ARTICLE

The Attack on American Cities

by Richard C. Schragger

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I. Introduction

Cities often test the existing limits of their regulatory authority in areas like environmental protection, labor and employment, and immigration. The last few years witnessed an explosion of preemptive state legislation attacking, challenging, and overriding municipal ordinances across a wide range of policy areas. But this hostility to city government is not new.[1] In 1915, one professor observed that "the relations of states to metropolitan cities in this country is 'a history of repeated injuries' . . . [and] 'repeated usurpations.'"[2]

This Article's descriptive goal is to understand how an institutional system overtly dedicated to the principles of devolution can be so hostile to the exercise of city power. Part II describes the twenty-first century attack on American cities by canvassing preemptive state legislation across a number of policy areas. Part III turns to "Our Federalism's" anti-urbanism. It describes how state-based federalism hinders municipal power generally, and how the U.S. Constitution favors rural over urban voters specifically. Part IV places this "anti-urban constitution" in the context of the historic skepticism of the exercise of city power. Finally, Part V considers the legal and political options available to cities in responding to these conflicts.

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1. *See generally* Gerald E. Frug & David J. Barron, City Bound: How States Stifle Urban Innovation 231 (2008); Gerald E. Frug, City-Making: Building Communities Without Building Walls 5 (1999). This Article's attention to constitutional anti-urbanism complements that work.
2. Robert C. Brooks, *Metropolitan Free Cities*, 30 Pol. Sci. Q. 222, 222 (1915).

II. Conflictual Federalism: A Review of State-Law Preemption

A. *Industry-Specific Preemption*

A range of specific industries sought and successfully lobbied for state preemption of local regulations. For example, certain materials used regularly by businesses, such as plastic and Styrofoam, have invited statewide preemptive legislation. States like Arizona, Idaho, and Missouri have explicitly preempted localities from banning plastic bags,[3] and Florida has preempted the regulation of Styrofoam.[4] Similarly, as of 2013, explicit preemption language targeting local pesticide regulation was adopted in 29 states.[5] Other local environmental regulations also invited state opposition; Oklahoma and Texas specifically preempted local regulation of hydraulic fracturing, or fracking.[6]

B. *Local Authority Preemption*

In addition to preempting local laws that seek to regulate private businesses, states have also preempted local authority in areas that come closer to the traditional core of municipal authority: revenue raising and spending. States dramatically limit localities' tax and spending abilities through tax and expenditure limitations. Thirty-four states, as of 2015, imposed property tax rate limits on localities.[7] Land-use regulation and schools are other topics of traditional local concern that have seen recent preemption activity. Local immigration issues also elicited state

3. *State Plastic and Paper Bag Legislation*, Nat'l Conf. St. Legislatures, https://perma.cc/YS54-MG7V.
4. Fla. Stat. §500.90 (2017) (preempting local regulation of polystyrene products).
5. Matthew Porter, State Preemption Law: The Battle for Local Control of Democracy, https://perma.cc/WPG8-SGLT.
6. *See, e.g.*, Okla. Stat. tit. 52, §137.1 (2017) (effective Aug. 21, 2015).
7. *Significant Features of the Property Tax: Tax Limits*, Lincoln Inst. Land Pol'y, https://perma.cc/S8K2-7PM8.

legislative attention—as conflicts over sanctuary cities have become more widespread.[8]

C. Punitive, Deregulatory, and Vindictive Preemption

Punitive preemptive laws seek to deter cities from—and punish cities for—passing ordinances that are in conflict with state law.[9] These laws fall into three broad categories: privately enforced civil penalties against local officials and governments, state-enforced fiscal sanctions for local governments, and criminal penalties.

"Deregulatory preemption,"[10] a more common form of state preemption, preempts for no obvious regulatory purpose; it functions merely to deny localities certain regulatory powers, rather than to protect actual policies adopted at the state level.

Lastly, vindictive preemption occurs when state law preempts more local authority than is necessary to achieve the state's specific policy goals, when the state threatens to withhold funds in response to the adoption of local legislation, or when the state threatens all cities with preemptive legislation in response to one city's adoption of a particular policy.

