LOCALISM ALL THE WAY UP: FEDERALISM, STATE-CITY CONFLICT, AND THE URBAN-RURAL DIVIDE

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INTRODUCTION

One characteristic of this age of political polarization is increasing conflict between states and their cities. Pandemic-related regulation has been a recent flashpoint, with governors and mayors at loggerheads over school openings, mask mandates, rent moratoria, and business closures.¹ But conflicts between state and city officials preceded that global emergency. In recent years, state hostility to local policymaking has become its own epidemic, with states preempting, suing, fining, and attacking local officials over a range of policies.² These conflicts harken back to an earlier era when state legislatures would adopt “ripper bills”

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that stripped local officials of their offices and authority. At the same
time, secession movements within states are gaining traction, at least
rhetorically. The immigrant sanctuary city has been followed by the
Second Amendment sanctuary city and, more recently, the rise of pro-life
and First Amendment sanctuary cities.

Popular electoral maps and our (understandable) preoccupation with
the Electoral College can sometimes suggest that red state and blue state
divisions are driving our current politics. But state-city conflicts are more
representative of the actual political cleavages that characterize “our
federalism” in the twenty-first century. States qua states are still
jurisdictionally and constitutionally salient, but they are not politically so.
Counties are the jurisdictions to watch as the election returns come in:
Maricopa, where Phoenix is located; Fulton, the county in which Atlanta
sits; and Fairfax, the largest county in Virginia, located just outside
Washington, D.C. The urban-rural divide is the defining feature of early

twenty-first century political life; that divide transcends both states and regions. Even as the winner-take-all electoral system suggests that state-to-state or region-to-region differences matter, the important political cleavages that drive electoral politics are occurring inside states.8

Federalism—the relation between states and between states and the federal government—is a central preoccupation of U.S. legal scholars. Less attention has been paid to the conflicts within states. But those conflicts are representative of the current state of American federalism, which is characterized by the decline of regional political affiliations and the rise of metropolitan ones, the broader conflict between urbanizing municipalities and rural counties, the fact of uneven economic development, and the consequent values bifurcation between low and high productivity places.9 State-city conflict is reflected in the stridency of national political rhetoric, the division of the country into “real” and “fake,” the demonization of the big city (and of all things “cosmopolitan”), and the invocation of “states’ rights” to oppose the exercise of municipal power.10

This form of sectional conflict is less amenable to federalism doctrines that contemplate state-by-state divergence; those doctrines can only serve as crude proxies for the political cleavages that are operating within states, not between them.11 Meanwhile, the intrastate doctrines that mediate the relationship between the center and the local, such as home rule, have shown themselves to be too weak for the task.12

That weakness is coupled with a certain lack of respect. State constitutional doctrines that mediate between states and cities are sometimes treated as a form of baby federalism—locally interesting, but not as important to our constitutional politics as the doctrines that govern the state-federal relationship. I disagree. Whatever the doctrinal and political status of state-federal relations, they tend to be parasitic on more fundamental features of political life in the early twenty-first century. State-city conflict is not federalism writ small; it is instead what

8. As one commentator recently stated, “[W]e’re actually near a high point in the contribution of within state variation in partisan voting, in contrast to between state variation, precisely as our attention as a country has increasingly turned to the state level debate of blue states versus red states.” The Science of Politics, Is Demographic and Geographic Polarization Overstated?, NISKANEN CTR. (May 19, 2021), https://www.niskanencenter.org/is-demographic-and-geographic-polarization-overstated/.


11. See Schragger, supra note 9, at 1590–91.

federalism—albeit mediated through a pre-urban Constitution that still
gives primacy to states—has become. Instead of “federalism all the way
down” as a way to characterize the multiple vertical layers of authority
in the United States, a better description might be “localism all the way
up”: conflict at the metropolitan scale is driving important aspects of our
national political life.

This Essay proceeds in four parts. Part I briefly describes recent state-
city conflicts and how they reflect an abiding urban-rural polarization. Part
II discusses three features of state democratic practice—anti-urban bias,
state legislative capture, and metropolitanism—that contribute to this
polarization, both intrastate and nationally. Part III explains why state-
based federalism doctrines fail to address metropolitan-level political
cleavages and why intrastate home rule doctrines have fallen short as well.
And Part IV canvasses possible mechanisms for addressing the urban-rural
divide, including a more robust home rule regime in the states. One leading
justification for a vertical division of power is the reduction of conflict
through institutions that provide room for a diversity of sub-state polities.
But, as practiced, U.S.-style, state-based federalism has failed to advance
that aim—in large part because it is operating at the wrong scale.

Recognizing the metropolitan origins of our polarized politics is
important for two reasons. First, reorienting the conversation away from
state-national conflict highlights the disadvantages of state-based
federalism as a mechanism for managing ideological cleavages. And
second, focusing on state-city conflict suggests the necessity of intrastate
institutional reform as a way forward. The urban-rural divide has
manifested in classic state-city political tensions since before
industrialization.14 The states’ public law has in the past been refashioned
in an effort to ameliorate those tensions, though to somewhat limited
effect.15 With those tensions now having “gone national,” it is time to
return to the states and look at the problem anew.

I. PREEMPTION AND SECESSION

I start with the explosion in state-city conflict, which legal scholars
have begun to document in a burgeoning literature that catalogs the rapid
rise and aggressive use of state law preemption.16 The targets of state

13. See Heather K. Gerken, Foreword: Federalism All the Way Down, 124
Harv. L. Rev. 4, 10 (2010).
15. Id.
16. See, e.g., Joshua S. Sellers & Erin A. Scharff, Preempting Politics: State
Power and Local Democracy, 72 Stan. L. Rev. 1361 (2020); Richard Briffault, The
Challenge of the New Preemption, 70 Stan. L. Rev. 1995 (2018); Erin Adele Scharff,
Hyper Preemption: A Reordering of the State–Local Relationship?, 106 Geo. L.J. 1469,
preemptive laws (which have been characterized along a continuum, from “deregulatory” to “punitive” to “nuclear”17) are generally the larger and more progressive cities in their respective states. The politics of preemption are usually apparent: red state legislators deploy their plenary authority over local governments to override and punish blue cities.18 But even in states with Democratic legislatures, preemption is rampant.19 In many ways, the recent trend has been a return to the early twentieth century, when the cities were governed from state capitol and urban machines were merely adjuncts to state political machines.20

The range of preemptive laws has been cataloged previously,21 but it is worth noting some recent examples, for they indicate how readily state legislatures are willing to quash even the most anodyne and local-specific municipal policymaking. Most obviously, the pandemic has given rise to clashes between cities and states over mask mandates and other public health responses to COVID-19. Recently, the Texas governor ordered that no local government, including school districts, may enforce any kind of mask mandate.22 Local government officials can be fined $1,000 for implementing such a rule.23 Governors repeatedly have overridden local closure laws and have asserted their authority over local school openings and school mask mandates as well.24

