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City Power in a New Era of Localism

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CITY POWER IN A NEW ERA OF LOCALISM

Wendell E. Pritchett*

Introduction	1449
I. Rethinking City Power.....	1450
II. Unleashing the City.....	1456
Conclusion.....	1461

INTRODUCTION

Are we beginning a new age of localism? Between the “Brexit” vote, the city-rural divide exposed by the American presidential election, and, more positively, the New Urban Agenda agreed to the United Nations Habitat III conference in Quito, evidence abounds that we are moving into a period that values local over global, the specific over the general.¹ It is a propitious moment for the publication of Richard Schragger’s excellent book, *City Power: Urban Governance in a Global Age*.² This book is a reminder that nations and their economies, social systems, and cultures, are primarily conglomerations of local economies, social systems, and cultures. This has been true for centuries, and was particularly true in the United States, as Schragger points out, in its periods of greatest

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1. See Emily Badger et al., *The Election Highlighted a Growing Rural-Urban Split*, N.Y. TIMES: THEUPSHOT (Nov. 11, 2016), <https://www.nytimes.com/2016/11/12/upshot/this-election-highlighted-a-growing-rural-urban-split.html> [https://nyti.ms/2jNUu50] (analyzing the outcome of the 2016 American presidential election); Rachel Donadio, *Britain’s Flight Signals End of an Era of Transnational Optimism*, N.Y. TIMES (June 24, 2016), <https://www.nytimes.com/2016/06/25/world/europe/brexit-britain-european-union.html> [https://nyti.ms/2lAvEUs] (discussing the “Brexit” vote); Michael Kimmelman, Opinion, *The Kind of Thinking Cities Need*, N.Y. TIMES (Oct. 28, 2016), <https://www.nytimes.com/2016/10/30/opinion/sunday/the-kind-of-thinking-cities-need.html> [https://nyti.ms/2jLTI5N] (noting the positive outcomes of Habitat III).

2. RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE (2016).

dynamism.³ The city, he argues with much evidence, created America. And since cities are at the front of creativity, economic growth, and cultural development, they deserve respect in our governmental system. As Schragger ably demonstrates, respect for local decision-making *is* the proper foundation of our federal system.⁴ Moreover, as Schragger argues, the law *should* organize itself around supporting the power of citizens to govern themselves at the local level.⁵

I. RETHINKING CITY POWER

City Power is a major contribution to the literature about the history, current scope, and future prospects of urban economic, political, and social power in the United States. Schragger makes a strong argument for an expansive view of the role of cities and the power they should have. This Review assesses Schragger's major and most innovative arguments about local power in the United States, and uses Schragger's arguments to propose ways to go beyond "unleashing" local government by creating legal structures that prioritize and exploit the strengths of localism to build a better society. The current political climate, both nationally and globally, makes this an ideal moment to set up sustainable local government structures—structures that would contribute to the global debate over the role of the city in society.

City Power addresses two deeply connected issues: first, whether cities *can* govern themselves, and second, whether cities *should be allowed* to govern themselves. Schragger answers *yes* to both.⁶ Cities have the power to shape their economies and social systems, and they should use this power to improve life for their citizens. As Schragger says this book is "really about the relationship of local economy and legal institutions."⁷ Cities, Schragger argues, shape economic growth and are shaped by it. Cities have shown themselves, through boom and bust, to be creative responders to the challenges facing their residents. With greater freedom, Schragger argues, cities can develop innovative solutions to the challenges of poverty, sustainability, and other social problems.⁸

3. See SCHRAGGER, *supra* note 2, at 26–27.

4. *Id.* at 3–5.

5. *Id.*

6. *Id.*

7. *Id.* at 6.

