

# Urban Agglomeration, State Domination

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## *(i) Urban agglomeration*

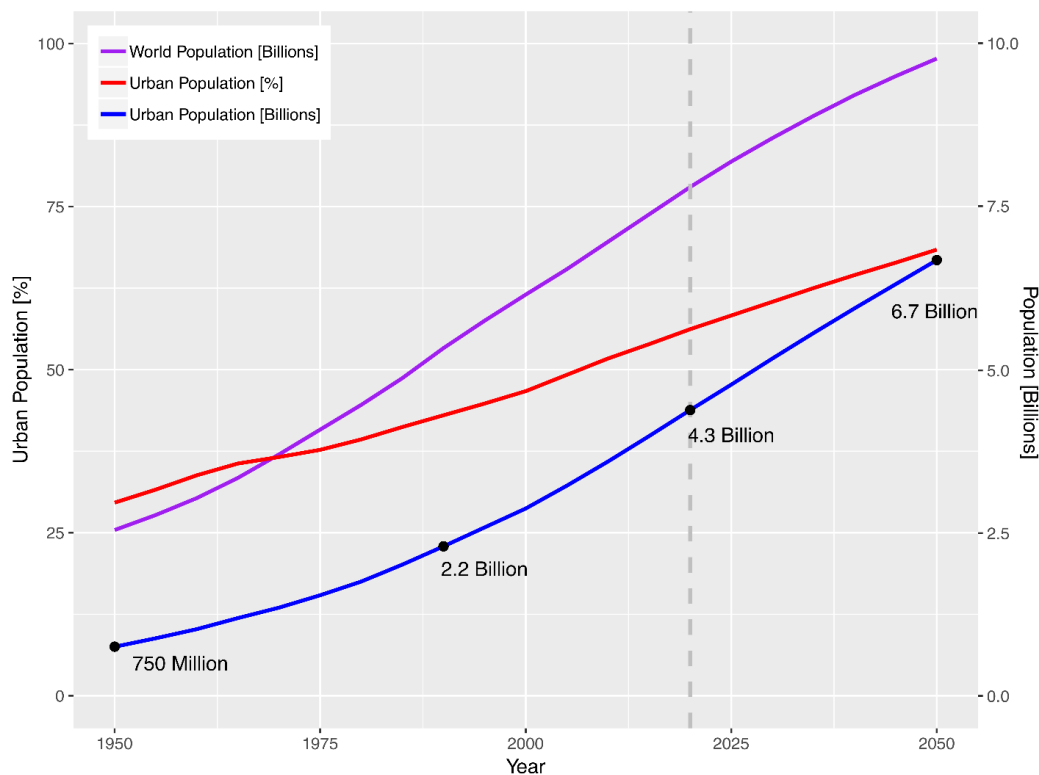
The twenty-first century has been hailed the “century of the city.”<sup>1</sup> Major demographic, economic, and political trends point to the increasing centrality of cities, and extensive urbanization more generally. Whereas a century ago only one in ten people lived in an urban area, today, for the first time in recorded human history, the majority of the world’s population lives in cities. This marks a major and unprecedented transformation in the ways in which human societies organize, both in spatial and in geopolitical terms. The majority of the growth is in the global south, but the global north has seen its fair share of change, too, in terms of both absolute numbers and speed of change. In 1800, a meager 3 percent of the world’s population lived in cities. In 1950, less than 30 percent of the world population lived in cities. In 1990, 43 percent of the world’s population lived in areas that were defined as cities. By 2018, this proportion has grown to 56 percent. Given that during this time, the world’s population has increased from 2.6 billion in 1950 to 5.3 billion in 1990 and to 7.6 billion in 2018, the city growth becomes even more disquieting—from 750 million in 1950 to 2.2 billion people in 1990 and to 4.3 billion in 2018. In other words, from 1950 to 1990 alone, the number of city dwellers worldwide tripled itself. What is more, within a quarter of a century from the 1990s to present-day, a mere generation, the number of city dwellers has further grown by a whopping 95%, or nearly doubled itself. By 2050, 2.5 billion people more are expected to live in urban settings as approximately 70% of the world population (projected at 10 billion) will reside in cities, (85% within OECD countries), thereby reflecting unprecedented human agglomeration in urban areas, with ever-widening density gaps between cities and hinterlands, as well as among megacity neighborhoods.<sup>2</sup>

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<sup>1</sup> *Report: Century of the City* (Rockefeller Foundation, 2006); online: <https://www.rockefellerfoundation.org/report/century-of-the-city/>

<sup>2</sup> For recent data see, *United Nations 2018 Revision of World Urbanization Prospects* (Population Division of the UN Department of Economic and Social Affairs [UN DESA], 2018).

