

In Praise of Strong Mayors

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January 2006 version

WORKING DRAFT

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This paper is being written for a symposium on executive power entitled “*The Most Dangerous Branch? Mayors, Governors, Presidents and the Rule of Law*”

“Things could be worse. I could be a mayor.”
Lyndon Johnson¹

Introduction

Mayors have a special status in American political mythology. The institution of the mayoralty is vaguely disreputable yet deeply democratic, often associated with corruption but also lauded for urban civic achievement, an office that gives voice to underrepresented interests but which can be an organ of elite manipulation. Like the city it represents, the mayoralty embodies the ambivalences of the democratic experiment: the simultaneous attraction and revulsion to the exercise of political power, the professed allegiance to—and deep skepticism of—democratic self-government, especially by and for local people. City government—and municipal affairs more generally—has often been understood as requiring a tradeoff between democratic responsiveness and managerial competence, politics and administration.² Unlike the presidency or the

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¹ Troubled Cities—and Their Mayors, Newsweek, March 13, 1967, quoted in Robert Lineberry & Ira Sharkansky, *Urban Politics and Public Policy* 168 (3rd ed. 1978).

² It has long been asserted that local democratic processes tend to produce inferior administrative results. See, e.g., Alexis de Tocqueville, *Democracy in America* 74-76, 112-119, 302-304 (F. Bowen ed., 1863) (arguing that despite the relative administrative incompetence of local officials, the political benefits of decentralization counseled in favor of permitting them to govern); John Stuart Mill, *On Representative Government* ch.15 (observing that local officials have a “much lower grade of intelligence and knowledge”). Both are reprinted in Frug, et al., *Local Government Law* (3d. ed. 2001).

governorship, the mayoralty has been suspect because it seems to pose the starkest choice between democracy and good government.

The history of the modern mayoralty has tended toward the suppression of the former in favor of the latter. Indeed, the most conspicuous characteristic of the modern mayoralty is its lack of power, which can be attributed in the first instance to the successful municipal reform efforts of the early 1900s. Since 1915, the National Municipal League—the leading instrument of municipal reform—has championed the council-manager form of government, a structure that is designed to divide politics and administration by vesting executive and legislative authority in an elected council and administrative authority in a professional city manager. In this regime, the mayor is normally a figurehead and political power is purposefully fragmented. In medium and small cities, and some large ones, this reformist vision of expert administration insulated from democratic control and independent of political power has dominated.

Mayoral powerlessness is being revisited, however, at least as a formal matter. A number of cities have recently revised their “council-manager” or “weak mayor” municipal charters in favor of a “strong mayor” structure, giving mayors veto powers and increased powers over appointments, and, in some cases, eliminating the city manager. Other cities have successfully lobbied state legislatures to give the mayor control over important municipal institutions, like the schools, which have traditionally been outside mayoral authority. There are a number of reasons for this centralizing tendency, many of them specific to the politics of particular cities. What “strong mayor” charter movements have in common, however, is the belief that a diffuse constitutional structure creates problems of accountability. Current-day reformers have reversed two assumptions that

animated the earlier reformers: that politics should or can be screened from administration, and that centralized power in an executive invites corruption. Reformers believe that a more executive-centered institutional structure can yield tangible governance benefits.

This “strong mayor” movement deserves some attention, and this Essay will begin by describing the movement and putting it into context. City government has been the site of almost continuous constitutional experimentation since the turn of the 20th century. The strong mayor is only the most recent attempt to address the problems of urban governance through institutional design; it reflects the reformer’s inclination to use procedural fixes to address substantive problems.

Increasing the formal powers of urban executives, however, is unlikely to address the deficiencies of city power more generally. Urban governance is highly constrained governance: regardless of what a city’s charter says, mayors are simply not significant wielders of power in our political and constitutional system.

The mayor’s lack of power can be explained in part by America’s history of anti-urbanism, which begins as far back as Jefferson, reaches its reformist heights at the turn-of-the-century in reaction to the urban political machine, and culminates with the rise of the suburbs and the fall of post-New Deal urban liberalism. Suburbanites continue to embrace the notion that municipal governance is primarily administrative or technical; indeed, suburban municipalities—most of which adhere to a weak mayor or council-manager structure—offer an explicit alternative to the “messy” politics of the city, an image of governance in which executive power—indeed, the exercise of political power of any kind—is submerged and repressed.

A more “structural” explanation, however, is the weak constitutional status of cities in the U.S. federal system. The primary form of American political decentralization is regional rather than municipal—states, not cities, are the salient sites for constitutionally protected “local” governance. As a result, cities and their leaders are three levels down the political food chain, and must normally ask the states for whatever powers they have or wish to exercise. This city subservience has an effect on political culture: mayors have experienced periods of influence in national policy-making, but except in rare circumstances, mayors are not serious players in national politics and rarely use the mayoralty as a stepping stone to national political prominence. The mayoralty is both a thankless job and often a dead-end one.³

This may explain why almost nothing has been written about the mayoralty in the legal literature. Public law scholarship tends to be preoccupied with national actors, taking the federal Constitution as its starting point. When addressing the issue of executive power, legal scholars tend to think in terms of the federal Constitution’s separation of powers between executive, legislative, and judicial branches. And when addressing issues of federalism, legal scholars normally focus on the states, mostly ignoring the actual “local” governments that make up the third tier of American federalism. More importantly, normative legal scholarship often anthropomorphizes units of government, discussing the relative authority or power of the “state” or the “nation” without attention to the political actors who actually exercise power in those places and the effects of constitutional structures on their offices.⁴

³ See Lineberry & Sharkansky, *supra* note ___, at 196.

⁴ State and local governments have over 15.8 million officials and employees, approximately three-quarters of which are employed by local governments. The overwhelming number of elected officials serve at the

The executive, however, can take numerous forms. Indeed, the prevalence (in most local governments) of a council that exercises both executive and legislative powers indicates that the national model is not at all dominant. And the variety of local charters and the apparent ease with which cities experiment with new ones illustrates the fluidity of constitutional structures.

Mayoral power is a function of both legal structures and politics—the relationship, as Harvey Mansfield has observed in his study of the presidency, between “formal” and “real” power.⁵ The first Part of this Essay examines these twin aspects of mayoral power from inside the city, describing the context in which city charter and other “strong mayor” reforms are being pursued. Charter reform itself is a regular pastime in some cities; it represents a robust and ongoing form of local politics through non-judicial constitutional reform. That politics gives us an insight into who wields power in cities and how and why mayors are seeking more.

The second Part examines formal and real mayoral power from outside the city. This Part asks how the larger constitutional structure of federalism affects the mayoralty, and argues that “strong mayor” charter reforms will do little to create “strong” mayors. Mayors are underpowered in part because cities are underpowered, and federalism is partly to blame. Although the United States has often been characterized as having a highly decentralized political system, that decentralization is often formal or legal rather than informal or political. Mayors may have power within their sphere, but that sphere is quite parochial, and their power in the regional and national competition for resources is limited by their lack of national political role.

local level. See Richard Briffault, *Home Rule for the Twenty-First Century*, 36 *Urb. Law.* 253, 257 (2004) (describing three-tier system).

⁵ See Harvey C. Mansfield, Jr., *Taming the Prince, The Ambivalence of Modern Executive Power* (1993).

Finally, Part III argues that the weakness of the mayoralty stems in large part from a distrust of urban democracy. For early-20th century reformers, the strong executive was too democratic; business interests and reform-minded elites feared a municipal government that was too responsive to the urban and ethnic masses. This mistrust of urban democracy continues to the present: reform charters are promoted on the grounds of efficiency, not democracy. Yet, perhaps surprisingly, the democratic argument for strong mayors is much more compelling than the technocratic argument, particularly if one believes that cities are (or should be) sites for popular democratic rule and not mere administrative agencies of their states. I conclude with some thoughts about how the strong mayoralty might be responsive to the political fragmentation and subordination of the democratic city.

I.

The Weak Mayoralty and the Politics of Reform

The weak mayoralty is first and foremost an artifact of the city's institutional structure. In many cities, executive power is not even defined; the executive and legislative functions are combined or executive power is purposely fragmented between an elected council and an appointed manager. Strong mayor reforms seek to remedy that defect by altering the formal political relationship among the various branches of city government and between elected and appointed officials. Of course, the reform program is itself a product of urban politics: Institutional reforms are a reflection of urban politics and shape that politics going forward.

A. The Weak Mayoralty

It may be surprising that mayoral power is so formally constrained in the United States. The notion of the strong executive is deeply embedded in American political culture, at least as applied to the Presidency. Alexander Hamilton, after all, declared that “energy in the executive is a leading character in the definition of good government.”⁶ In municipal government, however, the notion of the unitary, energetic executive has never been dominant.

Indeed, the mayoralty itself has generally been a disfavored office except for a brief period at the turn of the 20th century. In the late 1900s, an era in which city government was characterized by many as a “conspicuous failure,”⁷ the mayoralty seemed to hold promise as a possible instrument for reform. Early Progressive reformers like Frank Goodnow, John Bullitt, and Frederic Howe advocated the strong mayor, arguing that centralizing power in the executive would promote accountability, transparency, and democracy.⁸ The reformers had in mind a mayoralty that could act directly for the people, untarnished by the city machines, uncorrupted by the ward leaders and the parochialism of the city councils, and independent of big business interests. An elected centralized executive with complete authority over appointments and city departments was endorsed by the National Municipal League in its first Model City Charter, adopted in 1900.⁹ An elected city council would serve as the legislative branch, with an independent civil service commission operating to counter the old spoils system.

⁶ Federalist No.70 (1788).

⁷ See Jon C. Teaford, *The Unheralded Triumph: City Government In America, 1870-1900* (1984). Teaford describes this view, but argues that it was unwarranted.

⁸ See Russell Murphy, *The Mayoralty and the Democratic Creed: The Evolution of an Ideology and an Institution*, 22 *Urban Affairs Quarterly* 3-23 (1986)

⁹ See National Municipal League, *A Municipal Program: Report of a Committee of the National Municipal League* (1900); see also National Municipal League, *Model City Charter* (8th ed. 2003), introduction at viii.

In fact, power was shifting to the executive as urban governance became more complicated and executive administration became more salient. As cities began to engage in significant infrastructure investments related to the burgeoning urban population—waterworks, libraries, parks, sewer systems—administration was replacing stewardship: late 19th century mayors were beginning to take the reins of city government from the city fathers—the alderman, city councilmen, and selectmen—who had been the amateur governors of the ante-bellum city.¹⁰ The role of the mayor was greater than it had been previously because the role of municipal government was greater than it had been previously.

But the mayors' official ascendancy was short-lived, for competing power bases were emerging, specifically special purpose districts and state-created authorities, sometimes responsive to the mayor, sometimes not. A spate of charter activity resulted in the interposition of boards and commissions between the executive and city departments as a means of insulating the departments from cronyism and corruption.¹¹ The complicated layering of municipal bodies began almost immediately and mocked the first Model Charter's efforts to centralized power in an executive.

By 1915, when the National Municipal League published its second Model City Charter, the strong mayor had been completely excised.¹² After Galveston, Texas turned over governance to a special commission charged with responding to the flood of that city in 1900, commission government became popular among reformers. A number of pioneering cities combined the commission form with a professional city manager, analogizing the municipal corporation to the private business corporation. The city

¹⁰ See Teaford, *Unheralded Triumph*, supra note __, at .

