



The Limits of Progressive Policymaking in US Cities

Richard Schragger

While many US cities appear to enjoy extensive powers—as evidenced by the progressive policies enacted by certain mayors—local government is in reality often curbed by legislative retaliation at state and federal levels, in a context of ruthless political competition, geographical polarization, and rising anti-urbanism. Richard Schragger, author of City Power, sheds light on the dynamics at play and how cities can respond to them.

Series: Progressive Mayors and Urban Social Movements

Recently, the Tennessee legislature voted to punish the city of Memphis for removing two Confederate statues by striking a \$250,000 state appropriation that was to be used for the city's bicentennial celebration. The mayor and city council, representing the will of the majority-black city, had previously agreed to sell the two city parks in which the monuments stood to avoid a state law preventing the city itself from removing the statues. The new private owner was under no such restriction. Unhappy with Memphis's legal end-run around state law, the Republican-dominated legislature expressed its displeasure by cutting off funds.

Legislative retaliation against progressive cities is an emerging theme¹ across the United States. Donald Trump has threatened to cut off federal aid to "sanctuary cities"—those cities that have refused to comply with federal immigration mandates or have resisted cooperating with federal immigration authorities. The Texas legislature has adopted similar legislation that bars local officials from adopting sanctuary policies on pain of criminal and civil penalties and potential removal from office. Other states have simply overridden progressive local laws. We have now seen 37 states preempt local regulation of ride-sharing companies; at least 25 states preempt local minimum wage laws; 15 states override local paid- and unpaid-leave laws; and 12 states preempt local authority to regulate employee benefits. Many other cities never had the power to adopt these kinds of laws in the first place. The last half-decade has witnessed an explosion of preemptive state legislation seeking to "rein in" wayward (often progressive-leaning) cities.

This torrent of state legislative overrides is not entirely surprising. Though the idea of the progressive city as an engine for national (and even global) social change has been much touted, American cities are not particularly well-positioned as a matter of political and legal power. And though progressive mayors have been leading the charge on issues like environmental protection and economic inequality, their position in the political landscape has often been marginal. Indeed, the American city's legal and political autonomy has long been precarious. In 1915, a commentator

¹ See: Richard Schragger. 2017. "The Attack on American Cities", *Texas Law Review* (forthcoming); Virginia Public Law and Legal Theory Research Paper No.2017-46. Available online at the following URL: <https://ssrn.com/abstract=3026142>.

could observe that “to a large degree the history of relations of states to metropolitan cities [in the US] is a history of repeated injuries [...] repeated usurpations.”²

Those usurpations continue—indeed, they seem to have accelerated in the last decade or so, even as cities in the United States have become more economically stable, and in many cases, much richer. There are three reasons why American cities remain politically vulnerable. The first is US-style state-based federalism, which is institutionally biased against robust city autonomy. The second is political gerrymandering, which has exacerbated the political distance between city and non-city dwellers. And the third is the American ideology of anti-urbanism, which can be harnessed—and has been recently—to challenge progressive policies that have become associated with cities, even if those policies would generate widely shared benefits.

Intervention, interference, and the rhetoric of anti-urbanism

US state-based federalism is the first problem for American cities, and in some ways, an obvious one. As a constitutional matter, states exercise plenary power over their political subdivisions. States often grant broad powers to their local governments, but even in states that have constitutional provisions guaranteeing “home rule,” the state legislature can normally override most local laws at will.

