ANNUAL REVIEWS

Annual Review of Law and Social Science

Constitutions and the Metropolis

Ran Hirschl

Department of Political Science and Faculty of Law, University of Toronto, Toronto M5S 3G3, Canada; email: ran.hirschl@utoronto.ca

Annu. Rev. Law Soc. Sci. 2020. 16:59–77

First published as a Review in Advance on July 14, 2020

The *Annual Review of Law and Social Science* is online at lawsocsci.annualreviews.org

https://doi.org/10.1146/annurev-lawsocsci-051920-020619

Keywords

megacities, constitutional law, urbanization, multilevel governance, federalism, state theory

Abstract

Extensive urbanization and the consequent rise of megacities are among the most significant demographic phenomena of our time. Our constitutional institutions and constitutional imagination, however, have not even begun to catch up with the new reality. In this article, I address four dimensions of the great constitutional silence concerning the metropolis: (*a*) the tremendous interest in cities throughout much of the social sciences, as contrasted with the meager attention to the subject in constitutional theory and practice; (*b*) the right to the city in theory and practice; (*c*) a brief account of what national constitutions actually say about cities, and more significantly what they do not; and (*d*) the dominant statist stance embedded in national constitutional orders, in particular as it addresses the sovereignty and spatial governance of the polity, as a main explanatory factor for the lack of vibrant constitutional discourse concerning urbanization in general and the metropolis in particular.

INTRODUCTION

The twenty-first century has been hailed the century of the city, and the figures behind this reality are mind-boggling. Consider that a century ago, only one in ten people lived in an urban area; today, for the first time in recorded human history, the majority of the world's population lives in cities. This shift marks a major and unprecedented transformation of the organization of society, both spatially and geopolitically. The ever-expanding urbanization trend, arguably the most significant demographic trend of our time, is set to continue. The forecasts for 2030 or 2050—let alone for 2100—range from the disturbing to the near dystopian. Projections suggest that megacities of 50 million or even 100 million inhabitants will emerge by the end of the century, mostly in the Global South (see, e.g., Hoornweg & Pope 2017, Samet 2013). Our constitutional institutions and imagination, however, have failed to keep pace with this new reality. Cities have remained virtually absent from constitutional law and constitutional thought, not to mention from comparative constitutional studies more generally (Hirschl 2020). In the face of the mounting urban challenge, the silence of constitutional law and scholarship is deafening.

In this article, I address four dimensions of the great constitutional silence concerning the metropolis: (*a*) the tremendous interest in cities throughout much of the social sciences, as contrasted with the meager attention to the subject in constitutional theory and practice; (*b*) the right to the city in theory and practice; (*c*) a brief account of what national constitutions actually say about cities, and more significantly what they do not; and (*d*) the dominant statist stance embedded in constitutional law, in particular as it addresses sovereignty and spatial governance of the polity, as a main explanatory factor for the lack of vibrant constitutional discourse concerning cities. Taken together, the four angles of city constitutional (non)status I discuss here highlight the bewildering silence of contemporary constitutional discourse with respect to cities and urbanization, as well as the strong statist outlook embedded in national constitutional orders, effectively rendering the metropolis a constitutionally untenable entity.

STATE DOMINANCE, CONSTITUTIONAL SILENCE

The Italian city-states (e.g., Florence, Genoa, and Venice) are common landmarks in the history of Western civilization. Studies have also shown the significance of city-based religious toleration and refugee acceptance policies in explaining Frankfurt's late-medieval prominence and the ascendancy of Amsterdam during the Dutch Golden Age. The northern-European Hanseatic League is often mentioned as a medieval example of intercity collaboration that had significant economic benefits for its members. More recently, however, the triumph of the modern state has subjected cities and regions to the statist constitutional project. As the US Supreme Court noted in *Hunter v. City of Pittsburgh* (1907, pp. 178–79),

> Municipal corporations are subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted [sic] to them. . .The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state.

The shift is reflected in the marked difference between the social sciences' intellectual fascination with the urban domain and the scant attention cities get in constitutional scholarship.

The city features centrally in contemporary social science literature. Institutional economists have extensively debated the role of medieval Europe's city-state in laying the foundations for the emergence of early-modern Europe's economic supremacy, warfare power, and technological advancements (see, e.g., North & Thomas 1973, North & Weingast 1989, Stasavage 2014).

Meanwhile, social historians such as Mike Rapport have highlighted the centrality of the city as a locus of social and political unrest during the late–eighteenth century Age of Revolution (see, e.g., Rapport 2017). Roger Gould's (1995) study of the Paris Commune—a revolutionary government that ruled Paris for a couple of months in 1871—introduced a community-based (as opposed to class-based) understanding of that famous episode of urban resurgence and brief autonomy. In a similar vein, Manuel Castells's early work focused on "urban social movements" that, in addition to advancing their cause, help shape local identity (e.g., Castells 1983). The theory has been extended to Global South settings (Frazier 2019). Modern political sociologists, from Shmuel N. Eisenstadt and Peter Hall to Charles Tilly and Saskia Sassen, have examined the political and economic roots of the evolution, decline, and reemergence of the city and, later, the world city. Sassen's (2001) influential book *The Global City: New York, London, Tokyo* is a prime example of this line of inquiry, suggesting that global cities have emerged as key command points of the world economy and as focal points of financial services and innovation. Sassen argues that although globalization has resulted in the dispersion of numerous day-to-day services, it has not been accompanied by any corresponding decentralization of (state) control. Instead, Sassen (2001, p. 5) argues, control has become even more centralized: "The more globalized the economy becomes, the higher the agglomeration of central functions in a relatively few sites, that is, in global cities." More recent accounts portray global cities as inscriptions of the ideals of an international market society in space, "embody[ing] the ascendance of a set of neo-liberal principles at a certain moment in history," with all the familiar tendencies, good or bad, that come with such ideological hegemony (Curtis 2016, p. xv). Others point out that one of the main defining characteristics of metropolis demographics and everyday urban life is superdiversity, where various dimensions of diversity—racial, religious, ethnic, linguistic, political, sexual, and socioeconomic—constantly intersect with each other (see, e.g., Vertovec 2007).