¹¹ See Murphy, *The Mayoralty*, supra note __, at .

¹² See National Municipal League, *A Model City Charter and Municipal Home Rule* (1915).

manager plan, in which an elected council placed administrative powers and responsibilities into the hands of an appointed, professional city manager, appealed to business-minded city fathers. The corporate model also dovetailed nicely with Progressive-Era reformers' faith in expert administration. As reformer John Patterson argued, "the city is a great business enterprise whose stockholders are the people . . . Our municipal affairs would be placed on a strict business basis and directed, not by partisans either Republican or Democratic, but by men who are skilled in business management and social science."¹³ The council-manager plan distanced the administration of the city from politics. Reformers assumed that council members would serve part-time and that most municipal undertakings would be committed to a non-partisan professional answerable to the council but not directly to the voters.¹⁴

The city manager plan became the Municipal League's dominant model; in six subsequent Model Charters, including the most recent 2003 edition, the League has advocated a council-manager structure.¹⁵ That structure was, and continues to be, attractive; the number of adoptions of the council-manager plan by cities has steadily increased.¹⁶ Indeed, the mayoralty has become "something of a rarity"¹⁷; the office does not exist or exists only for ceremonial purposes in the majority of cities.¹⁸

Moreover, even in those cities that divide power between a mayor and a legislative council (i.e., those cities with mayor-council structures) the mayor is often

¹³ Quoted in Harold Wolman, *Local Government Institutions and Democratic Governance*, in *Theories of Urban Politics* (Judge, et al., eds. 1995) at 138.

¹⁴ See *id.* In addition to the council-manager plan, reformers also advocated non-partisan ballots and at-large elections. See *id.*

¹⁵ See National Municipal League, *Model City Charter* (8th ed. 2003).

¹⁶ See *id.*

¹⁷ Murphy, *The Mayoralty*, *supra* note __, at 15.

¹⁸ *Id.*; see also Susan MacManus & Charles Bullock, *the Form, Structure, and Composition of American's Municipalities in the New Millennium*, in *The Municipal Yearbook* (ICMA, ed. 2003), at 3.

weakened by charters that fragment her authority: the council may have final say over appointments, budget authority may be administrative, department heads or commission boards may be insulated from mayoral control by set terms of office, other executive officials may be elected city-wide, unions may have charter-protected rights, or significant power may be vested in a chief administrative officer who is answerable only indirectly to the mayor. A weak or nonexistent mayoralty means that executive power in municipalities tends to be fragmented horizontally, either among council members, between council and city manager, or among the council and other administrative officials who also exercise executive power.

The recent spate of “strong mayor” charter reforms is a reaction to this internal fragmentation, to the perception that city governance structures are outdated. It should be noted that this latter perception seems to be an ongoing feature of urban governance: cities have been tinkering with their constitutions constantly since the turn-of-the century.¹⁹ Los Angeles, for example, had modified its charter over 400 times before instituting its latest comprehensive reform in 1999.²⁰ As for the most recent reform efforts, those who study urban governance identify a number of trends: while the council-manager remains the primary form of city governance, a number of large and medium-sized cities have switched to a strong-mayor format, and others have “updated” their “weak mayor” charters by eliminating barriers to executive authority.²¹

¹⁹ See Teaford, *supra* note ___, at .

²⁰ See Raphael Sonenshein, *The City at Stake: Secession, Reform, and the Battle for Los Angeles* (2004). For a law professor’s take on charter reform in Los Angeles, see Erwin Chemerinsky, *On Being a Framer: The Los Angeles Reform Commission*, 2 *Green Bag 2d* 131 (1999); Chemerinsky, *Further Reflections of a Framer: The Los Angeles Charter Reform Experience*, 3 *Green Bag 2d* 125 (2000).

²¹ See Victor DeSantis & Tari Renner, *City Government Structures: An Attempt at Clarification*, 34 *State and Local Government Review* 95 (2002); George Frederickson, et al., *The Changing Structure of American Cities: A Study of the Diffusion of Innovation*, 64 *Pub. Admin. Rev.* 320 (2004); Frederickson,

This is not to say that strong mayor reforms have become a torrent.²² The National Municipal League continues to favor the professional manager. Indeed, within the community of municipal professionals, advocating anything but the council-manager model is seen as apostasy.²³ To bring the mayor within the fold, the characteristics of competence and non-partisanship are emphasized over political expertise. The mayor's self-presentation often reflects this emphasis on professionalism: the mayor presents himself as a competent and effective administrator, a CEO-figure rather than a political boss or a muckraking reformer. There are also some signs of formal convergence: manager-led cities are increasing power to their mayors while some mayor-led cities are embracing professional managers or chief administrative officers who work alongside both the council and the mayor.²⁴

In this way, the strong mayor and the city manager have partly converged, at least in terms of the expectations for the office of the mayoralty. The new mayoralty tends to adopt pragmatic and mostly nonideological—though some would say neoconservative²⁵—policy approaches to urban problems. This includes an emphasis on public safety, creation of a pro-business climate, the bureaucratic streamlining of city services, and a hesitance to adopt new taxes.

et al., How American City Governments Have Changed: The Evolution of the Model City Charter, 90 *Nat. Civic Rev.* 3 (2001).

²² While abandonments of the council-manager form have increased slightly, adoptions of the form have also increased. See James H. Svara, *The Embattled Mayors and Local Executives in American State and Local Politics: Directions for the 21st Century* 139, 164 (Weber & Brace, eds. 1999).

²³ The debate has raged in the pages of *Governing Magazine*. Compare Bill Hansell, *Mayors and Managers*, *Governing Magazine*, 10 (April 2000) with Patricia Ingraham, *Response at id.*; compare also Terrell Blodget, *Beware the Lure of the "Strong" Mayor*, *Governing Magazine*, (November 1993) with Rob Gurwitt, *The Lure of the Strong Mayor*, *Governing Magazine* (July 1993).

²⁴ See H. George Frederickson, et al., *Type III Cities*, in *The Future of Local Government Administration*, edited by H. George Frederickson and John Nalbandian. Washington, D.C.: The International City/County Management Association, 2002.

²⁵ See, e.g., Richard Flanagan, *Mayors and the Challenge of Urban Leadership* 190-203 (2004).

Many of these approaches have been embraced by policy specialists tired of the failures of 1970's-style social welfarist education, housing, and public safety policies. The left and right now both employ the rhetoric of competition: Cities are competing in a regional environment in which the suburbs are often the dominant economic and political force and in a global environment in which competition between cities and regions for jobs and growth is intense. In this atmosphere, the public features of the city—its politics—tend to be repressed: “constituents” are turned into “clients” or “customers”; “best practices” replace “policy”; an emphasis on “entrepreneurship” replaces an emphasis on “leadership;” “management” replaces “governing.”²⁶

Strong mayor reforms have thus coincided with a new executive managerialism. Mayor Michael Bloomberg of New York is sometimes evoked as the model of this managerial mayor.²⁷ A Democrat turned Republican, a billionaire entrepreneur turned politician, Bloomberg is familiar with the private-side provision of services to clients. He ran as technocrat, and practices what has been called the politics of “managerial competence,” a nonpartisan, non-confrontational approach to urban governance.²⁸ Bloomberg has succeeded by continuing the public safety and pro-business policies of his predecessor, Rudolph Guiliani, but he has also succeeded in gaining powers that Guiliani, who practiced a more charismatic and confrontational politics, could not. For example, he convinced the state legislature to grant him full authority over the city’s schools, a consolidation of power in the mayor’s office that would have been unthinkable only a few years ago.

²⁶ See, e.g., Osborne & Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*; see also H.V. Savitch & Paul Kantor, *Cities in the International Marketplace*, at 297 (2002) (discussing “new breed” of entrepreneurial mayors).

²⁷ See, e.g., Flanagan, *supra* note ___, at 190-203.

²⁸ See James Traub, *Bloomberg’s City*, *NYT Magazine*, at 21 (October 2, 2005).

Bloomberg's success in garnering authority shows how far we have come from the reformist principles of the Progressive Era. For most of its history, the independent, elected school board was a mechanism for making the schools democratically accountable while insulating the education system from the politics and patronage of city officials.²⁹ In most states, school administration is constitutionally separated from municipal administration: the school board is the archetype of the specialized, commission form of government advocated by Progressive-Era reformers.³⁰

Like other strong mayor reforms, centralizing authority over the schools in the mayor's office is driven by current institutional failures and the belief that a popular, directly accountable mayor can act competently where other officials cannot. For municipal reformers on both the left and the right, executive power seems like an ideal wedge to disrupt entrenched bureaucracies or corral fractious competing interests. "We're a football team with no coach," as one Dallas proponent of strong mayor reform has argued.³¹ The problem, according to strong mayor reformers, is not corruption but bureaucratic gridlock. There is a felt need for urban nimbleness in an era in which competition for government resources and private capital is fierce.

B. The Politics of Charter Reform

Whether charter reform will significantly affect the city's management or improve outcomes depends both on the mayor's relative political influence and the alignment of political forces that generate municipal reform in the first place. Remedying the formal,

²⁹ See Donald Parkerson, Jo Anne Parkerson, *Transitions in American Education: A Social History of Teaching* 19 (2001).

³⁰ See Kern Alexander, M. David Alexander, *American Public School Law* 104 (Thomson West 2005); see also L.N. Carol, et al., *School boards: Strengthening grass roots leadership* (1986); J.P. Danzberger, *School boards: A troubled American institution*, in *Facing the Challenge: The Report of The Twentieth Century Fund Task Force on School Governance* (1992).

³¹ See Alan Ehrenhalt, *The Mayor-Manager Conundrum*, *Governing Magazine*, at 6 (October 2004).

legal weakness of the mayoralty does not necessarily create strong mayors as a matter of city power. Both the remedy and the effects of the remedy have to be understood against the background of the urban political forces that generate them.

For political scientists, the primary constraints on the exercise of urban power come from the nature of city politics itself and only secondarily from formal institutional design—this is the distinction Mansfield draws between “real” and “formal” executive power. Scholars of urban politics who seek to describe how power is actually exercised within cities tend to treat the mayor and the mayoralty’s formal powers as just one variable in the political system. This variable has salience, but only in the context of a political system that is characterized by significant complexity.

Thus, in 1961, Robert Dahl could ask how power was exercised in New Haven, Connecticut, and his answer had little to do with the formal structure of New Haven’s city charter. “*Who governs?*” asked Dahl, and his answer, in his classic book by the same name, was that a multiplicity of individuals and groups did.³² Dahl argued that oligarchy—which had characterized 19th century city governance—had given way to pluralism by the middle of the 20th century: 1950’s New Haven was characterized by a political system in which a plurality of political institutions, elites, organized interests, elected officials, and voters were involved in making decisions. Governing was issue-specific and fluid; no one dominant individual or group explained the patterns of decision-making in areas as diverse as school policy, urban renewal, social welfare, policing, race, and labor relations.³³

³² R.A. Dahl, *Who Governs; Democracy and Power in an American City* (1961).

