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The Political Economy of City Power

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THE POLITICAL ECONOMY OF CITY POWER

*Richard C. Schragger**

Introduction	91
I. Weak Cities	96
A. Market-Based Local Government	96
B. State-Based Federalism	98
II. Efforts to Enhance City Power.....	102
A. Home Rule.....	103
B. National Urban Policy	107
C. Regionalism.....	111
III. [Re]conceiving the City	114
A. The Critical Legal City	115
B. The Right to the City	118
C. The Solidarity Economy.....	120
IV. City Power	124
A. A New Urban Economics.....	124
B. A New Urban Politics.....	128
Conclusion	131

INTRODUCTION

American cities are on the march. Many city populations have stabilized after a long decline, downtowns are thriving, and commentators celebrate the city resurgent.¹ In addition, cities are flexing their policy-making muscle. Cities have been adopting ordinances in areas as diverse as environmental

* Perre Bowen Professor, Joseph C. Carter, Jr. Research Professor, University of Virginia School of Law. Many thanks to Alexandra Hemmings for research assistance and to the editors of the *Fordham Urban Law Journal* for their excellent editorial suggestions.

1. See generally ALAN EHRENHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* (Vintage Books, eds. 2012); Ingrid Gould Ellen & Katherine O'Regan, *Reversal of Fortunes? Lower-Income Urban Neighborhoods in the U.S. in the 1990s*, 45 *URB. STUD.* 845, 866 (2008); Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 *URB. STUD.* 1275 (2006); Michael Storper & Michael Manville, *Behaviour, Preferences, and Cities: Urban Theory and Urban Resurgence*, 43 *URB. STUD.* 1247 (2006).

protection and health care and asserting themselves into policy spaces often considered exclusive to the state or the federal governments.²

Despite this general shift in city fortunes, however, American cities continue to be weak in important ways. Consider Detroit, which declared the largest municipal bankruptcy in U.S. history after a state receiver was appointed to take over the city's government.³ Some Detroit residents protested the suspension of elective municipal government, but for most outsiders, neither the declaration of bankruptcy nor the appointment of a state receiver garnered much attention or outrage.⁴ Questions about the efficacy and justice of appointing unelected state officials to govern entire cities were only raised after the crisis in Flint, another Michigan city with an appointed state receiver.⁵ In Flint, public officials who had replaced the elected city government failed to respond to complaints about the city's water supply, which was subsequently shown to be thoroughly contaminated.⁶ The failures of Flint's water supply revealed both the entrenched inequities in America's basic infrastructure and the striking limits of the electoral, economic, and political power of residents living in struggling municipalities.⁷

This lack of local political power is not restricted to municipalities in serious economic crisis. After Charlotte, North Carolina adopted a transgender rights ordinance, the state legislature responded with sweeping legislation aimed at limiting the authority of local governments to regulate across a number of areas.⁸ The North Carolina legislature objected to

2. See Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1117-22 (2007). See also Scott L. Cummings & Steven A. Boucher, *Mobilizing Local Government for Low-Wage Workers*, 2009 U. CHI. LEGAL F. 187, 189 (2009). Examples include: Newark, N.J., *Env'tl. Just. & Cumulative Impact Ordinance* (July 7, 2016); S.F., Cal., *Admin. Code § 14.1(b)(6)* (2008) (San Francisco Health Care Security Ordinance).

3. See Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, N.Y. TIMES (July 18, 2013), <http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html> [https://perma.cc/JT83-7HAG].

4. See, e.g., Monica Davey, *Bankruptcy Lawyer is Named to Manage an Ailing Detroit*, N.Y. TIMES (Mar. 14, 2013), <http://www.nytimes.com/2013/03/15/us/gov-rick-snyder-kevyn-orr-emergency-manager-detroit.html> [https://perma.cc/58VA-VC6C].

5. Richard Schragger, *Flint Wasn't Allowed Democracy*, SLATE (Feb. 8, 2016), http://www.slate.com/articles/news_and_politics/jurisprudence/2016/02/a_big_reason_for_the_flint_water_crisis_no_democracy_there.html [https://perma.cc/GAM9-PPVV].

6. See Julie Bosman, *Flint Water Crisis Inquiry Finds State Ignored Warning Signs*, N.Y. TIMES (Mar. 23, 2016), <http://www.nytimes.com/2016/03/24/us/flint-water-crisis.html> [https://perma.cc/TJP8-RWMH]. See also Schragger, *supra* note 5.

7. See generally Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1180-204 (2014); Michelle Wilde Anderson, *Democratic Dissolution: Radical Experimentation in States Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577 (2011).

8. See Dave Philipps, *North Carolina Bans Local Anti-Discrimination Policies*, N.Y. TIMES (Mar. 23, 2016), <http://www.nytimes.com/2016/03/24/us/north-carolina-to-limit>

Charlotte's law because it permitted transgender citizens to use bathrooms that conformed to their gender identity, as opposed to their biological sex. In a statute known popularly as HB2, the state not only overturned the "bathroom" portion of the city's ordinance but also declared that wage and hours regulation, municipal contracting, employment discrimination, and public accommodations laws are all "properly . . . issue[s] of general, statewide concern, such that . . . [state statutes] supersede and preempt" any contrary local policy.⁹ Many American cities have adopted local LGBT anti-discrimination ordinances, living wage laws, or other forms of social welfare regulation.¹⁰ And many cities have seen state legislatures preempt those ordinances, laws, and regulations.¹¹

What is striking about city power is how constrained it actually is. In 1967, political scientist Robert Dahl observed that "[c]ity-building is one of the most obvious incapacities of Americans."¹² Little has changed over the last fifty years, as suburbanization, deindustrialization, and the shift of policy-making authority from cities to states and states to the federal government has continued apace. Despite the urban resurgence of the last decades and the increased prominence of municipal lawmaking, the city's political economy remains the same. Cities in the U.S. federal system continue to be limited in important ways. The city's exercise of authority, political influence, and economic power is incidental to, or parasitic on, the exercise of power by the private sector or higher-level governments.

This Article describes the current political economy of city power and efforts to reform and remake it. U.S. cities are resurging in many cases and their economic power sometimes generates policymaking power. But the two examples noted—state takeovers of distressed cities and state preemption of municipal law—strikingly illustrate the significant distance

bathroom-use-by-birth-gender.html [https://perma.cc/69JW-DUKX]. See also Richard Schragger, *North Carolina's "Bathroom Bill" and the Right to Local Self-Government*, BALKINIZATION BLOG (Mar. 25, 2016), <http://balkin.blogspot.com/2016/03/north-carolinas-bathroom-bill-and-right.html> [https://perma.cc/YZT2-YA5U].

9. An Act to Provide for Single-Sex Multiple Occupancy Bathroom and Changing Facilities, N.C.G.S. § 143-422.2 (2016).

10. For a description of LGBT anti-discrimination ordinances see generally, Alan Greenblatt, *Beyond North Carolina's LGBT Battle: States' War on Cities*, GOVERNING (Mar. 25, 2016), <http://www.governing.com/topics/politics/gov-states-cities-preemption-laws.html> [https://perma.cc/5BHI-JWC8]; *Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender> [https://perma.cc/2KTL-FM8L]. For a description of living wage laws see Heidi Swarts & Ion Bogdan Vasi, *Which U.S. Cities Adopt Living Wage Ordinances? Predictors of Adoption of a New Labor Tactic 1994–2006*, 47 URB. AFF. REV. 743, 743–44 (2011).

11. Greenblatt, *supra* note 10.

12. Robert A. Dahl, *The City in the Future of Democracy*, 61 AM. POL. SCI. REV. 953, 964 (1967).

between municipal policy efforts and the city's actual political and economic clout. U.S. cities can do little without support from state authorities, which often block them from adopting preferred local legislation, fail to come to their aid when they are struggling, and take them over with relative impunity when they fail.¹³

Part I describes two significant features of the U.S. political economy that account for the city's weakness in relation both to markets and the centralizing state. The first is the practice of treating cities as competitors in a global marketplace for capital and labor, which requires cities to "compete" for investment. The second is the practice of state-based federalism, which increases the number of political competitors who seek to influence or control city policy-making.

Part II considers past efforts to address these weaknesses through three institutional reforms: home rule, national urban policy, and regionalism. Home rule efforts in the mid-to-late-nineteenth century sought to address the attractiveness of cities to state legislators eager to exploit the political and financial opportunities of the urban population boom.¹⁴ Home rule gave municipalities some modicum of self-government, but it did not aid those cities that would experience industrial decline many decades later. In the more recent past, national urban policy and regionalism have been offered as strategies to buttress cities in decline and provide more financial support for cities in the face of suburban growth.¹⁵ Those efforts have also been for the most part ineffective in providing urban financial stability for a significant number of municipalities.

Part III considers more ambitious (and to this point, mostly theoretical) efforts to challenge the city's basic lack of economic and political power. A range of advocates and theorists have argued that city powerlessness is a deep feature of the global market economy. Critical theorists argue that the city's lack of power is a core component of a particular kind of liberal economic order—one that privileges rights of property over rights of self-governance—and that the answer to city weakness is to challenge that prioritization.¹⁶

These disparate challenges to the liberal market order have failed to coalesce and seem unlikely to do so anytime soon. Nevertheless, Part IV

13. See, e.g., Davey & Walsh *supra* note 3; Philipps *supra* note 8.

14. See *infra* note 63 and accompanying text.

15. See *infra* note 86. See generally *infra* Parts II.B and II.C.

16. See, e.g., GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS (Princeton Univ. Press, eds., 1999). See generally, CITIES FOR PEOPLE NOT FOR PROFIT: CRITICAL URBAN THEORY AND THE RIGHT TO THE CITY (Neil Brenner, et al. eds., 2012); David Imbroscio, *Urban Policy as Meritocracy: A Critique*, 38 J. URB. AFF. 79 (2015); Kenneth A. Stahl, *Local Home Rule in the Time of Globalization*, 2016 BYU L. REV. 177 (2016).

suggests how the recent urban resurgence offers an opportunity to open-up some political and economic space for the exercise of city power, short of a radical transformation of the existing economic order. What is necessary is a political movement, not necessarily a political revolution.

This Article does not make a sustained argument on behalf of that movement.¹⁷ Instead, it describes the reasons for the city's economic and political weakness and a set of institutional and academic responses to that weakness. The reader does not need to agree that city power is ultimately desirable.

That being said, this Article suggests here and in conclusion that city power can serve as an antidote to a growing global democracy deficit. Neither the nation-state nor the transnational corporation seem able to address the political alienation and economic instability felt by many citizens in the U.S. and elsewhere. This felt instability has given rise to both left- and right-wing populism, often tainted by xenophobia and nationalism.¹⁸ In the United States, Donald Trump's presidential victory is illustrative of the latter. His rise to power is consistent with the British vote to exit the European Union and the increasing success of reactionary parties on the continent.¹⁹

There are many sources of citizen dissatisfaction with conventional politics at the turn of the twenty-first century—immigration, terrorism, outright racism, and economic stagnation all contribute. But surely another factor is the failure of national elites and distant government bureaucracies to provide effective responses to the economic and social dislocations caused by the global market economy. For those who see the city as the best chance for a robust local participatory politics, who celebrate the city as holding out—in Dahl's words—the “promise for the good life lived jointly with fellow citizens,”²⁰ challenging the basis of city weakness is a central task. If it can be fostered and protected, city power is one possible answer to increasingly potent economic and political estrangement.

17. For such an argument, see RICHARD SCHRAGGER, *CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE* (Oxford Univ. Press eds., 2016) (hereinafter *CITY POWER*).

18. See generally, Robert Kuttner, *Sanders, Trump, and Economic Populism*, *AM. PROSPECT* (Jan. 12, 2016), <http://prospect.org/article/sanders-trump-and-economic-populism> [<https://perma.cc/A8K3-9CGR>]; Jeff Stein, *Trump, Brexit and the Rise of Europe's Far-Right Stoke Fear in Brussels*, *NEWSWEEK* (Dec. 3, 2016), <http://www.newsweek.com/trump-brexit-europe-far-right-fear-brussels-527980> [<https://perma.cc/Y9ZW-VLZD>].

19. See generally, Steven Erlanger, *Brexit Proved to be Sign of Things to Come in US*, *N.Y. TIMES* (Nov. 10, 2016), <https://www.nytimes.com/2016/11/10/world/europe/for-us-brexit-was-a-sign-of-things-to-come.html> [<https://perma.cc/2PNT-SH4P>].

20. Dahl, *supra* note 12, at 964.

I. WEAK CITIES

Two features of the U.S. political economy define and limit city power. The first is the ideology and practice of market primacy—the idea that most goods and services should be produced through (free) markets and that state power should generally be limited to preventing, or solving, market failures. The second is state-based federalism, which interposes a regional tier of government in the U.S. between the nation and its cities. Market primacy shifts power toward the private sector, while state-based federalism drives policymaking toward central governments.