8. See *id.* at 16–17.

Yet cities have been limited in their abilities to respond to these challenges. These limits are both legal and conceptual. State and federal laws restrict the authority of cities to provide services, regulate markets, and engage in policy innovation.⁹ Even more restrictive than these legal limitations is the view during the past half century that what cities *should* do to respond to urban challenges extends only to their role as competitors for “consumer-citizens” whose only concerns are the bundle of goods that they, as cities, can offer.¹⁰ Schragger argues this competitive city model has narrowed what is possible in our cities, and people need to open their minds to alternative approaches:

My own conception of the city is grounded in its public role: the city as a site for individual and collective economic and political development. Like all cities, that city is an abstraction. Municipalities have political boundaries, but cities have sociological, economic, and spatial ones too—and municipal boundaries do not usually capture those.¹¹

This broader understanding of the role of the city allows for the possibility of more comprehensive government interventions that will enable cities and their residents to flourish.

Chief among its many contributions, *City Power* successfully weakens the argument that economic competition must direct local decision-making. For more than sixty years, the Tiebout Hypothesis has hung over urban policy like the Sword of Damocles.¹² In his famous work, Tiebout theorized that, in a market society with free mobility, cities must view themselves solely in economic terms and sell themselves to prospective inhabitants. Residents, Tiebout hypothesized, each have a distinct preference pattern for public goods and select their community based on the optimal satisfaction of those preferences.¹³ Correspondingly, he argued that successful cities are

9. See generally SCHRAGGER, *supra* note 2, at 78–132 (discussing the effects of “Vertical Federalism” and “Horizontal Federalism” in chapters three and four, respectively).

10. See *id.* at 44–45.

11. *Id.* at 15.

12. See SCHRAGGER, *supra* note 2, at 31–32. See generally Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956). For further discussion on the impact of Tiebout’s model, see generally THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES (William A. Fischel ed., 2006).

13. See Tiebout, *supra* note 12, at 418.

those that best match the public goods they provide to the demands of consumers.¹⁴

Though Tiebout noted several possible bundles of public goods that might attract consumer-citizens,¹⁵ the Tiebout framework has come to be accepted as defining a model of city governance that prioritizes economic development over other values.¹⁶ Further, proponents of this framework have argued that promoting economic development means very specific types of policies, in particular, low taxes that attract investment and wealthy people that will pay for basic services.¹⁷ Finally, the accepted wisdom holds that service costs must be strictly limited, or consumer-citizens will move to more “attractive” communities.¹⁸

Tiebout was honest that this was a theory, one that needed to be backed up by research, data, and evidence.¹⁹ However, even without much evidence to support it, this framework soon came to dominate urban policy at local and even national levels.²⁰ If the data ever supported this thesis, it certainly does not support the Tiebout framework in twenty-first-century America. Schragger shows, in detail, how the last two decades of urban growth undermine, if not obliterate, this theory.²¹ If the theory were true, Schragger argues, shouldn't cities with low taxes and service provisions have the highest economic growth? Not only is this not the case, but some of the cities with the highest taxes and service budgets (New York being the most striking, but far from the only example) are exactly the places with

14. *See id.* at 417, 420.

15. *See* Tiebout, *supra* note 12, at 418 (noting that consumers may prefer a community with higher taxes and more services). For further discussion of the “high tax-high service” model of local government in which citizens pay high taxes but receive significant services in return, see NEIL R. PEIRCE, *THE GREAT PLAINS STATES OF AMERICA: PEOPLE, POLITICS, AND POWER IN THE NINE GREAT PLAINS STATES* 140 (1973) (discussing Minnesota’s high-tax high service system).

16. *See* SCHRAGGER, *supra* note 2, at 45–46, 214.

17. *See, e.g.*, James Buchanan, *Principles of Urban Fiscal Strategy*, 11 *PUB. CHOICE* 1, 13 (1971).

18. *See id.* at 14–15.

19. *See* Tiebout, *supra* note 12, at 417, 423–24. *See generally* THE TIEBOUT MODEL AT FIFTY, *supra* note 12.

20. *See* Wallace E. Oates, *An Essay on Fiscal Federalism*, 37 *J. ECON. LITERATURE* 1120, 1124 (1999); *see also* Darien Shanske, *Above All Else Stop Digging: Local Government Law as a (Partial) Cause of (and Solution to) the Current Housing Crisis*, 43 *U. MICH. J.L. REFORM* 663, 663–64, 672 (2010) (demonstrating the effect of the Tiebout model on local housing policy).