³³ See *id.*

Dahl set one pole—pluralist theory—in the debate over the nature of urban politics.³⁴ Some scholars, writing in the aftermath of the urban crises of the 1960s and 1970s, argued that pluralism was so rampant that the city was mostly ungovernable.³⁵ Big city municipal policy, beset on all sides by a startling number and diversity of strident interest groups, was fragmented, unstable, chaotic, and reactive. The important question for those who saw city government as highly unstructured was not “*Who Governs?*” but “*Does Anybody Govern?*”³⁶ The answer for so-called “hyper-pluralists” was “no.”

Other scholars, however, have asserted just the opposite, arguing that the city, far from being characterized by a rampant pluralism, tends to be dominated by coalitions of local elite. Early elite theorists spoke of an urban “power structure” – dominated in many cases by downtown business and media elites.³⁷ More recently, scholars have argued that urban governing coalitions tend to coalesce around a growth strategy.³⁸ Advocates of the “growth machine” thesis argue that “coalitions of land based elites . . . drive urban politics in their quest to expand the local economy and accumulate wealth.”³⁹ Others have argued that though growth-related interests are centrally important to the politics of cities, growth coalitions are only one of a number of stable coalitions that can arise in

³⁴ See also Edward Banfield & James Wilson, *City Politics* 171 (1963).

³⁵ See, e.g., Douglas Yates, *The Ungovernable City: The Politics of Urban Problems and Policy Making* (1978)

³⁶ See David Judge, *Pluralism*, in *Theories of Urban Politics*, supra note __, at 13 (1995).

³⁷ See, e.g., F. Hunter, *Community Power Structure: A Study of Decision Makers* (1953); cf. C. Wright Mills, *The Power Elite* (1956). See also Robert Lineberry & Ira Sharkansky, *Urban Politics and Public Policy* 174 (3rd ed. 1978).

³⁸ See Harvey Molotch, *The City As Growth Machine*, 82 *J. Am. Soc.* 309 (1976).

³⁹ See Andrew Jonas & David Wilson, *The City as a Growth Machine: Critical Reflections Two Decades Later in The Urban Growth Machine: Critical Perspectives Two Decades Later* (Jonas & Wilson, eds. 1999).

urban political settings.⁴⁰ Like the elite theorists, so-called “regime” theorists “accept the privileged position of business,” but like the pluralists, they also believe that “politics matters.”⁴¹ Cities may experience different long-term “governing regimes” which may create stable alignments responsive to private and public interests.⁴²

Strong mayor reform movements reflect and are shaped by both elite and pluralistic forms of urban politics. It is noteworthy that the downtown business interests that had favored the city manager model at the turn of the century are significant supporters of strong mayor reforms now. Republican mayors of Democratic cities have often been at the forefront of institutional reform – Rudolph Guiliani in New York and Richard Riorden in Los Angeles are the most prominent examples. Mayoral power is a means for bypassing the traditional bases of Democratic city power: ethnic neighborhoods, municipal unions, racial minorities, the leading newspapers, the city council. Those who object to centralizing power in the executive are wary of this political convergence, fearing “business-backed Republican puppets,” in the words of one opponent of strong mayor reforms in Cincinnati.⁴³

Left-right politics is often just below the surface of charter reform, though it would be simplistic to understand the strong executive as simply a tool of business-backed Republican interests.⁴⁴ Indeed, the current strong mayor movement is indicative of a shift away from the urban liberalism that tended to pit business against labor, white against black, social welfarist policies against incentive-based ones, development against

⁴⁰ See, e.g., Clarence Stone, *Regime Politics: Governing Atlanta, 1946-1988* (1989); Stephen Elkin, *City and Regime in the American Republic* (1987).

⁴¹ Gerry Stoker, *Regime Theory and Urban Politics*, in *Theories of Urban Politics*, supra note __ at .

⁴² See id.

⁴³ Alan Ehrenhalt, *The Unraveling Of A Local Government*, *Governing Magazine*, Oct. 1995, at 7.

⁴⁴ Cf. Barbara Ferman, *Governing the Ungovernable City: Political Skill, Leadership, and the Modern Mayor* 146 (1985) (discussing charter reform efforts in New Haven, Boston, and San Francisco)

redistribution. Labor is much weaker in the cities than it once was. And racial politics is not as salient: many cities are now majority black, like Richmond, Oakland, and New Orleans, and thus racial and ethnic political competition has become somewhat muted.

The same can be said for pro- and anti-business divisions. Left-right politics tends not to map onto mayoral attitudes toward business anymore; most mayors will do everything in their power to maintain a pro-business climate. New Orleans' mayor Ray Nagin, for example, was criticized after Hurricane Katrina for paying more attention to the white business owners of that city than to the black constituencies of the Lower Ninth Ward.⁴⁵ Los Angeles mayor Antonio Villaraigosa, the first Latino mayor of that city and a former union organizer, has made it very clear that he will not antagonize business.⁴⁶ And Gavin Newsome, now better known for his forays into same-sex marriage, was initially criticized by left-leaning San Franciscoans as being too close to business interests.⁴⁷

Few scholars doubt the influence of pro-business elites in urban policy but many would acknowledge that these elites have to operate within an environment characterized by significant pluralism. City politics is still coalitional, especially politics as it is achieved through charter reform. Charter reform requires convincing a majority of the

⁴⁵ Lee Hancock, *Is it Black and White? In a City Split and Sinking Before Storm, Racial Issues Boil*, Dallas Morning News, Dec. 4, 2005, at 1A (Mayor Ray Nagin, "a former business executive, acknowledges that many of the returnees are white. But he also has frequently stressed that he and other leaders don't want their city to end up a pale shadow of its former self.... Even so, he has been questioned closely about his close ties to white business elites, some of whom have openly stated their desire to remake the city's demographics and politics.")

⁴⁶ Jonathan D. Colburn, *Villaraigosa: L.A.'s "most business-friendly mayor?"*, San Fernando Valley Business Journal, June 6, 2005, at 11 ("He's been saying to me over the last couple weeks 'I'm going to surprise people, I'm going to be most business-friendly mayor you've ever seen,' [Councilwoman Wendy] Greuel said.")

⁴⁷ Jane Meredith Adams, *Greens Cast Shadow Over Mayoral Elections: 3rd Party a Threat in San Francisco*, Chi. Tribune, Dec. 11, 2003, at C18 ("While Gonzalez and Newsom are both in their 30s, Gonzalez ran as the anti-establishment candidate and argued that Newsom was too close to business interests.")

electorate to agree to significant constitutional changes, many of which can be fairly opaque. Where reformers are lacking support across the myriad of urban constituencies, strong mayor efforts have failed. For example, the backing of municipal reformers could not save charter reform in Dallas. An unpopular mayor, lack of African-American support, and lackluster business backing doomed that effort.⁴⁸ For large-scale charter reform, the necessary coalitions (good government groups, downtown business interests, the city's leading newspapers, labor, and ethnic leaders) have to coalesce around a popular dissatisfaction with the status quo.

Elsewhere, this popular dissatisfaction has combined with elite opinion to generate charter changes. Citizens believe that mayors should “do something” about essential city services, and mayors have sought to bring their powers into alignment with citizens' expectations; mayoral takeovers of city school systems in New York and Chicago are an example. In other cities—like Oakland, San Diego, and Richmond—the mayor's popularity drives institutional reform. In Oakland and Richmond, in particular, charismatic mayors—Jerry Brown and Douglas Wilder, respectively—asked for and received significantly expanded executive powers on the basis of their reformist credentials and electoral popularity.

Mayors have long sought additional power, out of a simple desire to accumulate power, advance their party's electoral prospects, or because they are frustrated when they are blamed for policy and institutional failures that are beyond their control. Whatever their formal powers, however, mayors continue to operate within existing elite or pluralistic frameworks of urban political power, not outside them. Much will thus turn on

⁴⁸ See Emily Ramshaw, *Strong Mayor Trounced: Turnout Unexpectedly High as Proposal United South Side, Splits North*, *Dallas Morning News* Sunday (May 8, 2005). Cf. Ferman, *Governing the Ungovernable*, *supra* note ___, at ___ (discussing failed bids by mayors to gain more formal power).

the particular leadership qualities of the mayor. In the pluralist world of New Haven, circa 1955, for example, the mayor gained power not by being “at the peak of a pyramid, but rather at the center of intersecting circles.”⁴⁹ Mayor Richard Lee of New Haven created an executive-centered governing coalition by centralizing the authority over urban redevelopment. His power was gained through coordination and coalition-building – in Dahl’s words, Lee “negotiated, cajoled, exhorted, beguiled, charmed, pressed, appealed, reasoned, promised, insisted, demanded, even threatened, but he most needed support and acquiescence from other leaders who simply could not be commanded.”⁵⁰ Similarly, Kevin White’s successful run as mayor of Boston from 1968 to 1984, was attributable in large part to his considerable political skills in manipulating a fractious political system.⁵¹

This is not to say that institutional structures do not matter: the extent to which any particular actor within the system can bring political resources to bear on policy outcomes makes a difference. To the extent that mayors operate within a charter structure that grants them significant authority, that authority serves as a resource in the pursuit of policy. Thus, municipal reformers have argued that institutional reforms toward a strong mayor can affect internal city politics. Barbara Ferman, for example, argues that a weak mayor leads to policy-making by bureaucracy or promotes hyper-pluralistic competition for scarce resources.⁵² The result may be stalemate, or worse, cycles of rent-seeking. The strong mayor can build coalitions and hold them together, and can resist corporate-side as well as union-side capture. As Ferman argues, consistent

⁴⁹ Dahl, *supra* note __, at .

⁵⁰ Dahl, *supra* note __, at 204; *cf.* Neustadt, *Presidential Power: The Politics of Leadership* (1960) (describing presidential power as the power to persuade, not the power to command).

⁵¹ See Ferman, *supra* note __.

⁵² See Ferman, *supra* note __, at 211.

with some of the early-20th century municipal reformers, “lack of power can corrupt city hall almost as much as the possession of power.”⁵³

Nevertheless, it should not be forgotten that charter reform has always been a political instrument. Municipal reform is a trope of American urban politics, which historians have often characterized as an ongoing battle between “machine” and “reform” forces. The strong mayor movement is no exception: it both reflects the current state of municipal politics in particular American cities and structures that politics going forward.

That charter reform is a mode of politics—though somewhat different and more complex than electoral politics—highlights one of the significant limitations on the mayoralty: city charters are relatively easy to amend, at least in piecemeal fashion. The coalitions that are pushing for strong mayor reforms today may be the coalitions that cabin the mayor in the future (especially if the future mayor turns out to be unpopular). Moving power to the executive is a formal strategy for addressing the internal fragmentation of municipal government, but the political coalition that is able to deliver significant formal powers to one executive official might be unstable in the long term.

II.

Federalism and the Fragmented City

The conceit of the strong mayor movement—and all institutional reform movements—is that constitutional designers can “give” power to mayors that mayors can then exercise. Internal accounts of urban political power assume that cities (or, more precisely, certain actors within cities) have interests that they have the capacity to pursue. In other words, cities, like nation-states, are relatively politically autonomous. Whether that political autonomy is exercised on behalf of pro-growth elites, the mayor, a political

⁵³ Id. at 214 (internal quotations omitted).

machine, racial minorities, or business interests can be determined by studying particular cities; the fact of autonomy, however, is often taken for granted.