State legislators appear increasingly ready with preemptive legislation, whatever the issue of the day. In Florida, the governor recently signed legislation that permits the cabinet and governor to override local
budgeting decisions that reduce or redirect funds away from the police—a direct response to the “defund the police” movement championed in the aftermath of the Black Lives Matter protests.25

Preemptive voter suppression bills have also proliferated. In Georgia, a state law aimed at Fulton County outlaws mobile voting or accepting outside grants to run elections.26 In classic “ripper” bill fashion, the law also allows the State Election Board, controlled by the state legislature, to replace local election boards.27 In Texas, legislation that targets Harris County prevents counties from expanding voting hours or mailing absentee ballots absent a request and limits how local election boards allocate their budgets.28 Iowa, Michigan, Arizona, and other state legislatures have adopted or are considering similar bills.29 In all these states, voter suppression efforts take the form of eliminating the authority of local election officials.30

These are examples of a widespread phenomenon, targeting local laws across the spectrum, from plastic bag bans31 to the minimum wage.32 The new preemption is not confined to areas of policy that require


30.  See id.


uniformity or a comprehensive state-wide response. Instead, it is being used to overturn laws with which the legislature disagrees, often in areas of traditional local concern. In Montana, for example, the legislature recently outlawed local inclusionary zoning ordinances, effectively undercutting the City of Bozeman’s attempt to advance affordable housing. In Iowa, the legislature recently outlawed “source of income ordinances” meant to prevent landlords from discriminating against Section 8 housing voucher recipients. Only Des Moines, Iowa City, and Marion had such ordinances.

State legislative efforts to control, disempower, and remove or punish local officials are obviously intended to hobble local democratic institutions, mainly in large cities or in heavily minority counties. The antidemocratic thrust of recent preemption efforts is impossible to ignore. Yet this attack on cities is of a piece with the larger culture war, much of it not so subtly cast as a battle between “us” and “them.” Consider Texas Governor Greg Abbott’s treatment of Austin as a hostile country, echoed more generally by Donald Trump, as a candidate and then president, in his repeated attacks on “burning and crime-infested” cities. Another example of symbolic politics is the proliferation of state laws that bar local governments from removing Confederate monuments or renaming streets and schools. Statewide bans on local gun regulation are mostly symbolic,


35. Richardson, supra note 34.


too; local restrictive gun ordinances do not affect the bulk of gun owners who live elsewhere in the state.40 So are preemptive laws that bar localities from adopting LGBTQ or other anti-discrimination ordinances.41 These kinds of local ordinances do not have significant extraterritorial effects; preempting them seems therefore mainly expressive—to emphasize a threat that is not actually imminent or to signal legislators’ defense of the “right” values.

Stokers of the culture wars have long contrasted the “true” Americans of small towns and rural places with “big city” cosmopolitans.42 Historically, urbanity was associated with immigrants, Blacks, Jews, and Catholics, all of whom were associated with immorality, crime, and disease.43 Trumpian anti-urban rhetoric has revived those associations, with the addition of some new deviant groups—Muslims, undocumented aliens, and LGBTQ persons.44

The escalating conflict over urban versus rural values has given rise to recent secessionist movements. In states with more dominant urban populations, like Virginia and Oregon, the calls by rural communities to secede—again mostly symbolic—are becoming louder.45 The related Second Amendment sanctuary movement also invokes the language of secession, with the doctrines of interposition and nullification regularly


43. See CONN, supra note 42, at 15.

44. See Schragger, supra note 10, at 1211–16 (discussing contemporary populist anti-urbanism).

making rhetorical appearances. Often aligned with the burgeoning militia movement, Second Amendment sanctuary advocates are not making localist claims, but universal ones, asserting their own power and authority to interpret the Constitution and implicitly threatening violence should the state seek to enforce its law.

The geographical location of the Second Amendment sanctuaries is as predictable as the locations of the immigrant sanctuaries that emerged before them: rural communities have embraced the Second Amendment; cities and college towns and large, more diverse counties are more hospitable to immigrants and gun control. Vaccine hesitancy also tracks these geographical divides fairly accurately. Trump-voting states predictably have lower vaccination rates than Biden-voting ones, seemingly a direct result of policy driven by ideology. But these state-to-state differences mask the intrastate divide that is driving those wider disparities. The vaccination rate for Travis County, Texas, where Austin sits, is double that of the rural counties that make up large portions of the state.

II. THREE FEATURES OF STATE DEMOCRATIC PRACTICE

The tug-of-war between the metropolis and the hinterlands is not new. Prior to the Supreme Court’s one person, one vote decisions, rural state legislators protected their dominance by refusing to apportion legislative seats according to population, thereby shutting out growing


47. There is more than a tinge of white supremacy in these efforts, as well as an undercurrent of violent insurrection. Both were made manifest by the January 6 invasion of the Capitol and previously in events like the violent and deadly August 2017 “Unite the Right” rally in Charlottesville. Richard C. Schragger, When White Supremacists Invade a City, 104 VA. L. REV. ONLINE 58 (2018); see, e.g., Gardner, supra note 36, at 857–58.


49. Id.


51. Id.


urban constituencies. There is some evidence that the state legislature could be a place where deals between city and country could be struck, but in the main, cities complained bitterly about being governed from state capitols and sought equal representation, mostly to limited effect.

An early institutional response to the rural/urban conflict was the adoption of state constitutional provisions, mainly home rule and bans on special legislation, that were designed to ensure cities some protection from overweening legislatures. The one person, one vote revolution was also meant to address the problem of rural overrepresentation, though it arrived in the 1960s and ’70s at a moment when the suburbs were in their ascendency. Those decisions thus did less to enhance city power than some advocates may have hoped. Indeed, three current features of state democratic practice suggest continuity rather than discontinuity; the urban-rural divide appears to be as entrenched as ever.

The first feature is structural anti-urbanism, which continues despite successive waves of electoral and state constitutional reform. The underrepresentation of urban (and Democratic) interests in state legislatures has been repeatedly observed, blamed in large measure on the effectiveness of partisan gerrymandering. The commonly told story is that gerrymandering replaced malapportionment as the tool for entrenching non-representative majorities in state legislatures.

