Brooklyn Law Review

Volume 82 | Issue 2 Article 11

1-1-2017

Climate Change and Legitimate Governance: Land Use and Transportation Law and Policy in California

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LAND USE AND TRANSPORTATION LAW AND POLICY IN CALIFORNIA

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INTRODUCTION

Effectively responding to climate change poses a direct challenge to contemporary systems of governance.[1] As a problem, climate change crosses jurisdictions[2] and levels of government;[3] manifests as a long-term, incremental, and diffuse set of impacts;[4] and requires changes to deeply established ways of living and modes of economic exchange.[5] It should therefore be unsurprising that governments have been slow to respond.[6] And when governments have taken action in the United States, it has often taken form as novel, if not entirely new, subnational governance

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[1] ANTHONY GIDDENS, THE POLITICS OF CLIMATE CHANGE 4–5, 76–93 (2009); THE GOVERNANCE OF CLIMATE CHANGE: SCIENCE, ECONOMICS, POLITICS AND ETHICS 1–2 (David Held et al. eds., 2011); *see* KARI MARIE NORGAARD, LIVING IN DENIAL: CLIMATE CHANGE, EMOTIONS, AND EVERYDAY LIFE 3–4 (2011).

[2] GREENHOUSE GOVERNANCE: ADDRESSING CLIMATE CHANGE IN AMERICA 8 (Barry G. Rabe ed., 2010).

[3] IAN AYRES & JOHN BRAITHWAITE, RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE 122 (1992); Michele M. Betsill & Harriet Bulkeley, *Cities and the Multilevel Governance of Global Climate Change*, 12 GLOBAL GOVERNANCE 141, 149–59 (2006).

[4] *See* RAJENDRA K. PACHAURI ET AL., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REPORT 40–49 (2015), https://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf [https://perma.cc/95RM-JQJB].

[5] NORGAARD, *supra* note 1, at 3–4; Karen Ehrhardt-Martinez et al., *Mitigating Climate Change*, *in* CLIMATE CHANGE AND SOCIETY: SOCIOLOGICAL PERSPECTIVES 199 (2015) (Riley E. Dunlap & Robert J. Brulle eds., 2015).

[6] *See* DAVID G. VICTOR, GLOBAL WARMING GRIDLOCK: CREATING MORE EFFECTIVE STRATEGIES FOR PROTECTING THE PLANET, at xxxiii–xxxiv (2011).

strategies such as cap-and-trade systems,[7] carbon taxation,[8] and transportation and land-use regulations.[9] This is largely because partisan interests and stakeholders have rejected federal level top-down regulatory forms of government.[10] Even when climate change policy advocates have sound technical and scientific rationales for their proposals and plans, significant effort must be devoted to legitimizing preferred policies or solutions. Indeed, there seems to be a basic tension between policy strategies that will reliably reduce greenhouse gases (GHGs) and policy strategies that are harmonious with currently prevailing governance expectations.[11] Reflecting these tensions, climate change has become as much a sociopolitical problem as a strictly "environmental" one.[12]

The governance issues and tensions that arise and the strategies policy advocates deploy to overcome them beg questions about whether emerging policy processes that address climate change prioritize "policy legitimacy," such that it comports with popular beliefs and expectations, or "policy effectiveness," such as acceptably reducing GHG emissions.[13] In an earlier work, we investigated a novel policy strategy and process that emerged in Sacramento, California, to address urban development and found that, based on its success with regional stakeholders, the policy strategy became the basis for one of California's landmark climate policies—the Sustainable Communities and Climate Protection Act of 2008 (SB 375).[14] From our research, we concluded that the pursuit of legitimacy overwhelmed the policy imperative for an effective urban development and GHG

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[7] *See generally* Henrik Hasselknippe, *Systems for Carbon Trading: An Overview*, 3 CLIMATE POL'Y S43, S43–S57 (2003).

[8] Gilbert E. Metcalf & David Weisbach, *The Design of a Carbon Tax*, 33 HARV. ENVTL. L. REV. 499, 499–503 (2009).

[9] Patricia E. Salkin, *Sustainability and Land Use Planning: Greening State and Local Land Use Plans and Regulations to Address Climate Change Challenges and Preserve Resources for Future Generations*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 121, 126–29 (2009).

[10] HARRIET BULKELEY & PETER NEWELL, GOVERNING CLIMATE CHANGE (2d ed. 2015).

[11] Kees Van Kersbergen & Frans Van Waarden, *'Governance' as a Bridge Between Disciplines: Cross-Disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy*, 43 EUR. J. POL. RES. 143, 143–44 (2004) (discussing the ways in which governance expectations are shifting in several contemporary policy domains which has threatened the legitimacy of governance systems).

[12] *See* GIDDENS, *supra* note 1, at 229–30.

[13] *See* Ian Bache et al., *Symbolic Meta-Policy: (Not) Tackling Climate Change in the Transport Sector*, 63 POL. STUD. 830, 830–31 (2014).

[14] Deb Niemeier, Ryken Grattet & Thomas Beamish, *"Blueprinting" and Climate Change: Regional Governance and Civic Participation in Land Use and Transportation Planning*, 33 ENV'T & PLAN. C: GOV'T & POL'Y 1600, 1600–15 (2015).

mitigation solution.[15] In this context, "legitimacy" refers to a process designed to reflect and reinforce stakeholder perceptions that the actions of a governing body are proper and appropriate given prevailing expectations regarding authority and its application as reflected in norms, values, and beliefs of society.

The policy process we investigated was called the "Blueprint Plan,"[16] which sought to reshape regional transportation and land-use planning in an effort to mitigate urban ills associated with unplanned regional development, including traffic congestion, air pollution, and urban sprawl. In 2008, this same policy process emerged as a cornerstone of SB 375, which focused on reducing regional GHG emissions through better coupling of land use and transportation.[17] Although backed by state law, authority for the implementation of the Blueprint Plan was delegated to relatively weak regional governance entities called "Metropolitan Planning Organizations" (MPOs), who are forced, by their lack of either command authority or significant incentive, to seek regional consensus regarding their transportation plans.[18] In this context, and despite the promise the general blueprinting process showed for unifying regional stakeholders and the accolades bestowed upon it, the Blueprint Plan seemed unlikely to result in significant GHG reductions.[19] Indeed, the Blueprint Plan and the blueprinting policy process, we concluded, was unlikely to reach the 2020 GHG levels mandated by the State of California in its landmark Assembly Bill 32: Global Warming Solutions Act (AB 32).[20]

Given that the Blueprint Plan's actual accomplishment of GHG reductions has yet to be realized, this article takes a closer look at the policy strategies its advocates deployed to cultivate the social and political legitimacy necessary to gain approval for their preferred Blueprint Plan. Part I reviews the

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[15] *See id.* at 1614–16.

[16] For further details on the Blueprint Plan, see SACRAMENTO AREA COUNCIL OF GOV'TS, http://www.sacregionBlueprint.org/ [https://perma.cc/H5WV-UZQ9].

[17] *Sacramento Region: The Evolution of Integrated Transportation Planning*: *Hearing on S. 1733 Before the S. Comm. on Env't and Pub. Works* 11th Cong. (2009) (statement of Mike McKeever, Executive Director, Sacramento Area Council of Governments).

[18] For an overview of the role of metropolitan planning organizations, see PAUL G. LEWIS & MARY SPRAGUE, PUB. POLICY INST. OF CAL., FEDERAL TRANSPORTATION POLICY AND THE ROLE OF METROPOLITAN PLANNING ORGANIZATIONS IN CALIFORNIA 27–42 (1997), http://www.ppic.org/content/pubs/report/R_497PLR.pdf [https://perma.cc/2ESE-NVAB].

[19] Niemeier, Grattet & Beamish, *supra* note 14, at 1614–15.

[20] *Id.* While emissions have dropped, further dramatic reductions are going to be necessary to reach the 2020 and 2030 goals. *See* Kate Galbraith, *Question: How Hard Will It Be to Meet 2030 and 2050 Greenhouse-Gas Reduction Goals?*, CALMATTERS (July 18, 2015), https://calmatters.org/articles/how-hard-will-it-be-to-meet-2030-and-2050-greenhouse-gas-reduction-goals/ [https://perma.cc/E7R9-F7L6].

sociological and political science literature on legitimacy and legitimation. Part II describes California's climate change policy initiatives AB 32[21] and SB 375[22] as important aspects of the context within which the Blueprint Plan emerged. Part III offers a typology of legitimation strategies that emerged from our investigations of the blueprinting process that took place in Sacramento. The typology delineates *structural, popular, technical*, and *professional* forms of legitimacy. The typology of legitimacy developed in this paper is germane to understanding governance strategies and types, broadly construed, especially in the governance of climate change. This conceptual typology expands understanding of the existing theoretical treatments of legitimacy by focusing on the multi-dimensional nature of the concept. Specifically, this article shows how different sorts of legitimacy are gained (and by implication, can be lost) as well as how this affects the design and implementation of potentially contentious policy initiatives, particularly those associated with climate change.

I. LEGITIMACY AND GOVERNING

Legitimacy is a storied concept in the social sciences and within political theory more generally. In the eighteenth century, in his *Two Treatises of Government*, John Locke argued that explicit and implied consent were essential foundations for "legitimate" government.[23] In the nineteenth century, Max Weber delineated three forms of "legitimate authority": *traditional, charismatic, and legal-rational*.[24] The last, Weber claimed, was prototypical in modern western societies.[25] After World War II, legitimacy remained at the center of political theories of government and in understandings of how the government exercised "soft power."[26] For instance, political scientist Seymour Martin Lipset argued that legitimacy, along with economic development, were "social requisites of democracy."[27]

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[21] California Global Warming Solutions Act of 2006, AB 32, 2015–2016 Leg. Sess., Reg. Sess., ch. 488 (2006).

[22] SB 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

[23] JOHN LOCKE, TWO TREATISES OF GOVERNMENT 131 (1713), http://www.thefederalistpapers.org/wp-content/uploads/2012/12/Two-Treatises-of-Government-by-John-Locke.pdf [https://perma.cc/S6N7-53UH].

[24] Max Weber, *The Three Types of Legitimate Rule*, 4 BERKELEY PUBLICATIONS IN SOC'Y & INSTITUTIONS 1, 1–11 (1958).

[25] *Id.*

[26] JOSEPH S. NYE, JR., SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS (2004).

[27] Seymour Martin Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*, 53 AM. POL. SCI. REV. 69, 69–105 (1959).

