance, perhaps to the benefit of both regional and home rule advocates. Via discourse analysis and the lessons which it uncovers, the article provides a useful lens through which other State-home rule and regional planning debates can be considered critically.*

### **Introduction**

“From its inception, municipal home rule has been primarily directed at freeing cities from irksome legislative control. The movement has always found additional support in the argument that it relieves the state legislature of a burdensome and time-consuming responsibility. It must be obvious that unless cities are given power to provide for their own needs, a prohibition of legislative interference is utterly unworkable. The case for home rule has centred in the incompetence of our state legislatures on the one hand, and the simple wisdom of leaving local affairs to local disposition on the other.”

— Joseph D. McGoldrick (McGoldrick 1933, p. 299)

McGoldrick's impassioned case for home rule in 1933 is one that is echoed among contemporary proponents of home rule in California. The urban-political context under which the contemporary California plea for home rule is being made, however, is very different from the one that inspired McGoldrick. During the last decades of the

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19<sup>th</sup> century and first decades of the 20<sup>th</sup> century, the push for home rule, or the claim for local government autonomy over municipal affairs, successfully took place in a broader national context of government reforms that tried to restrain state legislative powers by enacting legislation that would empower local citizens with the ability to articulate their preferences over institutional forms and functional powers within their local communities (Libonati 1993).

The contemporary California home rule discourse, however, is being articulated in a context where state policymakers are paying greater attention to regional planning initiatives to address issues that include urban sprawl, isolated labor force pools, transportation management, affordable housing, income equity, and urban core revitalization. In this environment, home rule advocates are under attack, as the calls for regionalism contend that the autonomy of municipal governments has not only contributed to current urban-regional problems, but they also act as a barrier for regional planning initiatives. In contrast, home rule advocates are on the defensive because they consider that state legislation, as well as court rulings, have already severely curtailed hard-fought (some would say inalienable) local discretionary powers and therefore their autonomy. Almost irrespective of the debates on regionalism and claims made by proponents of regionalism, home rule advocates today, as in the 1930s, continue to focus on and argue against State intervention in local matters, invoking that “simple wisdom” that local affairs should be left to local disposition.

While home rule’s “simple wisdom” is compelling, in large part because it has deep roots in the United States’ traditions of self-government and liberal democracy, it perpetuates a narrow, static, and particularistic definition of “local,” which ignores the interdependence of municipalities within urban regions. In this light, the home rule discourse not only undermines regional planning initiatives, but it also puts into question whether the local autonomy that home rule advocates are defending actually exists. That is, is the “simple wisdom” of leaving local affairs to local dispositions really simple nowadays? This question is not only relevant to the proponents of home rule, but also to regional planners.<sup>1</sup>

The following article focuses on the contemporary home rule discourse in California and how it relates to State-level efforts to promote regional governance and regional planning initiatives.<sup>2</sup> The purpose here is to unpack the contemporary home rule discourse, as represented by a series of articles on home rule that appeared between 1997 and 2001 in the League of California Cities’ journal *Western City*.

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By unpacking the discourse, I intend to identify the major strains of the argument for home rule and consider whether there are elements in the discourse that could be compatible with the discourse on regionalism.

I argue that the foundations of the home rule discourse provide opportunities to evaluate and strengthen the discourse on regionalism and regional governance, perhaps to the benefit of both regional and home rule advocates. To this end, three questions guided my research:

- 1) What are the principal components of the contemporary home rule discourse in California, as represented by the League of California Cities?<sup>3</sup>
- 2) Are there elements of the home rule discourse that are compatible with the discourse on regionalism?
- 3) Does the fight for home rule provide lessons for proponents of regional planning and governance?

The remainder of the article is organized into five sections. Section II provides a background on the home rule and regionalism debates in California. Section III outlines the article's methodology, focusing primarily on the use (and limits) of discourse theory as an analytical framework for the subject matter. Section IV presents a series of quotes and arguments from *Western City* and analyzes the anatomy of the home rule discourse. Section V considers where there might be points of convergence between the home rule discourse and the regionalist discourse by reviewing segments of the 2002 California Speaker's Commission on Regionalism Report, *The New California Dream: Regional Solutions for 21<sup>st</sup> Century Challenges*. The Speaker's Commission's report is considered the latest and perhaps most publicized strand of the regionalist discourse in California. Section VI is the article's conclusion, which outlines a set of caveats for the proponents of regionalism based on the lessons provided by the home rule discourse and the discourse that could likely emerge from the Speaker's Commission on Regionalism.

### **Background: Challenges to Regionalism & the Home Rule Connection**

#### ***The Challenges to Regionalism in California: Fragmentation***

The preface to *The New California Dream: Regional Solutions for 21<sup>st</sup> Century Challenges*, the report prepared by the State of California Speaker's Commission on Regionalism (the Commission), begins with the following declaration:

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“At the dawn of the 21<sup>st</sup> century, California faces serious challenges to its quality of life, its economy, its commitment to social justice, its environmental legacy, and the legitimacy and effectiveness of its governmental bodies. Though there are innovative and committed public servants and public sector institutions willing and able to address these challenges, many of the fundamental policies and practices that guide the work of the state and local government are from another time. They are inadequate at best and barriers to success at worst.

To regain and sustain the California dream in the years to come, we need a new 21<sup>st</sup> Century regionalism: better policies, practices, and governmental and civic institutions that are aligned to support essential, and promising, regional strategies to produce world-class communities” (Speaker’s Commission 2002, p. 3).

The Commission identified six interdependent challenges for attaining the new 21<sup>st</sup> Century regionalism.<sup>4</sup> One of the challenges is ‘collaborating for effective 21<sup>st</sup> Century governance’, which the Commission defines as the State’s need to reform its governance policies and practices to foster a more collaborative, effective, and accountable, regional stewardship form of governance. The root of this particular challenge is what the Commission considers to be the “hodge-podge of governmental rules, fiscal policies, and institutional frameworks that often discourage regional collaboration, and rarely encourage it” (Speaker’s Commission 2002, p. 20).