But as political scientist Jonathan Rodden has described (in a recent book aptly titled Why Cities Lose), the roots of left-leaning (labor or


55. See, e.g., Roy A. Schotland, Commentary, The Limits of Being “Present at the Creation,” 80 N.C. L. REV. 1505, 1505 (2002). Schotland reports that in the aftermath of Baker v. Carr, Jesse Unruh, the legendary California Democratic politician, berated him, stating, “You think you’re helping the cities. The cities were taking care of themselves; we can work things out with the agricultural areas—because they don’t care what we do so long as it doesn’t interfere with them. But now you’ve shifted power to the suburbs—all they care about is keeping taxes down, and that means real trouble.”

56. Id. at 1505–06; see also Frederic C. Howe, The City: The Hope of Democracy 99–100 (1905).

57. See Ansolabehere & Snyder, supra note 54, at 229.

58. Id. at 230.


61. See id. at 305; see also Ansolabehere & Snyder, supra note 54, at 217.
Democratic Party) underrepresentation run deep and appear to be common to Western democracies that use winner-take-all, single-member electoral districts. Under such conditions, if a party’s voters are geographically clustered—as Democratic voters are in urban districts—the electoral system itself (regardless of gerrymandering) can create a skew that “lead[s] to outright minority-party control of state legislatures,” as Miriam Seifter has written. At a minimum, clustering combined with winner-take-all districts “exaggerate[s] majority control, giving bare majorities an inflated margin” especially once gerrymandering is factored in. Echoing Rodden, Seifter argues that state legislatures are increasingly not representative at all: they are in fact “countermajoritarian.”

A result of these spatial dynamics is political polarization that tracks and reinforces geographical polarization, a phenomenon Rodden traces back to the rise of urban workers’ parties at the beginning of the twentieth century and even earlier to the labor agitation that began in the late nineteenth century. Pro-labor concentration occurred in the early industrializing cities of Europe as well, but in those countries, labor leaders advocated for proportional representation. As Rodden observes, continental democracies with systems of proportional representation do not exhibit an anti-urban bias; European right and center-right parties cannot possibly assemble a governing coalition that entirely ignores or attacks cities. By contrast, in the United States, the Republican Party can write off cities almost entirely. In U.S. elections, the political fights focus on an increasingly narrow slice of the electorate: the elusive suburban voter. Indeed, even if the suburban voter is the “median” voter, Rodden notes that biased state legislatures will adopt policies significantly to the right of the median voter’s preference—a feature, he again argues, of single-member, winner-take-all-districts and the geographical concentration of Democratic votes in cities.

64. Seifter, supra note 63, at 1762.
65. Id.
67. Id. at 27.
68. Id. at 233.
69. See id.
70. Id. at 198; see, e.g., Edgar Sandoval, David Montgomery & Manny Fernandez, ‘Contested, Heated Culture Wars’ Mark Ultraconservative Texas Session, N.Y. TIMES (June 1, 2021), https://www.nytimes.com/2021/06/01/us/texas-republicans.html
The counter-majoritarianism of state legislatures is accompanied by a second salient feature of state democratic practice: the influence of highly motivated and well-funded cross-state corporate interest groups. Alexander Hertel-Fernandez, another political scientist, has done important work on state legislative capture. He documents how a number of powerful conservative, business-backed organizations led by the American Legislative Exchange Council (ALEC) have successfully targeted state legislatures, especially since the 1990s. Notably, ALEC does not restrict itself to the predictable deregulatory and anti-union reforms often favored by big business but has a broadly conservative agenda that includes such items as education reform, voter ID, and stand-your-ground laws.

State legislative capture is not new, of course. In particular, extractive industries in states dependent on them for jobs and economic development have long exercised significant influence in state capitols. ALEC introduced a one-stop shop for legislative assistance, however, across multiple policy areas. It provides all manner of model bills, hundreds of which are proposed in state legislative chambers each year. For part-time, underpaid, and often under-resourced legislators, ALEC serves as lobbyist, researcher, legislative aide, and legislative drafting service all in one.

The story of ALEC’s influence is in part the story of the rise of post-war conservative politics in the United States; whether ALEC has moved the electorate or is taking advantage of underlying shifts in Americans’ policy preferences is likely not knowable. What is notable is that both ALEC’s pro-business deregulatory push and its culturally conservative agenda have targeted city policymaking. ALEC has provided legislation

[https://perma.cc/4793-66QX] (observing that even as the state has become younger and less Republican, the Texas legislature is moving to the right).


73. Id. at 2–3, 55, 76.


75. Id. at 264. “In his systematic study of American legislative practices, published in 1907, Paul S. Reinsch . . . describ[ed] how business interests had developed a new and ‘far more efficient system of dealing with legislatures than [the old methods of] haphazard corruption.’” Id. (quoting Paul S. Reinsch, American Legislatures and Legislative Methods 231 (1907)).

76. Hertel-Fernandez, supra note 72, at 69, 72.
that overrides municipal laws across a whole range of issues, including—not surprisingly—in the field of labor and employment law. The legislative logrolling that could provide cities with some room to maneuver in exchange for supporting rural policy preferences does not seem to be operative. Indeed, ALEC’s cross-state strategy seems designed to override parochial intrastate relationships.

In any case, as Hertel-Fernandez observes, statewide preemptive legislation is one of ALEC’s staples. He notes that in 2000, less than two percent of the U.S. population lived in a state with local minimum wage preemption, but by 2016, almost sixty percent did; a similar trend applies to preemption of local paid sick leave. City policymaking is regularly shut down. Hertel-Fernandez writes that “the combination of state power over preemption, coupled with [ALEC’s] cross-state reach, severely curtails the ability of blue cities located within red states to take action on their own.”

It is significant—though perhaps predictable—that cities are being aggressively curtailed at the moment that they are also enjoying a resurgence. Newly industrializing cities at the turn of the twentieth century, too, were ripe targets for state intervention because they had become so economically important. State politicians were attracted to the spoils available in the growing city, while reformers were eager to address the social and political problems induced by massive and rapid urbanization.