A. Market-Based Local Government

Two aspects of the ideology of market primacy influence city power. First, the city is understood to be dependent on private investment for its economic health and welfare. Second, the city is understood to be engaged in a competition for private investment with other locations. Local officials, citizens, and interest groups all believe and act on these understandings. The municipal politics that results tends to be development-favoring. Local politics and policy are generally premised on the view that the exercise of city power is possible only to the extent that city officials can make alliances with those private-side economic actors who exercise *real* power.²¹

Market-based local government is animated by a kernel of economic truth: that labor and capital are generally mobile and cities and other local governments are stuck in place. From this observation, urban scholars and policymakers have generally embraced the idea—made famous by Paul Peterson’s concept of “city limits”²²—that the range of plausible city policies are those that can be shown to enhance the community’s economic prosperity. Prosperity depends on private sector success. City policies are thus limited to those that attract and retain capital and labor in a competitive inter-jurisdictional environment. Pursuant to this view, what ultimately governs the city are the financial, labor, and land markets, which place stringent limits on the city’s ability to act autonomously. Market-based local government drives policymaking toward accommodating the private sector, namely capital and labor, which cities must attract and retain to remain economically vibrant.

The theoretical and policy program that follows from this view of city competition has three salient features. First, the competitive paradigm strongly suggests that social welfare redistribution or regulation is not an

21. See CLARENCE N. STONE, *REGIME POLITICS: GOVERNING ATLANTA, 1946-1988*, 233 (Univ. Press of Kan. eds., 1989) (noting that the “elite controls resources of the kind and in the amount able to enhance the regime’s capacity to govern”).

22. See *generally*, PAUL E. PETERSON, *CITY LIMITS* (Univ. of Chi. Press eds., 1981).

appropriate task for sub-federal governments and certainly not appropriate for cities.²³ The city cannot risk capital flight by taxing it. If firms and residents are overtaxed they will flee. More importantly, if the city engages in redistributions that do not directly contribute to economic growth, the city will attract more needy poor people than it can support, further increasing the costs to the city and exacerbating capital flight.²⁴ On this theory, metropolitan-area tax-base competition means that cities can only realistically undertake developmental spending.²⁵

Second, the competitive paradigm predicts that cities will invariably converge on similar development and business-friendly policies.²⁶ Any city that resists will be abandoned by core industries, small businesses, and talented labor pools. “Business-friendly” policies might include subsidizing in-locality businesses, providing tax incentives for development, reducing regulation to a minimum, and generally keeping taxes low.²⁷ They could also mean providing amenities that are desired by higher-income residents and educated or talented workers in particular industries. In other words, cities have no choice but to adopt an attraction and retention strategy aimed at the most mobile taxpayers. And though cities can adopt slightly different strategies, in the end they will be mostly doing the same things. On this view, political ideology therefore plays a relatively small role in the running of cities.²⁸

23. *See id.*

24. *See* WALLACE E. OATES, *FISCAL FEDERALISM*, 131–40 (Edward Elgar Pub. eds., 1972); PETERSON, *supra* note 22, at 182–83; PAUL E. PETERSON, *THE PRICE OF FEDERALISM* 27–28 (The Twentieth Century Fund 1995); Richard A. Musgrave, *Fiscal Federalism*, in JAMES M. BUCHANAN & RICHARD A. MUSGRAVE, *PUBLIC FINANCE AND PUBLIC CHOICE: TWO CONTRASTING VISIONS OF THE STATE*, 160–61 (Mass. Inst. of Tech. eds., 2000). *But see* Timothy J. Goodspeed, *A Re-Examination of the Use of Ability to Pay Taxes by Local Governments*, 38 J. PUB. ECON. 319, 320 (1989).

25. *See* PETERSON, *supra* note 22.

26. *See id.*

27. Cities should “avoid redistributive policies that target the rich and drive them away.” Edward L. Glaeser, *The Death and Life of Cities*, in *MAKING CITIES WORK: PROSPECTS AND POLICIES FOR URBAN AMERICA* 22, 59 (Robert P. Inman ed., 2009). Similarly, cities should avoid overregulating business and should “be responsive to the needs of developers and entrepreneurs.” Robert P. Inman, *City Prospects, City Policies*, in *MAKING CITIES WORK: PROSPECTS AND POLICIES FOR URBAN AMERICA* 1, 17. City mayors should “fashion a pro-growth coalition.” *Id.* at 18. One way to do this is to “provide the amenities that will attract smart people and then get out of their way.” Glaeser, *The Death and Life of Cities*, in *MAKING CITIES WORK: PROSPECTS AND POLICIES FOR URBAN AMERICA*, at 59. Finally, declining cities are disposable assets, so “[i]n many cases, people are best served by leaving areas that have passed their period of economic prominence.” *Id.* at 61.

28. PETERSON, *supra* note 22, at 115 (claiming that the issues faced by local governments are by their nature non-ideological and hence do not give rise to party politics); Elisabeth R. Gerber & Daniel J. Hopkins, *When Mayors Matter: Estimating the Impact of Mayoral Partisanship on City Policy*, 55 AM. J. POL. SCI. 326 (2011) (finding that spending areas and city revenue streams, over which cities have only limited discretion, show no strong partisan

Third, market-based local government celebrates the theoretical benefits that will result from inter-city competition. Poorly run cities will pay for their misdeeds by capital and labor flight, and well run cities will gain, as migrants flock there. According to proponents of the market-based view, government will be made better by the discipline imposed by the threat of capital flight and by cities' attentiveness to voter preferences.²⁹

Moreover, this attention will bring economic growth.³⁰ Implicit in the market-based account is the notion that as long as cities adopt the right policies, they will increase their market share. If they adopt the wrong policies, they will reduce it. Cities are thus at fault when they decline and can be credited with good decisions when they boom. Growth is highly susceptible to local policy choices. But those choices have to be market-friendly and are dictated by the vicissitudes of mobile labor and capital.

The ideology and practice of market-based local government thus parallels the ideology and practice of market primacy generally. The claim is that one can enhance social welfare by structuring government on the model of a competitive marketplace.³¹ In the theoretical local-government market, capital calls the tune and cities sing it. The belief that cities are limited in their policy choices because real power resides in labor and capital markets is almost canonical.

B. State-Based Federalism

Market primacy is reinforced by the form that federalism takes in the United States. U.S. state-based federalism privileges states over other forms of sub-national government as a constitutional matter. Yet local governments are charged with significant responsibilities, even as they often lack the resources to meet them. States exercise significant power over their political subdivisions, but state officials need not take responsibility for local economic conditions. From the perspective of the city, this is the worst

influence). *But see* Michael Crow, *Overcoming City Limits*, 87 SOC. SCI. Q. 361 (2006) (describing and contesting this view). *See also* Chris Tausanovitch & Christopher Warshaw, *Representation in Municipal Government*, 108 AM. POL. SCI. REV. 605 (2014).

29. *See* WILLIAM A. FISCHER, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 58 (2001); Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418–23 (1956). *See also* Barry R. Weingast, *The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development*, 11 J. L., ECON. & ORG. 1, 5 (1995) (noting that the mobility of capital gives rise to a diverse array of public goods packages); OATES, *supra* note 24, at 49–50.

30. *See* Weingast, *supra* note 29. The “growth machine” describes the political sociology of a development-centered urban politics. Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 AM. J. SOC. 309 (1976). *See generally* JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE (1987).

31. *See* Weingast, *supra* note 29.

possible state of affairs. State-based federalism multiplies city officials' political competitors while the formal distinction between federal, state, and local authority allows those competitors to pick and choose when to intervene.

This state of affairs is a function of the mixed status of local governments in the United States. Pursuant to the U.S. Constitution, states exercise plenary power over their local government jurisdictions. For purposes of federal constitutional law, cities are generally treated as convenient agencies of their states.³² A city cannot assert a constitutional claim to exercise any particular powers, to adopt its own form of government, or to exist at all.³³ Nevertheless, under state constitutions, cities often enjoy a fairly high degree of formal autonomy, and as a matter of practice, cities exercise a fair amount of independent authority over their local economies and taxing and spending decisions.³⁴ In comparison to other constitutional systems, the American federal system is decentralized as a formal matter.³⁵

Three features of that system contribute to city weakness. The first is a mismatch between regulatory demands and regulatory scale. Cities are charged with fostering a positive local economic climate, promoting employment, and providing for the health and welfare of local citizens. But cities are not remotely autonomous. A city's fiscal status and economic health are deeply affected by global financial, labor, and goods markets. State and national tax, redistribution, immigration, land use, labor, and industrial policies all impact cities significantly. Yet because the provision of basic municipal services is understood to be a local responsibility, the variations in that provision normally do not concern the state.

Second, the formal separation of powers permits state officials to pick and choose when to intervene in local affairs without ever taking direct responsibility for local conditions. States are quick to override local decisions with which they disagree but slow to take on responsibility for providing basic municipal goods.³⁶ Cities thus may have significant

32. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

33. *See id.* at 179.

34. *See generally* COMPARING LOCAL GOVERNANCE: TRENDS AND DEVELOPMENTS (Bas Denters & Lawrence E. Rose eds., 2005) (comparing local autonomy across countries).

35. *See id.*

36. This result is a predictable outcome of a three-tiered federal system dominated by regional governments. Though some commentators have suggested that state-based federalism enhances city power, see Roderick M. Hills Jr., *Is Federalism Good for Localism? The Localist Case for Federal Regimes*, 21 J. L. & POL. 187, 215 (2005), the opposite appears to be true. As Frank Cross has argued, formally federal states may be more centralized than formally unitary ones. *See* Frank B. Cross, *The Folly of Federalism*, 24 CARDOZO L. REV. 1 (2002). This is particularly due to the fact that larger organizations are more likely to be decentralized than smaller ones. We might expect a large, unitary state to devolve significant decision-making powers to smaller-scaled entities, many of them smaller than American

responsibilities but insufficient resources to meet them. At the same time, cities exercise little influence over state and national demands. Because of the existence of three formally separate bureaucracies, state and federal authorities rarely need the direct cooperation or assistance of local officials to achieve state or national aims. This formal independence reduces the city's capacity to influence policies coming from the center.³⁷

Finally, third, the existence of a regional tier of government—the states—exacerbates the vertical competition between elected officials.³⁸ City leaders do not enjoy a monopoly on local representation. Aside from other city officials, elected state and federal officeholders also represent local constituents. The political competition that results involves taking credit for popular policies and avoiding blame for unpopular ones. State-level “tax-relief” and other types of unfunded mandates are an example.

The gap between state-wide preferences and local ones can be large. In North Carolina, for example, the “bathroom bill” pitted a politically conservative legislature representing exurban and rural interests against politically progressive mayors representing more liberal urbanites.³⁹ Consider also New York City Mayor Bill de Blasio's policy disputes with the governor of New York State, Andrew Cuomo. Despite their shared party-affiliation (both are Democrats), Cuomo opposed de Blasio's plan to tax high-income earners in the city to fund universal, city-wide pre-K programs.⁴⁰ Cuomo also initially objected to a city-wide minimum wage increase and to de Blasio's efforts to limit the expansion of charter schools.⁴¹ Eventually, Cuomo agreed to fund a pre-K program, but rejected de Blasio's proposed tax. Cuomo also adopted his own minimum wage proposal (which

states. Moreover, a middle, regional tier of government is likely to take up the policy and fiscal space that would otherwise be occupied by local governments in a unitary system. A middle tier of government will reduce the political power of more local officials. *See id.*

37. *See, e.g.,* *Printz v. United States*, 521 U.S. 898, 976-78 (1997) (Breyer, J., dissenting) (arguing that in European federations, the assignment of centrally mandated duties to local governments enhances local power). In *Printz*, the Supreme Court endorsed an anti-commandeering principle, under which localities cannot be forced to pursue federal aims. Under this approach, decentralized government is best served by defining an exclusive area of local control and protecting it against encroachment. *See id.* at 900.

38. *See generally* Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 *YALE L.J.* 2542 (2006) (hereinafter *Can Strong Mayors?*).

39. *See* Philipps, *supra* note 8.

40. The Editorial Board, *Political Rumble Over Universal Pre-K*, *N.Y. TIMES*, Jan. 23, 2014, at A26.

41. Michael Powell, *Cat in Albany is Outfoxing New York City's Mouse*, *N.Y. TIMES*, Mar. 6, 2014, at A22.

the state legislature eventually adopted) and rejected de Blasio's charter school reforms.⁴²

For city leaders, the gap between formal authority and political influence is where much relevant policy is made.⁴³ Very few of de Blasio's significant plans could be achieved without the governor's (and ultimately the state legislature's) support.⁴⁴

For cities in fiscal crisis, that support has not recently been forthcoming. Detroit, Flint, and other rustbelt cities have been declining for at least fifty years.⁴⁵ But their inability to garner sufficient state and national aid reflects an underlying reality: cities *qua* cities in the U.S. have few political allies and exercise limited political influence, either in statehouses or in Congress.⁴⁶

That was not always the case. The New Deal coalition relied on urban ethnics and African Americans, which made city mayors powerful political brokers.⁴⁷ Even as the city declined, New Haven's mayor Richard Lee was able to garner significant federal funds in the 1950s and 60s era of urban redevelopment.⁴⁸ As suburbanization took hold in the second half of the twentieth century, however, power shifted out of cities and continues to do so.⁴⁹ White flight resulted in majority-black cities with metropolitan areas becoming more economically and ideological segmented.⁵⁰ The gulf

42. Jesse McKinley & Vivian Yee, *New York Budget Deal With Higher Minimum Wage Is Reached*, N.Y. TIMES (Mar. 31, 2016), <https://www.nytimes.com/2016/04/01/nyregion/new-york-budget-deal-with-higher-minimum-wage-is-reached.html> [https://perma.cc/Z4JP-QXBC].