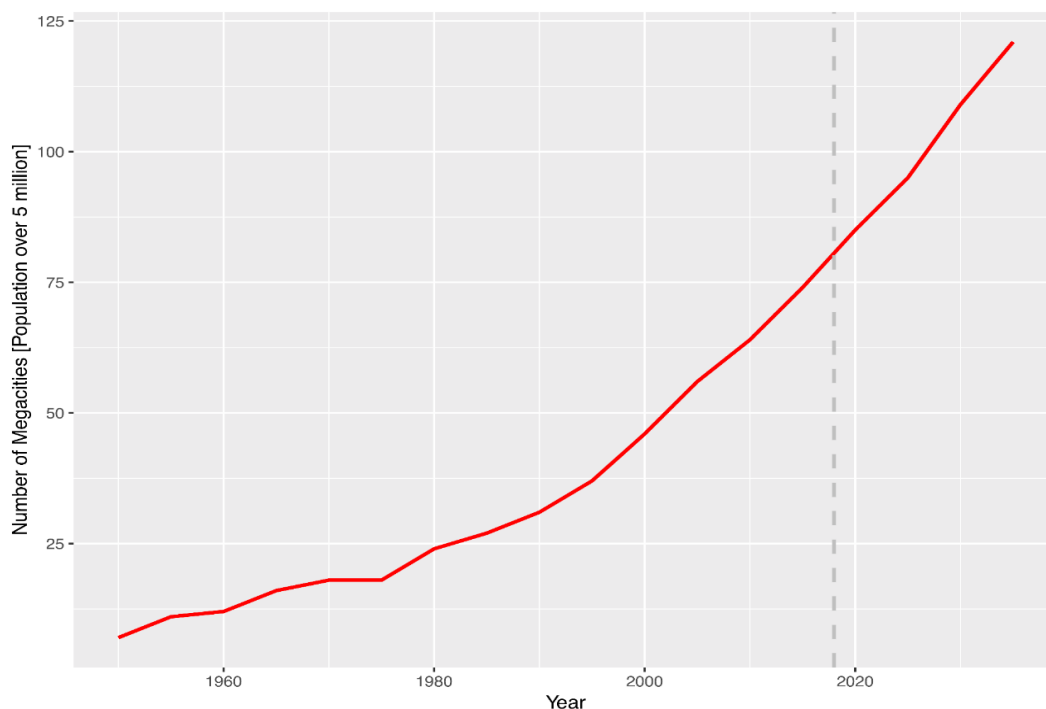


An immediate byproduct of the extensive urbanization of the last century is the emergence of megacities and megacity regions. In 1900, there were merely 12 cities in the world with one million residents or more.<sup>3</sup> Today, the number has passed 500, i.e. more than 40-time increase in a little over a century. As one-million or more cities are so common, the term “megacities” often refers to cities with 5 million people or more, to cities with 10 million people or more, or to urban centers with 10 million people or more. The figure are striking on all three counts. Between 1990 and 2015 alone, the number of cities worldwide with at least 5 million inhabitants has nearly tripled from 18 to 53. That number is expected to further double to 104 cities by 2030. In 1950, only one city (New York) had a population of more than 10 million.<sup>4</sup> In 2017, 19 megacities had a population greater than 10 million. When metro area population is taken into account,

<sup>3</sup> In the late 18<sup>th</sup> century, Beijing was the first city in history to have reached population of one million. London reached that milestone circa 1825.

<sup>4</sup> See Richard Stren, “Cities and Politics in the Developing World: Why Decentralization Matters,” in Karren Mossberger et al, eds., *The Oxford Handbook of Urban Politics* (Oxford University Press, 2012), 567-589.

as of 2017, 47 urban centers had population of at least 10 million.<sup>5</sup> The numbers are stunning: as of 2017, Tokyo's population stands at 38 million; Shanghai at 34 million; Jakarta at 32 million, Delhi at 28 million, Seoul at 26 million, Beijing at 25 million, Manila and Mumbai at 24 million each, while the population of metro Sao Paulo, Mexico City, Karachi, and Lagos stands at 22 million each. New York—the paradigmatic example of a Western megacity, is ranked 9<sup>th</sup> in the world in terms of its metro area population with approximately 24 million. Gigantic cities such as Cairo, Los Angeles or Dhaka (each with a metro-area population of 19 million) do not crack the top 15 most populated cities list. Megacities such as Bangkok, Rio de Janeiro or Bangalore, each with a metro-area population of between 13 to 15 million, are ranked in the third tenth. When another criterion is applied—concentration of people in a given city relative to the overall population of the entire country, the list of megacities becomes even longer. Santiago de Chile (6.5 million people) or the Taipei-Keelung metropolitan area (8 million people), do not meet the 10 million standard, but are home to well over one third of their respective polities' overall population.



<sup>5</sup> See *City Mayors Statistics 2017* <<http://www.citymayors.com/statistics/largest-cities-mayors-1.html>>

The extensive urban agglomeration and population growth in megacities is expected to continue in the coming decades. Demographic models suggest that by 2030, merely a decade from now, Delhi's population will reach 36 million (30% more than its current population), Karachi's population will reach 30 million (30% increase over 2018), while Dhaka's population will stand at 28 million (32% increase over 2018). Some projections suggest that megacities (dubbed "metapolis") of 50 million or even 100 million inhabitants are likely to emerge within the next century, all while levels of density and geographic concentration will continue to rise as the percentage of land area occupied by human settlement will remain well below 10%.<sup>6</sup> New research further suggests that by 2100, approximately one-quarter of the world's population will reside in the world's 101 largest cities, with an overall megacity population of between 1.6 and 2.3 billion. Should current urbanization patterns in Africa continue, studies suggest, the population of Lagos and Kinshasa could each reach 85 million by 2100, while the population of Dar es Salaam will reach 75 million. Meanwhile, the population of several megacities in the Indian sub-continent (Mumbai, Delhi, Kolkata, Karachi, and Dhaka) will have reached 50 to 70 million each by the turn of the 21<sup>st</sup> century.<sup>7</sup> No wonder recent UN reports declare the management of urbanization, especially in low-income and lower-middle-income countries, one of the greatest challenges of our times.<sup>8</sup>

## *(ii) Constitutional silence*

The remarkable urbanization shift touches on some of the core elements of political public life: how we conceive and govern the relationship between territory, people, and political organization—the building blocks of political sovereignty and of constitutional law. Surprisingly, however, our legal institutions and constitutional imagination have not yet even begun to catch up with the new reality. While living in the century of the city, we are still captives of statist constitutional structures, doctrines, perceptions, and expectations initiated at the age of revolution and generated with the creation of the modern nation-state.