This observation points toward a third feature of state democratic practice in the first quarter of the twenty-first century: metropolitanization. In recent decades, wealth, population, and productive enterprise have slowly and now more rapidly flowed into large urban agglomerations—cities and urbanizing counties—reprising in a form the economic growth that attracted state legislators’ attention during industrialization. Urbanization has also contributed to cultural sorting, increasing the values

77. Id. at 240–41.
78. Id.
79. Id. at 241.
82. See id. at 57–59.
bifurcation between high and low productivity places—a phenomenon that has been accelerating over the course of the twentieth century.⁸⁴

Roddon argues that the rural/urban divide can be understood as pitting more progressive and diverse urban constituencies against conservative-leaning and whiter rural communities.⁸⁵ At its inception, however, the rural/urban divide was driven by fears of concentrated municipal or corporate power.⁸⁶ The “problem of a great city within [a state’s] borders” could be solved—as New York’s future U.S. senator, Elihu Root, observed in 1894—by providing “that the small and widely scattered communities, with their feeble power comparatively . . . shall, by the distribution of representation, be put upon an even footing . . . with the concentrated power of the great cities.”⁸⁷ Doing so entailed amending state constitutions to enshrine geographic-based, as opposed to population-based, representation—which the New York constitutional convention of 1894 essentially did.⁸⁸ Other states followed, adopting county-based representation systems, coupled in some cases with limits on the number of representatives that could come from one county—a mechanism used by Pennsylvania, for instance, to limit the legislative delegation representing Philadelphia.⁸⁹ Indeed, the threat of urbanization regularly induced action on the part of incumbent rural legislators whenever that urbanization occurred. Nevada amended its constitution to limit the electoral power of Reno and Las Vegas as late as 1950.⁹⁰ Reynolds v. Sims,⁹¹ which invalidated such strategies, was not decided until 1964.⁹²

The actual political implications of malapportioned, anti-urban state constitutions differed depending on the region. Republicans benefited from malapportionment in the North, where cities were Democratic strongholds.⁹³ But in the South, white Democrats dominated rural areas and so were advantaged by anti-city malapportionment.⁹⁴ Urban residents in the West, by contrast, were often Republicans.⁹⁵ Progressive Era and New Deal politics, dominated in the latter period by the unholy alliance between Dixiecrats and Northern Democrats, meant that national political

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⁸⁵. Id. at 15–18.
⁸⁶. See ANSOLABEHERE & SNYDER, supra note 54, at 57.
⁸⁷. See id. at 58 (quoting 3 REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK 1226 (1894)).
⁸⁸. Id. 58–59.
⁸⁹. Id. at 59.
⁹⁰. Id.
⁹². See id. at 581.
⁹³. See ANSOLABEHERE & SNYDER, supra note 54, at 74–75.
⁹⁴. Id. at 77.
⁹⁵. Id. at 81.
cleavages did not necessarily track the urban-rural divide. Farmers and the small towns that relied on them and rural laborers in extractive industries welcomed cooperatives, electrification, road-building, and other progressive (and populist) efforts in Appalachia and across the rural South and West. The urban-rural political coalition that characterized the New Deal was sustained until the Civil Rights Era.

The urban-rural divide nevertheless permeates state politics—in some cases since the late nineteenth century. And it appears to start tracking party affiliation in the 1920s, when more densely populated counties begin to exhibit a consistent trend in favor of Democrats. In other words, urban-rural conflicts existed well before the present-day knowledge economy contributed to high concentrations of college graduates in cities. Urbanization has long produced a backlash from rural representatives fearful of concentrated economic power or jealous of their legislative prerogatives. And it has long produced a cultural backlash from whichever political party happened to be dominant in the countryside.

The present urban-rural divide—which seems to prevent cross-cutting agreement on otherwise popular economic and regulatory legislation—may be exacerbated by dramatically uneven economic development. The decline of the industrial city has been occurring at least since the 1950s. What is perhaps new is the whitening and depopulating of large swaths of the periphery and a new concentration of wealth in the greater metropolis—which in the Sunbelt has always included the

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96. See id. at 82.  
97. See id.  
98. See id. at 80.  
99. See id. at 57.  
103. See Berman, supra note 81, at 60–61.  
104. See Ansolabehere & Snyder, supra note 54, at 82.  
105. See, e.g., Seifter, supra note 63, 1793–94 (describing the popularity of increasing the minimum wage).  
The urban resurgence (or, for some, the “great inversion”\(^{108}\)) of the last few decades is a feature of this metropolitanization of the economy. On this account, the salient political divide is between metropolitan and non-metropolitan areas—those attached to the global economy through growing urban regions and those unattached to such regions and thus isolated from the global economy.\(^{109}\)

This observation has been made before,\(^{110}\) but what does it mean for state democratic practice? First, and most obviously, metropolitanization means that population and economic activity in many states increasingly reside in one or two large, heavily populated counties. Consider that the Denver metropolitan area constitutes almost sixty percent of Colorado’s total population.\(^{111}\) Atlanta and Phoenix are similarly dominant in Georgia and Arizona, respectively, as are Houston and Dallas in Texas.\(^{112}\) These metros not only provide the bulk of a state’s population, but also most of the state’s employment and economic activity.\(^{113}\) Battles to control those metro regions and reduce or shape the power of its leading cities are thus predictable. The degree of state officials’ political power might in fact turn on how much influence those officials wield in the state’s leading cities or metro regions (which may be why Austin’s independence is so galling to Texas state officials). Call this the centripetal force of state political economy.

Second, despite their economic dominance, leaders in urban regions face significant challenges of political coordination. The regional urban polity is heterogeneous, raising barriers to unified action; urban constituencies act in their own interests and rarely in the interest of the city qua city.\(^{114}\) Making matters more complicated is the fact that metropolitan regions tend to be highly fragmented, consisting of scores of local

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109. See Brownstein, supra note 2.


112. See Brownstein, supra note 2.

113. Id.

government entities.\textsuperscript{115} Regional institutions are often non-existent or extremely weak.\textsuperscript{116} Coordination is further hampered by the fact that the various communities making up a metropolitan region are not monolithic; central cities in these regions are often still home to significant groups of economically isolated citizens, and inner-ring suburbs are differently situated from outlying commuter towns. Competitive intergovernmental pressures, for residents and development, can undercut meaningful cross-border or cross-city cooperation.\textsuperscript{117}

In this political environment, and under a regime in which states exercise almost plenary authority over local governments, Democratic control of statewide political institutions seems to be a necessary precondition for the meaningful exercise of municipal power. It is not nearly sufficient, however; the intra-party conflicts between Mayor Bill de Blasio, former Governor Andrew Cuomo, and New York’s Democratic-controlled legislature are ample evidence of that.\textsuperscript{118} And again, those conflicts are unsurprising; if state officials stop meddling in the affairs of their state’s largest municipalities or counties, it might mean they have little to do at all. In red states, the winner of these battles is normally a foregone conclusion because of the application of overwhelming legislative or gubernatorial force. Cities simply lose.