In the 1970s, neo-Marxists moved away from materialist explanations of authority and state rule and toward the role that ideology and cultural legitimation played in relations within modernity's institutional triumvirate of state, market, and civil society.[28] In this vein, both O'Connor and Habermas argued that modern "capitalist states" in pursuing contradictory functions—both capital accumulation and social harmony—must repeatedly intervene to avert the economic and social crises that are endemic to capitalism.[29] Doing so, however, exposes the state as a partisan political interest that supports capital accumulation, which neo-Marxists claim undermines its legitimacy to govern as a neutral arbiter of social order.[30]

More recently, those who study risk and "risk societies" have also noted the important, contradictory, and even contested role that legitimacy plays in contemporary governing and governance processes.[31] Risk society theorists focus on the role that risk and its management play in cultivating reliance on state and societal trustees, like government, while simultaneously undermining trust in the same trustee institutions.[32] Because the modern state acts as both a manager and a creator of risk—e.g., nuclear, chemical, biological, and climate related—public faith in the "modern project" and social trust in it has become increasingly tenuous, divided, and provisional.[33] There is a paradox then, in that the state is both the producer of large-scale risks in society and also the protector, expected to secure society from such risks. In the words of risk theorist Zygmont Bauman, "The problem is not only that we are facing challenges on an undreamt of scale, but, more profoundly, that all attempts

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[28] JAMES O'CONNOR, THE FISCAL CRISIS OF THE STATE 180–81 (1973).

[29] *Id.* at 6; JÜRGEN HABERMAS, LEGITIMATION CRISIS 52–53 (1975).

[30] *See* O'CONNOR, *supra* note 28, at 6; *see also* Morris Zelditch, Jr., *Theories of Legitimacy*, *in* THE PSYCHOLOGY OF LEGITIMACY: EMERGING PERSPECTIVES ON IDEOLOGY, JUSTICE, AND INTERGROUP RELATIONS 33–53 (John T. Jost & Brenda Major eds., 2001).

[31] ULRICH BECK, RISK SOCIETY: TOWARDS A NEW MODERNITY 20 (Mark Ritter trans., 1992); Ulrich Beck, *World Risk Society as Cosmopolitan Society?: Ecological Questions in a Framework of Manufactured Uncertainties*, 13 THEORY CULTURE & SOC'Y 1, 2–32 (1996).

[32] The "Risk Society" label distinguishes the present from past "modern society" and the contemporary preoccupation with the future, the potential for safety or harm, and predicting the relationship between them (i.e., the risks). *See* Ulrich Beck, *The Reinvention of Politics: Towards a Theory of Reflexive Modernization*, *in* ULRICH BECK ET AL., REFLEXIVE MODERNIZATION: POLITICS, TRADITION AND AESTHETICS IN THE MODERN SOCIAL ORDER 1–6 (1994); ANTHONY GIDDENS, THE CONSEQUENCES OF MODERNITY 83–92 (1990).

[33] *See* GIDDENS, *supra* note 32, at 79–100; Beck, *supra* note 32, at 51–52, 58–91; William R. Freudenburg, *The 'Risk Society' Reconsidered: Recreancy, the Division of Labor, and Risks to the Social Fabric*, *in* RISK IN THE MODERN AGE: SOCIAL THEORY, SCIENCE AND ENVIRONMENTAL DECISION MAKING 107–122 (Maurie J. Cohen ed., 2000); James F. Short, Jr., *The Social Fabric at Risk: Toward the Social Transformation of Risk Analysis*, 49 AM. SOC. REV. 711, 711–12 (1984).

at solution bear in themselves the seed of new and more difficult problems."[34] This reflects a seemingly irreconcilable catch-22 in which solutions are rarely the end of a problem.

A. Institutions, Organizations, and Legitimacy

While broad theories of the state and legitimacy are useful for shedding light on the general societal conditions that give rise to tensions inherent in contemporary governing, neo-institutionalist theory focuses on how organizations of all kinds both seek out legitimacy via their strategic behaviors and also literally reflect legitimacy in their organizational environments via their methods of organization. Reflecting this, neo-institutionalist Marc Suchman defines legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."[35] Organizations are therefore structured to reflect broadly held and often taken-for-granted assumptions about how they "should look and act," including the procedures they have in place to do the work of the organization, the roles of different organizational actors, and the rules and criteria for how work is to be done. In this context, "formal structure" refers to the codified ways actors within the organization relate to one another, as well as the policies and procedures organizations use to govern the work of the organization.[36]

Formal structures represent the manifest aspects of organization such as organizational hierarchy, roles, rules, and contracts.[37] The elements of formal structure are typically contrasted with informal practices or routines.[38] These informal practices include the ways the work of the organization is actually done, and represent the "back stage" or "latent" aspects of the organization. Formal structure, as codified in policies, charters, and organizational directives, therefore acts as a

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[34] RISK, ENVIRONMENT & MODERNITY 38 (Scott Lash et al. eds., 1996).

[35] Mark C. Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20 ACAD. MGMT. REV. 571, 574 (1995) [hereinafter Suchman, *Managing Legitimacy*]; *see* Mark C. Suchman & Lauren B. Edelman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 L. & SOC. INQUIRY 903, 912–15 (1996).

[36] John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340, 341–42 (1977).

[37] W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS 151–79 (2d ed. 2001).

[38] *See* ALVIN W. GOULDNER, PATTERNS OF INDUSTRIAL BUREAUCRACY 24–26 (1954); Tim Hallett & Marc J. Ventresca, *Inhabited Institutions: Social Interactions and Organizational Forms in Gouldner's* Patterns of Industrial Bureaucracy, 35 THEORY & SOC'Y 213 (2006).

blueprint for the activities of the organization. Institutionalists view formal structure not only as a means that organizations use to achieve discrete ends but also as an important symbolic form of communication to both employees and the external environments within which they operate.[39] Indeed, institutional and neo-institutional research has consistently found that while the manifest and latent aspects of formal organization can complement and correspond with one another, they can, and frequently do, contradict one another as well.[40] In this regard, organizational structures are best conceptualized as "loosely coupled" to one another, but are easily "decoupled" insofar as the accomplishment of one organizational goal may not cohere with, or aid the accomplishment of, other organizational goals.[41]

Based on observation of organizational decoupling, early institutionalism emphasized how organizations and their members can be "co-opted" by outside political interests. Members can pursue the co-optation of outside interests that they desire to ally with or that threaten them and their plans.[42] More recently, scholars tend to focus on what organizational behaviors such as decoupling, co-optation, and isomorphism[43] actually reflect. Here, scholars note that high levels of uncertainty, when paired with difficult-to-measure outcomes, can push organizations towards merely seeking legitimacy rather than focusing on strategies that promote efficiency and effectiveness.[44] Legitimacy-seeking involves organizations pursuing mimesis and conforming to prevailing norms and standards within the industry, sector, or, more generally, society as a whole.[45]

The institutionalist perspective supplies a counter-thesis to a prevailing view of organizations as simply rational tools deployed by their masters to achieve certain goals.[46] By

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[39] *See* SCOTT, *supra* note 37, at 77–79.

[40] Neil Fligstein, *The Structural Transformation of American Industry: An Institutional Account of the Causes of Diversification in the Largest Firms, 1919–1979*, *in* THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS (Walter Powell & Paul DiMaggio eds., 1991); *see* GOULDNER, *supra* note 38, at 24–27; PHILIP SELZNICK, LEADERSHIP IN ADMINISTRATION: A SOCIOLOGICAL INTERPRETATION 5–7 (1957).

[41] Meyer & Rowan, *supra* note 36, at 341–42, 357.

[42] PHILIP SELZNICK, TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION 13 (1949). *Organizational cooptation*, which according to Selznick reflects institutionalization processes, occurs when organizational insiders take on the views of those from outside the organization as their own views. *Id.*

[43] *Isomorphism* involves organizations mimicking similar organizations for reasons of symbolic legitimacy rather than behavioral efficiency. *See* Paul J. DiMaggio & Walter W. Powell, *The Iron Case Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 152 (1983).

[44] *Id.*

[45] *Id.*

[46] *See, e.g.*, Eva Boxenbaum & Stefan Jonsson, *Isomorphism, Diffusion and Decoupling*, *in* THE SAGE HANDBOOK OF ORGANIZATIONAL INSTITUTIONALISM 78–94 (2008);

contrast, institutionalists view organizations as representing the ongoing social accomplishments of their members. In other words, institutionalists believe that the formal goals, metrics, and structures often associated with an organization's rational manifestation are always supplemented, complicated, and even undermined by less formal and latent aspects that arise as members interact with one another and their environments over time.[47]

Beyond "decoupling," recent institutionalist theory has focused on delineating different dimensions and even kinds of legitimacy. In this vein, a handful of legitimacy schemes have been put forward.[48] Some schemes identify legitimacy that emerges directly from interest groups called "pragmatic legitimacy"[49] or "sociopolitical legitimacy."[50] Others identify legitimacy that emerges from shared morals and norms,[51] while others identify the cognitive or cultural sources of legitimation.[52] Conceptualizations like these mostly reflect variation in researcher focus; different forms of legitimacy result from different sources, contexts, and environments. The next section focuses on the role of legitimacy in policymaking and policy implementation processes, the focal point of this article.

B. Policy Processes and Legitimacy

During the 1970s and 1980s, public pressure regarding a range of environmental and technological issues led to social and political conflict regarding federal and state level policy and

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Patricia Bromley & Walter W. Powell, *From Smoke and Mirrors to Walking the Talk: Decoupling in the Contemporary World*, 6 ACAD. MGMT. ANNALS 483 (2012); Kaisa E. Snellman, *Window-Dressers and Closet Conformists: Organizational Decoupling Revisited*, 1 ACAD. MGMT. PROC. 1 (2012). See examples of the "rational tools" approach to organizations in the work of ALFRED DUPONT CHANDLER, THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS 1–3, 6–7 (1977); OLIVER E. WILLIAMSON, MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS (1975); Oliver Williamson, *Transaction Cost Economics and Organization Theory*, *in* THE HANDBOOK OF ECONOMIC SOCIOLOGY (N. Smelser & R. Swedberg eds., 1994).

[47] *See* DiMaggio & Powell, *supra* note 43, at 147; W. RICHARD SCOTT, ORGANIZATIONS: RATIONAL, NATURAL, AND OPEN SYSTEMS 351–52 (5th ed. 2003).

[48] *See* David L. Deephouse & Mark Suchman, *Legitimacy in Organizational Institutionalism*, *in* THE SAGE HANDBOOK OF ORGANIZATIONAL INSTITUTIONALISM (2008).

[49] Suchman, *Managing Legitimacy*, *supra* note 35, at 578.

[50] Howard E. Aldrich & C. Marlene Fiol, *Fools Rush In? The Institutional Context of Industry Creation*, 19 ACAD. MGMT. REV. 645, 661 (1994).

[51] *See, e.g.*, SCOTT, *supra* note 37, at 134–36.

[52] Matthew E. Archibald, *Between Isomorphism and Market Partitioning: How Organizational Competencies and Resources Foster Cultural and Sociopolitical Legitimacy, and Promote Organizational Survival*, 22 RES. SOC. ORGS. 171 (2004); Suchman, *Managing Legitimacy*, *supra* note 35, at 582.

policymaking processes.[53] At that time, the public and many social movements fought to open such policy processes to greater public participation and feedback.[54] Reflecting this civic push, federal laws and acts, such as the National Environmental Protection Act and the Emergency Planning and Community Right-to-Know Act, as well as state acts like the California Environmental Quality Act, among others, specified that federal and state governments—and in some cases even particular industries—must both fulfill new, more stringent, guidelines and open their internal decision-making processes to greater public scrutiny in pursuing plans and developments.[55] Specifically, this meant that government plans would be both more rationally managed—meaning experts would technically assess the risks and benefits associated with a proposed project before taking action—and involve greater public examination and comment. Increased transparency and public involvement promoted still greater levels of social and political pressure that further stimulated public leaders to seek greater legitimation for their policies and plans.[56] The move toward more technocratic and democratic governance processes[57] therefore reflects an effort on the part of the state to gain greater public support, using new regulations that emphasize technical justifications for policy approaches and a "communities' right-to-know."[58]

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[53] THOMAS D. BEAMISH, SILENT SPILL: THE ORGANIZATION OF AN INDUSTRIAL CRISIS 82–85 (2002).