III. "Our Federalism's" Anti-Urbanism

The rise of state law preemption does not merely reflect a string of victories by deregulation-seeking interest groups. Instead, the recent spate of preemptive state legislation also reflects a structural bias against local government and an enduring feature of American federalism: its anti-urbanism.

A. The Problem of States

A number of commentators have pointed out that federal systems of government tend to be less decentralized than unitary ones.[11] What is it about U.S. states that impedes the devolution of power to U.S. cities? First, in a unitary government, implementation and monitoring are costly, so we might expect such a government to devolve significant powers and responsibilities to smaller-scaled entities, many of them smaller than U.S. states. Moreover, in the United States, the boundaries of regional governments—states—are fairly arbitrary. Each state's jurisdictional reach is a function of geography and history, not a result of a considered evaluation of a particular geographically concentrated population. Conversely, city boundaries can roughly cohere with an identifiable constituency. Absent strong reasons militating in favor of a particular federal structure, municipal or metro-area boundaries seem more relevant to governing than do regional ones.

Furthermore, in a federal system, regional or state governments take up the policy space that would otherwise be occupied by local governments. The existence of a regional tier of government always impedes localism because it introduces a constraint on local officials, who otherwise would have unmediated relationships with their own constituents and with the central authority.[12]

The third reason for the dominance of states is vertical redundancy.[13] City leaders do not enjoy a monopoly on local representation, nor are cities *qua* cities represented in the state or national legislatures. Instead, numerous elected officials—in statehouses and in the U.S. Congress—can validly assert that they represent locals, even as they do not represent the city as a whole. Because states share so much political and policymaking space with their local governments, state preferences will likely predominate.

B. Malapportionment

American anti-urbanism is not simply a function of state-based federalism: the problem for American cities is exacerbated by a system that favors rural over urban jurisdictions. The malapportionment of the U.S. Senate is a significant impediment to city power. By giving each state equal suffrage, the Senate favors less populated, rural states over highly populated, urban ones.[14] As metropolitan-area populations take up ever larger proportions of their states as well as increasing percentages of the total population of the nation, the Senate's malapportionment will continue to result in significant underrepresentation of urban interests.

State and congressional legislative districting also leads to an anti-urban bias. Following prominent apportionment cases,[15] suburban interests gained representation at a cost to both rural and urban constituencies. Those suburban interests were in some cases less willing to defer to cities than were the rural legislators. Add to this partisan gerrymandering and the geographical sorting by political affiliation, and the legislative anti-urban bias is magnified.[16]

C. Home Rule Failure

Home rule was intended to protect cities from a legislature that refused to let them govern,[17] but it has become mostly

8. *See, e.g.*, *City Enforcement of Immigration Laws Before Panel*, Billings Gazette (Jan. 14, 2013), https://perma.cc/9QCY-SAYS.
9. *See Legal Strategies to Counter State Preemption and Protect Progressive Localism: A Summary of the Findings of the Legal Effort to Address Preemption (LEAP) Project*, Better Balance (Aug. 9, 2017), https://perma.cc/Q7Z6-J6BG [hereinafter *Legal Strategies*].
10. Thanks to Richard Briffault for this insight.
11. *See, e.g.*, Frank B. Cross, *The Folly of Federalism*, 24 Cardozo L. Rev. 1, 35-36, 39-40 (2002) (arguing that the benefits of decentralization are derived primarily from independent local governments and that unitary, rather than federal, governments provide greater authority to local municipalities).
12. *See id.* at 27-28, 33-36 (arguing that local government power is significantly curtailed by state governments, which often limit decentralization at the local level).
13. *See generally* Richard Schragger, City Power: Urban Governance in a Global Age 89-96 (2016).
14. Paul A. Diller, *Reorienting Home Rule: Part 1—The Urban Disadvantage and State Law-making*, 77 La. L. Rev. 287, 291 (2016) [hereinafter Diller, *Part 1*].
15. *See, e.g.*, Reynolds v. Sims, 377 U.S. 533, 547-51(1964) (holding that state legislative and congressional districts have to abide by the one-person, one-vote rule).
16. Diller, *Part 1*, *supra* note 14, at 291.
17. David R. Berman, Local Government and the States: Autonomy, Politics, and Policy 62 (2003).

