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CITIES, LAND USE, AND THE GLOBAL COMMONS:
GENESIS AND THE URBAN POLITICS OF CLIMATE CHANGE

by

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**CITIES, LAND USE, AND THE GLOBAL COMMONS:
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Katherine Trisolini¹ and Jonathan Zasloff²

Introduction

Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.³

By quoting this pessimistic philosophy, the New Zealand Environment Court, in *Genesis Power Ltd. v. Franklin District Council* (“Genesis”),⁴ demonstrated its lack of faith in a local government to protect the Earth from climate change. Little wonder, then, that it mandated that a local district government set aside its concern for local environmental impacts and indigenous peoples’ cultural resources, and permit the construction of a wind farm that could reduce carbon emissions. In describing the legal basis for its decision, the Environment Court echoed prevailing assumptions that climate change can only be dealt with from the top down. That is, nation-states implement international treaties by imposing concern on local governments who would otherwise, “in pursuit of their well-being, destroy existing stock of natural and physical resources so as to improperly deprive future generations of their ability to meet their needs.”⁵

This chapter explores such a view of localities and its alternatives. We observe the seemingly contrary behavior of cities in the United States, which appear to have taken up the charge for climate protection despite the complete absence of the national influence identified as necessary by the New Zealand court and others. We then initiate an inquiry into the possible basis of these apparently against interest actions, drawing upon loose analogies to international relations theory.

Unlike the focus of most other climate change lawsuits, which have predominantly challenged actions of either large polluters or national agencies, the

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³ Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243, 1244 (1968).

⁴ [2005] N.Z.R.M.A. 541 (Env. C.) (We cite the case as “Genesis” following the Environment Court’s own format.).

⁵ *Id.* ¶ 225 (citing Canterbury Reg. Council v. Selwyn Dist. Council, [1997] N.Z.R.M.A. 25 (Env. C.)).

Environment Court in *Genesis* reviewed a local land use decision regarding the siting of a small wind farm. The Franklin District Council, responsible for the only required discretionary approval, refused consent to the wind farm's application because of the adverse impacts to the coastal landscape, the cultural resources of indigenous people, and local equestrian facilities.⁶ Under New Zealand's Resource Management Act,⁷ Genesis Power appealed to the Environment Court, a body invested with authority to conduct a de novo review of the Council's decision.⁸ The Environment Court reversed the decision, finding that the proposal's benefits, "when seen in the national context, outweigh the site-specific effects, and the effects on the local surrounding area."⁹

The case turns our attention to the impact of local land use decisions on climate change and the constraints under which local decision-makers act. Taken cumulatively, local governments' land use decisions—their determinations of which categories of activities go where—substantially impact greenhouse gas production. Local governments may control the availability of sites for alternative energy production, and their proximity to consumers, which influences transmission efficiency, as in *Genesis*. Among other things, local governments also determine the design of cities and towns that either require carbon-heavy auto use or encourage alternatives.

The New Zealand Environment Court expressed extreme skepticism about local governments' ability to incorporate global concerns about climate change into their decision-making. Rather, it envisioned them as trapped by parochial concerns analogous to those famously described by Garrett Hardin as producing the "tragedy of the commons,"¹⁰ a phrase which has become a trope in environmental law. Hardin described herdsmen following rational incentives tragically overgrazing the commons necessary for their livelihoods.¹¹ Many scholars following Hardin have further illuminated the traps precluding rational actors from preserving shared or "common pool" resources.¹² The scholarship on

⁶ *Id.* ¶¶ 3–5, 39–41.

⁷ 1991 S.N.Z. No. 69.

⁸ *See id.* § 120; *see also* New Zealand Ministry of Justice, Environment Court, <http://www.justice.govt.nz/environment/index.html#jurisdiction> (last visited Jan. 3, 2008) (describing the Environment Court's jurisdiction).

⁹ *Genesis*, [2005] N.Z.R.M.A. 541, ¶ 228.

¹⁰ *Id.* ¶ 223 (quoting REPORT OF THE BOARD OF INQUIRY: PROPOSED TARANAKI POWER STATION—AIR DISCHARGE EFFECTS ¶ 7.103 (Feb. 1995)); Hardin, *supra* note 3.

¹¹ Hardin, *supra* note 3, at 1244.

¹² ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 2–8 (1990) (summarizing the literature). For a summary of scholarship criticizing Hardin theory, *see* DANIEL H. COLE, POLLUTION AND PROPERTY: COMPARING OWNERSHIP INSTITUTIONS FOR ENVIRONMENTAL PROTECTION 15–16 (2002). As Cole explains, none of the scholarship criticizing Hardin undermines his "chief insight" that "open access resources tend to be unsustainably exploited" absent the imposition of a regime for their protection. *Id.* One recent work, however, challenges the common assumption that climate change presents a tragedy of the commons scenario at all. Rather, the authors propose that subglobal governments may unilaterally regulate climate change without behaving irrationally because regulation provides some benefit relative to no regulation at all. *See* Kirsten H. Engel & Scott R.

this problem largely presumes that there are only two ways out of this trap—privatization of the resource or imposition of resource protection by an external sovereign.¹³ Few are sanguine about the prospects of resolving the commons problem without one of these two solutions. On this view, we would not expect local governments—as small, individual users of the global commons—to tackle climate change constructively.

Yet, contrary to this tragic vision of resource users, we observe an apparent movement among U.S. cities¹⁴ to tackle climate change even when it appears to be against their immediate interest—at least as those interests have traditionally been understood.¹⁵ Thus, *Genesis* symbolizes a cluster of issues far broader than one dispute. It presents, rather, an opportunity to consider how local governments' actions on climate change can both inform theories of urban governance and enrich our understanding of relationships among varying international actors.

Although ostensibly categorized as climate change litigation, *Genesis* inspires comparison with political decision-making by city governments in the United States rather than with judicial determinations for several reasons. *Genesis* fits uneasily into a general discussion of climate change litigation because it was not really a piece of litigation at all, at least not in the way that American observers might think of it. Rather than a judicial proceeding, it more closely resembles an appeal from a lower to a higher level within an administrative agency empowered to make substantive policy. It also bears a striking similarity to an administrative appeal from a city's planning commission to its city council in the United States. The Environment Court's specialized jurisdiction empowers it to vet applications for water permits, subdivision approvals, zoning and planning designations, and to conduct enforcement actions—matters usually dealt with by

Saleska, *Subglobal Regulation of the Global Commons: The Case of Climate Change*, 32 ECOL. L.Q. 183, 188 (2005).

¹³ See OSTROM, *supra* note 12, at 8–13; Engel & Saleska, *supra* note 12, at 191.

¹⁴ Cities, of course, do not comprise all local governments. The Franklin District Council itself represented a different type of local government. For simplicity of expression, however, we will use “cities” and “local governments” interchangeably unless there is a particular reason to be more specific.

¹⁵ See *infra* Part 3. Note that many cities around the world have become involved in this movement to combat climate change. We discuss the role of U.S. cities because they provide a model of local governments with apparently clear disincentives to take this action and because, given the federal government's refusal to implement mandatory carbon reductions, their decision to do so particularly conflicts with the accepted model of local action.

We note, however, that although an increasing number of cities have autonomously initiated policies to reduce their carbon footprints, some local governments have resisted implementation of carbon reduction plans. San Bernardino County, California, for example, initially refused to incorporate robust climate change analysis and mitigation into revisions to its General Plan, a required document under California law that governs the physical development of land within the County's jurisdiction. After being sued by the California Attorney General for failing to adequately assess and mitigate the climate change impacts of updates to its plan, the county and the attorney general reached a settlement which will require the county to develop a Greenhouse Gas Emissions Reduction Plan. See *California v. County of San Bernardino*, No. CIVSS 0700329 (Cal. Sup. Ct. Aug. 28, 2007) Order Regarding Settlement, available at http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf.

administrative bodies such as planning commissions, water boards, or even city councils in the United States.¹⁶ Unlike the district courts in New Zealand that try common civil cases, the Environment Court is not bound by the same rules of evidence and its hearings occur in a much less formal environment somewhat like a local agency hearing in the United States.¹⁷

We consider the theoretical assumptions underlying the Environment Court's dim view of local governments through the lens of land use planning by municipalities in the United States, which presents nearly a mirror image of the context of the *Genesis* case in two important respects. First, while New Zealand's central government has expressly set out to address climate change through national policy, the United States government thus far has refused to accept the Kyoto Protocol or to adopt any mandatory emissions reductions. Second, while the New Zealand Resource Management Act provides the Environment Court with de novo review of district council decisions, local governments in the United States enjoy substantial discretion in land use matters, which are generally conceived of as matters of eminently local concern on which they are the final arbiter.¹⁸

The relationship between local government and climate change policy is thus particularly critical in the United States. As of this writing, the federal government has refused to address the climate issue seriously, and even state legislation regarding global warming leaves a large policy space open for municipal action.¹⁹ But most importantly, local control over land use policy

¹⁶ The Environment Court's work includes:

- "Designations authorising public works such as energy projects, hospitals, schools, prisons, sewage works, refuse landfills, fire stations, major roads and bypasses; and also major private projects, for example, dairy factories, tourist resorts, timber mills and shopping centres.
- Classifications of waters, water permits for dams and diversions, taking of geothermal fluids, discharges from sewage works, underground mines; maximum and minimum levels of lakes and flows of rivers, and minimum quality standards; and water conservation orders.
- Land subdivision approvals and conditions, development levies, car parking contributions, reserve contributions, development levy fund distributions, road upgrading contributions, regional roads, limited access roads, and stopping roads.
- Environmental effects of prospecting, exploration, and mining, including underground, open pit and alluvial mining.
- Enforcement proceedings (including interim enforcement orders), declarations about the legal status of environmental activities and instruments, existing and proposed, and appeals against abatement notices."

