

# *Fordham Urban Law Journal*

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*Volume 42, Number 1*

2016

*Article 6*

COMPARATIVE URBAN GOVERNANCE: CITYMAKING IN A  
GLOBAL ERA

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## Comparative Local Government Law in Motion: How Different Local Government Law Regimes Affect Global Cities' Bike Share Plans

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# COMPARATIVE LOCAL GOVERNMENT LAW IN MOTION: HOW DIFFERENT LOCAL GOVERNMENT LAW REGIMES AFFECT GLOBAL CITIES' BIKE SHARE PLANS

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This Article was originally prepared for the AALS Joint Program of the Section on State and Local Government Law & the Section on Comparative Law, held in New York City in January 2014. It was also presented in the Comparative Urban Law Conference in London, held in June 2014. We are grateful to the participants in both these conferences, and particularly to the organizers of each: Sheila Foster and Fernanda Nicola, and Nestor Davidson and Annie Decker, respectively. We are also thankful to Adam Green and Suchitra Paul for their invaluable research assistance.

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## INTRODUCTION

At the heart of the contemporary study of comparative local government law lies a paradox. On the one hand, the discipline relies on an assumption that there is a great deal of similarity between different cities across the world—an assumption evinced by adjectives such as “global,” “international,” or “world” that scholars routinely affix to the cities they compare.<sup>1</sup> If no minimal baseline of commonality is assumed, the whole exercise becomes futile. What is the point of comparing things that have nothing in common? On the other hand, what can be more local—as opposed to “global” or “international”—than *local* government law? The local is in the name, and for good reason. Local government law structures the smallest-scale political institutions, those that are the closest to the specific community. Thus inevitably this body of law reflects the community’s particular culture and politics. Much of local government law is dedicated to the regulation of space: local government law’s scope of interest, indeed its job, is parochial by definition.

This Article suggests and pursues one method for tackling this paradox presented by a field of law dedicated to the global attributes of the local (or the local attributes of the global).<sup>2</sup> The Article explores one common, “global,” policy adopted by many cities despite the particular, parochial nature of their local government law regimes. The Article seeks to figure out how the particularities of the local government legal system affect—or do not affect—a policy the city imports from elsewhere.

The policy picked here for this exercise—bike share plans—is in many ways highly reflective of our times. In the age of the global city, bike share plans have become irresistible to cities throughout the globe.<sup>3</sup> A local bike share scheme involves placing bikes in stations

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1. See *infra* Part I.A.

2. Social scientists refer to the phenomenon of “glocalization,” first introduced to scholarly discussion in Roland Robertson, *Glocalization: Time-Space and Homogeneity-Heterogeneity*, in *GLOBAL MODERNITIES* 25 (Mike Featherstone et al. eds., 1995). The term originated as a popular business strategy in Japan, and it implies the creation of products or services intended for the global market but customized to suit local cultures. *Id.*

3. A bike share plan is the shorthand often used to describe the shared use of a bicycle fleet. Susan Shaheen et al., *Bikesharing in Europe, the Americas, and Asia: Past, Present, and Future*, 2143 *TRANSP. RES. REC.* 159, 159 (2010).

spread throughout a city and inviting individuals to rent a bike at any station and return it to another in exchange for a payment set in accordance with the length of time during which the bike was used.<sup>4</sup> These bike-share plans have grown extremely popular in a very short span of time. Today Chicago's and London's streets are dotted with the blue bikes forming part of Divvy and Barclays Cycle Hire, respectively; Hangzhou's and Mexico City's with the red of Hangzhou Public Bicycle and EcoBici; Buenos Aires's and Taipei's with the yellow of Ecobici<sup>5</sup> and U Bike; Toronto's and Wrocław's with the black of Bike Share Toronto and nextbike; Rio de Janeiro's and Milan's with the orange of Bike-Rio and BikeMi; Copenhagen and Changwon (South Korea) with the white of GoBike and Nubija.<sup>6</sup> These cities, along with more than seven hundred of their brethren worldwide,<sup>7</sup> are all closely, and rapidly, following in the footsteps of Paris's original silver Vélib' bikes, launched less than a decade ago, in 2007.

The almost universal rush to adopt this one uniform policy presents itself as testament to the emergence of the global model of the modern city. Such a city is always concerned with the same array of problems: congestion, environmentalism, tourism, a professional upper-middle class, and a booming center. Consequently, it consistently toys with the same solutions considered elsewhere for these common concerns. In their global mold, cities thus end up adopting identical policies—say, bike sharing—regardless of their specific location. Still, inevitably, even for the global city, the specific location must matter. The homogenous and homogenizing policy of bike sharing is adopted by different legal systems—systems of local government law that correspond to the local particularities of the place where each operates. The result is bike share programs that, though identical in their animating principles and goals, vary greatly in their details.

And unlike the variance in the selected color scheme, some of the other details in which bike share programs vary are extremely

4. *See infra* Part I.B.

5. Originally called *mejor en bici*; there is no relation to Mexico City's EcoBici.

6. Of course, these are not the sole color options currently in use. Tel Aviv, (Tel-O-Fun) and Bangkok (pun pun) use green, while Brussels (Villo!) and Boston (Hubway) use silver.

7. As of July 2014, bike-share plans were in operation in 721 cities. Data collected by MetroBike, LLC. *The Bike Share World Map*, GOOGLE MAPS, <https://maps.google.com/maps/ms?ie=UTF8&hl=en&om=1&msa=0&msid=104227318304000014160.00043d80f9456b3416ced&ll=43.580391,-42.890625&spn=143.80149,154.6875&z=1&source=embed> (last visited Oct. 20, 2014).

important. For example, they relate to the bike share's source of funding—public, private, or a mix of the two. They involve the plan's integration with other transit options. They include the mode and level of user payments. They regard the identity of the authority running the plan. They respect the choice of location for the bike stations.<sup>8</sup> As opposed to technical distinctions in number of bikes or stations, or in the operating technology, most of these differences cannot be written off as the mere upshot of physical disparities between cities or the humdrum result of the disparate rollout times of the plans. Thus, while writers and international organizations extoll the benefits of the bike share plan as a policy suitable to all places, necessitating little more than adjustments to the geographical layout of the adopting city,<sup>9</sup> in actuality the bike share plan is a prime example of the global modified to the dictates of the local.

Many of such dictates of the local are dictates of local government law. This Article sheds light on the mechanisms by which a local government law system first enables the adoption of a policy of global origins but then alters that policy to fit in with the system's own idiosyncratic characteristics. In other words, this Article demonstrates how local government law matters in the age of the global city. To do so, this Article offers a first of its kind classification of local government law systems.<sup>10</sup> It thereby provides a general service to the study of comparative local government law: it suggests a way to analyze the most important attributes of a local government law system, wherever it may be, and compare that system to other systems based on comprehensive and coherent standards. Putting local government law systems side by side in this innovative manner, this Article examines the process by which the differences and similarities between them affect the resultant policies they adopt; in this particular case, the bike share policy they adopt.

Part I of this Article sets the academic and factual stage for this exercise. It first explores the literature in the comparative local government law field. It traces the impact that works in geography, sociology, and economics expounding on the “world city” or “global city” have had on legal thinking. It situates the Article among the different strands of existing scholarly analysis and explains the novelty and utility of its strategy of examining one policy across different local government law systems. It then proceeds to explain

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8. *See infra* Part III.

9. *See infra* Part I.B.

10. *See infra* note 71 (survey of existing typologies and their limits).

why bike share plans are particularly well suited for this strategy. For this purpose, the history and current state of bike share plans are chronicled. Relating the reality of bike share plans to the theoretical literature, the plans are shown to be real-world manifestations of the academic world or global city hypothesis. Part II describes the local legal backgrounds against which these plans, characteristic of the world or global city, were adopted. It puts forward four axes along which local government law systems throughout the world differ, and places those systems on different spots along those axes. Specifically, the axes Part II isolates are: the relationship between the city and the state (patterns of local empowerment); the relationship between the city and other local governments (patterns of local fragmentation); the relationship between the city and entities located below it (patterns of micro-localism); and the relationship within the city government (patterns of separation of powers). This categorization of local government law systems is then employed in Part III to explain similarities and dissimilarities between bike share plans disparate cities adopted. Specifically, Part III focuses on three key elements of a bike share plan: process of adoption, funding scheme, and choice of location for bike docking stations. Finally, Part IV draws avenues for future research based on the Article's framework and discusses the limitations of the framework—and of comparative local government law in general.

Independent of those limitations to be discussed at the analysis's conclusion, two caveats must be acknowledged at the outset. First, this Article offers a case study of one policy: bike share plans. While, as will be explained, that policy is particularly useful for the Article's theoretical purposes, no one would argue that it is the most important policy cities are currently adopting. Contemporary cities are confronted with grave social and economic challenges often left unaddressed by timid or impotent higher levels of governments. Cities must respond to rapid social change, transformation in production, extreme inequality, budget shortfalls, informal settlements, vagaries of a globalized real estate market, unprecedented urban growth, and more. The importance of bike share plans pales in comparison. We do not argue otherwise. We do believe, however, that the nature of a bike share plan as a low-stakes affair allows a useful exercise in comparative local government law. More contested policies face much more of an uphill battle before they can be adopted, and thus their spread is more checked in place

and pace.<sup>11</sup> As a result, it is often impractical to seek a comparison of cities' adoption of one policy that is highly impactful.

We hope that at least to a limited extent the conclusions derived from the experience of this Article's low stakes policy can later on be generalized to other policies. Inarguably, however, there is a second caveat standing in the way of any such generalization. In its analysis of bike share plans, this Article mentions many cities, but focuses primarily on a limited number of them. Those are Paris, London, New York, Chicago, Washington, D.C., Mexico City, Buenos Aires, Montréal, Shanghai, and Tel Aviv. These cities were picked because they answered three needs. First, and obviously, they all have prominent bike share plans. Second, they are all "global/world cities" of some, at least lowly rank, or aspirants at that status; thus they are suitable candidates for a study of patterns of behavior among global cities.<sup>12</sup> Third, and perhaps most important, these cities represent a wide geographic range that allows for a variety of legal systems: common law and civil law; federal and unitary; centralized and decentralized. Having said that, there is little doubt that other cities and legal systems would have offered additional differentiation. Furthermore, there is nothing inherently more interesting, or consequential, about these cities (or global cities in general) as compared to any other city. Nevertheless, the contours of any one article are limited, and a choice had to be made. We remain confident that since this choice was made in an informed manner, the argument, though inevitably somewhat weakened, is not ineffectual.

#### I. BACKGROUND: THE THEORY OF THE GLOBAL CITY AND THE POLICY OF BIKE SHARING

This Article aims at intervening in the comparative local government law literature through an exploration of bike share plans. For that purpose, it is imperative to review the existing literature in the field of comparative local government law, and explain why an analysis of bike share plans can aid in addressing its shortcomings. This introductory Part will engage that task by first reviewing the relevant academic literature in the field and then presenting bike share plans. In this manner the stage will be set for the following Parts' investigation which will draw, from the specific case of bike

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11. See, e.g., *infra* note 184 and accompanying text.

12. Social scientists agree that there are different tiers of global cities. See *infra* Part I.A.

shares, conclusions benefitting the broader comparative local government literature.

### A. The Global City and Comparative Local Government Law

The Introduction lists many cities from disparate parts of the world—London, Shanghai, New York, Rio de Janeiro, and others—assuming they have much in common. This move is far from audacious, or particularly original. We are living in the era of the global or world city, where, as sociologists, economists, and urban planners remind us, New York shares more with London and Rio de Janeiro than it does with Buffalo and Cleveland.<sup>13</sup> The ensuing brief literature review surveys some of the main social science works that introduced the concept of the global or world city and summarizes their effect on scholarship in local government law.

The terms “world city” and “global city” entered the lexicon in the closing years of the twentieth century. In 1986, John Friedmann introduced the “world city hypothesis,”<sup>14</sup> and in 1991 Saskia Sassen wrote of a new “global city.”<sup>15</sup> Their key insight was that developments of the past few decades produced a new global hierarchy of places, at the apex of which rest “world cities,” or “global cities.”<sup>16</sup> These cities serve as key nodes or command posts that exercise power over other cities in the system and the world economy as a whole. Specifically, the nature of late twentieth-century financial globalization elevated the status of those cities where the finance and specialized services industry was located.<sup>17</sup>

Friedmann’s work focused mainly on the resulting hierarchical relationship between cities.<sup>18</sup> It thereby engendered a body of

13. See, e.g., Saskia Sassen, *Introduction* to GLOBAL NETWORKS, LINKED CITIES 1, 25–31 (Saskia Sassen ed., 2002) (arguing that cities have grown increasingly decoupled from their regions and nations as they become more deeply embedded in international networks).

14. John Friedmann, *The World City Hypothesis*, 17 DEV. & CHANGE 69, 70 (1986).

15. See SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (1991).

16. The developments identified in these works were in fact predicted decades earlier. Stephen Hymer, *The Multinational Corporation and the Law of Uneven Development*, in ECONOMICS AND WORLD ORDER 113, 114 (Jagdish N. Bhagwati ed., 1972).

17. SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* 3–4 (2nd ed. 2000); Friedmann, *supra* note 14, at 70–77.

18. See, e.g., John Friedmann, *Where We Stand: A Decade of World City Research*, in WORLD CITIES IN A WORLD-SYSTEM 21, 41 (Paul L. Knox and Peter J. Taylor eds., 1995).



literature aiming at ranking the globe's world cities.<sup>19</sup> Sassen concentrated more on the effect a city's global status carries for the city itself. She argued that the same processes that have granted the global city prominence in the world economy have also restructured the city's own social and economic order and "thus a new type of city has appeared."<sup>20</sup> All global cities "have undergone massive and *parallel* changes in their economic base, spatial organization, and social structure."<sup>21</sup>

Sassen posited that the cause for the otherwise bewildering parallel developments in cities set apart by culture and history are transformations in the world economy. As economic activities become more dispersed across national borders, the task of managing them becomes more complex, and, consequently, large global firms outsource many management tasks to highly specialized service firms (e.g., accounting, legal consulting, public relations, telecommunications). These service firms are exceedingly similar in their mode of operation, regardless of their location, and they congregate together in certain cities since they are subject to "agglomeration economies."<sup>22</sup>

This concept of "agglomeration economies," mostly developed by economists, occupies a key position in the academic study of cities today.<sup>23</sup> The basic principle of agglomeration economics is that the presence of a certain person or firm has positive externalities: it generates effects that benefit others, who therefore desire to be in the vicinity of the person or firm. Agglomeration economists identify these effects, quantify them, and model the way in which they operate and dictate locational decisions. The agglomeration effects normally acknowledged include knowledge spillovers,<sup>24</sup> economizing on transportation costs,<sup>25</sup> and the opportunities offered by diversity (e.g.

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19. *E.g.*, Carl Abbott, *The International City Hypothesis: An Approach to the Recent History of U.S. Cities*, 24 J. URB. HIST. 28 (1997); Arthur S. Alderson & Jason Beckfield, *Power and Position in the World City System*, 109 AM. J. SOC. 811 (2004); David A. Smith & Michael Timberlake, *Conceptualising and Mapping the Structure of the World's City System*, 32 URB. STUD. 287 (1995).

20. SASSEN, *supra* note 15, at 4.

21. *Id.*

22. *Id.* at 3–7.

23. *E.g.*, EDWARD L. GLAESER, CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM 1–12 (2008); *see* David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1515–16 (2010).

24. Edward L. Glaeser et al., *Growth in Cities*, 100 J. POL. ECON. 1126, 1127 (1992) (discussing intra-industry information spillovers).

25. MASAHISA FUJITA ET AL., THE SPATIAL ECONOMY: CITIES, REGIONS, AND INTERNATIONAL TRADE 5 (1999).

of workers, consumption goods, or even dating prospects).<sup>26</sup> Most writers do not doubt the positive impact of these effects, and thus they tend to be bullish on the prospects of cities, which are the places where agglomeration effects are exploited. So much so that the economist Edward Glaeser chose to title his book *Triumph of the City*.<sup>27</sup>

Demographic data lends support to such sentiments, as cities worldwide have been experiencing rapid growth.<sup>28</sup> Particularly in the case of global cities in the developed world, however, this growth is not merely the product of economic factors, but also of changes in cultural preferences.<sup>29</sup> These are highlighted by sociologists and scholars of urban studies. Drawing on Jane Jacobs's seminal book, *The Death and Life of Great American Cities*,<sup>30</sup> researchers elaborate on the appeal of the urban lifestyle.<sup>31</sup> Citing phenomena that are common to cities worldwide, such as gentrification, they argue that middle- and upper-middle class individuals and families who decades ago would have been partial to the suburbs now prefer to stay in, or

26. RICHARD FLORIDA, WHO'S YOUR CITY?: HOW THE CREATIVE ECONOMY IS MAKING WHERE TO LIVE THE MOST IMPORTANT DECISION OF YOUR LIFE 243 (2008) (dating); BRENDAN O'FLAHERTY, CITY ECONOMICS 17–18 (2005) (consumption); Daron Acemoglu, *A Microfoundation for Social Increasing Returns in Human Capital Accumulation*, 111 Q. J. ECON. 779, 77981 (1996) (labor).

27. EDWARD GLAESER, TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MADE US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER (2011).

28. The World Health Organization reports that:

Today, the number of urban residents is growing by nearly 60 million every year. The global urban population is expected to grow roughly 1.5% per year, between 2025–2030. By the middle of the 21st century, the urban population will almost double, increasing from approximately 3.4 billion in 2009 to 6.4 billion in 2050.

*Urban Population Growth*, WORLD HEALTH ORG., [http://www.who.int/gho/urban\\_health/situation\\_trends/urban\\_population\\_growth\\_text/en/](http://www.who.int/gho/urban_health/situation_trends/urban_population_growth_text/en/) (last visited Oct. 7, 2014).

29. In developed countries, such as the United States, the phenomenon of urban growth manifests itself through a reversal of the historical trend whereby suburbs grew at the expense of the central cities. In 2011, for the first time in almost a century, the major cities of America's largest metropolitan areas grew faster than their combined suburbs. William H. Frey, *Demographic Reversal: Cities Thrive, Suburbs Sputter*, BROOKINGS INST. (June 29, 2012), <http://www.brookings.edu/research/opinions/2012/06/29-cities-suburbs-frey>.

30. JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES (1961).

31. See, e.g., LARRY BENNETT, THE THIRD CITY: CHICAGO AND AMERICAN URBANISM 115–46 (2010); SULEIMAN OSMAN, THE INVENTION OF BROWNSTONE BROOKLYN: GENTRIFICATION AND THE SEARCH FOR AUTHENTICITY IN POSTWAR NEW YORK 233–69 (2011); SHARON ZUKIN, NAKED CITY: THE DEATH AND LIFE OF AUTHENTIC URBAN PLACES 219–46 (2010).

return to, the central city.<sup>32</sup> This taste for the city is the product of cultural forces felt across regions, countries, and continents. Everywhere, affluent people seek the cultural activities, the shopping options, the diversity of experiences and encounters, the reduced reliance on cars, and the denser built environment, that major cities proffer.

Since both firms seeking to take advantage of agglomeration economies and the individuals moving into the city to enjoy its cultural offerings, bring money into the city, they are highly desirable from the perspective of the city.<sup>33</sup> Hence some of the global city scholarly literature has taken a markedly prescriptive turn. While Friedmann and Sassen focused on detecting, and sometimes even criticizing, the processes leading to the emergence of the world or global city, many succeeding writers have tried to present a roadmap for becoming a world or global city.<sup>34</sup> If the new hubs of economic activity are at heart identical products of parallel developments, as Friedmann and Sassen hypothesized, there is, succeeding writers contend, a common way for some cities to become such hubs—regardless of their geographical, historical, cultural, and national backgrounds.

For several writers and reformers, this effort at urban transformation has a clear legal component. If global cities are becoming more alike, and if there is a uniform prescription for success as a city, the menu of effective legal regimes a city must choose from is also limited.<sup>35</sup> When this line of reasoning is pursued further, ideas emerge regarding a model local government law to which global cities are organically attracted or, if that is not the case, which they should proactively pursue.

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32. See NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* 189–209 (1996) (providing an overview of the gentrification's causes and effects on different cities); see also Audrey G. McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power*, 8 U. PA. J. CONST. L. 1, 12–15 (2006) (noting both the economic and social factors driving the migration of the affluent back into cities); Michael E. Porter, *The Competitive Advantage of the Inner City*, HARV. BUS. REV., May–June 1995, at 55, 57–62.

33. See Gerald Frug, *Designing Government*, in *THE ENDLESS CITY* 298, 304 (Ricky Burdett & Deyan Sudjic eds., 2010) (inspecting the way in which government officials in cities seek to promote their global city status); MARK SCHNEIDER, *THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA* 125–26 (1989).

34. *E.g.*, FLORIDA, *supra* note 26; GLAESER, *supra* note 23.

35. *But see* Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1887 (2010) (arguing that major global cities have ascended to that status not thanks to their legal structure, but because structural changes in the economy favor them).