But the city operates within a larger political and constitutional framework that significantly shapes the powers of the city and its officials. Strong mayor reforms address horizontal relationships—between officials at the same level of government—but they do not address vertical ones. The vertical relationship is dominated by federalism, a constitutional structure that recognizes state governments as sovereigns but provides no recognition for local governments. States are the primary form of constitutionally-protected sub-national government in the United States and they exercise plenary power over their political sub-divisions. This arrangement has significant effects on mayors. First, because the mayor is only one of a number of political officials who represent “local” interests, her power tends to be easily diluted. Second, because of the existence of three separate governments, each with its own executive apparatus, the local leader is relatively unimportant when it comes to implementing important state objectives.

A. Vertical Fragmentation

The first effect of the American federal structure on cities and city executives is that it generates vertical redundancy. Mayors do not have a monopoly on local representation. Aside from other city officials, there are significant numbers of state and federal elected officials—namely state representatives and members of Congress—who represent “local” constituents. The federal system creates three levels of political officials—federal, state, and local. All of these officials are in competition for political credit and spoils. All are also nominally responsive to local constituencies but not directly to the city as a whole.

Early advocates of constitutional home rule recognized the vulnerability of the city to this form of political competition. In the early part of the 20th century, the concern was state legislators' attempts to co-opt the urban spoils' systems by giving out municipal goodies, like franchises, to favored constituents.⁵⁴ Progressive Era political reformers sought municipal "home rule" to limit the ability of state legislatures to interfere with city government.⁵⁵ One of the reformers' concerns was that state legislatures—dominated as they were of representatives of the rural part of the state—were generally hostile to city interests.⁵⁶ But another fear was the corrupt inclination of those legislators who actually represented districts within the city. If state legislators could adopt laws regulating all aspects of municipal government, as they did on a relatively regular basis in the late 1800's and early 1900s,⁵⁷ reform control of municipal government would accomplish little so long as the city's state legislative delegation or the wider state apparatus was controlled by the political machine. Reformers wanted to insulate city government from state government, and then work on the political problem of electing local pro-reform candidates within the city.⁵⁸

⁵⁴ See generally David Barron, *Reclaiming Home Rule*, 116 *Harv. L. Rev.* 2255 (2003).

⁵⁵ This is a simplification. Reformers did urge "home rule" as a means of protecting cities from state interference, but they also urged other reforms that would have the effect of limiting city power. Much turned on the particular reformer's substantive political program. For a discussion of the many versions of home rule, see *id.* at 2289-2333.

⁵⁶ Whether state legislatures were in fact hostile to city concerns is subject of some debate. The common view has been that state governments, at least in the east, "served as rural strongholds where the enemies of the city generally held sway." Robert Wiebe, *The Search for Order, 1877-1920* 176 (1967). Scott Allard, Nancy Burns, and Gerald Gamm have argued, however, that this perception is incorrect and that state legislatures normally adopted legislation that was favored by the city's legislative delegation. See Allard, et al., *Representing Urban Interests: The Local Politics of State Legislatures*, 12 *Stud. in Amer. Polit. Develop.* 267 (1998) (studying Alabama, Massachusetts and Michigan).

⁵⁷ See Allard, et al. *Representing Urban Interests*, *supra* note __, at __; Nancy Burns & Gamm, *Creatures of the State: State Politics and Local Government, 1871-1921*, 33 *Urb. Aff.* 59 (1997).

⁵⁸ See, e.g., Robert Brooks, *Metropolitan Free Cities*, 30 *Polit. Sci. Q.* (1915). Allard, et al. argue that mayors and other local leaders tended to work in tandem with their state legislative delegations, but this latter claim is relatively anecdotal and—as they observe—"tentative." See Allard, et al., *supra* note __, at 294. Their work certainly does not challenge the late-19th century and early 20th century reformers' overwhelming perception that state legislators were hostile to reform interests.

Increased competition for spoils is an extreme example of the kind of political competition a federal system generates.⁵⁹ But even aside from corruption, state and national officials—though chosen by “local” electorates—will often have widely divergent interests from local officials, in part because they have to be responsive to larger state and national interest groups and in part because they are accountable to a different local electorate.

The most mundane form of competition is the direct competition for credit and avoidance of blame. State and national elected officials have incentives to take popular positions on state and national matters and push any negative consequences onto lower-level officials. State and federal tax “relief”—which often merely displaces the cost of providing essential services onto localities—is an example of this phenomenon, as are unfunded mandates.⁶⁰ National and state politicians want credit for both providing services and cutting taxes; they can do both by adopting laws that shift costs to local governments. The No Child Left Behind Act—a federal enactment that requires states and local governments to spend money if they do not reach certain federally-mandated targets—is a primary example of this phenomenon.⁶¹ The Virginia legislature’s repeal of the unpopular car tax, which generated monies for local governments, is a more local example.⁶²

⁵⁹ Along similar lines, studies have shown that in developing countries, the existence of a regional level of government is correlated with higher levels of corruption. In a federal system, there are simply more elected officials who can be on the take. See Frank B. Cross, *The Folly of Federalism*, 24 *Cardozo L. Rev.* 1, 52-53 (2002).

⁶⁰ For a discussion of how federal mandates (and state pass-throughs) hurt cities, *see* Pietro S. Nivola, *Tense Commandments: Federal Prescriptions and City Problems* (2002); *see also* *Markets Not Mandates: A Request to Congress for a New Contract with America’s Cities*, CATO Institute.

⁶¹ For a discussion of this legislation, *see* James Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 *NYU L. Rev.* 932 (2004).

⁶² *See* Gordon C. Morse, *Virginia Must Learn the Car-Tax Lesson Over and Over*, *The Daily Press*, Dec. 2005.

A slightly different kind of competition between higher-level and lower-level officials is the competition to control specific local projects or outcomes. Because state legislative districts and U.S. Congressional districts are normally not co-extensive with municipal boundaries, the city qua city is not “represented” at these levels of government. State and national elected officials have strong incentives to inject themselves into local politics, often on behalf of their relevant local electorate but only incidentally on behalf of the local polity.

Consider Mayor Michael Bloomberg’s efforts to influence the form and pace of commercial development in New York City. His proposal to develop a stadium on the west side of the city in an effort to attract the Olympics and a professional football team to New York was stymied by the Speaker of the state assembly, Sheldon Silver. Silver represents the 64th Assembly District, which includes portions of lower Manhattan, and as speaker of the Assembly is one of three members on the Public Authorities Control Board, which also includes the Senate Majority Leader and the Governor. To obtain state financing for the stadium, Bloomberg had to obtain Board approval for the issuance of state bonds. But Bloomberg could not convince Silver, who wanted to focus on downtown redevelopment in his district, to support a stadium on the west side.⁶³

Consider also how Bloomberg’s influence over redevelopment at the former site of the World Trade Center is mediated by state and federal agencies and thus indirectly by state and federal elected officials. The commission nominally in charge of the redevelopment effort is the Lower Manhattan Development Corporation, which is governed by a 16-member board, half appointed by the Governor of New York and half by the Mayor. Thus, the mayor has some influence on the Corporation, though no more

⁶³ See Errol Cockfield, Jr., *Lawmakers Say No to Stadium*, *Newsday*, June 7, 2005.

than the Governor. The LMDC is a subsidiary of the Empire State Development Corporation, whose nine members and chair are appointed by the Governor. Another agency, the Port Authority of New York and New Jersey, whose members are appointed by the Governors of New York and New Jersey, owns the World Trade Center site. And finally, the LMDC is funded by a Community Development Block Grant administered and regulated by the Department of Housing and Urban Development, a federal agency. Bloomberg's competitors for influence are thus formidable, and include Governor George Pataki, state legislators like Sheldon Silver, and the congressional delegation from New York City, including Hillary Clinton and Charles Schumer, the Senators from New York. All of them are arguably as, or more influential, in the rebuilding of the World Trade Center site.

Of course, the post 9-11 rebuilding is unusual in its scope and national visibility. Nevertheless, it is indicative of the ways in which state and national officials influence local decisions.⁶⁴ These officials often operate through state-created public authorities that control important aspects of city policy.⁶⁵ For example, New York's Metropolitan Transit Authority controls the city's subway system and area regional rail lines. Though it generates most of its revenue from city ridership, the mayor has control over only four of the board's fourteen votes; the governor controls six votes.⁶⁶

⁶⁴ David Nice & Patricia Fredericksen tell a similar story of state and federal intervention in the construction of the Battery Tunnel between Manhattan and Brooklyn *in* Nice & Fredericksen, *The Politics of Intergovernmental Relations* 192 (1995).

⁶⁵ For a description of how Robert Moses became the most influential public official in New York City through his control of state-created public authorities, see generally Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (1974).

⁶⁶ Other votes are controlled by surrounding counties. The board itself has 23 members, four of which have one-quarter of a vote and six of which are non-voting. See Henry J. Stern, *Put the City in the Driver's Street*, *NYT* Dec. 20, 2005, at ___.

Specialized agencies, generated by both state governments and the federal government, undermine mayoral authority, as does the system of intergovernmental grants that often fund them. Unlike many other developed industrial nations, which use block grants or generalized revenue sharing to help fund local governments, the United States tends to use a system of program-specific or selective grants.⁶⁷ This style of intergovernmental fund transfers increases state and federal politicians' involvement in local affairs, for it makes every grant a potential political investment and a battleground for conflicting local interests. Because state or national funding is both necessary to achieve many city ends and is often program-specific, the city's capacity to engage in large-scale public works projects, to fund health, education, and welfare services, or to provide housing or other basic amenities to its citizens requires obtaining the cooperation of state and federal elected officials, whose political interests are not always or even usually aligned with the mayor's. These officials regularly broker relationships between local constituents and state and federal agencies, they influence the direction and flow of funds to organizations and groups in their districts, and they seek political credit for the results.

Mayors are thus often preoccupied with lobbying state and national government officials, a task that they have undertaken with mixed results. At the height of the New Deal, mayors had a significant voice in national affairs through the United States Conference of Mayors, which was established in the early 1930s, and was an important political component of the New Deal coalition.⁶⁸ Fiorello La Guardia, the first president

⁶⁷ See Pietro S. Nivola, *Tense Commandments: Federal Prescriptions and City Problems* 123 (2002).

⁶⁸ See Donald Haider, *When Governments Come to Washington: Governors, Mayors, and Intergovernmental Lobbying* (1974); see also Suzanne Farkas, *Urban Lobbying: Mayors in the Federal*

of the Conference, was a close personal friend of Roosevelt's, and that connection meant that the cities exercised influence in the administration of New Deal programs and the flow of federal resources to the cities.⁶⁹ Post-war mayors also had some success in directing the flow of federal resources to their cities—Richard Lee of New Haven again comes to mind—and especially during War on Poverty in the 1960s and into the 70s.⁷⁰ And when mayors controlled the local Democratic machine, as Richard Daley did in Chicago, they had a significant voice in party politics even at the national level.⁷¹

In all these instances, mayoral influence tended to turn on the mayor's ability to turn out the vote for state and national politicians. But these urban political coalitions were often short-lived; after La Guardia (and by the end of the New Deal), the USCM never regained its stature in Washington.⁷² And while the War on Poverty brought significant federal funds to cities, those programs often bypassed local politicians. Indeed, federal government programs were often designed to avoid the mayor's office altogether by mandating the creation of independent local agencies to handle federal funds.⁷³ More importantly, suburbanization reduced the importance of mayors as vote getters. Once the suburbs became the nation's dominant political players, the urban mayoralty lost much of its influence in the national political marketplace.⁷⁴ It is notable

Arena (1971); John Gunther, *Federal-City Relations in the United States: The Role of the Mayors in Federal Aid to Cities* (1990).