Within political science, scholars have described contemporary local governments as components of complex, multilevel governance structures, "having a host of vertical and horizontal relationships with a large range of other governmental, private and voluntary bodies" (Goldsmith 2012, p. 134). By these accounts, local government is part of a system of continuous negotiations among nested governments at several territorial tiers, all woven together in a complex policy network (see Hooghe & Marks 2001). Critics of the European Union's nation-state-based structure (e.g., Zielonka 2014) stress the need for a more flexible, differentiated, and multilayered configuration that reflects the status of cities and regions as centers of economic, political, and cultural activity. Other writers have focused on the spatial dimension of political preferences, emphasizing the tendency of like-minded or similarly situated people to concentrate in certain localities (neighborhoods, towns, cities) and the increasing divides in voting patterns along urban/rural lines (see, e.g., Bishop 2008, Rodden 2010). Several political scientists have extended this argument to suggest that, in first-past-the-post electoral systems, urban centers tend to be underrepresented compared to rural areas, mainly as a result of the historic concentration of left-leaning voters in cities and the aggregative wide margin of progressive candidate wins in urban electoral districts compared to more moderate right-leaning candidate wins in rural districts (see Boone & Wahman 2015, Rodden 2019). Others have suggested that, at least in the United States, the relative unification and better organization of city leaders throughout the twentieth century helped form a cohesive, well-represented, and often effective political force in shaping national policy making (see Ogorzalek 2018). Literature on progressive grassroots social movements in America's distressed communities points to new mobilization and policy tools available to activists at the city and neighborhood levels (see, e.g., Stone & Stoker 2015).

Meanwhile, scholars of urban planning and innovation studies have paid considerable attention to the city as an engine of economic growth, a magnet for the creative classes, and a

potential catalyst of regional cooperation. In the 1960s, believing that opportunities arising from close human interaction drove economic development, Jacobs (1961) famously criticized the supposedly "rational" mode of urban planning (residential districts, business centers, etc.) as lethal for spontaneous innovation. In another stream of thought, heavily influenced by economic theory, cities are commonly conceptualized as firm-like collective agents operating in a competitive field, attempting to position themselves favorably by discouraging settlement by costly, welfare-dependent populations (see, e.g., Peterson 1981), instead luring in the "productive classes" with attractive housing, employment, demographic composition, culture and recreation, public safety and cleanliness, high-quality education, and other similar enticements (see, generally, Audretsch et al. 2015, O'Sullivan 2018). Scholars of innovation, such as Florida (2002), have spoken about the competitiveness of cities, urban regions, and city clusters in attracting the creative class as a key driving force of urban economic development.[1] Against this thread, prominent critics of competitive economic models of urban development (e.g., Neil Brenner) point to the neoliberal foundations of such models and to the outright subjection of urban development to hegemonic neoliberal worldviews, and to the needs and interests of advanced capitalism more generally (see, e.g., Brenner & Theodore 2002). Meanwhile, leading economists (e.g., Paul Krugman) have connected ideas about economies of scale with population agglomeration and urban region density, thereby elucidating the economic logic behind the rise of megacities and of urban clustering more generally (see, e.g., Krugman & Masahisa 2000), or have emphasized the lack of attention to communities as a third pillar in canonical economic theory long dominated by attention to states and markets (Rajan 2019).

Prominent public intellectuals too have penned bestselling popular science books, such as *A Country of Cities* (Chakrabarti 2013), *The Metropolitan Revolution* (Katz & Bradley 2013), *Global Cities* (Clark 2016), *Triumph of the City* (Glaeser 2011), and most famously Barber's (2013) *If Mayors Ruled the World*, all pointing to the rising significance of cities, and perhaps also to the desirability of urban power as an alternative means of getting things done compared to bureaucracy- and politics-heavy national governments. This line of thought follows a pragmatist outlook: Cities are good at solving problems. City governance, owing to its relatively manageable scale, practical experience, and hands-on approach, may serve as an alternative to state apparatuses that are comparatively unwieldly, detached, and burdened by bureaucracy and politics. Pragmatist proponents argue that cities should seize the current zeitgeist of new localism and take control over policies targeting social and economic problems within their ambits (Katz & Nowak 2018).

Within legal academia, scholars of international and global law have identified the interconnectivity of the urban with national and international governance levels (Blank 2006), and more specifically the increasing involvement of cities in international policy making, particularly in environmental protection and global climate change regimes, but also in areas such as antipoverty, international migration, and refugee policies (see, e.g., Aust 2019). While lacking formal standing in international law, international city and mayoral networks have formed around an array of common goals, from joining the UN-Habitat program, to vowing to implement the Paris Agreement, to demanding representation at the global and pan-European policy-making fora concerning the refugee crisis. In fact, some observers have gone as far as suggesting that today's cities "are more involved in international policy-making, more savvy at navigating the international halls of power, more ambitious about voicing their opinions at the global level, and more influential in shaping global initiatives than perhaps at any time since Italy's city-states dominated during

[1]At the same time, cities that have been successful in their ability to attract the creative classes have more often than not witnessed increasing gentrification, unaffordability, segregation, and inequality (see, e.g., Florida 2017).

the Renaissance" (Swiney & Foster 2019). Although this statement may slightly exaggerate the current stature of cities in global affairs, it is true that cities, visionary and proactive mayors, and several transnational consortia of cities have been exceptionally active and influential in areas such as sustainability and environmental protection (see, e.g., Hughes et al. 2018, Lin 2018, Wyman & Spiegel-Feld 2020). In short, the last few decades have seen a burst of interest in novel thinking about urbanization and cities through the human sciences.

By stark contrast, very little of this intellectual richness has extended into the world of constitutional law. Here, the city remains a nonentity and a nonsubject. The gap is even more glaring when it comes to comparative constitutionalism. Despite the tremendous renaissance of comparative constitutional law, not a single comparative study considers constitutional innovation and stalemate from the standpoint of city–state relations. In fact, the metropolis is virtually nonexistent in comparative constitutional law, constitutional design, and constitutional thought. With the partial exception of a few American legal academics whose work focuses on American cities' legal and constitutional status (Frug 1980, Hartog 1983, Schragger 2016), as well as a handful of constitutional law scholars elsewhere who focus similarly on city position in their respective countries (see, e.g., Pieterse 2017, Sancton & Young 2009), there are no book-length comparative accounts of the challenges to constitutional governance posed by extensive urbanization, the rise of the metropolis, or consequent tensions along a center–periphery demographic and geopolitical axis. In comparative constitutional thought, the city continues to be nonexistent, quietly accepted as something fully subsumed within existing federalism and separation of powers doctrinal schemes. *The Oxford Handbook of Comparative Constitutional Law* (Rosenfeld & Sajó 2012), for example, is a major state-of-the-field collection that includes more than 50 chapters spread over 1,000 pages. Not a single chapter addresses the urban challenge in passing, let alone in significant detail. A similar silence resounds in virtually all other definitive handbooks, companions, and textbooks on comparative constitutional law. Predictably, even the recent resurgence of a periphery–center divide in economic and political discourse has not generated much novel legal or constitutional thinking about cities or spatial dimensions of constitutionalism more generally.