Some legal writers now argue that local government law systems are converging: national legal systems that historically diverged in their rules regarding cities are succumbing to the homogenizing forces engulfing the world or global city.<sup>36</sup> Works in this vein may be more explicitly prescriptive in nature. For example, writers have argued that cities should copycat effective land use regimes adopted by other cities;<sup>37</sup> others have advocated further decentralization based on the success of diverse local government law systems that have implemented such schemes.<sup>38</sup> This mantle has also been assumed by key international organizations that began adding decentralization, urban practices, and local government law to the repertoire of pro-development policies they propagate. The United Nations, for example, has been affiliated with a series of initiatives meant to promote good governance practices for cities. These suggested practices entail certain modes of local decision-making processes as well as sustainable policies respecting the environment, social concerns, transportation, economic development, and more.<sup>39</sup> The United Nations similarly endorsed a “Best Practices and Local Leadership Programme,” which defines itself as “a global network of government agencies, local authorities and their associations, professional and academic institutions and grassroots organizations

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36. *E.g.*, Robert J. Bennett, *Local Government in Europe: Common Directions of Change*, in *LOCAL GOVERNMENT IN THE NEW EUROPE* 1, 1–20 (Robert J. Bennett ed., 1993); PETER JOHN, *LOCAL GOVERNANCE IN WESTERN EUROPE* (2001) (concluding that many European countries are reforming their local government laws in a similar way, replacing the idea of traditional government with a multi-dimensional notion of governance); Hellmut Wollmann, *Local Government Systems: From Historic Divergence Towards Convergence? Great Britain, France, and Germany as Comparative Cases in Point*, 18 *ENV'T PLAN. C: GOV'T POL'Y* 33 (2000).

37. Matthew A. Light, Note, *Different Ideas of the City: Origins of Metropolitan Land-Use Regimes in the United States, Germany, and Switzerland*, 24 *YALE J. INT'L L.* 577 (1999), *reprinted in* *COMPARATIVE URBAN PLANNING LAW: AN INTRODUCTION TO URBAN LAND DEVELOPMENT LAW IN THE UNITED STATES THROUGH THE LENS OF COMPARING THE EXPERIENCE OF OTHER NATIONS* 24 (James A. Kushner ed., 2003).

38. PANEL ON URBAN POPULATION DYNAMICS, NAT'L RESEARCH COUNCIL, *CITIES TRANSFORMED: DEMOGRAPHIC CHANGE AND ITS IMPLICATIONS IN THE DEVELOPING WORLD* 401–06 (Mark R. Montgomery et al. eds., 2003). *But see* Schragger, *supra* note 35, at 1901–07.

39. UN-Habitat regularly publishes reports striving at this goal. *E.g.* UN-HABITAT, *A NEW STRATEGY OF SUSTAINABLE NEIGHBOURHOOD PLANNING: FIVE PRINCIPLES* (2013); UN-HABITAT, *CONSTRUCCIÓN DE CIUDADES MÁS EQUITATIVAS: POLÍTICAS PÚBLICAS PARA LA INCLUSIÓN EN AMÉRICA LATINA* (2014); UN-HABITAT, *PLANNING AND DESIGN FOR SUSTAINABLE URBAN MOBILITY* (2013).

dedicated to the identification and exchange of successful solutions for sustainable development.”<sup>40</sup>

Such policy moves have led David Barron and Gerald Frug to argue that legal scholarship should recognize not only a field of comparative local government law, but also a field of international local government law. International local government law is stirred by the insight that cities have grown into meaningful international actors. While technically cities have never been a subject of international law, local government law is now intertwined with international law. As already seen, cities have become a topic of interest for key actors in international law, such as the United Nations, who generate laws, or proposed laws, that at least indirectly affect the structure of national-level local government laws. At the same time, cities themselves interfere in world affairs: they form international networks among themselves and sometimes even formulate municipal foreign policies.<sup>41</sup>

Like the comparative local government law literature highlighting the convergence of different legal systems, the new body of work dealing with international local government law is motivated by a belief that globalization has, at least somewhat, changed the nature and diversity of traditional local government law regimes. Other authors in comparative local government law remain skeptical, however, and cling to a more traditional view of the relationship between different local government law systems. They argue that local government law systems may face similar external pressures due to globalization, but the outcomes of these new clashes are mostly characterized not by convergence of legal policies across national systems, but rather by divergence. For example, writers have researched the very divergent reactions of local governments faced with similar problems of competition for economic development,<sup>42</sup> a

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40. *Best Practices and Local Leadership Programme*, UN-HABITAT, <http://mirror.unhabitat.org/categories.asp?catid=34> (last visited Oct. 7, 2014).

41. See Gerald E. Frug & David J. Barron, *International Local Government Law*, 38 URB. LAW. 1, 2 (2006); see also Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT'L L. 875, 875–76 (2006) (making similar arguments about the changing legal status of cities). For examples of the application of the international local government law framework to specific policy fields, see Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. REV. INT'L L. 453 (2008) (immigration); Hari M. Osofsky & Janet Koven Levit, *The Scale of Networks?: Local Climate Change Coalitions*, 8 CHI. J. INT'L L. 409, 414–15 (2008) (climate change).

42. See, e.g., H. V. SAVITCH & PAUL KANTOR, CITIES IN THE INTERNATIONAL MARKETPLACE: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT IN NORTH AMERICA AND WESTERN EUROPE (2004).

post-industrial age,<sup>43</sup> informal housing,<sup>44</sup> or globalization trends in general.<sup>45</sup> More traditional nation-by-nation surveys of local government law also often highlight the enduring differences between local government law systems.<sup>46</sup>

This Article's analysis draws on the key insights of all these strands of current literature—the non-legal global city literature, the international local government law literature, the comparative local government law literature highlighting the convergence of systems, the comparative local government law literature highlighting the divergence of systems, and the surveys of laws—while employing a research method that is somewhat different from that most often suggested by any of them. To explain how this Article differs from existing works it is necessary to present the actual policy of bike share plans on which the Article focuses and see the way in which it reflects the different theoretical insights of the existing academic approaches just reviewed.

## B. Bike Share Plans

In a world teeming and obsessed with innovation, one of the hottest topics of the last few years has been the *sharing economy*.<sup>47</sup> Appealing to ideas of conservation, efficiency, self-sufficiency, and participation, all the while combining grassroots ingenuity and cooperation on the one hand with opportunities opened by technological advances and international entrepreneurs on the other, the sharing of commodities is an almost irresistible proposition. Over the past year alone, extremely successful services for the sharing of

43. See, e.g., JEFFERY M. SELLERS, *GOVERNING FROM BELOW: URBAN REGIONS IN THE GLOBAL ECONOMY* 37–89 (2002).

44. See, e.g., *ILLEGAL CITIES: LAW AND URBAN CHANGE IN DEVELOPING COUNTRIES* (Edésio Fernandes & Ann Varley eds., 1998).

45. See *LOCAL GOVERNMENT IN A GLOBAL WORLD: AUSTRALIA AND CANADA IN COMPARATIVE PERSPECTIVE* (Emmanuel Brunet-Jailly & John F. Martin eds., 2010).

46. See, e.g., *COMPARING LOCAL GOVERNANCE: TRENDS AND DEVELOPMENTS* (Bas Denters & Lawrence E. Rose eds., 2005); *LOCAL GOVERNMENT IN EUROPE: THE 'FOURTH LEVEL' IN THE EU MULTILAYERED SYSTEM OF GOVERNANCE* (Carlo Panara & Michael Varney eds., 2013).

47. See, e.g., Thomas Friedman, *Welcome to the 'Sharing Economy'*, N.Y. TIMES, July 20, 2013, <http://www.nytimes.com/2013/07/21/opinion/sunday/friedman-welcome-to-the-sharing-economy.html>; Rebecca Smithers, *More Than a Third of Britons Embrace the Sharing Economy*, GUARDIAN, June 13, 2014, <http://www.theguardian.com/money/2014/jun/13/third-of-britons-embrace-sharing-economy>; *The Rise of the Sharing Economy*, ECONOMIST (Mar. 9, 2013), <http://www.economist.com/news/leaders/21573104-internet-everything-hire-rise-sharing-economy>.

car rides and accommodations have not only gained record numbers of users (and investors) but also found themselves embroiled in fierce legislative and judicial battles.<sup>48</sup> These services desire to harness for economic efficiency and gains a simple fact of life: there are some commodities we own but do not need or use all the time—be it our cars, our homes, or even our time. Hence it will be beneficial for us if in those downtimes we could lend those commodities to others who need to use them just then. The new sharing services are meant to broker such deals: to match a user to a good—a car, a room, a person’s time—that is not being used at that specific time. Simple as it is, the idea is also revolutionary. It upends traditional notions of ownership and unsettles not only the owner’s role, but also the market position of traditional market participants who rely on those traditional notions—hence the battles in courts and legislatures.

The revolutionary sharing services, which different branches of government need now assess, were actually predated by a sharing service introduced by governments themselves: bike shares. Bike share plans are premised on the idea animating all sharing services: a user of a bike need not own it. Thus a bike share plan permits the user to pick a bike, which she does not own, at a docking station, ride it to her destination, and return the bike. Such programs were first proposed decades before the introduction of the technologies that

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48. For example, Uber, the car-share service, completed a funding round in June 2014 that valued the company at \$18.2 billion (among the highest valuations ever). Evelyn M. Rusli & Douglas MacMillan, *Uber Gets an Uber-Valuation*, WALL ST. J., June 6, 2014, <http://www.wsj.com/articles/uber-gets-uber-valuation-of-18-2-billion-1402073876>. In the preceding funding round, held only ten months earlier, Uber was valued at \$3.4 billion. Dan Primack, *More Details on Uber’s Massive Funding Round*, FORTUNE (Aug. 23, 2013), <http://fortune.com/2013/08/23/more-details-on-ubers-massive-funding-round/>. It now operates in 171 cities in forty-four countries. UBER, <https://www.uber.com/cities> (last visited Sept. 20, 2014). In many of those cities and others, legal challenges to its operation have been raised. For example, in Chicago, after the city adopted an ordinance to regulate the service’s activity, the Illinois legislature hastened to pass its own more restrictive bill, in reply to lobbying efforts by the taxi industry. H.B. 4075, 98th Gen. Assemb., Reg. Sess. (Ill. 2014). In August, Chicago governor Pat Quinn vetoed House Bill 4075. Press Release, Ill. Gov’t News Network, Governor Quinn Vetoes Uber Bill (Aug. 25, 2014), *available at* <http://www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=2&RecNum=12553>. The legal battle in Chicago is not unique. *See, e.g.*, Ingrid Pan, *Why Uber Faces Problems with Regulation and Existing Services*, MARKET REALIST (June 23, 2014), <https://marketrealist.com/2014/06/ubers-problems-regulation-existing-services/> (“In Brussels, for instance, Uber could face fines of up to 10,000 euros for offering fares to drivers without an official taxi license. In Germany, the Berlin Taxi Association won an injunction against Uber that could prohibit the company from operating there . . . . In Virginia, Uber received a cease and desist letter from the Virginia DMV.”).

facilitate the current rise of the sharing economy in bikes and other commodities.

In 1965, a member of Amsterdam's city council proposed that 20,000 bikes be distributed for use in the central city. The proposal was summarily dismissed by the city council. Nonetheless, volunteers painted fifty bicycles white and distributed them in the city center for public use. Most of these bikes quickly disappeared.<sup>49</sup> The next major bike plans, adopted decades later, began to address this problem of bike theft. In 1993, La Rochelle in France and Cambridge in England made bicycles available for public use, but required users to show some form of identification and leave a deposit to prevent theft.<sup>50</sup> The effectiveness of these plans was still limited since by and large they required lenders to return bikes to the same station from which they were picked up.<sup>51</sup>

The bike share plans prevalent today have exploited technological advances to address the two problems that plagued their predecessors: theft of bicycles and the rigidity of station locations. The birthplace of the contemporary plans is France, where the city of Rennes was the first to introduce a smart-card technology bike-share system in 1998 (appropriately, Rennes's system became known as *Vélo à la carte* ["bike by card"]). Rennes was followed soon thereafter by France's second largest city, Lyon, whose Vélo'v system then served as the model for Paris.<sup>52</sup> Launched in 2007 with 20,600 bikes at 1451 stations,<sup>53</sup> Paris's Vélib' was the first bike share plan adopted by a major global city, and it is thus often, and correctly, viewed as the trailblazer for the world's other major bike share plans.

The modern Vélib'-style bike share plan is characterized by a system of stations dispersed throughout the city, in which bicycles are docked. Any prospective user can register herself in advance or at a station—using a credit card (in Europe and America) or identification

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49. INST. FOR TRANSP. & DEV. POLICY, *THE BIKE-SHARE PLANNING GUIDE* 19 (2014). Ironically, the bikes that were not stolen were impounded by police who claimed that unlocked bikes incited theft. *Id.*

50. Inst. for Transp. & Dev. Policy, *Seven World-Class Cities Are Riding Tall in the Bike-Share Boom*, MASS TRANSIT (Dec. 5, 2013), [http://www.masstransitmag.com/press\\_release/11264001/seven-world-class-cities-are-riding-tall-in-the-bike-share-boom](http://www.masstransitmag.com/press_release/11264001/seven-world-class-cities-are-riding-tall-in-the-bike-share-boom).

51. *Id.*

52. Paul DeMaio, *Bike Sharing: History, Impacts, Models of Provision, and Future*, 12 J. PUB. TRANS. 41, 42–43 (2009).

53. NYC DEP'T CITY PLANNING, *BIKE-SHARE: OPPORTUNITIES IN NEW YORK CITY* 21 (2009).



card (mostly in China, but also in Buenos Aires)<sup>54</sup>—and remove a bike from the station, use it, and then re-dock it at any station that forms part of the city's scheme.

At the time of writing this Article, about 600 cities around the world have adopted a bike-share plan.<sup>55</sup> They count among them most of the cities commonly referred to as world or global cities (of different ranks): Berlin, New York City, Kyoto, London, Barcelona, Shanghai, Moscow, São Paulo, Dubai, Toronto, Bangkok, and the aforementioned Paris. In the United States alone, the number of shared bikes doubled during the first half of 2013 and is projected to double once again by the end of 2014, when about 37,000 publicly shared bicycles will be introduced onto the streets of American cities.<sup>56</sup>

The appeal of bike share plans to cities around the globe is easy to grasp. As cities keep growing, the congestion problems they face become ever more dire. A bike-share plan is one relatively cheap tool to deal with urban congestion since it takes cars off the road. It puts on bikes commuters who otherwise would have been in cars,<sup>57</sup> due to their practical inability to own a bike (a problem faced mostly by visitors), or the absence of storage room for the bike in their residences or of bike parking options at their destinations.<sup>58</sup> By thereby decreasing the number of cars on the road, the bike share plan reduces pollution and hence it is also environmentally attractive. It promises similar positive effects on the health of residents who will engage in physical activity (which carries mental benefits as well).<sup>59</sup>

These tangible benefits are not the sole elements at play when cities decide to adopt bike share plans. Perhaps even more pronounced are the abstract benefits. A bike share plan “improves a

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54. See INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 20; see also *Qué es el Sistema Ecobici?*, BUENOS AIRES CIUDAD, <http://ecobici.buenosaires.gob.ar/sistema-de-transporte-publico-en-bicicletas/inscripciones/> (last visited Oct. 4, 2014) (Arg.).

55. See INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 10.

56. Janet Larsen, *Data Highlights: U.S. Bike-Sharing Fleet More than Doubles in 2013*, EARTH POL'Y INST. (Aug. 28, 2013), [http://www.earth-policy.org/data\\_highlights/2013/highlights40](http://www.earth-policy.org/data_highlights/2013/highlights40).

57. LDA CONSULTING, CAPITAL BIKESHARE 2011 MEMBER SURVEY: EXECUTIVE SUMMARY, at ii (June 14, 2012) (noting that based on responses to a November 2011 survey, DC's bikeshare reduced miles driven per year by about five million).

58. Bike storage and parking problems were identified as key deterrents to the use of bikes in Paris prior to its adoption of the Vélib plan. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 18.

59. OBIS, OPTIMISING BIKE SHARING IN EUROPEAN CITIES: A HANDBOOK 41 (2011) (“Just 20 minutes of cycling a day has a noticeable, positive effect on health.”).

city's image and branding,"<sup>60</sup> and, accordingly, one booster organization concludes: "[b]ike-share, more than any other form of urban transport, has the ability to improve and transform our cities . . . . As more cities consider bike-share, cities and streets are once again becoming dynamic places for people and not just cars."<sup>61</sup>

Bike share plans are thus the quintessential global city policy. They were adopted in quick succession throughout the world, in different countries and continents, since diverse major cities are facing similar economic and demographic pressures that generate almost identical urban and environmental problems. These diverse major cities must address these problems in a way that will satisfy similar cultural tastes and preferences. These cities emulated each other: they followed the lead of one city, Paris, whose solution for a problem common to its peers satisfied the tastes of global cities. Foreign city leaders visited Paris, were impressed by its program, and vowed to implement their own versions.<sup>62</sup> To do so many of them have purchased equipment and services from the same publicly backed company originally established to implement Montreal's bike share.<sup>63</sup> Paris's lead was irresistible since global cities learn from the successes of each other, but also feel like competitors, who must hasten to adopt their fellows' successful policies in order to maintain their status. Thus, for example, Mexico City boasted of its role as a pioneer of North America in bike sharing,<sup>64</sup> and Buenos Aires

60. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 16.

61. *Id.* at 141.

62. Diane Cardwell, *In Paris, Bloomberg Eyes Bike Program for Home*, N.Y. TIMES, Sept. 30, 2007, <http://www.nytimes.com/2007/09/30/nyregion/30mayor.html>; Ben Russel, *Livingstone Plan for Street-Corner Cycle Hire Stands*, INDEPENDENT, Feb. 12, 2008, <http://www.independent.co.uk/news/uk/home-news/livingstone-plan-for-streetcorner-cycle-hire-stands-781025.html> (reporting the Mayor of London's announcement of implementation of a Paris-style plan, and of denouncements by his challenger, and subsequent successor, arguing that the introduced plan was not reflective enough of the Paris program); Eyal Tzaum, *Tel-O-Fun Kids: Larishona—Mezham Haskarot Ophanaim Leyeladim [Tel-O-Fun Kids: For the First Time—Venture of Renting Bikes to Kids]*, GLOBES, June 24, 2014 (Isr.) (reporting that Paris was the model that Tel Aviv's leaders followed in promoting the city's bike share).

63. Bixi serves, in different capacities, the bike-share plans of London, Madrid, Chicago, New York, and Melbourne, among other cities. It filed for bankruptcy in January 2014, and has since been acquired by a Quebec businessman. See Ian Austen & Matt Flegenheimer, *Canadian Bankruptcy Court Clears the Way for Furniture Executive to Buy Bike Share Company*, N.Y. TIMES, Apr. 11, 2014, <http://www.nytimes.com/2014/04/12/business/canadian-bankruptcy-court-clears-the-way-for-furniture-executive-to-buy-bike-share-company.html>.

64. SECRETARÍA DEL MEDIO AMBIENTE, GOBIERNO DEL DISTRITO FEDERAL, *ESTRATEGIA DE MOVILIDAD EN BICICLETA DE LA CIUDAD DE MÉXICO [BIKE SHARE STRATEGY OF MEXICO CITY]* 27 (2012) (Mex.), available at <http://martha.org.mx/una->

announced its bike share plan by naming other “great” cities that already had one.<sup>65</sup>

Bike share plans reflect nicely not only the theoretical insights of the global city literature, reviewed in the preceding section, but also the trends detected by the scholars promoting the idea of international local government law, reviewed there as well. A myriad of international actors advocate the bike share plan to local governments. Professional, research, and trade organizations, such as the Institute for Transportation and Development Policy, and the Transportation Research Board of the National Academies, publish manuals and guides for cities in order to persuade them to adopt a plan and then facilitate the planning process.<sup>66</sup> Non-professional international actors are also proselytizing. *The Economist* declared, “[j]ust as mass public transport changed the development of cities’ suburbs, bike-hire schemes are now shaping cities’ centres in subtle ways . . . . Time for more of the world to go Dutch.”<sup>67</sup> Even more importantly, both the United Nations and the European Union have funded reports extolling the benefits of bike shares for cities, and detailing recommendations for implementing a plan.<sup>68</sup>

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politica-con-causa/wp-content/uploads/2013/09/10-Estrategia-Movilidad-en-Bicicleta.pdf. The plan’s website announces: “on February 16, 2010, Mexico City joins the list of most innovative cities, becoming the first city in Latin America that integrates this means of public transport.” *What is ECOBICI?*, ECOBICI, <https://www.ecobici.df.gob.mx/informacion-del-servicio/que-es-ecobici> (last visited Oct. 4, 2014).

65. “[The bicycle program of Buenos Aires] is in line with global trends. The great cities of the world, like Paris, New York, Barcelona, and Bogotá, have already adopted it as a strategic partner to alleviate the transit problem and for a city of sustainable practices.” *Ecobici*, BUENOS AIRES CIUDAD, <http://ecobici.buenosaires.gob.ar> (last visited Sept. 20, 2014) (Arg.). Cities use bike share plans to compare their relative standing to that of other cities even after the plan is adopted. Thus, for example, in Chicago officials were consoling commentators lamenting the plan’s limited size as compared to that employed by New York by highlighting the lead the city holds over Denver and Minneapolis. Ted Cox, *Why Chicago’s Divvy Trails New York’s Citi Bike-Sharing Program*, DNAINFO CHI., July 30, 2014, <http://www.dnainfo.com/chicago/20140730/downtown/why-chicagos-divvy-lags-far-behind-new-yorks-citi-bike-sharing-program>.