[54] Dorothy Nelkin, *Science, Technology, and Political Conflict: Analyzing the Issues*, *in* CONTROVERSY: POLITICS OF TECHNICAL DECISIONS, at xi–xiii (Dorothy Nelkin ed., 3d ed. 1992).

[55] By plans and developments, we specifically mean both the introduction of new technologies and technical systems into society as well as the pursuit of economic, industrial, and/or urban developments that held both risks and benefits. Technological examples include nuclear energy, chemicals, and biodefense and biotechnology. Outsized infrastructural developments include proposals to mine and extract resources; mega-projects like new highways, bridges, airports, and dams as well as other infrastructural and industry focused proposals and expansions. *See* California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21000–21189 (West. 2017); CAL. CODE REGS., tit. 14, §§ 15000–15387 (2017); CYNTHIA CATES COLELLA, PROTECTING THE ENVIRONMENT: POLITICS, POLLUTION, AND FEDERAL POLICY 17–18 (1981); *What Is EPCRA?*, EPA, https://www.epa.gov/epcra/what-epcra [https://perma.cc/984B-JM4T]; ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, THE FEDERAL ROLE IN THE FEDERAL SYSTEM: THE DYNAMICS OF GROWTH (1981), http://www.library.unt.edu/gpo/acir/Reports/policy/a-86.pdf [https://perma.cc/C9N2-R6T4].

[56] *See, e.g.*, STEVEN L. DEL SESTO, SCIENCE, POLITICS, AND CONTROVERSY: CIVILIAN NUCLEAR POWER IN THE UNITED STATES, 1946–1974 (1979).

[57] DOROTHY NELKIN, TECHNOLOGICAL DECISIONS AND DEMOCRACY: EUROPEAN EXPERIMENTS IN PUBLIC PARTICIPATION (1977); SHEILA JASANOFF, DESIGNS ON NATURE: SCIENCE AND DEMOCRACY IN EUROPE AND THE UNITED STATES (2005).

[58] At the federal level, the public "right to know" and comment has been institutionalized in policy processes such "environmental impact statements." National Environmental Policy Act of 1969, 42 U.S.C § 4332 (2012). In cases where projects, technologies, and development plans involve significant public funding, oversight, or

Some areas where the democratic and technical demands on the design of governance approaches are particularly prominent are in transportation, land use, and environmental policy-based decisions. In terms of the *technical dimension* wherein experts seek to more rationally manage risks and benefits, policymakers rely on models and modeling in most urban policy decision making, and modelers spend a great deal of time and effort justifying their models as critical to decision making and for identifying policy solutions.[59] There is a strong desire to gain support for models, and with that support lend credibility to modeling tools used by technical experts.[60] Technocrats argue that new, ever more complicated and behaviorally consistent models are necessary to reflect more complex urban settings and societal contexts.[61]

Environmental policy scholars have also devoted attention toward *democratizing* environmental policy processes. For example, themes of collaboration, transparency, decision-making process, and representation have gained importance over time.[62] Citizen and stakeholder involvement in planning processes is now seen as critical to representing varied interests; leaders rely on enlisting public collaboration in imagining future development to reduce the number of potential clashes and conflicts over policy choices.[63]

Technical and democratic elements, however, cannot be assumed to comfortably coexist.[64] A recurring theme within the scholarship on policy processes posits tensions between technical

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potential impact are compelled to provide technical assessments of their intended benefits and probable/potential future risks as well as potential risk/cost-offsets before approval can be granted. At the state level, for example, in 1986 California passed the California's Safe Drinking Water and Toxic Enforcement Act of 1986 also known as "Proposition 65" which also stipulates public announcement and a community's right to know it is being or has been exposed to toxins. *See* Safe Drinking Water and Toxic Enforcement Act of 1986, CAL. HEALTH & SAFETY CODE § 25249.8 (West 2017).

[59] *See, e.g.*, David T. Hartgen, *Hubris or Humility? Accuracy Issues for the Next 50 Years of Travel Demand Modeling*, 40 TRANSP. 1133, 1133–34 (2013) (providing an overview of the accuracy and relevance of forecasting models for public decision making).

[60] M. Hatzopoulou & E.J. Miller, *Transport Policy Evaluation in Metropolitan Areas: The Role of Modelling in Decision-Making*, 43 TRANSP. RES. PART A 323, 330–35 (2009).

[61] Soora Rasouli & Harry Timmermans, *Activity-Based Models of Travel Demand: Promises, Progress and Prospects*, 18 INT'L J. URB. SCI. 31, 32–34 (2014).

[62] Marian Barnes et al., *Constituting 'The Public' in Public Participation*, 81 PUB. ADMIN. 379, 379–80 (2008); Matthew C. Nisbet, *Communicating Climate Change: Why Frames Matter for Public Engagement*, 51 ENV'T 12, 20–22 (2009).

[63] *See* Richard Willson, *Assessing Communicative Rationality as a Transportation Planning Paradigm*, 28 TRANSPORTATION 1, 14–15 (2001); Caron Chess & Kristen Purcell, *Public Participation and the Environment: Do We Know What Works?*, 33 ENVTL. SCI. & TECH. 2685, 2685–92 (1999).

[64] Sheila Jasanoff, *The Dilemma of Environmental Democracy*, 13 ISSUES IN SCI. & TECH. 63, 63–65 (1996).

and democratic dimensions of policymaking.[65] Policy processes that too strongly emphasize technical aspects risk appearing elitist and unresponsive to citizen values.[66] Policy processes that emphasize democratic elements are vulnerable to complaints that the resulting policies do not square with the science—findings that have been verified as reliable and valid—or that in seeking to satisfy too many stakeholders, a policy compromises its coherence and therefore what is necessary for it to achieve a stated objective, such as lowering a specific pollutant or achieving another desired environmental outcome.[67]

C. Risk Communication and Legitimacy

A final body of scholarship emphasizes the emergence and centrality of the concept of risk—its management and the minimization of harms—in debates about the design of governance systems. According to this view, a fundamental aspect of the state, and the legitimacy of government generally, is reflected in its ability to predict and manage future threats and ensure collective safety.[68] This means that a key function of any given governance system is to address and communicate the nature of those risks and to identify the means by which they can be managed.[69]

Like the work on policy processes reviewed above, both experts and citizens are implicated in the process of "risk communication." Experts must figure out how to characterize risks and citizens must be made to understand, and ultimately vet, those characterizations and the plans designed to address them.[70] As pursued by government and industry, risk communication strategy has currently taken form in what might best be termed "risk communication 'orthodoxy'": quasi-formalized governance strategies that are frequently deployed to both blunt

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[65] *See e.g.*, Karin Bäckstrand, *Civic Science for Sustainability: Reframing the Role of Experts, Policy-Makers and Citizens in Environmental Governance*, 3 GLOBAL ENVTL. POL. 24, 28–30 (2003).

[66] *See, e.g.*, DEL SESTO, *supra* note 56.

[67] Dahl characterizes this tension between technical and popular drivers of policy as between the priorities of citizen participation and system effectiveness. *See* Robert A. Dahl, *A Democratic Dilemma: System Effectiveness Versus Citizen Participation*, 109 POL. SCI. Q. 23, 23–34 (1994).

[68] GIDDENS, *supra* note 32; Anthony Giddens, *Risk and Responsibility*, 62 MOD. L. REV. 1, 4, 9–10 (1999).

[69] *See* Vincent T. Covello, *Risk Communication: An Emerging Area of Health Communication Research*, *in* COMMUNICATION YEARBOOK 359–373 (S.A. Deetz ed., 1992); BEN SHEPPARD ET AL., NAT'L CONSORTIUM FOR THE STUDY OF TERRORISM & RESPONSES TO TERRORISM, UNDERSTANDING RISK COMMUNICATION THEORY: A GUIDE FOR EMERGENCY MANAGERS AND COMMUNICATORS 4–6 (2012).

[70] *See, e.g.*, SHEPPARD ET AL., *supra* note 69, at 4, 6.

and redirect (potential) public criticism and encourage public buy-in and dialogue around a set of preferred policy principles or policy options.[71] Critics of risk communication contend that citizen involvement frequently appears to be a ceremonial aspect, rather than a substantively meaningful contribution. Before they seek citizen input, technical experts have already made the key decisions.[72]

Some important themes emerge from the diverse literature regarding legitimacy. Early social theory recognized government's coercive authority as quite limited, and thus, conceptualized legitimacy as a major functional imperative for the state.[73] Risk society theorists emphasize the ways in which states act both as the creators and the managers of societal risks—the latter requiring substantial attention to the legitimation of governmental strategies. Alternatively, institutional theorists focus on legitimacy as a key means by which organizations interact with their environments; they identify decoupling of formal structures from informal behavior as a common strategy for separating the external legitimation of the organization from its internal operations. Lessons from institutional research and theory identify the multifaceted nature of legitimacy, and therefore the multiple sources from which it can emerge and to identify and understand the multiple strategies that can be pursued to gain (or lose) it. Research on policy processes emphasizes the ways that governance systems pursue legitimacy founded upon technical expertise and executed through democratic processes; two pursuits that, while holding the promise of better policy, can also collide and create a basis for further conflict and policy dysfunction. Finally, studies of risk communication highlight how actors in governance systems understand, convey, and seek legitimacy in their efforts to win over others to their view of risk. These ideas provide a broad framework for our investigation of legitimacy in the context of one of California's signature climate change initiatives.

II. THE LEGAL BACKDROP TO BLUEPRINTING

California has arguably pushed further than any other state or the federal government in the design and implementation

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[71] THOMAS D. BEAMISH, COMMUNITY AT RISK: BIODEFENSE AND THE COLLECTIVE SEARCH FOR SECURITY 65–67 (2015).

[72] *Id.* at 65–70.