Whereas legal scholars have, by and large, accepted that reality, the city has attracted much attention throughout the human sciences. Contemporary political

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<sup>6</sup> See, e.g., Robert H. Samet, "Complexity, the Science of Cities, and Long-Range Futures," *Futures* 47 (2013): 49-58.

<sup>7</sup> See Daniel Hoornweg and Kevin Pope, "Population Predictions for the World's Largest Cities in the 21<sup>st</sup> Century," *Environment and Urbanization* 29 (2017): 195-216.

<sup>8</sup> See, *United Nations 2018 Revision of World Urbanization Prospects* (Population Division of the UN Department of Economic and Social Affairs [UN DESA], 2018).

theory has generated renewed discussion on the urban space as a site of dense social interaction, as an alternative to state- or ethnicity-based political community, and on the city as a potential source for its dwellers' rights and entitlements to renewed urban life (e.g. Henri Lefebvre's "right to the city").<sup>9</sup> Some normative theorists have gone as far as suggesting that cities may have their own defining ethos or values, or that cultivating the "spirit of cities" may be an effective answer to global convergence and homogenization.<sup>10</sup> Political sociologists, from S.N. Eisenstadt and Peter Hall to Charles Tilly and Saskia Sassen, have examined the political and economic roots of the evolution, decline, and re-emergence of the city and, later, of the global city. Prominent economists (e.g. Paul Krugman), and scholars of urban planning (e.g. Richard Florida) have paid considerable attention to the city as an engine for economic growth, a magnet for the creative classes, and a potential catalyst of regional cooperation.

In recent years, scholars and public intellectuals have gone on to suggest that, due to their relatively manageable scale and proximity to the people, cities are often better problem-solvers than the rigid and detached state apparatus. Cities should seize the current zeitgeist of "new localism" and take control over solving social and economic problems within their ambit.<sup>11</sup> Benjamin Barber's *If Mayors Ruled the World* offers what is arguably the boldest effort within mainstream discourse (i.e. aside from the Marxist-anarchist line of thought à la Murray Bookchin of undermining state authority via city power), to advocate for giving more power to cities.<sup>12</sup> Barber's argument is pragmatic: cities can deliver where big government can't. He suggests that cities' tendency to find practical solutions to big policy challenges as well as their unique combination of local engagements and cosmopolitan inclinations make cities better suited than states to deal with major contemporary governance problems. Cities, in Barber's conceptualization, offer "a miracle of civic 'glocality' promising pragmatism instead of politics, innovation rather than ideology, and solutions in place of sovereignty."<sup>13</sup> In short, the last decades have seen a burst of interest in and novel thinking about urbanization and cities through the human sciences.

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<sup>9</sup> See, e.g., Margaret Kohn, *The Death and Life of the Urban Commonwealth* (Oxford University Press, 2016).

<sup>10</sup> See, e.g., Daniel A. Bell and Avner de-Shalit, *The Spirit of Cities: What the Identity of a City Matters in a Global Age* (Princeton University Press, 2011).

<sup>11</sup> Bruce Katz and Jeremy Nowak, *The New Localism: How Cities Can Thrive in the Age of Populism* (Brookings, 2018).

<sup>12</sup> Benjamin Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (Yale University Press, 2013).

<sup>13</sup> Barber, *If Mayors Ruled the World*, 5.

By stark contrast, very little of this intellectual flurry has penetrated constitutional law. Here, the city remains a non-entity and a non-subject. The existing conversation, whether academic or jurisprudential, about all matters subnational — regions, states, provinces, etc. — is confined within centuries-old ideas about federalism and subsidiarity. The gap is even more glaring when it comes to comparative constitutionalism. In unitary polities, urban law and administrative law govern the nitty-gritty legal terrain. Despite the tremendous renaissance of comparative constitutional law, not a single comparative study traces the origins of constitutional innovation and stalemate with respect to city/state relations. In fact, the metropolis is virtually non-existent in comparative constitutional law, constitutional design, or constitutional thought. With the partial exception of a few American legal academics whose work focuses on American cities' legal status,<sup>14</sup> there are no book-length comparative accounts of the challenges to constitutional governance posed by extensive urbanization, the rise of the metropolis, or by consequent tensions along a center/periphery demographic and geopolitical axis. In comparative constitutional thought, the city continues to be non-existent, quietly accepted as being fully subsumed within existing federalism and separation of powers doctrinal schemes. *The Oxford Handbook of Comparative Constitutional Law*, for example, is a major state-of-the-field collection that includes over 50 chapters spread over a thousand pages.<sup>15</sup> Not a single chapter addresses the urban challenge in passing, let alone in significant detail. A similar silence resounds in virtually all other definitive handbooks, companions, and textbooks on comparative constitutional law.

The stark gap in constitutional scholarship on cities amid ever-expanding urban agglomeration worldwide, reflects longstanding state-centered vision of the constitutional order. Of particular relevance here are historical accounts of the rise of the modern state and the corresponding demise of city and subnational autonomy. It is well-known that the process of state formation in Europe involved the subjugation of the medieval city. Medieval and early-modern city-state and autonomous communities' powers were gradually yet effectively subordinated to the growing authority of the

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<sup>14</sup> Gerald Frug, "The City as a Legal Concept," *Harvard Law Review* 93 (1980): 1157-1154; Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law 1730-1870* (University of North Carolina Press, 1983); Richard Schragger, *City Power* (Oxford University Press, 2016).