III. The Failure of Local-Protecting Doctrines

The targeting of cities has occurred before. As noted, at the turn of the twentieth century and later at mid-century, reformers responded to attacks on city autonomy with institutional changes designed to protect local authority.\textsuperscript{119} Those efforts were of limited success.\textsuperscript{120} Nevertheless, umpiring the state-local relationship was one way to counter the power of statewide political machines.\textsuperscript{121} State constitutional home rule grants and constitutional bans on special legislation are two examples that originated in the Progressive Era.\textsuperscript{122}

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\item \textsuperscript{115} See id. at 672.
\item \textsuperscript{116} See Nestor M. Davidson & Sheila R. Foster, The Mobility Case for Regionalism, 47 U.C. DAVIS L. REV. 63, 68 (2013).
\item \textsuperscript{117} See, e.g., ANSOLABEHERE & SNYDER, supra note 54, at 65–67 (describing the rivalry between Los Angeles and San Francisco in the 1920s).
\item \textsuperscript{119} BERMAN, supra note 81, at 62.
\item \textsuperscript{120} See id. at 62–63.
\item \textsuperscript{121} See id. at 61–62.
\item \textsuperscript{122} Id. at 62.
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Local-protecting doctrines are justified for all the reasons that the vertical distribution of power is seen as advisable: deconcentrating power and protecting liberty, encouraging innovation and experimentation, preventing unequal treatment, fostering democratic engagement and teaching civic skills, lowering the costs of failure, promoting choice and a diversity of policy responses, increasing accountability, taking advantage of local knowledge, and providing political out-groups with opportunities to govern.123 These are, of course, conventional justifications for any multi-tiered governance regime.

In the case of the state-city relationship, however, these doctrines have mostly buckled under the forces of centralization. To be fair, it is not at all clear that constitutional structures, however entrenched, can “stick” in the face of severe political and values disagreement.124 Nevertheless, it is worth considering how supposedly devolutionary state-based federalism doctrines and supposedly local-protecting state constitutional doctrines have both undercut actual political decentralization.

As to the former, state-based federalism cuts against the exercise of decentralized municipal power.125 Cities can gain protection from federal law through federalism doctrines, but only incidentally. Constitutional anti-commandeering and anti-coercion doctrines protect locals only insofar as there is no daylight between them and their states. Once disagreement arises, the constitutional principle of state sovereignty takes over, leaving little room under federalism doctrines for protecting cities from contrary state commands.126 That is because a state’s legislative supremacy over its political subdivisions has seemingly become a federal constitutional rule, though never quite explicitly stated as such.127

Indeed, state legislative supremacy over cities need not be baked into federal constitutional law, even as the federal courts might generally defer to a state’s decisions regarding its internal political and jurisdictional organization.128 It has been repeatedly argued that it is not a logically necessary adjunct of state-based federalism to treat cities as mere instrumentalities of their states, as the Hunter v. Pittsburgh129 doctrine is regularly understood to do.

123. Schragger, supra note 9, at 1550, 1586, 1589, 1603.
127. See id.
128. See id.
129. 207 U.S. 161 (1907).
Consider, for instance, Kathleen Morris’s urging that the federal courts not take any position on the constitutional status of cities, but instead defer to the states, which regularly treat municipalities as constitutionally salient, mainly through home rule doctrines. Federal courts, on this account, should adopt a very narrow reading of *Hunter v. Pittsburgh*, applying state protective doctrines when available instead. Another option is to recognize a local right of self-government that runs to the people, bringing to the surface the “shadow doctrine” of local government status that has long been lurking. Sufficient doctrinal data points exist to make out a limited federal claim of local autonomy, as David Barron and I argued in separate articles some years ago. More recently, I have suggested an anti-commandeering principle that prevents states from requiring local compliance with federal law in areas in which the state is otherwise forbidden to regulate and locals would otherwise be shielded from federal commandeering.

These are workarounds, to be sure. The bottom line is that state-based federalism doctrines generally do little to protect cities from state law preemption except when federal law empowers cities or provides funds to them directly. This is why the existence of states and the corresponding constitutional doctrine of state supremacy generally impede devolution. A middle or “regional” tier of government tends to fill the policy and political space that would otherwise be occupied by cities or other local institutions in a non-federal system. If those states are constitutionally privileged, their dominance is even more entrenched. It may be for this

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130. Morris, *supra* note 126, at 34, 43–44.
131. *Id.* at 44.
134. Schragger, *supra* note 10, at 1218 (discussing potential challenges to SB4, the Texas anti-sanctuary-city law).
reason that cross-national studies show that federal systems of government are often less decentralized than unitary ones.\textsuperscript{137}

Moving “inside” states, we see a similar failure of local-protecting constitutional doctrines. Home rule, bans on special legislation, and other constitutional reforms—initially adopted during eras of urban resistance and reform—have also not prevented centralization. Like state-based federalism doctrines, these intrastate local-protecting doctrines are biased toward state supremacy.

That is in part because of a problem that I have elsewhere called “selective localism.”\textsuperscript{138} It is not that state legislatures do not devolve significant responsibilities to local governments. They do, which is why measurements of local fiscal and regulatory autonomy often do not track whether a state formally embraces Dillon’s Rule or home rule.\textsuperscript{139} The formal constitutional status of cities does not often predict cities’ actual ambit of responsibility.

But constitutional restrictions provide limited constraints on state legislatures, which may provide broad statutory grants of authority to cities but can also readily alter those grants. Indeed, state legislatures are very willing to override local laws that are politically salient and with which they disagree.\textsuperscript{140} But they are much less inclined to take on fiscal and social welfare responsibilities that can be easily off-loaded onto local governments.\textsuperscript{141} Tax cuts are popular among state legislators in part because they do not have to make up for the shortfalls in education, infrastructure, and other services that often fall first to local governments.\textsuperscript{142} And because of the highly decentralized system of government, who is accountable for tax and spending policy is often fairly opaque.\textsuperscript{143}

There are also no internal anti-commandeering or coercive spending doctrines in the states—though some states have adopted restrictions on unfunded mandates.\textsuperscript{144} Home rule is the main bulwark against state overreach, but it has always provided limited protection against state

\textsuperscript{137} See studies in Cross, supra note 136, at 47–49.
\textsuperscript{138} RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE 72 (2016).
\textsuperscript{140} See Cross, supra 136, at 36.
\textsuperscript{142} Id. at 640.
\textsuperscript{143} See id. at 639.
\textsuperscript{144} See, e.g., ALA. CONST. amend. 621(a); FLA. CONST. art. VII, § 18; COLO. REV. STAT. § 29-1-304.5(1) (2021).
preemption and other forms of legislative intervention. Moreover, even in home rule states, the fiscal constraints on local governments can be severe. States’ “fiscal constitutions,” for instance, often impose draconian limitations on local revenue-raising and spending authority. California’s Proposition 13 arguably has had more impact on the structure, authority, and autonomy of local governments in California than any protective grant of power contained in the California Constitution.

Vertical separation of powers doctrines—like home rule—are also difficult to enforce judicially. Courts are loath to block state legislative enactments, especially in areas that are of heightened public policy concern. Almost by definition, those areas—voting, anti-discrimination law, labor law, environmental protection, employment, and housing—are “matters of statewide concern,” with sufficient extraterritorial effects to justify state regulation. When courts adjudicate home rule disputes, they generally consider the local versus statewide effects of a particular policy area; the appropriate distribution of authority between the state and its subdivisions often turns on whether the enactment affects outsiders.