21. SCHRAGGER, *supra* note 2, at 45–46.

the highest economic growth.²² Conversely, places like Detroit, which has adopted some of the most “investment attractive” policies in the country at the local and state levels (for example, eliminating taxes for most economic development and providing public subsidies to boot) while slashing services, have among the slowest economic growth.²³

Schragger does not just make the point that the arguments for economic development-led urban policies are weak; he goes further by arguing that it is impossible to draw conclusions about why some cities prosper economically while others struggle.²⁴ There is no definitive explanation for what caused the bay area to flourish; though one might point to the tech boom, *why* did the tech boom happen there and not in Omaha? The answer does not lie in the economic policies of San Jose, which few people have described as a national model for urban innovation. Since history and current experience do not support strong connections between local economic development policies and local economic growth, Schragger argues, a competitive regulatory structure does not explain city growth, and therefore, is not *required* to promote the interests of cities.²⁵ Economic policy often fails. Cities cannot guess the future. Cities *can* however, prepare their people and distribute wealth to promote greater equity.²⁶

Yet legal institutions, particularly at the state but also at the federal level, limit the power of cities to pursue goals other than economic development. *City Power* is rich in urban history and presents a wonderful example of how historical perspective can helpfully frame solutions to current challenges. The existing framework, which greatly limits the power of local governments to collect revenue, provide services, and develop productive urban policies, emerged out of a very specific context: the urban revolution of the late 1800s.²⁷

22. See SCHRAGGER, *supra* note 2, at 48–51. For more on city taxes and services, see Thomas Frohlich & Alexander Hess, *Top Ten Cities with the Highest Tax Rates*, USA TODAY (Feb. 16, 2014), <https://www.usatoday.com/story/money/personalfinance/2014/02/16/top-10-cities-with-highest-tax-rates/5513981/> [<https://perma.cc/6DAQ-DHN2>].

23. Matthew Dolan & Kathleen Gray, *Study: Michigan Outpaces Other States on Tax Breaks, Incentives for Businesses*, DETROIT FREE PRESS (Mar. 7, 2017), <http://www.freep.com/story/news/local/michigan/2017/03/07/study-michigan-outpaces-neighboring-states-business-incentives/98816516/> [<https://perma.cc/KV5U-RMLU>].

24. See SCHRAGGER, *supra* note 2, at 46.

25. *Id.*

26. See *generally* SCHRAGGER, *supra* note 2 (discussing methods of redistribution via policy and politics in chapters five and six, respectively).

27. *Id.* at 65–69.

The rapid growth of cities in this era created massive fortunes, even larger social upheaval, and dramatic governance challenges.²⁸ Cities attempted to respond to these challenges in numerous and creative ways, often drawing on their past history of public-private partnerships.²⁹ The relationship between government and private enterprise, which was always fraught, became a significant concern to political reformers, who sought to control the influence of money in local government by limiting its power. As Schragger says:

In the U.S., the scope of the city's legal authority and the division of authority between cities, states, and the federal government—what constitutional theorists call *federalism*—are best understood as a reaction to the political pathologies that arise from the city-business relationship. Those pathologies reflect our political ambivalence about the inevitable intermixing of public and private power. Local political power has often been viewed as corrupt, understood broadly as the use of public monies for private ends. Even as the public subsidization of private activity has become commonplace, we have not resolved our nagging concerns about this intermixing.³⁰

As a result, state laws restrict the power of local governments to, among other things: tax new forms of income, discriminate in favor of their residents, or develop services that compete with state governments (or the private sector).³¹ These limitations on power have been critiqued by many policymakers and academics, but Supreme Court jurisprudence, most notably in *Hunter v. City of Pittsburgh*, makes clear that cities are “mere convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them.”³² Cities, the law holds, are restricted in their authority for the good of their residents and of society.

Schragger's historical analysis is sound, but I would amplify and extend one important point. Limitations on city power arose in a specific context: concern about concentrations of power and the

28. For thorough discussion on the rise of the city, see generally ROBERT M. FOGELSON, *DOWNTOWN: ITS RISE AND FALL, 1880–1950* (2001).