The prevalence of “home rule” local governments and the strength of the home rule discourse in California, one can argue, is one major component of the “hodge-podge” of governmental institutional frameworks that acts as a barrier to regional governance initiatives (Rothblatt 1982; Dodge 1996; Lewis 1998; Eigerman 1999; Campbell & D’Anieri 2001; Barbour & Teitz 2001). Fulton succinctly links home rule, regionalism and future development challenges in California by stating that “California’s preference for home rule has given small cities throughout the State a remarkable degree of freedom in shaping their communities, even when those small cities lie in the middle of huge metropolitan areas... California remains highly segregated by race, ethnicity, and income, partly because local control of land use has been wielded in the interests of such segregation” (Fulton 1999, pp. 343-344). Fulton continues this observation by asserting that the assumptions upon which the California planning system is based need to be revisited to achieve more effective planning in the State (Fulton 1999). The Speaker’s Commission on Regionalism can be considered part of this call for reform.

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### Home Rule: An Irrelevant Barrier?

Home rule is both a philosophical-ideological and legal concept. The orthodox home rule ideology posits that local government is a matter of absolute right that carries with it a set of discretionary powers, which cannot be taken away by the State (Libonati 1993).<sup>5</sup> As a legal concept, home rule is, broadly and technically speaking, the power vested in a local government to draft or change its charter and manage its own affairs, subject to the state constitution and general law of the State. Under home rule, state legislative interference in local affairs is presumed to be limited. Within this context, home rule can empower local governments to take initiative, confer immunity on local governments from the reach of state legislation, and instruct state courts to interpret grants of local authority liberally in favor of local discretion (Libonati 1993).

There are claims that California legislation, whether directly or indirectly aimed at curbing municipal powers, has rendered the enforcement of home rule in the state irrelevant. Restrictions on a municipal government's power to levy property taxes under the 1978 Proposition 13 have undermined the principal source of municipal autonomy (Shires 1999; JF Silva and Barbour 1999; JF Silva 2000b). From a legal-constitutional perspective, researchers and legal scholars note that "despite California's home rule tradition, tinkering with the local political structure ultimately remains the state's prerogative. The courts have held that it is 'well established that the state may create, expand, diminish, or totally abolish municipal corporations with or without the consent of its citizens, or even against their protest'" (Lewis 1998, p. 76).<sup>6</sup>

Furthermore, as Barbour and Teitz (2001) argue, the key systems that define our society operate at a regional scale. Consequently, "decisions about regulation or investment are typically made at one level of government, even though their spillover effects impinge on others" (Barbour and Teitz 2001, p. 2). Within this interdependent regional context, one could contend that home rule powers are at best ineffective and municipal autonomy is illusory. In his article "Our Localism: Part I—The Structure of Local Government Law," Briffault quotes G. Clark who stated that "the rhetoric of local autonomy is difficult to take seriously given the overwhelming evidence of the fiscal, political, and judicial domination of local governments by the higher tiers of the state" (Briffault 1990, p. 7).

Nonetheless, despite claims that home rule is legally and practically irrelevant, the concept remains powerful enough within municipalities that it thwarts a range of efforts to promote regional

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governance, as evidenced in the statements made by the Speaker's Commission on Regionalism. Among the sharpest criticism of municipal home rule within the regionalist discourse, however, is that regardless of the power or powerlessness of municipal governments, the defense and promotion of home rule is effectively used to insulate a municipality's parochial interests from broader regional concerns. Home rule can reflect territorial economic and social inequalities and reinforces them with political power. Its benefits accrue primarily to a minority of affluent localities, to the detriment of other communities and to the system of local government as a whole. Moreover, as Briffault argues, home rule "is primarily centred on the affirmation of private values... Localism [e.g., home rule] may be more of an obstacle to achieving social justice and the development of public life than a prescription for their attainment... Given the private focus of local politics, local autonomy may erode rather than enhance the possibility of creating a vigorous public life [at the local and regional levels]" (Briffault 1990, p. 2).

### **Notes on Methodology & Scope of Research**

#### **Discourse Theory: Talk By Itself Matters**

The issue of home rule in California, as in most of the United States, is complex. It not only cuts through many disciplines (e.g., political science, law, history, and sociology), but, more importantly, it manifests itself through diverse media, in multiple fora (e.g., city councils, regional boards, state legislature, and courts), and across key sectoral debates (e.g., fair share housing, open space preservation, and transportation). A truly comprehensive study of home rule would have to cover as many of these different manifestations of the issue as possible. A proxy for the comprehensive approach, however, is tackling the issue by analyzing its discourse, which as Hajer defines is the "ensemble of ideas, concepts, and categories through which meaning is given to a phenomena" (Hajer 1993, p. 45).

Theories on discourse and discourse construction further the post-positivist notion that language is not just a neutral means of communication. Language is a tool that creates or disassembles realities. Understanding narratives within the framework of discourse theory allows the planner to understand and appreciate the power dynamics (between the empowered and disempowered) involved in a given issue. If the power dynamic component of narratives is understood, the planner can be endowed with a powerful analytical tool.

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As Hajer clearly argued, “the linguistic turn [from positivism to postpositivism] potentially provides the policy analyst with useful new tools to analyze how certain relations of dominance are structured and reproduced...the study of discourse opens new possibilities to study the political process of *mobilization* of bias” (1993, p. 45). One infers from Hajer’s statement that the study of discourse is an avenue to develop strategies intended to break policy impasses and thus effect change. Moreover, the identification of bias also points to discourse theory’s potential as a tool to promote equity across a scope of issues and actors.

Before delving into the wealth of information embedded in stories and narrative, discourse theorists provide the planner with a set of caveats. Discourse theorists contend that narratives or statements should not be interpreted solely from the perspective of the actor that casts the discourse, but also from an understanding of the context in which the discourse is fixed or, in the words of Reiner & Schon (1993), “nested”. The context in which a discourse or narrative is nested is laden with competing discourses, constructs, values, and opinions. As Hajer’s paraphrasing of Michael Billig asserts, “to understand the meaning of a sentence or a whole discourse in an argumentative context, one should not examine merely the words within that discourse or the images in the speaker’s mind at the moment of the utterance. One should also consider the positions which are being criticized, or against which a justification is being mounted. Without knowing these counter-positions, the argumentative meaning will be lost” (Hajer 1993, p. 45).