43. See Schragger, *Can Strong Mayors?*, *supra* note 38.

44. Alexander Burns, *For Cuomo and de Blasio, the Tension Comes Easily*, N.Y. TIMES (Feb. 12, 2015), <http://www.nytimes.com/2015/02/12/nyregion/for-cuomo-and-de-blasio-the-tension-comes-easily.html> [https://perma.cc/ZZH7-3ZWL].

45. Daniel Hartley, *Urban Decline in Rust-Belt Cities*, FED. RES. BANK OF CLEVELAND, (May 20, 2013), <https://clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2013-economic-commentaries/ec-201306-urban-decline-in-rust-belt-cities.aspx> [https://perma.cc/G7W6-C36A].

46. See Schragger, *supra* note 38. See generally ROGER BILES, *THE FATE OF CITIES: URBAN AMERICA AND THE FEDERAL GOVERNMENT, 1945-2000* (2011).

47. See *Forty Years of Urban Economic Development: A Retrospective*, INT'L ECON. DEV. COUNCIL, 12 (2008), http://www.iedconline.org/clientuploads/Downloads/history/Forty_Years_Urban_Economic_Development.pdf [https://perma.cc/YKT6-24CF].

48. See DONALD H. HAIDER, *WHEN GOVERNMENTS COME TO WASHINGTON: GOVERNORS, MAYORS, AND INTERGOVERNMENTAL LOBBYING* 4-5, 35-38, 48-75 (1974).

49. See generally JON C. TEAFORD, *THE METROPOLITAN REVOLUTION: THE RISE OF POST-URBAN AMERICA* (Colum. U. Press 2006).

50. See Alana Semuels, *White Flight Never Ended*, THE ATLANTIC (July 30, 2015), <http://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/> [https://perma.cc/Y6CS-RBHD]. See generally KEVIN M. KRUSE, *WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM* (Princeton U. Press ed., 2005); THOMAS

between Democratic cities and Republican exurbs continues to widen, aided by highly sophisticated political gerrymandering.⁵¹ This political landscape makes state legislatures even less likely to be responsive to urban constituencies.

II. EFFORTS TO ENHANCE CITY POWER

The two sources of city weakness—market-based local government and the structure of U.S. state-based federalism—reinforce each other. Market-based theories of local government insist that cities cannot and should not adopt certain policies—like social welfare redistribution—without harming their economies. At the same time, cities are encouraged to engage in inter-municipal competition for capital on the theory that competition will both discipline cities to provide efficient services and encourage overall economic growth.

Meanwhile, state-based federalism creates the political conditions under which state officials are likely to engage in selective localism: picking and choosing what local policies to override, while avoiding responsibility for underlying economic conditions. Market-based local government informs decisions made through selective localism. If private sector economic growth is or should be the city's chief goal, then state intervention should be geared toward enhancing city competitiveness, not improving citizen well-being through other means.

State resistance to lending economic aid to struggling cities is an example. States have been loath to bail-out their declining cities on the theory that doing so will merely encourage the inefficiencies that led to failure in the first place.⁵² Opponents of bailouts argue that back-stopping local economies will short-circuit the beneficial inter-municipal competition that generates efficient local government.⁵³ States seem willing to intervene to assist struggling cities only when the state's credit rating appears to be at risk, and then mostly in order to get the city back in the business of promoting

SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POST-WAR DETROIT* (Princeton U. Press 1st ed. 1996).

51. Jenny Jarvie, *The South's New Divide: Blue Cities and Red States*, L.A. TIMES (Apr. 20, 2016), <http://www.latimes.com/nation/la-na-south-culture-wars-20160420-story.html> [<https://perma.cc/FC7W-C9KQ>].

52. Clayton P. Gillette, *Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy*, 79 U. CHI. L. REV. 281, 287 (2012). For contrary views, see Kevin A. Kordana, *Tax Increases in Municipal Bankruptcies*, 83 VA. L. REV. 1035, 1068-69 (1997); Richard Schragger, *Democracy and Debt*, 121 YALE L.J. 860 (2012).

53. See Gillette, *supra* note 52, at 310. But see Richard Schragger, *Citizens Versus Bondholders*, 39 FORDHAM URB. L.J. 787, 796-803 (2012) (hereinafter *Citizens*).

business.⁵⁴ The end result is that cities do not receive help when they are failing, but invite interference when they are succeeding.

The history of local government law in the U.S. illustrates both the dominance of the market as an organizing principle and the opportunism of selective localism. A long-running trope of American municipal government is that city power is consistently vulnerable to manipulation by both private sector actors and state and national officials.⁵⁵ Institutional reformers and urban policymakers have sought to address this problem—to create strategies that limit the political pathologies of inter-governmental relations while giving cities the capacity to pursue the material well-being of their citizens. This Part describes three such approaches: home rule, national urban policy, and regional government. All three reforms have sought to address the city’s economic and political dependence. All have had little success.

A. Home Rule

Home rule has generally been the formal solution to the problem of the city’s lack of legislative autonomy. Home rule grants in state constitutions or in state statutes are written to permit cities to adopt legislation in the absence of specific state authorization.⁵⁶ Home rule grants can also provide a defense against preemptive state statutes, though these grants of home rule “immunity” are less common.⁵⁷ The promise of home rule is that it will free cities from state constraints and state officials’ intermeddling. The history of home rule, however, complicates this picture. Home rule reformers were historically ambivalent about city power—as David Barron has shown⁵⁸—and home rule grants have often reinforced city limits instead of overcoming them.

The history is important, for it shows that home rule was part of a package of Progressive Era state constitutional innovations meant to clean up state

54. See Frank Shafroth, *The Risks States Take for Their Distressed Cities*, VOICES OF THE GOVERNING (June 30, 2014), <http://www.governing.com/gov-institute/voices/col-states-wall-street-credit-risk-distressed-localities-municipal-bankruptcy.html> [<https://perma.cc/8YPG-R7GC>] (discussing state reaction to municipal bankruptcies or near-bankruptcies in Alabama, California, Michigan, Pennsylvania and Rhode Island); THE PEW CHARITABLE TRUSTS, *THE STATE ROLE IN LOCAL GOVERNMENT FINANCIAL DISTRESS*, 12 (July 2013), http://www.pewtrusts.org/~media/assets/2016/04/pew_state_role_in_local_government_financial_distress.pdf [<https://perma.cc/E6L4-WT4G>]. *But see* Schragger, *Citizens*, *supra* note 53, at 799-00 (contesting the contagion literature).

55. See Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83 (1986).

56. David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2263 (2003).

57. *Id.* at 2290.

58. See generally *id.*

politics.⁵⁹ In an era of tremendous urban growth, massive wealth was being generated in the cities, and “the large rewards which lay in cities’ offices, their contracts, and the franchises in their streets became the mark of the political spoilsman in the state legislature.”⁶⁰ In part, home rule grants were intended to prevent the exploitation of the city by state officials and the special interests that sought to take advantage of an expanding urban populace. Inter-municipal competition to build infrastructure in the nineteenth century led to dubious giveaways to vested interests and contributed to state and local bond defaults during economic downturns. Reformers believed that keeping state government out of the affairs of municipal government would stem state-wide corruption.⁶¹

The institutional solution to this grasping of city-generated wealth was multi-pronged, and only partially aimed to protect city decision-making. Indeed, reformers targeted avaricious legislators whether they were in statehouses or on city councils.⁶² State constitutional reform involved restricting state legislative interference in municipal affairs, but it also involved restricting the ability for cities to favor private economic interests in other ways.⁶³ Public purpose requirements were added to state constitutions and were meant to limit the state and municipal governments’ authority to use public monies for private projects.⁶⁴ State constitutional debt limitations prevented state and municipal governments from taking on debt.⁶⁵

The turn of the century also witnessed the rise of state boards of health, water, sewage, and schools—the beginnings of state administrative law.⁶⁶ State utility commissions were adopted in response to the corrupt awarding of municipal contracts for gas, electric, streetcar, and telephone services.⁶⁷ Meanwhile, city charter reforms transferred important local government functions to nonpolitical professional city managers.⁶⁸ These reforms were of a piece with the Progressive Era emphasis on technical and expert

59. *Id.*

60. *See id.* at 2286 (quoting HOWARD LEE MCBAIN, *THE LAW AND PRACTICE OF MUNICIPAL HOME RULE* 6 (1916)).

61. *See* JON C. TEAFORD, *THE UNHERALDED TRIUMPH: CITY GOVERNMENT IN AMERICA, 1870-1900* (1984).

62. *See id.*

63. *See id.* *See generally* RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW*, 639-48 (7th ed. 2009).

64. *See* BRIFFAULT & REYNOLDS, *supra* note 63, at 816-19.

65. *See id.* *See generally* GERALD E. FRUG & DAVID J. BARRON, *CITY BOUND: HOW STATES STIFLE URBAN INNOVATION* (2008).

66. *See* JON C. TEAFORD, *THE RISE OF THE STATES: EVOLUTION IN AMERICAN STATE GOVERNMENT* (2002).

67. *See generally* Barron, *supra* note 56.

68. *See* Schragger, *Can Strong Mayors?*, *supra* note 38.

administration.⁶⁹ Home rule was not in the main a “local autonomy” strategy, but a “good government” strategy. State constitutional reforms often limited cities as much as they empowered them.

Importantly, that is how home rule continues to function, in three ways. First, home rule grants rarely include immunity from state preemptive legislation. In most cases, states are free to override local ordinances unless those ordinances have a very limited reach, such as those relating to the internal organization of municipal government.⁷⁰

Second, and similarly, home rule grants of initiative have generally been interpreted by state courts to apply only to those matters that are deemed to be “local” in nature. Issues that have effects outside the city’s borders or impede uniformity throughout the state are considered to be matters of statewide concern, both ineligible for local regulation and subject to state override.⁷¹ State courts have generally erred on the side of state power—understandably so, as most local regulations have some spillover effects. The local regulation of particular industries, employment relationships, or wage and hours laws are especially prone to be rejected as they are easily characterized as having detrimental effects on the statewide business climate or the statewide interest in reducing compliance costs.⁷² As is the case with any judicial effort to distinguish the local from the national, what is a matter of local or statewide concern seems often to be a function of the substantive policy preferences of the judge hearing the case.

Third, home rule grants do not address the imbalance of power between cities and the market. Home rule addresses the city-state relationship, but not the city-capital relationship. Shifting the locus of authority from the state legislature to the city council does not change the fact that private economic interests still exercise outsized power in municipal politics.

In other words, home rule grants do not free cities from the demand that they act as competitors in a global market for mobile capital.⁷³ While local autonomy can prevent the worst excesses of state interference, it does not ultimately challenge the municipal politics of economic growth, with its emphasis on the governmental promotion of, participation in, and subsidization of private commercial enterprise. Indeed, home rule reinforces

69. See SCHRAGGER, CITY POWER, *supra* note 17, at 64.

70. See Diller, *supra* note 2, at 1127-33.

71. See *id.* at 1127.

72. See Stahl, *supra* note 16, at 177 (“Under the doctrine of home rule, local governments can often only act in matters deemed ‘local’ in nature and cannot regulate ‘statewide’ issues that may have impacts beyond local borders.”).

73. See Stahl, *supra* note 16, at 177. See also SCHRAGGER, CITY POWER, *supra* note 17.

that politics, for it is generally interpreted—as already noted—not to apply to local commercial and financial regulations.⁷⁴

Thus, for cities that are prospering, home rule protects initiatives that serve the state's interests—mostly those policies that are property-protecting. The New York State legislature's resistance to New York City's effort to impose a local millionaire tax is an example.⁷⁵

In contrast, for cities in economic decline, home rule provides a figment of legal autonomy without practical capacity. The declining city in the local government market can do little with its legal autonomy except align with private-side business interests in an often vain attempt to generate economic development and stem the exodus of its tax base.⁷⁶ Detroit exercised its power of eminent domain to entice General Motors to build an automobile plant in the city.⁷⁷ New London, Connecticut, similarly exercised its eminent domain power in an effort to encourage Pfizer to relocate there.⁷⁸ In both cases, the cities did not act out of economic strength, but rather out of economic weakness.⁷⁹ And in both cases, after opening businesses there, the private corporate beneficiaries of the cities' largesse ultimately relocated, abandoning each city when economic conditions did not improve. Home rule does not equal city power. Many times, what declining cities need is more state intervention to mute the inter-city competition for tax base, not less.

As many observers have pointed out, local governments are generally permitted to adopt policies intended to attract and retain economic resources and prevent their redistribution.⁸⁰ Home rule as exercised by suburban municipalities makes it very difficult for states to impose inter-local revenue-sharing, to override exclusionary land-use policies, or to promote state-wide fair housing.⁸¹ Suburbs use land use laws to limit low-income housing and preserve the local tax base.⁸² Suburban home rule limits cities' capacity to

74. See Stahl, *supra* note 16, at 188-94.

75. Jesse McKinley, *New York Budget Hinges on Contentious Tax on the Rich*, N.Y. TIMES (Jan. 18, 2017), <https://www.nytimes.com/2017/01/18/nyregion/new-york-budget-millionaire-tax.html> [<https://perma.cc/8Q3D-AY27>].