29. For more on the nineteenth-century city, see generally ERNEST S. GRIFFITH, *A HISTORY OF THE AMERICAN CITY: THE CONSPICUOUS FAILURE, 1870–1900* (1974); IRA KATZNELSON, *CITY TRENCHES: URBAN POLITICS AND THE PATTERNING OF CLASS IN THE UNITED STATES* (1981); JON C. TEAFORD, *THE UNHERALDED TRIUMPH: CITY GOVERNMENT IN AMERICA, 1870–1900* (1984); James C. Scott, *Corruption, Machine Politics, and Political Change*, 63 AM. POL. SCI. REV. 1142 (1969).

30. SCHRAGGER, *supra* note 2, at 8.

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

32. 207 U.S. 161, 178–79 (1907).

influence of corruption with the rise of the “political machine.”³³ While many concerns motivated government “reformers,” high among them was the power that political machines gave to recent immigrants, people viewed by native-born Americans as less “worthy.” Like most if not all political battles, the fight between the “machine” and the “reformers” was one for power between newcomers and old-timers.³⁴ While couched in moral terms as a fight for good government, in the end it was about *who* got to make the decisions. Dillon’s Rule (which limits city powers to those explicitly delegated by the state) and other efforts to limit city authority were about restricting the ability of immigrants to reshape cities in their own image. State limits on local government power to borrow money, to establish business operations, and to provide services to their constituents, were all efforts to limit the scope and impact of local governments exactly at the time that immigrants were taking control of those governments.³⁵ In the twentieth century, as African-Americans, Latinos, and other persons of color have gained greater influence over local governments, cities continue to be chastised as “ungovernable” and inherently corrupt.³⁶ To be certain, American history and current events abound with stories of inefficiency, unethical activity, and outright crime at the local level, but cities continue to govern themselves and often flourish even with limited resources and under strong legal constraints.³⁷ In the end, the question of city power is not one of efficiency, Schragger argues. It is about whether citizens in a democracy have the *right* to govern themselves.

Further, in the 1800s, city power was the only meaningful power. State governments were far from the robust entities they are today. Today, states are active in health care, environmental protection, education, and criminal justice, among other functions, but in the

33. *See generally* LINCOLN STEFFENS, *THE SHAME OF THE CITIES* (Hill & Wang 1987) (1904); TEAFORD, *supra* note 29.

34. *See generally* DENNIS R. JUDD & PAUL P. KANTOR, *THE POLITICS OF URBAN AMERICA: A READER* (2d ed. 1998); DENNIS R. JUDD & TODD SWANSTROM, *CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY* (1st ed. 1994); KATZNELSON, *supra* note 29.

35. *See* JUDD & SWANSTROM, *supra* note 34, at 47–49.

36. *See generally* VINCENT CANNATO, *THE UNGOVERNABLE CITY: JOHN LINDSAY AND HIS STRUGGLE TO SAVE NEW YORK* (2001); FRED SIEGEL, *THE FUTURE ONCE HAPPENED HERE: NEW YORK, D.C., L.A. AND THE FATE OF AMERICA’S BIG CITIES* (2000).

37. *See generally* EDWARD GLAESER, *THE TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* (2012).

1800s, most states provided only basic ministerial functions.³⁸ And the federal government was even weaker than state governments. Concern about local power from state and federal officials might be better seen as “jealousy” of local capacity and desire to assume it. With the emergence of state governments in the Progressive Era, followed by the federal government during the New Deal and thereafter, federalism today looks very different than it did when local limitations were developed.³⁹ In the 1800s, cities dominated the debate about what government should do.⁴⁰ That is no longer the case, but maybe the balance of power should start to move back in that direction.

A century of experience shows that neither state nor federal centralization can erase concerns over the power of money in political decision-making. As Clayton Gillette long ago argued, claims that state governments can provide protection against capture are based on hunches, not data.⁴¹ Nor have state governments or the federal government been immune to corruption or discriminatory decision-making. Given Washington’s current dysfunction and Americans’ lack of faith in federal institutions, a move back towards more localized decision-making seems attractive to people from across the political spectrum.