That inquiry presupposes that state enactments enjoy a certain democratic pedigree; it tends to approach the question of local authority on the assumption that the state legislature is more broadly representative than local councils. If locals are indeed parochial in this democratic sense, they have the burden to show that their ordinances only affect their own citizens, who have had a say in their enactment. Extraterritorial effects need to be managed and internalized by the larger unit—the state.

But what if the state legislature is structurally parochial or is acting parochially—which is to say, for the benefit of special interests? If Seifter, Rodden, and the other critics of state democratic institutions are right, then the presumption of state legislative representativeness is badly misplaced. Because of their counter-majoritarian character, the

149. See id. at 186, 188–90; see Schragger, supra note 145, at 105; see, e.g., Arlington County v. White, 528 S.E.2d 706, 708 (Va. 2000) (discussing employee health insurance benefits as a matter of statewide concern).
150. Stahl, supra note 148, at 188–89.
151. Seifter, supra note 63, at 1733–34.
152. See, e.g., id. at 54.
assumption that state legislatures deserve our democratic respect may be incorrect.

In fact, it may be more appropriate to bestow that respect on the largest cities or counties in the state, which are likely more representative along a number of dimensions, especially racially and ethnically but also socioeconomically. This is especially so if the city is less susceptible than state legislatures to special interest capture, which Hertel-Fernandez’s work suggests. In cases where state legislative processes are prone to capture, city policymaking may better reflect majoritarian preferences, both in the city and statewide. Seifter observes, for instance, that raising the minimum wage is broadly popular in many red states where the legislature has preempted local minimum wage hikes. “[I]t is the cities,” she notes, “not the states, that appear to be conveying the popular will.”

The three features of state democratic practice previously discussed—structural anti-urbanism, state legislative capture, and the problem of metropolitan fragmentation—complicate the caricature of parochial cities and beneficent (cost-internalizing) state legislatures. If state institutions are deeply flawed and locals are democratically disadvantaged, then perhaps the home rule inquiry should be reversed. Instead of presuming that local lawmaking is a departure from the baseline of state legislative accountability, courts should adopt the reverse presumption and treat local-invading state legislative acts as presumptively anti-democratic unless justified.

The early home rule reformers thought as much; their goal was to cabin state legislatures as much as to empower municipal officials, who were, they fully recognized, no saints. The idea, at least among some Progressive Era reformers, was to break the state political machines in order to give good government a chance at the municipal level, without any misconceptions about the quality of local rulers. Protective doctrines like home rule were meant to be democracy-enforcing; they were not understood as providing exceptions to an already-perfected state democracy.
democratic practice. Such protective doctrines were meant to address state political dysfunction.

That states are too centralized or impede decentralization flips the usual critique. Skepticism of states and state administration has a long history, though it has been mostly voiced by proponents of national power—less by proponents of city power. Nationalists have been rightly skeptical of the reactionary and racist state regimes shielded by the invocation of “states’ rights,” intended as a defensive doctrine to prevent federal intervention.

But decentralists should worry about states, too. Consider that “states’ rights” has more recently been invoked as an offensive doctrine to justify across-the-board preemption of any local law with which the legislature disagrees. The outcome is again often reactionary. Majority Black cities have been common targets of state law preemption. Recent voter suppression efforts, for instance, tend to be based on a view of city voters as inherently corrupt—an attitude that leads some to assert that urban voters should count less than those voters who are more authentically members of the state’s political community.

The scorched-earth politics that these kinds of laws represent reflect, in many cases, national political parties pursuing national political and

161. See id.
166. Emily Badger, Are Rural Voters the ‘Real’ Voters? Wisconsin Republicans Seem to Think So, N.Y. Times (Dec. 6, 2018), https://www.nytimes.com/2018/12/06/upshot/wisconsin-republicans-rural-urban-voters.html [https://perma.cc/P73A-MHV6] (Robin Vos, the Republican Speaker of the Wisconsin State Assembly stated, “If you took Madison and Milwaukee out of the state election formula, we would have a clear majority.”).
culture war strategies in the states.\textsuperscript{167} Those national interests, however, are taking advantage of an existing geographical divide in the states that state institutions could be designed to mute.\textsuperscript{168} I am not talking about some free-floating, undifferentiated localism. Insulating city power through constitutional local-protecting rules has always been an attempt to solve the problem of urban underrepresentation against a backdrop of continual up-state/down-state tensions.

The urban-rural divide is not a product of such rules but the impetus for them. Perennial intrastate conflict can be mediated by limiting the power of state legislatures to govern where they are not wanted. But more importantly, effective local-protecting rules can invite bargaining, giving both sides an incentive to stay out of each other’s way. Enforcing a presumption of local control through robust restrictions on special legislation or home rule grants requires state legislatures to make a case for their broad representativeness and not merely assume it.

\textbf{IV. State Constitutional Home Rule Reform}

The urban-rural divide may doom us, especially if it becomes further entrenched through political sorting. Flight out of red states to blue states or vice versa reduces intrastate political diversity.\textsuperscript{169} It is not unheard of for elected officials to induce such sorting by way of making a more congenial electorate and thereby solidifying their own control.\textsuperscript{170} If the Texas legislature makes it impossible for Austin citizens to achieve their preferred policy goals, then those folks might move elsewhere. The migration of diverse college graduates into urban places while smaller, rural places lose their graduates alters the electorate in obvious ways in both places.\textsuperscript{171}

What to do? For institutional reformers, electoral reform is an obvious place to start. Indeed, there is precedent for such reform. In a prior

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era of malapportionment, the one person, one vote revolution substantially rewired the states’ political geography\textsuperscript{172}—though not in ways some had anticipated, and certainly not in ways that solved the problem of the concentration of Democratic votes in urban places.\textsuperscript{173}

The next frontier is proportional representation, a solution that Rodden favors,\textsuperscript{174} as it provides small parties at least some say in the government and forces larger parties to broaden their appeal.\textsuperscript{175} As already noted, anti-urban bias is largely avoided under proportional voting systems.\textsuperscript{176} Redistricting reform to counter extreme partisan gerrymanders also seems obviously necessary to prevent minoritarian government,\textsuperscript{177} though in light of the concentration of Democratic voters, “corrective” gerrymandering may be necessary to fix state legislatures’ bias.\textsuperscript{178} Addressing extreme partisan gerrymandering seems possible; some states have non-partisan districting commissions, and some state courts have been more amenable to policing the districting process than the U.S. Supreme Court.\textsuperscript{179} The likelihood of the large-scale adoption of proportional representation, however, is much smaller, as Rodden recognizes.\textsuperscript{180} Ranked-choice voting has received some good press, and a few cities have adopted it.\textsuperscript{181} But most states seem far from considering such a substantial change to their electoral systems.\textsuperscript{182}