76. See generally STONE, *supra* note 21.

77. *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616 (1981), *overruled by* *City of Wayne v. Hathcock*, 471 Mich. 445 (2004).

78. See *Kelo v. City of New London*, 545 U.S. 469, 473 (2005).

79. See *id.* See also *Poletown*, 410 Mich., at 630.

80. See Stahl, *supra* note 16, at 205-20; Diller, *supra* note 2, at 1132-33.

81. See generally Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990).

82. See *id.* See also Richard C. Schragger, *San Antonio v. Rodriguez and the Geography of School Finance Reform*, in CIVIL RIGHTS STORIES 1, 4 (Myriam E. Gilles & Risa L. Goluboff eds., 2008); Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 437 (2001).

prevent flight as it preserves the suburbs' capacity to avoid responsibility for the regional poor.

In sum, as Kenneth Stahl has argued, "home-rule doctrine . . . suits the agenda of both the state and capital."⁸³ Home rule does not protect the city when it seeks to adopt legislation that contradicts the state's basic commitments, especially the commitment to economic development. For cities in economic decline, home rule provides no real answer to the forces of global disinvestment. For prosperous cities and suburbs, home rule allows for business-friendly or property-protecting local policies but is often interpreted to reject local redistributive regulations. Home rule tends to empower those jurisdictions in the metropolitan region that already enjoy economic and political power. And it does nothing to reduce the city's dependence on private economic investment or mute the competitive scramble for economic resources.

B. National Urban Policy

Home rule was a Progressive Era response to the problems of state and local inter-governmental relations. In the mid-twentieth century, national urban policy became the focus for city planners, anti-poverty advocates, mayors, and urban developers concerned about the decline of cities. National efforts to grapple with ethnic white and black ghettos began with the New Deal, and continued through the War on Poverty and into the remainder of the twentieth century.⁸⁴ The federal government subsidized housing, transportation, schools, and other municipal infrastructure.⁸⁵ Federal urban policy has been much less ambitious since the Reagan administration and the reduction in federal funds in the 1980s.⁸⁶ Nevertheless, federal monies (or the lack thereof) are influential in shaping affordable housing, transportation, and education policy in U.S. metropolitan areas.⁸⁷

Federal aid to cities can be understood as a way to liberate them from both their market-based resource constraints and from interference by state officials. Unfortunately, federal support for the rebuilding of cities, especially in the urban renewal period, exacerbated existing local market forces instead of challenging them.⁸⁸ And while federal programs do have

83. Stahl, *supra* note 16, at 186.

84. *See generally* MITCHELL DUNEIER, *GHETTO: THE INVENTION OF A PLACE, THE HISTORY OF AN IDEA* (2016).

85. *See generally* BILES, *supra* note 46.

86. *See id.*

87. *Id.*

88. Jane Jacobs famously argued against urban renewal and federal highway building in her *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961). On urban renewal generally,

the potential to free cities from state dependence, often these programs—for all their good intentions—reinforce the same metropolitan-area political dynamics that they were intended to avoid.

Indeed, it is well-documented that federal housing, urban renewal, and transportation policies reinforced racial residential patterns, encouraged the flight from cities, and failed to stop urban decline. Housing financing in the mid-twentieth century occurred along racial lines, deepening divisions in metropolitan areas instead of overcoming them. African American neighborhoods were starved of financing, while white neighborhoods—especially those outside the city—received significant government support.⁸⁹ The federal government dictated lending standards for federally-backed home loans, which favored new construction over renovation, single-family instead of multi-family home construction, and homogeneously white instead of mixed or African American neighborhoods.⁹⁰ Redlining—denying loans in African American neighborhoods—was an explicit federal policy.⁹¹

Public housing also reinforced existing housing patterns. Federally-funded public housing was purposely segregated, as federal officials bowed to local pressure to avoid mixing “inharmonious social groups.”⁹² In many cases, local opposition derailed public housing altogether. The influx of federal highway funds, combined with federal financing of new homes, accelerated white flight to the suburbs.⁹³ The lack of quality housing in the cities fostered even more flight.⁹⁴

Federal urban renewal funds sought to stem this flight. But urban renewal efforts were also infected by racism and mostly resulted in disinvestment from poor neighborhoods. Downtown redevelopment schemes used slum clearance and blight removal to replace poor minority residents and the

see Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 31-35, 47 (2003).

89. See KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 203-09, 213-18 (1985); DAVID L. KIRP ET AL., OUR TOWN: RACE, HOUSING AND THE SOUL OF SUBURBIA 1-8, 16 (1995) (noting that in the suburban-shaping years between 1930 and 1960, less than one percent of all mortgages in the nation were issued to African Americans.).

90. See JACKSON, *supra* note 89.

91. *Id.*; Fed. Hous. Admin., Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act Part I, P 323(3) (1936) (“The infiltration of inharmonious racial groups will produce the same effects as those which follow the introduction of nonconforming land uses which tend to lower the levels of land values and to lessen the desirability of residential areas.”).

92. Fed. Hous. Admin., Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act Part I, P 323(3) (1936).

93. PETER HALL, CITIES OF TOMORROW, 291-94 (1988).

94. See JACKSON, *supra* note 89, at 138-53.

businesses that sustained them with higher-income residents and amenities intended to appeal to wealthy suburbanites.⁹⁵ Alternatively, federal funds were used to build highways through existing low-income neighborhoods, often destroying them in the process.⁹⁶

More generally, cities systematically redirected capital away from poor neighborhoods to downtown business districts, where it was used to prop up ailing commercial rents or remove unwelcome populations.⁹⁷ Most of these efforts were unsuccessful in stemming urban flight. Nevertheless, neighborhoods on the periphery and minority city residents suffered mightily. In the African American community, redevelopment was known derisively as “negro-removal.”⁹⁸

To be sure, federal money in itself is not bad and has the potential to restore economic stability. In the 1930s, only the national government had the resources and wherewithal to bring the country out of the Great Depression. Federal monies were used during the New Deal period to build housing, schools, parks, hospitals and other infrastructure that helped the urban working class move into the middle class. The problem was and has been that national programs do not generally avoid capture by those interests that already exercise power in metropolitan regions: suburbanites and downtown business interests. Even now, after the heyday of urban renewal, city rejuvenation efforts paid for with federal monies often disenfranchise and uproot the urban poor, while shifting monies to corporate interests.⁹⁹

Moreover, federal policy cannot easily undo the city/suburb divide, which has been entrenched through constitutional law. In *Milliken v. Bradley*, decided in 1974, the Court held that school desegregation remedies had to stop at the city line.¹⁰⁰ This decision ushered in an era of increasing school segregation in northern cities.¹⁰¹ With the Supreme Court’s blessing, whites simply had to cross into a neighboring jurisdiction to avoid court-ordered desegregation remedies. Other Supreme Court decisions in the 1970s limited plaintiffs’ ability to bring fair housing challenges when suburban municipalities sought to derail lower or middle income housing developments.¹⁰²

95. See Pritchett, *supra* note 88, at 6.

96. For an example, see ROBERT CARO, *THE POWER BROKER* 850-78 (1974).

97. See Pritchett, *supra* note 88, at 47.

98. *Id.*

99. See generally *Kelo v. City of New London*, 545 U.S. 469 (2005); *Poletown Neighborhood Council v. City of Detroit*, 410 Mich. 616 (1981).

100. 418 U.S. 717, 719-20 (1974).

101. Myron Orfield, *Milliken, Meredith, and Metropolitan Segregation*, 62 *UCLA L. REV.* 364, 452 (2015).

102. See, e.g., *Warth v. Seldin*, 422 U.S. 490, 504-07 (1975); *Village of Arlington Heights v. Metro. Metropolitan Hous. Metro. Housing Dev. Corp.*, 429 U.S. 252, 270-71 (1977); *City*

Present day federal housing policies have also had deleterious effects on cities. The U.S. has pursued an aggressive homeownership policy since the New Deal, providing subsidies for homeownership through the federal mortgage-interest tax deduction and by financing home mortgages through Fannie Mae and Freddie Mac. The emphasis on homeownership has not been accompanied by adequate oversight of lenders, however. During the lead up to the sub-prime mortgage crisis that precipitated the 2008 Recession, predatory lenders engaged in “reverse redlining,” targeting vulnerable (and usually African American) consumers for high-interest loans.¹⁰³ The influx of credit was soon followed by an outflow of equity, as large numbers of lower-income buyers lost their homes when the housing bubble burst.¹⁰⁴ Notably, a number of cities attempted to regulate lending standards in the lead-up to the sub-prime mortgage crisis, but state courts invalidated municipal predatory lending laws as inappropriate exercises of local power.¹⁰⁵ Many cities are still trying to recover from the avalanche of foreclosures that followed the 2008 crash.¹⁰⁶

A national urban policy could support and strengthen declining urban neighborhoods and return power to cities. Some of the policies adopted in the 1960s pointed in that direction, authorizing neighborhood groups to determine where federal monies would be spent.¹⁰⁷ Today, however, federal aid to cities is limited. Federal funds for public housing have almost completely dried-up.¹⁰⁸ Federal transportation dollars are scarce and mostly seem to subsidize highway construction.¹⁰⁹ Federal education funds available through No Child Left Behind are paired with punitive policies that

of *Eastlake v. Forest City Enter.*, 426 U.S. 668, 676-78 (1976); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 8-9 (1974); *James v. Valtierra*, 402 U.S. 137, 138-40 (1971). *See also* *Construction Indus. Ass’n, Sonoma County v. City of Petaluma*, 522 F.2d 897, 904 (9th Cir. 1975) (rejecting challenge to local growth-control ordinances based on a right to travel).

103. *See* Linda E. Fisher, *Target Marketing of Subprime Loans: Racialized Consumer Fraud & Reverse Redlining*, 18 J. L. & POL’Y 121, 126-27 (2009); Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARV. C.R.-C.L. L. REV. 375, 392 (2010). *See also* Michael Powell, *Bank Accused of Pushing Mortgage Deals on Blacks*, N.Y. TIMES (June 6, 2009), <http://www.nytimes.com/2009/06/07/us/07baltimore.html> [https://perma.cc/Y35E-VMJC].

104. *See* Fisher, *supra* note 103, at 127.

105. For a discussion, *see* Stahl, *supra* note 16, at 188-92.

106. *See, e.g., City of Miami v. Bank of Am. Corp.*, 800 F.3d 1262 (2015), *cert. granted sub nom* *Bank of Am. Corp. v. City of Miami*, 136 S. Ct. 2544 (2016).

107. *See* BILES, *supra* note 46.

108. *Id.*

109. *See id.*

result in the closing of “failing” urban schools and the shifting of monies to corporate-run, charter schools.¹¹⁰

The national government has the resources to invest in American cities. It did so in the New Deal and thereafter, sometimes to good effect. But federal urban policy has generally been unreliable, vulnerable to national political trends, and directed towards clearance and removal instead of rebuilding in place. Federal intervention has not enhanced city power. Indeed, federal policies have in many cases hurt the cities that they were intended to help.

C. Regionalism

A third oft-proposed solution to the resource-constrained city is regionalism. Proponents of regional government urge consolidation of city and suburban governments as a way to mute inter-local tax base competition. The regionalist starts with the correct observation that the city/suburb divide is a deep cause of metropolitan-area inequality.¹¹¹ The fiscal need to provide good services at a low tax price means that every jurisdiction competes to attract regionally desirable residents and businesses while repelling those that are undesirable. Cities have traditionally been at a disadvantage in this competition, as they have more difficulty controlling the socio-economic characteristics of their residents.

The regional solution involves extending the boundaries of the city outward, so that it captures the tax base generated by suburban growth. As David Rusk has repeatedly pointed out, “elastic cities”—those that can expand their boundaries by annexing neighboring land—do better on measures of inequality than do inelastic cities.¹¹² If the tax base is moving outside of city lines, then moving those lines makes a great deal of sense. A metro government can redistribute from rich to poor areas within the jurisdiction, capturing taxes from neighborhoods that would otherwise be outside of the city’s taxing reach. A regional government gives the city access to resources that it would not otherwise have.

Current-day metropolitanism emphasizes another component of regionalism: the economic benefits of regional cooperation. Advocates argue that metropolitan areas are unified labor and consumer markets and that the lines between metro-area jurisdictions are wholly artificial.¹¹³ They

110. See generally James E. Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932 (2004).

111. See generally REFLECTIONS ON REGIONALISM (Bruce Katz ed., Brookings Institution Press 2000).

112. DAVID RUSK, INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA 10-11 (1999).

113. See Nestor M. Davidson & Sheila R. Foster, *The Mobility Case for Regionalism*, 47 U.C. DAVIS L. REV. 63, 105-06 (2013).

further argue that the economic health of suburbs is higher in regions with healthier cities, that residents and businesses choose among metropolitan areas when deciding where to locate, and that cooperating municipalities can better provide the kinds of regional amenities that residents and businesses seek.¹¹⁴

The old regionalism and the new metropolitanism sound perfectly sensible. But there are two significant drawbacks. The first is that suburbanites do not seem convinced. American localism is deeply entrenched and the idea of regional government has never been popular. Metro government is a rare beast—found only in a handful of places.¹¹⁵ Creating a regional tier of government requires the cooperation of the state legislature and state legislators are unlikely to push for a policy that reduces the power of suburban jurisdictions and seemingly increases the power of metros. State legislatures instead tend to be responsive to their suburban constituencies and are loath to create large-scale regional entities that can compete with them for political power.