Meager as the constitutional and especially comparative constitutional thought has been on cities, the United States is in fact one of the few countries that have shown any signs of intellectual life in this area. A few scholars have critiqued American cities' constitutional powerlessness and lack of representation in the country's old and inflexible federalist meta-structure. The common denominator in most of these accounts is that legal institutions, at both the state and the federal levels, limit the power of cities to pursue substantive policy goals other than economic development (Schragger 2016). As Frug & Baron (2008)—pioneering scholars of American municipal law—have shown, state laws restrict the power of American cities to raise revenue and tax new forms of income, control land use, grant privileges to their residents, or develop services that compete with state governments or prominent elements of the private sector. Legal-theoretical developments have further limited city power, such as the rise of the public–private distinction in nineteenth-century American legal thought, which helped to curtail municipalities' corporate rights, according to notable legal historian Hartog (1983). Whereas the business corporation was designated by law as a private entity and thus awarded various legal and constitutional protections that enable it to assert rights against state encroachment, cities, as public corporations, were wholly beholden to state power (Schragger 2018b, pp. 67–68). Other scholars have pointed out that the subjection of American cities' authority to state and federal legislative powers was also driven by efforts "to limit the scope and impact of local governments exactly at the time that immigrants were taking control of those governments" (Pritchett 2017, p. 1455). As African Americans, Latinos, and other persons of color have gained greater influence over local governments, "cities continue to be chastised as 'ungovernable' and inherently corrupt" (Cannato 2001, quoted in Pritchett 2017,

p. 1455). More recent accounts of American cities' constitutional (non)status highlight systematic federal and state legal assaults on city power, often through preemptive legislation (Scharff 2016, 2018; Schragger 2018a; Stahl 2017). Several observers (e.g., Gerken & Revesz 2017, Stahl 2020) point out that progressive municipal agendas with respect to schooling and education, LGBTQ rights, or corporate tax surcharge hold considerable potential and have led the way in planting the seeds of social change. A handful of legal scholars have suggested that a more decentralized, region-based notion of federalism may be required for the concentration of power in Washington to be diffused (see, e.g., Blank & Rosen-Zvi 2018, Fontana 2017). However, as timely and intellectually refreshing as these accounts are, they represent merely a drop when compared to the ocean of constitutional law literature focused on the state as the spatial and conceptual epicenter of the constitutional universe.

THE RIGHT TO THE CITY IN THEORY AND IN PRACTICE

Equal opportunity, antidiscrimination, economic, social, and immigrant rights are frequently invoked in debates over the politics of the urban domain, but none of these constitutional rights, or the moral premise they reflect, was developed specifically in response to the urban context. The fact that debates involving these rights often take place in large city settings has much to do with the demographic and socioeconomic realities in these settings, not with the independent normative, qualitative, or analytical value of the rights themselves.

Arguably the most important conceptual innovation of the last half-century concerning the normative foundations of city and city dwellers' rights is the right to the city, first introduced in the late 1960s by French philosopher Henri Lefebvre [1996 (1968)] in his ground-breaking book *Le droit à la ville*. Not only has Lefebvre conceptualized the urban space as a political field or sphere of power, he also offers normative grounds for restructuring the power relations that underlie urban space and calls for a transfer of control from capital and the state to urban inhabitants (Purcell 2004). Conceptually, he argues that the right to the city is the right to "urban life, to renewed centrality, to places of encounter and exchange, to life rhythms and time uses, enabling the full and complete usage of. . .moments and places" [Lefebvre 1996 (1968), p. 178]. The context for Lefebvre's formulation was his vision—in the spirit of the neo-Marxist tradition of the late 1960s—of city inhabitants incrementally reclaiming space in the city through enhanced communal interface, so that a web of social interactions could form between people and ultimately trump the social atomism and alienation brought about by advanced capitalism.

Yet Lefebvre never fully elaborated on the concrete meaning of the right to the city. Over the last half-century, philosophers and political theorists have been offering various interpretations of Lefebvre's abstract formulation. As Kohn astutely observes, the exact meaning of the term nevertheless remains hard to pin down, owing in part to the broad interpretive literature itself, the evolution in Lefebvre's own formulation of the concept, and the tension between Lefebvre's historical-materialist critique of urban power relations and his utopian vision of urban renewal (see, e.g., Kohn 2016, pp. 177–78). Kohn offers a compelling conceptualization of the city as a commonwealth based on solidarism, which collectively produces social good available equally to all who live in it and contribute to its vibrancy. Building on the notion of rights "protect[ing] fundamental interests that are recognized by, and entail obligations for, others," Kohn (2016, p. 3) attempts to concretize the right to the city as a right that "protects access, enjoyment, and codetermination of the common-wealth of the city." Such a conceptualization of the right to the city, she argues, has radical implications for urban politics, in particular with respect to housing, public transit, and governance of public space (p. 9).

In a closely related line of thought, inspired by Elinor Ostrom's Nobel Prize–winning work on governing common-pool resources, Foster & Iaione (2016) suggest that the city's open

spaces—and perhaps even the city itself—may be conceptualized as a commons that ought to be governed by urban communities as a collective, or shared, resource pool. Such a conceptualization, they argue, calls for a departure from the privatization of common resources or monopolistic public regulatory control over them and a move toward what they see as pluralistic "urban collaborative governance." This model would foster increased cooperation among social innovators, civil society organizations, public authorities, business, and knowledge institutions (e.g., universities, museums, cultural centers, etc.). The normative starting point here seems to echo elements of Lefebvre's right to the city, in that the city possesses "shared resources that belong to all inhabitants" and is aligned with their "right to be a part of the creation of the city, the right to be a part of the decision-making processes shaping the lives of the city inhabitants, and the power of inhabitants to shape decisions about the collective resources in which we all have a stake" (Foster & Iaione 2016, p. 288).