66. See, e.g., INST. FOR TRANSP. & DEV. POLICY, *supra* note 49; OLIVIER RICHARD & THOMAS JOUANNO, *BIKE SHARING SYSTEMS: PART OF PUBLIC POLICIES ON SUSTAINABLE MOBILITY* (2014), available at [http://tra2014.traconference.eu/papers/pdfs/TRA2014\\_Fpaper\\_16430.pdf](http://tra2014.traconference.eu/papers/pdfs/TRA2014_Fpaper_16430.pdf); Shaheen et al., *supra* note 3, at 159.

67. *How Do Bike-Sharing Schemes Shape Cities?*, ECONOMIST (Oct. 22, 2013), <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-14>.

68. See, e.g., Sebastian Bührmann, NICHES, *NEW SEAMLESS MOBILITY SERVICES, PUBLIC BICYCLES*, available at [http://www.nybikeshare.org/file\\_download/NICHES\\_public\\_bikes.pdf](http://www.nybikeshare.org/file_download/NICHES_public_bikes.pdf); U.N. DEP’T OF ECON. & SOC. AFFAIRS, *BICYCLE-SHARING SCHEMES: ENHANCING SUSTAINABLE MOBILITY IN URBAN AREAS* (2011),

As the product of pressures facing major cities worldwide and of international patterns of interaction between world cities, bike share plans are the global city, and international local government law, in action. Accordingly, they are ideal candidates for a comparative analysis aiming to track the policy manifestations of the theoretical insights regarding the global city. Bike share plans enable a form of inquiry heretofore neglected. Works about the global city and about international local government law do not inspect specific common policies cities individually adopt.<sup>69</sup> Comparative local government law, in all its current incarnations, also mostly misses these: the convergence literature focuses on overall structural changes in local government law systems, and the divergence literature downplays common policies. Thus a gap exists in the literature, waiting to be filled by studies of common local policies.

A close examination of one policy that was adopted by cities operating under different local government law regimes should generate conclusions regarding the enduring, or fading, impact of local legal regimes on city action in the age of the global city. How did this uniform policy, the bike share plan, overcome different legal regimes? Why did the variations among legal systems not matter? Or maybe they did matter, and the uniform policy is not quite the uniform policy it appears to be?

## II. A TYPOLOGY OF DIFFERENT LOCAL GOVERNMENT LAW SYSTEMS

To answer these questions, the key attributes of a local government law regime that separate different cities must first be identified so that later the ways in which these attributes affect the resultant bike share plans can be explored. Bike share plans reflect the intersection between the homogenizing drive of the forces put in place by the global city, as presented in Part I of the Article, and the peculiarities of particular local government law regimes, to which this Part turns.

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available at [http://www.un.org/esa/dsd/resources/res\\_pdfs/csd-19/Background-Paper8-P.Midgley-Bicycle.pdf](http://www.un.org/esa/dsd/resources/res_pdfs/csd-19/Background-Paper8-P.Midgley-Bicycle.pdf).

69. International local government law is interested in tracing the process by which international *norms and standards* are locally adopted and enforced. Blank, *supra* note 41, at 922–26. The problem is that examples of such local adoption of global norms are hard to pinpoint since the local adopting agents often refrain from making the international influence explicit. *Id.* at 925. Analyzing the adoption of a policy, rather than a norm, overcomes this problem. This is particularly true for the case of a policy such as bike-shares, because, as noted, local agents adopting the policy often explicitly acknowledge the influence of specific global forces.

Local government law regimes, like law systems in general, differ in many variables. It would be impossible for this Part to provide a comprehensive review of all that legally sets apart the cities that have adopted bike share plans. Cities are distinct in their legal powers and responsibilities, institutional structure, financial capabilities, and political role. Furthermore, cities operate within disparate systems of public and private law, which inevitably contain many provisions that, while not directly set forth for local governments (and hence not intuitively perceived as falling within the realm of “local government law”), sketch the landscape for their action.<sup>70</sup> Thus in approaching the goals of this Part of the Article, much modesty is needed. This Part aims at surveying the legal regimes of different cities that have adopted bike-share plans, yet it addresses itself to certain legal attributes alone. There is little doubt that focusing solely on several elements of the legal system hampers the ability to understand its operation, and, in this Article’s specific case, its capacity for enabling, molding, and maintaining a bike share program. Thus the analysis presented in this Article has its inherent, and inevitable, limits.

This Article aims to alleviate this detrimental effect by pinpointing, in an informed manner, the specific attributes of a local government law system that can be deemed most basic. Indeed, the contribution made by this Article, and this Part in particular, to the literature in the field, extends beyond its insights dealing with one specific policy—bike share plans—precisely because of this effort at detecting a legal system’s basic attributes. This Part offers a reasoned typology of the most salient elements of a local government law system that should allow better comparisons of cities.<sup>71</sup> Since, as we will argue,

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70. For an example from “private” law, consider the tort of nuisance, which regulates competing land uses. For an example from “public” law, consider the constitutional protection for property rights, which sets the contours for any local regulation.

71. The few existing typologies of local government law systems are very useful for certain purposes, but too often they lack sufficient detail and legal sophistication. They mostly distinguish systems based solely on the range of their powers, sometimes broken down into functional responsibilities, discretion, and access. These studies highlight the wide range of functions assigned to local government in Northern, but not Southern, European systems. See, e.g., Edward C. Page & Michael J. Goldsmith, *Centre and Locality: Explaining Crossnational Variation*, in CENTRAL AND LOCAL GOVERNMENT RELATIONS: A COMPARATIVE ANALYSIS OF WEST EUROPEAN UNITARY STATES 156, 156–63 (Edward C. Page & Michael J. Goldsmith eds., 1987); JOHN, supra note 36. At most, this distinction is supplemented by a distinction between systems that endow local governments with general functional competence and those that limit their powers to those specifically granted by the state level government. Joachim Jens Hesse & Lawrence J. Sharpe, *Local Government in International Perspective: Some Comparative Observations*, in LOCAL GOVERNMENT

the major elements of any local government law system rotate around the specific axes of difference singled out in this Part, placing a given system on each of them will greatly facilitate an understanding of a city's legal capabilities, dynamics, and limitations.

This Part identifies and reviews four axes, along which local government law regimes might differ: the local government's relationship with the state (or patterns of local empowerment); the local government's relationship with other local governments (or patterns of local fragmentation); the local government's relationship with entities located below it (or patterns of micro-localism); and the relationship within the local government (or patterns of local separation of powers). Respecting each of these four key relationships defining a local government law system, this Part discerns, and elaborates on, the different approaches a legal system may adopt.

#### **A. The Local Government's Relationship with the State**

The most basic issue a designer of any tiered system of government must address is the manner in which powers are allocated between the different tiers of government. All the legal systems reviewed assume that the local level of government is subservient to at least one level of government that covers a wider geographical space (indeed, otherwise the term "local government law" would be meaningless). The difference between legal systems manifests itself in the way each system structures the relationship between the wider and more powerful level of government—the state—and the smaller and weaker level—the local. These structures can be placed along a continuum that consists of roughly six spots, moving from the weakest form of local empowerment to the strongest.

At the extreme weakness pole of the continuum, the local level lacks any independent existence. There is "a local": the local is a defined geographical space to whose governance specific bodies, separate from those governing the broader geographical arena, are assigned. However, those bodies are controlled by the larger level of government.

In such systems, the local is literally the "creature of the state." While this phrase is familiar to any American jurist, we should be

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AND URBAN AFFAIRS IN INTERNATIONAL PERSPECTIVE: ANALYSES OF TWENTY WESTERN INDUSTRIALISED COUNTRIES 603, 605–08 (1991). As the ensuing discussion will illustrate, even if systems are compared solely on the basis of their functional empowerment, this binary classification is too simplistic.

cautious when applying it, since our understating of it is deeply grounded in the specific dynamics of American local government law. When used in the United States, the trope conveys the ability of the greater level of government to create, empower, and abolish the local level.<sup>72</sup> While highlighting the legal fact that the local government only exists at the pleasure of the state, the phrase takes for granted the local government's separate existence—transient and feeble as it may be. At the same time, the creature of the state metaphor can, and does, reflect an even weaker form of the local. The local as a creature of the state might imply a legal reality whereby the local has never been empowered to meaningfully exist for any period of time. It is consistently wholly managed, more or less directly, by the state.

Among the bike-share adopting cities that this Article explores, Mexico City has traditionally stood for this model. American cities are often rightly perceived as creatures of the state, yet they have their own governance structure that exercises certain, albeit normally limited, powers.<sup>73</sup> Mexico City does not. The legal entity bearing the name Mexico City is the *Distrito Federal* (Federal District).<sup>74</sup> Because it is the national capital, it is autonomous from the state wherein it is located (*Estado de México*): it is a “federated entity” and thus often considered Mexico's thirty-second state. One might expect Mexico City, as a de-facto separate state, to have a particularly strong local government. In fact the opposite is true. Until 1996, the city operated completely in the shadow of the federal government. It was controlled directly by the Federal President and Congress.<sup>75</sup> Although a constitutional amendment passed in 1996<sup>76</sup> somewhat ameliorated the situation by establishing a locally elected Head of

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72. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 179–81 (1907).

73. That was not the case in Washington, D.C. until Congress passed the District of Columbia Home Rule Act of 1973. *See* District of Columbia Home Rule Act, D.C. CODE § 1-201 (2012). Up to that point Washington, D.C. was also an example for this model of an extreme weak “creature of the state.”

74. “Mexico City” sometimes refers to a narrower geographical space, the historic city and colonial city center (or *Zocalo*). In actuality, however, the old city of Mexico City is a smaller part or “district” of the *Distrito Federal* (DF) (Federal District) of the United Mexican States.

75. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended* art. 73(VI), Diario Oficial de la Federación [DO], 8 de Octubre de 1974 (Mex.) (granting the federal Congress the power to legislate on all matters concerning the Federal District); *id.* at art. 73(VI)(1) (entrusting the government of the Federal District to the President of the Republic); *id.* art. 89(II) (granting the president the power to appoint and remove freely the governor of the Federal District).

76. At that time a constitutional amendment was adopted. *See* Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended* art. 73(VI), Diario Oficial de la Federación [DO], 22 de Agosto de 1996 (Mex.).

Government (*Jefe de gobierno*) and legislative assembly, the city is still, despite local protests, denied a constitution or charter (unlike all the other Mexican states) and governed through the federal constitution and statutes.<sup>77</sup> The Mexican President still holds key powers over the city,<sup>78</sup> and the federal Congress maintains legislative jurisdiction as well as the authority to remove the city's Head of Government.<sup>79</sup>

Even in its contemporary, moderated format, the Mexico City model represents an extreme notion of local government as creature of the state. It is a radical model since a local government can be perceived as created by the state and existing at its mercy, yet still be afforded certain powers to manage itself. This form of local empowerment, of which Montreal serves a major example, represents the next, second, point along the continuum of patterns of city-state relations. Canadian federal law does not recognize or protect local governments. The legislative history of the British North America Act (adopted in 1867, and renamed the Constitution Act in 1982) indicates that “municipal institutions” were to derive their powers from the province alone.<sup>80</sup> Quebec, like the other provinces, accordingly chose to view its localities as its creations.<sup>81</sup> A clear expression of this view was provided as late as in 2002, when Quebec decided to forcibly merge several municipalities in its territory in an

77. *Id.* art. 122. During the past year, a campaign by city leaders to equalize the standing of the federal district to that of the other Mexican states and allow it to draw its constitution, has been gaining steam. Lizbeth Padilla Fajardo, *¿Por qué al DF le conviene (o no) convertirse en el estado 32?* [Why the Federal District should (or should not) become the thirty-second State], CNNMÉXICO (Jan. 13, 2014), <http://mexico.cnn.com/nacional/2014/01/13/por-que-al-df-le-conviene-o-no-convertirse-en-el-estado-32>. For the official position of the Federal District's judicial department, see Flavio Martínez Zavala, *Constitucion para el Distrito Federal* [Constitution of the Federal District], CONSEJARIA JURIDICA Y DE SERVICIOS LEGALES, <http://censoeapdf.df.gob.mx/index.php/noticias/noticia/120-constitucion-df> (last visited Oct. 4, 2014).

78. Constitución Política de los Estados Unidos Mexicanos [C.P.] art. 122 (B).

79. *Id.* art. 122 (A).

80. The Charlottetown Conference of September 1864, where a Canadian Union was first discussed, agreed that provinces should be responsible for “municipal laws.” This was changed to “municipal institutions” in the first draft considered by the ensuing Quebec Conference in October. G.P. BROWNE, *DOCUMENTS ON THE CONFEDERATION OF BRITISH NORTH AMERICA* 32–49, 55–165 (2009). The Confederation Debates of the Legislature of Canada in 1865 made no reference to this clause. *PARLIAMENTARY DEBATES ON THE SUBJECT OF THE CONFEDERATION OF THE BRITISH NORTH AMERICAN PROVINCES* (1865).

81. IAN MACF. ROGERS, *THE LAW OF CANADIAN MUNICIPAL CORPORATION* 111 (2nd ed. 1971) (explaining that elections in almost all Canadian municipal institutions are creatures of statute).



effort to lower taxes. On January 1, 2002, what was then the City of Montreal was merged with twenty-seven surrounding suburban municipalities to form a single, unified city covering the entire Island of Montreal.<sup>82</sup>

While such action literally exemplifies the fact that the city is a mere creature of the state—or rather, in Canada, the province—Quebec has, unlike Mexico, endowed its creature with real legislative powers. The framework for the powers of cities such as Montreal is set in the Cities and Towns Act of Quebec, which explains that local governments do hold powers—those specifically delegated to them by the provisional government.<sup>83</sup> The restriction is simple: powers are limited to those set out in specific statutes creating or empowering the local government.

As the provincial court explained:

Our courts have repeatedly stated that cities only possess the authority granted to them by the provincial government. As a legal creation, a city only possesses the powers that have been expressly delegated to it or that result directly from such delegated powers . . . . A city does not have any inherent power . . . . Therefore, we must not look for legislation prohibiting a city in engaging in such an act, but rather we should determine whether there exists a provision in the provincial legislation authorizing the city to do such a thing.<sup>84</sup>

The legality of any action of a local government is open to attack on the ground that it is *ultra vires*: beyond the powers delegated.<sup>85</sup> This approach to local powers is reminiscent of the traditional attitude known in the United States as Dillon's Rule.<sup>86</sup>

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82. The merger was accomplished through Bill 170, passed by the Quebec National Assembly in December 2000. See *An Act to Reform the Municipal Territorial Organization of the Metropolitan Regions of Montréal, Quebec and the Outaouais*, S.Q. 2000, c. 56 (Can.). For more on the merger, see Henry Milner & Pierre Joncas, *Montreal: Getting Through the Megamerger*, 11 *INROADS* 49 (2002).

83. ROGERS, *supra* note 81, at 136–38.

84. Québec (Procureur général) c. Montréal (Ville) et al., 2004 CarswellQue 1881 (Can.); Ville de Saint-Timothée c. Ville de Salaberry-de-Valleyfield, 2001 CarswellQue 2550 (Can.); R. v. Greenbaum, [1993] S.C.R. 674, 687 (Can.).

85. ROGERS, *supra* note 81, at 362–64. Even if courts may be willing to expand the expressly granted powers by interpretation, they will do so only when those added powers are necessarily implied by the explicit grant of power by the state. *Ottawa Electric Light Co. v. City of Ottawa*, [1906] 12 O.L.R. 290 (Can.).

86. JOHN DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 448–55 (5th ed. 1911) (according to Dillon's Rule a local government only holds those powers expressly granted to it, and accordingly these are to be construed narrowly). Like the American Dillon's Rule, the Canadian *ultra vires* doctrine as a cap on local powers is supplemented by the locality's inability to contradict provincial laws. It is further strengthened by yet another mechanism, which does not form part of

An ultra vires, or Dillon's Rule, model of local empowerment can be even more restrictive. A local government law system may supplement the requirement of ex-ante state authorization to act with an added requirement of specific ex-post approval by the state for each and every local action in that field.<sup>87</sup> This is, at least formally,<sup>88</sup> a component of Israel's ultra vires model.<sup>89</sup> All local legislative, financing, and planning decisions must be approved by the national government.<sup>90</sup>

Even without a state clearance requirement for each decision, the ultra vires model is on the constraining side of the local empowerment continuum, as indicated by the many complaints aired

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traditional American law. Since the local government is a subordinate form of government, Canadian law submits its acts to heightened review that normally does not apply to governmental acts. Local actions may be deemed illegal if they are enacted for corrupt or personal motives, are made in breach of fundamental procedural requirements, are discriminatory in operation, or unreasonable. Dale Gibson, *The Constitutional Position of Local Government in Canada*, 11 MAN. L.J. 1, 11 (1980).

87. Note the difference between such a regime and the notion of preemption: in the latter, the local decision stands in the case of state-level inaction, while the former requires active approval by the state.

88. Yishai Blank has argued persuasively that Israeli local government law in books is not reflective of Israeli local government law in action, where the central government is lax and selective in employing its supposedly mandatory powers of supervision. Yishai Blank, *The Location of the Local: Local Government Law, Decentralization and Territorial Inequality in Israel*, 34 Hebrew U. L. Rev. 197 (2004) (Isr.).

89. An early Supreme Court decision announced that Israeli law incorporated the ultra vires approach to local government. H CJ 36/51 Het v. City of Haifa 5(2) PD 1553, 1557 [1951] (Isr.).

90. Local by-laws must be approved by the Minister of the Interior. Municipalities Ordinance (New Version), 5724-1964, 1 LSI 247, § 258 (Isr.). Local annual budget must be submitted to the Minister for approval as well. *Id.* §§ 204–07. Local zoning and development plans must receive similar approval. *See* Planning and Building Law, 5725-1965, 19 LSI 330 (1948–1989) (Isr.). In the field of local taxation, the allowable rates, exemptions, classification, etc., are set by national legislation or administrative action. Adjustments in the National Economy Act of 1992, § 9 (Isr.); Adjustments in the National Economy Act of 1993, § 139 (Isr.). To change the rate or classification of a property, specific approval is needed. General Property Tax Law (1990) (Isr.). An amendment passed by the national Parliament, but yet to come into force, will exempt municipalities that meet certain financial stability criteria from the approval requirement in certain fields, replacing it with a notification requirement. The Minister of the Interior must declare that the city meets the financial criteria and is hence a “sound city hall.” A Law Amending the City Halls Order (No. 135), 2014. The minister has declared that twenty-four municipalities, including Tel Aviv have qualified (though qualification can be revoked at any time). Omri Ephraim, *They Don't have a Deficit: These are the 24 Sound Municipalities*, YNET, Mar. 16, 2014 (Isr.).

by Montreal's political and economic leadership.<sup>91</sup> Their agitation has gained traction with the recently installed provincial government.<sup>92</sup> If thusly promoted legislation will indeed change the status of big cities in Quebec, Montreal (along with Quebec City) will move further along the spectrum of modes of local empowerment.

The next, third, point on this continuum is to be found in the French model, under which Paris operates. While, like their Québécois counterparts, French cities (*communes*) are only empowered to legislate where the state legislature has allowed them to do so, the French National Assembly has empowered localities in advance to generally act in prescribed, yet comprehensive, fields. The Decentralization Acts of 1982–1983 contain a catalogue of city functions: school building and maintenance, land use planning, social assistance, local road maintenance, school busing, waste collection, and water treatment.<sup>93</sup> In each of these, the locality can act without obtaining prior authorization from the state.<sup>94</sup> While this statutory list of functions appears closed, in actuality cities have been able to extend their powers into further, discretionary fields. Often, following local activity in a new, and formally unauthorized field, the National Assembly ratifies the practice by adopting a law providing a legal framework for the preexisting local action.<sup>95</sup> The result is that cities' powers are as broad—and opaque—as they were under the old

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91. Rene Bruemmer, *Big-City Mayors Demand More Decision-Making Powers and Funds from Quebec in New 'City-State' Deal*, NATIONAL POST, Mar. 20, 2014, <http://news.nationalpost.com/2014/03/20/big-city-mayors-demand-more-decision-making-powers-and-funds-from-quebec-in-new-city-state-deal/>.

92. In April 2014, the newly elected provincial government of Quebec agreed to sponsor a law that will grant Montreal (as well as Quebec City) a special status freeing it, in certain fields, from the need to rely on a specific enabling act for every local action. See *Montreal Will Get Special Status from Quebec*, CTV MONTREAL NEWS (Apr. 29, 2014), <http://montreal.ctvnews.ca/montreal-will-get-special-status-from-quebec-1.1797601>. A few years ago, Ontario adopted a law that might serve as a model for the city of Toronto. See City of Toronto Act, S.O. 2006., c. 11, sch. A (Can.).

93. See Loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, les départements, les régions et l'Etat [Law 83-8 of January 7, 1983 on the Division of Powers Between Municipalities, Counties, Regions and the State Law] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 7, 1983 (Fr.).

94. Although, as will be explained later, in some of these fields authority is shared with regional bodies.

95. For example, the “*libertés et responsabilités locales*” act was passed on August 13, 2004 authorizing municipalities to aid businesses. Municipalities had been providing such aid for decades. See PATRICK LE GALÈS, *POLITIQUE URBAINE ET DÉVELOPPEMENT LOCAL, UNE COMPARAISON FRANCO-BRITANNIQUE* (1993).

system instituted by the 1884 Communal Liberties Act.<sup>96</sup> That act put cities in charge of matters of municipal interest, without clarifying the actual contents of that term.