It may be surprising that cities are so weak in a constitutional system that is in many other respects highly decentralized. But the United States is not so much decentralized as it is federal, and federalism, US-style, invites state interference. In a unitary constitutional system, the center has to devolve power because implementation and monitoring is otherwise expensive. In a federal system, however, state governments tend to take up the policy space that would otherwise be occupied by local governments. Moreover, states in the US can be selective about when they intervene. Cities are generally responsible for the basic health, safety, and welfare needs of the populace, and the formal separation of functions between local, state, and federal governments means that state and federal officials can deflect responsibility for general conditions but take credit for narrow interventions. Local leaders do not have a monopoly on local representation, which means that they are in vertical competition with state and federal elected officials who also conceive of themselves as representing “local” constituents. All of these officials are in competition for political credit and spoils. All are also nominally responsive to local constituencies but not directly to the city as a whole. The result is political competition for influence and money in which mayors and other city leaders are at a distinct advantage.³

The upshot is that city leaders are operating in a system in which the state legislature and governor are often the most significant barriers to achieving local progressive goals. Even in states like New York, where Democrats control both the city and state political machinery, the progressive mayor of New York City, Bill de Blasio, can get little done without the cooperation of Andrew Cuomo, the Democratic governor. Cuomo’s antipathy to de Blasio is well documented, and he has opposed or co-opted de Blasio’s policies in areas as disparate as charter schools, congestion pricing, a millionaire tax, the living wage, and universal pre-K education.

Of course, this conflict is more salient in “red states,” where conservative legislatures oppose “blue city” policies. North Carolina’s opposition to Charlotte’s transgender anti-discrimination ordinance is an example. In response to Charlotte’s attempt to authorize the use of public restrooms on the basis of identified sex, the North Carolina legislature adopted a bill that would not only force transgender people to use bathrooms that accorded with their biological sex, but also overrode local

² Source: Robert C. Brooks. 1915. “Metropolitan Free Cities”, *Political Science Quarterly*, vol. 30, no. 2, June, pp. 222–234. Available online at the following URL: www.jstor.org/stable/2141920.

³ See: Richard Schragger. 2006. “Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System”, *Yale Law Journal*, vol. 116. Available online at the following URL: <https://ssrn.com/abstract=905840>.

wage-and-hours, public-accommodations, anti-discrimination, and local-contracting ordinances for all cities across the board.

That state legislatures can be dominated by Republicans despite large Democratic-leaning urban populations (and often statewide Democratic majorities) is in part a function of geographical sorting and gerrymandering. Geographical sorting by political affiliation is increasing, with large numbers of Democratic voters located in ever more compact urban areas while Republican voters are spread more evenly throughout suburban and rural districts.⁴ This makes it relatively easy for electoral maps to isolate Democratic districts, where Democrats “waste” significant votes. Those votes help Democrats win statewide races, but their compactness is a distinct disadvantage in state legislative races. A consequence is that one of the two major political parties can almost entirely ignore a state’s urban constituents. At least when it comes to the House of Representatives and state legislatures, Republicans can govern comfortably without the cities, relying almost exclusively on non-city voters.

It is no surprise then that the rhetoric of anti-urbanism has been deployed most forcefully by conservative politicians, in states and nationally. Consider Donald Trump’s portrayal of inner-city neighborhoods as violent, decaying, deprived, and corrupt, or his attacks on sanctuary cities. There is an obvious reactionary strain to this kind of populist anti-urbanism. At the turn of the twentieth century, the fear of ethnic masses animated anti-city sentiment, for it was in the city that the dangers of “socialism, [...] Romanism, and immigration” were “enhanced, and [...] focalized”—as one 1885 polemicist put it.⁵ In the 1920s and ’30s, anti-urbanism was part of a wider southern sectional agenda. Agrarians and others who called themselves decentralists or distributists, emphasized the conflict between rural and urban America, and argued that large-scale industrialization was leading to the concentration of property and political power in fewer hands, the dispossession of the propertied middle class of shopkeepers and small manufacturers, and the destruction of rural independence.