Discourse and the narratives that convey elements of a discourse are acted out and equally transformed through discourse coalitions, actant-networks, and appreciative systems/context shifts (Reiner & Schon 1993). Regardless of the terminology, it is paramount for planners to recognize that these theories attempt to illustrate how space and place are socially constructed and *deconstructed* out of human inter-relations and interaction, and that the shaping of place is the outcome of power struggles between various discourses (Hillier 2001). This is an important point to keep in mind when addressing issues such as regionalism and local governments in California, especially if the former is seen as an attempt to create a new scale of organization and management and the latter is seen as a project to preserve a particular set of ideals.



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**Case Study Approach: The *Western City*'s 1997-2001 Debate on Home Rule and the California Assembly Speaker's Commission on Regionalism Report**

**Home Rule as Presented by the League of California Cities' *Western City***

Research focused on a particular discourse can draw data, information, and insights from a variety of resources, including in-depth interviews, public statements, public documents, print and non-print media records, and journals, among other sources. This article's primary source of information on the contemporary home rule discourse in California was a series of columns that appeared in the League of California Cities' monthly journal, *Western City*, from January 1997 through September 2001. The compilation of columns collected and analyzed for this article is being considered as a case study on home rule, inasmuch as the pieces represent a single on-going debate and set of educational pieces organized by one institution that has made its bias for municipal home rule in California clear. The treatment of the journal articles as a single case study, however, does not ignore the fact that several people with different professional affiliations participated in the debate and provided a range of independent opinions and perspectives on the issue. In this respect, the quotes and observations reproduced in this article from the *Western City* articles will be attributed to their particular author.

Although the debate on home rule in *Western City* has been tracked since January 1997, since the publication of the article "The Case for Home Rule" by Michael Jenkins, the primary source of discourse samples are taken from the 2001 series of columns presented under the title "Home Rule Watch." The titles from the home rule debate in *Western City* that were analyzed for this article are:

- "How the Deck is Stacked Against Citizens Wanting to Self-Govern" by Roberta MacGlashan, *Western City* September 1997,
- "What Home Rule Means to Me" by Chris McKenzie, *Western City*, September 2000,
- Home Rule Watch: "California's Affair with Local Control" by Chris McKenzie, *Western City*, January 2001,
- Home Rule Watch: "Local Control, Some Basic Concepts" by JoAnne Speers, *Western City*, March 2001, and
- Home Rule Watch: "Home Rule in Action: Cities Helping Residents with Utility User's Tax," *Western City*, August 2001.

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### **The California Assembly Speaker's Commission on Regionalism Report**

The California Speaker's Commission on Regionalism's report *The New California Dream: Regional Solutions for 21<sup>st</sup> Century Challenges* (2002) was selected as the primary case study for analyzing and referencing the regional governance and regional planning initiatives discourse. The Commission's report could well be considered among the more cutting-edge samples of the regionalist discourse outside of academia. Certainly, its high profile within the California State government gives the document a level of public exposure equivalent to (if not greater than) the home rule discourse conveyed through *Western City*. The discussion of the report in Section V is not intended to be a thorough analysis of the document. Rather, sections are used to highlight the major areas where the home rule and regional governance discourse seem to converge.

### **Scope and Limits**

The article focuses primarily on the home rule discourse (i.e., the "talk"). Consequently, it does not present a full analysis of the legal underpinnings of home rule, nor of current and past litigation on the matter, which in many respects would represent the concrete actions and manifestations of the discourse. In this respect, the application of discourse theory as the analytical framework of my research attempts to counterweigh this shortcoming.

With regard to the legal aspects of the home rule debate, there is a large body of literature within the legal profession and the various law disciplines that covers additional aspects of the issue. Some of the law literature is covered in this article (e.g., Briffault 1990 and Eigerman 1999), as well as several basic legal concepts and doctrines pertaining to home rule (such as, Dillon's Rule and Cooley Doctrine).

Finally, since the article covers a single, albeit varied, case study of the home rule discourse, it does not pretend to capture the full breadth of the home rule discourse in California, which is likely to be as varied as the different regions and political jurisdictions of the State. Furthermore, with the exception of the Speaker's Commission on Regionalism, my research did not trace the discourse on home rule debate into other arenas such as the California Constitutional Revision Commission and other State or local-level debates (e.g., regional fair share housing in the Bay Area). Despite these limitations, the article's approach and lessons provide a useful lens through which other State-home rule and regional planning debates can be studied, in particular Oregon, Minnesota, and New Jersey where landmark projects and cases

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have been testing the limits of local, regional, and state government relations.

### **Anatomy of the Contemporary Home Rule Discourse**

As discussed in Section II, by the late 1970s and with the advent of Proposition 13, the concept of separation of sources was undermined. It thus follows that local municipal autonomy, if measured by a government's ability to control and guide revenue streams, was weakened, if not severely compromised. Similarly, the growing interdependence of the urban region puts into question a local government's ability to control its internal affairs. Despite these conditions that arguably render home rule powers ineffective, if not illusory, the home rule discourse remains strong. The following section dissects the home rule discourse as projected by the League of California Cities and its magazine *Western City*. The first sub-section dissects the article that is perhaps the most representative of the home rule discourse, "What Home Rule Means to Me" by Chris McKenzie, Executive Director (since 1999) of the League of California Cities. The second sub-section provides a series of quotes that highlight additional components of the discourse.

#### **And Now a Word from our Executive Director...**

Chris McKenzie's editorial "What Home Rule Means to Me" (*Western City*, September 2000, p. 3) begins by invoking Alexis deToqueville's Democracy in America. deToqueville's quote—"the strength of free peoples resides in the local community... without local institutions, a nation may give itself free government, but it has not got a spirit of liberty"—immediately grounds the editorial in the context (albeit an interpretative context) of the U.S.'s founding principles and forges the image that the local community is the nerve center of freedom and liberty.