This latter manner of empowering cities—granting them control over “municipal” (or “local”) affairs—is a popular technique that is at least supposed to empower them more than the methods reviewed so far. Hence it is the next, and fourth, point on the continuum of local empowerment schemes. It is prevalent in many American cities, among them New York City and Chicago, which have been granted “home rule” status. In American law home rule replaces the traditional Dillon’s Rule regime mentioned earlier. Under the New York Constitution’s grant of home rule powers, local governments may adopt local laws relating to local property, affairs, or government, as long as they are not inconsistent with the state constitution or any other general state law.<sup>97</sup> Courts read this provision as conferring a “broad police power upon local government relating to the welfare of its citizens.”<sup>98</sup> Yet it would be a mistake to assume that the powers exercised by New York City, or any other home rule city in the state (or country) are truly far-reaching—or even farther reaching than those of cities like Paris exercising mostly enumerated powers. Since the New York constitutional provision limits the city’s alleged general power to actions in “local” affairs in a manner that is not “inconsistent” with existing general laws or “preempted” by acts of the legislature, courts have much leeway in limiting city power.<sup>99</sup> So much so that, arguably, in contrast to the French experience, in New York the opacity of the lines drawn by the state for the scope of city powers led to further restriction, rather than expansion, of local powers.<sup>100</sup>

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96. For more on the act, see Gilles Pinson, *France, in* CHANGING GOVERNMENT RELATIONS IN EUROPE: FROM LOCALISM TO INTERGOVERNMENTALISM 68, 74 (Michael J. Goldsmith & Edward C. Page eds., 2010).

97. N.Y. CONST. art. IX, § 2(c); N.Y. MUN. HOME RULE LAW § 10 (McKinney 2011). The current home rule provision was raised to constitutional status in the New York Constitution of 1938. It was first introduced as a statute in 1928. 1928 N.Y. Laws 1446.

98. *N.Y. State Club Ass’n v. City of New York*, 505 N.E.2d 915, 917 (N.Y. 1987), *aff’d*, 487 U.S. 1 (1988).

99. *E.g., People v. De Jesus*, 430 N.E.2d 1260, 1260 (N.Y. 1981) (acknowledging that the Alcoholic Beverage Control Law was, “exclusive and State-wide in scope, and that, thus, no local government may legislate in this field”).

100. For an overview of the debate over the meaning and reach of home rule in American law, see, for example, David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255 (2003); Richard Briffault, *Our Localism*, 90 COLUM. L. REV. 1, 10–18 (1990); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

Accordingly, more empowering models that go beyond the mandate to act in local/municipal affairs (i.e., the home rule model) can be detected on the empowerment continuum. These further empowering models, embodying the fifth spot on the local empowerment continuum identified in this section, bypass the limits inherent to any model that restricts local powers to a certain realm. For an illustration, attention should be turned to England.<sup>101</sup> Aiming to revolutionize an exceptionally centralized system,<sup>102</sup> the Localism Act of 2011 states in its opening provision that local authorities hold a “general power of competence” which implies the “power to do anything that individuals generally may do.”<sup>103</sup> The law does recognize that restrictions might be placed on this general power,<sup>104</sup> but, much more so than the American home rule model, it represents the opposite attitude to that found in the ultra vires model (of which Quebec served here as an example).<sup>105</sup> Rather than being empowered to act only when explicitly allowed to do so (by a specific enabling act as in Quebec or in spheres covered by the home rule provision, as in New York), the city is empowered to act unless explicitly barred from doing so.<sup>106</sup>

The current English regime thus appears dramatically more empowering than the models reviewed so far. Nonetheless, English

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101. London does not operate under the regime described here, but rather under a special act, the Greater London Authority Act of 1999. Under its original version, in force at the time the bike share plan was adopted, the Authority held the “general power” to promote “economic development and wealth creation,” “social development,” and the “improvement of the environment.” Greater London Authority Act, 1999, c. 29, § 30(1) (Eng.). The original act contained specific limits on this power, some of which were later removed by the Localism Act of 2011. See Localism Act, 2011, c. 20, § 186 (Eng.). The Localism Act further empowered the Authority. See *id.* §§ 186–222.

102. David Wilson, *The United Kingdom: An Increasing Differentiated Polity?*, in *COMPARING LOCAL GOVERNANCE: TRENDS AND DEVELOPMENTS* 155, 155–57 (Bas Deters & Lawrence E. Rose eds., 2005).

103. Localism Act, 2011, c. 20, § 1 (Eng.).

104. *Id.* § 2.

105. England purposefully adopted this new model to reject the older ultra vires model, from which it has gradually been moving away. The Local Government Act of 2000 made some headway in providing local authorities with a new, less restrictive, legal framework. It replaced the ultra vires regime with a regime reminiscent of the home rule model just reviewed. Local governments were afforded the power to promote or improve the economic, social, and environmental “well-being of their area.” Local Government Act, 2000, c. 22, § 2(1) (Eng.).

106. Arguably the Local Government Act goes beyond that. It empowers the Secretary of State to issue an order amending, repealing, revoking, or disapplying a statutory provision (whenever passed or made), which prevents or restricts local authorities from exercising the general power. *Id.* § 5.

cities today are not particularly strong, and since this section aims at constructing a comprehensive view of the modes of city empowerment, it is important to understand why. The discussion so far has revolved around the varying extent of cities' legislative powers. But these are not the only powers that matter to cities. English local government law, more than other local government law systems, represents an extreme disconnect between legislative powers and the always important finance powers. While English cities' legislative powers might today, following the Localism Act, be broad, their funding powers are decidedly narrow. Local governments' taxing and other revenue-raising powers are harshly restricted,<sup>107</sup> and the new Localism Act specifically excludes the power to engage in commercial activities—a major source of potential income—from localities' "general power" to act as individuals.<sup>108</sup> As a result, London's government, like other British cities, is forced to depend on grants from the central government, often with strings attached, for ninety-five percent of its spending.<sup>109</sup> Such total financial dependence may well offset in practice the far-reaching legislative independence embedded in the English model of local empowerment.

The model equating municipalities with individuals has its limits, since any individual may be subject to limits imposed on her by the state. Hence the model going even farther in empowering a local government equates cities not with the individual, but with the state. The sixth and final model in the continuum suggested here, it is the most radical of the local empowerment models, and occupies the

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107. *See* Localism Act, 2011, c. 20, § 3 (Eng.) (limiting localities' ability to charge for services); *Id.* § 223 (amending the Greater London Authority Act 1999 and allowing the London mayor to receive through delegation, functions from any minister, but not any power to fix fees or charges); Local Government Act, 2000, c. 22, § 3(2) (Eng.) (stating that the power conferred under the act "does not enable a local authority to raise money"). Most generally, the allowable form of local taxation—currently, the "council tax"—is set by the central government, which also limits forms of valuation and rate increases, and mandates certain reductions. *See generally*, Local Government Finance Act, 1992, c. 14 (Eng.).

108. Localism Act, 2011, c. 20, § 4 (Eng.).

109. Jules Pipe, *Two Years On, What Has the Localism Act Achieved?*, GUARDIAN, Nov. 2, 2013, <http://www.theguardian.com/local-government-network/2013/nov/02/localism-act-devolution-uk-local-authorities>. This predicament is not unique to England. Mexican municipalities, for example, have traditionally been faced with a similar problem. Their constitutional standing notwithstanding, their dependence on federal and state discretionary funding places an obstacle for any meaningful autonomy. *See* Jonathan Fox & Luis Hernandez, *Mexico's Difficult Democracy: Grassroots Movements, NGOs, and Local Government*, 17 ALTERNATIVES 165, 169 (1992).

farthest pole on the empowerment spectrum. Among this Article's cities, this model was chosen by Argentina for Buenos Aires.

Argentinian law in general is characterized by a particularly pro-localist approach. Under the laws of the different Argentinian provinces, municipal competence is quite broad because, in general, it reaches all matters related to the satisfaction of the local society's common welfare needs.<sup>110</sup> What renders this model more powerful than the American home rule model, which some might find similar, is that in stark contrast to the United States, the Argentinian federal constitution mandates that provinces create, and respect, municipal powers.<sup>111</sup> Of more interest here, the constitution further specifically empowers the city of Buenos Aires.<sup>112</sup> Declared as the nation's capital, the city was separated from the surrounding Buenos Aires Province. Hence the city's formal name is *Ciudad Autónoma de Buenos Aires* (Autonomous City of Buenos Aires).

For most of its history, the city was run under federal authority—like Mexico City, which represented, as should be recalled, the most conscripted model of local empowerment. Buenos Aires was transported to the opposite pole of the spectrum of local empowerment by the most recent comprehensive amendment to the Argentine Constitution, approved in 1994. Therein Buenos Aires was granted autonomy from the federal government such that it now operates as a quasi-province, quasi-city.<sup>113</sup> Like other Argentine

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110. ANTONIO MARÍA HERNANDEZ, SUB-NATIONAL CONSTITUTIONAL LAW IN ARGENTINA 52–55 (2001).

111. Article 5 of Argentina's Constitution, which was included in Argentina's first constitution adopted in 1853, provides that "[e]ach Province shall enact its own constitution under the republican, representative system, in accordance with the principles, declarations, and guarantees of the National Constitution, ensuring its administration of justice, municipal regime, and elementary education." Art. 5, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.). Article 123 states that "[e]ach Province dictates its own Constitution, in conformity with what is established in Article 5, assuring municipal autonomy and regulating its scope and content in the institutional, political, administrative, economic and financial structure." *Id.* art. 123. The Mexican Constitution adopts an even more proactive approach, in line with the weakened standing of the states in its federal system. Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 115 ("For their internal government, the States shall adopt the popular, representative, republican form of government, with the free Municipality as the basis of their territorial division and political and administrative organization."). Article 115 proceeds to mandate the structure of local governments and the right to freely administer their finances. *Id.* The municipal level was introduced by the first post-revolutionary constitution of 1917.

112. Art. 129, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

113. *Id.* ("The City of Buenos Aires shall have an autonomous system of government, with its own legislative and jurisdictional powers, and a head of government who shall be directly elected by the people of the City. A law shall

provinces, the city has its own constitution,<sup>114</sup> and it holds seats in the federal House of Representatives and Senate.<sup>115</sup> Thus unlike other cities in Argentina—and all cities operating under the other models of city power reviewed so far in this section—Buenos Aires enjoys both the autonomy of a province (or state) in managing its own affairs and the power to be directly involved in federal affairs.<sup>116</sup>

This final model illustrates that the spectrum of local empowerment begins with the city that has no existence independent of the state, and ends with the city that morphs into a state. To recap this spectrum in its entirety, there are, roughly speaking, six models of city-state relationship, proceeding from the most restrictive of the local to the most liberal: creature of the state, ultra-vires (with or without a state approval requirement), ex-ante authorization in specified fields, home rule, all powers not restricted, and city as state.

### **B. The Local Government's Relationship with Other Local Governments**

Local government law creates a system within which cities operate. That system must regulate the relationship between the local government and the state government located “above” it. The preceding section reviewed the different manners employed by discrete legal systems to structure that relationship. However, that is not the only inter-governmental relationship a local government law system must structure. Once a legal system recognizes local governments—i.e., entities smaller than the overall state system—it is also pressed to regulate the relationships among those smaller

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guarantee the interests of the National Government while the City of Buenos Aires is the Capital City of the Nation. Within the framework established in this Article, the National Congress shall convene the inhabitants of the City of Buenos Aires so that through the representatives that they elect for this purpose, they exact the organizational statute of the City's institutions.”); *see also* Antonio M. Hernandez, *Judicial Federalism and the Protection of Fundamental Rights in Argentina*, 41 RUTGERS L.J. 907, 907 (2010) (referring to Buenos Aires as a “city-state”).

114. CONSTITUCIÓN DE LA CIUDAD AUTÓNOMA DE BUENOS AIRES [Constitution], Oct. 6, 1996 (Arg.).

115. Arts. 44, 45, 54, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

116. Shanghai's status in China is also identical to that of a province, since it is a “municipality directly under the Central Government.” XIANFA art. 95, § 5 (1982) (China). But Chinese provinces cannot adopt laws conflicting with national laws or regulations. *Id.* at art. 100. Hence it might be misleading to treat the system as particularly empowering.



entities. Hence in this section, we will review varied patterns that legal systems adopt for structuring such interactions.<sup>117</sup>

Different patterns of relationships among local governments may exist, separately or in tandem, depending on the manner in which the legal system fragments local powers. First there is the inevitable fragmentation of space between legally identical local governments, each governing its own separate space. Further fragmentation might be added if the system allows multiple local governments, distinct in their legal status and powers, to cover the same space. If multiple governments are responsible for the same area, they will differ in their geographical scope (one government will cover a larger area encompassing the smaller area covered by the other), in their roles and powers (one government will hold general powers while the other will hold specific powers), or in both. Consequently, different local government law systems will be characterized by three distinct forms of inter-local interactions: between cities, between cities and governments of a broader (yet still sub-state) geographical scope (e.g., regional governments), and between cities and special purpose governments. This section reviews, in order, the varying contours jurisdictions might draw for each of these three types of interactions.

By definition, a jurisdiction that allows for local government that is smaller than the jurisdiction itself creates fragmentation. The first, and inevitable, form of fragmentation is the splintering of space between separate yet legally identical local governments—i.e., cities. The resultant relationship between the various cities, particularly neighboring cities, is the focus of much economic, political, and legal discussion among academic commentators, and for good reason.<sup>118</sup> This Article does not pretend to truly engage that discussion. For the Article's purposes, suffice it to state that in a system where the state level enjoys the power to legally define the local—as is true in almost all existing empowerment models reviewed earlier—the state government sets the rules for this relationship between the different locals as it defines all other local powers. That is to say, since the state

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117. *See also* Frug, *supra* note 33, at 298 (arguing that the fragmentation of the metropolitan area is one of the key issues currently affecting the way in which government can empower and disempower cities).

118. *E.g.*, GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 3–13 (1999); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996); William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 FORDHAM L. REV. 57 (1999); Nestor M. Davidson & Sheila Foster, *The Mobility Case for Regionalism*, 47 U.C. DAVIS L. REV. 63 (2013).

empowers the city, the state decides which powers to compete or cooperate with other cities the city can exercise.

This decision dictates the specific pattern the first of the three forms of inter-local interactions, that between cities, will assume in a given local government law system. Specifically, it determines to what extent will that pattern be characterized by coordination. The architecture of the state-local relationship, especially in systems closer to the weaker pole of local empowerment continuum, institutes an asymmetry between the empowerment to engage in inter-local competition on the one hand, and in inter-local coordination on the other. Any state grant of a specific power to the city inevitably contains the ability, maybe even the necessity, to compete with other cities exercising that same power. In the absence of explicit state-created curbs on such inter-city competition,<sup>119</sup> the power to engage in it is assumed, or, more accurately, built-into the specific local power to act.

In contrast, the ability to cooperate and coordinate with other cities is not a component of the award of specific local powers. Rather, it must be awarded separately. For inter-city agreements and forums for coordination to exist, the legal system must adopt a direct approach towards them.<sup>120</sup> Three options present themselves: a legal system may authorize inter-city agreements and coordination arenas; it may incentivize the city to enter them; and it may even force them on the city.

In the United States, most states explicitly authorize local governments to enter inter-local agreements.<sup>121</sup> Once permitted by the state, such agreements also enable cities to create forums for broader inter-local cooperation. Thus, for example, in the Washington, D.C., area, local governments within the District, in suburban Maryland, and in northern Virginia entered inter-local agreements in 1957 to form the Metropolitan Washington Council of

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119. *See* S. Burlington Cnty. NAACP v. Mount Laurel Twp., 336 A.2d 713 (1975) (holding that state statutes impose an obligation on municipalities to zone for the welfare of all the state's people, not merely for local residents).

120. *See generally* Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190 (2001) (discussing inter-local agreements).

121. *See* U.S. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION 26–27 (1993) (reporting that forty two states empower local governments to enter inter-local agreements). For example, the Illinois Constitution provides that “units of local government . . . may contract or otherwise associate among themselves . . . to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance.” ILL. CONST. art. VII, § 10.

Governments to facilitate cooperation. Membership of the association now consists of three hundred elected officials from twenty-two local governments, the Maryland and Virginia State legislatures, and Congress.<sup>122</sup>

A jurisdiction can go beyond such a permissive approach towards inter-local agreements and cooperation and actively promote it. Local government law systems can incentivize cooperation by empowering cities to enact policies in inter-city contracts or bodies that they are unable to pursue on their own. Since, in such a system, the city is awarded more authority when acting with others than when acting alone, it is more likely to initiate, or agree to, cooperation. An example is found in French law, which enlarges the scope of local entities' authority to define priorities in the fields of urban transportation, commerce, and more, when adopting a joint plan.<sup>123</sup> French law also forces the national government to coordinate its projects with inter-local cooperative bodies—but not with individual localities.<sup>124</sup> Another example is presented by federal American laws conditioning federal grants for transportation on the formation of regional planning boards in metropolitan areas.<sup>125</sup>

Such an incentive-based system goes beyond simply permitting agreements in an effort to stimulate inter-local cooperation. Still, it is not particularly aggressive in its pursuit of that goal. The most proactive approach towards inter-local cooperation between cities a local government law system may adopt—beyond permission and incentive—does not leave the decision whether to create these cooperative bodies to the localities themselves. Rather, the state will create the forum by law and mandate that the relevant localities participate. French law has recently done just that: it created a special regional coordination body for local governments in the Paris

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122. METRO. WASHINGTON COUNCIL OF GOV'TS, 2013 BOARD MEMBER HANDBOOK (2013), *available at* <http://www.mwcog.org/uploads/pub-documents/vF5dWFY20130215152146.pdf>.

123. Loi 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbain [Law 2000-1208 of December 13, 2000 on Solidarity and Urban Renewal], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 14, 2000, p. 19777 (Fr.).

124. Loi 95-115 du 4 février 1995 d'orientation pour l'aménagement et le développement du territoire [Law 95-115 of February 4, 1995 on Guidance for the Management and Development of the Territory], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 5, 1995, p. 1973 (Fr.) (addressing voluntary regional arrangements—*pays*—mostly applicable to rural areas).

125. 23 U.S.C. § 134 (2012).

area, the *Métropole du Grand Paris*, which will start operating in January 2016.<sup>126</sup>

When adhering to this latter approach the state imposes some degree of inter-local coordination; yet still, it does not interfere with local powers. Actual cooperation is still dependent on choices made by existing, traditional, local governments. In other words, the pattern of fragmentation remains based on cities alone: no non-city body is awarded independent powers. Many jurisdictions, however, go beyond the typical local governments when dividing spatial powers, and grant powers to separate, non-city bodies. To deal with the fragmentation wrought by the presence of disperse neighboring local governments, they establish autonomous regional bodies encompassing all of these neighboring governments and governing the region in its entirety.<sup>127</sup> Paradoxically, this cure to fragmentation adds another layer of governance whose relationship with the traditional fragmented local governments (i.e., cities) must be regulated. Jurisdictions must contend with a second form of sub-state, inter-local, relationships in which the local government is now engaged (the first being the inter-city relationships just reviewed). This relationship between the city and the regional body is molded by many factors, but key among them is the nature of the regional body of which three types can be identified.

First, in some jurisdictions regional bodies are mere branches of the state government, in which case the relationship between the city and the regional body is regulated just as the city-state relationship. An example of a purely administrative regional body, appointed and managed by the state government, is the Mexico City Metropolitan Area: *La Zona Metropolitana de la Ciudad de México* (ZMCM). ZMCM covers forty-one municipalities, including the city of Mexico City—the *Distrito Federal*—and adjacent localities situated in two other provinces. It is responsible for planning and delivering major

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126. Loi 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles [Law 2014-58 of Jan. 27, 2014 on the Modernization of Public Territorial Action and Affirmation of Cities], *JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE* [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 28, 2014, p. 1562 (Fr.) (stating that the council will exercise powers transferred to it by the municipalities, but also powers designated by the state).

127. For more on regionalism, see Richard Briffault, *Localism and Regionalism*, 48 *BUFF. L. REV.* 1, 314 (2000); Gerald E. Frug, *Beyond Regional Government*, 115 *HARV. L. REV.* 1763, 1766–81 (2002).

inter-jurisdictional services—e.g., highways, airports, and water.<sup>128</sup> Regardless, like all of Mexico's fifty-six metropolitan areas, it is a mere conduit for implementing federal policies in these fields—it is part of a local government law system that disempowers all forms of the local in favor of the state.

Conversely, the regional body may wholly reflect the local, which appoints its members and controls it. In such a case, the regional body, awarded new powers by the state, augments the substantive and geographical sphere of control of the local government. That characterization of the regional body as empowering the local may be slightly misleading, however, since often the body strengthens one local government—normally, though not always, that of the region's central city—at the expense of others. Consider the case of regional bodies in Quebec. Each of the province's "urban agglomerations" covers a central city and its surrounding municipalities.<sup>129</sup> Agglomeration council seats are distributed among localities in accordance with population size<sup>130</sup> and hence the central city is assured dominance.<sup>131</sup> Montreal holds eighty-seven percent of the votes in the urban agglomeration of which it, along with fifteen other municipalities, forms a part. The city of Montreal literally *holds* these votes: the law mandates that the municipal representatives vote in accordance with the decision of the city council that dispatched them to the agglomeration council.<sup>132</sup> The city of Montreal is thereby empowered vis-à-vis its surroundings since the law specifically bans surrounding municipalities from acting in fields that are deemed concerning the entire region,<sup>133</sup> including transportation, water, police, social services, and development.<sup>134</sup>

In its first two forms, the regional body embodies either the state (e.g., ZMCM) or the city (e.g., the Montreal urban agglomeration). Another, third form of regional body that a local government law

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128. Bruce J. Perlman & Juan de Dios Pineda Guadarrama, *Rethinking a Megalopolis: A Metropolitan Government Proposal for the Mexico City Metro Area*, 43 ST. & LOC. GOV'T REV. 144, 145–46 (2011).