Moreover, it is not entirely clear that cities would welcome consolidation with inner-ring suburbs. Suburban resource needs have increased over the last few decades, as suburban poverty has increased.¹¹⁶ Cities may not find it to their advantage to be aligned with declining, fiscally-strapped suburban municipalities.

The second drawback is that there is no reason to believe that regionalism will result in significant shifts of political or economic resources to urban areas. In assessing Louisville's experiment with regional government, for example, Hank Savitch and Ronald Vogel concluded that "city-county

114. See *id.* See also BRUCE KATZ & JENNIFER BRADLEY, *THE METROPOLITAN REVOLUTION: HOW CITIES AND METROS ARE FIXING OUR BROKEN POLITICS AND FRAGILE ECONOMY* (2013).

115. Pat Hardy, *The Consolidation of City and County Governments: A Look at the History and Outcome-Based Research of These Efforts*, MUN. TECH. ADVISORY SERV. (2012), [http://www.mtas.tennessee.edu/Knowledgebase.nsf/0/F0DA25B83B3AE2EA85257A9F006860E5/\\$FILE/consolidation%20research%20and%20history%20paper.pdf](http://www.mtas.tennessee.edu/Knowledgebase.nsf/0/F0DA25B83B3AE2EA85257A9F006860E5/$FILE/consolidation%20research%20and%20history%20paper.pdf) [<https://perma.cc/PC8C-TBCP>]. See also MYRON LEVINE, *URBAN POLITICS: CITIES AND SUBURBS IN A GLOBAL AGE* 250 (9th ed. 2015); Kathryn Murphy, *Reshaping County Government: A Look at City-County Consolidation*, NAT'L ASSOC. OF COUNTIES (2012), <http://www.naco.org/sites/default/files/documents/Reshaping%20County%20Government%20A%20Look%20at%20City-County%20Consolidation.pdf> [<https://perma.cc/ECK8-7ZDA>] (noting that there have been only forty-one successful city county consolidations since 1805); John Stuart Hall, *Who Will Govern American Metropolitan Regions, and How*, in *CITIES AND CONTEMPORARY SOCIETY* 63-65 (Donald Phares ed., 2015) ("A handful of other metropolitan areas of the United States have adopted compromises in which limited regional functions of government are provided by a metropolitan-wide government while many more localized functions remain the purview of existing cities, towns, and counties. The best examples of this approach are Miami, Portland, and Minneapolis-St. Paul.").

116. See ELIZABETH KNEEBONE & ALAN BERUBE, *CONFRONTING SUBURBAN POVERTY IN AMERICA* (2013).

consolidation has enhanced the ability of affluent suburbanites while reducing the political influence of blue-collar, inner-city residents, particularly African American residents.”¹¹⁷ They further concluded that city-county consolidation is likely to result in a “more internally cohesive [corporate] regime, coupled to weakened city neighborhoods that are less able to influence the development agenda” and “more rather than less urban sprawl.”¹¹⁸

It is highly plausible that a newly combined county-city government would be dominated by suburban rather than urban interests. Regionalists focus on the resources that will become available to the city once it consolidates with the county. But political power tends to follow economic power and there is no reason to believe that county residents will readily give up their economic power.¹¹⁹ Savitch and Vogel noted that after the Louisville consolidation, it became more expensive to mount a mayoral campaign for the combined city-county region and that business and suburban interests dominated the local political process.¹²⁰

Regionalism is a mobility strategy. The regionalist accepts the basic premise of market-based government: that cities are unable to generate economic growth without attracting and retaining mobile factors. As Douglas Rae has argued, “Those of us who want better life chances for low earning households in major cities, should set out to increase inequality by attracting and keeping high earners, now greatly underrepresented in central city populations.”¹²¹ The capture and tax agenda argues either for providing amenities to the rich to encourage them to relocate, or for enlarging the city’s boundaries—which serves the same purpose. Another element of the capture and tax agenda is to disperse existing poor urban populations more evenly throughout the region. Dispersal can take a number of forms: moving poor people into mixed income housing in the suburbs, limiting the building of low and moderate income housing in the urban core, or mandating that all municipalities take their “fair share” of the regional poor.¹²²

These policies seek to alter the demographics of city and suburb—a form of residential engineering that often faces resistance from both white suburbanites and minority urbanites. Attracting the rich requires cities to

117. DAVID IMBROSCIO, *URBAN AMERICA RECONSIDERED: ALTERNATIVES FOR GOVERNANCE AND POLICY* 65 (2010) (quoting Savitch & Vogel).

118. *See id.* (quoting Savitch & Vogel).

119. *See* Sheryll Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 *GEO. L.J.* 1985 (2000).

120. *See* IMBROSCIO, *supra* note 117, at 65.

121. Douglas W. Rae, *Two Cheers for Very Unequal Incomes: Toward Social Justice in Central Cities*, in 18 *JUSTICE AND THE AMERICAN METROPOLIS* 105-06 (Clarissa Rile Hayward & Todd Swanstrom eds., 2011).

122. *See* *S. Burlington Cty. N.A.A.C.P. v. Mt. Laurel, Twp.*, 336 A.2d 713, 724-25 (1975).

provide amenity-based “bribes” aimed at mobile taxpayers: arts districts, restaurants, museums. For existing residents, projects that are aimed at increasing a neighborhood’s desirability to a certain demographic look like an exercise in gentrification. At the same time, moving the poor out of certain neighborhoods—deconcentrating poverty—requires a high level of coercion and often destabilizes those neighborhoods.¹²³

Regional revenue-sharing to provide necessary infrastructure certainly makes a great deal of sense, as do other regional policies that promote and encourage residential and educational desegregation. But the policies that the new regional government will adopt are likely to emphasize business-friendliness at the cost of significant redistribution.

In sum, regionalism may provide more resources to cash-starved local governments and that is all to the good. But regionalism does not alter the relative powers of cities and the market. Even in a redrawn metro, the political economy of the region will likely remain unchanged. Wherever the boundaries are drawn, urban areas in the city are likely to be at a distinct political and economic disadvantage. And the city—even one with expanded boundaries—will remain constrained.

III. [RE]CONCEIVING THE CITY

Home rule, national urban policy, and regionalism operate within the existing framework of the market economy and three-tiered federal system. These approaches to city power seek to increase the city’s access to resources and enable the city to use them while limiting central interference.

This Part considers more radical reform proposals—ones that challenge both market primacy and the existing distribution of power. Radical critiques of the existing market order treat the city as a central site for democratic participation and economic justice. In these accounts, the city is not only a jurisdiction and a physical form, but a political concept—providing a form of organization that can arguably address the democratic and economic deficits of the existing liberal democratic nation-state. Critics of city weakness evoke Aristotle’s *polis*: the city as synonymous with the concept of political partnership or self-governance. Proponents argue that city power is an essential mechanism for reforming the market structures that engender inequality and that limit citizens’ political and economic freedom.¹²⁴

This Part briefly summarizes three of these accounts: the critical legal city, the right to the city, and the solidarity economy. Each account offers a

123. On mobility schemes generally, see discussion *infra* Section III.C.

124. See discussion *infra* Part IV.

structural critique of the existing market-based, liberal economic order. Each account also struggles with similar difficulties of implementation.

A. The Critical Legal City

Consider first the critical literature on the legal city, led by Gerald Frug's work on the city as a legal concept.¹²⁵ Writing against a backdrop of Marxian challenges to rights-based liberalism, Frug argues that the city's weakness is a function of a liberal ideology that suppresses alternative forms of collective power. In the act of bifurcating the state and the individual—the former exercising power and the latter exercising rights—classical liberalism undermined and ultimately rejected the city as an independent source of collective authority.¹²⁶

According to Frug, this story started with the medieval city and its status as an intermediate corporate entity, combining features of the state and the market. It ended with the reification of a new distinction between private rights-holders and governments. Though municipal and business corporations were originally undifferentiated, the business corporation was ultimately understood to be entitled to private rights—namely, the right of property. The municipal corporation, by contrast, was reconceived as a threat to the exercise of private rights.

This differentiation took place over the course of the eighteenth and nineteenth centuries, as the municipal corporation evolved from a territorially-based trading corporation designed to protect member merchants' and tradesmen's prerogatives, to a political jurisdiction charged with protecting and advancing the health, safety, and welfare of its populace.¹²⁷ The medieval city, which enjoyed a certain amount of political independence from both the Crown and Church, was replaced with the municipal corporation. And the municipal corporation became an administrative arm of the state.

Scholars have offered a variety of explanations for this dramatic shift. Some argue that republican ideology played a role—the medieval and early colonial municipal corporation was vulnerable to the same political winds that produced the American Revolution. The closed municipal corporation—like other hierarchical, aristocratic, and nondemocratic institutions—had to be brought under democratic control. The new economic thinking of Adam Smith and the developing notion of free markets

125. See generally Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

126. See *id.*

127. For one of the most important accounts of this transformation, with particular emphasis on New York City, see generally HENDRIK HARTOG, *PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730–1870* (1989).

also influenced the change, as did the far longer historical movement from status to contract and the rise of the liberal legal order.¹²⁸ The shift away from collectivism toward individual autonomy, with its language of human rights, made it necessary to reconfigure institutions that were neither state nor individual.¹²⁹

Frug tells a more critical story, arguing that the demise of city power was a function of the rise of the centralizing state coupled with an emphasis on property rights over collective rights of self-government.¹³⁰ Frug further argues that the emerging rights-based liberalism had no room for intermediate entities between the state and the individual, because those entities were too much of a threat to the power exercised by each.¹³¹ And so the city was assimilated to the state, while the private business corporation and other associational entities were assimilated to the individual.¹³²

As Frug points out, the municipal corporation's economic power was the chief casualty of this bifurcation.¹³³ Once the medieval and early-colonial city no longer maintained a monopoly on trade, vocations, and the selling and buying of goods, the city had to establish a new relationship with commercial activity in order to control the capital necessary to sustain it.¹³⁴

In the United States, the bulk of that work was done by classical jurists and reformers concerned about the relationship between legislatures and economic favoritism more broadly.¹³⁵ Classical late-nineteenth-century legal thinkers worried that legislatures were inclined to favor certain groups in the marketplace over others. In the arena of municipal law, cities were actively engaged in what classical legal thinkers saw as economic favoritism—the distribution of exclusive franchises and monopolies and the use of public power to promote private gain.¹³⁶ Therefore, these thinkers saw judicial oversight as necessary to ensure that legislation was in the public

128. See JON C. TEAFORD, *THE MUNICIPAL REVOLUTION IN AMERICA*, 25-35, 57-59 (1975).

129. See *id.* See also JON C. TEAFORD, *THE UNHERALDED TRIUMPH: CITY GOVERNMENT IN AMERICA, 1870-1900*, 29-34, 57-59 (1984) (discussing how aldermen and comptrollers in growing cities adapted their roles to serve their communities).

130. See FRUG, *supra* note 16, at 39-45 (1999).

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. See generally HOWARD GILLMAN, *THE CONSTITUTION BESIEGED: THE RISE AND DEMISE OF LOCHNER ERA POLICE POWERS JURISPRUDENCE* (1993); G. Edward White, *THE CONSTITUTION AND THE NEW DEAL* (2000). See FRUG, *supra* note 16, at 40-45. See also HARTOG, *supra* note 127, at 2-4 (expressing skepticism towards the public nature of municipal governments).

interest.¹³⁷ They also pushed for limits on municipal power as necessary to protect the fundamental right of all free persons to enter into markets or participate in avocations on an equal basis.¹³⁸

This legal invention of the disempowered city was essential to the creation of our existing capitalist, market-centered legal order, according to Frug. That legal order assumes the bifurcation of market and state and prevents each from entering the sphere of the other, making it seem the “natural” and “obvious” way to organize political and economic life.

Critical legal theorists have long targeted that necessitarian logic.¹³⁹ Frug draws on these critiques to reject the weak city, arguing that true democratic freedom requires empowering an intermediate association that is neither state nor market, but enjoys characteristics of both. For Frug, city power would help dismantle a liberalism that favors capital over collectives and private corporate power over public democratic freedom.¹⁴⁰

Operationalizing such a profound revolution in our legal and economic sensibilities is difficult. Frug admits that market-based liberalism is not going away anytime soon and that his vision of an empowered city is utopian.¹⁴¹ So he starts small, suggesting municipal ownership of productive assets such as banks and insurance companies.¹⁴² The municipal operation of commercial enterprises is a conceivable way to challenge the market/state distinction. City ownership of the instruments of corporate finance can bring markets under popular democratic control—the goal of an empowered city strategy.

How transformative this strategy can be is a real question. But importantly, Frug conceptualizes city power as central to the project, not just incidental to some other set of policy goals.¹⁴³ As he writes:

We can transform society as much or as little as we want in order to begin the process of making the city an alternative form of decentralized power in our society. We can accept all, part, or none of the market system and the welfare state. But real power must be given to cities.¹⁴⁴

137. JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS, 449-50 (5th ed. 1911). See generally Richard McCormick, *The Discovery that Business Corrupts Politics: A Reappraisal of the Origins of Progressivism*, 86 AM. HIST. REV. 247 (1981).