<http://www.justice.govt.nz/environment/index.html#jurisdiction> (last visited Jan. 2, 2008).

¹⁷ See *id.*

¹⁸ The U.S. judiciary reviews land use actions, of course, but defers to local bodies. Even in "quasi-judicial" actions, where local decision-makers are theoretically applying pre-existing standards, review is confined to whether "substantive evidence" in the record supports the decision-maker's judgment. For legislative acts, courts accord to local bodies' judgments a strong presumption of validity. Both notions are hornbook law. See JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 5.33 (2003).

¹⁹ See, e.g., California Global Warming Solutions Act of 2006, CAL. HEALTH & SAFETY CODE §§ 38500–38599 (West Supp. 2007). This Act directs the State Air Resources Board to achieve emission reductions through energy conservation, increased use of renewables, cap and trade programs, and directions to state

means that cities will play a major role in determining if the United States can reduce its emissions sufficiently to mitigate climate change. Scholars thus are in need of a theory to explain local governments' policy affecting this global common pool resource. We cannot provide such a theory at this point, but we do set forth a framework for developing one. We suggest that analogies to international relations theory may help expand upon current theories of urban politics. We also find that the Environment Court's conclusion concerning the competence of local governments to grapple with climate change is less certain than the Environment Court assumed.

1. *Genesis*—Case Background

The *Genesis* case originated as a matter of local concern in the Franklin District on the North Island of New Zealand. Genesis Power's proposal to build nineteen wind turbines on the Awhitu Peninsula begat an unusual opposition alliance of horse trainers and representatives of New Zealand's indigenous population. The Awhitu Peninsula land was an important element of the cultural heritage of New Zealand's Tangata Whenua (literally, people of the land), the first people to settle in New Zealand.²⁰ The Te Iwi O Ngati Te Ata people objected because the project would adversely impact an area of cultural importance, and because, prior to Genesis Power's application for approval, no survey had been performed to discern the areas of cultural significance.²¹ Owners of local, decades-old equestrian facilities feared that vibrations, visual stimulation, and noise from the construction and operation of the wind farm would spook the horses and undermine their training, racing, and other horse-related businesses.²² The project objectors argued that they had no objection to the project *per se*, but *not here*. The location of this particular project, they argued, would adversely impact the "visual, landscape, natural character, amenity and cultural values in the environs of the site . . . and the surrounding rural area; and the current, lawfully established, use of the properties adjacent to the proposed wind farm site."²³

regulators to reduce emissions from motor vehicles. *Id.* But it says nothing about local land use authority. For a summary of state efforts, see PEW CTR. ON GLOBAL CLIMATE CHANGE & PEW CTR. ON THE STATES, CLIMATE CHANGE 101: STATE ACTION (Oct. 2006), *available at* http://www.pewclimate.org/docUploads/101_States.pdf (last visited Dec. 2, 2008); PEW CTR. ON GLOBAL CLIMATE CHANGE, LEARNING FROM STATE ACTION ON CLIMATE CHANGE (Mar. 2007), *available at* http://www.pewclimate.org/docUploads/States%20Brief%20Template%20_March%202007_jgph.pdf (last visited Jan. 2, 2008).

²⁰ *Genesis*, [2005] N.Z.R.M.A. 541, ¶ 7 (Env. C.) ("The Awhitu Peninsula has been described as possibly one of the most densely populated areas of the Auckland Province, prior to European contact. Te Iwi O Ngati Te Ata are the tangata whenua. They have a long and close association with the Peninsula. It accordingly is very special to them as part of their cultural heritage.") (citation omitted). For background on Tangata Whenua, see Tangata Whenua, People of the Land, <http://www.enzed.com/tw.html> (last visited Jan. 2, 2008).

²¹ *Genesis*, [2005] N.Z.R.M.A. 541, ¶ 38.

²² *Id.* ¶¶ 37, 129–63.

²³ *Id.* ¶ 43(i)–(ii).

As noted above, the Franklin District Council refused consent because of the adverse impacts to the landscape, the Tangata Whenua, and the equestrian facilities.²⁴ The Council's decision reminds us that local governments must directly answer to constituents whose way of life often may rely on existing land use patterns and whose cultural heritage may be disrupted by changes to the landscape. *Genesis* suggests potential limitations on local governments' ability to promote land use changes that help reduce greenhouse gas emissions when those changes disturb settled expectations that existing land uses will continue and will not be compromised by unfamiliar uses.

Project proponents sought review before the Environment Court, which reviews the Council's decision pursuant to the Resource Management Act. On appeal, the parties' stipulated statement of facts sets forth the numerous environmental benefits of the proposed wind farm. They agreed that it would: create security of supply by diversifying New Zealand's generating base and providing 18 MW of power, enough to supply 7500 households per year, or thirty-seven percent of the homes in Franklin District and 0.18% of New Zealand's annual electricity consumption; reduce greenhouse gas emissions by generating electricity without emitting greenhouse gases during operation and emit 40,000 fewer tons of CO₂ per year than a comparable coal fired power plant; reduce dependence on the national grid because of the proximity to the source of the demand; reduce transmission losses; provide a reliable energy resource; provide development benefits of wind energy generally; and contribute to New Zealand's renewable energy target.²⁵

The Environment Court identified four potential negative impacts: "(i) effects on the visual amenity of the area—including effects on the landscape and natural character; (ii) noise effects on areas of recreation and workplaces; (iii) various horse-related effects; and (iv) effects on tangata whenua."²⁶ The Environment Court acknowledged that the Te Iwi O Ngati Te Ata "have a long and close association with the [Awhitu] Peninsula," making it a very special part of their cultural heritage.²⁷ Nonetheless, it dismissed the Tangata Whenua concerns because it found that most of the sites had been degraded or were of questionable cultural value, and that the project conditions would be sufficient to protect cultural artifacts.²⁸ The Environment Court found most of the other negative impacts to be minimal as well.

The Environment Court acknowledged one major adverse impact of the project, that the "scale of the turbines is such that they would dominate the surrounding area and undermine the visual integrity of the natural character and

²⁴ Subsequent to the lodging of the appeal, *Genesis* amended the project to address several of the Franklin District Council's concerns by removing one turbine of the original nineteen proposed and relocating two. At that point, the Council amended its position to "not opposing" the project. *Id.* ¶ 42.

²⁵ *Id.* ¶ 64(vi)(a)–(g).

²⁶ *Id.* ¶ 67.

²⁷ *Id.* ¶ 7.

²⁸ *Id.* ¶ 212(v).

landscape of the coastal environment.”²⁹ However, the Environment Court emphasized that the Resource Management Act’s mandate to preserve the coast’s “natural character” and protect it from “inappropriate development” must be subordinated to the Act’s general purpose to provide for “sustainable management.”³⁰ Among the factors to be considered in assessing appropriate development in the context of sustainable management, the Resource Management Act required the Environment Court to consider “the effects of climate change and the benefits to be derived from the use and development of renewable energy.”³¹ The Court concluded that the latter outweighed impacts to the coastal environment.

Given the Environment Court’s factual findings dismissing the majority of impacts and its conclusion that sustainable management outweighed the mandate to preserve the coast’s natural features, it could have based its decision entirely on these factual elements. Instead, the Environment Court includes a theoretical discussion suggesting that it acts as an agent of the national government in ensuring protection of common pool resources that would otherwise be managed ineffectively by individuals and localities.

The Environment Court stated that Parliament’s amendment of the Resource Management Act in 2004 to include explicit consideration of climate change provided “a clear recognition by Parliament of both the importance of the use and development of renewable energy and the need to address climate change, both of which are key elements in the proposed the wind farm.”³² In response to the project opponents’ contention that the project did not warrant the environmental cost because reduction in greenhouse gas emissions attributable to the project would be *de minimis*, the Environmental Court quoted at length from a passage authored by the Board of Inquiry in a report rejecting claims that a power station’s contribution to worldwide CO₂ emissions, and hence climate change, would be negligible:

An implication could be taken from this statement that, as the contribution of the proposed power station to the total world emissions of CO₂ would be miniscule, then it would make no difference to any global warming effects whether the power station were to be built or not.

We do not accept the argument. To do so would imply that as the world’s CO₂ emission is composed a great number of small emissions, the effect of any one of them could be discounted. But if one, why not more, or many, or, indeed, all? . . . Without the

²⁹ *Id.* ¶ 215.

³⁰ *Id.* ¶¶ 215–16.

³¹ *Id.* ¶ 224 (citing Resource Management (Energy and Climate Change) Amendment Act, 2004 S.N.Z. No 2 (amending Resource Management Act, 1991 S.N.Z. No. 69, § 7)).

³² *Id.* ¶ 220.

Convention, and united efforts toward compliance, the situation becomes another example of what the economist Garret Hardin called the ‘tragedy of the Commons’ in his famous article bearing that title Each man is locked into a system that compels him to increase his herd without limit in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a common brings ruin to all.

Here because there is no one owner of an exploitable common resource, in this case the air as a receiver of carbon dioxide, the resource becomes overused and ill-used or even destroyed.