McKenzie's plea for home rule is conveyed in the form of a story: "I chose the subject of this column because of two experiences I had this summer" (2000, p. 3). His first experience was a reading of a legal brief supporting the case of local communities in a California Department of Finance lawsuit that was before the California Court of Appeals. The second experience was his lobbying efforts for the inclusion of the term "home rule" in the League of California Cities' (LCC) mission statement that was discussed in a Mayors and Council Members Executive Forum.

The importance of the *County of Sonoma vs. California Department of Finance* case, according to McKenzie, is less about the

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State's role in funding schools, and more about "the more than 150-year struggle in California to protect cities from the excesses and dangers of too much centralized power in state government" (2000, p. 3). McKenzie equates reserving financial decisions for local control with home rule and argues that through most of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries the state's electorate has codified the protection of city treasuries from state intervention. The overruling effect of Proposition 13 on a local government's ability to raise and allocate funds is referred to in passing, and only within a critique that the State is abusively interpreting the Proposition's language (i.e., the State is taking the term "allocate" to mean "eating" a piece of the municipal pie).

The second component of McKenzie's story is his attempt to include the term "home rule" in the LCC's mission statement. Specifically, McKenzie argues for the inclusion of the following statement: "The mission of the LCC is to restore and protect the greatest measure of home rule in our communities to enhance the quality of life of all Californians" (2000, p. 4). The original mission statement emphasized education, communication, and improving the quality of life of cities.

McKenzie argues against LCC members who believe the term home rule communicates divisiveness and parochialism by claiming that "home rule simply means locally elected officials, not the state Legislature, should make the decisions that affect how city government is structured and financed" (2000, p. 4). McKenzie continues by declaring that home rule "means keeping the largest measure of government closest to the electorate where they can see it... It means keeping local decisions local, and allowing room for state and federal policy decisions when we are united as a state or nation" (2000, p. 4).

### **And Now a Word from our Home Rule Colleagues...**

#### **Indignation over interference, turf wars, and placing the blame on a decline in civility at the local level**

Writing under the header "Local Government Under Attack," Michael Jenkins raises the defensive tone of the contemporary home rule discourse by pointing out that state fiscal policy, "unrestrained interference in essentially local matters," and the California initiative process are "crippling local government." The result of these actions and policies goes completely counter to what Jenkins considers the "truism that strong local government promotes an active citizenry, creativity and innovation in problem-solving, self-reliance and responsiveness." Jenkins goes on to declare not only that "local

government is hopelessly hamstrung by the cumulative impact of these phenomena,” but that also, as a result, “it is no coincidence that civility in the local government arena has declined in the last decade in direct proportion to the increasing frustration of operating government under such adverse circumstances” (Jenkins 1997, p. 4).

Although recognizing the limitations placed by the state and citizen initiatives on local government autonomy, Jenkins sustains that “local government is not inherently powerless” (1997, p. 4). Echoing what McGoldrick noted in 1933, Jenkins continues by arguing that “the problem is that the place of cities within the California constitutional framework is ill-defined. The lack of clear turf leaves cities vulnerable to interference, well intentioned or otherwise, by the state. Moreover, the courts have dutifully protected, and probably enhanced beyond what is necessary for good democracy, the power of initiative. The current wobbly state of local representative government is the result of such action” (Jenkins 1997, p. 4).

In addition to the lack of clarity within the state constitution, Jenkins contends that the state’s interference in municipal matters and the resultant clash between city and state are also driven by a fear that local government authorities will not safeguard and respect minority rights within their jurisdictions. Whether the fear is substantiated or not, Jenkins states that “the remedy for this is not perpetuating the debilitation of local government or allowing the legislature to intervene every time it gets the notion that some area of regulation is ‘important,’ but to keep intact the overarching authority of the state in the implementation of *truly* important statewide policies” (1997, p. 7). It is interesting to note that such statewide policies are “prohibitions on discrimination, open-meeting laws and access to public records, worker protection laws, protection of natural resources, regulation of the insurance industry,... and the fair administration of justice” (Jenkins 1997, p. 7).

### **Home Rule’s View of Fiscal Constraints and Economic Independence**

It was previously noted that state fiscal policies, whether established by legislative action or ballot initiatives, have eroded local government autonomy. The home rule discourse rarely misses an opportunity to re-claim the right of local municipalities to economic independence. Again, Jenkins declares that “it is common knowledge that power tends to follow money and the increasing control over locally grown revenues by the legislature has contributed mightily to the imbalance in governance... Suffice it to say that the health of cities

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depends in a resumption of some control over locally raised taxes and the attendant predictability of revenues” (Jenkins 1997, p. 7). Among the solutions presented by Jenkins and endorsed by *Western City* to reclaim a municipality’s economic independence are: extending to local agencies a larger share of the sales tax; and allowing tax-sharing and burden-sharing (e.g., to provide for housing) among neighboring local agencies (Jenkins 1997).

In the article “How the Deck is Stacked Against Citizens Wanting to Self Govern” (*Western City*, September 1997), Roberta MacGlashan continued Jenkins’ line on economic independence and stable revenue streams. Although addressing county financial problems, the conclusion to her article makes a plea for the state to develop a logical formula for funding local government and education, stop shifting local government’s share of property taxes to support the state budget, reduce or drop un-funded state mandates on local government, and ensure that ‘revenue neutrality’ need no longer be an issue...” (MacGlashan 1997, p. 30).

### **Home Rule’s Vision of the Region and Regional Planning: Local Leadership for Regional Matters**

JoAnne Spears’ contribution to the home rule debate in “Local Control: Some Basic Concepts” (*Western City*, March 2001) reinforces the notion that the best form of government is the one that is closest to the individual: “local control... goes to the heart of cities’ ability to address issues of concern to their communities. It also offers the most opportunity for collective problem solving that is responsive to the needs, values, and priorities of most people” (Spears 2001, p. 6). Nonetheless, Spears, in a relatively rare home rule moment, acknowledges the interdependent urban-regional context, and she bridges the gap between local affairs and regional concerns by stating that:

“Of course, some challenges transcend a community’s boundaries. Protecting local control can also involve local leadership addressing the challenges in collaboration with other neighbouring communities. Through such leadership, local officials can devise solutions that are responsive to the region’s needs” (Spears 2001, p. 6).