II. UNLEASHING THE CITY

City Power has many strengths. First, it not only synthesizes many aspects of Schragger’s prior work on local government as well as the work of other scholars, it knits these earlier pieces together into a coherent thesis clearly tied to both evidence and conclusions. Unlike some other books in legal academia, *City Power* is not a cobbling together of articles. It is a comprehensive and well-structured book. Second, the book’s use of historical sources is both thorough and innovative. It is an excellent introduction to urban history, and also puts that history in important context to help explain the current structures of local government. Third, the book provides an excellent

38. See generally MICHAEL MCGERR, *A FIERCE DISCONTENT: THE RISE AND FALL OF THE PROGRESSIVE MOVEMENT* (2005).

39. For further discussion on the New Deal state, see IRA KATZNELSON, *FEAR ITSELF: THE NEW DEAL AND THE ORIGINS OF OUR TIME* (2014), and see also PHILIP FUNIGIELLO, *THE CHALLENGE TO URBAN LIBERALISM: FEDERAL-CITY RELATIONS DURING WORLD WAR II* (1978).

40. See generally KATZNELSON, *supra* note 29; JUDD & SWANSTROM, *supra* note 34.

41. See, e.g., Clayton P. Gillette, *The Exercise of Trumps by Decentralized Governments*, 83 VA. L. REV. 1347, 1402–07, 1409–10 (1997).

antidote to the powerful (but declining) economic development framework, and helps chart a path forward for cities that enables them to truly serve the needs of their citizens. Building on his historical and current analysis, Schragger offers an alternative framework for thinking both about what cities *should* do, and how local power *could* be structured to promote those goals.

With limited reason to quibble with this excellent book, the rest of this response will focus on further explicating its implications for city governance. Schragger asks two questions: *can* cities govern? And, *should* cities govern? He correctly answers affirmatively to both. However, having answered these in the affirmative, it is also important to ask: *what* should cities govern? And, *how* should cities govern? The answer to the first question requires further exploration of Schragger's "alternative" approaches to governance to replace economic development as the dominant framework. The answer to the second requires understanding what *City Power* as a legal matter might look like.

Schragger puts forth social welfare spending as an alternative focus for cities, arguing that recent local innovations such as city living wage laws and environmental regulations point the way to an alternative approach.⁴² Later, Schragger says, "[c]ities should do less of what they cannot do—induce economic growth through competitive local industrial policies—and more of what they can—provide quality basic services to their residents."⁴³ Here, he puts a stake in the ground on the side of many progressive activists who have critiqued the economic development approach and called for investments in infrastructure, education, and other programs that help city residents.⁴⁴

So far, efforts to develop a progressive city theory have been limited. Many can agree on what spending they *do not* like. However, it is much less clear which activities local governments should promote. The typical answer to the question of progressive policy is that cities should spend on services to help the poor—particularly education, which most people agree can help alleviate poverty and improve the life outcomes of young people.⁴⁵ But even within the education sphere, there are deep debates about how to do

42. SCHRAGGER, *supra* note 2, at 12, 16–17.

43. *Id.* at 248.

44. For further discussion on these calls for investment, see generally SUSAN S. FAINSTEIN, *THE JUST CITY* (2011); David Harvey, *The Right to the City*, 53 *NEW LEFT REV.* 23 (2008).

45. See generally FAINSTEIN, *supra* note 44; Harvey, *supra* note 44.

this. Are charter schools the necessary innovation, or should traditional school systems, which have historically been unresponsive to many constituencies, be rebuilt?⁴⁶ Should neighborhoods have the power to shape themselves, or does the “Not in My Backyard” attitude have too great an effect on the affordable housing shortages that many cities face?⁴⁷ These are among the dozens of fundamental questions cities are currently debating, and the lines don’t fall clearly along the liberal-conservative axis. Minimum wage and environmental regulations are good opening strategies towards a progressive city, but they are limited if the goal is to transform struggling local communities.