<sup>15</sup> *The Oxford Handbook of Comparative Constitutional Law* (Michel Rosenfeld and András Sajó eds., Oxford University Press, 2012).

early-modern state, with its quest for full control over its territory and people.<sup>16</sup> In some cases, the subjugation of city powers by the state-led “building a leviathan” project was swift—either as a result of clear power imbalances, or because pooling military or economic resources of several smaller units to create a more potent large one served the interests of weakened city-states. In other instances, emerging states had to resort to active disciplining and open confrontation with recalcitrant, self-asserting cities, adamant on maintaining their sovereignty and authority over their territory, people, capital, and knowledge. Given the considerable variance in how city-states were incorporated into the modern state, it is clear that a range of historical and regional contingencies influenced this evolution alongside broader geographical, cultural, and economic factors. Sooner or later, however, the vast majority of hitherto autonomous cities (at least in Europe) were “nationalized” and contained within the early-modern state, giving way to the state-centered conception of sovereignty and spatiality. Whereas in 1500, the city-state in all its varieties was the dominant form of political unit in Europe, by 1800 it had given way to the early-modern state and its overseas colonies.

Subsequent political paths converged, with few exceptions, upon a single form of a medium-sized, centralized state, with the later addition of federalism as a joint-governance pact between subnational administration and a national government. It was during that phase of the evolution of city-state relations that substantial urban communities lost much of their previous autonomy and status. As states sought to establish their monopoly over the legitimate exercise of physical force and authority, enhance their influence upon economic and social life, and, most importantly, control “who gets what, when and how” within their respective territories, they also laid increasing claim to primacy as a focus of popular loyalties and collective identity.<sup>17</sup> As cities became nationalized, state-centered bureaucracies and governance structures were established; cities were increasingly perceived as mere cogs (important as they might be) in national economies, and as components (important as they might be) of nation-states.<sup>18</sup> As Gerald Frug has shown in his seminal article written in 1980, during

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<sup>16</sup> See, e.g., Patrick Le Galès, *European Cities: Social Conflicts and Governance* (Oxford University Press, 2002); Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton University Press, 1996).

<sup>17</sup> See Charles Tilly, *Coercion, Capital and European States, AD 990–1992* (Blackwell, 1992); Peter J. Taylor, *World City Network: A Global Urban Analysis* (Routledge, 2004). Holding the monopoly over the legitimate use of physical force by a government in a well-defined territory is, according to Max Weber, one of the defining features of the state. See generally, Weber’s *Rationalism and Modern Society: New Translations on Politics, Bureaucracy, and Social Stratification* 129–198 (Tony Waters & Dagmar Waters, trans. and eds., Palgrave, 2015).

<sup>18</sup> Taylor, *World City Network*, 15.

that grand transformation, the legal conceptualization of the city was consistently narrowed to a powerless “creature of the state” and to an entity authorized by the state to solve purely local problems. In that process, Frug argues, “it is not simply that cities have become totally subject to state control—although that itself demonstrates their powerlessness—but also that cities have lost the elements of association and economic strength that had formally enabled them to play an important part in the development of Western society.”<sup>19</sup> The effect on the constitutional imagination with respect to political geography and spatial autonomy was immediate and complete, leading to a dearth of creative thinking concerning the governance of cities as the statist project of national constitutions, whether centrist or federalist, achieved prominence.

### *(iii) State domination*

American constitutional jurisprudence on city power represents a very small fraction of federalism case law in that country. *Hunter v. City of Pittsburgh*, a major US Supreme Court ruling rendered in 1907, continues to stand out as the landmark, field-defining ruling decision in this area.<sup>20</sup> Its take-home message is clear: “municipal corporations are subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted [sic] to them ... The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state.”<sup>21</sup> Yet, as devastating as *Hunter’s* message has been for city power, several observers point out that progressive municipal agendas in San Francisco (with respect to LGBT marriage equality), Portland (with respect to corporate tax surcharge), or New York (with respect to universal pre-kindergarten) have led the way in planting the seeds of social change.<sup>22</sup>

From a formal constitutional standpoint, two main principles govern city power in the US. Forty states follow some version of the so-called “Dillon’s Rule.” Formulated by jurist John Dillon in 1868, it requires that all exercise of city power be traced back to a specific legislative grant of authority. The presumption is that cities do not have legislative authority unless it is explicitly granted to them through a concrete,

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<sup>19</sup> Gerald Frug, “The City as a Legal Concept,” 1119-1120.

<sup>20</sup> For an overview of the *Hunter* ruling, its evolution and legacy, see Josh Bendor, “Municipal Constitutional Rights: A New Approach,” *Yale Law & Policy Review* 31 (2012): 390-431.

<sup>21</sup> *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), 178-179.

<sup>22</sup> See, e.g., Heather Gerken and Joshua Revesz, “Progressive Federalism: A User’s Guide,” *Democracy* 44 (2017); online: <https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/>



identifiable piece of legislation. In other words, municipal corporations owe their origin to, and derive their powers and rights wholly from, the State legislature. Ten states are considered “home rule” (so-called “Cooley Doctrine”) jurisdictions. Here, cities enjoy a broader initial grant of authority and are able to act without specific authorization. In these states, an article of amendment in the State constitution grants cities and municipalities the capacity to pass laws to govern themselves as they see fit as long as they comply with State and US constitution. The “Cooley Doctrine” upon which “home rule” jurisdiction is based reflects the notion of an inherent right to local self-determination. In practice, however, even in states that follow the home-rule principle, legislatures can (and often do) override municipal laws with ordinary legislation.