129. An Act Respecting the Exercise Of Certain Municipal Powers in Certain Urban Agglomerations, C.Q.L.R., c. E-20.001, §§ 4–15 (2004) (Can.).

130. *Id.* § 59.

131. Unsurprisingly, the suburbs are resentful of this arrangement. *See, e.g.*, Jason Magder, *Suburban Mayors Hope for Changes to Agglomeration Council*, MONTREAL GAZETTE, Nov. 4, 2013, <http://www.montrealgazette.com/business/Suburban+mayors+hope+changes+agglomeration+council/9129015/story.html>.

132. C.Q.L.R., c. E-20.001, § 62.

133. *Id.* § 17.

134. *Id.* § 19.

system may empower reflects a truly autonomous third tier of government between the city and the state. Political regional bodies<sup>135</sup> exercise specific powers that are reserved to them. They may thus place an additional constraint on city powers, separate from that imposed by the state. An illustration is the French *region*.<sup>136</sup> Following decentralization reforms in the 1980s,<sup>137</sup> the *region*, for instance, Île-de-France covering Paris,<sup>138</sup> is a directly elected governmental body that exercises enumerated regional-level powers. For example, while the *commune* (city) operates elementary schools, the *region* operates the high schools.<sup>139</sup> While the *commune* is responsible for local planning, the *region* is responsible for regional planning.<sup>140</sup>

All the regional bodies reviewed so far—whether run by the state, by the localities, or independently—exercise general, or, more accurately, varied, powers. Another wholly separate class of sub-state governments (often, though not always, regional in character) is different. Local government law systems may recognize bodies that hold the competence to merely act in one, or a few, specified field or fields. Supplementing the relationship among cities reviewed first in this section, and the relationship between cities and regional bodies, reviewed second, the relationship between the city and these bodies is

135. Mexican law explicitly prohibits such bodies. Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 115(i) (stating that each municipality shall be administered by a council (Ayuntamiento), elected by direct popular vote, and that there shall be no intermediate authority between this body and the government of the State).

136. At least theoretically, in many American states the county is also an example. See Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 979–92 (2010) (discussing the current limits and potential promise of counties as regional bodies).

137. The *regions* were created in 1956 but were originally staffed with state bureaucrats. ANDY SMITH & PAUL HEYWOOD, *REGIONAL GOVERNMENT IN FRANCE AND SPAIN* 6 (2000).

138. Generally France operates a three-tiered local government system: *region*, *département*, *commune*. Paris is an exception since it is both a *commune* and a *département*.

139. See MINISTRY OF NAT'L EDUC., FILES ON SCHOOL EDUCATION: SCHOOL EDUCATION IN FRANCE 4 (2012), available at [cache.media.eduscol.education.fr/file/dossiers/07/3/2013\\_School\\_Education\\_in\\_France\\_244073.pdf](http://cache.media.eduscol.education.fr/file/dossiers/07/3/2013_School_Education_in_France_244073.pdf) (explaining school divisions).

140. The region adopts a “Schéma Régional d’Aménagement et de Développement du Territoire.” Loi 83-8 du 7 janvier 1983 relative à la répartition des compétences entre les communes, les départements, les régions et l’Etat [Law 83-8 of January 7, 1983 on the division of powers between municipalities, departments, regions, and the state], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 9, 1983, art. 34.

the third and final form of sub-state relationships a local government law system may define and regulate.

This relationship is usually designed to weaken the city. American law, for example, has endeavored over the past century and a half to limit the power of cities by reinforcing that of special districts and authorities.<sup>141</sup> Each such entity is granted the responsibility for a limited number of functions: for example, water supply or public housing. Such special districts are most often created by the state through statute: e.g., New York's Metropolitan Transportation Authority Act,<sup>142</sup> or Chicago's Regional Transportation Authority Act.<sup>143</sup> Once created, the special district drains powers that could have otherwise been exercised by the city. This tension is somewhat alleviated when the cities covered by the district must assent to its creation and are then asked to appoint some of its board members (e.g., Chicago's Regional Transportation Authority).<sup>144</sup> However, often the authority is not controlled by the city, but rather by the state (e.g., New York's Metropolitan Transportation Authority, whose members are appointed by the governor).<sup>145</sup>

In sum, cities may interact with sub-state actors of three sorts. For each, a different potential pattern of relationship may exist in different local government law systems. First, all cities interact with other cities, and the state may allow them to cooperate with those other cities, incentivize them to do so, or force such cooperation on

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141. See Nadav Shoked, *Quasi-Cities*, 93 B.U. L. REV. 1971, 1977–90 (2013).

142. N.Y. PUB. AUTH. LAW § 1260–1279 (McKinney 1967).

143. 70 ILL. COMP. STAT. 3615/1.01 (1991).

144. *Id.* (established by statute but subject to approval in referendum); *Id.* § 3.01 (stating that the mayor of Chicago appoints five members, and that other members are appointed by Cook County and surrounding counties).

145. N.Y. PUB. AUTH. LAW § 1263 (McKinney 2010) (stating that members are appointed by the governor following approval of the Senate, and that some must be appointed based on the recommendation of the city). Alternatively, state statutes may create a special authority that is run by the general regional body (e.g., Paris's *Syndicat des transports d'Île-de-France* (STIF)) and in such cases the analysis may revert to that reviewed earlier when regional bodies were considered. Ordonnance 59-151 du 7 janvier 1959 relative à l'organisation des transports de voyageurs en Ile de France [Ordonance 59-151 of January 7, 1959 on the Organization of Passenger Transport in the Ile-de-France], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 10, 1959, p. 696 (Fr.). Originally, STIF was governed by the state, but following a decentralization reform in 2005 the state withdrew and transferred control to the region. Loi 2004-809 du 13 août 2004 relative aux libertés et responsabilités locales [Law 2004-809 of August 13, 2004 on Local Freedoms and Responsibilities], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 17, 2004, p. 14545 (Fr.). In Montréal the agglomeration council appoints the board. In such case the analysis reverts to that reviewed earlier when regional bodies were considered.

them. Second, in some local government law systems cities also interact with regional bodies, which may be agents of the state further facilitating state dominance over the city, agents of the cities themselves empowering some cities at the expense of others, or independent bodies removing certain powers from the purview of the city. Third, local government law systems may force cities to deal with special purpose governments, which remove control over specific policy fields from the city, but in whose management the state may permit the city to participate.

### **C. The Local Government's Relationship with Entities Located Below It**

Once a legal system recognizes the local—a sub-state level of governance—it must regulate the relationship between that level and the state level, as well as the relationships within that level. Accordingly, so far this Part of the Article reviewed the different ways in which jurisdictions may regulate the relationship between the city and legal entities that are either “above” it (the state, regional bodies) or on the same plane with it (neighboring municipalities). There may be yet another group of relationships affecting a city’s power to adopt a policy. For the legal structure might also empower entities located below the local, i.e., below the city. While a local government law system must, by definition, have a local level and a state level, it need not recognize any level below the local. Yet often it does.<sup>146</sup> For if the local is created and empowered in the name of decentralization, why stop there? Why settle on the local, the city, as the lowest level of government?

An expanding number of legal systems have grown frustrated with their failure to provide a satisfactory, principled answer to these questions, and thus have embarked on a drive to create and empower even smaller entities that supposedly more closely correspond to ideas of community. Elsewhere, one of the authors titled this phenomenon micro-localism.<sup>147</sup> Micro-localism may entail the establishment, recognition, and empowerment of bodies or groups located below the city. When present in a local government law system, such micro-localism differs in its degree of formality and of directness. The following paragraphs will expound on these two variables, moving from the most direct and formal manifestations of micro-localism to the least.

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146. Nadav Shoked, *The New Local*, 100 VA. L. REV. 1323, 1401–02 (2014).

147. *See id.*



Micro-localism may affect city policy-making by direct creation of formal entities—termed by Richard Briffault as sub-local bodies<sup>148</sup>—holding specific powers. Examples are Paris’s and Montreal’s statutorily created *arrondissements*—each with its own mayor and council,<sup>149</sup> or Buenos Aires’s elected *communas*, created by the city legislature and granted not only a participatory role in the supply of services and social benefits but also, for example, the exclusive power to plan and control the maintenance of parks and streets.<sup>150</sup>

Such formal sub-local bodies are strongest when instituted at the same time the city government itself was founded, rather than as a later decentralization reform. Thus London’s boroughs, which set their own form of elected government and whose powers respecting local services and policies are broader than those of the Greater London Authority (e.g., they include education), were created along with the Authority, and most of them trace their boundaries to pre-existing independent local governments.<sup>151</sup> Another example is the sixteen districts and one county constituting the municipality of Shanghai, which were recognized alongside with Shanghai in the Chinese national constitution, and elect their own “people’s congresses.”<sup>152</sup> Although the standing committee of Shanghai can annul any of their decisions,<sup>153</sup> theoretically their powers within their own micro-local domains are identical to those of the broader municipality.<sup>154</sup> More strikingly, these micro-local legislatures elect the members of Shanghai’s people’s congress.<sup>155</sup>

Thus the legal systems in Shanghai, London, Paris, Montreal, and Buenos Aires recognize and, to different degrees, empower formal

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148. Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 508 (1997).

149. See CODE GENERAL DES COLLECTIVITÉS TERRITORIALES [C.G.C.T] Partie II [Part II], Livre I, V [Books I, V] (Fr.). The law, adopted in 1982, gives the arrondissement the power to manage local social services, opine on any zoning issue in the district, and more. *Id.* Unlike in France, this Quebec law left it to the city to organize the actual arrondissements. Unlike its Paris counterparts, the Montreal arrondissement also adopts its own budgets. See generally, An Act Respecting Municipal Territorial Organization, C.Q.L.R., c. O-9 (Can.).

150. Law No. 1777, Apr. 10, 2005, [1518-005] B.O. 2292 (Arg.).

151. The London Boroughs and the Greater London Council were created by the London Government Act of 1963. London Government Act, 1963, c. 33 (Eng.). Under the Government and Public Involvement in Health Act of 2007, each borough council and its residents must choose one of two possible models for its political structure. Government and Public Involvement in Health Act, 2007, c. 28 (Eng.).

152. XIANFA art. 95 (1982) (China).

153. *Id.* art. 104.

154. *Id.* art. 99.

155. *Id.* arts. 97, 102.

micro-local bodies of a political nature. Other legal systems establishing formal micro-local bodies may accord them a much-lesser role. Each of Mexico City's *delegaciones* has been headed, for the last fourteen years, by an elected chair (*jefe delegacional*), yet they all lack any legislative or regulatory powers, and are solely administrative sub-divisions of the city implementing its policies.<sup>156</sup> New York City's formal micro-local bodies, the "community boards," are solely advisory and composed of members appointed by city-level representatives.<sup>157</sup>

The micro-local bodies in the systems reviewed so far varied in their potency in the local decision-making process—those reviewed first held assigned powers; those reviewed second, only administrative or advisory powers—but they were all formally recognized. A local government law system may also settle for completely informal micro-local bodies: bodies created not by the city or the state, but by voluntary action of local residents. Examples are Chicago's neighborhood associations and commerce boards.<sup>158</sup> While not legally obliged to do so, the local government might be pressed to devise a strategy to acknowledge the role and influence of these informal micro-local bodies. For example, in Chicago, aldermen, who customarily enjoy the right to veto city council decisions affecting their ward, often consult neighborhood associations and boards within their wards before announcing their position. Some aldermen have, at times, even pledged to abide by the neighborhood association's stance.<sup>159</sup>

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156. Ley Orgánica de la Administración Pública del Distrito Federal [LOAPDF] [Enabling Law for Public Administration of the Federal District], art. 2, Gaceta Oficial del Distrito Federación [GODF], 29 de Diciembre de 1998 (Mex.) (defining the *delegaciones* as political-administrative bodies enjoying "functional" autonomy); see also *id.* arts. 3 (III.), 22(XX), 24(III), 37.

157. See N.Y.C. CHARTER ch. 70 (2009). Board members are appointed by the Borough President and city councilpersons. *Id.* They mostly convey local concerns to the city, but they also play an advisory role in zoning issues and must be consulted on the placement of most municipal facilities in the community. *Id.*

158. One example of a powerful neighborhood association in Chicago is the East Village Association, with whom officials consult before approving zoning changes or licensing in the area. *About EVA*, E. VILLAGE ASS'N, <http://news.eastvillagechicago.org/p/about-eva.html> (last visited Oct. 2, 2014). An example of a neighborhood-based chamber of commerce, operating in a neighboring community within West Town, is the Wicker Park Bucktown Chamber. *About the Wicker Park Bucktown Chamber*, WICKER PARK BUCKTOWN, <http://www.wickerparkbucktown.com/the-chamber/about> (last visited Oct. 2, 2014).

159. For example, one alderman pledged to a neighborhood association within his ward (the East Village Association) not to award a liquor license in the area for two years unless the association released him from said pledge. Emily Morris, *Forbidden Root Brewery Plan Gets Vote of Support from Neighborhood Group*, DNAINFO

Finally, in addition to formal or informal micro-local bodies, the local government might be forced to interact with a micro-local that is instituted indirectly. Like the voluntary neighborhood association, such micro-localities lack a formal role in decision-making processes; in addition, unlike the neighborhood association, they lack an institutional embodiment altogether. One form of such extremely informal, indirect micro-local influence is found in England, where the Localism Act of 2011 empowered groups of residents to oblige a local government to thoroughly consider their offer to replace it in the provision of any public service (“the right to challenge”).<sup>160</sup> Another form of such informal empowerment, arguably even more indirect, is found in New York and elsewhere in the United States where state laws have been interpreted to grant individual residents standing to legally contest a city decision affecting their neighborhood.<sup>161</sup> When viable under the jurisdiction’s procedural and substantive laws, the threat of this radical form of indirect empowerment of the sub-city neighborhood means that, even in systems where micro-local bodies are wholly absent, the city is not immune to challenges from lower-level actors.

Local government systems are not obliged to recognize decision-making powers located underneath the city. Nevertheless, in many local government law systems cities are forced to contend with their constituent elements. These may express their preferences through means situated at different spots along a spectrum of formal establishment and direct empowerment: formal neighborhood bodies with defined political powers, formal neighborhood bodies with advisory or administrative powers alone, informal neighborhood bodies, or individual or group legal standing to sue the city on behalf of neighborhood interests.

#### D. Relationships Within the Local Government

This Part of the Article has discussed the “city’s” power to adopt policies and its need to coordinate such moves with other entities—located above it, on the same plane with it, or below it. A casual reader of this, or any other such discussion of “city” power, may infer that the city is a unitary “black box”: one entity with external relationships, but no real internal processes. Obviously that is not the

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CHI., May 6, 2014, [www.dnainfo.com/chicago/20140506/east-village/forbidden-root-brewery-plan-gets-vote-of-support-from-neighborhood-group](http://www.dnainfo.com/chicago/20140506/east-village/forbidden-root-brewery-plan-gets-vote-of-support-from-neighborhood-group).

160. Localism Act, 2011, c. 20, §§ 81–86 (Eng.).

161. See Shoked, *supra* note 146.

case. The “city” does not adopt policies; its political branches adopt policies. The way in which they do so inevitably affects those policies. Thus the final variable setting local government law systems apart, which is reviewed here, focuses on the city’s internal interactions. Specifically, this section examines the relationship, or separation of powers, between the city legislature and city executive.

Cities are often designed along institutional lines familiar from the context of state-level governments. Their political decision-making powers are normally distributed between a legislative branch—a city council—and an executive branch—a mayor.<sup>162</sup> Exceptions do exist:<sup>163</sup> the Greater London Authority’s assembly lacks the power to pass legislation and is thus solely a supervisory body overlooking an executive, the mayor.<sup>164</sup> Still, more often than not, cities have legislative and executive branches, and differ mostly in the balance they strike between these two powers.

Legislatures’ most powerful tool is normally their control of the budget. Many local government law systems emulate state level governments in this regard. The city council must approve the annual budget proposed by the mayor.<sup>165</sup> However, sometimes the council’s power in this regard is restrained. In London, for example, the Assembly can only reject the budget by a two-thirds majority, and its power to amend the budget is limited.<sup>166</sup>

While their control over the budget empowers city councils, mayors, for their part, are strengthened through their control of the city’s administrative branches. Administrative regulation may often effectively replace legislation, and thus spare the mayor the need to have the council legislate the policies she desires.<sup>167</sup> The mayor is

162. While mostly irrelevant for the purposes of this Article, cities, like states, may also have a third branch of government: a judicial system that adjudicates cases involving legislation adopted by the local legislature.

163. In the United States, many cities follow the council-manager form of government, rather than a mayor model. *E.g.*, Harold Wolman, *Local Government Institutions and Democratic Governance*, in *THEORIES OF URBAN POLITICS* 135, 138–39 (David Judge et al. eds., 1995).

164. Parliament recently released a highly critical review of this anomalous structure. CMTYS. & LOCAL GOV’T COMM., *POST-LEGISLATIVE SCRUTINY OF THE GREATER LONDON AUTHORITY ACT 2007 AND THE LONDON ASSEMBLY*, 2013-14, H.C. 213, at 30–32 (U.K.). But note that the London mayor is also at best a weak executive, as he does not control the boroughs.

165. *E.g.*, Municipalities Ordinance (New Version), 5724-1964, 1 LSI 247, §§ 204–07 (Isr.) (requiring city council approval for the local budget prepared by the mayor).

166. Greater London Authority Act, 1999, c. 29, sch. 6 (Eng.).

167. The issue was recently litigated in New York, where the court held that the mayor could not bypass the council and enact a ban on large sugary drinks through administrative action of the Board of Health. *N.Y. Statewide Coal. of Hispanic*

hence particularly powerful in a system where she alone controls the executive. In a system where administrative officers are accountable solely to the mayor, the council may be left with only the power of the budget to meaningfully impact policy in key fields. That is the case in New York City and Buenos Aires, where the department heads or *ministeros/as* are appointed and removed by the mayor, and the council must content itself with supervising them through control of their budgets.<sup>168</sup> The mayor is weaker in other cities, such as Chicago, which require that the council approve the appointment of at least some of the commissioners heading the city's executive departments, and allow it to remove them.<sup>169</sup> Finally, the mayor is least powerful in cities where she is required to form an executive cabinet, or coalition, that must enjoy majority backing among the council members.<sup>170</sup> This is the system instituted by Israeli law and governing the relationship between Tel Aviv's council and the city hall board.<sup>171</sup> It also characterizes Chinese law governing the relationship between Shanghai's people's congress and its standing committee<sup>172</sup> (but actual

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Chambers of Commerce v. N.Y.C. Dep't of Health and Mental Hygiene, 23 N.Y.3d 681, 697–701 (2014).

168. N.Y.C. CHARTER § 6 (2009) (“The mayor shall appoint the heads of administrations, departments, all commissioners and all other officers not elected by the people, except as otherwise provided by law. The mayor . . . may remove from office any public officer holding office by appointment from a mayor of the city . . .”); Art. 100, CONSTITUCIÓN DE LA CIUDAD AUTÓNOMA DE BUENOS AIRES [CONST. B.A.] (Arg.).

169. *E.g.*, CHI. MUNI. CODE § 2-45-030 (2014) (Commissioner of planning and development); CHI. MUNI. CODE § 2-102-020 (2014) (Commissioner of transportation); CHI. MUNI. CODE § 2-84-040 (2014) (Superintendent of police). In London, the Assembly holds confirmation hearings on several mayoral appointees (including the chair of Transport for London), but the Mayor can overrule any rejection. Greater London Authority Act, 2007, c. 24, § 4 (Eng.). The one exception is the Deputy Mayor for Policing and Crime, whose appointment can be rejected by a two-thirds majority of the Assembly's Police and Crime Committee, thanks to a special law. The Police Reform and Social Responsibility Act, 2011, c. 13, § 20(3)(b) (Eng.).

170. Paradoxically, a council is probably the weakest when the mayor may appoint its members to the executive, but need not enjoy the continued support of council members. In this scenario, a person is often institutionally expected to supervise herself: the same person may be a councilperson and a member of the executive. Reforms have been promoted to alter the current scheme of the Greater London Assembly, which allows for such appointments. CMTYS. & LOCAL GOV'T COMM., *supra* note 157, at 24–29.

171. *See* Tel Aviv-Jaffa, Dep't of Charters & Neighborhoods, City Halls Order (New Edition) (Isr.). The current coalition agreements among the different parties represented in the Tel Aviv city council are available at <http://www.tel-aviv.gov.il/Cityhall/Divisions/Pages/Neighborhoods.aspx?tm=&sm=&side=256>.