Political activists, international organizations, and city networks have invoked the right to the city in arguing for enhanced city autonomy as well as for various rights and entitlements of city dwellers as polity members. Neo-Marxist accounts have characterized the right to the city as a collective right and have invoked it to assert public ownership of the city's territory and opposition to the privatization of urban space (e.g., Harvey 2012, Mitchell 2003). This right has been brought up liberally in debates concerning housing, transit, governance of public space, and meaningful political participation (Kohn 2016, p. 177; see also Harvey 2003, Marcuse 2009, Purcell 2014).

A related argument raised by radical democracy theorists posits that city power offers an appealing alternative to exclusive state power, or at least a challenge to the nationalization of politics. In his book *Urbanization Without Cities*, for example, Bookchin (1992) argues that fully empowered members of a body politic are much closer to the true meaning and ultimate fulfilment of democratic ideals when exercised on a city scale than on a nation-state scale. Predictably, national politics is captured by national meta-narratives, struggles over control of state institutions, and large-scale resource allocation processes. Such a system is aimed at establishing the state as the main pillar of solidarity, loyalty, and collective identification, en route weakening alternative collective identity bases, notably the urban or the local. Against the nationalization of politics, Bookchin advocates the creation of a worldwide parliament of cities as a counterbalance to the state-based political scheme.

However, as Mayer (2009) notes, the revolutionary edge of the right to the city has been replaced with identity-based claims for inclusion. The maxim was originally formulated in the 1960s as a radical answer to the crisis of Fordism and as part of the antiwar movement. The concept was later reformulated as a response to austerity and the political shift toward neoliberalism in the 1980s, and then to the globalization of markets in the 1990s and 2000s. In recent years, however, the right to the city has taken a different form, and it is now often invoked to demand full, inclusive, and equal membership within existing political systems and to promote the progressive realization of such values within and by cities. To some extent, this transformation reflects contemporary liberal rights jurisprudence, heavily occupied with what have been termed claims of culture or (less favorably) identity politics (Fraser 1996, Fraser & Honneth 2004).

Inspired by these debates, contemporary political theory has generated renewed discussion on the urban space as a site of dense social interaction and as an alternative to state- or ethnicity-based political community, and on the city as a potential source for its dwellers' rights and entitlements to renewed urban life (see, e.g., Kohn 2016). Bauböck (2003) has revived the discussion about urban citizenship (dubbed "city-zens"). Other political theorists (e.g., de Shalit 2018) have written about cities as political communities and as potential identity bases and further explored the possibility of drawing on *jus domicile* (a place-based membership criterion) as an alternative to current state-based membership models, in particular in the context of immigrant rights (Bauder 2012).

In recent years, the advancement of the right to the city has been closely entangled with cities' efforts to establish themselves as "human rights cities."[2] The trend has been conceptualized as reflecting the proliferation of human rights discourse and human rights regimes beyond the state. Human rights city initiatives may be driven by principled motives, such as city leaders' genuine commitment to human rights, or by their frustration with the city's constitutional nonstatus, reflecting ideological gaps between progressive cities and conservative governments. It may be driven by cities' or mayors' interest in fostering their reputation, nationally or internationally, as inclusive and socially progressive polities. It may also simply reflect a question of scale: Cities are perhaps better suited to enforce human rights commitments than the very large and often detached state apparatus. Some scholars of human rights cities have suggested that, at least in the United States, the trend may have some concrete legal bite; interpretation of federal intervention in state affairs as appropriate may ensure that human rights protection does not fall below federal standards, thereby shielding cities from preemptive rights-curtailing legislation by states (see, e.g., Davis 2017, 2018). Either way, the hope driving the human rights cities trend is that cities can and will "deliver where nation states have failed" (Oomen et al. 2016, p. 2), ideally leading to "a new urban utopia: a place where human rights strive to guide urban life" (Grigolo 2019).

In practice, the human rights cities trend has taken various forms, the three most common of which are transnational or regional intercity declaratory commitments to a right to the city agenda; adoption of human rights charters by individual cities; and attempts at city sanctuary policies or municipal identity card programs that signal defiance of national antimigrant policies and provide city residents, including undocumented migrants, access to essential services. These developments, embryonic as they are, may have significant symbolic, educational, and at times practical significance, certainly in a nationalist-populist age where an exclusionary us-versus-them rhetoric is prevalent. They signal the adopting city's genuine commitment to international human rights standards, as well as to an inclusive, socially progressive public policy agenda. Such city charters may also have some self-determination effects in signaling the community's commitment to a shared set of values. Nevertheless, akin to other types of self-generated emancipatory moves by cities, the real legal or constitutional effect of such human rights city charters is unclear at best, as in most instances they lack formal status in claims made vis-à-vis states or central governments, and they seldom if ever replace or operate in lieu of polity-wide constitutional guarantees of pertinent rights and entitlements. The compliance and enforcement mechanisms created by such charters are limited. Even avid proponents of the human rights cities idea note that very few of the charters adopted to date create effective legal remedies that allow individuals or groups claiming human rights violations to seek any meaningful legal relief (e.g., Soohoo 2016). What is more, with a few exceptions where political incentives so warrant, national governments cannot be bound by such policy initiatives. Unlike constitutional rights commitments at the national level, it is unclear what actual duties city rights create. In other words, human rights cities may promise various rights protections, but the actual duty to realize such rights is often well beyond cities' legal ambit. No support or resources are provided by the state, which remains the primary, and often the only, relevant agent and duty bearer of human rights commitments vis-à-vis the international arena (see Kalb 2017, p. 88).