In some home rule states—New York being a prime example—an intricate system of joint governance has evolved whereby in certain policy areas the state may legislate only upon approval of affected localities, whereas in other policy areas, counties may pass laws only upon the approval of the state. In several major cities that account for a significant portion of their respective state’s population—notably Chicago (Illinois), Washington (District of Columbia), and New York City (New York)—state legislatures allow for what has been termed “integrated governance” of the school system whereby the mayors control public schools in the city and directly appoint the head of the school system. In 2002, New York State legislature granted then-mayor of New York City, Michael Bloomberg, control over the New York City Department of Education. This deferential policy, which was one of Mayor Bloomberg’s major accomplishments in transforming New York, has continued ever since, with a few brief lapses due to legislative negotiations between the city and state authorities. By contrast, a plan put forward in 2006 by the Mayor of Los Angeles, Antonio Villaraigosa, to bring the Los Angeles Unified School District—the second largest public school district in the United States (NYC is first)—under his administration’s direct management was found by a court to be in violation of the California constitution.<sup>23</sup>

Even as relatively powerful a city as NYC may be, it too often finds itself bound by limiting, preemptive state legislation that prevents the city from implementing policy changes in key areas.<sup>24</sup> Limiting rulings by apex state courts have restricted the ability of other American major cities such as Los Angeles, San Francisco or Chicago to legislate in key policy areas such as education, taxation or crime prevention. According to the National League of Cities’ 2017 report on *City Rights in an Era of Preemption: A State by State Analysis*, “state legislatures have stricken down laws passed by city leaders in four crucial areas of local governance: economics, social policy, health and safety.”

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<sup>23</sup> *Mendoza v. State of California*, 149 Cal.App.4th 1034 (2007).

<sup>24</sup> See e.g., *Mayor of the City of New York v. Council of City of New York*, 2013 N.Y. Slip Op. 31802(U), 1-2.

Leading experts on American cities' constitutional status note that there are various ways in which states could frustrate cities' efforts to address the welfare of urban residents by using zoning laws to diffuse local power to the suburbs. Instances of preemption have expanded considerably in the last decade, with states preempting or overriding city ordinances concerning issues as diverse as local living wage regulations, gun control, municipal civil rights law, tobacco regulations, transgender anti-discrimination rights, posting nutritional information in restaurants, and sanctuary city policies.<sup>25</sup> As a recent study astutely observes, "it is unclear how a system overtly dedicated to the principles of devolution can be so hostile to the exercise of municipal power."<sup>26</sup>

As disempowered as American cities may be, Canadian cities easily win the title of most constitutionally weak cities in North America. As a primer on Canadian politics describes it, "Canadian cities have been, without a doubt, the outcasts of Canadian federalism."<sup>27</sup> Lacking any direct constitutional powers, cities and municipalities in Canada exist only as bodies of delegated provincial authority, entirely dependent on provincial legislation for their power and sources of revenue. The *British North America Act, 1867* (renamed *Constitution Act, 1867*) established the relevant constitutional (and by extension, political) landscape for current federal and provincial relationships with municipalities. In that mid-19<sup>th</sup> century document, cities are virtually non-existent, with no residual authority of their own. Section 91 of the *Constitution Act, 1867* lists the main legislative areas reserved to the federal government, while section 92 addresses the legislative areas reserved for the provincial governments. There are two key provisions in section 92: section 92(8), which gives the provinces exclusive control over municipalities, and section 92(16), which gives the provinces authority over all matters

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<sup>25</sup> Martha F. Davis, "Design Challenges for Human Rights Cities," *Columbia Human Rights Law Review* 49 (2017): 28-66, at 29-30. See also Erin A. Scharff, "Hyper Preemption: A Reordering of the State-Local Relationship?" *Georgetown Law Journal* 106 (2018): 1469-1522; Kenneth A. Stahl, "Preemption, Federalism and Local Democracy," *Fordham Urban Law Journal* 44 (2017): 133-179; Erin A. Scharff, "Powerful cities? Limits on Municipal Taxing Authority and What to Do About Them," *New York University Law Review* 91 (2016): 292-343; Richard C. Schragger, "The Attack on American Cities," *Texas Law Review* 96 (2018): 1163-1233. Schragger further notes that "these legal challenges to municipal regulation have been accompanied by an increasingly shrill anti-city politics, emanating from state and federal officials .... Anti-urbanism is a long-standing and enduring feature of American federalism ...."

<sup>26</sup> Schragger, "The Attack on American Cities", 1163.

<sup>27</sup> Luc Turgeon, "Cities within the Canadian Intergovernmental System," in Alain Gagnon, ed., *Contemporary Canadian Federalism* (University of Toronto Press, 2009), 367.

of a local or private nature. In addition, provinces have jurisdiction over “hospitals, asylums, charities, and eleemosynary institutions” (s. 92(7)) as well as “shop, saloon, tavern and actioneer licenses” (s. 92(9)). In short, the constitutional powers assigned in 2018 to major cities of the caliber of Montreal, Toronto and Vancouver are delineated by a 150-year old document, and are controlled exclusively by provincial authority, alongside “charities,” “shops,” and “saloons and taverns.”

Consider the statist subjugation of Toronto, Canada’s largest metro area and home to approximately 20% of Canada’s population and over 50% of Ontario’s population. It is the fourth largest urban center in North America (after Mexico City, Los Angeles and New York) and is consistently ranked among the world’s top financial centers. Metropolitan Toronto’s population has passed seven million with a growth rate of approximately 18% over the last decade—nearly double that of Canada or Ontario. The City of Toronto itself, home to three million people, has far more people than five of Canada’s provinces. And yet, the city is without the constitutional or self-government prerogatives awarded to the provinces. It is estimated that every second immigrant to Canada settles in the Greater Toronto Area; consequently, nearly half of the city’s population is foreign-born. On a practical level, given its size and unique demographic composition, the city carries much of the day-to-day brunt of sustaining viable multiculturalism in the public sphere, let alone addressing the consequences of growing economic inequality and social strife. Nonetheless, the city is systemically dependent on national or sub-national planning, funding, and political economy considerations, as its independent taxation and legislative authority is very limited.