A different “coping mechanism” for urban-rural polarization is federalism or decentralization\textsuperscript{183}—institutional structures that divide authority between levels of government. This solution focuses on the intrastate vertical separation of powers, which has a long history in the public law of the states.\textsuperscript{184} That history suggests that state-level constitutional reform may be possible.

\begin{thebibliography}{99}
\bibitem{172} Ansolabehere & Snyder, supra note 54, at 12.
\bibitem{173} See generally id.
\bibitem{174} See Rodden, supra note 62, at 230.
\bibitem{175} See id. at 230–31.
\bibitem{176} Id. at 230–33.
\bibitem{177} See Diller, supra note 60, at 326–27.
\bibitem{178} Rodden, supra note 62, at 267.
\bibitem{180} Rodden, supra note 62, at 228–29, 265.
\bibitem{183} Rodden, supra note 62, at 255.
\bibitem{184} See id. at 273–74.
\end{thebibliography}
One place to start would be the replacement of weak home rule with strong home rule—the ambition of the National League of Cities’ recently published Principles of Home Rule for the Twenty-First Century (Principles). The Principles updates the model home rule constitutional provisions promulgated by the American Municipal Association (AMA) (which became the National League of Cities in 1964) over sixty years ago. The previous AMA model was influential and sparked the so-called “second wave” of municipal home rule reform in the states. (The first wave had occurred in the Progressive Era with the adoption of the first home rule charters.)

The Principles is an emphatically pro-local, pro-democracy document, but in ways that should be uncontroversial: it primarily seeks to address and limit the use of state power to intimidate, punish, delegitimize, and defund local government. That basic idea is not new, though it has recently come under severe strain. The Principles, therefore, reaffirms the proposition, embraced by the AMA in 1953, that cities should be able to initiate legislation on all matters so long as the legislation is consistent with state law. Permission from the legislature is not a prerequisite for municipal action. And it further reaffirms the right and capacity for local citizens to elect their rulers and manage their own democratic process and structure of governance. Many of these principles are already embodied in state constitutions, even if they have gone underenforced in recent years.

The Principles also seeks to rebalance state-local power, which has skewed strongly in favor of the legislature. The 1953 AMA model sought to insulate cities from state control of local matters. In the words of the Executive Director of the AMA at the time, “Municipal governments can be neither free nor responsible unless they are guaranteed the right (and


186. Id. at 4–5.
187. Id. at 12.
188. Id. at 11.
189. Id. at 8, 17–19.
190. Id. at 12.
191. Id. at 34, 40–41.
193. See Bulman-Pozen & Seifter, supra note 192, at 908.
the compulsion) to decide purely local matters for themselves.”\textsuperscript{195} The new \textit{Principles} does not adopt the “local matters” language; judicial determinations of what is a matter of local concern and what is a matter of state concern are challenging and highly contentious or (more often) lead to mostly confirming state legislative authority.\textsuperscript{196} Instead, the model adopts a general “presumption against preemption” on the theory that cities and states are equivalently competent to exercise authority across the whole range of policy matters.\textsuperscript{197} This presumption consists of a requirement that the state provide a clear statement of its intent to preempt and can do so “only if necessary to serve a substantial state interest, only if narrowly tailored to that interest, and only by general law.”\textsuperscript{198}

These requirements are not alien to state and federal law; they are cribbed from existing state and federal practice.\textsuperscript{199} Clear statement rules have been part and parcel of preemption inquiries in both federal and state law.\textsuperscript{200} The substantial state interest and narrow tailoring tests have been applied by state courts making home rule determinations already.\textsuperscript{201} So, too, the general law requirement is simply a version of the ban on special legislation, written into many state constitutions during the first wave of home rule reform and also applied by state courts.\textsuperscript{202}

Notably, the \textit{Principles} does not provide for municipal “immunity” from contrary state commands but rather requires that the state justify preemptive legislation, a standard that is high but not insurmountable.\textsuperscript{203} The model seeks to buttress home rule by shifting the default in favor of local authority, not immunize a sphere of municipal action altogether.\textsuperscript{204}

A different approach to state-local relations could be taken. Some states currently provide local governments with a defined protected sphere of governance.\textsuperscript{205} Other states demand that certain kinds of preemptive legislation be adopted by a legislative supermajority or pass through other procedural hurdles before becoming law.\textsuperscript{206} To be sure, judicial enforcement of these requirements can be quite spotty; another purpose of

\textsuperscript{195.} \textit{Id.}
\textsuperscript{196.} \textit{Id.} at 55.
\textsuperscript{197.} \textit{Id.} at 57.
\textsuperscript{198.} \textit{Id.} at 35.
\textsuperscript{199.} See \textit{id.} at 52 for discussion.
\textsuperscript{200.} \textit{Id.} at 54–55; see, e.g., \textit{Gregory v. Ashcroft}, 501 U.S. 452, 460 (1990) (adopting a clear-statement rule for federal preemption of state law).
\textsuperscript{201.} See \textit{Nat’l League of Cities, supra} note 185, at 56.
\textsuperscript{202.} \textit{Id.} at 58–59.
\textsuperscript{203.} \textit{Id.} at 53, 56.
\textsuperscript{204.} \textit{Id.} at 53.
\textsuperscript{205.} See \textit{id.} at 54; see, e.g., \textit{Sonoma Cnty. Org. of Pub. Emps. v. County of Sonoma}, 591 P.2d 1, 12–13 (Cal. 1979).
\textsuperscript{206.} \textit{Nat’l League of Cities, supra} note 185, at 55; see, e.g., \textit{Ill. Const. art. VII, § 6(g); City of Rockford v. Gill}, 388 N.E.2d 384, 387 (Ill. 1979).
the revised Principles is to call attention to the gap between existing constitutional home rule grants and their enforcement.\textsuperscript{207} The Principles is in many ways an act of recovery and reassertion of constitutional provisions that have experienced serious institutional decay over time.

Any given mechanism for enforcing a vertical division of authority within the state has costs and benefits. The important point is that state constitutions are fecund with provisions that seek to maintain an appropriate division of authority between the state and the city.\textsuperscript{208} The states’ public law of “intrastate federalism”\textsuperscript{209} is already quite rich and varied. And the concerns animating the different approaches to intrastate decentralization are long-standing. The current Principles seeks to adapt those concerns in an increasingly metropolitan age when political polarization is at an extreme.\textsuperscript{210} In this way, the approach is fairly conventional and consistent with the reasons one would adopt any form of constitutional federalism. If we cannot get along, let us each at least go along—through mechanisms that provide some space for self-government, reduce the stakes for losers, and moderate the effects of winner-take-all politics.