What is more, intellectually intriguing and normatively appealing as human rights city initiatives are, their immediate applicability to the main sites of urbanization—low- or lower-middle-income countries in the Global South—appears questionable. The challenges facing Kinshasa, for

[2] On the scope, potential, and challenges of the "human rights cities" trend, see Oomen et al. (2016) and Oomen (2018). Among the cities experimenting with human rights legislation that seminal collection discusses are Barcelona, Mexico City, Montréal, Utrecht, and San Francisco.

example, are enormous—its population has increased from 400,000 to 13 million in the space of only half a century, a 32-fold increase in a city where the annual GDP per capita ranges between $200 and $500 (Hirschl 2020). Dhaka contains 20 million residents living with a city-wide density of 46,000 people/km^2 (119,140/mile^2). Consider Dhaka's population density compared with other cities: It is 5 times that of New York City, 7 times that of San Francisco, 12 times that of Paris, 16 times that of Toronto, and nearly 30 times that of Melbourne (Hirschl 2020). The challenges of Kinshasa, Dhaka, Mumbai, Lagos, and other huge cities of the Global South are not likely to be resolved by accounts, compelling as they may be, that project a New York City, Paris, or San Francisco political and demographic reality on fundamentally dissimilar urban settings in the Global South. A more urgent challenge in such settings seems to be the limited realization of already constitutionalized economic and social rights. These rights are more commonly constitutionalized today than ever before (see Jung et al. 2015, Rosevear et al. 2019), but their actual delivery in many of the enormous urban centers of the Global South is sparse and ineffective owing to weak state capacity and unfavorable political interests (see, e.g., Brinks & Gauri 2014). To pick an obvious example, even the most rudimentary and supposedly universal responses to the coronavirus disease 2019 (COVID-19) threat—handwashing and so-called social distancing—are not readily available to residents of densely populated shantytowns that often lack basic sanitation facilities.

WHAT DO NATIONAL CONSTITUTIONS SAY ABOUT CITIES?

Most constitutional orders that were adopted over a two-century span between the late eighteenth century and the 1970s, whether federal (e.g., United States, Canada, Australia, Mexico, Germany), unitary (e.g., France, Netherlands, Sweden), or somewhere in between (e.g., United Kingdom, Spain), covering North America, Western Europe, and many former colonies in Africa, Asia, and Latin America, treat cities, including some of the world's most significant urban centers, as creatures of the state, fully submerged within a Westphalian constitutional framework and assigned limited administrative local governance authority. Their constitutional statuses range anywhere from secondary to nonexistent. Whereas approximately 60% of the national constitutions currently in effect designate their respective country's national capital, only a small handful of these constitutions (not to mention the other 40% of national constitutions) address these cities, let alone other large cities within their territorial jurisdiction, as metropolitan centers per se. Scattered examples of noncapital city-provinces in Europe (e.g., Bremen or Hamburg in Germany or Basel-Stadt in Switzerland) are precious few exceptions to this reality, and virtually none is predicated on a deep, across-the-board constitutional recognition of the metropolis as an autonomous or distinct order of government.

American cities, some of which are among the world's largest, lack constitutional personality and are principally at the mercy of state governments, constitutionally speaking. Doctrines such as Dillon's Rule and home rule (the Cooley doctrine) were formulated in the mid-nineteenth century and endorsed by the US Supreme Court in the early twentieth century [e.g., *Atkin v. Kansas* (1903), *Hunter v. City of Pittsburgh* (1907)]; these continue to govern the constitutional status of American megacities today. The result is that American constitutional jurisprudence on city power represents a very small fraction of that country's federalism case law. Meanwhile, America's dated yet rigid constitutional structure equips states with the power to draw electoral district boundaries in a way that frustrates urban representation and, most importantly, allows state legislatures to preempt city legislation. Leading experts on American cities' constitutional status note that there are various ways in which states could frustrate cities' efforts to address the welfare of urban residents by implementing redistricting and rezoning to dilute local power to the suburbs. Instances of preemption have expanded considerably in the last decade: States have preempted

or overridden city ordinances on issues as diverse as local living wage regulations, gun control, municipal civil rights law, tobacco regulations, LGBTQ antidiscrimination rights, requirements for nutritional information in restaurants, antiplastic and environmental protection legislation, and sanctuary city policies. Several states have also enacted laws that prohibit cities from joining international city networks.

American proponents of enhanced city power—an uphill battle, as we have seen—may find solace in the fact that, disempowered as American cities are, Canadian cities easily win the title of constitutionally weakest in North America. Lacking any direct constitutional powers, cities and municipalities in Canada exist only as bodies of delegated provincial authority, entirely dependent on provincial legislation for their power and sources of revenue. Large Canadian cities, essentially the frontline delivery agents of Canadian multiculturalism and social integration, are governed by a constitutional order that dates back to 1867 (at which time metro Toronto's population was less than 50,000; today it is 7.5 million). In this reckoning, municipal institutions are creatures of provincial governments, controlled exclusively by provincial authority alongside charities, eleemosynary institutions, shops, and saloons and taverns. Given that 85% of Canada's population lives in cities, and that more than 50% of the nation's population is concentrated in six metro areas, it would be something of an understatement to say that the constitutional nonstatus of cities in twenty-first-century Canada—purportedly one of the world's leading constitutional democracies, featuring abundant scholarly awareness for and legal recognition of diversity and differentiated citizenship—reflects serious constitutional datedness. It represents a major democracy deficit, possibly in violation of some of the country's major constitutional pillars, as defined by the Supreme Court of Canada.[3]

Australia's constitutional order too allows for near-complete state domination of cities and metropolitan governance more generally (Sansom & Dawkins 2013, Saunders 2005). Although there has been some ambivalence in the high court jurisprudence concerning the Commonwealth's (federal) power to invest in massive urban renewal projects, Australia's major cities remain patently underrepresented under the existing constitutional order. Unlike in Canada, Australia's constitution does not set out the states' enumerated powers in a list. Instead, it enumerates only the Commonwealth (federal) Parliament's powers (primarily in section 51 with three in section 52). Any legislative area not granted to the Commonwealth in sections 51 or 52 remains with the states. Because local government was a subject of colonial legislation prior to confederation and is not one of the powers given to the Commonwealth, the constitutional power to legislate on municipal governance resides with the states. Consequently, Australia's large cities—Sydney (metro population 5.2 million; approximately two-thirds of New South Wales's population), Melbourne (metro population 5 million; approximately three-quarters of Victoria's population), and Brisbane (metro population 2.5 million; approximately half of Queensland's population)—are largely at the mercy of state governments, which effectively control a variety of key policy areas, from education, health, and policing to planning, land use, infrastructure, and major utilities. Three prominent and unsuccessful attempts to amend Australia's constitution to empower cities have either failed in referenda (in 1974 and 1988) or been withdrawn due to lack of support (in 2013).