172. XIANFA art. 103 (1982) (China).

executive powers lie with the parallel “local people’s government” and mayor, both appointed by the central government).<sup>173</sup>

The mayor’s ability to adopt policies is thus dictated by the institutional design of her powers vis-à-vis those of the legislature in controlling the budget and the executive branch. Her relative standing is also molded by less apparent factors. A mayor is rendered powerful when she can draw on her standing in other, wider political forums. In many American states, the mayor controls appointments to special purpose governments.<sup>174</sup> French law allows, and in practice heavily relies on, the principle of *comul de mandats*—accumulation of offices. Mayors hold one or more elective mandates on upper levels, including the National Assembly, in addition to their mayoral position.<sup>175</sup> Bearing additional offices naturally augments the political clout of mayors, often dubbed *notables locaux* (“the local worthies”). Some even proceed to declare French local governments “local monarchies.”<sup>176</sup> Even without the formal trappings of higher office, a mayor, especially when serving in a major city, can be emboldened by her standing in national politics. Council members are highly unlikely to enjoy any such visibility.<sup>177</sup>

At the same time, while the mayor may be empowered thanks to her standing in arenas located above the local government,

173. *Id.* art. 105.

174. Chicago’s mayor, for example, appoints all members of the Chicago Board of Education. The statute explicitly states that council approval is not necessary. 105 ILL. COMP. STAT. 5/34-3 (2005).

175. The only limits on the ability to accumulate office are found in la loi organique 2000-294 du 5 avril 2000 relative aux incompatibilités entre mandats électoraux [Organic Law 2000-294 of April 5, 2000 on Incompatibilities between Electoral Mandates], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Apr. 6, 2000 (dealing with members of the National Assmebly), and la loi 2000-295 du 5 avril 2000 relative à la limitation du cumul des mandats électoraux et des fonctions électives et à leurs conditions d'exercice [Law 2000-295 of Apr. 5, 2000 of the Restriction of Accumulated Electoral Mandates and Elective Offices and their Conditions of Practice], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Apr. 6 (dealing with members of the European Parliament, local elected officials, and local executives).

176. See Albert Mabileau, *Les genies invisibles du local. Faux-semblants et dynamiques de la décentralisation* [Invisible Local Genies. Pretenses and Dynamics of Decentralization], 47 REVUE FRANÇAISE DE SCIENCE POLITIQUE [FRENCH POLITICAL SCIENCE REVIEW] 340, 353 (1997)(Fr.); Yves Mény, *La République des fiels* [The Republic of Fiels], 60 POUVOIRS [POWERS] 17 (1992) (Fr.).

177. See Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 256976 (2006) (arguing that local institutional reforms are not enough to strengthen American mayors; it is important that avenues be opened for mayors to participate in state and federal politics).

councilmembers may augment their status thanks to their standing in arenas located below it. When each council member is elected to represent a specific district within the city, she may enjoy great influence on all decisions affecting that district, due to her ability to furnish, when and to whom necessary, local votes.

For the internal decision-making processes of the city, a determinative factor is often the balance of powers between the mayor and the council. This balance is shaped mostly by three factors. The first two are dictated by institutional design: the extent of the council's power to control the budget, and the extent of the mayor's power to control administrative authorities. The third variable is both actors' relative political power, which is often determined by the the relevant local actor's standing in other forums.

### E. Summary

As the sources of power reinforcing the institutional standing of the local executive or legislature—from above or from below—just analyzed highlight, the four different axes that mold cities' powers should not be viewed as independent from each other. This Part thoroughly reviewed four defining features of a local government law system: The basis for the local government's authority in state law (placed on a continuum from the weakest to the strongest); the manner in which sub-state power is fragmented among different local governments (setting infrastructure for cooperation among cities and establishing regional bodies and special purpose governments); the willingness to recognize the power of entities smaller than the local (in differing degrees of formality and directness); and the internal power structure within city government (setting the relative power of the mayor in her interactions with the council). Each of these four key elements of a local government law system makes certain local policies, but not others, possible. However, these four axes of difference do not exist in a vacuum: they interact with each other. Their joint operation establishes the foundation for any local government law system.

### III. BIKE SHARE PLANS IMPLEMENTED BY DIVERSE LOCAL GOVERNMENT LAW SYSTEMS

Local government law systems differ in many ways. Some of the most salient differences were detected in the preceding Part, and organized into four particularly impactful axes. Yet how do these differences matter with respect to actual policy? How does a local government legal regime affect real world action? How does

comparative local government law in books translate into comparative local government law in action?<sup>178</sup>

Answering these quandaries is a central task of this Article, which this Part engages. It goes back to the bike share plans—introduced in Part I—and examines the way in which the legal regimes of major cities—reviewed in Part II—impacted their adoption and form. Three elements of a bike share plan that are, almost undeniably, key for its operation will be discussed: the fashion of the plan’s adoption, the plan’s funding, and the locations picked for the plan’s stations. The analysis of these three components demonstrates that while the role and definition of a bike share plan is straight-forward, and the overall mode of operation of plans adopted following Paris’s Vélib’ is similar in its outline—as seen in Part I—the plans differ greatly in some of their most important details, and these differences are attributable to variations in local government law regimes.

#### A. Adoption of the Bike Share Plan

The importance of the mode of a plan’s adoption needs no accounting for. The first task in promoting a policy—a local policy or any other policy—is to identify the actor who may legally enact it. The specific identity of that actor affects not only the likelihood of the policy’s eventual adoption, but also the characteristics of the policy once in force. The ability to integrate the policy with other existing policies and to adjust rules that may facilitate or hamper its success hinges on the adopting actor’s power to control these other policies and rules.

While all the cities under consideration adopted a bike share plan, they vary widely in the identity of the authority that was responsible for that move. This variation is a function of the four types of differences between local government law regimes detected in Part II. This section reviews in order the effect each of the four axes has had on plans’ adoption.

First, the specific location of the local government law regime on the empowerment continuum identified in Part II.A prescribed the expanse of the legal authority to adopt and implement a plan. In the city that is fully the creature of the state, Mexico City, the bike share plan was a policy authorized by the federal government.<sup>179</sup>

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178. See generally Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12 (1910).

179. The plan was implemented by the Federal District’s Ministry of the Environment. See SECRETARÍA DEL MEDIO AMBIENTE, *supra* note 64, at 26–41.



Elsewhere, where cities enjoy some legal independence, challenges still presented themselves. In cities operating under the slightly less weakening regime of ultra-vires (or Dillon's Rule) city governments could not simply assume the authority to enact the program. Tel Aviv sought and received approval from the national Minister of the Interior.<sup>180</sup> In Montreal, there were doubts whether the city enjoyed the power to adopt the plan in the absence of a specific provincial enabling act. The city proceeded to adopt the Bixi plan, nonetheless, relying on its authorization to act in the field of local transportation and to manage its public property.<sup>181</sup> The City's Auditor General, when asked to review the move, agreed that those provisions provided the necessary authority, but only as long as the bike share service was not offered for commercial purposes.<sup>182</sup> Thus the city was barred, for example, from directly exporting the system to other cities and countries.<sup>183</sup>

Cities located closer than Tel Aviv and Montreal to the empowerment pole on the city-state relationship continuum did not have to contend with questions respecting the local authorization to adopt the plan. Such cities' relative freedom to adopt bike share plans regardless of their general patterns of empowerment can probably be written off as owing to the low stakes involved in these policies, at least in relative terms.<sup>184</sup> However, even when cities were empowered to adopt bike share plans, secondary or incidental authority problems sometimes appeared. One recurring example has been road safety rules requiring bicycle riders to wear helmets.<sup>185</sup>

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180. Tel Aviv Finance Committee, Decision 303, Protocols No. 17/10, at 11 (Jan. 25, 2010) (Isr.).

181. Montreal Exec. Comm. Res. CE07 1555 (Can. 2007).

182. BUREAU DU VÉRIFICATEUR GÉNÉRAL, SPECIAL REPORT OF THE AUDITOR GENERAL OF THE VILLE DE MONTRÉAL TO THE CITY COUNCIL AND TO THE URBAN AGGLOMERATION COUNCIL 67, 76–77 (2010).

183. *Id.* at 80–81.

184. For example, Tel Aviv encountered little trouble in having its plan approved by the Minister of the Interior. As scholars have noted, local by-laws are rejected by the Israeli Minister of the Interior, who exercises the legal duty to approve them, only when they touch upon “sensitive political matters”—mostly issues relating to religious affairs, such as the sale of non-Kosher meat or the opening of businesses on the Sabbath. Blank, *supra* note 88, at 262.

185. A recently released study found that with the adoption of a bike share plan, head injuries' portion of the overall number of bike riding related injuries rises. Janessa M. Graves et al., *Public Bicycle Share Programs and Head Injuries*, AM. J. PUB. HEALTH Aug. 2014, at e106. However, since the research also found that the overall number of injuries decreases in cities with bike share plans, the hastily made popular argument that bike share plans are related to higher rates of head injuries is misleading.

Such a requirement renders bike shares impractical,<sup>186</sup> and it has been cited as the cause for the low ridership afflicting the Melbourne plan and its ensuing failure.<sup>187</sup> Thus, operators and cities seek to prevent helmet rules from being applied.<sup>188</sup> Exemptions from the helmet rule are easily enacted when the authority implementing the plan also controls safety rules—as was the case with the federal government in Mexico City.<sup>189</sup> However, for cities whose mode of empowerment includes the power to adopt a bike share plan but not to enact road safety rules, the challenge presented is very real. Vancouver’s efforts to adopt a bike-share plan have been thwarted for years by British Columbia’s laws requiring all cyclists to wear helmets.<sup>190</sup> Boston was forced to introduce the first helmet dispensary since Massachusetts law mandates that “[a] person, firm or corporation engaged in the business of renting bicycles shall make available a bicycle helmet . . . to each person renting a bicycle.”<sup>191</sup> In Tel Aviv, the

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186. See Piet de Jong, *The Health Impact of Mandatory Bicycle Helmet Laws*, RISK ANALYSIS 782, 785 (2012). A feasibility study of a bike share plan in the city of Seattle, conducted by the University of Washington, highlighted this problem. See DEP’T OF URBAN DESIGN & PLANNING, UNIV. OF WASH., SEATTLE BICYCLE SHARE FEASIBILITY STUDY (2011).

187. Benjamin Preiss, *Bike Share Scheme Disappointing*, AGE (May 31, 2011), <http://www.theage.com.au/victoria/bike-share-scheme-disappointing-20110531-1fdto.html>. The relevant bike helmet law is a state law adopted by Victoria. See Tristin Hopper, *Frustrated by B.C. safety laws, Vancouver prepares to roll out helmet vending machines at bike-share stations*, NAT’L POST, July 25, 2013, <http://news.nationalpost.com/2013/07/25/vancouver-to-launch-helmet-vending-machines-along-with-new-bike-share-system-to-ensure-citys-riders-are-protected>. In late 2014 Seattle became the first city to run a bike share plan allowing each renter to also rent a helmet (for \$2). Seattle was forced to do so since it operated in King County, which has a mandatory helmet law. For information on Seattle’s system, Pronto!, see *How it Works*, PRONTO!, <http://www.prontocycleshare.com/how-it-works>.

188. The operator of Capital Bikeshare in D.C. was successful in making the argument that adhering to the rule would require it to violate the district’s hygiene rules due to the need to share helmets. See INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 79.

189. The helmet law was repealed for reasons of social equity, on the ground that not everyone could afford a helmet and disposable helmets were an environmental hazard. Ana Peñalosa, *Bike-Sharing Goes Viral: Mexico City, Mexico*, SUSTAINABLE TRANSPORT MAG., Winter 2009, at 29. In June 2014, Dallas eliminated its requirement that adult bikers wear helmets in order to jump start its bike share plan planned for later in the year. See *Dallas Eliminates Helmet Rule for Adult Bike Riders*, DALLAS NEWS (June 11, 2014), <http://www.myfoxdfw.com/story/25754861/dallas-eliminates-helmet-rule-for-adult-bike-riders>.

190. Jon Marcus, *One City Finally Solved Bike Sharing’s Big Safety Problem*, TIME, Nov. 14, 2013, available at <http://nation.time.com/2013/11/14/one-city-finally-solved-bike-sharing-big-safety-problem/>.

191. MASS. GEN. LAWS ch. 85, § 11D (2009).

mayor implored council members to pressure members of the national parliament to change the relevant safety rules.<sup>192</sup> Only after parliament obliged and adjusted the Israeli helmet statute did the city's plan become viable.<sup>193</sup>

By determining whether state permission is a condition for the plan's adoption or for regulatory adjustments necessary for its viability, the patterns of local empowerment clearly affect the manner by which different cities introduce a bike-share plan. The other three legal axes along which jurisdictions vary can also carry a major effect. Patterns of local fragmentation, the second axis surveyed in Part II.B, were responsible for the fact that some of the bike share plans were not adopted, or implemented, by traditional city governments. Rather, the leading role was sometimes assumed by local bodies falling into one of the other categories introduced in Part II.B.

In Washington, D.C., the plan was adopted as an inter-local contract facilitated by an inter-local coordinating body. Capital Bikeshare began when the District's Department of Transportation and Arlington County, Virginia, expressed their mutual desire for a bike-share. The two local governments reviewed bike share proposals, and then selected an operator in 2010.<sup>194</sup> A few years later, other local governments—Alexandria, Virginia, and then Montgomery County, Maryland—chose to join Capital Bikeshare.<sup>195</sup> Actual implementation of the plan, and the securing of funding, was carried out through the National Capital Region Transportation Planning Board,<sup>196</sup> a subdivision of the Metropolitan Washington Council of Governments, the area's inter-local coordinating body, discussed in Part II.B.

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192. Minutes of City of Tel Aviv Council meeting, at 56 (Nov. 1, 2010). On August 3, 2011, Parliament exempted from its helmet law adult riders in urban roads. Transportation Order, § 65C(a) (Isr.). Even before that, the law was not enforced, since no regulations to implement it were adopted by the ministry. Sahar Hazkoren, Rochvim Al Ophanaim? Kvar Lo Tzarich Casdah Ba'yir [*Riding a Bicycle? No Longer Need a Helmet in the City*], YNET (Aug. 8, 2011), <http://www.ynet.co.il/articles/0,7340,L-4104316,00.html> (Isr.).

193. Since the original contract with the operator was signed before the national law was amended, the city promised to indemnify the operator for any judgment in a lawsuit brought as a result of the use of bikes without a helmet. Tel Aviv Finance Committee, *supra* note 180, at 10.

194. *About Capital Bikeshare*, CAPITAL BIKESHARE <https://www.capitalbikeshare.com/about> (last visited Sept. 22, 2014).

195. *Id.*

196. NAT'L CAPITAL REGION TRANSP. PLANNING BD., BICYCLE AND PEDESTRIAN PLAN FOR THE NATIONAL CAPITAL REGION (2010), *available at* <http://www.mwcog.org/uploads/pub-documents/o15fW1g20101110111248.pdf>; *About Capital Bikeshare*, *supra* note 194.

As in Washington, D.C., in Montreal the pattern of local fragmentation engendered a plan promoted not by the city itself. However, since Montreal's pattern of local fragmentation is distinct from that of Washington, D.C., and characterized by special purpose entities (the third form of fragmentation reviewed in Part II.B)—Montreal employed a different non-city mechanism for adopting and implementing its bike-share plan. Montreal mandated that the plan be developed and implemented by a metropolitan organization that manages the area's paid parking system: *Société en commandite Stationnement de Montréal*.<sup>197</sup> The latter is an agent of the Board of Trade of Metropolitan Montreal, a private consortium of businesses set to promote local growth. The city picked this technique in order to rely on the expertise of the organization that had developed and was operating computer-based parking meters. In addition, the city could thereby insulate its own coffers from the costs of the project. The reliance on a non-city actor raised some legal concerns: the city's Auditor General reckoned that this was a prohibited delegation of government power.<sup>198</sup> Later agreements between the city and *Société en commandite Stationnement de Montréal* remedied this original deficiency by assuring public control.<sup>199</sup>

The process leading to the adoption of Montreal's Bixi is not only an example of the effect of the jurisdiction's pattern of local fragmentation, but also of the potential influence of the jurisdiction's pattern of micro-localism (Part II's third axis of legal difference). Because of the formal micro-localism embedded into the city's institutional architecture, the city government was not sure whether it held the power to adopt a plan, fearing that the authority to do so lied with the individual *arrondissements*. The city sought the advice of its general counsel, who dispelled the concerns and cleared the plan for adoption on the local, rather than micro-local, level.<sup>200</sup>

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197. Montreal Exec. Comm. Res. CE07 1555 (Can. 2007).

198. BUREAU DU VÉRIFICATEUR GÉNÉRAL, *supra* note 182, at 77–80.

199. *Id.*

200. Counsel explained, in his opinion of July 20, 2007:

The purpose of implementing a public self-serve bicycle system is to 'enhance citizens' mobility and reduce the modal share of the automobile.' In its 2007 transportation plan, the Ville de Montréal recognizes the bike as 'an essential component of the current transportation system and intends to break new ground with innovative measures to further encourage active transportation' . . . .

We are therefore of the opinion that a public self-serve bicycle system represents much more than a recreational sport in the meaning of Article 141 of the Charter of the Ville de Montréal (R.S.Q., chapter C-11.4), which

Conversely, in Shanghai the bike plan was—or rather, the bike plans were—adopted by formal micro-local bodies.<sup>201</sup> Instead of pursuing adoption on the city level, where political hurdles might have been more challenging, the local firm interested in operating bike share plans (Forever Bicycle) persuaded some of the city's distinct districts to adopt bike share plans. In 2009, Minhang was the first district to adopt such a program. It has since been followed by Pudong, Xuhui, and Baoshan.<sup>202</sup>

Finally, when a city, rather than another local or micro-local body, adopted the plan, the fourth axis of difference—respecting the patterns of separation of powers within a city—inevitably affected the manner of enactment. In many cities—for example, Chicago, Tel Aviv, and Buenos Aires—the program was adopted by the city council.<sup>203</sup> However, in others, where the mayor is more powerful, the executive took the lead. In Montreal, for example, the plan was enacted by order of the city's executive,<sup>204</sup> but the latter did claim to rely on the city's transportation program, adopted by the legislature a few years earlier.<sup>205</sup> New York represents the most extreme example of executive leadership: Citi Bike was adopted and implemented by the mayor and the Department of Transportation which he controls, while city council had to content itself with briefings.<sup>206</sup>

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stipulates that the organization of recreational sports and sociocultural activities are under the jurisdiction of the borough councils.

As there is no specific mention in the Charter as to who has jurisdiction relative to such transportation activities (public self-serve bicycle system), we must conclude that the City Council has jurisdiction, in accordance with Article 84 of the Charter.

*Id.* at 81.

201. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 92.

202. Baoshan is the only one of these districts that did not hire Forever Bicycle as the operator. See Rebecca Kanthor, *Cycle City: Shanghai Ramps up Its Bike-Share Schemes*, CNN (Apr. 22, 2012), <http://travel.cnn.com/shanghai/play/shanghai-gets-its-ride-shanghai-rideshare-307485>.

203. Regulatory Law No. 2.586, Dec. 11, 2008 (Arg.); Tel Aviv City Council Minutes, at 62 (Feb. 8, 2010) (Isr.) (reporting that the Mayor asked the council to approve the budget committee's decision to adopt the plan); *Chicago Bike Share Plan Approved by City Council*, CITY CHI. (Apr. 20, 2012), [http://www.cityofchicago.org/city/en/depts/cdot/provdrs/bike/news/2012/apr/chicago\\_bike\\_shareplanapprovedbycitycouncil.html](http://www.cityofchicago.org/city/en/depts/cdot/provdrs/bike/news/2012/apr/chicago_bike_shareplanapprovedbycitycouncil.html).

204. Montreal Exec. Comm. Res. CE07 1555 (Can. 2007).

205. See VILLE DE MONTREAL, 2007 TRANSPORTATION PLAN, available at [http://ville.montreal.qc.ca/pls/portal/docs/PAGE/PES\\_PUBLICATIONS\\_EN/PUBLICATIONS/2007\\_TRANSPORTATION\\_PLAN.PDF](http://ville.montreal.qc.ca/pls/portal/docs/PAGE/PES_PUBLICATIONS_EN/PUBLICATIONS/2007_TRANSPORTATION_PLAN.PDF).

206. See N.Y.C. DEP'T OF TRANSP., NYC BIKE SHARE: DESIGNED BY NEW YORKERS 7 (2013).

As this section illustrated, while all the cities this Article reviews surpassed the initial hurdle of adopting a bike-share plan, they differed wildly in the process they had to go through in order to reach this result, due to the legal differences between them detected in Part II. A few cities had to allay concerns about their authority to adopt the plan, and some encountered more difficulty than others in making necessary adjustments to other general laws to facilitate the plan's viability. Some cities had the plan adopted or implemented by non-city local actors—an inter-local cooperative body or a special purpose body. Some saw the plan adopted by micro-local bodies. And while many required local legislative approval for the plan, some relied on unilateral executive action. These early, and seemingly procedural, variations later had far-reaching effects on key elements of the adopted plan. Similarly, the impact of underlying differences between local government law systems did not conclude at the time of a plan's adoption. We will see those later effects and impacts now.