138. See DILLON, *supra* note 137.

139. See, e.g., DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION (1998); ROBERTO UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1986).

140. See generally FRUG, *supra* note 16, at 9-13; cf. Stahl, *supra* note 16, at 219-40 (deploying a Marxian critique of home rule).

141. See FRUG, *supra* note 16, at 214-16.

142. *Id.*

143. See generally Frug, *The City as a Legal Concept*, *supra* note 125.

144. *Id.* at 1149-50.

In this way, Frug's critical project is adamantly city-centered. City power is not incidental to the project of recreating the existing economic and political order. It is essential to that project's success.

B. The Right to the City

The city as the locus of transformative reform is also at the heart of "the right to the city," a concept developed by the pioneering French sociologist Henri Lefebvre in the late 1960s¹⁴⁵ and recently revived by a diverse set of urban-based political movements.¹⁴⁶ Those who invoke the right to the city assert an individual liberty to access urban resources, to avoid spatial segregation and exclusion, and to be provided with public services that meet basic needs in health, education, and welfare.¹⁴⁷ The right to the city, as some have used it, is also an assertion of a fundamentally public right to certain territories and a resistance to the privatization of urban space.¹⁴⁸ The right to the city has been invoked to challenge the exclusionary developmental processes that have shaped metropolitan areas worldwide. These include segregation, slum clearance, urban renewal, urban decline, and gentrification.¹⁴⁹

These types of claims have been mostly asserted by anti-poverty advocates in response to the rapid pace of global urbanization. Dramatic

145. See generally HENRI LEFEBVRE, *LE DROIT À LA VILLE* (1968); HENRI LEFEBVRE, *WRITINGS ON CITIES* (Eleonore Kofman & Elizabeth Lebas eds. and trans., 1996). For a discussion, see generally Mark Purcell, *Excavating Lefebvre: The Right to the City and Its Urban Politics of the Inhabitant*, 58 *GEO. J.* 99 (2002).

146. See Purcell, *supra* note 145.

147. See DANIEL MOECKLI, *EXCLUSION FROM PUBLIC SPACE: A COMPARATIVE CONSTITUTIONAL ANALYSIS*, 415-16 (2016); EDWARD W. SOJA, *SEEKING SPATIAL JUSTICE* (2010); RIGHT TO THE CITY ALLIANCE, *WE CALL THESE PROJECTS HOME: SOLVING THE HOUSING CRISIS FROM THE GROUND UP*, 2, 4 (2010), http://righttothecity.org/wp-content/uploads/2014/02/We_Call_These_Projects_Home-2.pdf [https://perma.cc/ALB5-9D9X].

148. See, e.g., DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* (2003).

149. See, e.g., Niels Boeing, *The Urban Revolution*, *WE-MAGAZINE*, April 2010, at 111, reprinted in *Introduction to Recht auf Stadt Hamburg*, http://wiki.rechtaufstadt.net/index.php/Introduction_to_Recht_auf_Stadt_Hamburg [https://perma.cc/VPZ2-JR5R] (discussing Germany's *Recht Auf Stadt*, which grew out of a 2009 demonstration in Hamburg); Marie Hurchzermeyer, *Invoking Lefebvre's 'Right to the City' in South Africa Today: A Response to Walsh*, 18 *CITY* 41 (2014); *A Short History of Abahlali baseMjondolo, the Durban Shack Dwellers' Movement* (Oct. 2006), <http://abahlali.org/a-short-history-of-abahlali-basemjondolo-the-durban-shack-dwellers-movement> [https://perma.cc/AD3M-69F6] (discussing South Africa's Abahlali baseMjondolo, a shack dwellers movement begun in 2005); *About*, RIGHT TO THE CITY ALLIANCE, <http://righttothecity.org/about/mission-history/> [https://perma.cc/A2RN-XR6D] (discussing the United States' Right to the City Alliance, launched in 2007). See also Margit Mayer, *The "Right to the City" in Urban Social Movements*, in *CITIES FOR PEOPLE NOT FOR PROFIT: CRITICAL URBAN THEORY AND THE RIGHT TO THE CITY* (Neil Brenner, et al. eds., 2012).

inequality in the mega-cities of the developing world has given rise to violent disputes over access to land, municipal services, and public space.¹⁵⁰ The right to the city has also been linked to international protest movements like Occupy Wall Street that first appeared in developed countries.¹⁵¹

Advocates use the language of rights to lay claim to the city as a social and political collective. The idea of a claim on the city—a legal entitlement to it—is more than an affirmative social welfare right. As influential Marxist urbanist David Harvey argues, the right to the city is “far more than a right of individual or group access to the resources that the city embodies . . . it is a collective rather than individual right.”¹⁵² It encompasses the idea that individuals have idiosyncratic, non-monetizable stakes in neighborhoods and in the city as a whole that should be recognized. In other words, individuals have a right not just to the exchange value of land but to its use value as well—not just to buy and sell urban land, build or tear down buildings, or invest capital—but also to enjoy the city’s non-commodifiable, public goods of sociability, society, and community. This entitlement can be operationalized as a right to stable tenure regardless of one’s resources.

In addition, the right to the city suggests that individuals should have equal access to communal processes that create wealth, because the city is itself a product of those processes. Harvey argues that “to claim a right to the city . . . is to claim some kind of shaping power over the processes of urbanization.”¹⁵³ Edward Soja elaborates:

Lefebvre saw the normal workings of everyday urban life as generating . . . inequitable and unjust distributions of social resources across the space of the city. Demanding greater access to . . . valued resources by those most disadvantaged by inequitable and unjust geographies defined the struggle to reclaim the manifold rights to the city. The aim, at least from the liberal egalitarian point of view, is to gain greater control over the forces shaping urban space . . . to reclaim democracy from those who have been using it to maintain their advantaged positions.¹⁵⁴

Like Frug’s argument for city power, the right to the city is a claim to appropriate democratic control over the political and social processes that constitute urbanization. Marxist theorists like Harvey invoke this idea by

150. See Melanie Lombard & Carole Rakodi, *Urban Land Conflict in the Global South: Towards an Analytical Framework*, 53 URB. STUD. 2683, 2684-87 (2016); WORLD BANK, *Violence in the City: Understanding and Supporting Community Responses to Urban Violence*, 26-27 (2011), https://www.unicef.org/protection/Violence_in_the_City.pdf [<https://perma.cc/E8WM-6BTD>].

151. DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION*, 1-25, 163 (2012).

152. *Id.* at 4.

153. *Id.* at 5.

154. SOJA, *supra* note 147, at 96.

challenging the existing capitalist order.¹⁵⁵ But the right to the city can also be used in a more limited way to challenge existing political and social arrangements that exclude or marginalize, namely those development processes that favor the wealthy over the poor.

The right to the city has been difficult to realize, however, in large part because it is invoked across so many contexts. In some ways it is a defensive right—a right not to be expropriated or displaced by predatory development policies. It is also an affirmative right to gain from the wealth generated by the city. The argument for “spatial justice”¹⁵⁶ partakes of both of these ideas. Proponents argue that land-based private development constrains the public’s rights to the collective value of the city, and regularly isolates, excludes, and restricts particular groups or classes of individuals from asserting this right.¹⁵⁷

This spatial approach—embodied in “occupy-style” protests that assert literal and symbolic territorial claims—is utterly foreign to the current market-based orthodoxy. Market-based local government assumes that a combination of property rights and (generally) free markets generate the patterns of metropolitan-area development that result. On this view, the city is a neutral background against which individual property owners act—no more than a legal jurisdiction in which individuals who already hold rights exchange entitlements. Urbanization and the wealth it produces are thus primarily a market process, not a political one.

The right to the city asserts otherwise. It challenges the politics of urbanization, not just its economics. This politics favors transnational corporations over local communities, wealthy new arrivals over the existing poor, competition over solidarity, development over stable tenure. At root, the right to the city is an anti-poverty movement, but it is also an assertion of a more egalitarian urban politics—a claim to the city as a place of collective ownership.

C. The Solidarity Economy

A similar dissatisfaction with the inequitable results of urban development is reflected in critiques of liberal urban policy. Critics charge that current-day anti-poverty policies have failed to address underlying structural

155. See HARVEY, *supra* note 151, at 115.

156. SOJA, *supra* note 147.

157. *Id.* See also HARVEY, *supra* note 151, at 22-23 (“[S]ince the urban process is a major channel of [surplus] use . . . then the right to the city is constituted by establishing democratic control over the deployment of the surpluses through urbanization.”); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1844-47 (1994).

inequalities that are endemic to global capitalism and that the tax and redistribute program is insufficient to resolve those inequalities.

David Imbroscio's work is a recent example. Imbroscio argues that the standard progressive reform agenda is inadequate to the task of solving the deep problems of urban poverty.¹⁵⁸ That reform agenda, he contends, is characterized by a "meritocratic paradigm"—an approach to urban poverty that seeks to address barriers in the social environment that prevent the poor from reaching their full potential.¹⁵⁹ These efforts are geared toward providing individuals the resources to overcome the disadvantages of inadequate schooling, troubled families, and poverty-impacted neighborhoods.¹⁶⁰ But, according to Imbroscio, these policies miss the point entirely: by focusing on equality of opportunity, liberals misidentify the source of urban poverty as inadequate social services or weak social ties, when the origins of economic inequality run much deeper.¹⁶¹ Imbroscio agrees that resources are inequitably distributed, but he disagrees that the goal of liberal policy should be to afford individuals in poor places the ability to achieve upward mobility by "dint of their own merit."¹⁶² American urban policy should instead be geared toward restructuring an economy that produces a few "merit-worthy" winners and a large number of losers.¹⁶³

Imbroscio makes two claims. The first claim is that liberal policymakers are too enamored of a set of "uplift" policies that have not been proven to work.¹⁶⁴ The second claim is that these policies are targeted toward individual mobility and thus underappreciate the need for community-wide economic strategies that can address structural economic disparities.¹⁶⁵ He contends that current policies geared toward increasing individual opportunity are not going reverse the broad economic trends of the twentieth and early twenty-first centuries and to expect them to do so only reinforces existing inequalities.

Education policy is Imbroscio's first example.¹⁶⁶ As he notes, school reform has been viewed as a solution to poor, stagnant urban economies for at least half a century and yet "we see over and over the inability of various reform efforts to achieve much achievement in poor children's schooling."¹⁶⁷

158. *See generally* Imbroscio, *supra* note 16.

159. *Id.* at 80.

160. *Id.*

161. *Id.*

162. *Id.* at 79.

163. *Id.* at 93.

164. *Id.* at 80-93.

165. *Id.* at 93-95.

166. *Id.* at 80.

167. *Id.* at 83.

In the current economy, even those who do attain a college education—and it is precious few—are not guaranteed success. Imbroscio cites statistics showing that those who start below the poverty line tend to stay there, regardless of their educational attainments.¹⁶⁸ And he cites further data that shows that people who start in the middle class and do attain college degrees—while doing better than those who do not—also fall out of the middle class in very high numbers.¹⁶⁹

Imbroscio also challenges the efficacy of programs that seek to correct for family and neighborhood dysfunction, arguing that these interventions only have modest effects on social mobility rates.¹⁷⁰ Early childhood intervention policies, for example, do not seem to generate great gains in social mobility over time, even if they may help some individual students achieve greater success.

The same is true of policies that seek to move people out of their existing neighborhoods or disperse poverty through the creation of mixed-income communities. Imbroscio argues that such policies—like the “Moving to Opportunity” program that gives families vouchers to relocate to lower poverty neighborhoods—have shown at best mixed results.¹⁷¹ He also observes that for most residents of poor neighborhoods, relocation is not desirable or even feasible.¹⁷² Mobility policies underappreciate the value and importance of human attachments to family, home, neighborhood, and community.¹⁷³ But more importantly, such policies are impractical and inhumane to implement on a large scale. Even moving relatively large numbers of families out of poor neighborhoods would have only slight effects on overall social mobility rates.

In short, Imbroscio argues that addressing poverty by reducing opportunity barriers is simply not a viable long-term strategy. Drawing on Thomas Piketty’s path-breaking work on inequality,¹⁷⁴ Imbroscio observes that the widespread social mobility that characterized mid-century western nations seems to have passed. As he writes: “the meritocratic dream at the heart of liberal urban policy seems doomed at least for the foreseeable future.”¹⁷⁵ And so, “[r]ather than being designed to produce high rates of social mobility for meritorious individuals, the key aspiration [of social

168. *Id.* at 83-84.

169. *Id.* at 84-85.

170. *Id.* at 88.

171. *Id.* at 90.

172. *Id.*

173. *Id.* at 92.

174. See generally THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Harv. U. Press 2014).

175. Imbroscio, *supra* note 16, at 94.

welfare policy] must instead be the uplift of entire urban communities.”¹⁷⁶ Imbroscio calls this emphasis the “solidarity economy,”¹⁷⁷ which he distinguishes from a competitive economy that focuses on rewarding achievement.