The European Charter of Local Self-Government (which came into force in 1988) provides some basis to believe that European cities may be better off than their counterparts in the United States, Canada, or Australia. It protects the basic prerogatives of local government, exercised by

[3]As is well-known, in its decision in *Reference re Secession of Quebec* (1998), the Supreme Court of Canada stated that the Canadian constitution is based on four equally significant underlying principles: (*a*) federalism, (*b*) democracy, (*c*) constitutionalism and the rule of law, and (*d*) the protection of minorities. None of these principles trumps any of the others.

directly elected councils, and affirms the capacity of local authorities, within the limits of the law, "to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population." Article 2 denotes that the principle of local self-government must be recognized in domestic legislation and, where practicable, in the constitution. However, in reality, the charter's net effect on enhanced city constitutional power in Europe has been modest at best, as the constitutional status of cities continues to reflect established national constitutional traditions largely unaltered by the charter (see, generally, Boggero 2017, Himsworth 2015, Kirchmair 2015). What is more, the charter fails to distinguish between small townships and megacities, instead referring broadly to "local government."

Meanwhile, the Rhine-Ruhr metropolitan region (Germany's largest urban agglomeration, with more than 11 million people) lacks any autonomous constitutional standing or personality; in fact, it is not even mentioned in the state constitution of North Rhine-Westphalia, within the boundaries of which it exists. The same is true of Frankfurt, described in Sassen's (2001) seminal work as a global city alongside New York, London, and Tokyo—yet there is not even a whisper about Frankfurt in the Hessian state constitution. Whereas the German Basic Law protects the residual regulatory competences of municipalities in local affairs not regulated by other orders of government, it does not differentiate among the competences of small towns and large cities (Bumke & Voßkuhle 2019, pp. 418–20).

Several constitutional orders, all of them outside North America and Western Europe, acknowledge the new reality of megacity prominence and extend fiscal autonomy and policy-making authority to such cities (Hirschl 2020). Tokyo, the world's largest metropolis, enjoys recognition as both a city and a prefecture, owing to a mix of primary legislation, constitutional provisions, and political traditions that evolved from the 1940s onward. The Chinese constitution assigns special status to key cities—Beijing, Shanghai, Tianjin, and Chongqing—which are viewed as engines of economic growth and as centers of national importance. The constitution of South Korea, as well, establishes 17 subnational units, of which 8 are designated first-level cities (including Busan, Gwangju, Incheon, and Seoul), and Sejong as a special self-governing city. In these settings, constitutional support of megacities reflects astute, long-term central government planning aimed at fostering megacity power as the engine of regional or national economic growth.

In other instances—for example, as with recent constitutional reforms concerning urban affairs in India and Brazil—constitutional treatment of megacities is part of an overhaul of federalism. In India, the seventy-third and seventy-fourth constitutional amendments (1992) were aimed at enhancing the constitutional autonomy of local government and articulated a vision of decentralized power and responsibility through the provision of constitutional status to urban centers. And in Brazil, the City Statute (2001), alongside Articles 182 and 183 of the constitution (1988), addresses matters of urban development and self-governance. (In both countries, the long-standing reality of subnational control over cities and politically driven intergovernmental affairs has brought about mixed results; see Hirschl 2020.) Arguably, the most expansive constitutional protection of cities on offer today is featured in the South African constitution (1996), in which a nexus of constitutional provisions, notably Chapter 7 (ss. 151–164) of the constitution, guarantee municipal standing and empower cities' planning and fiscal autonomy. Certain capital cities that have grown into some of the world's largest urban centers enjoy a self-governing national territory status (e.g., Delhi) or have been elevated from a federal district status to a full-fledged state or subnational unit constitutional status (e.g., Mexico City, Buenos Aires) and have acquired a full state-like status, on par, constitutionally speaking, with other recognized subnational units/states/provinces. These and other innovative constitutional mechanisms represent ways of addressing some of the challenges faced by the modern metropolis while the state maintains central constitutional control. However, in Canada, Australia, Germany, France, and the United States—all Global North

constitutional settings—these innovations remain beyond the purview of viable constitutional renewal discourse, let alone practice. And even in those parts of the constitutional cosmos where city constitutional empowerment has been considered, the starting point and basic assumption of statist constitutional orders is that the city is just a component—and a largely dependent one at that—of the nation-state and its statist constitutional framework.

This structural problem is further exacerbated by the intersection of demographic concentration in many urban areas with constitutionally protected malapportionment, which leads certain electoral systems to systematically under-represent large urban centers and their residents. In metropoles as diverse as Toronto, Mumbai, and São Paulo, poorly apportioned electoral systems are structured in a manner that prevents increasingly large sections of a democratic polity's population from having equitable representation in a legislative body. In other settings (e.g., Zürich, Chicago), the political voice of city inhabitants is reduced and practically subsumed by larger subnational units. In its recent landmark ruling in *Rucho v. Common Cause* (2019), the US Supreme Court held (five–four along traditional conservative–liberal ideological lines) that partisan redistricting is a political question, not reviewable by federal courts, and therefore ought to be addressed by Congress or by state legislatures and not by the judiciary. Taken together, these trends have proven to systematically weaken the political representation of cities and their residents and negatively impact predominantly urban policy issues, such as transit, density, and affordable housing.

SPATIAL STATISM

This stark gap in constitutional scholarship on cities, amid ever-expanding urban agglomeration worldwide, reflects a long-standing state-centered vision of the constitutional order. As Barber (2018, p. 11) observes in his recent treatise on the principles of constitutionalism, "Constitutionalism is a doctrine that is derived from, or at least tightly connected to, the state. It applies to those creating states and, also, to those who act within and upon the structures of the state." Why does this statist project, whether principled or pragmatic, ignore urban agglomeration?

Of interest here are historical accounts of the rise of the modern state and the corresponding demise of city and subnational autonomy. It is well-known that the process of state formation in Europe involved the subjugation of the medieval city. Medieval and early-modern city-states' and autonomous communities' powers were gradually yet effectively subordinated to the growing authority of the early-modern state, with its quest for full control over its territory and people (see, e.g., Le Galès 2002, Spruyt 1994). New, state-based citizenship and equivalent political membership regimes gradually replaced city-based ones (see, generally, Prak 2018). In some cases, the subjugation of city powers by the state-led leviathan-building project was swift—either as a result of clear power imbalances or because pooling military or economic resources of several smaller units to create a more potent, larger one served the interests of weakened city-states. In other instances, emerging states had to resort to active disciplining and open confrontation with recalcitrant, self-asserting cities, adamant on maintaining their sovereignty and authority over their territory, people, capital, and knowledge. Given the considerable variance in how city-states were incorporated into the modern state, a range of historical and regional contingencies clearly influenced this evolution alongside broader geographical, cultural, and economic factors. Sooner or later, however, the vast majority of hitherto autonomous cities (at least in Europe) were nationalized, enveloped by the early-modern state, their power giving way to the state-centered conception of sovereignty and spatiality. Whereas in 1500, the city-state in all its varieties was the dominant political unit in Europe, by 1800 it had given way to the early-modern state and its overseas colonies.