### B. Funding of the Bike Share Plan

A crucial element of a bike-share plan is the manner in which it is funded. The mode of funding influences many, if not all, of the plan's attributes: the physical infrastructure to be used (i.e., number and quality of bikes and stations), the pricing scheme for users, the technological sophistication of the system (e.g., the technology used to track the location and number of bikes; anti-theft devices), maintenance standards and plan flexibility (the shifting of bikes between stations), and more. In the past year insufficient funding for the local bike share plan has surfaced as a hotly debated problem in many major cities. New York City's plan was deemed "successful" but financially "wobbly";<sup>207</sup> the sponsor of London's program

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207. Matt Flegenheimer, *Citi Bike System Successful, but Wobbly from the Start*, N.Y. TIMES, Mar. 26, 2014, <http://www.nytimes.com/2014/03/27/nyregion/as-citi-bike-approaches-anniversary-worries-abound.html>. The system has been a success in terms of its acceptance by users: within nine months of its adoption (counting an exceptionally harsh winter) it topped seven million trips, and counted more than 100,000 buyers of annual membership—surpassing in those numbers programs adopted elsewhere. Emily Badger, *Why DC's Bikeshare is Flourishing While New York's is Financially Struggling*, WASH. POST, Apr. 1, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/04/01/why-docs-bikeshare-is-flourishing-while-new-york-is-financially-struggling/>. Yet financially, it has struggled badly. In March 2014, the program's general manager resigned. Annie Karni, *General Manager of City's Bike Share Program Resigns*, N.Y. DAILY NEWS (Mar. 26, 2014, 3:22 PM), <http://www.nydailynews.com/blogs/dailypolitics/general-manager-city-bike-share-program-resigns-blog-entry-1.1735642>. Reports have emerged that the plan is in need of tens of millions of dollars. Laura Kusisto et al.,

announced its withdrawal;<sup>208</sup> Toronto was forced to take over its bike-share plan after the operator could not repay its loans;<sup>209</sup> Montreal's operator, already bailed out by the city in 2011, went bankrupt;<sup>210</sup> and in Barcelona (as in other Spanish cities)<sup>211</sup> the government is no longer capable of adequately supporting the system.<sup>212</sup> As commentators and experts have noted, many of these problems can be traced to mistakes committed early on, when the funding scheme was picked for the program.<sup>213</sup> As this section shows, in most cities that pick was a function of the legal structure of the relevant jurisdiction, as reviewed in Part II.

Since bike share plans are not expected to be self-funding (i.e., they can very rarely subsist on user fees alone),<sup>214</sup> a source of funding for the installation of the plan's infrastructure and for its maintenance is needed. The source can be private, public, or a combination thereof. When private funds are the only resource utilized, as in New York City, the system is operated by a licensee that relies on revenues from corporate sponsorship and advertising to supplement those derived from user fees (in New York, for example, Citibank bought the

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*Citi Bike, Needing Millions of Dollars, Looks for Help*, WALL ST. J., Mar. 20, 2013, <http://www.wsj.com/articles/SB10001424052702304256404579451770072629130>.

208. See Sean Farrell, *London Looking for a New Sponsor to Stump Up £37.5m for Boris Bikes*, GUARDIAN, June 2, 2014, <http://www.theguardian.com/uk-news/2014/jun/02/london-new-sponsor-boris-bikes-tfl-barclays-cycle-hire>.

209. Oliver Moore, *Toronto to Take over Struggling Bixi Bike-Share Program*, GLOBE & MAIL, Dec. 4, 2013, <http://www.theglobeandmail.com/news/toronto/toronto-to-take-over-struggling-bixi-bike-sharing-program/article15761883/>; *Bixi Toronto Under New Management, Now Called "Bike Share Toronto"*, MARKET WIRED (Mar. 31, 2014), <http://www.marketwired.com/press-release/bixi-toronto-under-new-management-now-called-bike-share-toronto-1893948.htm>.

210. See Nick Summers, *Bike Sharing Crashes in Canada*, BLOOMBERG BUSINESSWEEK (Jan. 21, 2014), <http://www.businessweek.com/articles/2014-01-21/bike-sharing-crashes-in-canada>.

211. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 125.

212. Barcelona had to resort to increasing the pricing for users, generating local outcry. See Camilo Baquero, *El Ayuntamiento insta a comprar bici en lugar de usar el Bicing [The City Urges Buying Bikes Instead of Using the Bike Share Program]*, EL PAIS, Oct. 19, 2012, [http://ccaa.elpais.com/ccaa/2012/10/18/catalunya/1350587436\\_402030.html](http://ccaa.elpais.com/ccaa/2012/10/18/catalunya/1350587436_402030.html) (Spain).

213. *E.g.*, Badger, *supra* note 207; Gabe Klein, *What Is the Larger "Share" in Bikeshare?*, URB. LAND MAG. (Apr. 4, 2014), <http://urbanland.uli.org/sustainability/larger-share-bikeshare/>. Klein was head of the Washington, D.C., and then Chicago, transportation departments, when those cities adopted their bike-share plans. Klein, *supra*.

214. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 49; Matthew Christensen & Susan Shaheen, *Can Bikeshare Systems Ever Stand on Their Own Two Wheels?*, CONVERSATION (Feb. 17, 2014), <http://theconversation.com/can-bikeshare-systems-ever-stand-on-their-own-two-wheels-22981>. Only the D.C. system comes close.

system's naming rights).<sup>215</sup> If public monies are drawn on, as in Buenos Aires or Tel Aviv, the local government operating the system channels funds into the plan as necessary to fill gaps between the system's costs and the revenues generated from user fees (in Buenos Aires residents do not pay user fees at all).<sup>216</sup> A mixed private-public funding scheme can take several forms. The most straightforward mixed scheme simply combines the private funding scheme with the public one. Thus, London's bike share plan is funded mostly by funds from the city's transportation department, Transport for London (TfL), but also by sponsorship fees paid by Barclays Bank.<sup>217</sup>

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215. The for-profit plan is a joint venture between New York City and NYC Bike Share, LLC, a wholly-own subsidiary of Alta Bicycle Share, Inc. Bike Share, LLC is responsible for all operating costs, and it funded the startup costs through the sponsorship agreement it entered with Citigroup and a loan it secured from Goldman Sachs. Kusisto, *supra* note 207; See Jennifer Peltz, *Citi Bike Share Program Launches with 6,000 Bikes Across New York City*, HUFFINGTON POST (May 27, 2013), [http://www.huffingtonpost.com/2013/05/27/citi-bike-share-program-launches\\_n\\_3342202.html](http://www.huffingtonpost.com/2013/05/27/citi-bike-share-program-launches_n_3342202.html). According to the agreement, profits (if any) are to be shared 50/50 between NYC Bike Share, LLC and the City.

216. In Tel Aviv, the city contracted with an operator who is paid a fixed annual fee by the city, and additional compensation if the plan does not generate certain pre-determined revenues levels. Tel Aviv Finance Committee, *supra* note 180, at 8–9 (minor amendments to the contract were later made in Tel Aviv Finance Committee, Decision 362, Minutes No. 19/10, at 1–2 (Mar. 9, 2010) (Isr.). Of course the city can in turn sell advertisement rights to private entities. In Buenos Aires, for example, Citi gave a \$40 million grant to the city for startup in exchange for advertising at the stations.

217. The overall initial cost of the system was expected to be £79 million. Barclays made a deal with TfL in 2010 to provide a substantial investment—£25 million over five years (or £5 million per year)—in exchange for branding and naming rights for the system in that period. Barclays recently decided not to continue its support once its initial contract with TfL expires (in summer 2015), so TfL is now looking for a new sponsor to pay at least £5.5 million over seven years for the right to rebrand the system. On top of the implementation cost, the annual operating cost of Barclays Cycle Hire (as of 2013) is £24 million, £7.5 million of which has been covered by revenues from fares and membership fees and £5.4 million of which has been covered by private sponsors like Barclays Bank. Otherwise, the rest of the operating cost as well as the initial cost of the system has been covered by TfL funds. See LONDON ASSEMBLY TRANSPORT COMM., PEDAL POWER: THE CYCLE HIRE SCHEME AND CYCLE SUPERHIGHWAYS 12–20, 38–40 (2010), *available at* <http://www.london.gov.uk/sites/default/files/FINAL%20REPORT.pdf>; LONDON CYCLE HIRE SCHEME, LONDON CYCLE SUPERHIGHWAYS, NAMING RIGHTS AND SPONSORSHIP AGREEMENT (May 21, 2010), <http://tfl.gov.uk/cdn/static/cms/documents/barclays-cycle-hire-and-superhighways-sponsorship-agreement.pdf>; TRANSPORT FOR LONDON, BARCLAYS CYCLE HIRE FREQUENTLY REQUESTED STATISTICS 5 (2014), *available at* <https://www.tfl.gov.uk/cdn/static/cms/documents/bch-transparency-end-september-2014.pdf>; TRANSPORT FOR LONDON, WRITTEN SUBMISSIONS RECEIVED FOR THE TRANSPORT COMMITTEE'S REVIEW OF THE CYCLE HIRE SCHEME AND CYCLE SUPERHIGHWAYS 20 (2010), *available at* <http://www.london.gov.uk/sites/default/files/Full%20Doc.pdf>.



Another mixed scheme, first adopted by Paris for its groundbreaking system (and accordingly used as template for other cities, such as Mexico City), involves an exchange between the city and the system's private operator. The latter establishes and operates the system at its expense, and in return the city grants it the unrelated rights to operate billboards the city owns.<sup>218</sup>

A myriad of motives guides a city's choice between these funding options. The legal framework under which the city operates is central among them, although often its effect is not apparent. Based on the experience of the cities reviewed in this Article, two of the four major characteristics of a local government law system, detected in Part II, impact the likelihood that a funding scheme counting a meaningful public component will be picked: patterns of local empowerment (the first axis of difference, reviewed in Part II.A) and patterns of local separation of powers (the fourth axis of difference, reviewed in Part II.D).

Patterns of local empowerment within the relevant jurisdiction have allowed some cities, but not others, to rely on public funding for which they are not responsible—i.e., grants from a higher level of government. In such cases, and for obvious political reasons, cities have been much more willing to expend public monies (which are not their own, after all) on the bike share plan. Thus, several cities in the United States—such as Chicago and Washington, D.C.—relied, in establishing their programs, on public funding through federal grants.<sup>219</sup> The public component in London's mixed funding scheme

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218. Vélib' was established through a ten year contract between the city of Paris and *la société des mobiliers urbains pour la publicité et l'information*, a subsidiary of JCDecaux. John Ward Anderson, *Paris Embraces Plan to Become City of Bikes*, WASH. POST, Mar. 24, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/23/AR2007032301753.html>. JCDecaux paid the start-up costs of \$115 million and operates the bike share program. *Id.* The city receives all revenue from the program, as well as a fee of about \$4.3 million per year. *Id.* In exchange, JCDecaux was awarded control of (and all income from) 1628 city-owned billboards. *Id.* The arrangement is very lucrative for JCDecaux. Estimates indicate that it generates revenues of up to \$80 million annually from the advertising contract. INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 129.

Mexico City adopted a similar model. The city shared the startup costs with Clear Channel Outdoor Mexico (CCOM) (the government contributed 75 million pesos: \$5.7 million). CCOM keeps the revenues it collects from the users and pays the city a fee of 250,000 pesos (about \$20,000) per month (i.e., the private firm bears all the risks). In exchange, CCOM received an Administrative Temporary Revocable Permit to operate 150 outdoor advertising facilities in Mexico City, called marquees, which are the pedestals with clocks located in main avenues. Contract No. JUDAA/C-087/2009.

219. The startup costs of both programs were covered by the federal congestion mitigation and air quality improvement program. 23 U.S.C. § 149 (2012). Both

is derived from the budget of the city's own transit department—TfL—but like other local authorities in England, much of TfL's funding originates with the central government.<sup>220</sup> Mexico City and Buenos Aires relied (the former partially, the latter wholly) on local government funds, but in both cases, in light of those cities' pattern of local empowerment, local funds are in fact state—or in the Mexican case, federal—funds.<sup>221</sup>

Cities' abhorrence of using their own local funds is revealed by the behavior of cities that, due to their patterns of legal empowerment, were unable to tap state or federal level funding, yet still desired to employ public funding. Such cities often refrained from forthrightly utilizing local funds. As mentioned, Paris preferred to transfer property to the system's operator, rather than funds.<sup>222</sup> Montreal, instead of directly funding the plan, guaranteed loans obtained by the special authority operating the system.<sup>223</sup>

The enlistment of public funding for the bike share plan is, to some extent, a function of the patterns of local empowerment characteristic of the relevant jurisdiction and the resulting availability of state or federal (rather than local) resources. The likelihood that public funds be poured into the project is also impacted by the patterns of local separation of powers, as reviewed in Part II.D. The most important factor in this regard is the standing of the mayor vis-à-vis the local legislature, and the inevitable desire of mayors to evade legislative supervision or political give-and-take with council members. The interaction of this constant political desire and the variable legal structure generates three distinct scenarios.

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systems then rely, to a limited extent, on local sources of funding for shortfall in the operating budget. For example, in Chicago (which received \$18 million in federal funding), according to the contract reached with the operator of the system, after the first year of operation (during which the city is entitled to 90% of profits and responsible for 90% of losses) the operator will be responsible for any annual operating loss, up to a cap negotiated yearly with the city. The city funded its part of the plan using Tax Increment Finance funds (to the tune of \$5.5 million). *See* AUTH. OF THE CITY COUNCIL OF THE CITY OF CHI., *JOURNAL OF THE PROCEEDINGS OF THE CITY COUNCIL OF THE CITY OF CHICAGO ILLINOIS* 23783, 23785–86 (Apr. 18, 2012).

220. *See How We Are Funded*, TRANSPORT FOR LONDON, <http://www.tfl.gov.uk/corporate/about-tfl/how-we-work/how-we-are-funded> (last visited Oct. 1, 2014).

221. Mexico City's own legislative body does not control local funds anyway. *Constitución Política de los Estados Unidos Mexicanos* [C.P.], *as amended*, art. 122, *Diario Oficial de la Federación* [DO], 10 de Febrero de 2014 (Mex.)

222. *See* Anderson, *supra* note 218 and accompanying text.

223. *See* Montreal City Council Res. CM10 0944 (Can. 2010). Even for this act, given the jurisdiction's restraining patterns of local empowerment, the city had to seek approval from a provincial minister. BUREAU DU VÉRIFICATEUR GÉNÉRAL, *supra* note 182.

First, in cities where the power of the legislature is confined mostly to control of the budget, the mayor can act unilaterally as long as no public funds are conscripted. Hence in New York, where the mayor alone controls the executive branch, Mayor Michael Bloomberg was able to avoid a council debate over the plan once he decided to forsake public funding.<sup>224</sup> The plan was then adopted by the city's department of transportation, accountable solely to the mayor.<sup>225</sup>

Second, in cities where the legislature does not command the budget, the executive can achieve sole control over the plan even when turning to the public coffers. London's plan is closely associated, in the eyes of the public and the media, with Mayor Boris Johnson (though the plan was originally conceived by his predecessor, and a strong character in his own right, Ken Livingston).<sup>226</sup> And indeed, "Boris Bikes," as they are affectionately known,<sup>227</sup> were introduced by the city's department of transportation, TfL, which the mayor controls.<sup>228</sup> Yet the Mayor did not shy away from securing some public funding for his personal project. Unlike his New York counterpart, London's mayor dominates the budgetary process (recall that the legislature can only reject the annual budget suggested by the mayor by a two thirds majority),<sup>229</sup> and consequently the reliance on public funds did not jeopardize the mayor's complete control of the bike share plan.

Finally, in cities where the legislature's power extends beyond the budgetary process and into the management of the executive

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224. See INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 100–01; Christensen & Shaheen, *supra* note 214.

225. See Matt Flegenheimer, *For Bloomberg and Bike-Sharing Program, the Big Moment Arrives*, N.Y. TIMES, May 26, 2013, <http://www.nytimes.com/2013/05/27/nyregion/on-eve-of-bike-sharing-debut-watching-for-a-fiasco-or-a-success.html>.

226. See Hugh Muir, *Revealed: How the Cycling Mayor Re-Wrote History for Paxo's Last Interview*, GUARDIAN, June 19, 2014, <http://www.theguardian.com/politics/2014/jun/19/hugh-muir-diary-boris-bikes-paxman>.

227. See Owen Duffy, *Glasgow Follows London's Boris Bikes by Launching Public Bike Rental Scheme*, GUARDIAN, June 24, 2014, <http://www.theguardian.com/uk-news/scotland-blog/2014/jun/24/glasgow-bike-rental-scheme>; *Boris Bikes 'Good for Health of Users', Study Says*, BBC (Feb. 14, 2014), <http://www.bbc.com/news/health-26171326>.

228. See Agreement Relating to provision of services for the London Cycle Hire Scheme, between Transport Trading Limited and Serco Limited (2009), *available at* <http://www.tfl.gov.uk/cdn/static/cms/documents/london-cycle-hire-scheme-agreement-redacted-version.pdf>.

229. See Greater London Authority Act, 1999, c. 29, sch. 6 (Eng.). In New York City, the council must approve the budget and it also has the power to make amendments to it. *Budget Process*, N.Y.C. COUNCIL, <http://council.nyc.gov/html/about/budget.shtml> (last visited Oct. 12, 2014).

agencies, the mayor cannot dominate the bike share plan even if public funds are renounced. Hence the mayor is not incentivized to forego them. The result is that an institutionally weakened mayoralty can lead to the use of public funds. Thus in Tel Aviv, where the council controls not only the budget but also the administrative agencies,<sup>230</sup> and where therefore the mayor could not have dominated the process even if public funds were not used, there was no reason to forsake them.

These three distinct experiences demonstrate that public funds are less likely to be used when their introduction into the program will interfere with the mayor's effort to monopolize the decision-making processes respecting the plan. Throughout the world, bike share plans have been closely associated with individual, strong-willed, mayors.<sup>231</sup> Such mayors' effectiveness and stranglehold on policy-making is inevitably conditioned on their legal relationship with local legislatures. Thus along with the pattern of local empowerment which may or may not render non-local public funds accessible, local separation of powers is a local legal filter through which general, and natural, political urges must pass before generating a funding policy.

### C. Placement of the Bike Share's Docking Stations

Docking stations are the backbone of a bike share plan. They determine the availability of bikes and the plan's reach. Washington, D.C.'s first experiment with bike sharing failed, allegedly because of the limited distribution of stations (which did not extend beyond the city's boundaries).<sup>232</sup> The location of the stations determines who will be the primary users of the system: commuters or tourists, affluent

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230. See Tel Aviv Finance Committee, *supra* note 180.

231. In addition to the plans in London and New York, Paris's plan is also accredited to the city's dominant mayor at the time of its acceptance, Bertrand Delanoë. See *Velib à Paris, un succès politique pour Delanoë*, POLITIQUE.NET (Aug. 30, 2007), <http://www.politique.net/2007083002-le-succes-de-velib-a-paris.htm> (Fr.). Tel Aviv's plan is also accredited to its Mayor, Ron Holdai. *E.g.*, Yossi Klein, Meazben Ve'yail o Nechmad Ve'nirpeh? [*Annoying and Ineffective or Nice and Lazy?*], HAARETZ (Oct. 16, 2013), <http://www.haaretz.co.il/opinions/.premium-1.2142186> (Isr.) (arguing that while the other candidates for the mayoralty are interested in social issues or criticizing the mayor, the incumbent is concerned with his key policy of bike promotion); Ilanit Hayut, Eash Hashivuk Shel April: Rosh Iryat Tel-Aviv Ron Holdai [*Marketing Man of April: Tel Aviv's Mayor Ron Holdai*], GLOBES (May 5, 2013), <http://www.globes.co.il/news/article.aspx?did=1000841387> (Isr.) (designating the mayor "marketer of the month" for his success in promoting his bike-share plan, adopted two years earlier).

232. See Lydia DePillis, *R.I.P. SmartBike, Good Riddance*, WASH. CITY PAPER, Sept. 16, 2010, <http://www.washingtoncitypaper.com/blogs/housingcomplex/2010/09/16/r-i-p-smartbike-good-riddance/>. Smartbike was introduced in 2008. *Id.*

residents or weaker segments of the local population, etc. The stations are also the most visible element of the program: more than any other component of a bike-share, they in fact change the city's landscape. The stations are the plan's element that all residents inevitably are confronted with in their daily lives. As a result, stations have been the only component of the bike share plan litigated in courts.<sup>233</sup> This section will investigate how a city's local government law system dictates these all important station placement decisions.

Since at stake is the geographical scope of the plan, decisions respecting the distribution of stations are highly impacted by the legal factors that divide control over local space: i.e., patterns of local fragmentation and patterns of micro-localism (the topics of Parts II.B and II.C). Patterns of local fragmentation most prominently affect the ability to integrate the plan with other cities and/or other transit systems. The ability to share the plan with other cities in the metropolitan area is determined by the local government law system's attitude toward relationships between cities. Stations will be placed throughout the metropolitan area, and not solely within the adopting city, if the jurisdiction's patterns of local fragmentation facilitate and incentivize inter-local agreements between cities—as in Chicago<sup>234</sup> as opposed to New York.<sup>235</sup> Or if they establish an inter-local body that can coordinate the plan—as in Washington, D.C.<sup>236</sup>

The ability to integrate the plan with other transit systems is, in turn, a function of the local government law regime's attitude towards functional fragmentation. If the jurisdiction's pattern of fragmentation checks subject-field fragmentation (i.e., fragmentation into special districts), and centralizes control over all transit systems

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233. In New York, residents filed suits for bodily injuries they claimed were suffered because of the location and design of the stations. See Rebecca Harshbarger & Natalie O'Neill, *Citi Bike Hit with First Lawsuits*, N.Y. POST, Oct. 2, 2013, <http://nypost.com/2013/10/02/citi-bike-hit-with-first-ever-injury-lawsuits/>. Other cities have faced legal challenges over bike share stations as well. See *infra* note 244 (discussing litigation in London); *infra* notes 249–52 and accompanying text (discussing litigation in Chicago).