Spears’ contribution to the March 2001 edition of *Western City* could be traced to her reinterpretation of Mark Baldassare’s book California in the New Millennium: The Social and Political Landscape,

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which was reviewed in the October 2000 edition of *Western City*. In the article, “The Challenge of Local Leadership,” Spears recounts that:

“Growing regional splits within California also afford local leaders the flexibility to collaborate on regional solutions that are responsive to a region’s own unique needs... Working with fellow elected officials and others to address local needs and concerns—many of which do not stop at an individual agency’s jurisdictional boundaries—California’s city officials are in a position to move the State forward on important land use, infrastructure and planning issues” (Spears 2000, p. 22).

### **A Final Word from our Executive Director: “Simple Wisdom” 2001**

To inaugurate the 2001 *Western City* series “Home Rule Watch,” the LCC’s Executive Director, Chris McKenzie continued the plea for home rule in “California’s Affair with Local Control” (*Western City*, January 2001). In many ways, McKenzie invoked McGoldrick’s “simple wisdom,” the idea that local affairs should be left to local disposition. McKenzie wrote:

“As a state of citizens who are fundamentally suspicious of government, it is not surprising that local control and home rule have been embraced with such enthusiasm. Local governments are more easily held accountable for their transgressions than the distant state and federal governments” (2001, p. 7).

### **Interpretation of and Inferences from the Discourse**

Through McKenzie’s (2000) editorial, one discerns not only the major elements of the pro-home rule discourse, but also a host of hidden discourses that buttress the arguments of home rule proponents. Although McKenzie officially offers one definition of home rule (i.e., local control of finances), the 2000 editorial outlines other components of home rule. In addition to the control of finances, home rule is about control of government structure, quality of life, and “seeing” government. As posited by the discourse theory literature, each one of these defining concepts is laden with a host of additional meanings, images and histories.

The hidden discourses of McKenzie’s editorial are as illuminating as his outline of the definition of home rule. The inclusion of an excerpt from deToqueville’s *Democracy in America* introduces the provocative historical discourse on the founding principles of the United States, a discourse that also contains elements of the discourses

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of freedom, individualism, self-government, and economic development in the United States (cf. M. Friedman's Capitalism and Freedom).<sup>7</sup> The discourse of localized self-government was most apparent, however, in McKenzie's reference to home rule as a means to keep local decisions local, "allowing room for state and federal policy when we are united as a state or nation" (2001, p. 4). That is, non-local decisions are valid when local governments (i.e., an embodiment of the individual or citizen) voluntarily join a state or national venture. Finally, through his use of terms such as "battles" and "struggles", McKenzie invokes the discourse of power struggles between California cities and the State, which is also a component of the larger, national discourse on the role of government.

The contributions to the home rule debate made by McKenzie's colleagues further illustrate several of the points and images McKenzie fashions in the 2000 article. More importantly, the colleagues also introduce aspects of the discourse, which may, at best, dovetail with the regional governance discourse. Although they are inter-related, the themes of the home rule discourse can be separated and summarized as follows:

### **Rights and Democracy: Local Government is the Cornerstone of Democracy, therefore Defending Home Rule is Defending True Democracy**

The legal and fiscal constraints on home rule powers in California may well render them irrelevant. Indeed, home rule advocates recognize this as well. The home rule discourse's claim over lost local government autonomy, however, is not simply a fight to regain either inalienable or hard-earned rights and power for localities, it is technically also a fight to defend the core of the United States' democracy and democratic practices.<sup>8</sup> McKenzie and Jenkins both clearly convey, for example, the notion that state actions that weaken local government autonomy also weaken the locus of democratic values and practices. Consequently, government accountability, effective public participation and representation, and public sector legitimacy are severely compromised.

While citizen participation and trust in government have been in decline in the US, home rule claims that this decline might be linked to a weakness in local government autonomy due to state intervention is highly debatable (Dodge 1996; Baldassare 2001). Furthermore, the use of ballot initiatives in California to circumvent government (at the local, county, and state levels) suggests that state residents have



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embraced this alternate form of direct democracy at the expense and in spite of traditional democratic institutions (JF Silva 2000a).

Nonetheless, the claim that the best government is the government closest to the people (either for participation or for citizen oversight of government action) is one that resonates through a series of policy, public, and private circles. Finally, within this broad theme of local democratic government, the home rule discourse also projects the notions that:

- Local government is uniquely situated to assume a leadership role in planning.
- Local city officials are direct representatives of citizen needs and aspirations, and are therefore uniquely placed to act as the frontline for reform.
- Local authorities are the best agents for harnessing local creativity, problem-solving abilities, and entrepreneurial energies (McKenzie 2000; McKenzie 2001; Spears 2000; Spears 2001).

#### **Trust and Clear Jurisdictional Boundaries Between Local and State Affairs**

The poorly defined realm of “municipal affairs” has generated and sustained a detrimental level of tension between local and state levels. The tension consumes much of the home rule discourse’s energy, and, as JF Silva argues (2001), it has fostered a vicious circle in state-local relationships that threaten discussions on issues such as regionalism.

While few would argue that drawing the line between a local, regional, or state matter is an easy, or even realistic, task, what the home rule discourse allows one to see is that a key element in defining local or state jurisdiction is trust. JF Silva notes that:

“one of the difficulties in drawing a line between state and local responsibility is the lack of trust that has developed between the state and local governments. As legislators in the 19<sup>th</sup> Century were concerned that local governments would be agents of oppression, so are current legislators and governors, who exercise state powers often to the detriment of community preferences. This lack of trust does not allow for a reasonable discussion over appropriate roles and responsibilities” (Silva 2000, p. 17).

In addition to the issue of trust between levels of government, another lesson to be taken from this strand of the home rule discourse

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is that the changing laws of local government formation and powers serve to illustrate that the very idea of “local” is contestable and contingent. The legal definition of local units often becomes the result of political, economic, and social conflicts among differing local and state interests (Briffault 1990).