[73] Lipset, *supra* note 27, at 86–89; Weber, *supra* note 24, at 1.

of laws and policies intended to reduce GHG emissions.[74] In 2006, the state adopted Assembly Bill 32: Global Warming Solutions Act (AB 32),[75] which was the first GHG reduction law in the United States. The law mandates a reduction in state emissions of GHGs to 1990 levels by the year 2020. In addition, the so-called Pavley Law[76] was passed in 2009, which established standards that would reduce GHG emissions from motor vehicles.[77] This was followed by two Executive Orders which built on AB 32: S-21-09, which focused on renewable energy and mandated a GHG reduction of 80% below 1990 levels by 2050[78] and, most recently, EO-B 30-15, which mandated an interim target of "40 percent below 1990 levels by 2030."[79]

These laws focus on three technological and material changes: (1) increasing statewide usage of low carbon fuels; (2) lowering emissions throughout all sectors; and (3) implementing a carbon trading system.[80] AB 32 charged the California Air Resources Board (CARB) with regulating and setting greenhouse gas targets for the state.[81] Over the past ten years, CARB has developed a range of regulatory initiatives that seek to fulfill these three technological and material aspects, and in doing so lower the state's GHG footprint. For example, CARB has required the generation of renewable energy, the use of cleaner gasoline, and developed and implemented a cap-and-trade program in the state.[82] As a result, since 2005 GHG reductions have seen modest declines in a number of sectors.[83] However, despite such progress, transportation emissions have not returned to 1990 levels.[84]

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[74] *See generally* Katrina vanden Heuvel, *Once Again, California Leads the Way*, WASH. POST (Dec. 8, 2015), https://www.washingtonpost.com/opinions/once-again-california-leads-the-way/2015/12/08/3bdc8cf4-9d0a-11e5-8728-1af6af208198_story.html?utm_term=.06bbe43b6bfa [https://perma.cc/NA5Q-35TX].

[75] Assemb. B. 32, 2006 Leg., Reg. Sess. (Cal. 2006).

[76] Senator Fran Pavley, a Los Angeles County Democrat, authored the 2006 law.

[77] Clean Car Standards, Assemb. B. 1493, 2009 Leg., Reg. Sess. (Cal. 2009) (commonly referred to as the Pavley law).

[78] Cal. Exec. Order S-21-09 (Sept. 15, 2009).

[79] Cal. Exec. Order B-30-15 (Apr. 29, 2015).

[80] CAL. AIR RES. BD., CLIMATE CHANGE SCOPING PLAN: A FRAMEWORK FOR CHANGE 5 (2008), https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf [https://perma.cc/QG9U-22XT]; CAL. AIR. RES. BD., PROPOSED FIRST UPDATE TO THE CLIMATE CHANGE SCOPING PLAN: BUILDING ON THE FRAMEWORK 2 (2014), http://www.ahrinet.org/App_Content/ahri/files/NEWSLETTER/2014/February/CA_Draft_Update_Climate_Change_Scoping_Plan_February_2014.pdf [https://perma.cc/2Y6A-723] [hereinafter CAL. AIR. RES. BD., PROPOSED FIRST UPDATE].

[81] Assemb. B. 32, 2006 Leg., Reg. Sess. (Cal. 2006).

[82] CAL. AIR. RES. BD., PROPOSED FIRST UPDATE, *supra* note 80, at ES-2–ES-3.

[83] Transportation and electricity generation saw modest GHG declines between 2005 and 2014.

[84] CAL. AIR. RES. BD., PROPOSED FIRST UPDATE, *supra* note 80, at ES-2–ES-3.

Very soon after AB 32 was passed, the legislature enacted the Sustainable Communities and Climate Protection Act of 2008 (SB 375).[85] SB 375 elaborated on the land use and transportation planning dimensions of AB 32. It authorized the California Air Resources Board to establish regional greenhouse gas reduction targets and charged the state's eighteen MPOs with designing and implementing the necessary transportation and land-use planning processes.[86] MPOs are regional bodies established in 1973 by the Federal-Aid Highway Act for the purpose of distributing federal transportation funds;[87] using MPOs for the purposes of SB 375 implementation signaled a recognition that transportation systems are best planned from a regional scale rather than a city, county, or state scale.[88]

SB 375 specifically embraces Sacramento Area Council of Governments's (SACOG) regional approach to addressing climate change as reflected in their Blueprint Plan and the blueprinting process they deployed in ratifying that plan.[89] In relying on the framework developed by SACOG in its Blueprint Plan, MPOs are urged to create long-range transportation and land-use plans through an inclusive civic process that engages regional stakeholders—business interests, civic groups, organizations, and individual "citizen planners"—to weigh in on regional development preferences.[90]

The roots of blueprinting stretch back before SB 375 and, therefore, prior to climate change as a policy focus. In 2002, SACOG initiated the Blueprint Plan in an effort to plan transportation and housing development through the year 2050. SACOG was among the first in California to complete the process and certainly the first to label their effort "blueprinting."[91] Modeled after efforts undertaken in Portland, Oregon, and Salt Lake City, Utah, the objective of the Blueprint Plan was to

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[85] *See* SB 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

[86] Mary D. Nichols, *Sustainable Communities for a Sustainable State: California's Efforts to Curb Sprawl and Cut Global Warming Emissions*, 12 VT. J. ENVTL. L. 185, 186 (2010).

[87] MARK SOLOF, N.J. TRANSP. PLANNING AUTH. INC., HISTORY OF METROPOLITAN PLANNING ORGANIZATIONS 21 (1998), http://www.njtpa.org/getmedia/b95661af-dfd4-4e3d-bb87-39e617619c7b/MPOhistory1998.pdf.aspx [https://perma.cc/8PB8-LYSJ].

[88] *See* ELISA BARBOUR & MICHAEL TEITZ, PUB. POL'Y INST. OF CAL., BLUEPRINT PLANNING IN CALIFORNIA: FORGING CONSENSUS ON METROPOLITAN GROWTH AND DEVELOPMENT, at iv–v, 1 (2006), http://www.ppic.org/content/pubs/op/OP_606EBOP.pdf [https://perma.cc/ZK7R-LQJ5].

[89] John Darakjian, Comment, *SB 375: Promise, Compromise and the New Urban Landscape*, 27 UCLA J. ENVTL. L. & POL'Y 371, 383–84 (2009).

[90] *See* Greg Greenway, *Getting the Green Light for Senate Bill 375: Public Engagement for Climate-Friendly Land Use in California*, 10 PEPP. DISP. RESOL. L.J. 433, 444–47 (2010).

[91] BARBOUR & TEITZ, *supra* note 88, at 1 & nn.3–4.

develop a regional plan that would densify urban growth, create walkable neighborhoods, promote mixed-use development, increase low-income housing, and expand the use of nonmotorized and public transportation.[92] SACOG expected that these mechanisms would improve lower vehicle miles traveled, and as a result, reduce urban sprawl.[93] In short, the Blueprint Plan would encourage "smart" regional metropolitan growth.[94]

Over its history, most growth in the Sacramento metropolitan area has reflected short-term planning and opportunistic development with little coordination across the region's communities and without sustained public input.[95] Based on projections that by 2050 the Sacramento metropolitan area would need to accommodate 1.7 million new residents and twice the amount of current housing, SACOG imbued their Blueprint Plan and agenda with a fair amount of urgency.[96] The Blueprint Plan was also an attempt to break with the "competitive localism," wherein communities compete rather than cooperate on land-use and transportation initiatives, and to move towards a consensus-based regional planning process.[97]

The process was well received, winning a number of prestigious environmental and planning awards.[98] Again, the

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[92] VISIONPDX, PORTLAND 2030: A VISION FOR THE FUTURE 58 (2008), https://www.portlandoregon.gov/bps/article/168876 [https://perma.cc/T9WZ-6G2Q]. Utah's visioning plan is described here: ENVISION UTAH, THE HISTORY OF ENVISION UTAH, https://www.epa.gov/sites/production/files/2014-07/documents/envision_utah.pdf [https://perma.cc/M8WZ-EX9X].

[93] Gabriel Baird, *City's Future at Center of Debate—A Regional Planning Agency and Elk Grove Officials Both Claim to Have a Better Plan*, SACRAMENTO BEE, Mar. 21, 2004, at N1.

[94] The concept of "smart growth" can encompass many things. SACOG's definition includes the following planning and transportation aspects: "[p]rovide a variety of transportation choices"; "[o]ffer housing choices and opportunities"; "[t]ake advantage of compact development"; "[u]se existing assets"; "[m]ixed land uses"; "[p]reserve open space, farmland, natural beauty, through natural resources conservation"; and "[e]ncourage distinctive, attractive communities with quality design." SACOG, BETTER WAYS TO GROW: EXAMPLES FROM THE SACRAMENTO REGION OF THE SEVEN PRINCIPLES OF SMART GROWTH 1 (2008).

[95] *See* BARBOUR & TEITZ, *supra* note 88, at iii, 5–11.

[96] SACOG, SPECIAL REPORT BLUEPRINT SUMMIT: A REVIEW OF 2004 REGIONAL FORUM REGIONAL REPORT 2–3 (2004).

[97] BARBOUR & TEITZ, *supra* note 88, at 5.

[98] As of 2010, the Blueprint Plan had been awarded the following: Innovations in American Government Award by Kennedy School of Government, Harvard University; the California Governor's Award for Environmental and Economic Leadership; the Transportation Planning Excellence Award by the Federal Highway Administration/Federal Transit Administration; the Presidential Citation from the California Chapter of the American Institute of Architects; the Environmental Leadership Award from the Environment Council of Sacramento; The Award for Smart Growth Achievement from the U.S. Environmental Protection Agency; The "Thanks to You" Award from the American Leadership Forum Mountain Valley Chapter; The Award for Outstanding Achievement from the Association of Metropolitan Planning Organizations; Community Development Award from the Sacramento Mutual Housing Association;

Blueprint Plan was considered so successful that the legislature modeled SB 375 after it.[99] Initially blueprinting emerged as a method to build consensus for developing long-range regional plans. Later, blueprinting became a governance strategy that regional MPOs in California and California state leaders considered key to achieving statewide reductions in land-use- and transportation-related GHGs.

III. CULTIVATING LEGITIMACY

SACOG deployed a multipronged approach that relied on four distinctive legitimation strategies in their Blueprint Plan as a means of gaining support and promoting their preferred transportation and land-use plan. In general terms, governance strategies involve different sorts of legitimacy depending on how they are configured, what they seek to accomplish, and who or what governing body is in charge of them. In SACOG's case, the Blueprint Plan involved a new regionalist policy approach to transportation planning in which SACOG, as the governing authority, had little command authority to compel compliance. What is more, the California Legislature tasked SACOG with creating and implementing a plan to address a nationally contentious issue—climate change and GHG emissions—that could involve a highly resistant metropolitan political environment.[100] These circumstances pushed SACOG to cultivate greater levels of public recognition and legitimacy to empower its agenda and exert control over its programs, mandates, and associated responsibilities. SACOG's blueprinting efforts employed four types of legitimacy that we identify and define below. These include: s*tructural*, *popular*, *technological*, and *professional*.

Structural legitimacy refers to the way that the formal structure of a governance entity—when in conformance with deeply embedded, widely shared, and taken-for-granted institutionalized rules—tends to gain credibility and, with that, a good level of legitimacy. This structural aspect can reflect both intraorganizational qualities and/or interorganizational network characteristics. As a governance body, SACOG is organizationally situated at the center of a broad network of regional actors including cities, counties, and stakeholders such

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and the Regional Clean Air Award from the American Lung Association Sacramento Emigrant Trails. SACOG, SPECIAL REPORT: BLUEPRINT'S IMPACT ON THE REGION AND RESIDENTS QUALITY OF LIFE 16 (2010).

[99] MONICA ALTMAIER ET AL., CTR. FOR A SUSTAINABLE CAL., INST. OF URBAN & REG'L DEV., MAKE IT WORK: IMPLEMENTING SENATE BILL 375, at 5–6 (2009).