Furthermore, even though the emission from the proposed power station is small by world standards, nevertheless the harm or potential for harm, throughout the world is very large. A small proportion of a very large amount may itself be large.³³

The Environment Court emphasized that Parliament, through its 2004 amendments to the Resource Management Act, affirmed the Board of Inquiry’s view that New Zealand must address climate change.³⁴ Moreover, Parliament had “reinforced the intention” of requiring the Environment Court to pay particular attention to climate change.³⁵ The Environment Court took this mandate as its authorization to answer the Hardin problem by assuming the role of outside sovereign “to ensure present people and communities do not, in pursuit of their well-being, destroy existing stock of natural and physical resources so as to improperly deprive future generations of the ability to meet their needs.”³⁶

It is noteworthy that, even prior to the 2004 amendments, the Environment Court presumed that climate change could only be addressed effectively at the national level. The Environment Court’s 2002 decision in *Environmental Defence Society (Inc.) v. Auckland Regional Council*³⁷ recognized that climate change is a “serious concern” that “is likely to result in significant changes to the global environment, including New Zealand and the Auckland region.”³⁸ Despite recognizing the scientific reality of climate change, however, the Environment Court in 2002 refused to grant the Environmental Defence Society’s request to impose a mitigating condition on the Auckland Regional Council’s air discharge approval of a 400 MW gas-fired combined cycle power station. In refusing to require the power plant owner to offset its carbon dioxide emissions by planting trees to act as carbon sinks, the Environment Court stated that New Zealand had a

³³ *Id.* ¶ 223 (quoting REPORT OF THE BOARD OF INQUIRY, *supra* note 10, ¶¶ 7.102–7.104).

³⁴ *Id.* ¶ 220.

³⁵ *Id.* ¶ 224.

³⁶ *Id.* ¶ 225.

³⁷ [2002] N.Z.R.M.A. 492 (Env. C.).

³⁸ *Id.* ¶ 65, *quoted in* Genesis, [2005] N.Z.R.M.A. 541, ¶ 221.

“clear preferred policy . . . to address greenhouse gas emissions . . . at a national level to ensure consistency of approach to guarantee an efficiency compatible with achieving the best social environmental and economic outcome.”³⁹ Although not ruling on the District Council’s claim that such a condition was outside of its jurisdiction, the Environment Court emphasized the difficulty the Auckland Regional Council would have enforcing and monitoring such a condition if trees were planted outside of the Auckland region.⁴⁰ Thus, the Environment Court has twice presumed that national action constitutes the only effective and appropriate way to address the climate commons on the grounds that local governments will either be unwilling or unable to successfully address this problem.

2. Cities and Climate Change Activism: Unlikely Bedfellows

The widely accepted understanding of the difficulties in tackling commons problems, as exemplified by the Environment Court’s decision in *Genesis*, suggests that local governments will not address climate change effectively in their decision-making on land use matters. This would be particularly true of cities in the United States given the lack a federal mandate. Yet surprisingly, some municipalities in the United States are interjecting themselves into the national and international policy arena by tackling climate change despite apparently strong institutional incentives to avoid this issue. This is particularly surprising because of the diffuse nature of the benefits and the localized nature of the costs. Although Elinor Ostrom has observed users of common pool resources autonomously generating successful allocation systems from the bottom up without private ownership, her analysis focuses on smaller scale resources such as fisheries, grazing meadows, and irrigation institutions.⁴¹ Thus, while her work inspires us to recognize that local users may be capable of addressing commons problems in the absence of private ownership or imposition of regulation from a superseding sovereign, it does not help us understand the actions of municipalities tackling the *global* common resource implicated in climate change. The following section discusses our reasons for finding it unlikely that municipalities in the United States would address climate change and then discusses the surprising possibility that some of them may, in fact, be doing so. In order to understand these actions, we then turn to analogies with international relations theory to expand on current theories of urban politics and begin working on a model of municipal action on climate change.

Local governments’ control over many land use decisions in the United States can have a monumental impact on climate change. For example, their planning approach impacts transportation choices dramatically. One-third of all the carbon dioxide that enter the atmosphere in the United States come from the

³⁹ *Id.* ¶ 88.

⁴⁰ *Id.* ¶ 92.

⁴¹ See OSTROM, *supra* note 12.

transportation sector.⁴² This sector causes more CO₂ emissions than any other, and since 1980 its emissions have also been growing the fastest,⁴³ consuming seven out of every ten barrels of oil that the United States uses.⁴⁴

Efforts to lessen transportation's role in global climate change have focused largely on making vehicles more fuel-efficient and the fuel they run on cleaner. Yet Americans spend more and more time behind the wheel every year. As the Center for Clean Air Policy warns, growth in vehicle-miles-traveled in the United States "has outpaced population growth and is projected to continue to outstrip improvements in vehicle efficiency."⁴⁵ Sprawling residential and commercial development is the chief problem. For many Americans, cars are the most practical, and often the only way, to get to work, stores, entertainment, social gatherings, or grandmother's house for the holidays.

Moreover, vehicle miles traveled (or "VMT") can increase drastically at the smallest level of urban planning. Traditional Euclidean zoning—the type preferred by most suburbs, possibly because of its salutary impacts on property values—requires the radical separation of uses. Homeowners cannot even walk to the supermarket; they must drive there because commercial and residential neighborhoods are usually separated by major arterials.⁴⁶ This separation is highly significant, as nearly forty percent of vehicle miles traveled are for local trips, not commuting.⁴⁷

The automobile's significant contribution to emissions has put a distinctly green cast on the smart growth and New Urbanist views of planning. To completely define these views would require an article in itself, but for our purposes, they hold that sprawling development increases automobile use, leading to greater congestion and pollution. Their solution is more compact, higher-density development, which allows for greater use of mass transit. Moreover, the possibility of residents walking to amenities and essential services is seen as the critical test of appropriate neighborhood design. New Urbanists also favor mixed-use developments with narrower streets to allow for a pedestrian-friendly character.⁴⁸

⁴² See Eileen Claussen, *Foreward* to DAVID L. GREENE & ANDREAS SCHAFER, PEW CTR. ON GLOBAL CLIMATE CHANGE, REDUCING GREENHOUSE GAS EMISSIONS FROM U.S. TRANSPORTATION, at ii (May 2003), available at <http://www.pewclimate.org/docUploads/ustransp.pdf>.

⁴³ GREENE & SCHAFER, *supra* note 42, at 2–3.

⁴⁴ *Id.* at 3.

⁴⁵ Progressive Policy Institute, *Driving Down Carbon Dioxide* (Nov. 24, 2003), http://www.ppionline.org/ppi_ci.cfm?knlgAreaID=116&subsecID=900039&contentID=252224 (quoting Center for Clean Air Policy); see also GREENE & SCHAFER, *supra* note 42, at 6 ("Transportation energy use and greenhouse gas emissions are increasing because the growth of transportation activity exceeds the rate of improvement in energy efficiency and because little low-carbon fuel is used.") (italics omitted).

⁴⁶ See Peter Calthorpe, *Land Use and Building the American Community*, Presentation at the Fourth Annual Land Use Conference, The Rocky Mountain Land Use Institute, University of Denver College of Law (1996) (videotape, on file with authors).

⁴⁷ *Id.*

⁴⁸ A good characterization of New Urbanist development is found at the website of the Congress for the New Urbanism:

Whatever the other pros and cons of the New Urbanist/smart growth paradigm,⁴⁹ any actual decrease in VMT requires it. That need creates a significant problem. Unlike in New Zealand, where the Environment Court could force consideration (and prioritization) of national concerns, land use in the United States has a nearly sacrosanct position as a local concern.⁵⁰ But the most powerful incentives to cities all appear to point against a low-VMT planning policy. Indeed, as explored below, cities might encourage auto dependency as a way of attracting commerce and capital.⁵¹

The benefits of mitigating climate change are about as widely diffused as possible; the city incurring the costs of adaptation bears them by itself—a highly unfavorable calculus. And those costs of adaptation are precisely ones that cities should be loathe to endure. Consider the most basic element of local public finance: the “capitalization” of public services into home values. Although no one likes paying local property taxes, those taxes eventually lead to higher property values because of the public services they pay for. This is hardly an earth-shattering insight; everyone knows that—all things being equal—homes in a town with excellent public schools will cost more than those in its neighbor with poor ones.

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- Rule out any project that is gated, that lacks sidewalks, or that has a tree-like street system, rather than a grid network. The project as a whole should connect well with surrounding neighborhoods, developments, or towns, while also protecting regional open space.
 - Rule out “single-use” projects that are just housing, retail, or office. The various types of building should all be seamlessly integrated—from different types of housing, to workplaces, to stores.
 - The project should have a neighborhood center that is an easy and safe walk from all dwellings in the neighborhood. Buildings should be designed to make the street feel safe and inviting, by having front doors, porches, and windows facing the street—rather than having a streetscape of garage doors.
 - The project, and particularly the neighborhood center, should include formal civic spaces and squares.
 - Finally, there is the “popsicle test.” An eight-year-old in the neighborhood should be able to bike to a store to buy a popsicle without having to battle highway-size streets and freeway-speed traffic.

<http://www.cnu.org/chapter> (visited Jan. 3, 2008).

⁴⁹ Some scholars see sprawling development as beneficial, and thus object to New Urbanism. See, e.g., Peter Gordon & Harry W. Richardson, *Are Compact Cities a Desirable Planning Goal?*, 63 J. AM. PLAN. ASS’N 1 (1997). This position is effectively critiqued in Reid Ewing, *Is Los Angeles-Style Sprawl Desirable?*, 63 J. AM. PLAN. ASS’N 107 (1997).

⁵⁰ See, e.g., ROBERT C. ELLICKSON & VICKI L. BEEN, *LAND USE CONTROLS: CASES AND MATERIALS* 29 (3d ed. 2005) (“Public land use regulation in the United States traditionally has been mainly the province of local governments.”); Richard L. Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 3 (1990) (“Land use control is the most important local regulatory power. . . . [In land use], state-delegated power, supported by judicial attitudes sympathetic to local control, has resulted in real local legal authority, notwithstanding the nominal rules of state supremacy.”).