The solidarity economy strives to create local, stable economies in place. Instead of embarking on a “massive sociospatial reordering of the urban population,”¹⁷⁸ Imbroscio advocates “community-based development institutions, worker-owned firms, publicly-controlled businesses, and webs of interdependent (locally networked) entrepreneurial enterprises”—all of which will “generate indigenous, stable and balanced economic growth in local economies.”¹⁷⁹ These efforts are directed toward struggling inner-city communities; the idea is not to relocate poor people to new neighborhoods, but to give them the resources to gain economic security where they are.

Imbroscio advocates a populist localism. The response to the dislocations caused by globalization is to reconstruct the economy on a local and less vulnerable scale. The goal is to counter global corporate capitalism with community economic development and to provide for the city’s economic and civic independence from the strictures of global finance.

As Imbroscio points out, this constructive form of economic populism is necessitated by the failure of the existing meritocratic regime to address economic stagnation. The individual opportunity and mobility strategy is too weak to counter the forces of transnational capital mobility and accumulation. According to Imbroscio, the meritocratic paradigm has not only failed African American inner-city residents, but has also disappointed many downwardly mobile white middle-class Americans. The rise of ethnic nationalism on the right and anti-corporate populism on the left is a symptom.¹⁸⁰

To be sure, cities are easily coopted by corporate forces. Locals’ capacity to assert independence from global markets is questionable. For that reason,

176. *Id.* at 93.

177. *Id.* at 94.

178. *Id.* at 93.

179. IMBROSCIO, *supra* note 117, at 9. See also GAR ALPEROVITZ, *AMERICA BEYOND CAPITALISM* (Democracy Collaborative Press 2nd ed., 2011); MICHAEL SHUMAN, *GOING LOCAL: CREATING SELF-RELIANT COMMUNITIES IN A GLOBAL AGE* (Routledge 2000); THAD WILLIAMSON ET AL., *MAKING A PLACE FOR COMMUNITY: LOCAL DEMOCRACY IN A GLOBAL ERA* (Routledge 2002).

180. Chuck McCutcheon, *Populism and Party Politics*, 26 CQ RESEARCHER 721, 724 (2016) (“The left- and right-wing versions of American populism have different orientations. Left-leaning populists seek to check the power of banks and big business Populists on the political right, meanwhile, direct their frustration at the government, arguing it favors undeserving groups over ordinary Americans — often minorities or foreigners”). See also Richard Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920–1940*, 90 IOWA L. REV. 1011 (2005).

critics of liberal urban policy like Imbroscio often embrace municipal or local ownership of productive assets and institutions. Indeed, the theme of public or municipal ownership runs through each of the critical accounts of the existing market economy. Progressive-Era reformers also encouraged municipal ownership, as a similar demand for public control over the instruments of economic development informed that movement.

IV. CITY POWER

Advocates of city power, the right to the city, and the solidarity economy are responding to the seeming dominance of global capital in the twenty-first century. An abiding theme of these critiques of market-based liberalism is the lack of democratic control over the scope, scale, and terms of economic growth and decline. Cities are the visible manifestations of this democracy deficit. The hollowed-out shell of Detroit can be contrasted with the gleaming residential towers of Manhattan. In both instances, global market processes have bypassed a significant portion of the populace. Resistance to the market—whether it is disinvesting or overinvesting—seems futile.

Theorists writing in a critical mode champion city power by way of reimagining certain basic liberal commitments. Frug challenges the market/state distinction; Marxist theorists seek a revolutionary urban politics; economic localists reject the equal opportunity gospel. In all these cases, however, the likelihood of a radical shift away from the current market-based orthodoxy seems remote.

The urban resurgence of the last decades, however, suggests a way forward, as it teaches two lessons that undercut the assumptions of capital mobility and city subservience. First, the urban resurgence calls into question the competitive model of urban growth and decline. Cities do not “compete” themselves into urban success—the causes of city success or failure are complicated and not easily attributable to particular capital-favoring policies. If that is true, then we can reverse the assumption that capital calls the tune and that cities must sing it.

Second, if we take that reversal seriously, it suggests that cities have the capacity to engage in social welfare redistribution and other policies that are not directly responsive to the demands of mobile capital. It may also be possible for the city’s economic power to translate into political power, though that is less assured in light of the constraints of U.S. state-based federalism.

A. A New Urban Economics

The first step is to challenge the competitive account of city growth and decline. Recall that the ideology and practice of market-based local government presumes that cities are in a global competition for mobile capital and that any given city’s success or failure will turn on its capacity to

attract and retain it. But this competitive paradigm is theoretical. The idea of the “limited city” might not be accurate if social welfare policies do not precipitate capital flight or if there is little or no connection between market-friendly policies and economic growth.

In fact, the reasons for city growth or decline are complex, and not often attributable to policy. Standard explanations of urban development tend to emphasize technological or demographic change, not tax or expenditure policies. For example, even well-governed cities declined in the face of deindustrialization during the middle part of the twentieth century.¹⁸¹

More importantly, the urban rebound of the last twenty years does not appear to have been caused by any particular capital attraction and retention policies. Urban resurgence is a global phenomenon. Cities have become more prosperous whether or not local officials pursued neo-liberal market policies or did something else. In the last twenty years, none of the U.S. cities that have now seen their populations stabilize and their property values increase moved to reduce local tax rates or regulations so substantially as to eliminate the city-suburb differential.¹⁸² Nor have those rebounding cities demonstrably improved particular city services. Urban schools, for example, have not gotten measurably better when compared to their suburban counterparts.¹⁸³ And whether a city is “business-friendly” or has low taxes

181. See Glaeser, *supra* note 27, at 22, 25-26.

182. See SCHRAGGER, CITY POWER, *supra* note 17, at 194-97.

183. See A DECADE OF URBAN SCHOOL REFORM: PERSISTENCE AND PROGRESS IN THE BOSTON PUBLIC SCHOOLS 133-34 (S. Paul Reville & Celine Coggins eds., 2007); G. Alfred Hess Jr., *Understanding Achievement (and Other) Changes under Chicago School Reform*, 21 EDUC. EVAL. & POL'Y ANALYSIS 67, 79-80 (1999); Diane Ravitch & Joseph P. Viteritti, *Introduction*, in CITY SCHOOLS: LESSONS FROM NEW YORK 1, 3-5 (Diane Ravitch & Joseph P. Viteritti eds., 2000); Sam Dillon, *Large Urban-Suburban Gap Seen in Graduation Rates*, N.Y. TIMES, Apr. 22, 2009, at A14; CHRISTOPHER B. SWANSON, CLOSING THE GRADUATION GAP: EDUCATIONAL AND ECONOMIC CONDITIONS IN AMERICA'S LARGEST CITIES (2009), https://secure.edweek.org/media/cities_in_crisis_2009.pdf [<https://perma.cc/CFD3-KLNS>] (comparing graduation rates in the principal school systems of the country's fifty largest cities with nearby suburban communities for the period 1995-2005). See also Micere Keels et al., *The Effects of Gentrification on Neighborhood Public Schools*, 12 CITY & CMTY. 238 (2013) (Providing a thorough review of the literature on urban resurgence and public school education, and finding no aggregate academic benefit from gentrification, with possible negative effects on underprivileged children in Chicago. According to some studies, a clear negative relationship exists between the process of gentrification and the overall experience of local public school students.). See, e.g., Tomeka Davis & Deirdre Oakley, *Linking Charter School Emergence to Urban Revitalization and Gentrification*, 35 J. URB. AFF. 81, 85 (2013). For an account of the link between urban renewal and urban school revitalization in Philadelphia, see Maia Cucchiara, *Re-branding Urban Schools: Urban Revitalization, Social Status, and Marketing Public Schools to the Upper Middle Class*, 23 J. EDUC. POL'Y 165 (2008). See also Kristen A. Graham, *Near-broke Phila. Schools Must Borrow to Make Payroll*, PHILA. INQUIRER, Oct. 22, 2015, at A1; Joshua Rosenblat & Tanner Howard, *How Gentrification is Leaving Public Schools Behind*, U.S. NEWS, (Feb. 20, 2015) <http://www.usnews.com/news/articles/2015/02/20/how-gentrification-is-leaving-public->

and low regulatory burdens does not predict growth,¹⁸⁴ even if city boosters claim otherwise.

Resurgent cities have, in fact, not done anything starkly different from what they had been doing for the past seventy-five years to attract young people and suburbanites to the urban core. Massive investments in urban renewal, highway building, stadiums, and showplaces did not slow the decline of post-industrial cities in the middle and latter part of the twentieth century. The relatively minor investments in cities at the turn of the twenty-first century appear to be an unlikely cause for cities' more recent successes.

So what explains the urban resurgence? The conventional market model assumes that capital is hyper-mobile and that cities must compete to attract it. Because capital can flee, local governments have a limited range of policy options. In particular, they have limited ability to adopt social welfare redistribution and regulations that appear hostile to corporate capital. The urban resurgence, however, suggests that the relationship between capital and the city moves in the opposite direction. One can flip the assumption about who is competing for what. Instead of the city competing for capital, capital is competing for cities.

This idea is not so strange. Technology firms compete to be in San Francisco. Finance firms compete to be in London. Young, educated workers compete to be in Manhattan and so do corporate headquarters. This competition is evident in the high rents that these residents and businesses are willing to pay. As any realtor will tell you, "location, location, location."

In other words, the view that capital and labor are endlessly mobile is incorrect.¹⁸⁵ The competitive theory of city growth and decline assumes a relatively flat world, in which jurisdictions compete on an even playing field. Economic geographers, however, have shown that this is not true.¹⁸⁶ Economic activity is not spread evenly over geographic space. Some places

schools-behind [<https://perma.cc/7NYH-3CFP>] (discussing gentrification's effect on public schools in Washington D.C.).

184. See SCHRAGGER, CITY POWER, *supra* note 17 at 191-217. See also, Terry F. Buss, *The Effect of State Tax Incentives on Economic Growth and Firm Location Decisions: An Overview of the Literature*, 15 ECON. DEV. Q. 90, 97-99 (2001); Yoonsoo Lee, *Geographical Redistribution of U.S. Manufacturing and the Role of State Development Policy*, 64 J. URB. ECON. 436-47, 445 (2008); Carlos F. Liard-Muriente, *U.S. and E.U. Experiences of Tax Incentives*, 39 AREA 186, 189-90 (2007) (reviewing literature).

185. See MARIO POLÈSE, THE WEALTH AND POVERTY OF REGIONS: WHY CITIES MATTER 54-55 (2009); WORLD BANK, 2009 WORLD DEVELOPMENT REPORT: RESHAPING ECONOMIC GEOGRAPHY 50-52 (2009); K.R. Cox, *The Local and the Global in the New Urban Politics: A Critical View*, 11 ENV'T & PLAN. D: SOC'Y & SPACE 433, 437-41 (1993).

186. See SCHRAGGER, CITY POWER, *supra* note 17, at 34-40.

will always have more economic activity and some will have less.¹⁸⁷ Often those with less will decline even when their costs are lower, while those with more will continue to advance despite their comparative cost disadvantage. Location matters to persons and firms—the flow of workers or businesses into or out of a particular jurisdiction is not simply a question of which jurisdiction has lower costs. Economists have shown that dense, rich places often get denser and richer while sparse, poor places get less populated and poorer.¹⁸⁸ Being in the right location appears to offer myriad economic advantages.¹⁸⁹ Capital and labor need cities as much as cities need capital and labor.

At the beginning of the twenty-first century, cities have reasserted their historical advantages as providers of the infrastructure, markets, and labor pools that generate growth.¹⁹⁰ Cities seem to thrive in an economy increasingly dominated by knowledge-based industries—such as information technology—where informal face-to-face communication is understood as essential. Cities are centers of innovation and appear to be necessary for the intra- and cross- industry exchange of ideas. But cities also seem to be thriving simply because they are denser and contain more people, jobs, and opportunities for social, economic, and political interaction than do suburbs and exurban jurisdictions.¹⁹¹

Market-based theories of local government need to attribute the success or failure of cities to some policy change. If “competition” between cities is to mean anything, the city must exercise some level of agency—some capacity to control its economic fate. But it is likely that city growth and decline is cyclical and only indirectly connected with any particular local tax and spend policy. The processes by which twenty-first century cities have become larger and more important are not reducible to inter-city competition and cannot be attributed to any particular set of urban policies. Competition does not induce growth—other forces are at work.

Indeed, the inability to predict economic growth and decline should make scholars and policymakers wary of claims that capital-attracting policies are at play. Recall that in 1950 many believed that Detroit would become the

187. On uneven economic development, see WORLD BANK, *supra* note 185, at 8. *See also* PIERRE-PHILIPPE COMBES ET AL., *ECONOMIC GEOGRAPHY: THE INTEGRATION OF REGIONS AND NATIONS* 365 (2008).

188. *See* PAUL KRUGMAN, *THE SELF-ORGANIZING ECONOMY* 61-73 (Blackwell Publishers, eds., 1st ed. 1996); WORLD BANK, *supra* note 185, at 50-52.

189. *See* Edward W. Soja, *Beyond Postmetropolis*, 32 *URB. GEO.* 451 (2011).

190. *See* EDWARD GLAESER, *TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* (MacMillan eds., 2011).