234. Chicago and two of its closest suburbs, Evanston and Oak Park, have applied for state grants to expand Divvy into those suburbs. See Memorandum from Suzette Robinson et al., Dir. of Pub. Works, to Honorable Mayor et al., City of Evanston (Aug. 12, 2013).

235. This summer the cities of Hoboken, Weehawken, and Jersey City, located across the Hudson River from Manhattan, will inaugurate their own bike-share plan—one that will not be integrated with Citi Bike. See Andrew Tangel, *Three N.J. Cities Eye Bike-Sharing*, WALL ST. J., Mar. 9, 2014, <http://online.wsj.com/articles/SB10001424052702303824204579425853318799962>.

236. Where stations are spread beyond the city proper. See *supra* note 234 and accompanying text.

in one local body, stations will be more easily placed to render the bike share a coherent part of the local public transit system. Since Mexico City (i.e., the *Distrito Federal*) operates its own bus and subway systems, it integrated the bike share stations with transit stops.<sup>237</sup>

Conversely, when the jurisdiction does embrace subject area fragmentation, and the city does not control its transit system, the potential for interface between the bike share and other modes of transit is limited. In such legal regimes the most the city can do is to unilaterally attempt to place docking stations near public transit hubs. Thus New York City's guidelines successfully attempted to place stations near subway exits, major bus stops, and ferry lines, though the city is not in charge of those public transit systems.<sup>238</sup> But in such a legal environment the city cannot experiment with more imaginative forms of inter-transit integration for which unilateral action is inadequate. For example, it is highly unlikely that New York City will follow Hangzhou and allow residents to use the same card to ride a bus and then pick a bike at a docking station after disembarking.<sup>239</sup> Or that it will imitate Guangzhou and adjust the location of bus rapid transit infrastructure to the needs of the bike share plan.<sup>240</sup>

Legal fragmentation into special districts hence affects station placement by splintering control over modes of public transit. It further does so by removing certain spaces from direct city control. London's TfL must, for example, apply for planning permission from the Royal Parks if it seeks to place a docking station within one of the parks located in the city.<sup>241</sup>

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237. See SECRETARÍA DEL MEDIO AMBIENTE GOBIERNO DEL DISTRITO FEDERAL, *supra* note 61, at 27. The city even added a docking station that was not in the original plan to accommodate the requirements of one of its bus lines.

238. See N.Y.C. DEP'T OF CITY PLANNING, BIKE-SHARE OPPORTUNITIES IN NEW YORK 95 (2009). A recent study found that indeed seventy-two percent of all Citi Bike stations are within a five minute walk of a subway station. LILY GORDON-KOVEN & NOLAN LEVENSON, RUDIN CTR. FOR TRANSP. MGMT. & POLICY, CITI BIKE TAKES NEW YORK 8 (Sarah M. Kaufman ed., 2014).

239. See INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 25.

240. *Id.* at 59.

241. The Secretary of State for the Department of Culture, Media, and Sport manages the parks under powers set out in section 22 of the Crown Lands 1851 Act, which transferred management of the parks from the monarch to the government. Crown Lands Act, 1851, 14 & 15 Vict., c. 42, § 22 (Eng.). The Secretary has recognized the Royal Parks Board, whose members are appointed by the mayor of London, as an advisory body. Royal Parks Management Agreement 2012–2015, pt. 2, § 5.1 (“The [Royal Parks Board] is an advisory body and has a role in the strategic oversight of The Royal Parks.”).

The choice of locations for docking stations is thus highly dependent on the local government law system's patterns of local fragmentation. It is also impacted by its patterns of micro-localism. A question that a local government implementing a bike share plan must contemplate is to what extent should it involve residents, through micro-local mechanisms, in decisions respecting the placement of stations in their midst. Cities differ in the answer they supply to this question in accordance with the degree and manner (formal and informal, direct and indirect) by which they recognize micro-localism, as reviewed in Part II.C.

In a city where the micro-local formal body is almost fully autonomous—where it may even be viewed as an independent city—the micro-local has full control over the program. As already mentioned, in Shanghai bike share plans were adopted by individual districts, and, as a result, the location of stations is directed by these micro-local bodies.<sup>242</sup> Each system is limited in its coverage to one specific district (in other words, Shanghai does not truly have a bike-share plan; it has several plans, each operating separately in its own area).<sup>243</sup>

Shanghai, naturally, represents the extreme case, where, arguably, the micro-local replaces the local. In cities where there is clear separation between local and micro-local, and the latter is subservient to the former, the micro-local often still plays a key role in decisions respecting the location of the stations for the bike share plan adopted by the local. This is particularly true if the micro-local is a formal, and empowered, level of government. In London, where the elected borough governments exercise extensive general legislative and regulatory powers, their involvement with the city-adopted bike share plan is focused on the stations' placement. London's TfL works closely with the boroughs and applies for planning permission from the host borough for each docking station it builds. Generally, the boroughs are supportive of the initiatives, but in several cases they did veto docking stations.<sup>244</sup>

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242. *See supra* notes 148–55 and accompanying text.

243. *See supra* notes 148–55 and accompanying text

244. *See* TRANSPORT FOR LONDON, CYCLING REVOLUTION LONDON END OF YEAR REVIEW 2010 at 42 (2010) (showing general support for docking stations); TRANSPORT FOR LONDON, FREEDOM OF INFORMATION REQUEST FOI-0371-1314 (2013), available at [https://www.whatdotheyknow.com/request/barclays\\_cycle\\_hire\\_docking\\_stat](https://www.whatdotheyknow.com/request/barclays_cycle_hire_docking_stat); *Transparency*, TRANSPORT FOR LONDON, <http://www.tfl.gov.uk/corporate/transparency/#on-this-page-5> (last visited June 18, 2014). As of 2013, only two docking station approvals have been challenged in the courts, but no lawsuits have been successful.

Other cities with formal, yet less powerful, micro-local bodies have chosen to bypass those bodies in placement decisions. The *communas* play no role in Buenos Aires's program, and Paris's *arrondissements* are bystanders in the process: local residents are solely advised by signage that a station is to be constructed.<sup>245</sup> In cities where the formal micro-local bodies are administrative or advisory, their role, not surprisingly, is similarly limited. Mexico City's *delegaciones* were afforded no role in the EcoBici program, even though its coverage was explicitly focused on specific *delegaciones*.<sup>246</sup> New York City's Department of Transportation did a bit more to incorporate its formal, yet advisory, micro-local bodies into the process. Presentations were held for the community boards, and a website was set up where anyone could vote for, or suggest, a station location.<sup>247</sup>

This diluted avenue for micro-local participation implemented in a city with formal, but non-political, micro-local bodies was not dramatically different from that pursued in a city with the still weaker version of micro-local bodies: those that are informal. Like New York, Chicago conducted presentations to its voluntary, informal, neighborhood associations.<sup>248</sup> In addition, the host ward's alderman was asked to approve each Divvy bike station before its

245. Proposed sites for the stations are approved by the city's Department of Architecture and Heritage Service; the detailed plans and locations of the terminals are approved by the roads department; residents are given notice of construction of a docking station, but are not consulted or allowed to intervene. Before each station is constructed, small information posters and panels are put up for local residents at the entrances to apartment buildings, in local businesses, and at the construction site itself. The Mairie de Paris also set up an extramunicipal commission composed of various local authorities and associations (e.g., police department, local transport authorities, Ile-de-France Council, etc.) to advise the city on bicycle policy. Press Release, Mairie de Paris, Thousands of Self-Service Bicycles Real Freedom! Bicycles Everywhere, Bicycles for Everybody! (2007), available at <http://www.gtkp.com/assets/uploads/20091127-145510-86-Dossier%20de%20presse%20Anglais%5B1%5D.pdf>.

246. See SECRETARÍA DEL MEDIO AMBIENTE GOBIERNO DEL DISTRITO FEDERAL, *supra* note 64, at 27–31. The same was, obviously, true in most consolidated cities that do not recognize formal sub-local bodies or indirect micro-local legal challenges. Placement determinations there have been completely centralized. Tel Aviv excluded neighborhood residents from the decision. In fact, some city council members argued that the issue should not even be discussed by the council members themselves: this “professional” (as opposed to “policy”) decision should be left, as it was, to central administrators. Tel Aviv City Council Minutes, at 124–31 (Mar. 22, 2010) (Isr.).

247. N.Y.C. DEP'T OF TRANSP., *supra* note 206, at 6; see, e.g., *NYC Bike Share Suggestion Archive*, N.Y.C. DEP'T TRANSP., <http://a841-tfpweb.nyc.gov/bikeshare/suggestion-archive/> (last visited June 18, 2014).

248. See, e.g., Justin Haugens, *Rogers Parkers Discuss Plans for Divvy Stations, Greenway*, STREETS BLOG CHI. (Apr. 22, 2014), <http://chi.streetsblog.org/2014/04/22/rogers-parkers-discuss-plans-for-divvy-stations-greenway/>.



construction.<sup>249</sup> Chicago's acknowledgement of informal micro-localism did not end there, however. Chicago had to contend with the most indirect form of micro-localism: a neighbors' lawsuit. The suit, enabled by current trends in American law respecting neighbors' challenges, was brought by residents who claimed that a station carried detrimental aesthetic effects, thus reducing property values.<sup>250</sup> Though no temporary injunction was issued,<sup>251</sup> the city decided to settle the case by moving the controversial station.<sup>252</sup>

Like the fashion in which the plan is adopted and funded, the scheme for spreading and placing its stations is determined by the local system's legal characteristics. Patterns of fragmentation determine whether the stations will reach beyond municipal boundaries and how effective their integration with other transit systems will be. In addition, patterns of micro-localism determine how, if at all, input from neighborhoods will be taken into account in the placement process.

#### IV. RAMIFICATIONS AND LIMITATIONS

Bike share plans, the quintessential uniform policy of the global city, as described in Part I, emerge from Part III as programs that differ in many of their important details: adoption, funding, and geographical implementation, due to legal variations between jurisdictions, explored in Part II. This concluding Part of the Article briefly reviews potential ramifications of this analysis, and acknowledges its limitations.

Can this Article be read as a "best practices guide"? Should it be viewed as an attempt at adding a legal component to the guidebooks respecting the recommended physical and economic characteristics for a bike share plan?<sup>253</sup> "Yes" and "no." "No," because the Article

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249. See CHI. DEP'T OF TRANSP., CHICAGO STREETS FOR CYCLING PLAN 2020 16 (2012), available at <http://www.cityofchicago.org/content/dam/city/depts/cdot/bike/general/ChicagoStreetsforCycling2020.pdf>.

250. See Mitch Smith, *Condo Residents Go to Court over Divvy Bike Sharing Station*, CHI. TRIB., Aug. 22, 2013, [http://articles.chicagotribune.com/2013-08-22/news/chi-divvy-bike-sharing-lawsuit-20130821\\_1\\_bike-sharing-program-divvy-condo-residents](http://articles.chicagotribune.com/2013-08-22/news/chi-divvy-bike-sharing-lawsuit-20130821_1_bike-sharing-program-divvy-condo-residents); Steven Vance, *Injunction to Remove Divvy Station Denied, but Lawsuit Can Continue*, STREETS BLOG CHI. (Aug. 19, 2013), <http://chi.streetsblog.org/2013/08/29/injunction-to-remove-divvy-station-denied-but-lawsuit-can-continue/>.

251. See Vance, *supra* note 250.

252. John Greenfield, *Divvy NIMBYs' Bike-Share Nightmare Is Over: Lakeview Station Relocated*, STREETS BLOG CHI. (May 8, 2014), <http://chi.streetsblog.org/2014/05/08/divvy-nimbys-long-nightmare-is-over-lakeview-station-relocated/>

253. Current literature recommending bike share plans advises that a plan be adjusted to a city's physical layout, population size, and even culture; yet until now

does not embrace a specific model for a bike share plan or endorse any legal reforms to local government laws to facilitate such a model. “Yes,” because the Article highlights the legal considerations that must be taken into account when formulating a suggested model for a bike share plan. In other words, the Article does not advocate, for example, broader reliance on public funding for bike shares or reinforcement of mayors’ or city councils’ legal powers in local government systems. At the same time, it does argue that when a local legislature controls local funds but not other elements of the local administrative process, public local funding is unlikely to be made available. International policy organizations, or local reformers, who advocate reliance on public funding for bike-shares, must take this reality into account.

Similarly, they must tailor their policy recommendations to the interests and preferences of the authority that actually holds the power to implement the recommended plan in light of local laws in the specific city—regardless of the merits of those existing laws or of the bike-share policy recommendations. Even when the desirability of a certain attribute of a bike-share plan is hardly questionable, the prospects that the attribute be effectuated in a given city will depend on relevant local legal patterns. For example, the integration of the plan with other modes of transit or its expansion to correspond to natural, rather than municipal, metropolitan boundaries depends on the form of local fragmentation that the particular local government law system perpetuates.

This mode of thinking could assist not only those committed to bike share plans’ spread and perfection; it should also serve as a blueprint for future works in comparative local government law. The insights of the global city and international local government law literature are extremely illuminating and useful. There is no denial that the city is intertwined with the world—economically, socially, and legally—more than ever before. As the astoundingly rapid spread of bike share plans demonstrates, global pressures and trends, and also global connections and organizations, lead to the local adoption of common policies. Even so, those common global policies are imported into preexisting local government law systems that are not common. The common policies will inevitably have to be adjusted to the most impactful un-commonalities between those systems, many of which were highlighted in Part II of this Article.

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the need to deal with variation in local laws has been ignored. *E.g.*, INST. FOR TRANSP. & DEV. POLICY, *supra* note 49, at 10–13.

Chronicling, as was done in this Article, and, maybe even more importantly, predicting, the ways in which these adjustments are made, are important tasks for works in comparative local government law inspecting other global policies or problems.<sup>254</sup>

The approach suggested here thus has much promise, but it is important to remain aware of its limits, particularly those pertaining to its aspiration at fully contextualizing global phenomena, trends, and policies. While this Article tries to describe differing local government legal regimes without preconceptions of a baseline, several of the choices in constructing the typology of local government law systems in Part II may have been tinted by its immersion in American legal concepts. Thus, for example, a valid argument could be made that Shanghai should not have been considered to be a city with its districts functioning as micro-local bodies; rather, the districts should have been viewed as cities and Shanghai as a regional body. A similar claim could be made respecting the Greater London Authority and the London boroughs.<sup>255</sup> Elsewhere, when discussing patterns of local empowerment, the Article relies on the traditional distinction prevalent in American law between the local power to initiate policies, and the threat that, once adopted, those policies be preempted by state-level acts (i.e., the distinction between the local power of initiative and the local right to immunity).<sup>256</sup> In systems such as those prevalent in Israel and China, where any local act requires approval by the upper levels of government,<sup>257</sup> this distinction may be artificial.

An even more troubling aspect of the Article's imperfect sensitivity to the peculiarities of the local is its inability to account for variation in culture—legal and political—as distinct from variation in institutional design. Places differ not only in their legal systems, but also in the culture that draws for local participants the contours of the

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254. For example, uniform regulation of ride share services, offered worldwide by the same providers, is currently being promoted by those providers and others (including the market players threatened by them, such as taxi drivers), and often considered by different cities. Research could examine how such regulation—of the same service often proffered by the same firm—may be pursued in different legal regimes.

255. Gerald E. Frug, *Empowering the City: London/New York*, URB. OMNIBUS (Feb. 17, 2010), <http://urbanomnibus.net/2010/02/empowering-the-city-london-new-york/> (“New York City’s government in many ways is more comparable to London’s boroughs than it is to the Greater London Authority.”).

256. See, e.g., GERALD E. FRUG ET AL., LOCAL GOVERNMENT LAW: CASES AND MATERIALS 167 (5th ed. 2010).

257. See *supra* notes 87–90, 173 and accompanying text.

possible and acceptable within those systems. These cultural differences—not only the legal ones—influence participants’ ability to adopt and design policies. Thus, for example, while the two cities’ differing separation-of-local-powers schemes affected London’s decision to expend government funds on the bike share plan as opposed to New York’s choice to forego them, the Article cannot, and does not desire to, argue that other factors were not also at play. Due to past customs and contemporary trends, few would be surprised to learn that London was more willing than New York to rely on public action and investment.<sup>258</sup> Similarly, the different forms of local fragmentation prevalent in Washington, D.C., as compared to Tel Aviv, affected the former’s ability, as opposed to the latter’s inability, to situate docking stations throughout its metropolitan area. At the same time, so did the long-standing tradition of inter-local cooperation in the Washington, D.C., area, a tradition wholly absent in the Tel Aviv area.<sup>259</sup>

History and culture not only exert an influence alongside legal institutions; they also interact with those institutions. That interaction is multi-faceted. Existing institutions sustain local political culture, but often that same culture was originally, at least partially, responsible for those institutions’ creation and design.<sup>260</sup> New York City’s laws may facilitate privatization and the rise of a strong, politically independent mayor, but they may well have been molded in this way precisely because local culture supports privatization and a strong, politically independent local leadership.<sup>261</sup> This Article’s

258. See, e.g., E.S. Savas, *Introduction to PRIVATIZATION FOR NEW YORK: COMPETING FOR A BETTER FUTURE, A REPORT OF THE NEW YORK STATE SENATE ADVISORY COMMISSION ON PRIVATIZATION 3* (E.S. Savas ed., 1992) (discussing New York City’s penchant for privatization).

259. Most prominently, in the 1990s, Ramat Gan, a city bordering Tel Aviv, used subsidies and tax abatements to attract corporate headquarters from Tel Aviv. The result is that much of the area referred to today as Tel Aviv’s downtown is actually in Ramat Gan. Another city on Tel Aviv’s outskirts, Bat Yam, filed a suit with the Israeli Supreme Court in March 2014, demanding that the Minister of the Interior appoint a committee to reconsider the division of revenue between Bat Yam, Tel Aviv, and two other cities. It argued the amount of commercial and industrial space under its control is disproportionately limited. H CJ 2245/14 City of Bat Yam v. Minister of the Interior (filed Mar. 26, 2014) (Isr.).

260. See, e.g., Jide O. Nzelibe, *Our Partisan Foreign Affairs Constitution*, 97 MINN. L. REV. 838, 853 (2013).

261. On the lengthy history of a strong executive in New York City and its incorporation into the different charters under which the city has operated, see Joseph P. Viteritti, *The Tradition of Municipal Reform: Charter Revision in HISTORICAL CONTEXT*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM* 16, 16–20 (Frank J. Mauro & Gerald Benjamin eds., 1989).

analysis cannot determine which preceded which—culture or law—or which is more impactful.

This Article focuses on law, but it does not intend to downplay the role of local political culture. Local culture is central to policy-making; the Article's sole and modest claim is that so is a local government law system.

### CONCLUSION

When Citi Bike's blue bikes made their initial appearance on the streets of New York City, a member of the editorial board of the Wall Street Journal sounded the alarm bells: "totalitarianism" was taking over New York.<sup>262</sup> As some speculated, this was a way of expressing concern over the arrival of French invaders.<sup>263</sup> The warning that the bike-share plan was the first sign of the demise of the capitalistic order and its replacement with a European order was somewhat overblown. It betrayed a reflective objection to the new and "un-American." At the same time, surprisingly, these prophets of doom clutching to the old, local American share much with the boosters of the global city who believe that there is no such thing as a purely American local or a purely American city.<sup>264</sup> The two camps assume that the bike share plan is basically non-local: it is French, or it is global. They fail to see that the plan is, at its heart, local. It is a New York plan, not a Paris plan or a global plan. For example, it is one of the few bike share plans in the world that employs no public funds, and it is a plan designed with the knowledge that in New York, more than anywhere else, residents can head to court to contest the location of a docking station.<sup>265</sup> These, and many other peculiar attributes of the plan, owe to the legal realities against which New York City—but not Paris, or any other global city—adopted a bike share plan. The original idea of the modern bike share is undeniably

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262. See Dorothy Rabinowitz, *Opinion: Death by Bicycle*, WALL ST. J. (May 31, 2013, 2:00 PM), <http://www.wsj.com/video/opinion-death-by-bicycle/C6D8BBCE-B405-4D3C-A381-4CA50BDD8D4D.html> (responding to the question of why the city council thought a bike share was a good idea by stating "[d]o not ask me to enter the mind of the totalitarians running the city").

263. Dan Amira, *Why Conservatives Hate Citi Bike So Much*, in *One Venn Diagram*, N.Y. MAG., June 5, 2013, <http://nymag.com/daily/intelligencer/2013/06/venn-diagram-why-conservatives-hate-citi-bike.html>.

264. See *supra* Part I.A. Almost fifty years ago, Norman Mailer memorably wrote, "New York is one of the capitals of the world . . . . Perhaps [Chicago] is the last of the great *American* cities." NORMAN MAILER, *MIAMI AND THE SIEGE OF CHICAGO: AN INFORMAL HISTORY OF THE REPUBLICAN AND DEMOCRATIC CONVENTIONS OF 1968* at 85 (1968).

265. See Shoked, *supra* note 146.

French and global. The law remains decidedly American and New York. Therefore, as a real-world policy, and not a mere idea, the bike share plan inevitably must also be American and New York.