⁵¹ See, e.g., GREG HISE, *MAGNETIC LOS ANGELES: PLANNING THE TWENTIETH-CENTURY METROPOLIS* 130–31 (1997); THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 129–30 (1996).

Not everyone lives in high-tax, high-service jurisdictions, of course. Instead, people vote with their feet. In the 1950s, economist Charles Tiebout famously hypothesized that local governments could efficiently provide public goods because individuals could “shop” among local jurisdictions, choosing the jurisdiction that provides their optimal mix between taxes and services. Local political entrepreneurs, the theory states, will compete to attract mobile consumer-taxpayers, offering distinct tax-service packages to suit consumer demand.⁵²

Yet, simply relying on property taxes to maintain the desired mix of taxes and services is highly unstable. Under the Tiebout scheme, lower-income individuals have a great incentive to migrate to wealthy communities to free-ride on the larger tax base. Bruce Hamilton, writing twenty years after Tiebout, termed this possibility “musical suburbs”—the poor chasing the rich in a “never-ending quest for a tax base.” Hamilton’s insight was that cities would use land use controls to block the free riders and increase their own fiscal base.⁵³ As William Fischel has bluntly noted, “The family of eight that wants to rent part of a lot in Scarsdale and park two house trailers on it and send their kids to Scarsdale’s fine schools is apt to find a few regulations in their way.”⁵⁴

Localities interested in enhancing property values, however, often will attempt to increase VMT. They will adopt large lot size requirements and generally low densities, making it extremely difficult to support a public transportation system financially. They also will resist providing sites for affordable housing, because these residents will be the classic “free riders” of the Tiebout-Hamilton system. But no matter how property-wealthy a city might be, it will still need its working class: the police officers, firefighters, teachers, nurses, secretaries, janitors, and clerks who provide critical services but are rarely highly compensated. And zoning them out (and killing the density necessary for transit) means that they will have to drive to their jobs, further increasing vehicle miles traveled and greenhouse gas emissions.

These structural problems are compounded by literally decades of local land use practices and bureaucratic culture, combined with developer practices and business models, which presume and foster high-VMT development. In order to retool, cities must completely overhaul their zoning codes, general plans, road and street designs, parking requirements, block length specifications, and virtually

⁵² See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 419–20 (1956). Our discussion of the Tiebout-Hamilton framework relies primarily on Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?*, 50 UCLA L. REV. 801, 811–13 (2003).

⁵³ See Bruce W. Hamilton, *Property Taxes and the Tiebout Hypothesis: Some Empirical Evidence*, in FISCAL ZONING AND LAND USE CONTROLS 13, 15 (Edwin S. Mills & Wallace E. Oates eds., 1975); see also Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUD. 205 (1975).

⁵⁴ William A. Fischel, *Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting*, 30 J. ECON. LITERATURE 171, 171 (1992).

every aspect of what they have done since the end of the Second World War.⁵⁵ These changes also will require developers to change alongside the cities, uprooting established business models and thereby incurring large new design costs, a prospect likely to lead to some resistance.

All of these patterns and incentives would lead the observer to anticipate that cities in the United States would continue to promote land use policies that exacerbate climate change. One would not expect cities to be on the front lines of tackling this issue.

3. Understanding New International Actors: Why Are U.S. Cities Tackling Climate Change?

Despite the pressures identified above, an increasing number of municipalities throughout the country appear to be confronting the specter of climate change. The 2005 U.S. Mayors Climate Change Protection Agreement provides that signatories agree on a common goal: to meet or beat Kyoto Protocol targets within their own communities, that is, to reduce greenhouse gas emissions to seven percent below 1990 levels by 2012.⁵⁶ As of July 13, 2007, 600 mayors have signed the Agreement.⁵⁷ The Sierra Club estimated that if the first 230 signatory cities succeed, their reductions would equal those expected from the combined Kyoto commitments of the United Kingdom, the Netherlands, and all Scandinavian countries.⁵⁸ The City of Portland, Oregon, already claims to have substantially reached its Kyoto-“mandated” levels.⁵⁹

Why are these cities embracing this initiative despite the pressures against them? A clear answer is not available in the existing literature. Determining the best explanation for the apparent urban leadership on climate change obviously awaits more detailed empirical research on implementation of the Agreement—

⁵⁵ A good demonstration of how postwar planning has undermined New Urbanism is found in Michael Lewyn, *New Urbanist Zoning for Dummies* (GWU Legal Studies Research Paper No. 183, 2006), available at <http://ssrn.com/abstract=873903>.

⁵⁶ They also agree to urge their state governments and the federal government to do the same. See U.S. CONFERENCE OF MAYORS, THE U.S. MAYORS CLIMATE PROTECTION AGREEMENT (2005), available at <http://usmayors.org/climateprotection/documents/mcpAgreement.pdf>.

⁵⁷ A press release from the U.S. Conference of Mayors states that, as of July 13, 2007, 600 mayors have signed the agreement. See Press Release, The U.S. Conference of Mayors, 600 Mayors in All 50 States and Puerto Rico Take Action to Reduce Global Warming (July 13, 2007), available at http://usmayors.org/climateprotection/climateagreement_071307.pdf.

⁵⁸ Jennifer Hattam, *Green Streets: Where Great Ideas Are Transforming Urban Life*, SIERRA CLUB MAG., July/Aug. 2006, at 36.

⁵⁹ See A PROGRESS REPORT ON THE CITY OF PORTLAND AND MULTNOMAH COUNTY LOCAL ACTION PLAN ON GLOBAL WARMING 1 (June 2005), available at <http://www.portlandonline.com/shared/cfm/image.cfm?id=112118> (“Despite rapid population and economic growth, local greenhouse gas emissions in 2004 were only *slightly above* 1990 levels, the benchmark year established in the Kyoto Protocol.”) (emphasis added). We note that this figure comprises all emissions from the area, not simply those produced by governmental activities.

and of course the track record that such research would investigate.⁶⁰ But any research outcome promises to illuminate two scholarly disciplines generally not associated with each other: urban theory and international relations theory. Considering the role of cities in the politics of climate change suggests that bridging these two fields could enrich them both. It also may provide critical information to advocates seeking to mitigate climate change.

The traditional Westphalian model of international law and international relations focuses exclusively on nation-states as international actors.⁶¹ A burgeoning literature recognizes, however, that other actors, such as nongovernmental organizations, subnational governments, transgovernmental networks, and multinational corporations profoundly affect the course of international law and politics;⁶² and thus, the traditional Westphalian model is becoming obsolete. These new players in world affairs include local governments. Yishai Blank, for example, argues that “globalization is not only imposed on passive localities by their states or international institutions—it is also advanced from the ground up by localities themselves. Localities are thus doing their part to further disaggregate the waning Westphalian concepts of the unitary state.”⁶³

Knowledge of how precisely local governments behave in such a highly complex global politics, however, remains rudimentary. We suggest that one potentially fruitful way to frame the issue lies in applying the insights of international relations theory to municipal behavior on the global stage. Indeed, the very origin of international relations theory derives from Thucydides, who was attempting to explain the actions of city-states.⁶⁴ More importantly, international relations theory represents a useful series of frames of the behavior of

⁶⁰ One excellent project by Harriet Bulkeley and Michelle M. Betsill reviews the influence of Local Governments for Sustainability’s (ICLEI) Cities for Climate Protection program on six cities, including two in the United States assessing the success of this transnational network in influencing climate change policy. This gives us a good start on the empirical work necessary to understand local governments’ actions. See HARRIET BULKELEY & MICHELLE M. BETSILL, *CITIES AND CLIMATE CHANGE: URBAN SUSTAINABILITY AND GLOBAL ENVIRONMENTAL GOVERNANCE* (2003). For further discussion on this topic, see *infra* Parts 3.1, 3.4.

⁶¹ See MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 162–63 (4th ed. 2003) (“Sovereignty was the crucial element in the peace treaties of Westphalia, the international agreements intended to end a great war and to promote a coming peace. . . . the key actor on the world’s stage was the sovereign state to which all loyalty was due internally and which was unrestrained externally.”). If cities have an independent role in global politics, this development clearly cuts against the Westphalian grain.

⁶² See, e.g., EARL H. FRY, *THE EXPANDING ROLE OF STATE AND LOCAL GOVERNMENTS IN U.S. FOREIGN AFFAIRS* 23 (1998) (“While predictions concerning the rapid demise of the nation-state are premature, an evolutionary process is certainly under way, in terms of both the distribution of governing authority within the nation-state and the constant interaction among governments, international organizations, and citizens groups.”); Hari M. Osofsky, *Climate Change Litigation as Pluralist Legal Dialogue?*, 26 STAN. ENVTL. L.J. & 43A STAN. J. INT’L L. 181 (2007) (joint issue); Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VA. J. INT’L L. 1 (2002).

⁶³ Yishai Blank, *Localism in the New Global Legal Order*, 47 HARV. INT’L L.J. 263, 268 (2006).

⁶⁴ Laurie M. Johnson Bagby, *The Use and Abuse of Thucydides in International Relations*, 48 INT’L ORG. 132 (Winter 1994).

governmental units competing for survival without centralized, sovereign-created rules.⁶⁵ As cities increasingly interject themselves into the international dialogue on climate change both as policymakers and as litigants, they step out of the domestic realm in which they are governed by a set of well-established legal rules. Moreover, in a competitive global economic environment, cities, like nations, must be concerned for their survival. To be sure, the “destruction” of a city may not be political but economic, but few can examine the status of, say, Detroit, and claim that it has “survived” in anything but the most nominal terms. While analogizing competition between cities to the anarchical global order is far from perfect, the management of common pool resources such as the Earth’s atmosphere lends itself well to international analogies.