[100] *See* Darakjian, *supra* note 89, at 386, 397 & n.110.

as interest-focused nongovernmental organizations, representatives of industry and other commercial concerns, and the general public.[101] What is more, the formal measures SACOG followed when engaged in transportation and land-use planning were intended to align with contemporary beliefs and expectations regarding the proper divisions of authority and responsibility in publicly consequential decisions, as well as those relating to how government ought to be organized, how decisions ought to be made, and therefore how government can best fulfill the common good.

By contrast, *popular legitimacy* refers to the ways that governance entities attempt to reflect institutionalized expectations concerning what constitutes proper governance processes and public inclusion with regard to important decisions that affect the public, as well as with their implementation once a decision has been made. In Western-style democracies, this invariably involves some level of transparency, civic representation, and citizen involvement. Policy processes that involve citizens, therefore, better satisfy democratic expectations. They are understood to reflect local concerns and increase the legitimacy of the policy decision that emerges from the governance system. Conversely, governance arrangements that exclude such measures hazard denunciation as secretive and "undemocratic" and, therefore, are out of sync with community values or reflective of elite self-interest.

Distinct from popular appeals, *technological legitimacy* refers to ways that governance entities try to cultivate the impression that their actions are grounded in hard data and that they rely on the latest technological tools—i.e., "high tech" tools and solutions. Finally, *professional legitimacy* refers to the ways that governance entities mirror or deploy symbols associated with professional knowledge, state-of-the-art theory, findings, and vetted metrics and standards. Professional legitimacy reflects a context within which governance strategies are used to display an alignment with expert opinion and where the expert authority is grounded in a recognized body of knowledge (see Table 1).

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[101] For information concerning SACOG see, *About SACOG*, http://www.sacog.org/about-sacog [https://perma.cc/3GGH-KZDK].

TABLE 1. Legitimacy Typology

Type of Legitimacy	Essential Features	Examples
Structural	formal structures, location, distribution, exercise of authority, due process	a "third way" policy tack, triple-weighted voting process
Popular	inclusiveness, representativeness	forums, workshops, neighborhood meetings, citizen planners
Technological	high-technology	cutting-edge planning software,[102] I-PLACE^{3}S, SACMET, MEPLAN
Professional	state-of-the-art, knowledge	professional awards, smart growth principles

Parsing the features that distinguish different aspects of legitimacy as an ideal type is a useful tool, both theoretically and pragmatically, insofar as it exposes how governance institutions, policies, and laws gain (or lose) adherents, quite apart from the outcomes associated with them. Below, each type of legitimacy introduced above is empirically developed as reflected in SACOG's Blueprint Plan and the blueprinting process.

A. Structural Legitimacy

By the end of the mid-twentieth century, political tensions emerged in many Western democracies around two general modes of organizing government and, with them, governance.[103] The tension played out across a wide variety of policy domains. The first mode founded authority to manage societal problems and collective risks in a centralized body, often referred to as "the state" or "the government," that exercises the power to define,

[102] I-PLACE^{3}S, SACMET, and MEPLAN are state-of-the-art planning and modeling software technologies. For a more detailed discussion, see *infra* Section III.C.

[103] *See* AYRES & BRAITHWAITE, *supra* note 3, at 3; Bob Jessop, *Liberalism, Neoliberalism, and Urban Governance: A State-Theoretical Perspective*, 34 ANTIPODE 452, 452–72 (2002).

implement, and enforce policies in the name of the public.[104] Through the early part of the twentieth century, state criminal justice policies, federal and state taxation, interstate and state highway systems, and federal and state welfare policies were largely organized under this "command model" of governance both in the United States and elsewhere.[105]

More recently, political parties on the right, joined in many cases by center-left coalitions, have favored a second mode of organizing policy responses.[106] This tack has generally emphasized more decentralized, often market-based arrangements that rely on incentives rather than sanctions, and on self-regulation rather than command authority, to achieve desired policy outcomes.[107] These two governance modalities have been contrasted in many theoretical and empirical works in the social science field. These works frequently characterize the older approaches as rooted in "command" or "command and control model" and newer approaches as rooted in "market principles" and "neoliberalism."[108]

Currently, the tensions between command and neoliberal governance models lie at the center of an ongoing debate about how societies ought to respond to climate change. For example, Professor Michael Hanemann characterizes the debate over California's landmark climate change policy, AB 32, as being rooted in a conflict between "regulation" and "trading" approaches—i.e., state-centered versus market-centered governance forms.[109] Increasingly, governments have hybridized their policies to involve both command features and market principles in order to realize the strengths of one or the other and resolve the political tensions that accompany their singular use. Scholars have referred to this middle path between either governance extreme as a "third way" governance strategy.[110] SB 375's sponsor, Senator Darrell Steinberg, described the law in a manner that very much echoed these larger ideological tensions:

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[104] David John Frank et al., *The Nation-State and the Natural Environment over the Twentieth Century*, 65 AM. SOC. REV. 96, 96–102.

[105] For further discussion regarding the command model see DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 51 (2005).

[106] *Id.*

[107] *See id.*

[108] For a further discussion of neoliberalism see Jessop, *supra* note 103, at 454.

[109] W.M. Hanemann, *How California Came to Pass AB 32, the Global Warming Solutions Act of 2006*, at 25–26 (Dep't of Agric. & Res. Econ. & Policy, Working Paper No. 1040, 2007), https://escholarship.org/uc/item/1vb0j4d6 [https://perma.cc/TPP5-4FVP].

[110] ANTHONY GIDDENS, THE THIRD WAY: THE RENEWAL OF SOCIAL DEMOCRACY 64–65 (1998).

> I think everyone recognizes that in order to meet the requirements of this very aggressive law, we're going to have to employ market-based mechanisms, we're going to have to regulate, and we're going to have to focus on mobile sources, stationary sources, and land use, which is the subject of SB 375. Since this is such groundbreaking legislation, there's a lot of anxiety about the balance of those aspects. Many of us on the Democratic side feel that, while market-based mechanisms are important and should be part of the strategy, if we aren't aggressive in looking at the regulatory side, we're not going to meet the goals. The Republican side feels that if we regulate, we're going to harm the economy.[111]

SB 375's governance model put into practice two important concepts: "network governance" and "regionalism." In terms of the former, the legislature and the governor agreed to statewide CO_2 reduction targets with the details of operationalizing the plan left to CARB.[112] CARB further left planning and implementation to regional MPOs who were tasked with achieving targeted reductions by modifying their long-range transportation and land-use plans.[113] Therefore, MPOs like SACOG were tasked with coordinating input from metropolitan area cities and counties, and designing and implementing a long-range transportation plan that would achieve GHG targets as specified by CARB and state level legislation AB 32 and SB 375.[114]

As such, SACOG's role in this governance network reflects the contemporary impulse to balance command regulation with bottom-up input and incentives.[115] Higher levels of government set a broad framework of rules and provide funding, but regions and subregional units are given the autonomy to determine how best to conform and achieve the policy goals set by those higher levels of authority.[116]

In truth, the principles behind SACOG's Blueprint Plan were in place before climate change emerged in 2006 as a policy issue in California.[117] SACOG, as a regionalist governance

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[111] *California's SB 375 Would Tie Local Planning Decisions to Transportation Funding*, VERDEXCHANGE (Sept. 23, 2014), https://www.verdexchange.org/news/california's-sb-375-would-tie-local-planning-decisions-transportation-funding [https://perma.cc/72EY-V8CL].

[112] Bill Fulton, *SB 375 Is Now Law—but What Will It Do?*, CAL. PLANNING & DEV. REPORT (Oct. 1, 2008), http://www.cp-dr.com/articles/node-2140 [https://perma.cc/6DSX-DDDU].

[113] *California's SB 375 Would Tie Local Planning Decisions to Transportation Funding*, *supra* note 111.

[114] *See* SB 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008); Darakjian, *supra* note 89, at 372; Fulton, *supra* note 112.

[115] GIDDENS, *supra* note 110, at 100.

[116] *See* Betsill & Bulkeley, *supra* note 3, at 144–45.

[117] *See* Kacey Lizon, *Sacramento Region Blueprint: Linking Land Use and Transportation*, SACOG, http://www.sacog.org/overview/sacramento-region-blueprint [https://perma.cc/3ZZR-QUCP].

structure, provided a politically acceptable alternative for left and center-left politicians because it prevented the "free-riderism" they associated with free-market strategies that they anticipated would undermine the effectiveness of SB 375.[118] On the right, SACOG also proved satisfactory because regionalism paid homage to the importance of local autonomy, especially in land-use planning where centralized and top-down regulation of land use and development are unacceptable to policymakers of this ideological bent.[119] Therefore, SACOG, as an MPO governed through regionalism, was well situated to play the key role of convener of SB 375's roll-out and implementation. Indeed, legislators believed MPOs were the best means of implementing SB 375 precisely because of their political acceptability to the state's varied stakeholders.[120]

As a regionalist means of coordinating transportation planning, SACOG's policymaking process, like many MPOs', is intended to reflect the preferences of the cities and counties present in the region. As a consequence, a networked form of regional governance emerged from SACOG's policymaking deliberations. Individual members on SACOG's board and planning committees reflect locally elected officials and state agency representatives as well as other private, commercial, and civic not-for-profit stakeholders.[121] The role of the board and its committees is to provide technical input and analysis, specialized knowledge, and stakeholder input for SACOG's primary responsibility: planning the region's Metropolitan Transportation Plan (MTP) and allocating federal transportation funds for the plan.[122]

By federal law, regional MPOs have significant flexibility in structuring their internal decision-making processes as they develop their MTPs.[123] In SACOG's case, a thirty-one-member

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[118] In this context the "free rider" problem reflects individual cities benefiting from the collective pursuit of state GHG reduction goals, as mandated by AB 32 and SB 375, while they "selfishly" continue to develop without regard to their individual role in promoting climate change. *See* MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS 76 (1965). In short, AB 32 and SB 375 require all cities and counties to participate in reducing their GHG emissions if state mandated goals are to be achieved. SB 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

[119] Hanemann, *supra* note 109.

[120] *California's SB 375 Would Tie Local Planning Decisions to Transportation Funding*, *supra* note 111.

[121] JOINT POWERS AGREEMENT FOR THE SACRAMENTO AREA COUNCIL OF GOVERNMENTS art. 5, § 5.0 (July 1, 2003), http://www.sacog.org/sites/main/files/file-attachments/jpa.pdf [https://perma.cc/TZ2V-JW4U].

[122] Elisa Barbour & Elizabeth A. Deakin, *Smart Growth Planning for Climate Protection*, 78 J. AM. PLANNING ASS'N 70, 72 (2012).