Is this more robust version of home rule sufficient to counterbalance state legislatures’ counter-majoritarianism? Can state constitutional reforms mediate the urban-rural divide? There are, of course, reasons to be skeptical of the judicial enforcement of the vertical separation of powers, as one might be skeptical of all judicial efforts to mediate power relationships when judges are obviously interested parties.\textsuperscript{211} At the same time, constitutions cannot be entirely ignored and thus may induce political bargaining in the shadow of the law.

At the very least, state constitutions are more easily amended. The U.S. Constitution seems practically unamendable at this point in history,\textsuperscript{212} and so addressing the deep and abiding anti-urban bias in the Senate and the Electoral College is going to be near impossible. And while state constitutional politics is just that—a version of state politics—there comes a time when an existing regime is so entrenched and so non-responsive to majority preferences that institutional reform becomes possible.\textsuperscript{213} The momentum for electoral reform in the states in the period just preceding

\begin{itemize}
\item \textsuperscript{207} Nat’l League of Cities, supra note 185, at 16–17.
\item \textsuperscript{208} Fred O. Smith, Jr., Federalism in the States: What States Can Teach About Commandeering, 2021 Wis. L. Rev. 1257.
\item \textsuperscript{209} See id. at pt. I.
\item \textsuperscript{210} Nat’l League of Cities, supra note 185, at 15–16.
\item \textsuperscript{211} Baker & Young, supra note 124, at 100–02.
\item \textsuperscript{212} Thomas W. Merrill, Interpreting an Unamendable Text, 71 Vand. L. Rev. 547, 549 (2018) (“The U.S. Constitution . . . is now widely declared to be virtually impossible to amend . . . .”)
\item \textsuperscript{213} See Brownstein, supra note 2 (arguing that the breaking point for blue cities is the passing of no-mask mandates).
\end{itemize}
the Court’s one person, one vote decisions may be an example;214 so, too, the impetus for home rule reform in previous eras was extreme dissatisfaction with unrepresentative state institutions.215

Consider shifts in state electoral power that invite decentralization. In Colorado, a new Democratic legislature modified the state’s preemptive oil and gas laws to permit the local regulation of fracking.216 In Virginia, Democrats took over the General Assembly and lifted the statewide ban on local governments removing their Confederate monuments.217 Notice that the Colorado Democrats did not ban fracking statewide, nor did the Virginia Democrats order cities to remove their Confederate statuary. Local control may have its own political equilibrium, attractive to both parties when the electorate is closely divided.

In the current economic and political climate, decentralization of power to cities may be responsive to more than just the felt need to mute or reduce political conflict. Central governments are under increasing strain, riven by factions, seemingly incapable of addressing the citizenry’s basic needs and failing to provide even a baseline of safety and security that the modern social welfare state has promised.218 The pandemic has exposed the significant limitations of the centralizing impulse—both in the United States and abroad—and raised the possibility that we are too reliant on large-scale, central governments that—when governed incompetently—become enormously destructive.219 Think of local power as much-needed redundancy—as providing for institutional resilience even if it is sometimes inefficient.

214. See Ansolabehere & Snyder, supra note 54, at 11–12.
218. See Schragger, supra note 9, at 1583–84 nn.206 & 208–12; Tassilo Herrschel, Metropolitanization of the State: Towards Inequality in Democratic “Voice”?, 45 FORDHAM URB. L.J. 1197, 1200–01 (2018) (describing mismatch between nation-states and metropolitan growth); Mica Panić, Transnational Corporations and the Nation State, in TRANSNATIONAL CORPORATIONS AND THE GLOBAL ECONOMY 244 (Richard Kozul-Wright & Robert Rowthorn eds., 1998) (explaining that some transnational corporations “have achieved such a command over global resources, and with it such an impact on the international economy, as to raise serious doubts about the long-term survival of the nation state”).
To be sure, these kinds of structural arguments do not usually move voters or even institutional reformers. Decentralization qua decentralization has no constituency. Citizens and interest groups seek their policy aims at the level of government that is most amenable to them; federal or divided government structures tend to be a (“tragic”) compromise borne of necessity and frustration, not the first-best choice of those who can or believe they can win elections. But hope springs eternal for the law reformer. And that law reformer would do well to look to state constitutions for solutions to the problem of our now-metastasized urban-rural divide.

CONCLUSION

Political polarization is a defining feature of our age, but not along sectional or regional lines, or even policy ones. State-to-state differences still obtain, to be sure. But the leading political cleavages are occurring within states, not between them. And the rise of Trumpism indicates that traditional left-right policy positions are not particularly fixed. “Left” and “Right” have lost much of their meaning; it is increasingly more accurate to refer to the main features of political conflict in the United States as urban and rural.

As population and economic output increasingly concentrate in metro areas, one possibility is a global revolt of the “left-behinds,” a sharpening of the urban-rural divide to the point of a knife. Another revolt could be brewing as well. As cities and their surrounding metro areas become more populous and productive, a significant gap arises between the prevailing sites of productive economic activity and the location of the regulation and redistribution of that economic output.

Call this the mismatch thesis: the increased prominence of cities and metro areas has not in recent decades been accompanied by enhanced policymaking authority. State governments (and sometimes the federal government) are instead increasingly overriding, defunding, and constraining cities. The state law preemption epidemic is one result; the deepening of the urban-rural political divide is another.

A common justification for a federal regime is that it aligns decision-makers with the costs and benefits of their decisions. But under the current regime, the most populous and productive places in the country are highly constrained and unable to respond to emerging threats. State-based federalism is failing to mute political conflict because it is not responsive

221. Rodden, supra note 62, at 83.
222. Id. at 9.
223. See Schragger, supra note 9, at 1541.
to the primary political cleavage of this age. The doctrine of state legislative supremacy provides no political space for metropolitans and non-metropolitans to govern in their respective spheres.

Intrastate local-protecting doctrines have wrestled with this challenge for over one hundred years. The response to perennial state-city conflict has been to try to cabin it by providing an institutional space for its resolution: the state legislature acting against the backdrop of constitutional rules that establish a workable vertical division of authority. As legislatures ignore those rules and courts fail to enforce them, however, the geographical and political distance between the city and the state widens. Democratic practice in the states and the nation becomes a winner-take-all battle for control accompanied by the demonization of “inauthentic” places and voters. This is “localism all the way up”: the problem of the city in the state has become the problem of the city in the nation.