Subsequent political paths converged, with few exceptions, upon a single form of a medium-sized, centralized state, with the later addition of federalism as a joint-governance pact between subnational administration and a national government. It was during this phase of the evolution of city-state relations that substantial urban communities lost much of their previous autonomy and status. As states sought to establish their monopoly over the legitimate exercise of physical force and authority; enhance their influence on economic and social life; and, most importantly, control "who gets what, when and how" within their respective territories, they also laid stronger and stronger claims to primacy as the focus of popular loyalty and collective identity (see Taylor 2004, Tilly 1992).[4] As cities became nationalized, state-centered bureaucracies and governance structures emerged. Cities were increasingly perceived as mere components, however important, of nation-states and as cogs, however central, in national economies (Taylor 2004, p. 15). As Frug showed in his seminal *Harvard Law Review* article written in 1980, the legal conceptualization of the city during that grand transformation was consistently narrowed to a powerless "creature of the state" and to an entity authorized by the state to solve purely local problems. In that process, Frug (1980, pp. 1119–20) argues, "it is not simply that cities have become totally subject to state control—although that itself demonstrates their powerlessness—but also that cities have lost the elements of association and economic strength that had formerly enabled them to play an important part in the development of Western society." As the statist project of national constitutions, both centrist and federalist, achieved prominence, the effect on the constitutional imagination with respect to political geography and spatial autonomy was immediate and complete, leading to a dearth of creative thinking concerning city governance.

One prominent consequence of this political atrophy is the exclusion of cities from the purview of contemporary federalism, both in theory and in practice. Historically, federalism has been developed and deployed in response to pooling factors, including military interests (both defensive and offensive) and economic welfare (Palermo & Kössler 2017, p. 69). A group of interested units join together into one of several types of confederated entities—multi-tribe (e.g., the ancient Israelites), multination (e.g., the Iroquois Confederacy), multi-republic (e.g., the Helvetic Confederation), and multi-city-state (e.g., the Hellenic Achaean League, the Lombard League in northern Italy, or the northern European Hanseatic League) (see, e.g., Davis 1978, Elazar 1987). In modern federations, however, and in the field of contemporary constitutional studies, the near-exclusively applied unit of federalism is the state and its equivalents (provinces, Länder, cantons, regions, emirates, etc.). As Gerken (2010, p. 21) writes of the American context, "Federalism scholars have typically confined themselves to states, the only subnational institutions that possess sovereignty." With few exceptions, the same is true in other federalist settings around the world. Worldwide, the Westphalian model continues to dominate the theory and practice of federalism, with its notion of sovereign territorial states divided along ethnic, religious, and linguistic cleavages and reflecting conventional notions of nationhood, peoplehood, and/or historical patterns of conquest and settlement. In this universe, cities, home to the majority of mankind, ubiquitous and crucial to every aspect of twenty-first-century society, culture, economics and politics, are virtually absent, "the forgotten stepchildren of both federal politics and scholarship" (King 2014, p. 295).

Tellingly, very little attention has been devoted in political theory, let alone in constitutional theory, to federalism's unit question. This gap is particularly troubling, as Levy (2007) observes, considering the prevalence of federalism and the dominant status of state-sized, subnational units in contemporary federalism (see, more generally, Tierney 2018). For Levy (2007, p. 459), one of the few authors to have addressed the unit size issue, "federations are made of provinces that are too

[4]Holding the monopoly over the legitimate use of physical force by a government in a well-defined territory is, according to Max Weber, one of the defining features of the state.

few, too large, too rigid, too constitutionally entrenched, and too tied to ethnocultural identity to match theories based on competitive federalism, Tiebout sorting [supposed optimization of public service provision based on competition across local jurisdictions], democratic self-government, or subsidiarity."[5] As Weinstock (2014, pp. 269–70) notes, if we are to take ideals of subsidiarity and stakeholding seriously, it is unclear why "both theoretical discussions about, and the practice of, real-world federal arrangements [should stop] at the level of provinces, länder, U.S. states and the like" and continue to exclude cities.

The exclusion of cities from modern federalism, like the constitutional silence on urban agglomeration, may reflect and perpetuate an embedded tendency in public law that Shachar and I have termed spatial statism—the notion that public law, through its spatial ordering, partakes in sustaining the centrality of a state-oriented locus and focus of sovereign control of its territory in the face of competing forces, real or perceived (Hirschl & Shachar 2019). Of course, a range of economic forces transcend the power of the state, knowing no borders—notably, investment, trade, capital mobility, knowledge transfer, and tax evasion. Politically, too, international organizations are proliferating, and transnational standard setting is on the rise. Nonetheless, core aspects of classical public law remain largely statist, especially those focused on territoriality, a vital dimension of sovereignty. There remains a strong statist grip over zoning and land policy, takings, public works and infrastructure investment, social welfare, and control over intergenerational wealth transfer through inheritance and property taxation, to say nothing of the intensely government-controlled military, policing intelligence, and surveillance domains. Statist concern with territorial sovereignty also manifests in less obvious arenas, from the growing anxiety over immigration, borders, and uncontrolled entry to the doctrine of permanent sovereignty over natural wealth and resources, from state control of religious sites and attire in the public sphere to the rise of statist neo-secessionism driven by nationalist-populist trends. Taken in conjunction, these ongoing statist projects suggest that the state is alive and well as a potent actor in the public law arena. From closed borders and regional lockdowns to extensive surveillance and tracking of citizen movement, responses to the COVID-19 pandemic of 2020 further suggest that the statist quest for control has not waned. Global markets have weakened the state's fiscal autonomy but have fallen short of dismantling a core element of the Westphalian order: the state's legal grip over its territory. Facing existential threats to its long-standing dominance, the state has modified and reinvented itself to remain a key player in the struggle for spatial control. A similar statist impulse, I argue, also drives the state's innate concern regarding the rise of large, densely populated, politically significant and economically potent cities.