toothless in that regard.[18] The original version of home rule usually limited city power to matters of "local" concern, and local concern was almost always interpreted narrowly by state courts and against the background presumption that the state still held general police power.[19] Alternatively, some states adopted blanket grants of the police power to local governments, subject to the denial of that power by a specific act of the state legislature.[20] This "legislative" home rule permits local governments wide discretion in initiating legislation, but no or very limited protection against state law preemption.[21] Our current, late-20th-century version of home rule favors suburban power to protect property values over urban power to promote equality.[22] Courts conventionally hold that zoning and other land use matters fall within the core of home rule authority, thus vindicating a power that often favors exclusionary suburbs.[23] At the same time, courts are skeptical of city efforts to embrace other policies that might redistribute away from property owners or that might benefit cities to the detriment of suburbs.[24] Home rule is most robust insofar as it is associated with protection of a sphere of home life,[25] but has less traction when it comes to commercial or redistributional policies.[26] Consequently, localism is protected by home rule grants, but that localism is of a certain kind, more readily enjoyed by suburban jurisdictions and easily effaced when locals seek to regulate powerful commercial and financial actors.[27]

IV. Forms of Anti-Urbanism

This part identifies a number of strands of anti-urbanism that continue to shape attitudes toward the exercise of city power. The enduring anti-urban narrative suggests that the city is badly governed, bad for citizens' welfare, and bad for the nation.

A. *Antidemocratic Anti-Urbanism*

The first strand of anti-urbanism consists of a skepticism of municipal government that took root in the Progressive Era and has never been entirely shaken. That skepticism begins with a conventional view—adopted then and still prevalent now—that American cities are abysmally governed, more corrupt than state or national polities, and more prone to capture by special interests.[28] These notions continue to persist, often in mayoral contests, in which the idea of the "CEO mayor" who can bring discipline to municipal government and run it more efficiently, has become popular[29]

Today, *antidemocratic* anti-urbanism is best illustrated by state takeovers of fiscally distressed municipalities. That a city could be stripped of elected municipal government might be surprising if it were applied to a state or a suburban jurisdiction. However, the trope of city mismanagement, corruption, and political failure is a powerful one. Takeovers are driven by an assumption of city political failure. But democratic accountability is not the problem, it is the solution in these cases. For example, in Flint, Michigan, an unelected manager shifted the city's water supply to save money despite significant popular opposition and evidence that the water system was poisoning residents.[30] Thus, emergency managers' lack of political accountability should be a strike against their appointment, not an advantage.[31]

B. *Anti-City Anti-Urbanism*

The *anti-city* strand of anti-urbanism is best captured by Ebenezer Howard, who offered the Garden City as an antidote to the crowded and congested London of the late-19th century.[32] The Garden City's real import was its approach to planning: a rigid separation of uses; an obsession with the healthful qualities of nature; and a commitment to a suburban-style landscape.[33] These features were taken up by progressive planners in the 1920s and applied through the rapid adoption of zoning codes nationwide.

The Garden City was followed by Le Corbusier's Radiant City, which led to mid-century planners developing a belief that cities are noisy, congested, dangerous, and unhealthful. These planners began to promote forms of planning that stripped city neighborhoods of their human scale, that demonized street life, that minimized the mixing of commercial and residential uses, and that treated grassy