In Europe too, cities lack autonomous constitutional standing. As is well known, contemporary pan-European constitutional discourse is preoccupied with subsidiarity talk and attempts to appease democracy deficit tensions through jurisprudential and legislative deference to national worldviews, cultural inclinations, and policy preferences. Yet, while European countries are increasingly vocal in demanding enhanced nullification and opting-out options vis-à-vis pan-European policies they object, they are avidly reluctant to even consider, let alone grant, anything close to such options for major urban centers within their territorial boundaries. Despite major overhauls in urban governance (e.g. the establishment of the Greater London Authority or the Greater Paris plan), virtually none of Europe’s major cities, whether in unitary or federal states, enjoys extended constitutional status that emancipates it from the ultimate grip of central or regional governments.

Consider Germany, the most populated country in the EU. Unlike most countries of its population size (85 million) or economic significance, it does not feature a real megacity. Due to a confluence of historical contingencies, from the multiple political entities of the pre-Bismarck era to destruction of World War II and the split of the

country and of Berlin from 1945 to 1990, it has evolved as a relatively decentralized country. Several German cities, notably Berlin (one of Europe's cultural capitals), Frankfurt (one of Europe and the world's financial centers), and Dusseldorf (at the heart of the Rhine-Ruhr region, one of Europe's heavy industry centers), have evolved into major cities on a continental scale. Indeed, Berlin (by virtue of being capital of Germany), Hamburg and Bremen (both were independent city-state members of the historic Hanseatic League at the time of German unification in 1871)<sup>28</sup>—enjoy constitutional status as city-states equal to that of a canton/province/state.<sup>29</sup> Yet, this designation is predominantly of administrative significance, and does not reflect any enhanced revenue generation modes or novel constitutional thinking about the megacity or the urban agenda more generally.

The weak constitutional status of German cities has come to the fore amid the arrival of a very large number of refugees to Germany in 2015 and 2016. A federal quota system distributed the incoming refugees across the country according to tax revenues and population size. Consequently, Germany's large cities received the bulk of incoming migrants, regardless of their existing challenges with respect to density, affordable housing, oversubscribed transit, health care and education facilities etc. As recent reports suggest, that framework imposed uneven burdens on city-states and large cities.<sup>30</sup> While large German cities, notably Berlin and Hamburg, have shown considerable ability to innovate in order to effectively absorb a large number of newcomers, there remain a huge institutional and constitutional gap between what German cities are expected to do with respect to refugee housing or integration, and their lack of meaningful constitutional standing or even a seat at the pertinent policymaking table.<sup>31</sup>

Likewise, there are no provisions in the specific German state constitutions that grant any special treatment to large cities. Munich is only named once in the Bavarian

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<sup>28</sup> The inclusion of Bremerhaven—essentially an enclave in the state of Lower Saxony—in the German Basic Law's designation of Bremen as city-state was done upon request of the US navy to allow it access to a main seaport after World War II.

<sup>29</sup> The main privilege the three German city-states have enjoyed vis-à-vis other cities is their systemically better positioning with respect to equalization transfers between the Federal Government and the Länder (Länderfinanzausgleich).

<sup>30</sup> Bruce Katz, Luise Noring, and Nantke Garrelts, "Cities and Refugees—The German Experience" (Brookings, 2016).

<sup>31</sup> See Bruce Katz and Jessica Brandt, "The refugee crisis is a city crisis: World leaders are negotiating a global compact on refugees. Urban leaders need a seat at that table" (*City Lab*, October 27, 2017).

state constitution;<sup>32</sup> neither Cologne nor Dusseldorf are even mentioned in the state constitution of North Rhine-Westphalia; and the Hessian state constitution is silent with respect to Frankfurt, a city that was described in Saskia Sassen's seminal work as a "global city" alongside New York, London, and Tokyo.<sup>33</sup> Moreover, the Rhine-Ruhr metropolitan region—Germany's largest urban agglomeration with 11 million people living in an area considerably smaller than the size of Cyprus with a population 10 times larger than that of Cyprus—is included in its entirety within the state of North Rhine-Westphalia, maintains certain administrative coordination bodies but lacks any autonomous constitutional standing or personality.

Arguably the boldest attempt in Europe at devolution of power to megacities, was the creation of the Greater London Authority (GLA) in 2000. In the 1990s, the central government renewed interest in pushing the city forward. Mega-projects such as the Channel Tunnel Rail Link, the Jubilee Line expansion, the London Eye, and the Millennium Dome and Bridge were centrally funded. The entire GLA initiative was part of the Labour government's plan to modernize local government and make it more accessible and responsive to people's concerns, as well as an attempt to foster policy cohesion across the London metro area—something that urban planners thought was missing since the disbanding of the Greater London Council in 1986.<sup>34</sup> However, constitutional empowerment of London has never been part of the plan. Calls for greater city autonomy, especially following the Brexit referendum, have been quickly silenced by the central government. Moreover, observers agree that the GLA Act left many opportunities for the central government to intervene and assert its authority in core urban planning and city governance matters.<sup>35</sup>

The statist hand that controls the megacity may also empower it at will. Much has been written on leading Asian countries' political and constitutional support of megacities, reflecting astute, long-term central government planning aimed at fostering megacity power as the engine of regional or national economic growth. The Japanese state's support of Tokyo or South Korea's backing of Seoul are prime examples of

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<sup>32</sup> Art. 68, states that the Bavarian Constitutional Court shall be formed at the Higher Regional Court in Munich.

<sup>33</sup> Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton University Press, 2001).