We most emphatically do *not* argue that cities will behave in world politics in the same way as nation-states, if for no other reason than cities are embedded within a set of domestic laws far denser and more powerful than the anarchy of global politics. Rather, we believe that enough similarities exist between the incentives for cities and those for nation-states that international relations theory can provide a framework that helps to generate useful research hypotheses for investigating the motivations behind cities’ actions on climate change. Moreover, broader theories can help clarify discrete data, detecting broader behavior patterns that might appear at first to be driven by idiosyncratic or highly localized factors.

As will be explained in greater detail below, the turn to international relations theory also might help to explain an anomaly in urban theory, particularly the regnant models that analyze cities’ motivation and function as attracting capital or serving as neutral “markets” or “bankable” locations. In sum, then, connecting two streams of scholarship both broadens and deepens our understanding of the increasingly complex global political environment.

3.1 Urban Theory and Quasi-Realism: Cities as Markets

We should begin, then, with the most influential model in modern international relations theory, “Structural Realism” and its less demanding counterpart that we term “Quasi-Realism.”⁶⁶ Structural Realism posits that policy outcomes are principally shaped by the international system. That system, Structural Realists contend, is anarchical, and thus threatens the viability of all the

⁶⁵ To the extent that cities globally begin to make strong efforts toward combating climate change, the international relations analogy becomes stronger, because no central enforcement mechanism exists for relations between cities in different nations.

⁶⁶ The standard work outlining such a theory is KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979). Since Waltz’s study appeared, the literature commenting on and reacting to it has been vast.

states within that system. In such a competitive environment, states measure their own success by their power *relative* to other states in the system.⁶⁷

Structural Realism parallels the most significant trends in urban theory, in particular the significant expansion of scholarship seeking to understand the role of cities in the globalizing economy. Michael Porter's work, which stressed that cities must compete for scarce capital in order to survive economically,⁶⁸ has been applied worldwide. Porter's work echoed an older model developed by Paul Peterson,⁶⁹ which argued that the weakness of cities within a federalist framework requires them to avoid redistributive politics and privilege business elites as a way to promote economic development and secure their tax base. Cities must compete "with one another so as to maximize their economic position."⁷⁰ To achieve this objective, "the city must use the resources its land area provides by attracting as much capital and as high a quality labor force as possible."⁷¹

Urban sociologists and geographers whose politics sharply differ from Porter's (and to a lesser extent, Peterson's) have also gotten into the game. Saskia Sassen's influential writings focus on a narrower band of urban centers, which she terms "world cities," and finds fierce competition among larger cities to attract the "command-and-control functions of the global economy," which we understand to comprise the network of critical business services—such as banking/finance, accounting, advertising, and law—that international capital relies upon to maintain the health of the global capitalist system. Recent scholarship by Gerald Frug and David Barron on "international local government law" discusses how international law implicitly endorses a vision of the "private city."⁷² This urban form, promoted by the World Bank among others, emphasizes the city's role as a market location that can facilitate economic growth. Although not limited to a narrow range of command centers, the normative focus of international law on cities as private markets again emphasizes the economic function of cities and de-emphasizes their governmental role.⁷³

Despite highly divergent disciplinary backgrounds and political outlooks, a powerful theme underlies the cities-as-markets view: globalization and the mobility of capital has sharply curtailed urban autonomy, forcing cities to compete for capital and driving a convergence of urban politics around the attraction of

⁶⁷ An excellent summary of structural realism's implications for states' foreign policies is found in Fareed Zakaria, *Is Realism Finished? (Method of Analyzing International Relations)*, 30 NAT'L INT. 21 (Winter 1992).

⁶⁸ Michael Porter, *The Competitive Advantage of the Inner City*, 73 HARV. BUS. REV. 55 (1995). In order to advance this model, Porter established the Initiative for a Competitive Inner City, <http://www.icic.org> (last visited Jan. 3, 2008). Porter's framework derived from his earlier work, which focused on national competitiveness. See MICHAEL PORTER, *THE COMPETITIVE ADVANTAGE OF NATIONS* (1990).

⁶⁹ PAUL E. PETERSON, *CITY LIMITS* 12 (1981).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Gerald Frug & David Barron, *International Local Government Law*, 38 URB. LAW. 57 (2006).

⁷³ To be clear, Frug and Barron do not endorse the model; rather, they argue that international law appears to do so. See *id.*

business. If not zero-sum, this model certainly has little room for mutually beneficial cooperation between cities.

Not surprisingly, other urban theorists take exception to—or at least highly qualify—this picture. H.V. Savitch and Paul Kantor contend that “cities need not be leaves in the wind,” and argue forcefully that cities have varying bargaining positions with national and international capital, thus allowing them wiggle room to develop their own independent policies.⁷⁴ (Nonetheless, they still acknowledge that the relationship with capital is a critical factor in shaping modern cities.) In similar fashion, Peter Newman and Andy Thornley find regional differences between North America, Europe, and Pacific Asia, based largely on differences in national-local relationships.⁷⁵ Newman and Thornley also find that cities within a region often adopt very different economic development strategies.

Cities, of course, do not function in an entirely zero-sum world, which is why Structural Realism in international relations theory provides an imperfect analogy for examining city behavior⁷⁶ and why we reference its application to cities as “Quasi-Realism.” However, the analogy is not far off. As Porter, Peterson, Sassen, and others have emphasized, however, cities do compete for vital goods like investment capital, which does yield a zero-sum result. Moreover, there can only be so many “centers” of critical command functions; once these functions are too spread out, no city can serve as a center. Thus, we find the analogy useful for identifying a set of presumptions in urban theory and for framing hypotheses about municipal action.

Despite the theoretical presumption that cities compete for capital, any serious municipal attack on climate change would, upon first impression, appear to be *adverse* to business interests. While global economic command-and-control functions might not necessarily require a particular urban land use and environmental strategy, one would not expect cities to focus on environmental, energy, and land use policies to prevent climate change as a means of attracting capital. As for cities’ own competitive advantage, the business groups pursued as part of a competitive-advantage strategy likely would be wary of a city whose policies were focused on global warming.

Such local governments might advance regulations and policies that could substantially curtail capital’s ability to conduct business in the way that it wants. They could restrict or penalize energy use, or require energy use from renewable sources, increasing its cost. They could zone for high-density development, thereby curtailing the construction of low-rise office parks popular in both the

⁷⁴ See generally H.V. SAVITCH & PAUL KANTOR, CITIES IN THE INTERNATIONAL MARKETPLACE: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT IN NORTH AMERICA AND WESTERN EUROPE (2002).

⁷⁵ See generally PETER NEWMAN & ANDY THORNLEY, PLANNING WORLD CITIES: GLOBALIZATION AND URBAN POLITICS (2005).

⁷⁶ Another obvious difference is that cities do not anticipate military conflict with other cities. Their primarily economic conflict with each other, however, contains large implications for their overall health and well-being.

commercial and industrial sectors.⁷⁷ They could insist on restrictions on employee automobile usage or require and enforce parking cash-outs.⁷⁸ They could attempt to set urban growth boundaries and thus reduce business' options for development and expansion. And they could restrict free parking, thus forcing retail businesses to internalize the costs of automobile dependence.⁷⁹ Indeed, the very unpredictability of what regulatory steps they might take could deter capital.

Scholars taking a quasi-realist view, then, would hardly be surprised if they found that municipal rhetoric on climate change remains just that. Cities may be engaging in mere window dressing, signing memoranda that sound impressive—and enhancing the profile of ambitious local politicians⁸⁰—without really taking the difficult steps required to actually reduce their emissions. For example, they might take relatively cosmetic measures such as procurement reform or increased albedo measures.⁸¹ All of these would undoubtedly have positive environmental impacts and represent sound policy, but they would hardly go far enough toward combating climate change. Inaction or limited action, then, would suggest that the pessimistic theories set forth above actually do explain cities' actions.

The most comprehensive and thoughtful review of municipal policies on climate change provides some important evidence for this pessimistic quasi-realist position. Harriet Bulkeley and Michele M. Betsill reviewed the climate change policies in six cities on three continents, including two cities in the United States.⁸² They found that although some of these cities did take proactive measures on in-house energy management, such as municipally owned vehicle fleets and public property, they took few measures in the more critical areas of planning, transportation, and other land-use controls such as building codes.⁸³ More serious attempts to promote climate change policies usually derived from pre-existing agendas; in other words, urban policymakers pursued measures that reduced carbon emissions not for their own sake but for other policy reasons or to foster their own images as pro-environmental politicians.⁸⁴ (We have more to say

⁷⁷ Many industries prefer sprawling development, as low-rise office parks are considered particularly suitable for many commercial and industrial users. See HISE, *supra* note 51; SUGRUE, *supra* note 51; PETERSON, *supra* note 69.

⁷⁸ See Jennifer Dill, *Mandatory Employer-Based Trip Reduction: What Happened?*, 1618 TRANSP. RES. REC. 103–10 (1998).

⁷⁹ See generally DONALD SHOUP, *THE HIGH COST OF FREE PARKING* (2005).

⁸⁰ This certainly could explain the actions of some prominent mayors. See, e.g., Governor, *L.A. Mayor Doing Power-Inspired Duet*, DAILY BREEZE (Torrance, Cal.), July 10, 2006, at A13 (“It’s no secret that [Los Angeles Mayor Antonio] Villaraigosa thirsts to be Governor.”).