18. For an excellent account of the "failed promise of intrastate federalism," see Kenneth A. Stahl, *Preemption, Federalism, and Local Democracy*, 44 Fordham Urb. L.J. 133, 163-77 (2017).
19. Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & Pol. 1, 18-19 (2006).
20. Diller, *Part 1*, *supra* note 14, at 291.
21. *See* Paul A. Diller, *Reorienting Home Rule: Part 2—Remedying the Urban Disadvantage Through Federalism and Localism*, 77 La. L. Rev. 1045, 1119 (2017) [hereinafter Diller, *Part 2*].
22. David J. Barron, *Reclaiming Home Rule*, 116 Harv. L. Rev. 2255, 2263 (2003).
23. *See, e.g.*, 2 W. Mike Baggett & Brian Thompson Morris, Texas Practice Guide: Real Estate Litigation §8:11 (2017) (explaining that both statute and case law grant broad zoning powers to Texas municipalities).
24. Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841, 1878 & n.108 (1994) (showing how courts give authority to local governments when the controversy is close to the "associational rights of individuals").
25. Kenneth A. Stahl, *Local Home Rule in the Time of Globalization*, 2016 BYU L. Rev. 177, 185-86 (2016).
26. *See id.* at 181-82 & nn.10-13 (acknowledging that courts regularly strike down local laws which regulate commercial and financial actors).
27. *See id.* (acknowledging that courts regularly strike down local laws which regulate commercial and financial actors); *see also* Rick Su, *Have Cities Abandoned Home Rule?*, 44 Fordham Urb. L.J. 181, 195 (2017) (suggesting that cities have been complicit in undermining the concept of home rule).
28. *See* Barron, *supra* note 22 at 2292-93 (2003).
29. Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 Yale L.J. 2542, 2576 (2006).
30. Richard Schragger, Flint Wasn't Allowed Democracy, Slate (Feb. 8, 2016), https://perma.cc/BL3G-T2HU.
31. *See id.* ("State officials, in fact, don't want appointed managers to be responsive to local constituents. That is the whole point of appointing a manager—to prevent him or her from responding too readily to the costly demands of city constituents.").
32. Jane Jacobs, The Death and Life of Great American Cities 17 (1961).
33. *Id.* at 18-19.

spaces as necessary for the full realization of the good life.[34] These design elements had a moralizing valence—poor living conditions were associated with poverty as well as with deviance and criminality.

Anti-city anti-urbanism continues to exert a powerful subterranean force: remedying poverty is often confused with improving the neighborhood. And an undercurrent of anti-urbanism exists in the notion that urbanites need to move to the suburbs to succeed.[35] Social welfare policy continues to be preoccupied by the deficiencies of city neighborhoods themselves—both in terms of those neighborhoods' physical attributes and their sociological make-up.[36]

C. *Antigovernment Anti-Urbanism*

Antigovernment anti-urbanism draws a direct connection between bigness and the loss of liberty; centralization and the absence of self-government; and density and the threat to American values.[37] Resistance to central authority is a continuing and pervasive political and cultural trope, but cities have been less able to assert the values of local autonomy than have the suburbs. Cities are viewed as centralizers; suburbs and small towns are where local self-government is perceived to flourish. Large cities require large municipal governments, expansive municipal services, and significant amounts of revenue. City living also mandates tolerance of a certain collective, public life that appears to be antithetical to rural or suburban individualism.[38]

D. *Populist Anti-Urbanism*

At the turn of the twentieth century, the fear of ethnic masses animated anti-city sentiment. Present-day anti-urbanism is driven by ethnic and racial hostility as well. It also appears to be animated by dissatisfaction with large-scale national and global economic processes. The city is often associated—on both the political right and left—with these processes. The city is the location of corporate headquarters, large-scale global finance, and free trade cosmopolitanism. Ironically then, the recent success of American cities has inaugurated heightened conflict between cities and states and between cities and the nation.

V. City Defenses

This part begins by evaluating the legal arguments available to cities in resisting state centralization.[39] It then turns to the politics of city power. Federalism's anti-urban bias, the dominance of the suburbs, and the effects of political sorting cannot be undone with legal arguments—thus, the cities' central defenses must be political.

A. *City Legal Defenses*

1. Federalism

The Tenth Amendment's anti-commandeering principle is a ready—if limited—tool for cities to use in resisting federal commands. Consider SB4, the recently enacted Texas anti-sanctuary city provision, that requires local officials to comply with federal immigration law on threat of civil and criminal liability.[40] Under existing U.S. Supreme Court precedent, federal immigration officials cannot commandeer local police to spend money, allocate resources, or provide personnel to enforce federal law.[41] So too under existing precedent, the state of Texas cannot create its own parallel immigration enforcement authority.[42] SB4, however, compels local officials to enforce federal law.