<sup>34</sup> See Carolyn Harrison, Richard Munton & Kevin Collins, "Experimental Discursive Spaces: Policy Processes, Public Participation and the Greater London Authority," *Urban Studies* 41 (2004): 903-917, at 905; Karen West et al., "The Greater London Authority: Problems of Strategy Integration," *Policy & Politics* 31 (2003): 479-496, at 480.

<sup>35</sup> See, e.g., Greg Clark and Tim Moonen, *World Cities and Nation States* (Wiley Blackwell, 2017), 41.

megacity central state empowerment. Shanghai's rapid metamorphosis from a grey factory city into its current status as a regional and global megacity has been analysed extensively.<sup>36</sup> Observers agree that turning Shanghai into a world city has not been possible without it becoming a Chinese "state project" since the 1990s. China's long-term, state-enabling approach towards megacity governance has been implemented through the notion of centrally administrated municipalities (CAM): Shanghai, Beijing, Tianjin, and Chongqing. Article 30 of China's 1982 constitution establishes the notion of CAMs ("The country is divided into provinces, autonomous regions and municipalities directly under the Central Government"); assigns to CAMs a constitutional status equivalent to that of provinces; and stipulates that these province-level megacities are held directly accountable for and controlled by the central government.

Consequently, China's unique spatial governance structure comprises four CAMs, 22 provinces (official Chinese reports include Taiwan in that category for a total of 23), and five autonomous regions, all in what is formally a unitary state but practically has evolved as an intricate quasi-federal system. Article 89 of the constitution further warrants that one of the tasks of the PRC State Council is "to exercise unified leadership over the work of local organs of state administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions and municipalities directly under the Central Government." In addition, from the mid-1980s onward, 15 large cities were assigned a "sub-provincial cities" status. These include rapidly growing megacities such as Guangzhou, the capital of Guangdong Province (metro population 25 million), Shenzhen (metro population 23 million; also within the Guangdong Province), Hong Kong, as well as Chengdu, capital of Sichuan Province (metro population 18 million).

In a complementing move, China's *hokou* (household registration) system, introduced in the 1950s to monitor the population, control internal migration, and prevent the emergence of slums in urban centers, was reformed a number of times, most notably in a major overhaul in 2014, to allow over 100 million internal migrant workers to register in the cities where they live, thereby enabling them and their families to access essential social services, including education and health care benefits.<sup>37</sup> For its most part, the *hokou* system remains tiered depending on the size of migrant workers' the destination city; the larger the destination city is, the stricter the

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<sup>36</sup> See, e.g. Xiangming Chen, ed., *Shanghai Rising: State Power and Local Transformation in a Global Megacity* (Minnesota University Press, 2009).

<sup>37</sup> See Bettina Gransow, "International Migration in China – Opportunity of Trap?" *Focus Migration Policy Brief* 19 (December 2012).

criteria for residence registration and entitlement to social services get. However, experts agree that while further reforms to the *hokou* system are required, the gradual ease of legal restrictions on internal migration since the 1980s has contributed to the success of China's centrally-planned approach to urbanization.<sup>38</sup>

Finally, let us consider the Dhaka bifurcation saga — another telling illustration of the political impulse that may stand behind megacity empowerment or disempowerment, as well as an illustration of state control of cities in the world's lower-income countries. The Dhaka metro region in Bangladesh has approximately 19 million people and is one of the world's most dense megacities. It is projected to reach over 50 million people before the end of the 21<sup>st</sup> century. Inequalities abound — approximately 40% of the city's population lives on 5% of the land. The city is also at high risk of flooding due to a combination of unfavorable weather conditions, severe climate change impact, and a chronically dysfunctional sewage system. The bitter political war between the two major parties in Bangladesh — the socialist-secularist Awami League and the nationalist Bangladesh Nationalist Party (BNP) — has turned the governance of Dhaka into a key battlefield for national politics. For near half century, Bangladesh politics has been completely overshadowed by a vicious duel between these two parties, each following a modern-day version of an "I am the state" approach.

In an unprecedented move in the region, the Awami League-led government announced in 2011 that the Dhaka City Corporation (DCC) would be split into the Dhaka North City Corporation (DNCC, 36 wards) and the Dhaka South City Corporation (DSCC, 56 wards). Citing the inefficiency and incompetency of the DCC, the government promoted the division as a move towards modernization and as necessary to improve service provision in a megacity in need of major reforms.<sup>39</sup> What the government did not say — but every observer of Bangladesh politics knew — is that taking control of the DCC and ousting the Mayor of Dhaka, Sadeque Hossain Khoka (2002 to 2011), a leading politician in the BNP, was the real motivation behind the move.

Since it emerged victorious in the national election in 2008, the Awami League government made a concerted effort to prevent the Dhaka mayoral elections from taking place. A host of administrative reasons for not holding the elections were put

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<sup>38</sup> Kam Wing Chan, "Achieving Comprehensive *Hokou* Reform in China," *Paulson Policy Memorandum* (December 2014); Kam Wing Chan, *Urbanization with Chinese Characteristics: The Hukou System and Migration* (Routledge, 2018); Liqiu Zhao, Shouying Liu, Wei Zhang, "New Trends in Internal Migration in China: Profiles of the New-generation Migrants," *China & World Economy* 26 (2018): 18-41.

<sup>39</sup> See "Splitting Dhaka: Model or Mistake," *Future Challenges*, Feb. 27, 2012; <https://futurechallenges.org/local/searchlight/splitting-dhaka-model-or-mistake/>.

forth. Eventually, the government introduced the bifurcation plan in late 2011. It was hastily approved by the Awami League-controlled parliament (reports in local media suggest the parliamentary debate on the Dhaka split bill lasted nine minutes), and the split of one of the world's largest megacities came into force on December 1<sup>st</sup>, 2011. Upon approval of the abolition of the DCC and the split of Dhaka into DNCC and DSCC, the government moved on to appoint administrators to lead the new entities, while the mayor and councillors (of the BNP) were pushed out of office. The Bangladesh High Court rejected all petitions against the bifurcation, citing orderly passing of the local government (city corporations) Amendment Act-2011, under which Dhaka City Corporation was bifurcated into two city corporations. And so the government's manoeuvre of splitting Dhaka for partisan purposes was complete.