⁶⁹ See Haider, *supra* note __, at .

⁷⁰ See *id.* at 48-75; see also Anne Marie Cammisa, *Governments As Interest Groups: Intergovernmental Lobbying and the Federal System* (1995). Cammisa, borrowing in part from Haider, discusses four phases of inter-governmental lobbying. These phases roughly coincide with Roosevelt's New Deal, Johnson's Great Society, Nixon's New Federalism, and Reagan's "new" New Federalism. See *id.* at 2-5.

⁷¹ See generally, F. Richard Ciccone, *Daley: Power and Presidential Politics* (1996); Adam Cohen & Elizabeth Taylor, *American Pharaoh* (2000).

⁷² See Haider, *supra* note __, at .

⁷³ See Cammisa, *supra* note __, at ; see also Jon C. Teaford, *The Twentieth Century American City* 139 (2nd ed. 1993).

⁷⁴ See Teaford, *Twentieth Century American City*, *supra* note __, at chs. 6-7; see also Anne Marie Cammisa, *Governments as Interest Groups: Intergovernmental Lobbying and the Federal System* (1995)

that since the late 1970's, federal aid to local governments and to programs that serve urban populations have experienced significant and continuing declines.⁷⁵

Indeed, American mayors are relatively invisible, at least as a matter of national politics. Contrast the status of the American mayor with the French mayor. While France has a highly unitary and centralized political system, its central city mayors have traditionally been quite powerful nationally. In significant part, this is because French mayors are often national political figures; in France elected officials can hold local and national political office simultaneously.⁷⁶

Unlike French mayors, American mayors enjoy limited national political stature. Rudolph Giuliani's post-9-11 national prominence is an exception, not the rule. Most mayors—even of big cities—have less name recognition outside their cities than Supreme Court Justices. Moreover, the very departmentalization of local, state, and national government has effects on politicians' career trajectories. In unitary systems it might not be uncommon for politicians to begin their careers at the local level and work their way up through regional administrations, culminating in a career in the central administration.⁷⁷ In the United States, the local, regional, and federal units of government are constitutionally distinct and often politically as well. Local office is not

(describing the disagreements among municipal lobbying organizations and the decline of their effectiveness).

⁷⁵ Cammisa, *supra* note __, at 6-7. Commentators have described this federal withdrawal from the field of urban policy as “fend-for-yourself” federalism. See John Shannon, *The Return to Fend-For-Yourself Federalism: The Reagan Mark*, 13 *Intergovernmental Perspective* 34-37 (1987). With the decline in federal spending, local governments have also gained some freedom from federal regulations, though the relationship between the elimination of federal monies and the elimination of federal regulations has been sporadic. For an article that discusses the federal government's role in addressing urban problems and urges additional federal investment in city-related programs, see Peter Salsich, *Saving Our Cities: What Role Should the Federal Government Play?* 36 *Urb. Law.* 475 (2004).

⁷⁶ Walter Nicholls, *Power and Governance: Metropolitan Governance in France*, 42 *Urb. Stud.* 783-800 (2005); see generally Sidney Tarrow, *Between Center and Periphery: Grassroots Politicians in Italy and France* (1977).

⁷⁷ See Jeanne Becquart-Leclercq, *Local Political Recruitment in France and the United States: A Study of Mayors*, 8 *European J. of Pol. Res.* 407 (1980).

a prerequisite for state or national office, and it may be a detriment. As one observer of the New York mayoralty noted, “What [mayors] must do to get elected and reelected are the very things that prevent them from ever moving onto higher office.”⁷⁸

Indeed, except in unusual circumstances, the mayoralty in the United States tends not to be a stepping stone to higher political visibility, state or national executive authority, or even a position in the national legislature. A strikingly small percentage of those who have served in the U.S. House of Representatives or the U.S. Senate have ever had experience as a local elected official.⁷⁹ Only three Presidents began their careers as mayors.⁸⁰ And few who obtain significant cabinet posts or other high posts in the federal administration got there because they performed admirably as a mayor or city councilmember.⁸¹

This political reality reflects a structural one. Mayors tend to be politically salient in constitutional systems that permit cities to be represented at higher levels of

⁷⁸ Haider, *When Governments Come to Washington*, supra note ___, at 300.

⁷⁹ A preliminary analysis of the database of United States Congressional Historical Statistics, 1789-1996 indicates that less than 23% of members of Congress reported prior service in *any* municipal office (including municipal judgeships). See Inter-university Consortium for Political and Social Research and Carroll McKibbin. *ROSTER OF UNITED STATES CONGRESSIONAL OFFICEHOLDERS AND BIOGRAPHICAL CHARACTERISTICS OF MEMBERS OF THE UNITED STATES CONGRESS, 1789-1996: MERGED DATA* [Computer file]. 10th ICPSR ed. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 1997. See also Becquart-Leclercq, supra note ___, at 421 (observing that American mayors do not use their political position as a springboard to higher office).

⁸⁰ Of American Presidents, only Andrew Johnson, Grover Cleveland, and Calvin Coolidge had been mayors, none of a major metropolitan city. Johnson was chosen mayor of Greeneville, Tennessee in 1828, 37 years before he assumed the Presidency; Cleveland was elected mayor of Buffalo in 1881, and Coolidge was elected mayor of Northampton, Massachusetts in 1910, after he had already served two terms in the Massachusetts House of Representatives.

⁸¹ A preliminary study of presidential appointees indicates that only 19 of the 1528 appointees covered in the biographical database had served as mayor or city/local administrator. See Mackenzie, G. Calvin, and Paul Light. *PRESIDENTIAL APPOINTEES, 1964-1984* [Computer file]. Washington, DC: National Academy of Public Administration [producer], 1985. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 1987.

government, as in Germany or Russia,⁸² or where mayors can hold national office. In the United States, cities are not represented in state or national councils and one need not hold local office to represent local interests. This is not to say that local political officials cannot influence either national or state policy. In some states with large cities and few other population centers, cities can dominate the political landscape. But the layering of political influence in the U.S. federal system tends to fracture the city as a polity and thus reduce the influence of any one political leader. The vertical fragmentation of the city limits the mayor's ability to effectuate public policy, especially insofar as those policies require the cooperation of higher-level governments.

B. Separation of Functions

The problem of fragmentation is compounded by a second feature of American-style federalism: its emphasis on a categorical or formal separation of functions. In the United States, the division of authority among levels of government tends to take a categorical form. Federalism itself is a categorical doctrine:⁸³ it delimits spheres of authority between states and the federal government. And while localities are formally subordinate to their states, they are often protected under state constitutions that mimic the state-federal relationship by carving out a separate sphere of authority for local governments. States are always in a position to limit the formal powers of cities and often do so, but state constitutions do provide for some local autonomy. The city thus enjoys a contradictory legal status: it is an instrumentality of the state but it is also

⁸² See Roger Gibbons, *Local Governance and Federal Political Systems* UNESCO 2001 (on file with author).

⁸³ See Judith Resnick, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 *Yale L. J.* 619 (2001).

politically autonomous within its sphere—it is an administrative unit as well as a mini-sovereign.

The ongoing debates in the legal literature concerning the relative power or powerlessness of the city reflect this dual status. Those who emphasize city power argue that certain localities, especially suburban ones, exercise significant local autonomy in areas in which they are deemed locally sovereign, mostly those activities that implicate land use, education, and local health and welfare.⁸⁴ Scholars who emphasize city powerlessness point to the fact that local governments are instrumentalities of their states and enjoy no independent legal status protectable by the Constitution. Unlike private corporations, which exercise the autonomy that all private persons may exercise, municipal corporations exercise power at the state's sufferance.⁸⁵

These conceptual and descriptive accounts of local power can co-exist.⁸⁶ On the one hand, local governments in the United States enjoy a significant amount of legal autonomy, at least as compared with local governments in some other western democracies.⁸⁷ Local officials are normally elected by the local electorate, not appointed by a central government. Local governments usually have taxing authority (though it is limited) and thus are not entirely dependent on grants from higher-level governments.

⁸⁴ See Richard Briffault, *Our Localism, Part I: The Structure of Local Government Law*, 90 Colum. L. Rev. 1 (1990); Briffault, *Our Localism, Part II: Localism and Legal Theory*, 90 Colum. L. Rev. 346 (1990).

⁸⁵ See Gerald Frug, *The City as a Legal Concept*, 93 Harv. L. Rev. 1057 (1980). For an extended discussion of Frug's city powerlessness thesis, see Frug, *City Making* (1999).

⁸⁶ The city/suburb distinction has arguably tracked the city powerless/city power debate and overtaken it, though there are still debates about the form of local autonomy that suburban municipalities exercise. Professors Frug and Barron, for example, argues that local governments, especially suburban ones, exercise a form of "defensive localism" rather than a form of "local autonomy." See Gerald Frug & David Barron, *Defensive Localism: A View of the Field From the Field*, 21 J.L. & Pol. 261 (2005).

⁸⁷ See generally, *Comparing Local Governance: Trends and Developments* (Bas Denters & Lawrence Rose, eds. (2005).

And local governments can generally make decisions about what to spend monies on (though again, the state requires certain kinds of expenditures).

Moreover, though localities are constitutionally inferior to states, many states have granted them some modicum of “home rule,” which means that they tend to exercise significant authority over local land use decisions, zoning, condemnation and urban redevelopment, and over basic local services. State and federal authorities generally do not interfere with local budgeting or fiscal decisions until a locality is well into bankruptcy.⁸⁸ And local governments tend to be politically autonomous: that is, the choice of local officials is generally not dictated by the winning party at the state or national level. Local officials can (and do) disagree vociferously with the policy preferences of the party that exercises power statewide or nationally.

That cities enjoy some amount of formal legal autonomy, however, does not mean that city leaders exercise influence over those policies that are in fact most important to their constituents. Indeed, the very character of local autonomy tends to limit the city’s political authority rather than extend it, in large part because central governments are quick to intervene to counter local decisions they disagree with, but slow to intervene to take on the responsibility for providing basic municipal services.

Even in states with constitutional grants of home rule authority, the regulatory authority that cities exercise is almost always contingent on grants of authority from the state or subject to revision, in many cases through regular legislation. States have

⁸⁸ See Hank Savitch & Ronald Vogel, *The United States: Executive-Centred Politics in Comparing Local Governance*, *supra* note ___, at 220.

overruled local attempts to adopt affirmative action ordinances,⁸⁹ living wage laws,⁹⁰ partnership benefits for same-sex couples,⁹¹ anti-discrimination ordinances that apply to gays and lesbians,⁹² rent control or linkage ordinances intended to increase affordable housing,⁹³ and ordinances regulating gun ownership and use.⁹⁴ States have also been aggressive in preventing cities from taxing their own citizens for local services, adopting statewide tax and spending restrictions that often hit cities particularly hard.⁹⁵ For purposes of state intervention the city is often treated like a subordinate state agency, its range of action is quite limited.

⁸⁹ See *Georgia Branch, Associated General Contractors of America, Inc. v. City of Atlanta*, 321 S.E.2d 325, 328 (Ga. 1984) (voiding city ordinance providing favored treatment to minority and female-owned businesses in the awarding of city contracts as violating statute reincorporating the city).