Trumpian anti-urbanism similarly shares a resentment of the big city, a fear of racial and ethnic difference, and a sense that urban policies and values are contrary to the country’s values. The most high-profile city–state conflicts have involved immigration, guns, LGBT anti-discrimination, environmental protection, and wage-and-hours regulation. In Texas, the Republican governor, Greg Abbott, seems especially exercised about the city of Austin, a politically progressive place: “As you leave Austin and start heading north, you start feeling different,” Abbott has told appreciative audiences. “Once you cross the Travis County line, it starts smelling different. And you know what that fragrance is? Freedom. It’s the smell of freedom that does not exist in Austin, Texas.”⁶

Defending city power; overcoming city powerlessness

There are a few legal defenses that can be mounted in response to the attack on American cities. Cities have sued Donald Trump and won (at least in the lower courts), invoking constitutional federalism protections. In the states, the legal road is more challenging. As already observed, home-rule grants in state constitutions do not provide much protection against preemptive state legislation. Cities are bringing constitutional equal protection challenges—and there is some ground for

⁴ See: Jowei Chen and Jonathan Rodden. 2013. “Unintended Gerrymandering: Political Geography and Electoral Bias in Legislatures”, *Quarterly Journal of Political Science*, vol. 8, no. 3, pp. 239–269.

⁵ Source: Rev. Josiah Strong. 1885. *Our Country: Its Possible Future and its Present Crisis*, New York: Baker & Taylor, pp. 141 and 129 (available online at the following URL: www.questia.com/read/11531623/our-country-its-possible-future-and-its-present-crisis); cited in Steven Conn. 2014. *Americans Against the City: Anti-Urbanism in the Twentieth Century*, New York: Oxford University Press.

⁶ Source: Jonathan Tilove. 2017. “Gov. Abbott: Austin stinks and so does ‘Sanctuary Sally’”, *Austin American-Statesman*, 6 June. Available online at the following URL: www.statesman.com/news/state--regional-govt--politics/gov-abbott-austin-stinks-and-does-sanctuary-sally/goq6JEihda4PzADg2lOMgO.

thinking that state legislatures are targeting majority-black or mainly Hispanic cities for special disabilities—but that claim is a difficult one to demonstrate factually or legally.

The defense of city power must ultimately rest on state-level politics. Cities that have pursued progressive local policies—especially wage-and-hours policies—have done so with the assistance of national labor and anti-poverty interest groups. On the other side, industry and business lobbyists have been fairly successful in pursuing their own deregulatory agenda. Cities succeed in heading off preemptive laws when they have allies in the legislature or in the governor’s office. Sometimes “corporate cosmopolitans” support progressive city policies as well. This was the case in North Carolina, when professional and college sports leagues—most prominently the National Basketball Association and the National Collegiate Athletics Association—insisted that they would move their events out of North Carolina if the legislature did not retreat on its discriminatory bathroom bill.

The central challenge for progressive city leaders is structural. City powerlessness is built into US-style state-based federalism. It is exacerbated by a gerrymandered electoral system. And it is motivated by a long-standing ideology of anti-urbanism.

In the middle of the 20th century, when many old-line American cities seemed in irretrievable decline, the assumption was that progressive economic policymaking was impossible⁷ because of the immutable laws of capital flight. Social-welfare spending, business regulation, and redistribution from rich to poor had to be undertaken by central governments, otherwise business and jobs would flee across the local border.

I have argued in my recent book, *City Power*, that this narrative was never accurate. And, indeed, now that many US cities are experiencing an economic resurgence, that form of economic fatalism has given way to a more optimistic account of the city’s regulatory and redistributive capacities. What the last decade’s attack on American cities illustrates, however, is that city power is still limited by institutions. The American city is constrained, not because of its vulnerable position in the global marketplace, but because of the legal barriers erected by states and the federal government.

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⁷ See: Richard Schragger. 2013. “Is a Progressive City Possible? Reviving Urban Liberalism for the Twenty-First Century”, *Harvard Law & Policy Review*, vol. 7, p. 901; Virginia Public Law and Legal Theory Research Paper No. 2013-22. Available online at the following URL: <https://ssrn.com/abstract=2295697>.