#### *(iv) Conclusion*

The list of examples of state subjugation, or self-interested empowerment, of the city are many. We could have gone on to discuss state-initiated capital city relocation (e.g. Rio de Janeiro to Brasilia, Lagos to Abuja, or the Egyptian government plan to move the country's capital away from Cairo); the statist outlook behind the Greater Paris (Le Grand Paris) plan, the empowerment of Mexico City or the bifurcation of Dhaka; or how ostensible attempts to empower Indian cities, among them some of the world's most massive megacities (e.g. through the 74<sup>th</sup> Amendment to India's constitution) have allowed state governors to call the shots on city power. All things considered, and with very few exceptions, cities remain under the state's grip. As the modern state has effectively eliminated the city as a formal political entity, constitutional representation of the urban—habitat of over half of the world's population—is minimal. Age-old subsidiarity and federalism doctrines remain the main, perhaps even only, constitutional response to spatial grievances. As cities lack constitutional standing to advance their agenda, their ability to use "exit" threats is virtually non-existent.

The anchoring spatial factor plays a key role. Shrewd litigants who are not anchored to a single location may engage in "forum shopping"—essentially choosing a jurisdiction or a legal forum that is likely to benefit them the most. Legitimate companies and tax evaders alike commonly register their businesses in overseas jurisdictions that offer favorable taxation and banking rules. Mass production of goods tends to gravitate to jurisdictions with lower wages, reduced safety standards, or poorly protected worker rights. Potential "capital flight"—essentially, if you do not accept our demands, we will transfer our operations elsewhere where costs are lower—is a lethal strategy commonly deployed by corporations in their constant attempts to extract better conditions from governments (e.g. tax cuts, investment in infrastructure or favourable trade platforms). Cities, by contrast, are not going anywhere; they are tied to a specific



spatial location. Naturally, none of these strategic maneuvering options are available to them.

As cities lack any exit option, and can only exercise limited “voice” channels (to borrow Albert Hirschman’s famous terminology), cities that wish to have their agendas pursued in ways other than the usual “privatize public assets, attract private sector investment, and develop public-private partnerships” pro-business mantra, must align themselves with broader political interests at the national or subnational levels, as well as think creatively about how to utilize regulatory niches in policy areas that permit limited city autonomy. The stark gap between city centrality and the virtual constitutional silence on urban power pushes ambitious cities and city leaders to advance notions such as international city networks, human rights cities, environmentally-friendly cities, or to adopt right to the city charters. For the most part, such initiatives have a socially progressive undercurrent to them, addressing policy areas such as air quality and energy efficient construction, “smart cities” (cities that implement new technologies), affordable housing, enhanced community representation, or accommodating policies towards refugees and asylum seekers. However, with few exceptions, such initiatives live *beside* the formal constitutional or international law frameworks that govern national jurisdictions but are not included in them. Such initiatives, meaningful as they may be at the practical or symbolic level, remain rather toothless inasmuch as constitutional institutions, litigation, or jurisprudence are involved.

The near-absolute constitutional silence on cities amid unprecedented levels of urbanization worldwide points to a methodological nationalism embedded in modern constitutionalism. National constitutions have an inherently centralizing, statist outlook to them. They reflect a “seeing like a state” vision of the territory they govern and, more often than not, a dated conceptualization of that territory’s geographical organization and demographic composition. Just as modern states—conquerors of the city—would not entertain the possibility of seriously re-emancipating cities unless they are set to benefit from it, so do their constitutional orders with their subordination of the local and general disregard for urban autonomy.

Even as influential cities emerge, the state and the accompanying statist constitutional vision are reluctant to give away governance power. City leaders must align their interests with broader state interests and/or with big business and private sector resources. As they cannot forum-shop, cities must turn to other ways to try to improve their lot, for example, by competing for mobile resources, such as talent, wealth, or the headquarters of major industries or corporations. The recent Amazon search for a location for its second headquarters demonstrates this dynamic. A bidding war emerged among 238 cities in the United States, Mexico and Canada, a tally later

reduced to 20 finalists, each of which offered significant tax incentives and other benefits to lure the company. While politicians understandably saw this as a valuable opportunity for their cities to create or strengthen their branding as high-tech hubs, economists and other policymakers sounded a more cautious note, raising concerns about the use of public money in the service of the interests of one of the world's richest and most valuable corporations. In New York City, which landed one of the promised new headquarters, the approval process was finalized only after the city gave up its local veto on the planning process, agreeing that control over the process will be held by the state.

Whereas transnational organs or economic corporations hold considerable leeway vis-à-vis the statist constitutional order, cities do not. Lacking any meaningful "exit," "flight," or "forum shopping" capacity, aspiring cities increasingly turn to international city networking, mainly in areas such as environmental protection, sustainability, and human rights, drawing on attractive yet abstract notions such as the "right to the city." Consequently, the net potential of such collaborations to bring about real *constitutional* (i.e. not merely symbolic, reputational, or educative) change in megacity status is limited. Granted, such transnational city networks may affect local regulations, and may also be seen as an initial step toward the realization of a parliament of cities notion, often associated with Barber's *If Mayors Ruled the World*. However, these networks lack the most basic prerogative of parliaments, namely the ability to make the law of the land.