If the protections of the Tenth Amendment run to the state of Texas, then one would assume that the state could waive this protection.[43] However, if the Tenth Amendment runs to the people, then Texas cannot force cities to do what the state or the federal governments cannot each do separately.[44] A municipal anti-commandeering principle would admittedly be novel—though the principle is sound if one assumes that the people act most immediately through their local governments. The leading argument against SB4 is that by deputizing local-government officials to enforce immigration laws, Texas has created an enforcement apparatus that is preempted by federal law.

2. Home Rule

A more direct way to defend against state law preemption is via state constitutional home rule guarantees or via other

34. *See id*. at 20, 22 (describing the belief held by many city planners that streets were a bad place and that houses should be turned inward, providing the "illusion of isolation and suburban privacy").
35. The evidence is actually uncertain regarding the social and economic outcomes for specific movers. *See, e.g.*, Raj Chettyetal, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence From the Moving to Opportunity Experiment*, 106 Am. Econ. Rev. 855, 857-59 (2016). For a critique of "moving to opportunity" and other dispersal strategies, see David Imbroscio, *Urban Policy as Meritocracy: A Critique*, 38 J. Urb. Affairs 79, 89-92 (2016).
36. *See* Imbroscio, *supra* note 35, at 89.
37. Steven Conn, Americans Against the City: Anti-Urbanism in the Twentieth Century 62 (2014).
38. *See id.*
39. Some of this work has been done previously in law reviews and elsewhere. The discussion that follows is informed by the sources cited below as well as by conversations I have had with my local government law colleagues; *see also Legal Strategies*, *supra* note 9.
40. *See* S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017) (enacted); *see* Tex. Gov't Code §§752.053, .056 (West 2017); Tex. Penal Code Ann. §39.07 (West 2017).
41. *See* Printz v. United States, 521 U.S. 898, 935 (1997) ("Congress cannot compel the States to enact or enforce a federal regulatory program.").
42. Arizona v. United States, 567 U.S. 387, 394 (2012) (finding that the federal government has broad powers over immigration).
43. *But see* New York v. United States, 505 U.S. 144, 181-86 (1992) (rejecting the argument that consenting to infringement of state sovereignty may waive the protections of the Tenth Amendment); Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).
44. *Cf*. Bond v. United States, 564 U.S. 211, 222 (2011) ("By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.").

state constitutional provisions that prevent the targeting of municipalities for special treatment. The difficulty is that most states have embraced a form of constitutional home rule that cannot resist explicit state law preemption.[45] Cities often have the power of initiative, but what they do not often enjoy is the power of immunity—they cannot generally assert local law's supremacy over a duly and properly enacted state statute that conflicts.

Generality requirements in state constitutions may have more teeth.[46] Yet, most states' generality requirements are mere formalities; they merely prevent the legislature from specifically identifying a city for special regulation.[47] Moreover, home rule provisions in state constitutions do not interpret themselves—there is often textual room to create more space for local authority. Courts, however, are generally wary of broad grants of local power. State court judges tend to be amenable to arguments for statewide uniformity and are by definition part of a statewide professional, political, and cultural apparatus. Their allegiance is unlikely to run to cities.

3. Equal Protection

One example of this type of litigation involves situations in which the absence or withdrawal of local authority is itself a structural component of the constitutional injury. The most prominent example of this is *Romer v. Evans*.[48] There, the Supreme Court held that Amendment 2, which barred Colorado local governments from adopting LGBT protective antidiscrimination laws, was unconstitutional—both because of its breadth, and because it undermined the ability for local pro-gay majorities to gain protections in local jurisdictions with pro-gay majorities.[49] Nevertheless, the Supreme Court has not extended *Romer* beyond its narrow confines, and there are few cases applying it in a case of state-local conflict.[50] In what circumstances a shift of decisionmaking authority from the local to the state would constitute an equal protection violation is uncertain. Preemptive state legislation may be a violation when it overrides local laws that extend equal benefits to a normally unpopular group, and when there are no good reasons for statewide regulation—both indications of state-wide animus, an impermissible motive for government regulation.[51]