⁸¹ The term “albedo” refers to the reflectivity of materials; higher reflectivity reflects more energy into the atmosphere, keeping ground-level temperatures cooler. See Brian Stone Jr., *Urban Heat and Air Pollution: An Emerging Role for Planners in the Climate Change Debate*, 71 J. AM. PLAN. ASS’N 13–25 (Winter 2005).

⁸² See generally BULKELEY & BETSILL, *supra* note 60. We should note, however, that Bulkeley and Betsill do not identify themselves as realists.

⁸³ *Id.* at 171–85.

⁸⁴ *Id.*

about these reasons below.)⁸⁵ Bulkeley and Betsill's work was published two years prior to the Mayor's Agreement and was directed toward international efforts to shape cities' actions rather than domestic ones; nonetheless, it does demonstrate the difficulty of implementing climate change mitigation policies and the possibility that municipal policies may be more rhetoric than action.

But what if cities actually mean it? Quasi-realism would not be without explanations. Cities competing for economic development resources might very publicly fight climate change, casting doubt on the Environment Court's thesis.

First, Sassen argues that in order to attract the command-and-control functions of the international economy, cities must also attract the highly educated professionals who provide critical services to global capital. These professionals might care a great deal about living in a sustainable city.⁸⁶ Moreover, at some point, cities might pass a tipping point, where pollution, congestion, and livability get so bad that the municipality is unable to attract capital investment.

Second, the mere fact that cities might be competing within the Tiebout equilibrium hardly implies that they would compete in the same way. Many local governments simply cannot hope to compete with the fast-growing outer suburbs and exurbs: they lack the huge tracts of land necessary for sprawling development.⁸⁷ No matter how much San Francisco tries, it cannot provide space for large office parks with free employee parking. Thus, such cities will move toward more compact development and New Urbanist form as a way of finding a market niche.

Simply because quasi-realism could explain both mere rhetoric on climate change and genuine municipal policy changes does not imply that it is incoherent; rather, it shows that the framework raises a set of new research questions. If cities prove to be only paying lip-service to climate change politics, then this would seem to demonstrate the pessimistic version of quasi-realist theory. If, however, cities are actually taking the kinds of serious, difficult measures required to reduce overall emissions, then establishing the validity of quasi-realism becomes more complex. Researchers would have to determine whether the strategy of attracting key professionals actually represents a pattern of municipal policy across different governments: can we point to any actual and continuing⁸⁸ governmental action to promote economic development through sustainability policies that would

⁸⁵ See *infra* Part 3.4.

⁸⁶ See NEWMAN & THORNLEY, *supra* note 75, at 44 ("There is increasing awareness that the success of the city also lies in maintaining . . . environmental sustainability."). Newman and Thornley do not, however, provide any direct evidence of this awareness, or that it has been translated into policy.

⁸⁷ See Matthew P. Drennan & Michael Manville, *Lagging Behind: California's Interior Metropolitan Areas* (May 31, 2006) (unpublished manuscript, on file with authors).

⁸⁸ We emphasize the continuing nature of such policies as a way to avoid confusing temporary fads—which might be best described as constructivist, see *infra* Part 3.3—from genuine systemic incentives.

otherwise cut against the interests of capital?⁸⁹ If not, then it would be hard to represent it as a function of a global system since presumably many cities face the same incentives. But if so, then such a pattern could provide important evidence for a more positive quasi-realism.

3.2 *Liberalism: All Politics is Local*

Broadly speaking, Liberal theories of international politics argue that the actions of states are driven by domestic political conditions.⁹⁰ These conditions can be ideological (i.e., states behave according to cultural or religious traditions), material (states behave according to the economic interests of powerful political actors), or institutional (states behave according to the specific mode of aggregating preferences within them, such as democracy or dictatorship). Using the lens of Liberal theory, we would consider how individuals or political groups use the climate change issue for either idealistic or material purposes. Moreover, we would look to the internal politics of the city, not its relative relationship to other cities, as the impetus behind its regulatory stance on climate change. From this perspective, we must consider that, as a distinct political milieu, large American cities are generally left-of-center,⁹¹ and in the United States, the Bush Administration's refusal to take climate change seriously has intensely politicized the issue. For the President's domestic opposition, the administration's attitude symbolizes an arrogant, parochial government hostile to scientific data—indeed, data of all kinds.⁹² It should hardly surprise observers that mayors representing their democratic constituencies would take pleasure in highlighting Washington's abdication of leadership. These kinds of Democratic-leaning cities are also the most likely to have local environmental activists who make campaign contributions and show up at the polls in low-turnout municipal elections.

If, by analogy to Liberal theory, we presume that all politics is local, we would expect Democratic-leaning cities to take stronger anti-climate change actions. But this signals more than a reaction to the Bush Administration.

⁸⁹ There is some sketchy evidence that this may be happening. See, e.g., TERRY NICHOLS CLARK, *THE CITY AS AN ENTERTAINMENT MACHINE* (2003), L.T. Ker, *Towards a Tropical City of Excellence*, in *CITY AND THE STATE: SINGAPORE'S BUILT ENVIRONMENT REVISITED* (Ooi Giok Ling & Kenson Kwok eds., 1997).

⁹⁰ See Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513–53 (1997); Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT'L L. 205, 228 (1993). Because a broad range of theoretical approaches use this label, forests have been felled attempting to define "Liberalism." The way we use it here has become accepted in international relations theory, despite the seemingly endless variety of contexts and meanings that the word holds. We adopt it here to follow the international relations literature, not as an assessment of any other use of the term.

⁹¹ See, e.g., Jill Lawrence, *Democratic Gains in Suburbs Spell Trouble for GOP*, USA TODAY, Nov. 26, 2006, at 6A (noting Democratic candidates won sixty percent of the vote in inner suburbs); Posting of Ezra Klein, *Places, Not States*, http://ezraklein.typepad.com/blog/2007/03/places_not_stat.html (Mar. 26, 2007) ("It's long been understood that urban centers go Democratic . . .").

⁹² For a discussion on this latter point, see the superb analysis in Joshua Micah Marshall, *The Post-Modern President*, WASH. MONTHLY, Sept. 2003, at 22.

Environmentalism has become a principal hallmark of the modern Democratic Party, so we would naturally anticipate that cities dominated by Democrats would also have a distinctly green cast. This is particularly true because land use policies to mitigate climate change hardly signal a new direction in planning theory. They represent the “smart growth” policies that progressive planners and “New Urbanists” have been advocating for nearly two decades. Left-of-center Democrats have advocated “smart growth” and energy conservation long before climate change appeared on the national political horizon, and will continue to do so if the global warming problem miraculously disappears tomorrow. Thus, Democratic-leaning cities will adopt climate change policies not only because of the politicization of the climate debate nationally, but also because those policies conform to a pre-existing political agenda.⁹³

At the same time, the Agreement’s signatory list includes many traditionally conservative cities. This could indicate that alarm over climate change is crossing partisan lines. Polling suggests that this, indeed, is happening. One poll found that sixty-three percent of Americans believe environmental hazards such as climate change present a threat equivalent to that of terrorism,⁹⁴ a supermajority that reveals strong bipartisan preferences. Similarly, seventy percent of respondents to a January 2007 poll stated that global warming is having a serious impact now.⁹⁵ Sharper evidence is available from polling data broken down along party lines. Although a higher percentage of Democrats perceive a threat from climate change, a substantial majority of Republican primary voters do as well; thus, a December 2006 poll of New Hampshire Republican primary voters (whose viewpoints figure to be highly conservative) found that seventy percent believe climate change to be a “serious threat”⁹⁶ and seventy-five percent think that the United States should take action to reduce greenhouse gas emissions.⁹⁷ Congressional Republicans, however, seem out of step with their constituents and local elected Republican officeholders: Only thirteen percent of GOP members of Congress believe “beyond a reasonable doubt” that human activity is causing

⁹³ For example, much of Los Angeles Mayor Antonio Villaraigosa’s announcement concerning his “climate change” policy actually concerned several items detached from the climate change agenda, such as restoring the Los Angeles River, reducing pollution at the Port of Los Angeles, cleaning up the Santa Monica Bay, and increasing open space. See Antonio R. Villaraigosa, L.A. Mayor, Remarks Before the Latino Congreso Conference (Sept. 8, 2006), *available at* <http://www.earthday.net/news/Remarks-LatinoCongresoConference.pdf>.

⁹⁴ See Memorandum from Global Strategy Group to Yale Ctr. for Envtl. Law & Policy (Mar. 7, 2007), *available at* <http://research.yale.edu/envirocenter/uploads/epoll/YaleEnvironmentalPoll2007Keyfindings.pdf> (visited Jan. 3, 2008).

⁹⁵ See Press Release, CBS News Poll, The President, the State of the Union and the Troop Increase (Jan. 22, 2007), *available at* http://www.cbsnews.com/htdocs/pdf/012207_bush_poll.pdf.

⁹⁶ See THE MELLMAN GROUP, LARGE MAJORITIES CLAIM AT LEAST SOME KNOWLEDGE ABOUT GLOBAL WARMING (Dec. 2006), *available at* <http://www.cleanair-coolplanet.org/information/nhpollresults.pdf>.

⁹⁷ See *id.*

climate change, compared with ninety-five percent of their Democratic counterparts.⁹⁸

Such data suggests that preferences form differently depending upon the level of government: Republican voters will back climate change skeptics at the national level while supporting action against climate change at home. They may be more willing to cross party lines for environmental causes when the stakes are local. This in turn suggests unique aspects of local politics that will translate into unexpected municipal behavior on climate change—precisely the sort of outcome that would be anticipated by Liberal theory. All politics may be local, as Tip O’Neill famously stated, but at least with climate change, local politics may be becoming global.