⁹⁰ *New Orleans Campaign for a Living Wage v. City of New Orleans*, 825 So. 2d 1098, 1108 (La. 1098) (holding that New Orleans' minimum wage law was invalid because of Louisiana law prohibiting municipalities from establishing a minimum wage applying to private employers).

⁹¹ *Connors v. City of Boston*, 714 N.E.2d 335, 342 (Mass. 1999) (holding that "mayor's executive order extending health insurance benefits to Boston employees' domestic partners and their dependents" was inconsistent with state law and invalid); *Lilly v. City of Minneapolis*, 527 N.W.2d 107, 113 (Minn. Ct. App. 1995) (holding that city council resolutions authorizing reimbursement to city employees for health care costs for same-sex domestic partners was ultra vires and without legal force or effect).

⁹² *Mack v. City of Detroit*, 649 N.W.2d 47, 51 (Mich. 2002) (holding that city charter could not create a private right of action for sexual orientation discrimination because that would contravene state governmental immunity law); *Delaney v. Superior Fast Freight, Cal.Rptr.2d 33, 36-38* (Cal. Ct. App. 1993) (holding that city ordinance banning sexual orientation discrimination in employment was preempted by California's Fair Employment and Housing Act even though the state law did not specifically address sexual orientation discrimination)

⁹³ *Ariz. Rev. Stat. Ann. § 33-1416* (2000) (preempting rent control for mobile homes); *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So.2d 801, 804 (Fla. 1972) (holding that municipalities had no power to enact rent control ordinances absent specific authorization from the state legislature); *Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline*, 260 N.E.2d 200, 207 (Mass. 1970) (invalidating town rent control by-law and holding that municipalities could not enact rent control ordinances absent specific delegation of such power from the state)

⁹⁴ *Cincinnati v. Baskin*, 817 N.E.2d 433, 437 (Ohio Ct. App. 2004) (holding that more restrictive city ordinance regarding the number of permissible firearm rounds must give way to the more permissive state statute); *Michigan Coalition For Responsible Gun Owners v. City of Ferndale*, 662 N.W.2d 864, 874 (Mich. Ct. App. 2003) (holding that city ordinances making local buildings gun-free zones were preempted by state statutory scheme); *Ortiz v. Pennsylvania*, 681 A.2d 152, 155 (Pa. 1996) (holding that since the Pennsylvania General Assembly prohibited municipalities from regulating gun ownership, Philadelphia and Pittsburgh could not pass ordinances regulating assault weapons).

⁹⁵ Proposition 13 in California is an example of this, as is the Taxpayer Bill of Rights (TABOR) in Colorado. For a description of TABOR's effects, see Nicholas Johnson et al., *Ctr. on Budget & Policy Priorities, Colorado's Fiscal Problems Have Been Severe and Are Likely To Continue: Colorado's Stringent "TABOR" Limit Has Worsened the Problems* 6 (2004), available at <http://www.cbpp.org/3-17-04sfp.pdf>.

This state interference with local decision-making does not alter the city's responsibility to provide basic services to its citizens, however. Cities are primarily responsible for the basic health, safety, and welfare needs of the populace; state and national elected officials can thus pick and choose when and under what circumstances to intervene. And because the provision of basic municipal services is understood as a local responsibility, the variations among localities in that provision normally do not concern the state.⁹⁶ This works well for those localities that are resource rich; it tends to work less well for those that are not.

City leaders are thus truly parochial, in the fullest sense of the term. The mayor is a "little Caesar"⁹⁷ –the head of a formal municipal bureaucracy that is separate, politically and formally, from the state and federal bureaucracy. The formal separation of powers maintains the locality's legal autonomy, preventing interference by central authorities in some (limited number) of cases. But the formal separation of powers also means that local officials might have little influence over policy when central governments do intervene or in cases when the city would otherwise desire intervention. Cities can thus be understood as both autonomous and constrained.⁹⁸

A comparison to the French mayoralty is again useful. In France, financial power and legal authority is officially concentrated in the hands of the central state with localities merely fulfilling state mandates. But "the ability of the central state to achieve

⁹⁶ In the education context, however, a number of state courts have ruled that significant inter-local variations in education spending violate state constitutional guarantees. See, e.g., *Edgewood Ind. Sch. Dist. V. Kirby*, 777 S.W.2d 391 (1989).

⁹⁷ See Megan Mullen, et al., *City Caesars? Institutional Structure and Mayoral Success in Three California Cities*, 40 *Urb. Aff. Rev.* 19 (2004).

⁹⁸ This contradictory status often makes it difficult to characterize the degree and type of local government autonomy in the United States. Scholars who take a comparative perspective recognize this difficulty. See Mike Goldsmith, *Autonomy and City Limits in Theories of Urban Politics*, *supra* note __, at 228 (discussing the fluid nature of scholarly attempts to create a typology or schema of comparative local autonomy).

its goals depend[s] upon the active consent and cooperation of local elected officials.”⁹⁹ In the twentieth century, the French city became the “territorial gatekeeper,”¹⁰⁰ controlling the downward flow of state resources and funneling resources into urban growth beneficial to the city. Central city mayors exercised power by developing personal relations with central administrators, by lobbying state ministries, and by influencing policy through their representation in parliament and in other national-level councils. The key element to French mayoral power, however, was the dependence of central authorities on local cooperation to accomplish state ends. The French mayor’s power was derived in significant part by his ability to exert political control over national directives.¹⁰¹

For those who are steeped in the ideology of federalism, the robustness of local influence in a unitary system might seem anomalous. In the United States, formal legal autonomy—federalism and its equivalent at the state level, home rule—tends to be equated with the exercise of decentralized power. The assumption is that political power flows from legal authority. This is the essence of categorical or “separate spheres” federalism: the division of political power—the actual exercise of influence over policy outcomes—is assumed to follow from the formal or legal separation of functions.

But, of course, there is no necessary relationship between the formal decentralization of power and the actual exercise of political influence, between—using Edward Page’s terminology—“legal localism” and “political localism.”¹⁰² As a number

⁹⁹ Walter Nicholls, *Power and Governance: Metropolitan Governance in France*, 42 *Urb. Stud.* 783-800 (2005); see generally Sidney Tarrow, *Between Center and Periphery: Grassroots Politicians in Italy and France* (1977).

¹⁰⁰ Nicholls, *supra* note __, at .

¹⁰¹ *Id.*

¹⁰² See Edward C. Page, *Localism and Centralism in Europe: The Political and Legal Bases of Local Self-Government* (1991); see also Goldsmith, *Autonomy and City Limits*, *supra* note __, at 228.

of commentators have pointed out, the mere existence of a federal system does not itself guarantee political decentralization.¹⁰³ A system in which local governments are wholly dependent on funds from a central government, but in which the central government is entirely responsive to powerful local officials might have a high degree of political localism despite its low degree of legal localism. Conversely, local governments that have the formal powers to tax and spend may have little power to influence state and national policies that make it difficult for them to operate on a sound fiscal basis. These localities may experience a low degree of political localism despite their relatively high degree of legal localism. The question, as Sidney Tarrow famously put it, is whether the center moves the periphery or the periphery moves the center.¹⁰⁴

The nature of formal city autonomy in the United States tends to contribute to the weakness of the city's political influence.¹⁰⁵ In contrast to France, for example, the formal independence of the local, state, and federal governments means that state and federal governments rarely need the direct cooperation or assistance of local officials to achieve state or national aims. This form of independence may have perverse consequences for local influence. As Justice Breyer pointed out in his dissent in *Printz v. United States*,¹⁰⁶ one of the Court's recent strategies for protecting local power—the adoption of a federalism-protecting anti-commandeering rule—is diametrically opposed to the strategy undertaken by a number of European federal democracies. Breyer argued

¹⁰³ See, e.g., Richard Briffault, "What About the 'Ism'?" Normative and Formal Concerns in Contemporary Federalism, 47 Vand. L. Rev. 1303 (1994).

¹⁰⁴ Tarrow, *Between Center and Periphery*, supra note __, at .

¹⁰⁵ But cf. Goldsmith, supra note __, at 238 (arguing that U.S. local governments enjoy a relatively high political status but relatively moderate legal status, the combination of which gives them a moderate to high level of local autonomy compared to other western democracies); Roderick Hills, *Is Federalism Good for Localism? The Localist Case for Federal Regimes*, 21 J. L. & P. 187 (2005) (arguing that local governments in the United States are relatively autonomous compared with local governments in some unitary systems).

¹⁰⁶ 521 U.S. 898 (1997) (Breyer, J., dissenting).

that a constitutional system that creates rigid obstacles to intergovernmental cooperation by treating sub-federal governments as bureaucratically (and formally) autonomous does not necessarily lead to increased local power. In places like Germany and Switzerland, constitutionalists believe that the assignment of centrally-mandated duties to local authorities “interferes less not more”¹⁰⁷ with the authority of local government.

Preventing the central government from ever requiring local governments to implement federal directives reduces local control by mandating the creation of a centralized implementation bureaucracy, independent from and unaccountable to local authorities.¹⁰⁸

This is not to say that a unitary state or a more “cooperative” federal system would necessarily serve cities better.¹⁰⁹ My argument here is not that the American form of federalism always impedes decentralization—though some scholars have made that claim.¹¹⁰ In a federal system, cities have to compete with states and the federal government for political and fiscal resources. Whether cities will lose in the competition for those resources depends a great deal on the form that city autonomy takes.¹¹¹ In the

¹⁰⁷ *Id.* at .

¹⁰⁸ *Id.* at .

¹⁰⁹ Roderick Hills, for example, argues that the relationship between mayors and the central government in France is a form of “bureaucratic decentralization” that produces a “sterile form of clientelism rather than a robust democracy.” See Hills, *supra* note __, at 215. I am sympathetic with Hills’ preference for something he calls “democratic decentralization,” see TAN *infra*, but I am skeptical of Hills’ claim that the U.S. federal system promotes it, anymore than it promotes “bureaucratic decentralization.”

¹¹⁰ See, e.g., Frank B. Cross, *The Folly of Federalism*, 24 *Cardozo L. Rev.* 1 (2002); Edward Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 *UCLA L. Rev.* 903 (1994). See also Pradeep Chhibber & E. Somanathan, *Are Federal Nations Decentralized? Provincial Governments and the Devolution of Authority to Local Government*, draft on file with author; But see Hills, *Is Federalism Good for Localism?*, *supra* note __, at (criticizing Cross and Rubin & Feeley).

¹¹¹ Certainly the existence of a regional level of government means that there is additional competition for resources: the government pie has to be divided three ways. Whether regional governments will compete with local ones for resources (or both will compete for resources with the national government) will turn in part on whether each unit of government has its own dedicated revenue source. What is uncontroversial is that in the United States the federal government has the most budgetary flexibility because states and localities are limited by balanced-budget requirements and constitutional debt limitations that are not imposed on the federal government. The federal government can engage in massive debt-supported counter-cyclical spending but states and localities cannot, and thus their immediate fiscal health tends to fluctuate with the health of the local economy. For a description of the interaction between federal, state

United States, the existing form of local autonomy tends to generate politically fragmented cities and relatively parochial local leaders. The combination of formal legal autonomy and local political subservience generates a parochial city.