45. *E.g.*, Reynolds v. Sims, 377 U.S. 533, 556-57 (1964); Gray v. Sanders, 372 U.S. 368, 379 (1963).
46. *See, e.g.*, City of Canton v. State, 766 N.E.2d 963, 964-65 (Ohio 2002).
47. Diller, *Part 2*, *supra* note 21, at 1073.
48. 517 U.S. 620 (1996).
49. *Id.* at 633.
50. An example of the Sixth Circuit adopting a localist reading of *Romer* can be found in Equal. Found. of Greater Cincinnati v. City of Cincinnati, 128 F.3d 289, 295 (6th Cir. 1997), *cert. denied*, 525 U.S. 943 (1998).
51. *See* Richard C. Schragger, *Cities as Constitutional Actors: The Case of Same-Sex Marriage*, 22 J.L. & Pol. 147, 185 (2005). *But cf.* Schuette v. Coal. to Defend Affirmative Action, 134 S. Ct. 1623, 1638 (2014) (plurality opinion) (rejecting a challenge to a Michigan constitutional amendment prohibiting state universities' use of race-based preferences).

B. City Political Defenses

While it is useful to analyze possible legal defenses to preemptive state legislation, it is more relevant to examine a city's political defenses. Many preemptive laws are never tested in court, and their repeals can short-circuit a full judicial hearing. Consequently, very little preemptive legislation is ultimately susceptible to legal challenge. Instead, city resistance normally takes place within the legislative arena, in fights over legislation.

1. Cities and National Interest Groups

City-state conflicts have become increasingly salient, in part because of state and federal inaction in particular regulatory arenas, and in part because political entrepreneurs have found opportunities at the local level. A good example of this is pro-labor efforts—generally spearheaded by national organizations working as part of a larger cross-city effort,[52] and opposed by organizations that have made a concerted effort to promulgate model state legislation consistent with industry-friendly, free-market positions.[53]

That industry would seek to counter local regulation hostile to it is unsurprising. But because cities also attract the attention of state legislators, the problem of legislative capture is apparent. State legislators depend heavily on interested parties to provide them with information. At the same time, cities rarely have the resources to counter expertise, to marshal evidence, or to respond to proposed state legislation. And the organizations that represent cities within the state tend to be fractured and weak. Thus, the lack of a concerted municipal *qua* municipal voice in state-city preemption debates means that specific policy interest groups tend to drive intergovernmental relations.

2. Corporate Cosmopolitanism

In response to the city of Charlotte's adoption of a transgender bathroom ordinance that permitted individuals to use the public bathroom that corresponded with their gender identity, the North Carolina Legislature passed HB2—"the bathroom bill"—mandating that public bathrooms and changing facilities be restricted to individuals of their biological sex.[54] HB2 is a good example of a local ideological fight that may have garnered less reaction in a less hyperpolarized and nationalized political environment.

The bathroom bill is also an example of how economic development remains a central concern of state and local politicians and an important driver of policy. The most significant political pressure groups were large-scale national corporations. The National Basketball Association and the

52. Steven Malanga, *How the "Living Wage" Sneaks Socialism Into Cities*, City J. (Winter 2003), https://perma.cc/4FGK-2UR3.
53. *See, e.g.*, Molly Jackman, *ALEC's Influence Over Lawmaking in State Legislatures*, Brookings (Dec. 6, 2013), https://perma.cc/H4JS-QM5U.
54. N.C. Gen. Stat. §143-422.11(repealed 2017); *see also* Nat'l League of Cities, Ctr. for City Solutions, City Rights in an Era of Preemption: A State-by-State Analysis 11 (2017), https://perma.cc/FBM3-SAF6.

National Collegiate Athletic Association have been vocal about LGBT nondiscrimination, and both threatened to withdraw their tournaments and events from North Carolina locations.[55] Other companies threatened to suspend planned expansions in the state.[56] This pressure ultimately resulted in the repeal of HB2, and a moratorium on all municipal private-sector employment and public-accommodation ordinances until December 1, 2020—striking down Charlotte's antidiscrimination law, as well as the state's more far-reaching bathroom bill. Thus, local power to adopt antidiscrimination ordinances was not vindicated, but it was not entirely preempted either.