191. *See, e.g.,* POLÈSE *supra* note 185; Edward L. Glaeser et al., *Growth in Cities*, 100 *J. POL. ECON.* 1126, 1127 (1992); Robert E. Lucas, Jr., *On the Mechanics of Economic Development*, 22 *J. MONETARY ECON.* 3, 38-39 (1988).

biggest and most influential city in the United States. In the early 1970s, prognosticators predicted New York City's rapid and inevitable decline.¹⁹² How any given city will experience the economic cycle is not easily predictable. That fact should disabuse policymakers of the notion that if cities just adopted the right capital-favoring policies, all will be right.

If growth and decline are much less susceptible to policy than conventional accounts assert, then cities are much less constrained to adopt capital-favoring policies in order to succeed.¹⁹³ In the large number of cases, such policies will not do much good.¹⁹⁴ And adopting contrary policies will not do much harm. Rather than an observation of fact, the argument that cities are competing is an assertion used by certain political interests to advance their own aims, regardless of the effects of the particular policies that they support.

B. A New Urban Politics

The difficulty of predicting city growth or decline leads to the second lesson of the urban resurgence: the city's assumed limits are less economic than political. The proliferation of metropolitan-area local governments and the subsidization of suburban flight are not economic facts, but political ones. Disinvestment from central cities in the mid-twentieth century was hastened by the federal support for suburban development, segregationist housing policies, and Supreme Court decisions that limited the reach of school desegregation. That local government borders are porous and that local governments have to fund their services with what they earn in

192. See MICHAEL STORPER, KEYS TO THE CITY: HOW ECONOMICS, INSTITUTIONS, SOCIAL INTERACTIONS, AND POLITICS SHAPES DEVELOPMENT 1 (Princeton Univ. Press eds., 2013). On Detroit, see Jack Lessenberry, *City That Put World on Wheels Now a Bleak, Urban Disaster*, TOLEDO BLADE (Mar. 26, 2011), <http://www.toledoblade.com/JackLessenberry/2011/03/25/City-that-put-world-on-wheels-now-a-bleak-urban-disaster.html> [https://perma.cc/8D73-3ZZY] ("When Detroit formally celebrated its founding that summer, city fathers triumphantly predicted that a population of 2 million was just around the corner."). See also Bill McGraw, *A Different Time: When Detroit Believed It Was the Greatest City*, DEADLINE DETROIT (Mar. 13, 2013), http://www.deadlinedetroit.com/articles/4081/looking_back_on_the_week_detroit_reached_its_all-time_peak [https://perma.cc/R8H8-ED8G]. On New York City, see JEROME KRASE & JUDITH N. DESENA, RACE, CLASS AND GENTRIFICATION IN BROOKLYN: A VIEW FROM THE STREET (Lexington Books eds., 2016); JEROME KRASE, SELF AND COMMUNITY IN THE CITY (Univ. Press of Am. eds., 1982) (describing the 1975 predictions of Eleanor Holmes Norton).

193. Indeed, evidence suggests that cities have much more divergent redistributive policies than one would predict based on the competitive model. See *Craw*, *supra* note 28; Tausanovitch & Warshaw, *supra* note 28.

194. See Hongbin Cai & Daniel Treisman, *Does Competition for Capital Discipline Governments? Decentralization, Globalization, and Public Policy*, 95 AM. ECON. REV. 817, 817-18 (2005) (arguing that competition has a polarizing effect, causing cities that are unable to attract mobile capital to abandon business-friendly policies in favor of predation or the interests of existing citizens).

jurisdictionally-local tax dollars is a function of political organization.¹⁹⁵ State officials' "selective localism" is similarly a function of political organization. The formal division of authority between local, state, and federal governments and the vertical competition between officials who represent "local" constituents are a product of U.S. state-based federalism. These aspects of state power are a political reality: the states are not going away anytime soon.

But urbanization is a reality too. And growing metropolitan regions are changing state-level political dynamics. For example, cities and metropolitan areas in traditionally rural and southern states are generating a new political calculus as increasingly diverse, young, educated, and progressive voters migrate to urban places.¹⁹⁶

More importantly, accepting that growth can neither be hastened by "business-friendly" policies nor readily retarded by "redistributive" ones opens up a larger array of urban policy options.¹⁹⁷ Cities have more freedom to pursue certain social welfare and anti-discrimination objectives. These objectives expose the widening rift between urban political constituencies and rural or exurban ones. Conflicts between cities and their states and between cities and the federal government are likely to increase, at least in the short term.

The municipal living wage movement is a good example, both of cities' political capacities and of states' often hostile response. According to the conventional account, local minimum wage laws are a bad idea. Economists are suspicious of municipal wage floors, worrying that under such a law,

195. See generally Macedo, *supra* note 182.

196. See Karen L. Cox, Op-Ed, *A New Southern Strategy*, N.Y. TIMES (Nov. 17, 2012) <http://www.nytimes.com/2012/11/18/opinion/sunday/a-new-southern-strategy.html> [<https://perma.cc/3T3C-CP5B>] ("If Charlotte or Atlanta were the size of New York City, then perhaps we wouldn't tag either North Carolina or Georgia as red states."); Joel Kotkin, *How the South Will Rise to Power Again*, FORBES (Jan. 31, 2013), <http://www.forbes.com/sites/joelkotkin/2013/01/31/how-the-south-will-rise-to-power-again> [<https://perma.cc/8EPS-Y4ZL>] ("The South's new breed of carpetbaggers increasingly bring diplomas, skills and high wage jobs with them. The main attraction: not only jobs, but lower housing prices, lower taxes and, overall, a more affordable quality of life."). North Carolina is a good example. HB2, the "bathroom bill," became a point of contention in the 2016 gubernatorial election. The business community generally opposed the bill and its unpopularity contributed to the ouster of the conservative governor. See Jonathan M. Katz, *Major Companies Press North Carolina on Law Curbing Protections from Bias*, N.Y. TIMES (Mar. 29, 2016), <http://www.nytimes.com/2016/03/30/us/north-carolina-governor-attacks-critics-of-law-curbing-protections-from-bias.html> [<https://perma.cc/BQ3J-8Q72>]. There have been a number of failed efforts to repeal HB2, most recently after Charlotte rescinded its transgender ordinance with the expectation that the legislature would back repeal. See Jim Morrill & Steve Harrison, *Gov. Pat McCrory Calls for Special Legislative Session Wednesday to Repeal HB2*, THE CHARLOTTE OBSERVER (Dec. 19, 2016), <http://www.charlotteobserver.com/news/local/article121729973.html> [<https://perma.cc/4Y3T-3KFZ>].

197. See SCHRAGGER, CITY POWER, *supra* note 17.

employers would reduce hiring or move out of the jurisdiction altogether.¹⁹⁸ Therefore, they argue that cities cannot regulate wages without generating capital flight.¹⁹⁹ Only centralized governments can effectively adopt wage floors.²⁰⁰

The recent living wage movement, however, has tested those claims. Cities were the first governments to adopt significant wage hikes, and those cities have not seen a massive outflow of capital and jobs.²⁰¹ Evidence also shows that higher minimum wages reduce urban poverty.²⁰² The success of municipal living wage laws has induced some states to adopt higher minimums and is putting pressure on federal elected officials to follow suit.²⁰³ What is now a national minimum wage movement had little political traction until cities adopted their own wage floors in the mid-2000s. In addition, cities have become important sites for organizing low-wage workers in the healthcare, hospitality, and service industries²⁰⁴ and for pursuing a whole range of worker-favorable policies.

Of course, as previously noted, the city's ability to adopt and protect its own laws is significantly limited. Conservative state legislatures have aggressively preempted local wage, anti-discrimination, housing, and social

198. See T. William Lester, *Labor Standards and Local Economic Development—Do Living Wage Provisions Harm Economic Growth?*, 32 J. PLAN. EDUC. & RES. 331, 331-32 (2012).

199. See CLAYTON P. GILLETTE, LOCAL REDISTRIBUTION AND LOCAL DEMOCRACY: INTEREST GROUPS AND THE COURTS 8 (Yale Univ. eds., 2011).

200. See *id.*

201. For a thorough review of the literature, see generally DALE BELMAN & PAUL J. WOLFSON, WHAT DOES THE MINIMUM WAGE DO? (Upjohn Inst. for Emp. Res. eds., 2014); WHEN MANDATES WORK: RAISING LABOR STANDARDS AT THE LOCAL LEVEL (Michael Reich et al. eds., 2014); Michael Reich, *Increasing the Minimum Wage in San Jose: Benefits and Costs*, CTR. ON WAGE & EMP. DYNAMICS, INST. FOR RES. ON LAB. & EMP., U.C. BERKELEY (Oct. 2012), <http://www.irl.berkeley.edu/cwed/briefs/2012> [<https://perma.cc/P2BL-YP9Y>].

202. See SCHRAGGER, CITY POWER, *supra* note 17, at 146-47 (discussing studies).

203. See Jenni Bergal, *Cities Forge Policy Apart From States*, PEW CHARITABLE TR., (Jan. 15, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/1/15/cities-forge-policy-apart-from-states> [<https://perma.cc/VKP8-QJFX>] (listing the fifteen states that have laws preventing cities from regulating wages). See also The Editorial Board, *When States Fight to Overturn Good Local Labor Laws*, N.Y. TIMES (OP. PAGES), Feb. 19, 2016, at A30.

204. See generally Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF. L. REV. 1927, 1993-94 (2007); Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, 17 J. AFFORDABLE HOUS. & CMTY. DEV. L. 59, 61 (2008); Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153 (2011); Katherine Stone & Scott L. Cummings, *Labor Activism in Local Politics: From CBAs to 'CBAs' and Beyond*, in THE IDEA OF LABOUR LAW 276 (Guy Davidov & Brian Langille eds., 2011).

welfare laws adopted by more progressive-minded cities.²⁰⁵ Over twenty states have adopted laws preempting local minimum wage ordinances.²⁰⁶

Indeed, the current political environment is quite hostile to cities. City constituencies tend to be more politically progressive, but conservatives hold power in the majority of state houses and in the U.S. Congress, and more recently took over the American presidency. Donald Trump has attacked so-called “sanctuary cities”—cities that provide identification cards and other services for undocumented workers or that refuse to assist federal authorities in enforcing federal immigration laws. He has threatened to cut their receipt of federal funds if they do not assist with federal immigration enforcement.²⁰⁷ A number of mayors have declared that they will resist, though the costs of such resistance could be significant.²⁰⁸ American cities do not now have an ally in the Oval Office, or in any of the branches of the federal government, and they have few allies in the states.

Nevertheless, the periphery’s influence on the center shifts over time. Like economic cycles, political cycles are difficult to predict. The centripetal forces of the twentieth century are still at work in the twenty-first. But there are emergent counter-forces. For critics of the existing market-based political order, city power may be able to serve as a counterweight both to global corporate capital and the increasingly distant nation-state. As conservative attacks on liberal democracy reveal popular dissatisfaction with the status quo, locating an alternative and more accessible site for economic and political participation seems ever more urgent. That site can (and for many, should) be the city. The rise of urban-based political movements suggests that city power is a political possibility even as it faces significant opposition by those committed to state power in the service of global capital.

CONCLUSION

Cities operate in a market economy that privileges private economic interests and a constitutional structure that places cities at the bottom of a hierarchy of governments. For most of the latter half of the twentieth century, American cities were decidedly subordinate to both mobile capital and to more central government officials, in both theory and in practice. At the turn of the twenty-first century, there has been a subtle shift—central

205. See Greenblatt, *supra* note 10.

206. See Bill Kramer, *Multistate Insider*, *Localities Challenging State Preemption Laws*, MULTISTATE INSIDER (Aug. 22, 2016), <https://www.multistate.us/blog/insider/2016/08/localities-challenging-state-preemption-laws> [https://perma.cc/4S5F-Q9RV].

207. See Jennifer Medina & Jess Bidgood, *Cities Vow to Fight Trump on Immigration, Even if They Lose Millions*, N.Y. TIMES, Nov. 28, 2016, at A10.

208. See *id.*

cities have gained ground and economic activity is increasingly centered in metropolitan areas.

To be sure, the U.S. political culture is still characterized by a fervent anti-urbanism.²⁰⁹ Declining cities like Flint are taken over with little fanfare. Legislators preempt local legislation with a minimum of political pushback. In the nineteenth century, a political movement led to the adoption of home rule reforms. In the twentieth, a political movement agitated for a national urban policy. But these efforts did not protect or ensure city power—the hydraulic forces of centralization and privatization have simply been too strong. Those forces are unlikely to abate soon.

The American city's weakness is not just a function of impersonal social and economic forces, however. Its weakness is also a function of an ideology of American-style municipal boosterism that infects every aspect of the center-periphery relationship. For the booster, cities are market actors and municipal citizens are shoppers in a market for location. A city's economic success is proof of a city's good leadership. Economic decline is proof of a city's failure to innovate. The American city continues to be defined by its commercial success—something it has little control over—as opposed to its fostering of a politics and economics of equals—something it in fact has some capacity to advance.

Imaging a different city will take effort—both theoretical and practical. The goal of such a reimagining is a richer account of democratic life—one that can address a more profound political alienation. Providing cities with home rule protections or with additional financial support can ameliorate some of the material challenges that cities face, but not this deeper political and economic malaise.

209. See STEVEN CONN, *AMERICANS AGAINST THE CITY: ANTI-URBANISM IN THE TWENTIETH CENTURY* (Oxford Univ. Press eds., 2014).