C. The Limited City

The fact that many of the policies that matter to cities are made at higher levels of government is particularly important in light of the city's economic constraints. As Paul Peterson argued over twenty years ago, city politics is limited politics.¹¹² Cities are constrained by a set of economic realities that mean that city leaders often exercise relatively little influence over their city's economic fate. For those scholars who emphasize the city's economic limits, the relevant question is not "*Who governs?*" but rather "*What difference does it make?*"¹¹³

Two characteristics of the city's political economy are salient. First, local government is dependent on property taxes and other territorially-specific revenues for its fiscal health. Second, as in all capitalist economies, the welfare of local citizens is primarily dependent on private investment, employment, and production, and capital and labor move easily across city lines.¹¹⁴ The twin facts of urban tax-base dependence and the mobility of capital means that cities cannot engage in policies that alienate private capital, and indeed, must actively encourage its inward flow. The particular dominance of pro-growth or business forces in the politics of the city can thus be explained by the

and local fiscal policies, see generally David Super, Rethinking Fiscal Federalism, 118 Harv. L. Rev. 2544 (2005).

¹¹² Paul Peterson, *City Limits* (1981); Mark Schneider, *The Competitive City: The Political Economy of Suburbia* (1989).

¹¹³ See Ferman, *Governing*, supra note ___, at 218 (internal quotation and citation omitted).

¹¹⁴ See Susan Fainstein, et al, *Restructuring the City: The Political Economy of Urban Development* (1983); Peterson, supra note ___.

simple economic fact that these forces are the lifeblood of the city.¹¹⁵ Cities need to avoid significant redistributive policies—such as investments in social welfare or health and human services—while promoting developmental policies that will attract business and wealthier residents. Cities that engage in too much redistribution will see mobile fiscal resources flee to other locales with less redistributive policies. The city’s fiscal and budgetary priorities are thus significantly limited; there is only so much room to maneuver.¹¹⁶

Central cities, in particular, are limited by the economic realities of cross-border competition. But suburban municipalities, which have been attractive as alternatives to the city precisely because they tend to avoid redistributive strategies, also seem unable to achieve the outcomes they desire. Suburban municipalities appear to have more control than cities over their tax-base and service needs. By incorporating independently and gaining control over their property taxes, suburbs can avoid the higher tax costs associated with urban redistribution, namely the provision of services to lower income populations.¹¹⁷ Suburbs also have some ability to control their populations by adopting zoning ordinances that ensure a minimum price for housing, thus setting a price for entry into the community. Incorporation and zoning are two strategies that prevent the immigration of lower-income arrivals that have high service needs.¹¹⁸ These strategies permit a suburban municipality to keep taxes low and provide a relatively high level of services.

¹¹⁵ See Peterson, *supra* note __.

¹¹⁶ See *id.*

¹¹⁷ See, e.g., Gary Miller, *Cities By Contract* (1981).

¹¹⁸ See generally *Fiscal Zoning and Land Use Controls* (Mills & Oates, eds. 1975); see also William Fischel, *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land Use Policies* (2001).

Nevertheless, suburban municipalities, like urban ones, also seem to have little control over their ultimate economic and fiscal fate. Mark Schneider has shown that municipal policies designed to encourage growth or development often have little impact on tax-service ratios in the suburbs, and that large-scale shifts in employment have more to do with local economic health than do the specific tax and spending decisions of local governments.¹¹⁹ Moreover, existing housing stock and the preferences of housing consumers tend to be conditions over which local governments have little influence. In both city and suburban places then, municipal budgetary and fiscal priorities and policies, while not irrelevant, have relatively small effects when compared to macroeconomic conditions. Schneider's conclusion is that "local government policies are relatively ineffective in producing the outcomes local actors want."¹²⁰

This fact should not be surprising. The decline of rust belt and other northeastern cities that had flourished during industrialization can be explained largely by macroeconomic factors, specifically the demise of heavy industry and the migration of employment and firms to the west and south. Other effects are more local. For example, urban scholars have noted an alarming decline of inner-ring and second-tier suburbs in a number of metropolitan areas.¹²¹ These suburbs have few resources to battle the ongoing migration toward new housing on the urban fringe. Unlike the central cities, the inner-ring suburbs have little in the way of cultural amenities to offer, their housing stock is

¹¹⁹ See Schneider, *supra* note __, at __; see also Richard Schragger, *Consuming Government*, 101 Mich. L. Rev. 1824 (2003).

¹²⁰ *Id.* at 210.

¹²¹ See, e.g., William Lucy and David Phillips, *Metromorphosis: Changing Patterns, Beliefs and Policies in Cities and Suburbs* (2005) (draft on file with author).

often unattractive, and they are beginning to experience the kinds of social ills that formally only afflicted central cities.¹²²

Population and economic migrations are largely out of the control of local governors: regional or macro-economic forces are not easily susceptible to policies that can be pursued by municipalities acting alone. Indeed, in a highly fragmented metropolitan region, there are often hundreds of local governments, each asserting control over their portion of regional development, but none able to manage it. Cities cannot effectively control their borders, they cannot print money or engage in countercyclical spending or entertain other macro-economic manipulations of the economy, and they are dramatically affected by state and national tax, redistribution, immigration, land use, labor and industrial policies. National, state, and region-wide policies often have large-scale effects that dwarf any competing efforts by a single local governor.¹²³

The aftermath of Hurricane Katrina offered a dramatic example of the limited reach of local power. It is an understatement to say that the Mayor of New Orleans, Ray Nagin, had significant difficulty moving the state and federal bureaucracies to his city's aid; Nagin was reduced to begging on national television for assistance. Perhaps Nagin's difficulties stemmed from his position as the mayor of a mostly Democratic and African-American city during a period of Republican dominance of the national government. It is more likely, however, that his failures reflected the inherent lack of power in his office.

¹²² See *id.*

¹²³ If a particular municipality's fate is tied to larger demographic and economic trends that are largely beyond its control, then the city's internal political structure may not matter very much. The few empirical efforts to compare the relative efficiencies of council-manager and mayor-council cities (by comparing per capita spending or unit price for services) have either come to contradictory conclusions or found that the formal structure is not relevant. See Harold Wolman, *Local Government Institutions and Democratic Governance in Theories of Urban Politics*, *supra* note ___, at 135, 147 (describing empirical studies).

Indeed, the inability for Mayor Nagin to respond effectively to a natural disaster the size of Katrina reflected his limited ability to respond to his constituents more generally, long before the hurricane hit. Despite some recent signs of city rejuvenation, urban mayors like Nagin are still confronting some of the country's most intractable social problems: concentrated poverty, failing schools, high crime rates, racial segregation, the flight of the middle-class, a declining industrial job-base. Mayors can only come to the rescue of their cities to the extent that they have the resources to do so. To the extent those resources are only available at the state or federal level, the mayor is often in the position of supplicant.¹²⁴ Mayors come to Washington to lobby for aid or assistance, but they tend not to have ongoing relationships with federal elected officials or federal bureaucracies. Instead of being direct participants in state and federal policy-making, they are outsiders to it, only as influential as any other representative of a group or institution seeking government aid might be.

More importantly, city mayors appear to have limited ability to influence the kinds of policies, particularly tax and redistribution policies, that only states or the federal government can effectively undertake. Because of their dependence on mobile local revenue, cities are not appropriately scaled to engage in redistribution. Nevertheless, cities are responsible for a disproportionate number of citizens whose welfare turns on the content of those policies.

American cities thus experience both a level of formal legal responsibility and a level of political interference that together tends to limit the city's policy options.¹²⁵ In

¹²⁴ See, e.g., James Dao, Lawmakers Question Louisiana Governor on Storm Response and Preparation, *NYT* at A26 (Dec. 15, 2005) (describing).

¹²⁵ See Svava, *Embattled Mayors*, *supra* note ___, at 140-142 (describing imbalance between city responsibilities and city resources).

the case of New Orleans, for example, the boundaries of formal legal autonomy undoubtedly hindered an effective disaster response: there is significant evidence that federal bureaucrats and state and federal officials had difficulty transcending the formal legal boundaries between local, state, and federal authority.¹²⁶ At the same time, New Orleans' future will depend in large part on state and federal policies over which the city has limited control or influence.

III.

Strong Democratic Mayors

One can imagine a less parochial mayoralty, but such a mayoralty would entail altering the existing “constitutional” relationship between the city and the state and federal governments—between the periphery and the center. Current strong mayor reform efforts—which seek to increase the formal powers of the mayoralty—do not contemplate such a reformation in part because those reforms do not challenge the dominant conceptual model of the city. That model, which we have inherited from Progressive-era reformers, understands cities primarily and almost exclusively as sites for the provision of municipal services. Municipal government is, on this account, a species of administration; its success or failure is measured against a metric of managerial competence and technical expertise. Strong mayor reforms are well within this dominant paradigm. Those who favor the strong mayor (especially business interests) mostly make arguments about the efficiency of the unitary executive: centralizing power in one office

¹²⁶ See, e.g., Jonathan Walters and Donald Kettl, the Katrina Breakdown, 19 *Governing Magazine* 20 (Dec. 2005).

will streamline the city's bureaucracy, increase accountability, and improve administration.

A competing model of the city, however, and one that was also articulated by reformers in the early part of 20th century (and others much before them), conceives of the city as a site for the exercise of popular democratic energy. On this account, the city is not merely an instrument for delivering services, but rather a formative site for the exercise of mass politics—*The City, the Hope of Democracy*, as Frederic Howe put it in the title of his 1905 book.¹²⁷ For Howe—and for many political theorists that came before and after him—the city represents the nearest realization of the democratic project. The city is the site for genuine political organization, for the “rebirth,” as Howe argued, “of democracy.”¹²⁸

One can defend and promote the strong mayor on this latter ground as well, and Howe and others did so. At the turn of the 20th century, elite opposition to the strong mayor was grounded in paternalistic and nativist sentiments: elites feared that mass democracy in a city of immigrants would lead to irresponsible rule. Municipal reformers' inclination to suppress municipal democracy by fragmenting executive power and placing authority in elite-run boards and commissions was driven by the reality of municipal corruption, but also by the notion that urban democracy was potentially lawless.¹²⁹ As Howe, a dissenter to this strategy, wrote: “Distrust of democracy has inspired much of the

¹²⁷ Frederic Howe, *The City, the Hope of Democracy* (1905).

¹²⁸ *Id.* at 7.

¹²⁹ See Murphy, *supra* note __; Teaford, *supra* note __. See also Edward Banfield & James Wilson, *City Politics* 171 (1963).

literature of the city. Distrust of democracy has dictated most of city laws. . . . Reform organizations have voted democracy a failure.”¹³⁰

Distrust of urban democratic power continues to be reflected in the dominance of the divided executive: the features of most city governments, with their professional city managers or weak mayors, prove that we have internalized this story of failure. Indeed, the professional manager provides a comforting image of governance in which executive power—indeed, the exercise of political power of any kind—is submerged and repressed.¹³¹

For this reason it is often surprising and sometimes unnerving when mayors do not adhere to the technocratic model. Consider Mayor Gavin Newsome’s claim that he was enforcing constitutional norms when he ordered the City of San Francisco to issue marriage licenses to same-sex couples in February 2004.¹³² Newsome argued that state and federal guarantees of equal protection required his city to provide marriage licenses on a gender-neutral basis. Following San Francisco’s lead, a number of other cities throughout the country began to issue same-sex marriage licenses as well.