### **Fiscal Autonomy and Stability: The Broader Link Between Fragmentation and Federal / State Funding**

Closely related to the issue of rights, democracy, trust, and defining areas of jurisdiction, is the issue of state and local finance. The home rule discourse defines home rule in terms of fiscal autonomy and the ability to manage revenue streams at one’s discretion. In addition to the claims for devolution of fiscal powers from the state, home rule advocates also make the case for a more logical, clearly defined, and consistent fiscal state policy, as noted by Jenkins (1997) and MacGlashan (1997). Whether local government funds come from the state or are locally generated and managed, an underlying argument is that the unpredictability of and dependence on state funding ultimately distorts the priorities of local government policies. Consequently, the current state-local funding relationship can lead to poor planning decisions, on the one hand, and to increased local fragmentation, on the other.

With regard to the latter, research conducted by Paul Lewis (1998) suggests that a closer look at the fiscal relationship between local government entities and the state and federal government is warranted. Lewis’ research on the determinants of political fragmentation in California has revealed interesting insights into the complexities of the state’s political structure.<sup>9</sup> According to Lewis, there are three principal determinants of fragmentation. Two “deep” underlying factors that have determined political fragmentation in a region include: 1. the locality’s size; and 2. its historical population growth (bigger and older areas tend to have more governmental entities). Lewis’ third, and perhaps most relevant, finding in relation to the state’s regional/local governance issues is that low levels of fragmentation are correlated with higher levels of state and federal resources. That is, “areas receiving more of their revenue in the form of *intergovernmental aid* are less fragmented, perhaps because they have less need to set up new political structures to overcome local revenue shortfalls” (Lewis 1998, p. 67).

Thus, by proposing this angle on the determinants of fragmentation, Lewis argues that state policymakers can “attempt to alter the incentives, fiscal burdens, and resources of California’s

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localities; more generous intergovernmental aid... appears to reduce the impulse toward fragmentation” (Lewis 1998, p. 78). In this light, Lewis clearly states that major structural changes to the state’s governmental institutions are not fully warranted.

#### **Inter-Jurisdictional Collaboration on Local Terms**

From a regional planning perspective, JoAnne Spear’s contribution to the home rule discourse is refreshing and compelling. For a discourse that can easily be characterized as inward looking and parochial, the recognition that communities are interdependent, and therefore there is a need to collaborate across local government boundaries on certain issues, is auspicious. The caveat within this strand of the discourse, however, is that cooperation and collaboration across boundaries should be at the initiative of the local residents and through local leaders (e.g., a localized, bottom-up approach to inter-jurisdictional cooperation).

#### **Convergence: Finding Home Rule in California’s 21<sup>st</sup> Century Regionalism**

In his book Regional Excellence: Governing Together to Compete Globally and Flourish Locally, Dodge outlines a host of strategies to help build and strengthen regional governance efforts in the United States.<sup>10</sup> Within this article’s discussion of the home rule discourse and its relation to regional governance, two of the more relevant approaches to regionalism that Dodge offers are:

- 1) The regional governance discourse should be one of inclusion and recognition of the various levels of government in the United States. That is, regionalists need to think about and emphasize how “regional decision making complements local, state, and national decision making by providing mechanisms for addressing cross-cutting challenges that cannot be sponsored by any one of those levels alone. [Regionalism] does not replace, but rather enriches and helps preserve [the federated] system of governance” (Dodge 1996, p. 5).
- 2) Understanding the existing (i.e., fragmented) and emerging (i.e., collaborative networks and initiatives) models of regional governance can help community leaders and citizens to design a future vision of regional governance excellence for their region or even inspire the development of a new model for regional governance (Dodge 1996).

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The Speaker's Commission on Regionalism and its report *The New California Dream: Regional Solutions for 21<sup>st</sup> Century Challenges* is a comprehensive policy framework to reform the State's approach to institutional, economic, environmental, and social development. The report and its policies are deeply rooted in the belief that the State's challenges should be addressed at the regional level. Recognizing the high level and rootedness of local government fragmentation in the state, the report encourages the state to foster regional governance mechanisms and regional planning initiatives that harness this fragmentation. To this end and along the lines of Dodge's recommendations, the Commission's report not only constructs a regional framework based on collaborative planning and decision making efforts, but it also bases many of its recommendations on a critical assessment of the failures of past attempts at regionalism.<sup>11</sup>

Within this context, the apparent overtures to California's home rule advocates and the inclusion of several strands of the home rule discourse in the Commission's report are noteworthy. Following is a list of excerpts from *The New California Dream* that illustrate where and how the home rule and regional governance discourses can converge:

On 21<sup>st</sup> Century regionalism and local government home rule:

- "This Regionalism is not the enemy of localism, but its friend. There are many matters that are best dealt with at a neighborhood or community level, through excellent local government agencies and an engaged and informed public. But even very local issues must be at least understood within its broad regional context, if local solutions are to be supported and sustained over time" (Speaker's Commission 2002, p. 25).

On the effects of state fiscal policy on the condition and role of local governments in California:

- "We took fiscal 'home rule' away from local governments and failed to encourage coordination with regional agencies, though these are the public institutions on the front line of planning and growth" (Speaker's Commission 2002, p. 12).
- "When billions of property tax dollars were shifted from local coffers in the recession of the early 1990s, local collaboration often was displaced by local competition for

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sales tax dollars, thus distorting the land use decision making process” (Speakers, Commission 2001, p. 19).

On the evolving relationship between the city and the region:

- “At the turn of the 20<sup>th</sup> Century, when California’s greatest cities were beginning to emerge, California’s Progressives, in a response to corrupt state government, paved the way for California’s unique brand of ‘home rule’ based in the belief that government decision making closest to the citizens produces the cleaner and better government. In that time, the city was the ‘region’” (Speaker’s Commission 2002, p. 18).

On the need for fiscal reform and local finances:

- The Commission’s goal is “to improve planning and sustainable development on a local and regional basis, through fiscal stability and adequate revenues for local governments, and through financial incentives to encourage and support collaborative regional planning and implementation” (Speaker’s Commission 2002, p. 59).