[123] THOMAS W. SANCHEZ, METRO. POLICY PROGRAM, AN INHERENT BIAS? GEOGRAPHIC AND RACIAL-ETHNIC PATTERNS OF METROPOLITAN PLANNING ORGANIZATION BOARDS 2 (2006), https://www.brookings.edu/wp-content/uploads/2016/06/20060124_mp

board of directors is the governing body and every city and county within the Sacramento metropolitan region holds a seat. On SACOG's board, voting is weighted by the population size of each participating city and county. For example, Sacramento City and Sacramento County, the most populated areas in the region, have two and three seats, respectively.[124] SACOG also relies on a "triple-weighted" voting system to make transportation and land development decisions more representative of the metro-area population.[125] For SACOG to adopt a measure, a majority of the region's cities and counties must support it, and in so doing, a majority of the region's population by extension are deemed to support it through their city or county representatives.[126] Practically speaking, this means that four of six counties and twelve of twenty-two cities in SACOG's defined MPO region must support a measure for it to pass and move toward implementation.[127] This structure of representation helped to legitimize SACOG's regional governance and its pursuit of GHG reductions insofar as its decision making includes representative consideration of local governments and their populations.

This analysis of SACOG's Blueprint Plan and the subsequent drafting of SB 375 highlights the role of governance expectations and activities—how state, regional, and local entities are linked to one another—that can cohere or clash with prevailing ideas regarding how government "ought" to be organized. In SACOG's case, left-leaning and centrist politicians in California's state capital rejected both command-centered and neoliberal governance models.[128] As a result, SB 375 reflected the preferred option: reliance on regionalist governance networks coordinated by MPOs. The legislation reflected SACOG's perceived success in implementing its Blueprint Plan because SACOG had pursued its regional MTP reliant on a relatively open planning process that brought in key stakeholders from across the region. The structure of governance as represented in SACOG's regionalist approach—both in its intra-organizational attributes and in the extra-organizational network it coordinated—neither veered toward command authority nor neoliberalism, but rather

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os.pdf [https://perma.cc/C86L-776X]; *see* Federal-Aid Highway Act of 1962, Pub. L. No. 87–866, 76 Stat. 1145, 1145–48 (1962).

[124] JOINT POWERS AGREEMENT FOR THE SACRAMENTO AREA COUNCIL OF GOVERNMENTS, *supra* note 121, at art. 5, § 5.8.

[125] *See* SACOG, SACOG HANDBOOK 22 (2015).

[126] *See* JOINT POWERS AGREEMENT FOR THE SACRAMENTO AREA COUNCIL OF GOVERNMENTS, *supra* note 121, at art. 5, § 5.6.

[127] SACOG, *supra* note 125, at 22.

[128] Mary Lynne Vellinga, *Growth Battle Rejoined—Steinberg's Land-Use Proposal Seeks to Avoid Previous Mistake*, SACRAMENTO BEE, Sept. 9, 2007, at B1.

reflected SACOG's efforts to reach out and appeal to its stakeholders. The regionalist approach was recognized and rewarded with a good deal of "structural legitimacy."

B. Popular Legitimacy

Popular legitimacy refers to how a citizenry perceives a governance entity. It refers to whether citizens deem that an entity fulfilled institutionalized expectations regarding proper levels of public involvement in decisions as well as in implementation efforts once a policy has been created. Popular legitimacy emerged with SACOG's extensive outreach efforts and was reflected in the citizen participation it encouraged through the neighborhood meetings, workshops, and public forums it sponsored. Popular legitimacy was also reflected in SACOG's adherence to decision rules that stressed regional representation in its policymaking process.

Popular legitimacy, as a generic item, emerges from local history, civic-political relations, and civic discourse that embeds societal "trustees," those vested with some form of public authority, and their decisions in local social expectations. Likewise, when citizens engage in a civic dialogue regarding a policy or program's design, implementation or its outcomes (real or projected), they rely on shared expectations to compare, contrast, and judge its worthiness. As a consequence, citizens are more likely to consent and cooperate with requests, decrees, and laws that mirror their expectations and, when their expectations are met more readily, trust the governments that propose them. The media, special interest groups, and social movements frequently also play a role in helping to shape popular impressions and, with those impressions, the credibility of a proposed program or policy. At its base, then, popular legitimacy is reflected in policy proposals that emerged from a process that explicitly involves citizen participation, which, in turn, generates the perception that policies are consonant with widely held community norms and values.[129]

To promote popular legitimacy with its plans, SACOG therefore deliberately sought to associate its Blueprint Plan with democratic processes and principles. Indeed, SACOG not only sought to play into such expectations but also to actively cultivate civic engagement through its transportation and urban planning agenda. Taking lessons learned in Portland, Oregon,

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[129] *See* MAX WEBER, ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY 31 (Guenther Roth & Claus Wittich eds., 1978).

and Salt Lake City, Utah, where urban planners had already successfully incorporated high levels of public input into their urban planning efforts, SACOG developed blueprinting as a regional visioning process to highlight that it too was incorporating citizen planners into its policymaking.[130] These undertakings were intended to appear open, deliberative, and democratic and involve the region's socioeconomic and ethnic diversity.[131] As such, once completed, SACOG could claim that the Blueprint Plan reflected the region's popular will.

The Blueprint visioning process itself took shape through forty-four public workshops, organized at neighborhood, county, and regional levels, where invited citizens, civic groups, and commercial and local governmental stakeholders deliberated on alternative regional growth plans.[132] The neighborhood workshops began in 2003 when SACOG convened meetings with residents in twenty-five different regional communities with the purpose of familiarizing them with the goals of the Blueprint Plan.[133] SACOG also held significantly larger county-level forums, including planning workshops, to spread the word about transportation investment options and to gauge local preferences for improving Sacramento's regional transportation system.[134] The neighborhood and county meetings culminated in a "Regional Forum" in October of 2004.[135] This meeting involved some 1400 business leaders, elected officials, and "citizen planners."[136] SACOG repeated the formula it had developed at the neighborhood and county workshops, wherein participants scrutinized maps and data supplied by SACOG that were oriented around four projected growth scenarios. At the end of the event, after SACOG ran through the data and answered questions, citizen planner participants were urged to electronically "vote"—i.e., they were polled—on their preferred growth scenario.[137]

The neighborhood, county, and regional forums were then followed by a final "Elected Officials Summit" held in October of 2004.[138] Eighty elected officials from across the Sacramento metropolitan region attended.[139] They were presented with the

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[130] *See* sources cited *supra* note 92.

[131] Photographs used in SACOG publications portrayed citizen planners as a racially and ethnically diverse group. *See* SACOG, *supra* note 98.

[132] *Id.* at 2.

[133] SACOG, *supra* note 98, at 1.

[134] *The Need for the Blueprint*, SACRAMENTO REGION BLUEPRINT, http://www.sacregionblueprint.org/process/ [https://perma.cc/N77C-YJ7V].

[135] SACOG, *supra* note 98, at 2.

[136] *Id.* at 2.

[137] *Id.* at 2–4.

[138] *Id.* at 1.

[139] *See* SACOG, *supra* note 98, at 2.

results and summaries of the surveys and polls taken of "citizen planners" over the preceding months at the visioning forums.[140] These surveys showed that 99% of regional leaders preferred development directed by "smart growth principles."[141] As with the previous workshops, the forum culminated in another chance to "vote."[142] Using electronic keypads, officials overwhelmingly approved[143] the growth scenario favored by prior local and county participants in the Regional Forum. SACOG leadership also advocated for this voting system as a means of establishing popular legitimacy.

In November 2004, the SACOG board voted and approved the "preferred plan," a plan that SACOG had largely scripted in advance of the meetings and votes, but that had been confirmed through an organized sequence of workshops, forums, and public meetings.[144] In truth, the blueprint process advocated by SACOG and the scenarios preferred by "citizen planners" at SACOG's public forums were one in the same; a majority of participants wanted a less congested, less polluted, more walkable region with a lower carbon footprint while maintaining the promise of continued economic growth.[145] Having been educated to prefer the seven smart growth options embodied in the Blueprint Plan, citizen planners then voted to embrace those options.[146]

SACOG reports regarding the Blueprint Plan and their blueprinting efforts also featured photographs of their workshops and forums that purposively highlighted the diversity of citizen participants, showing them engaging with one another and SACOG planners around tables with SACOG literature, computers, and regional maps that illustrated the different

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[140] *Id.* at 1–2.

[141] Mary Lynne Vellinga, *Forum Favors a New Direction for Development*, SACRAMENTO BEE, May 2004, at B1.

[142] We would like to emphasize that the citizen planners were not truly voting in so far as they were deciding an actual outcome. More, the voting represented a polling by SACOG of their opinions. The difference is important: the idea that citizens were actually voting on an outcome fed into the popular legitimacy that both the Blueprint Plan and SACOG achieved by deploying the language and façade of a democratic process.

[143] In this summit, several questions were used to poll participants that asked in different language essentially the same question: did the respondent support SACOG's Blueprint Plan. In this poll, approval exceeded 50% ranging from 78%–92% of those polled expressed support for the Blueprint preferred scenario. SACOG, Elected Officials Summit the Blueprint: Transportation and Land Use Plan (2016).

[144] *See* SACOG, *supra* note 98.

[145] *Id.*

[146] *See* SACOG, TALL ORDER REGIONAL FORUM: CHOICES FOR OUR FUTURE (2004), http://old.sacog.org/publications/Forum2004Program.pdf [https://perma.cc/5W6H-EZRL].

development options.[147] SACOG used these images in subsequent publications, event announcements, and media spots to emphasize the participatory aspect of the Blueprint.[148] Indeed, these became visual tropes, routinely used by SACOG as it sought to associate itself and the Blueprint with deliberative and participatory aspects of the Blueprint Plan's "visioning" process. The association with the popular will lent SACOG's Blueprint Plan the requisite popular legitimacy it required to design the region's transportation future.

SACOG's public relations and promotional materials highlighted the convergence of its Blueprint Plan's ambitions and the preferences expressed by citizen planners, at workshops, forums, and the summit of elected leaders. Moreover, SACOG officials repeatedly highlighted the deliberative and diversity aspects of the public forums as well as the "general consensus" that had been reached through them.[149] Over time, SACOG's blueprinting process caught on; it gained a great deal of regional credibility for articulating a plan that seemingly dovetailed with local preferences and that therefore gave SACOG the popular legitimacy it needed to push through its preferred regional transportation and land-use agenda.

Through the blueprinting process, SACOG pursued a strategy designed to lend their regional planning efforts popular legitimacy. SACOG moved their planning processes much closer to local constituents through the workshops, forums, and neighborhood meetings. They also deployed technical presentations and participatory tools that facilitated a sense of inclusion, transparency, and decision-making participation.[150] The priority given to citizen involvement partly reflected that SACOG, as an MPO, has little command authority over cities or counties and is also a nonelected governance body. And while SACOG's board of directors is mainly composed of regionally elected officials, as an MPO, it is vulnerable to the criticism that it does not reflect the local popular will. SACOG's active inclusion of "citizen-planners" in its transportation design and planning processes acted to blunt potential criticisms and provide a mechanism through which it could gain the necessary legitimacy and, with it, regional support to carry out its legislative mandate.

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[147] Elisabeth Sherwin, *Meeting Mulls Region's Future Growth*, DAVIS ENTERPRISE, May 3, 2004.

[148] SACOG, *supra* note 98.

[149] BARBOUR & TEITZ, *supra* note 88, at iii.

[150] For a discussion of Technological Legitimacy, *see infra* Section III.C.