It is notable that the primary arguments against HB2 were economic and driven by the threat of corporate flight. Cities like Charlotte are economic engines for their states, especially if those cities and their immediate surrounding metropolitan areas are homes to corporate headquarters, and business leaders. Private, corporate boycotts as a means to induce policy change have been effective in a number of states. Thus, corporate "cosmopolitans" can be effective allies to cities, though certainly not across the whole range of issues. LGBT antidiscrimination, for example, may be both familiar to corporate decisionmakers and consistent with the corporate mission. Economic and regulatory issues, by contrast, may not be. If Charlotte was proposing a local minimum wage, it is likely the interests would line up differently.

3. Metro-Area Demographics

In the face of a hostile state legislature, the city's political influence will ultimately turn on the metropolitan-area population's identification with the city's interests. The city population is often dwarfed by the surrounding metropolitan-area population, which is located in suburban towns and smaller municipalities, or in a large suburban county. Even as metro-area suburbs become increasingly dense and more ethnically diverse, it is unclear if suburban voters will come to identify with city voters. Suburban voters have generally not been interested in consolidating school districts, sharing revenue with the central city, or creating regional planning or metro-wide governing bodies.

Two kinds of demographic shifts could auger a political change. The first is the rising wealth and economic primacy of the central city. Economically robust cities are more likely to be able to pursue social-welfare legislation, and defend those policies against state objection. Simply having access to more stable municipal resources makes a significant difference in the political and fiscal life of the city. The less fiscally dependent the city is on the state, the more autonomy it can exercise.

The second demographic shift is the increasing economic diversity of the suburbs. Struggling and poor suburban locations are becoming more commonplace, and central cities are no longer the primary locations for the poorest metropolitan-area residents.[57] But does this "great inversion"[58] imply city political strength? To the extent that non-metro or non-city populations are less connected to the expanding cosmopolitan economy, and a sense of cultural distance remains prevalent, their interests will diverge from city dwellers.[59]

VI. Conclusion

The attack on the cities is not simply a function of present-day polarized American politics. Anti-urbanism is deeply embedded in the structure of American federalism. The relative weakness of the American city has often puzzled observers, who note that the U.S. constitutional system is otherwise highly decentralized. The puzzle is more explainable once one appreciates the political and cultural distinction between local autonomy and city power. The U.S. intergovernmental system supports local autonomy of a certain form; it does not support city power.

Cities and their wider metropolitan areas now contain the bulk of the American population and are the primary economic drivers of their states, regions, and the nation. The focus on states in "Our Federalism" distracts from this important long-term demographic and economic shift. If federalism is to have any force as an idea, it must wrestle with this current reality. City power is necessary to vindicate the values of diversity, majority rule, and local self-government.

For cities operating in a political environment where the ideological distance between them and the state is significant and growing, the need for both corporate and metro-area allies is essential. The structural, cultural, and political anti-city biases are otherwise difficult to overcome.

55. *In Bitter Divide, Repeal of North Carolina LGBT Law Fails*, ESPN (Dec. 21, 2016), https://perma.cc/MR26-PZHD.

56. Ryan Bort, *A Comprehensive Timeline of Public Figures Boycotting North Carolina Over the HB2 "Bathroom Bill,"* Newsweek (Sept. 14, 2016), https://perma.cc/N58X-FRAA.

57. *See* Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession*, Brookings (Mar. 31, 2016), https://perma.cc/5ZAQ-V8YQ (observing that suburbs have the largest and fastest growing poor populations).

58. Alan Ehrenhalt, The Great Inversion and the Future of the American City 1 (2012).

59. *See* William H. Frey, *Census Shows Nonmetropolitan America Is Whiter, Getting Older, and Losing Population: Will It Retain Political Clout?*, Brookings (June 27, 2017), https://perma.cc/VAD3-WRLP.