The linkages between smart growth policies and the prevention of climate change shows that predictions of Liberal theory also might derive from the material realm. New Urbanism fulfills the needs of some social groups more than others, particularly young professionals, “empty-nesters,” and (to a lesser extent) families where all the adults work. None of these household types needs the standard suburban form of sprawling single-family homes with lawns.⁹⁹ Liberal theory might suggest that the degree to which a local government adheres to anti-climate change policies would vary with these kinds of critical demographic factors. And this trend could have a ratchet effect: Promoting compact development would attract more members of these demographic groups, which could in turn strengthen political support for New Urbanist form.¹⁰⁰ The theory might also suggest an alternative explanation if we find that older cities and inner-ring suburbs prefer compact development over sprawl; local elites with fixed investments in these localities, Liberals will suggest, will serve as the driving force behind local economic development policies in order to buttress their own assets.

Thus, in the same way that quasi-realism frames a research agenda, Liberalism does as well. It directs us to consider that the impetus for cities’ actions may not lie in purely economic terms, but may rather stem from the ideological bent of its inhabitants. (Of course, these may often extend beyond environmental issues to other matters such as religion, etc.)

Most obviously, does any relevant difference exist between municipal climate change policies based upon the strength of Democratic partisanship or other indicators of left-leaning politics? If not, do we find evidence that environmental issues generally or climate change policy particularly may influence voters at the local level to cross partisan lines in a manner that would not

⁹⁸ See *Congressional Insiders Poll*, NAT’L J., Feb. 3, 2007, at 6 (asking the question, “Do you think it’s been proven beyond a reasonable doubt that the Earth is warming because of man-made problems?”).

⁹⁹ See Calthorpe, *supra* note 46.

¹⁰⁰ Liberal skeptics would wind up on the same side as the Realists, although for different reasons: cities will not respond, Liberals will argue, because of the Homevoter Hypothesis. There is an important (and potentially unanswerable) question as to whether the operation of the Homevoter Hypothesis is better described as a Liberal or Realist development. Moravcsik suggests that internal politics driven by external system effects are Liberal. See Moravcsik, *supra* note 90, at 523.

occur on national-level votes? Similarly, can we point to differences based upon the demographic characteristics mentioned above? If we find central cities and inner-ring suburbs pushing more compact development, can we point to particular elites driving such a decision, with variations in local elites affecting the degree of New Urbanism adopted?

3.3 Constructivism: International Discourse

Constructivist international relations theory suggests that, by producing a set of discursive practices that shape knowledge and ideas, international interaction creates the international system itself.¹⁰¹ Thus, constructivist theory focuses on dialogue between actors as the primary source of their relationship. For constructivists, language creates the international system by constructing parties' self-definitions. The most extreme position sees it as a matter of discourse creating states, not states engaging in discourse. A more moderate position holds that notions of national interest are altered fundamentally through the interactions of states and other actors in world politics.¹⁰²

Margaret Keck's and Kathryn Sikkink's influential account of "transnational advocacy networks" (TANs), which they define as "networks of activists distinguishable largely by the centrality of principled ideas or values in motivating their formation,"¹⁰³ serves as a recent outstanding example of the constructivist turn. The overall point is that strong forces outside a polity influence its politics on principled grounds.¹⁰⁴

¹⁰¹ It is worthwhile to distinguish between "hard" and "soft" constructivism. See Richard H. Steinberg & Jonathan M. Zasloff, *Power and International Law*, 100 AM. J. INT'L L. 64, 82–85 (2006) (making this distinction). Hard constructivists argue that the most basic building blocks of the international order are social constructs. See, e.g., FRIEDRICH V. KRATOCHWIL, RULES, NORMS, AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS (1989). Soft constructivists explain the international social processes that affect the international system.

¹⁰² The more extreme position is sometimes associated with the work of Friedrich Kratochwil. See KRATOCHWIL, *supra* note 101. The more moderate approach is taken by Alexander Wendt. See ALEXANDER WENDT, *SOCIAL THEORY OF INTERNATIONAL POLITICS* (1999); Alexander Wendt, *The Agent-Structure Problem in International Relations Theory*, 41 INT'L ORG. 335 (1987).

¹⁰³ MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

¹⁰⁴ Anne-Marie Slaughter has also suggested that these international networks run between governmental officials as well as among activists. See Anne-Marie Slaughter, *The Real New World Order*, FOREIGN AFF., Sept./Oct. 1997, at 183. It is not clear whether this represents a Constructivist turn or an Institutional one. Slaughter herself describes her work as Liberal because she sees the individual rather than the state as the repository of preferences.

Although Bulkeley and Betsill also highlight the function of transnational networks in their discussion, they focus almost exclusively on transnational networks of government officials as opposed to nongovernmental advocacy networks. See BULKELEY & BETSILL, *supra* note 60, at 186–93. This is largely because their study concerns the ICLEI CCP program, which by definition is restricted to government officials. But this focus, in our view, means that their discussion of transnational networks fits more precisely into an Institutional framework, because it concerns the use of international institutions to facilitate cooperation between governments (in this case, local governments). We recognize that the

The intense national and international focus on climate change suggests that viewing cities' actions as primarily a reaction to local pressure (as Liberalism would posit) may be missing the forest for the trees. The Mayors' Agreement itself was launched at the U.S. Conference of Mayors,¹⁰⁵ and when Los Angeles Mayor Antonio Villaraigosa declared his adherence to the Mayors' Agreement, he did so not at City Hall but at an international conference at the University of California Los Angeles (UCLA). On the dais, he was accompanied not by members of the City Council, but rather by Bill Clinton, Tony Blair, San Francisco Mayor Gavin Newsom, and London Mayor Ken Livingstone.¹⁰⁶

Thus, the politics of local climate change may be driven by powerful advocacy networks whose origins lie far from the cities in which they operate. Within this framework, national and international environmental organizations raise the issue's salience, propose specific actions, and command press attention, making it useful—and at times necessary—for local politicians to embrace the initiative. Indeed, they may shape politicians' own values. TANs may provide financial, informational, and political support to local organizational chapters and new cadres of activists energized by the climate change issue. Thus, they not only create connections between cities on this policy issue, but they help policymakers and their constituents believe that climate change requires a significant policy response from all levels of government.¹⁰⁷

The growth of local climate change policy advocacy even could suggest that Keck and Sikkink's framework has more power than they gave it credit for. Keck and Sikkink hypothesize that TANs are most effective in dealing with "issues involving bodily harm to vulnerable individuals, and legal equality of opportunity."¹⁰⁸ Neither category includes climate change.¹⁰⁹ Moreover, Keck and Sikkink argue that TANs achieve prominence because they target repressive governments (such as human rights abusers) where domestic political opposition is practically close to impossible. Here, however, we might see the influence of powerful TANs even in open and tolerant U.S. cities. Such developments could point to a wider and more powerful role for TANs in the emerging global order.

borders of the international relations theory paradigms blur in this case, because it is not clear whether the institution is reducing the transactions costs of cooperative behavior (the Institutionalist account) or changing the discourse and thereby altering governments' perceptions of their self-interest (the Constructivist account). In international legal scholarship, such hybrid theories are becoming more common as empirical work becomes more detailed. See Steinberg & Zasloff, *supra* note 101, at 86–87.

¹⁰⁵ See Office of the Mayor, Seattle, Wash., What Is the U.S. Mayors' Climate Protection Agreement?, <http://www.seattle.gov/mayor/climate> (last visited Jan. 3, 2008).

¹⁰⁶ See Carla Marinucci, *In L.A. Speech, Blair Talks Tough in Defense of Israel*, S.F. CHRON., Aug. 2, 2006, at A10.

¹⁰⁷ For further discussion of this approach, see generally Osofsky, *supra* note 62.

¹⁰⁸ *Id.* at 204.

¹⁰⁹ Catastrophic climate change could, of course, cause severe bodily harm, but Keck and Sikkink emphasize that it involves specifically vulnerable groups, e.g., women subjected to circumcision, or the grotesque human rights abuses of the Pinochet government.

3.4 Institutionalism: Evolving Cooperation

Institutionalists accept the rationalist framework offered by Structural Realists, but suggest that transgovernmental institutions can transcend the Prisoner's Dilemma by providing a framework for cooperation. The Prisoner's Dilemma is a two-player game structured so that even though cooperation between the two parties would yield overall benefits for both, each player's "dominant strategy"—i.e., the course that it will take regardless of the other player's moves—is to "defect," or take uncooperative action. As Douglas G. Baird and his colleagues note, the Prisoner's Dilemma "is emblematic of some collective action problems in the law in which individual self-interest leads to actions that are not in the interest of the group as a whole."¹¹⁰ Many international problems can be conceptualized as Prisoner's Dilemmas: Nations have powerful temptations to break arms control agreements, for example, for fear that the other party is doing the same.¹¹¹

By considering a series of cross-cutting yet related matters, international institutions effectively make nations "repeat players" in these areas. This, in turn, allows for the repetition, or "iteration" of the Prisoner's Dilemma, which as Robert Axelrod has shown, can facilitate cooperative outcomes.¹¹² In addition, international institutions reduce information and transactions costs by generating otherwise-costly monitoring information, thereby reducing uncertainty about compliance and assisting the production of international stability.¹¹³ Finally, institutions reduce the usually high transactions costs of achieving international agreements and cooperation.¹¹⁴

By way of analogy with institutionalism, we would look for the formation of transmunicipal institutions, which could generate information about compliance with the Mayor's Climate Change Protection Agreement as well as reducing the transactions costs of multilateral action. The Agreement itself might represent cities' attempts to create such institutions. Organizations such as the International Council on Local Environmental Initiatives (ICLEI), the Clinton Foundation's Climate Change Initiative, and the Large Cities Climate Change Leadership Group

¹¹⁰ DOUGLAS G. BAIRD, ROBERT H. GERTNER & RANDAL C. PICKER, *GAME THEORY AND THE LAW* 312–13 (1994).