The Commission recommends many policy actions, including:

- “Amend the constitution to protect locally levied taxes from being reallocated for state purposes. That portion of property taxes allocated for local government services would be considered locally levied” (Speaker’s Commission 2002, p. 63).

On the proposed role of the state—devolution, alignment, and support:

- A major set of policy actions required for attaining California’s 21<sup>st</sup> Century Regionalism targets the need for constitutional changes that would redefine the role of the state vis-à-vis regions. “[If] California is a state of regions, decision making on most essential economic and quality of life issues should be made at the regional level, through a partnership among all levels of government and the private and civic sector... If effective 21<sup>st</sup> Century governance requires state government partnership with regions, then by means of devolution, alignment, or support, state government must fundamentally change its nature, role and function... to accomplish this would require the state to

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share power, funding, and accountability with local governments and regional agencies” (Speaker’s Commission 2002, pp. 97-100).

Despite the bold recommendations for state reform and devolution of powers, the most interesting point of convergence between the home rule and regional governance discourses is the Speaker’s Commission’s introduction and use of the term “regional home rule”. As part of its goal to improve planning and sustainable development on a local and regional basis (through fiscal stability and adequate revenues for local governments), the Speaker’s Commission considers that “regional home rule” will be established, among other outcomes. Regional home rule, in this context, is decision making on a bottom-up basis that meets long-term and broad state goals. It reflects the needs of the state’s diverse regions, collaboratively determined (Speaker’s Commission 2002). Regional home rule is further defined as “collaborative planning among local jurisdictions” that ensures the integrity of supra-regional systems.

In light of the discussions on home rule in Section II, the Speaker’s Commission’s introduction of the term “regional home rule” is interesting not only because it incorporates a term that is anathema to regional governance and its advocates, but because it really does not fully reflect the essence or history of the term. Municipal home rule is first and foremost about local government autonomy vis-à-vis other levels of government. It is about a particular (small) scale of government, not simply a decision making process or a conduit for local decisions to be considered by upper levels of government. Furthermore, municipal home rule is grounded on a notion of self-government that is manifested through a concrete set of institutions, practices of public participation, and mechanisms of representation contained within a geographically defined area. The municipal home rule discourse also claims to have a clearly defined set of constituents.

By highlighting the differences between municipal home rule as analyzed in this article and regional home rule as presented by the Speaker’s Commission on Regionalism one is not trying to undermine or criticize the attempt to reconcile two traditionally divergent discourses. Rather, the differences in the use of the term home rule raise several questions about the direction and challenges that the Speaker’s Commission on Regionalism might face. The challenges, in many respects, are similar to the claims (and complaints) made by the contemporary home rule advocates as outlined in this article.

**Conclusion: 21<sup>st</sup> Century (Home Rule) Regionalism?**

The analytical tools provided by discourse theory allow planners and policy analysts to take an important first step in their efforts to develop planning policies and programs. The analysis of *Western Cities'* home rule debate serves as a minor example of how planners interested in promoting regional planning initiatives—whether through the creation of regional government structures or more informal regional collaborative efforts—can approach the various elements that positively or negatively shape regional growth. Upon deconstructing the home rule discourse, the regional planner is theoretically better equipped to consider whether elements of the home rule discourse are compatible with the regional governance and regional planning discourse. In this respect, the California Speaker's Commission on Regionalism and its report, *The New California Dream*, illustrate how two traditionally contradictory discourses can converge.

Home rule and its discourse might well be irrelevant on a fiscal-legal level in California, but this weakness does not take away from its ability to thwart regional planning initiatives. Moreover, if one considers the Speaker's Commission on Regionalism as the source of an emerging and influential discourse on regionalism in California, it is clear that the concept of home rule is also strong enough to permeate and condition the regional governance discourse.<sup>12</sup>

Although it is too early to judge the impact and longevity of the Speaker's Commission's regional home rule discourse, a set of question-caveats arises: If elements of the home rule discourse can effectively converge with a discourse on regional governance, is the convergence a positive and strategic one inasmuch as a barrier to regional initiatives has been lifted? Will we thus witness a new form of regional governance and inter-governmental relations? A die-hard regionalist would hope so.

Or, does the incorporation of a discourse that makes concrete and longstanding claims about the unbalanced relationship between state and local governments foreshadow a reproduction of the local-state level battles, but at the regional-state level? Clearly, the latter assumes that the claims made by municipal home rule advocates have not been or may never be resolved. The fact that the Speaker's Commission on Regionalism makes a set of similar claims on the state on behalf of regions (devolution of power; flexible, but stable fiscal policies, etc.) indicates that issues around jurisdiction, police powers, and finance are far from being resolved. In fact, one would argue that the recommendations proposed by the Speaker's Commission on

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Regionalism, especially around the issue of devolution, are more radical than any such claim made by home rule advocates. Nonetheless, with regards to areas of jurisdiction, one of the positive elements of the emerging regional governance discourse is that the state's interests are equated with those of the region. The equation of state and regional interests could thus effectively undo or at least mitigate tensions such as the one created between cities and the states over the definition of "municipal affairs."

Finally, the issue of political representation and public participation within the Speaker's Commission's 21<sup>st</sup> Century regionalism remains to be considered thoroughly, especially in terms of mechanisms that would reproduce the strengths of democratic government at the local level (e.g., responsiveness, accountability, access, and visibility). Perhaps one of the most innovative and promising contributions made by the Speaker's Commission on Regionalism is the introduction of and emphasis on collaborative approaches to planning and flexible forms of governance to solve regional issues.

The discussion on collaborative efforts, however, is generally focused on a level and type of participation (public-private group initiatives) that might function well as conduits for particular interests, but not necessarily as mechanisms for broader public representation. As this paper has argued, regardless of the motivations, the municipal home rule discourse gains much of its strength by invoking the virtues and traditions of local democratic practices and government. If, in the medium and long-run, the Speaker's Commission on Regionalism's proposal for a 21<sup>st</sup> Century regionalism can demonstrate that it can improve and strengthen public participation and representation in local and regional matters, then perhaps the latest attempt at regionalism in California can begin to take root effectively.