C. Technological Legitimacy

Government and governing bodies typically rely on a range of technologies to pursue their mandates. For example, SACOG routinely sought support for its actions by associating them with "high-tech" models, plans, and solutions.[151] The importance of technology, and with it technological legitimacy, is not well developed in the legitimation literature. Yet appeals to data-driven and evidence-based policies, performance-based measurements and policy "dashboards,"[152] as well as high-tech formulations like "e-government"[153] or "Gov 2.0"[154] exemplify the current reality that perceptions of "better governance" and "better results" are highly associated with plans and policies that make use of the latest technologies. Technology in instances like this represents higher levels of effectiveness; use of high-order technology tools signifies good leadership and innovative efforts and therefore conveys to the public a high level of sophistication.

Indeed, SACOG deployed a number of new techniques and technologies in their blueprinting efforts to enrich the context within which citizen planners would define their preferences—and thereby achieved technological legitimacy. For example, they simulated development scenarios for different neighborhoods and cities across the region.[155] SACOG displayed different future growth scenarios on video-projected regional Geographic Information Systems (GIS) generated maps that were color-coded according to the growth patterns associated with them such as the sprawl, traffic congestion, and housing density they might affect.[156]

To produce these visually stunning depictions of the region's "possibilistic" futures, SACOG relied on a number of leading planning software programs, including I-PLACE^{3}S, SACMET, and MEPLAN to build visualizations for the workshops and forums.[157] While MEPLAN and SACMET

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[151] *See* SACOG, *supra* note 146.

[152] *See* Thomas Plant & Janine Douglas, *The Performance Management Continuum in Municipal Government Organizations*, 45 PERFORMANCE IMPROVEMENT 43, 45 (2006).

[153] Mark Howard, *e-Government Across the Globe: How Will "e" Change Government?*, GOV'T FIN. REV. 6, 6–9 (2001).

[154] Enrico Ferro & Francesco Molinari, *Making Sense of Gov 2.0 Strategies: "No Citizens, No Party"*, 2 J. EDEMOCRACY 56, 56–68 (2010).

[155] *See generally Technology of the Blueprint: Workshop Participants Can See Future Today with I-PLACE^{3}S Software*, SACRAMENTO REGION BLUEPRINT, http://www.sacregionblueprint.org/technology/ [https://perma.cc/VJB8-U5FP].

[156] *See id.*

[157] Specifically, I-PLACE^{3}S software allowed citizen planners, with guidance from SACOG's staff of urban planners, to manipulate land uses for individual parcels in the region to view how changing neighborhoods might affect broader transportation

operated in the background, these technologies supplied SACOG planners with the tools necessary to "wow" citizen planners, city and county officials, and other stakeholders at the workshops as cutting-edge planning technologies.[158]

New technologies such as these became part of SACOG's larger legitimation strategy because they facilitated SACOG's pursuit of a general set of ideals and ambitions that regional stakeholders already wanted to pursue—namely, a higher quality of life. Through the use of technologically driven visual cues and a clicker-based polling processes, over time SACOG was able to engender a sense of regional consensus that the Blueprint Plan was a success.[159] These technological measures were thus a central medium through which SACOG anchored its blueprint efforts.

That SACOG celebrated I-PLACE^{3}S, MEPLAN, and SACMET as innovative technological tools in its own publications suggests that their role was more than functional, but also reflected an attempt to cultivate legitimacy among the regions' stakeholders.[160] Ultimately, we cannot say whether or not these technological elements were the basis for higher levels of public approval, but the local press repeatedly lauded SACOG's use of them. What is more, the role played by "citizen planners" in SACOG's virtual planning forums through electronic polling (or "voting") and visualization also played an important role in the awards bestowed on SACOG by professional associations and the federal government.[161] The connection to professional associations and expert knowledge was also important to SACOG's blueprinting process. Closely related to technological legitimacy, professional legitimacy was a key element in SACOG's perceived Blueprint Plan's success that we take up below.

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and land-use planning outcomes. Also important, and underlying the use of I-PLACE^{3}S, was SACOG's use of MEPLAN, a land-use forecasting model that allows transportation analysis and provides mapping aspects for illustrating different growth scenarios too, and SACMET, which enables the mapping of regional travel demand and therefore the generation of impact assessment and output that further enhanced the modeling of different regional growth scenarios. *See Infrastructure Cost Model*, SACRAMENTO REGION BLUEPRINT, http://www.sacregionblueprint.org/technology/infrastructure-cost-model/ [https://perma.cc/934N-W34E]; *Travel Model*, SACRAMENTO REGION BLUEPRINT, http://www.sacregionblueprint.org/technology/travel-model/ [https://perma.cc/B5H6-BS5Q].

158 *See supra* note 157.

159 Elisabeth Sherwin, *Video Conference Will Look at Transportation*, DAVIS ENTERPRISE, Nov. 3, 2006.

160 *Tools & Data*, SACOG, http://www.sacog.org/tools-data [https://perma.cc/TXW6-Z3LG].

161 *See* SACOG, *supra* note 100, at 2–3, 16.

D. Professional Legitimacy

Governance entities can also justify their actions by aligning them with professional credentials, associations, standards, and bodies of knowledge. The invocation of expertise is a means of cloaking governance actions in rationality. Expert knowledge and technocracy often stand in contrast with citizen input in democratic processes insofar as they are founded in distinctive governance principles.[162] Some have even argued that the use of expert knowledge to legitimize governance often masks elite interests and should be viewed critically.[163] In SACOG's case, the credibility of their blueprinting process largely hinged on their rhetorical marriage of "regional values" with professionally derived "smart growth" planning principles. Put directly, by marrying "democratic principles"—i.e., structural and popular legitimacy—with professionally motivated "technocratic" ones—i.e., technical and professional legitimacy—SACOG gained regional support and the veneer of success it required to ratify its Blueprint Plan. The professional concepts that stand behind smart growth originate in reactions against suburban development, or "sprawl."[164] Post-WWII urban sprawl led to a critique in the 1980s that had professional urban and regional planners rethinking metropolitan development. Reference to "smarter growth" was meant to capture a range of ideas about how to avoid the negative aspect of urban-suburban sprawl.[165] Strategies meant to stave off such sprawl included encouraging compact development, mixed commercial and residential land use, and reliance on public transportation.[166]

In 1991, the Local Government Commission—a nonprofit urban planning organization in Sacramento—convened to develop a set of principles to govern land-use planning.[167] The result was the "Ahwahnee Principles," an early

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[162] THOMAS D. BEAMISH, COMMUNITY AT RISK: BIODEFENSE AND THE COLLECTIVE SEARCH FOR SECURITY 35–38 (2015); *see* Éric Montpetit, *Policy Design for Legitimacy: Expert Knowledge, Citizens, Time and Inclusion in the United Kingdom's Biotechnology Sector*, 86 PUB. ADMIN. 259, 264–67 (2008).

[163] *See, e.g.*, A. Claire Cutler, *The Legitimacy of Private Transnational Governance: Experts and the Transnational Market for Force*, 8 SOCIO-ECON. REV. 157 (2010); Christina Boswell, *The Political Functions of Expert Knowledge: Knowledge and Legitimation in European Union Immigration Policy*, 15 J. EUR. PUB. POL'Y 471 (2008).

[164] ADAM ROME, THE BULLDOZER IN THE COUNTRYSIDE: SUBURBAN SPRAWL AND THE RISE OF AMERICAN ENVIRONMENTALISM 1–3 (2001).

[165] Patricia E. Salkin, *Implementation of the APA Growing Smart Legislative Guidebook: Beginning to Benchmark Success*, 33 REAL EST. L.J. 339, 340–41 (2004).

[166] Tom Daniels, *Smart Growth: A New American Approach to Regional Planning*, 16 PLANN. PRAC. & RES. 271, 271–77 (2001).

[167] PETER CALTHORPE ET AL., LOCAL GOV'T COMM'N, THE AHWAHNEE PRINCIPLES FOR RESOURCE EFFICIENT COMMUNITIES (1991).

charter that developed smart growth principles to guide regional development.[168] In 2002, the American Planning Association (APA) published a national guide to smart growth titled, *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*.[169] In it, the APA outlined an ambitious planning agenda of standards, regulatory changes, and financing options that it suggested states, regions, and locales pursue to "combat urban sprawl, protect farmland, promote affordable housing, and encourage redevelopment."[170]

In the blueprinting process, SACOG married the Ahwahnee Principles with the APA's recommendations, leading to a seven-point program that (1) created more transportation options, (2) encouraged mixed land uses, (3) promoted compact development, (4) provided greater housing choices, (5) utilized existing assets, (6) encouraged quality design, and (7) conserved the region's natural resources.[171] Advocates for the Blueprint Plan argued that it provided a superior vehicle for pursuing community development because, at the heart of the plan, were accomplished professional planners who were applying state-of-the-art knowledge.[172] Summarized in repeated reference to SACOG's "smart growth principles," this conveyed that transportation and land-use planning in the Sacramento region was at the cutting edge.[173]

The professionalism associated with the Blueprint was further underscored, even amplified, by the awards that professional groups, associations, and the federal government conferred on SACOG's Blueprint Plan and its blueprinting process—particularly the inclusiveness and civic engagement it claimed to promote. Indeed, such awards could only reflect blueprinting as a process since they were conferred before the Blueprint Plan had or could achieve the outcomes it was tasked with attaining.[174] It was not through material attainments such as lowered GHGs, but rather through its linkage of legitimacy founded in professionalism and expertise as well as that deriving from regional engagement in democratic processes,

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[168] *Id.*

[169] *Growing Smart Guidebook*, AM. PLANNING ASS'N, https://www.planning.org/growingsmart/ [https://perma.cc/5DWB-3L59].

[170] *Id.*

[171] *See* CALTHORPE ET AL., *supra* note 167, at 2–3.

[172] *See* SACOG, *supra* note 98, at 15.

[173] *See id.*

[174] *Id.* at 16.

that the Blueprint Plan gained its reputation as a "successful" means of planning regional transportation and land use.[175]

Indeed, founded on this reputation as a regional, statewide, and national success, the blueprinting process quickly became a standard for metropolitan planning in California and the development of long-range transportation plans. The blueprinting process was institutionalized in California law when the State Assembly ratified SB 375. That is, in June 2005, soon after SACOG's ratification of its regionally preferred Blueprint Plan and MTP, the California legislature allocated funding for selected state metropolitan areas to model their efforts after SACOG's Blueprint Plan and the blueprinting processes reflected therein.[176] The program was called the "Blueprint Learning Network."[177] The legislature justified its funding of the program by explaining that future quality of life and community growth required that California metropolitan areas integrate transportation, housing, land use, environmental resources, and other infrastructure and services, and that the Blueprint Plan provided a roadmap for doing so.