The mayors’ actions elicited a predictable response from their respective state officials: state officials sued local officials, demanding that they comply with state statutes. Most courts sided with the state. In California, the state supreme court issued a

¹³⁰ Howe, *supra* note __, at 1. Terrance Sandalow described this Progressive-Era distrust of local politics in Sandalow, *The Distrust of Politics*, 56 *NYU L. Rev.* 446, 451-57 (1981).

¹³¹ “Reform politics appears in its purest form in affluent suburbs. The homogeneous middle-class setting produces the least tension between reform institutions and the clientele that those institutions serve.” L. Stone, et al., *Urban Policy and Politics in a Bureaucratic Age* 117 (1986). Scholars have argued that reform political structures, especially the at-large ballot and non-partisan elections, diminish the voice of lower- and working-class constituents. See *id.*; see also Wolman, *supra* note __, at 135, 146, 147-48 (discussing studies comparing “reform,” “unreformed,” and “mixed cities” that lend some support to the assertion that reform institutional structures tend to reduce participation by minority and low-income citizens).

¹³² See Richard Schragger, *Cities as Constitutional Actors: The Case of Same-Sex Marriage*, 21 *J. L. & P.* 147 (2005).

strongly worded ruling that voided all the marriages performed for same-sex couples in San Francisco.¹³³ The opinion is notable for its rhetorical reining in of wayward local public officials. The city was asking for a determination on the merits – that is, whether it was acting unconstitutionally in denying same-sex couples marriage licenses – but the court viewed the city’s issuance of licenses as akin to civil disobedience. “The scope of authority entrusted to our public officials,” stated the court, “involves the determination of a fundamental question that lies at the heart of our political system: the role of the rule of law in a society that justly prides itself on being ‘a government of laws, and not of men’ (or women).”¹³⁴ Rule of law values dictate that a local public official charged with a ministerial duty cannot be “free to make up his or her own mind whether a statute is constitutional and whether it must be obeyed.”¹³⁵ According to the court, local officials may not disregard a state law even if there are substantial questions about its constitutionality, and even if their purpose in doing so is to test the constitutionality of the law.¹³⁶

Whether a local official must always comply with a state statute that is arguably unconstitutional is a tougher legal question than the majority’s opinion indicates—at least one of the dissenters in the California case expressed concern about the breadth of the majority’s ruling.¹³⁷ What is noteworthy about the California opinion, however, is the court’s dismissal of the mayoralty as anything other than an inferior ministerial office. Newsome’s actions were subversive because he challenged the subordinate posture of cities; he not only laid claim to a role in interpreting the state and federal constitutions

¹³³ See *Lockyer v. City and County of San Francisco*, 33 Cal. 4th 1055 (2004).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See *id.* at .

(thus challenging the authority of the judiciary) but he also asserted a populist vision of the mayoralty that did not accept its relatively weak constitutional status.

This version of the strong mayoralty—populist, constitutionally self-confident, politically subversive—is more like the strong mayor of Howe’s *City, the Hope of Democracy* than it is like the strong mayor of current-day municipal reformers. The “democratic city”—as Robert Dahl named it—is not a subservient, technocratic, constitutionally-inferior institution, but rather the ideal (indeed, the “optimal”) site for the pursuit of “democratic political life.”¹³⁸ Writing over sixty years after Howe, Dahl too argued that city building is a worthy task of democratic politics. Unlike the nation-state (on one hand) or the village (on the other), the city is “not so huge that it reduces participation to voting, nor so small that its activities are trivial.”¹³⁹ Cities are significant enough, both in size and in the complexity of their objectives, to make governance meaningful, but small enough to permit citizen engagement.¹⁴⁰ The democratic city is a “political unit of more truly human proportions in which a citizen can acquire confidence and mastery in the arts of politics—that is, of the arts required for shaping a good life in common with fellow citizens.”¹⁴¹

A strong mayoralty derived from this vision of the democratic city is more likely to have substantial effects on city power, to the extent that it can wrest some amount of power from the center. Gavin Newsome’s gambit in San Francisco failed as a formal matter (and perhaps as a political one), but it emboldened a number of mayors throughout

¹³⁸ Robert Dahl, *The City in the Future of Democracy*, 61 *Am. Polit. Sci. Rev.* 953-970 (1967). Richard Ford also uses the term “democratic city” in Richard Ford, *the Boundaries of Race: Political Geography in Legal Analysis*, 107 *Harv. L. Rev.* 1841 (1994).

¹³⁹ Dahl, *supra* note __, at 967.

¹⁴⁰ See *id.* (the democratic city “confronts us with a task worthy of our best efforts because of its urgency, its importance, its challenge” and allows us to participate in shaping “not merely the trivial but some of the most vital aspects of our environment”).

¹⁴¹ *Id.*

the country. Indeed, Newsome's actions may represent the emboldened mayoralty: certainly Newsome saw himself as a local populist, aggressively pursuing the interests of his urban constituency despite opposition from the state and federal governments. Increased adoptions of local measures that regulate individual rights, social welfare, and other measures traditionally thought of as within the purview of the states indicate additional movement in that direction.¹⁴²

The emboldened mayoralty is not without its risks; gains in democratic responsiveness may be accompanied by the threat of autocracy. Consider the mayoralty of New York's Rudolph Guiliani. The Guiliani administration was autocratic in both substance and style: Guiliani's aggressive leadership style and his emphasis on law-and-order policies accounted for his popularity, but also severely strained it.¹⁴³ Indeed, Guiliani's polarizing politics made it difficult for his administration to move beyond the public safety successes that marked his first term. A series of police brutality scandals, which exacerbated an already tendentious relationship with the minority community, undercut the effectiveness of his administration in its second term.¹⁴⁴

After September 11, however, Guiliani was able to "cast aside his polarizing political style, and become a figure of national unity."¹⁴⁵ As the nation's first "war-time" mayor, Guiliani proved the effectiveness of charismatic executive leadership even to those who had disagreed with his substantive policies. In so doing, he raised the profile of the mayoralty, albeit under unique circumstances. The mayoralty's importance in the

¹⁴² See Richard Briffault, *Home Rule for the 21st Century*, 36 *Urb. Law.* 253 (2004). Living wage ordinances have become popular, as have anti-discrimination and domestic partnership statutes, gun control ordinances, anti-predatory lending statutes, and local campaign finance laws. See *id.*

¹⁴³ See Flanagan, *supra* note __, at 189.

¹⁴⁴ *Id.* at 188-89.

¹⁴⁵ *Id.* at 188.

immediate aftermath of 9/11 was not so much its role in coordinating rescue or rebuilding efforts but rather in setting a tone of authority and compassion under traumatic conditions. Giuliani served as an embodiment of the city as a political and social community.

Scholars and reformers who are democracy-minded—that is, those who tend to favor a wider distribution of political power or a more participatory politics—rarely think of the mayoralty as an instrument of political decentralization or a source of popular political energy. For Howe and other decentralist progressives,¹⁴⁶ the real threat to good government was not the democratic mobs, but state and local plutocrats and the suppression of local democratic will. Howe was not under any illusions about the exercise of city power, however. “The boss,” he acknowledged, “appears under any system, whether the government be lodged with the mayor, the council, with boards, or commissions.”¹⁴⁷ Under a strong mayor, however, the exercise of power is easily identified: “A single executive of large powers elected directly by the people” is responsive to the community because “attention can be focused on a single individual, whereas it is difficult to follow boards, commissions, or a large council, each member of which is seeking to shift the burden of responsibility on to someone else.”¹⁴⁸ Howe sought to increase local democratic politics, not limit it, for he believed that local democracy was a solution to the problem of the machine, not its source. The attraction of the strong mayor for early reformers was not efficiency. Municipal government was to

¹⁴⁶ I have discussed the decentralist strand of progressivism in Richard Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920-1940*, Iowa L. Rev. (2005).

¹⁴⁷ Howe, *supra* note ___, at 185.

¹⁴⁸ *Id.* at 180.

be designed to promote democratic energy, to foster cities that could lead a revolution in good government from the bottom-up.

This bottom-up revolution required (and requires) a change in the relationship between the city and the state and federal governments. Howe and other progressives sought to protect cities from intrusive state regulation and oversight, to promote a particular version of home rule. Some even encouraged the creation of “metropolitan free cities” that would become constitutionally independent sub-federal governments of their own after seceding from their states.¹⁴⁹

City secession was never a serious option, and it is certainly not one today. And strong mayor charter reforms alone are unlikely to encourage the flowering of executive-led urban democracy. Urban power continues to be marginalized in the United States in large part because of the “persistence of elite ambivalence toward democratic politics.”¹⁵⁰ Nevertheless, a popular urban chief executive may have the political authority to assert the city’s interests in battles with the state or the federal government, to generate some political influence over policies that emerge from above. At the very least, the strong democratic mayoralty would be the city’s own. As Howe argued: “If our cities must be governed by a boss, it is most desirable that he be an elective one.”¹⁵¹

Conclusion

The weakness of the mayoralty illustrates a number of features of American political organization: the elite skepticism of democracy, a belief in technocracy as a solution to political failures, an emphasis on legal decentralization over political decentralization, and a federal system that fractures local power. More so than the

¹⁴⁹ See Robert Brooks, *Metropolitan Free Cities*, 30 *Pol. Sci. Q.* 222 (1915).

¹⁵⁰ Murphy, *supra* note ___, at 17.

¹⁵¹ Howe, *supra* note ___, at 186.

presidency or the governorship, the mayoralty reflects an abiding ambivalence about the exercise of political power. Weak mayor charters and the dominance of the council-manager form of local government reflect the widespread notion that municipal government is mainly administrative in nature. This understanding indirectly serves the interests of the mayor's political competitors at the state and federal level, who have an interest in preventing mayors from gaining significant power. The ideology of municipal technocracy both cabins city power and enhances the power of those at higher levels of government.

In an era in which the state and national governments are retreating from a serious urban policy or a social welfarist agenda, cities have to increase their capacity to respond to both the substantive and participatory demands of their constituencies.¹⁵² Though efficiency and democracy are often conceptually at odds, executive power has recently been viewed as a way to move forward along both dimensions. This view, which seems unremarkable at the national level, has been repressed at the municipal level. In part because of the long-running association of municipal politics with the political machine, strength in the executive seems most threatening in municipalities. But the city is directly accountable and accessible to the citizenry in ways that other levels of government are not. Indeed, the mayor contends most directly with citizens' dissatisfaction with government failures even if those failures are entirely outside the mayor's control.¹⁵³ For that reason alone, the traditional skepticism of local executive power should be reversed.

¹⁵² See Bas Denters & Lawrence Rose, *Local Governance in the Third Millennium: a Brave New World in Comparing Local Governance*, supra note __, at 8.

¹⁵³ See Svava, *Embattled Mayors*, supra note __, at 139.

Strong mayor reforms, however, address only one aspect of the fragmentation of the democratic city. They do little to challenge the city's constitutional subordination. And to the extent that strong mayor charter reforms are grounded in a corporate or administrative model of local government, they are unlikely to alter intergovernmental relationships in the city's favor. Whether a strong mayoralty derived from democratic norms can alter those relationships, however, is an open question.