¹¹¹ An excellent summary of the Prisoner's Dilemma game with implications can be found at *Prisoner's Dilemma*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Aug. 11, 2003), <http://plato.stanford.edu/entries/prisoner-dilemma>.

¹¹² See ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

¹¹³ Two leading accounts of Institutionalism theory are ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (1984); ROBERT O. KEOHANE, *Neoliberal Institutionalism: A Perspective on World Politics*, in *INTERNATIONAL INSTITUTIONS AND STATE POWER: ESSAYS IN INTERNATIONAL RELATIONS THEORY* 1988).

¹¹⁴ Theoretically, TANs could be providing the same sorts of services for local governments, providing an intriguing possible link between constructivist and Institutionalism theory.

claim to be operating in a similar fashion, creating international institutions to facilitate cooperation.¹¹⁵

Institutional existence, of course, hardly implies effectiveness. Bulkeley and Betsill's study questions ICLEI's present ability to significantly promote robust municipal climate change policies. The United Nations' Environment Program provides little assistance to local governments and is itself a weak link in an overmatched U.N. framework.¹¹⁶ The Clinton Foundation states that it is developing a worldwide purchasing cooperative to lower the prices of energy-saving products and to catalyze the development and deployment of low-energy and low-greenhouse gas-producing products and services.¹¹⁷ Such plans, however, while positive might be relatively minor.

But this might not be the end of the story. As suggested above, one major obstacle preventing New Urbanist land use is not political but inertial.¹¹⁸ Sprawling development occurs because of encrusted layers of obsolete zoning and planning codes, which in turn create business models designed for traditional suburban growth, which in turn leads developers to propose and advocate for these models. And while New Urbanist designers have crafted codes in response to suburbia, these documents have nowhere near the specificity and applicability for cities to deploy them, especially since cities are generally not working with empty land, but rather with suburbs needing retrofitting. Hiring the extra staff and costly consultants necessary to achieve low-VMT land use may be well beyond the range of most cities. To the extent that institutions such as the Mayors' Conference, ICLEI, the Clinton Foundation, and others can provide such services at lower cost to urban areas, they would represent the kind of transaction costs-reducing bodies envisioned by institutionalist theory.

Institutionalist theory, then, suggests a potentially fruitful research agenda in investigating these groups and others like them.¹¹⁹ Most importantly, to what extent has institutional involvement allowed individual cities to accelerate the pace and depth of their initiatives to address climate change? Can we detect the use of institutional information in augmenting monitoring capabilities? Can we point to any actual reduction in transactions costs by the provision of these institutional

¹¹⁵ See *President Clinton Launches Large Cities Climate Initiative*, ENV'T NEWS SERVICE, Aug. 2, 2006, <http://www.ens-newswire.com/ens/aug2006/2006-08-02-05.asp> (last visited Jan. 3, 2008).

¹¹⁶ See PHILIP SHABECOFF, *A NEW NAME FOR PEACE: INTERNATIONAL ENVIRONMENTALISM, SUSTAINABLE DEVELOPMENT, AND DEMOCRACY* 49–50 (1996).

¹¹⁷ See William J. Clinton Foundation, *Clinton Climate Initiative*, <http://www.clintonfoundation.org/cf-pgm-cci-home.htm> (last visited Jan. 3, 2008).

¹¹⁸ More precisely, one might say that the problem derives not from inertia but rather from fixed costs.

¹¹⁹ Its applicability suffers because of the relative dearth of enforcement measures that cities have against other cities. Institutional monitoring is useful because it allows states to retaliate against each other if they do not comply. But whereas states can retaliate against each other in several ways, usually through trade and other economic barriers, cities have far fewer levers. Nevertheless, cities have some weapons available to them—most notably tax incentives, planning and zoning codes, and tit-for-tat strategies—which could provide at least some basis for reciprocity.

services? And can we determine whether institutional involvement has led to outcomes that would not have otherwise occurred?

Our own suspicion is that *all* of the theories will turn out to explain different aspects of municipal behavior. After all, in the context of international relations, “[n]one of the metatheories of the last century ha[s] been able to deliver the knockout blow that some may have once thought possible. No one trying to understand international relations can ignore power, *or* law, *or* the state, *or* civil society, *or* norms, *or* language.”¹²⁰ Now, “midlevel analysis of international legal and political developments using hybrid theories”¹²¹ is the best course. Creating and applying these hybrids represents the challenge for those seeking to understand the local politics of climate change. And the better the understanding, the more effective can be advocacy strategies designed to influence policy.

4. Conclusion: Is a Theory Necessary?

As cities increasingly become international players, particularly on climate change, the development of a theory modeling the local politics of climate change could be of great value to both the scholarly and policymaking community. Understanding what cities do and why they do it is imperative. Whether or not the United States enacts comprehensive (or even piecemeal) climate change regulation, local governments will control the land use process for the foreseeable future, and thus they will play a central role in the mitigation of or adaptation to global warming—or the failure of such efforts. Practically, the better the understanding of local politics, the more effective can be advocacy strategies designed to influence land use policies. And even if state and federal policy eventually manages to somehow regulate land use for the purpose of mitigating climate change, these policies will have to be implemented at the local level. Will local governments be able to respond constructively? Or is “sustainable development” at the urban level only an oxymoron in the face of fierce international competitive pressures? We still do not know, but we should find out.

What does seem clear is that the pace of international climate change litigation will surely quicken as impacts become increasingly apparent. Cities will find it advantageous for a host of reasons to serve as climate-change plaintiffs. Even if cities are hypocritical about climate change, hypocrisy is the tribute that vice pays to virtue, and in the case of lending a few city attorneys to the effort, it is not a very big tribute at all. The seconding of attorneys to international climate change litigation, however, will mean a great deal to the cash-strapped NGOs that now must devote a major portion of their resources to the effort. To the extent that city leaders gain domestic support for climate change reduction efforts, serving as a plaintiff certainly will promise political benefits. Plaintiff cities such as Oakland, California, and Boulder, Colorado, have already been lionized by

¹²⁰ Steinberg and Zasloff, *supra* note 101, at 86.

¹²¹ *Id.*

transnational advocacy networks,¹²² which figure to pressure others to join in. And as attorneys from different jurisdictions develop connections representing co-plaintiffs in climate change litigation, they could provide ballast and organizational heft for the growth of cooperative institutions that further environmental goals.¹²³ Moreover, from a risk perspective, cities ignore climate change at their peril; cities and other local governments are beginning to find themselves defending against climate change actions as well.¹²⁴ Thus, recalcitrant jurisdictions may find it costly to miss jumping on this policy bandwagon.

Perhaps the Environment Court was right, and perhaps cities rush headlong into disaster. But enough evidence exists, both inside and outside the climate change arena, to suggest that the Environment Court may have seriously overstated the matter. If local and regional policy continues to play a central role in efforts to forestall and adapt to climate change, neglecting it would represent a failure not only of scholarship, but of the world community's effort to contend with the greatest environmental threat that humanity has ever faced.

¹²² See Press Release, Friends of the Earth, City of Oakland, Calif., Joins Global Warming Lawsuit in Unanimous City Council Vote (Dec. 18, 2002), *available at* <http://www.foe.org/new/releases/1202oakland.html> ("We congratulate the cities of Oakland and Boulder for their leadership in holding the Bush administration accountable for failing to take action on global warming" (quoting Gary Cook, Coordinator of Greenpeace's Global Warming Campaign)). The statements refer to the lawsuits challenging the Overseas Private Investment Corporation's and the Export-Import Bank's investment decisions on NEPA grounds. On March 30, 2007, the federal district court in San Francisco partially denied defendants' motions for summary judgment, allowing the case to proceed. See Order Denying Plaintiffs' Motion for Summary Judgment and Granting in Part and Denying in Part Defendant's Motions for Summary Judgment, *Friends of the Earth, Inc. v. Mosbacher*, No. C 02-04106 JSW (N.D. Cal. Mar. 30, 2007). It is not known as of this writing precisely how this litigation will be affected by the Supreme Court's decision in *Massachusetts v. EPA*, No. 05-1120 (U.S. Apr. 2, 2007).

¹²³ We derive this idea from the work of Anne-Marie Slaughter, who has argued that the state is "disaggregating" into its component functions, thereby unbundling into its separate, functionally distinct parts. These courts, regulatory agencies, executives, and legislatures, says Slaughter, are then networking with their counterparts abroad, creating a new, transgovernmental order. See generally ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* (2004).

¹²⁴ See, e.g., *Ctr. for Biological Diversity v. City of Banning*, No. RIC 46097 (Cal. Super. Ct. filed Nov. 21, 2006) (challenging Banning's approval of a large housing development because it failed to disclose, analyze, or mitigate greenhouse gas emissions from the project); *Ctr. for Biological Diversity v. City of Desert Hot Springs*, No. RIC 464585 (Cal. Super. Ct. filed Jan. 24, 2007) (similar issues). The California Attorney General's suit against the County of San Bernardino, discussed *supra* note 15, presents another example of this phenomenon.