IV. SUMMARY AND DISCUSSION

This article offers an analysis of an emergent governance strategy, "blueprinting," that has been widely heralded as a success by the planning profession, by the federal government, California's legislature, and the press.[178] The Sacramento Area Council of Government initially designed and pursued its Blueprint Plan in a highly uncertain policy context where they, as a Metropolitan Planning Organization, held little command authority and only the limited means to incentivize regional governments and populations to comply with their policy mandate and aspirations. With its original intent to moderate urban-suburban sprawl,[179] SACOG's planning staff emphasized legitimating their efforts to gain public favor and the support of regional elites. The plan gained such support that it was later adapted as SB 375. As our prior research suggests, despite its

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[175] Senator Steinberg makes this argument in *California's SB 375 Would Tie Local Planning Decisions to Transportation Funding*, *supra* note at 111.

[176] *Blueprint Learning Network*, CAL. DEP'T OF TRANSP., http://www.dot.ca.gov/hq/tpp/offices/orip/bln.html [https://perma.cc/38NF-QBS3].

[177] *Id.*

[178] Mike McKeever, *Sacramento Region Develops New Paradigm for Transportation Planning* 9, SACOG, http://www.sacog.org/sites/main/files/file-attachments/2008-09-03_exhibit_a_-_new_paradigm_trans._planning.pdf [https://perma.cc/BQZ2-R4Z4].

[179] *See* Darakjian, *supra* note 89, at 380–83.

regional embrace, its diffusion across California, and its role as the basis for landmark climate legislation, the Blueprint Plan and its successor SB 375 are unlikely to deliver significant GHG reductions.[180] The question this article addresses, therefore, is why SACOG's Blueprint Plan has come to be considered such an unmitigated success given that it has little chance of delivering the GHG attainments and other negative urban development outcomes it was mandated with achieving?

The answer we found lies not in the Blueprint Plan achieving measurable material outcomes, such as lower GHG emissions or reduced traffic congestion, but rather in the decoupling of such outcomes from the Blueprint's legitimacy as a plan and more importantly as a *planning process*. Specifically, we found that four distinctive types of legitimation emerged out of the blueprinting process that marked it as a successful policy. The first form of legitimacy reflected *structural* aspects of blueprinting as a policy process. SACOG's regionalist "third way" approach reflected neither command nor market principles and was therefore relatively unthreatening to metro-area political and commercial elites or the population in general. As a policy strategy, the structure of authority and decision-making power gained the Blueprint Plan considerable "structural legitimacy" because many stakeholders in the region found it preferable to the typical alternatives: either command-and-control regulatory government or laissez-faire policy approaches.

The blueprinting process also generated goodwill and popular trust in SACOG and its policy efforts and therefore gained what we term "popular legitimacy," too. Popular legitimacy reflected the Blueprint Plan's strong emphasis on civic engagement and participation as exemplified in the numerous neighborhood, county, and regional workshops and forums wherein "citizen-planners" "voted" for their preferences during such meetings. In this capacity, the blueprinting process as a policy strategy gained SACOG and the Blueprint Plan a good bit of positive regional notoriety and was acclaimed by professional planners and legislators for its transparency, inclusiveness, and for the options it seemed to provide citizen-planners even though most of those options were already vetted and represented in the Blueprint Plan as a preferred development option for the region.[181]

SACOG's blueprinting process also incorporated the use of high-technology that enhanced the public and participatory aspects of transportation policymaking that were a sensation at its

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[180] *See* Niemeier, Grattet & Beamish, *supra* note 14, at 1613–15.

[181] *See supra* Part III.

public workshops and forums. The use of high-tech "click polling," maps and mapping software, and impressive visualizations of the region's development options were all routinely highlighted in news press accounts and by SACOG in its promotional materials. The use of such tools and the stir they generated among workshop and public forum participants, as well as the local and regional press, afforded SACOG what we term "technological legitimacy," approval that also played an important role in the Blueprint Plan's perceived success.

Finally, SACOG sought to personify professionalism in its Blueprint Plan by framing its blueprinting efforts as reflecting expert-inspired planning principles such as "smart growth" and other state-of-the-art knowledge in a bid to gain regional support and stymie resistance. In truth, the citizen workshops and forums were as much about educating political elites and the public regarding the "best" urban development trends as they were about convincing the public to follow SACOG's preferred plan. Yet the line between "education" and "suasion" as reflected in the practice of educating the public—polling them regarding their preferences with a limited number of development options (four), and then choosing the Blueprint Plan—was indefinite at best. Teaching participants that the Blueprint Plan reflected "smart growth" highlighted that it was a state-of-the-art policy aligned with principles and ideas rooted in professional planning knowledge. We refer to this form of credibility as "professional legitimacy" since it reflected the professional knowledge and expertise SACOG paid homage to and used to its benefit when seeking to gain support for its Blueprint Plan.

V. LOOKING FORWARD

This article began by identifying the challenge climate change poses to the current political-economic contexts. Namely, legal and policy strategies must both effectively reduce GHG emissions and align with contemporary expectations regarding the exercise of government authority. Determining how to reduce carbon emissions is largely a technical issue. Society currently has the scientific know-how to dramatically reduce the use of fossil fuels to power cars, homes, and commercial activities, yet, these issues require fundamental changes to a contemporary way of life that reflects ideological commitments, values, and assumptions regarding such things as individual freedoms, civic inclusion, private property, and economic growth. As a result, there is considerable uncertainty about the forms policies should

take so that they align with both material considerations and legitimate social and political means of governance from which social trust in government is largely based.

Moreover, the problem of climate change has emerged at a time when command-and-control forms of governance and regulation are out of favor for all but the most extreme circumstances and public policies, such as fighting crime and terrorism. Importantly, markets, incentives, and volunteerism have proven equally unsupportable among those on the center-left, who see it as capitulation to industry and commercial interests and against the common or collective good.[182] In this context, compromise is the only viable alternative, but even this has proven extremely difficult to achieve.[183] Indeed, despite most efforts made across the nation, no compromise has been possible. As a consequence, climate change has gone largely unaddressed.[184]

Given our findings, legitimacy must be acknowledged as a crucial aspect of policy design and implementation. Policymakers ignore it at their own peril. What is more, an important implication for policy and policymakers of our typology is that legitimacy must be viewed not as a singular "thing," and therefore corresponding strategy, but as a multifaceted phenomenon that requires multiple actions to achieve. The different legitimation strategies we observed evoked different responses and resonated for different reasons with different policy stakeholders.

From this, an important cautionary tale emerged from our research that is directed at the policy world. It suggests policymakers take heed of legitimacy concerns as they plan and seek to implement their policies, but also to beware, since simple, even seemingly innocuous, missteps can lead to public distrust and policy rejection.[185] Some regions and their publics may be compelled by how governance is structured, such as how authority is distributed, where responsibility decisions reside, and whether some form of due process is expected before decisions are made. Others might demand high levels of transparency, participation, and civic engagement in order to feel that policies are representative and therefore serving the public good. Still

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[182] For a broader discussion of how conservative policies in the 1980s and 1990s prioritized market-based solutions resulting in a boon to economic elites, see Thomas W. Volscho & Nathan J. Kelly, *The Rise of the Super-Rich: Power Resources, Taxes, Financial Markets, and the Dynamics of the Top 1 Percent, 1949 to 2008*, 77 AM. SOC. REV. 679, 684, 693 (2012).

[183] Theda Skocpol, *Naming the Problem: What It Will Take to Counter Extremism and Engage Americans in the Fight Against Global Warming* (2013) (prepared for the Symposium on "The Politics of America's Fight Against Global Warming").

[184] GIDDENS, *supra* note 1, at 4–5.

[185] BEAMISH, *supra* note 162, at 35–38.

others may view policies that are associated with high-technology modeling, applications, and visualizations to be in-step with best practices and therefore exemplars of sound policy prescription. Finally, close association with high levels of expertise and the professional acumen—state-of-the-art knowledge—is another justification for support of a given policy and its plans or, on the contrary, lack of its rejection.

Although we have presented a typology that distinguishes types of legitimation strategies, we would not insist that what we presented here represents an exhaustive list of legitimacy types, nor that the different forms are entirely distinct from one another. It should also be of some interest to policymakers as to whether or not different forms of legitimacy may come into conflict with one another. For instance, there may be a principle-based conflict between popular legitimacy and its emphasis on "democratic participation" and "citizen choices" and that of professional legitimacy with its emphasis on "expertise" and "authoritative knowledge."[186] Yet, this tension did not emerge in our investigations of the Blueprint Plan even though it has in other policy contexts.[187]

One can also think of the different forms of legitimacy as intertwined or "braided" with one another, where two or more strategies are bundled together as one. For example, citizen stakeholders were indeed brought into the process, but they were not left an open forum to air their preferences. Rather, they were guided in their decisions by SACOG's professionals who educated them and then channeled their choices through a closed-set of prearranged alternatives.[188] In this sense, the "popular" and "professional" forms of legitimacy were braided together in the SACOG case. Braiding is also reflected in the ways that technological legitimacy and professional legitimacy reinforced one another while remaining distinct. Applying the latest technologies and methods is an expectation of experts. The use of high-tech tools was also meant to "wow" stakeholders, and in SACOG's case, engender a feeling of active engagement in the policy process. In this way, the different strands of legitimacy were woven together in the blueprinting process in a manner that

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[186] See discussion in K.S. SHRADER-FRECHETTE, RISK ANALYSIS AND SCIENTIFIC METHOD: METHODOLOGICAL AND ETHICAL PROBLEMS WITH EVALUATING SOCIETAL HAZARDS 3–14 (1985).

[187] *See generally id.*; BRIAN WYNNE, RATIONALITY AND RITUAL: THE WINDSCALE INQUIRY AND NUCLEAR DECISIONS IN BRITAIN (1982); BARBARA L. ALLEN, UNEASY ALCHEMY: CITIZENS AND EXPERTS IN LOUISIANA'S CHEMICAL CORRIDOR DISPUTES (2003); DEL SESTO, *supra* note 56.

[188] *See supra* Part III.

promoted the Blueprint Plan's perceived "success" even before it could achieve the mandates it had been created to achieve.

Finally, an important policy insight gleaned from prior studies of legitimacy is the inclination for organizational actors, in highly uncertain environments, to decouple formally recognized organizational structures and processes from manifest goals and outcomes.[189] Organizational actors do so as they pursue stakeholder legitimacy and support by aligning their activities with their institutional environments. This observation is highly relevant to understanding SACOG's organizational strategies in seeking to implement its preferred Blueprint Plan. Whether SACOG's Blueprinting Plan will succeed in reducing GHGs as AB 32 and SB 375 mandates is still not known. As revealed in our prior research, however, there is reason to believe that SACOG's Blueprint Plan will not reach GHG targets nor significantly reduce the region's output by 2020.[190] Nonetheless, the blueprinting process has been labeled a success. Indeed, early acclaim translated the Blueprint Plan into California law as climate-fighting legislation SB 375. Given our findings regarding the important part that policy legitimation played, we recommend asking hard questions of "successful" governance strategies like blueprinting because when policy processes are decoupled from policy outcomes, meaningful progress on important societal problems and issues can be lost or at least downplayed. In the case of the Blueprint Plan, this could mean that a seemingly "successful policy" meant to reduce California's GHG emissions fails to significantly do so.

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189 Boxenbaum & Jonsson, *supra* note 46, at 79.

190 Niemeier, Grattet & Beamish, *supra* note 14, at 1613.