### **Endnotes**

- 1) Parks and Oakerson (1989) contend that the long and continuing debate over metropolitan governance concerns two basic questions: 1. What patterns of public organization are more likely to be responsive to citizen preferences, efficient in the way services are produced, and equitable in the way services are financed and delivered?; and 2. What patterns of governance are more likely to enable individuals to establish and maintain such patterns of organization in view of changing preferences, technologies, and other circumstances of metropolitan life?
- 2) Regional governance in this paper is broadly defined as the interactions of community officials and citizens, and the organizations they



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represent as they design strategies for addressing challenges that cut across communities and deliver services for meeting common ends. Regional planning initiatives can be formal or informal arrangements that can focus on a range of activities from service delivery to design of planning or development strategies geared toward the region. The use of these definitions differs from the regional governance discourse, which will be discussed in more detail in Section VII. For a discussion and summary of the various forms of regionalism and the motivations for regionalism, refer to Campbell and D'Anieri's "Unpacking the Impetus for Regional Planning in the U.S.: Cooperation, Coercion, and Self-Interest" (2001 Draft).

3) Founded in 1898, the League of California Cities is an educational-lobby association of California city officials with a membership base that represents all of California's 476 cities. It describes itself as an association of officials who work together to "enhance their knowledge and skills, exchange information, and combine resources so that they (the officials) may influence policy decisions that affect cities". The League's mission "is to restore and protect local control for cities through education and advocacy to enhance the quality of life of all Californians" (League of California Cities 2001). Among the League's stated beliefs are: local self-governance is the cornerstone of democracy; the vitality of cities is dependent upon their fiscal stability and local autonomy; and focused advocacy and lobbying is most effective through partnerships and collaboration (League of California Cities 2001).

4) The six challenges identified by the Commission are: 1. Economic prosperity for all; 2. Social and economic progress; 3. Building better communities; 4. Enhancing environmental quality now and for the future; 5. Collaborating for effective 21<sup>st</sup> century governance; and 6. Enhancing regional security, reducing vulnerability, and increasing self-sufficiency (Speaker's Commission 2002, p. 4).

5) Libonati refers to the Cooley Doctrine, which was outlined in 1871 by Michigan Supreme Court Judge Thomas Cooley in *People vs. Hurbult* and his "Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of States of the American Union". Section IV expands upon the Cooley Doctrine.

6) Lewis cites *Scuri v. Board of Supervisors, 1982*.

7) Williams and Matheny (1995) noted in their discussion of the three dominant political-regulation discourses in the United States (managerial, pluralist, and communitarian) that American democratic thought has been torn between, on the one hand, a fear of public (centralized) power and the threats it holds for freedom and, on the other hand, a desire for communal (i.e., community/localized) democracy. At the center of this tension are the different types of claims laid upon the notion and principles of self-government, as well as the complex system of government and decision making that "self-government" has generated in the United States. That is, self-government applies to the individual, the community, the state, and the nation, a condition that ultimately creates a host of contested views of democracy and tensions between levels of government.

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Despite its location toward the bottom of the established hierarchy of government in the United States, local government as a form of self-government and as an established arena for democratic, participatory practices is ingrained in the U.S. psyche. Finally, the rootedness of local government in the U.S. psyche has inspired court declarations claiming local government as an inalienable right. The Cooley Doctrine of Home Rule: Inspired by a case against state legislation that removed the city of Detroit's responsibility over services and infrastructure, Michigan Supreme Court Judge Thomas Cooley wrote the following passage, which has become part of the legal history of the home rule debate: "Local government is a matter of absolute right; and the state cannot take it away. It would be the boldest mockery to speak of a city as possessing municipal liberty where the state not only shaped its government, but at discretion sent in its own agents to administer it; or to call the system one of constitutional freedom under which it should be equally admissible to allow the people full control in their local affairs, or no control at all." (Excerpt taken from Libonati 1993) The Cooley Doctrine is juxtaposed by Dillon's Rule, which contends that cities and all political subdivisions of the state owe their existence to grants of power from the state. Under this interpretation, local government possesses no inherent sovereignty, its powers are construed strictly, and there is little room for discretionary authority or incidental powers (Libonati 1993). For a thorough discussion of Dillon's Rule and local government autonomy in the United States, refer to Briffault's "Our Localism: Part I—The Structure of Local Government Law" (1990).

8) Whether or not this is truly the motive of the home rule advocates is debatable. The central point here, as stated throughout in the article, is that it is the claim on democracy and democratic values that gives the home rule discourse a certain strength and resonance among particular audiences.

9) Lewis' work recognizes that the complex structure of local government affects four basic realms: service provision, land use and economic development, equity (socio-economic), and representation. Furthermore, the conditions of these realms at the local level have repercussions at the regional and state levels. The goal of "Deep Roots" is not to describe California's politically fragmented landscape or to theorize on its effects on municipalities, the region or the state, but to ascertain the determinants of the fragmentation. Among the determinants Lewis reviewed were: demographic correlations (e.g. more people in an area translate into more levels and forms of government); pre-existing patterns of government structures, which also would have been determined by previous demographic patterns (e.g. older, more populated areas have a history of politically fragmented local government); intergovernmental variables (e.g. home rule charters, fiscal/funding relationships); socio-economic characteristics of the community; and political influence of developers and the private sector.

10) Dodge presents a "five-point" strategy for attaining regional excellence in a fragmented metropolis. Collective efforts to create and/or improve regional governance need to make it: 1. Prominent, visible and important; 2. Strategic—future regional governance vision and action plans

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are needed; 3. Equitable—economically, racially, and fiscally; 4. Empowering—developing individual regional citizenship and an overall sense of regional community; and 5. Institutionalized—creating regional problem solving and service delivery mechanisms (Dodge 1996, p. 47).

11) By making the connection between Dodge's recommendation and the Commission's report, the author is not claiming that the former directly influenced the latter. Background research on the Speaker's Commission on Regionalism was limited within the scope of this paper.

12) There is an entire study to be done on how the California home rule discourse found itself into the Speaker's Commission's report and proposals. Insights into the actual process by which the discourses converged may well prove useful in future evaluations of the proposed 21<sup>st</sup> Century Regionalism or other California regional planning initiatives.

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