Another suggestion that Schragger makes is a move away from global, large-scale capital to more support for more localized, small-scale capital enterprises.⁴⁸ Cities have attempted to implement policies to support local businesses for decades. Some of these efforts have been successful, though the research on the impact of such programs has reached limited conclusions.⁴⁹ And many of these efforts have been subject to similar criticisms—political capture, favoring of (local) elites and corruption—that Schragger discusses in his history of local government and the rise of state regulation.⁵⁰ Although local business can provide some inoculation against capital flight, the evidence of the success of such efforts is limited.⁵¹ Further, in earlier eras, most economic activity was, indeed, local, but activists such as union leaders, civil rights advocates, and others had problems with successful local businesses too.⁵² While global capital presents a particular set of problems, the underlying conflict will continue to be

46. For an overview of the debate on charter schools, see KEEPING THE PROMISE?: THE DEBATE OVER CHARTER SCHOOLS (Leigh Dingerson et al. eds., 2008).

47. See Roderick M. Hills, Jr. & David Schleicher, *Planning an Affordable City*, 91 IOWA L. REV. 101, 115–16 (2015); see also Roderick M. Hills, Jr. & David N. Schleicher, *Balancing the “Zoning Budget,”* 62 CASE W. RES. L. REV. 81, 97–99 (2011).

48. SCHRAGGER, *supra* note 2, at 189.

49. For a snapshot highlighting some of this research, see Stacy Mitchell, *Key Studies: Why Local Matters*, INST. FOR LOC. SELF-RELIANCE (Dec. 22, 2011), <https://ilsr.org/key-studies-why-local-matters/#1> [<https://perma.cc/JF6B-C26A>].

50. See, e.g., Patrick Kerkstra, *Sham Minority Contractors Have Been Hired in Your City, Probably*, NEXT CITY (May 13, 2013), <https://nextcity.org/daily/entry/sham-minority-contractors-have-been-hired-in-your-city-probably> [<https://perma.cc/F9GD-SUHU>].

51. See generally, Mitchell, *supra* note 49.

52. See, e.g., Richard C. Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920-1940*, 90 IOWA L. REV. 1011, 1044–46 (2005) (highlighting complaints about local monopolies).

between the haves and have-nots, whether the haves are down the street or in London or Beijing.

Another, perhaps fledgling, approach might be to adopt some of the strategies of the “sharing” movement, which acknowledges the power in collective, less capital-intensive operations where people contribute their own human capital and participate in the enjoyment of the resources produced by such communal activities.⁵³ In recent years, such an approach has received increasing attention, but it remains a work in progress with many limitations. For example, a framework that describes companies such as Uber and Airbnb, which have billions of dollars of capitalizations, as the foundation for a “sharing” system has significant challenges in application.⁵⁴ These challenges underscore that, while many agree that the existing economic development framework should be scrapped, it is less clear what should replace it.

Perhaps the second question is easier to answer: how should cities govern? Schragger argues for “unchaining” local governments to allow them to experiment, but experiment within what framework? The only way to truly free cities for experimentation is to severely limit the ability of state and federal governments to regulate their activities. One way to think about this might be to adopt “Super Home Rule” statutes that provide cities with wide areas of authority and couple those rules with judicial frameworks that require the state to prove that a city activity is clearly outside the bounds of this authority.⁵⁵

Much recent study has concluded that, like the late nineteenth century, American cities are the hubs of innovation and the places where most economic development is happening. According to a recent Brookings report, more than sixty percent of job growth since the great recession is in urban areas, and the nation’s twenty largest metros constitute more than two thirds of the country’s productivity.⁵⁶

53. See DUNCAN MCCLAREN & JULIAN AGYEMAN, *SHARING CITIES: A CASE FOR TRULY SMART AND SUSTAINABLE CITIES* 4–8 (2015).

54. See, e.g., Naomi Schoenbaum, *Gender and the Sharing Economy*, 43 *FORDHAM URB. L.J.* 1023, 1024 (2016); Dean Baker, *Don’t Buy the ‘Sharing Economy’ Hype*, *THE GUARDIAN* (May 27, 2014), <https://www.theguardian.com/commentisfree/2014/may/27/airbnb-uber-taxes-regulation> [<https://perma.cc/4KWK-TWRT>].

55. See generally David J. Barron, *Reclaiming Home Rule*, 116 *HARV. L. REV.* 2255, 2262–66 (2003).

56. See Mark Muro & Sifan Liu, *Another Clinton-Trump Divide: High-Output America vs. Low-Output America*, *BROOKINGS INST.: THE AVENUE* (Nov. 29, 2016), <https://www.brookings.edu/blog/the-avenue/2016/11/29/another-clinton-trump-divide-high-output-america-vs-low-output-america/> [<https://perma.cc/589U-FNDC>].

Such dominance is a double-edged sword, as evidenced in the recent presidential election, where the “economically disenfranchised” part of the country voted overwhelming against the candidate supported by large cities. However, if cities and metropolitan regions are the locus of growth, then cities should be empowered so that they can do more to distribute their wealth more widely and enable more people to participate in economic and social progress.

Such a system would support greater local innovation, but it might frame that support specifically around the goal of greater economic and social inclusion. It might require successful cities to partner with struggling satellite cities in their ambit and to assist those communities to enjoy the advantages of city growth. It might couple greater local power to generate revenues (both through taxation and innovation) with current trends to limit spending at the state and federal levels. It might, in short, move us closer to the period when city power was at its highest, before the reforms of the late nineteenth and early twentieth century.

As Schragger explains, this framework threatens to supplant political governance with market forces. As he states, “the increased power of large-scale, transnational capital has led some to question the regulatory capacities of the nation-state. Decision-making appears to be migrating away from democratic institutions to global markets, leaving many to ask whether citizens have any role to play in the governance of their political communities.”⁵⁷ For Schragger, city politics is the answer because it provides an “urban democracy that promotes individuals’ participation in economic and political life on terms of equality.”⁵⁸

Furthermore, as Schragger proposes, this new local framework should be adopted around the globe. He states:

Regulatory localism might be a feature of globalization—that is the optimistic story for those who worry about the loss of local democratic control. . . . In reasserting the public’s right and ability to control those large-scale corporate entities whose presence in the community is both a necessity and a threat, decentralized economic regulation suggests that city governance is still possible in an age of global capital flows.⁵⁹

57. SCHRAGGER, *supra* note 2, at 16.

58. *Id.*

59. *Id.* at 256.

Schrager correctly identifies the opportunities provided by a localist framework to knit cities across the globe to share best practices in inclusion and equitable development.

CONCLUSION

In order to establish such a framework, cities would need “unleashing,” as Schrager proposes. Cities would need to have the clear authority to experiment without overreaching oversight from state governments. Among the powers cities would need are the abilities to: (1) tax revenues in (almost) any manner they consider appropriate; (2) adopt inclusionary policies in housing, including rent controls if viewed as a potential solution to price escalation; (3) adopt not only minimum wage laws but other laws protecting workers’ rights; (4) favor their own residents over others in employment and service provision. These are among the most contested areas of local government law, but the past few years have witnessed an increase in local adoption of a broader equity agenda. To truly unleash cities would require pre-emptive restrictions on what state governments could do to overrule such experimentation, so that cities could develop a robust agenda without concern that courts or state legislatures could undo their efforts.

To those who fear that unbridled state power might challenge fundamental rights, there are two retorts. First, the United States Constitution and the limits it places on governmental actions that infringe upon individual rights would remain. Second, if cities used this power inappropriately, the political “market” would still impose constraints. People can, and do, move from local government to local government, as Tiebout and his followers have long argued. If market efficiency can be trusted, then governments should take diverse approaches to governance and see which ones prevail. Because of the current political climate, and in light of the divisions elucidated by the 2016 United States presidential election, the time is right to begin such experiments in earnest.

If such an effort really takes hold, it will have much credit to give to Richard Schrager’s contributions to our understanding of the past and potential future of city power. By showing that law is contingent, and context-specific, Schrager makes available new possibilities for the organization of our society.