This, in turn, points to the continued relevance, albeit in a new configuration, of classical works in political sociology and state theory, from Weberian accounts to Scott's (1998) *Seeing Like a State*, that emphasize the ability to consolidate and enforce laws over a defined territory as one of the constitutive factors for the rise and endurance of the modern state. As several public law theorists have pointed out, the state is a core building block, indeed a sine qua non concept, in public law (Loughlin 2018);[6] it has never abandoned its claim "to be the center of the legal universe" (Fassbender 2018, p. 1207). At least when it comes to constitutional control of cities, where the state remains the master of the domain, that claim certainly holds true.

[5]If the leading theories of federalism are to be taken seriously, Levy (2007, pp. 460–63) argues, they warrant a much more flexible, decentralized model of federalism, composed of smaller constituent units than the typical state- or province-sized ones.

[6]Loughlin (2018, pp. 1156) argues that in linking territory, authority, and people in an intelligible scheme, the state is "the foundational concept that enables lawyers coherently to engage with the issue of political authority." For an overview of pertinent patterns of change and continuity in public law–related statehood theory, see, e.g., Walker et al. (2018).

The state's existential fear of large cities is also driven by a more immediate concern. Large cities can serve as nurseries for potentially unruly radicalization, leading to an undermining of state power and possibly even to political revolution. By their very nature, megacities are densely populated and are home to critical masses of people. They facilitate close human interaction and feature public spaces where large crowds can easily congregate, thereby allowing for a rapid spread of ideas, including potentially socially and politically destabilizing ones. Cities, in particular capital cities, are home to important government buildings, national monuments, and media outlets that provide concrete targets for protestors; the popular capture of these emblems of power has both practical and symbolic meaning. The Occupy Wall Street movement in New York, riots in Los Angeles, or the massive, at times veering-out-of-hand demonstrations that took place in Toronto and Hamburg against G20 leaders and their pro-globalization and pro-corporation plans may ultimately be controllable. But as the street warfare in Hong Kong, mass demonstrations in Tahrir Square, and wide protests in the streets of Santiago suggest, the megacity features a potentially explosive combination of people, ideas, and spatial conditions that from a statist point of view is better kept under check.

CONCLUSION

Contemporary constitutional thought and constitutional practice have thus far failed to address one of the major challenges of modern governance: urban agglomeration and the rise of the megacity. The world is urbanizing at an extraordinary rate. The majority of humanity now lives in cities. Megacities of 50 million or urban regions of 100 million are no longer considered mere science fiction. Consequently, cities draw tremendous attention in public policy circles and throughout the human sciences as more and more officials, researchers, and public intellectuals point to cities' crucial significance in promoting innovation, effectively addressing core policy challenges, and reviving democratic participation. Yet in public law, and in particular in constitutional law, this intellectual renaissance is nowhere to be seen. The muteness is even more striking in comparative constitutional law—constitutional law's supposedly cosmopolitan intellectual sibling. The vast majority of urban swelling over the last half-century has taken place in the developing world. Yet, very few major comparative accounts of the constitutional status of megacities have been published to date.

Progressive cities and city leaders have assumed important roles in advancing initiatives in key policy areas, such as public housing, education, undocumented migration, and climate change. The human rights cities trend, in particular, has taken root. The on-the-ground implications of these developments in improving certain urban residents' lives are consequential. With few exceptions, however, these initiatives do not enjoy the unflagging support of central governments and continue to operate beside or at the margins of the constitutional order.

Constitutional law—in its capacity as the legal foundation for the state's institutions and their prerogatives—creates and reflects a statist understanding of the polity's legal order. Consequently, national constitutions, constitutional jurisprudence, and constitutional scholarship overlook the city and urban agglomeration more generally. This state of affairs appears unsustainable. In the face of unequivocal scientific evidence of a mounting urban challenge worldwide, the silence of constitutional law and scholarship is deafening. New thinking about constitutionalism and urbanization is desperately needed.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

LITERATURE CITED

Atkin v. Kansas, 191 U.S. 207 (1903)

Audretsch D, Link A, Walshok M, eds. 2015. *The Oxford Handbook of Local Competitiveness*. New York: Oxford Univ. Press

Aust H. 2019. The shifting role of cities in the global climate change regime: From Paris to Pittsburgh and back? *Rev. Eur. Comp. Int. Environ. Law* 28(1):57–66

Barber BR. 2013. *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities*. New Haven, CT: Yale Univ. Press

Barber NW. 2018. *The Principles of Constitutionalism*. New York: Oxford Univ. Press

Bauböck R. 2003. Reinventing urban citizenship. *Citizensh. Stud.* 7(2):139–60

Bauder H. 2012. *Jus Domicile*: in pursuit of a citizenship of equality and social justice. *J. Int. Political Theory* 8(1–2):184–96

Bishop B. 2008. *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart*. New York: Houghton Mifflin

Blank Y. 2006. The city and the world. *Columbia J. Transnatl. Law* 44(3):875–939

Blank Y, Rosen-Zvi I. 2018. Reviving federal regions. *Stanford Law Rev*. 70:1895–993

Boggero G. 2017. *Constitutional Principles of Local Self-Government in Europe*. Leiden, Neth.: Brill-Nijhoff

Bookchin M. 1992. *Urbanization Without Cities: The Rise and Decline of Citizenship*. Montreal, Can.: Black Rose Books

Boone C, Wahman M. 2015. Rural bias in African electoral systems: legacies of unequal representation in African democracies. *Elect. Stud.* 40:335–46

Brenner N, Theodore N, eds. 2002. *Spaces of Neoliberalism: Urban Restructuring in North America and Western Europe*. Oxford, UK: Blackwell Publ.

Brinks D, Gauri V. 2014. The law's majestic equality? The distributive impact of judicializing social and economic rights. *Perspect. Politics* 12(2):375–93

Bumke C, Voßkuhle A. 2019. *German Constitutional Law: Introduction, Cases, Principles*. Oxford, UK: Oxford Univ. Press

Cannato V. 2001. *The Ungovernable City: John Lindsay and His Struggle to Save New York*. New York: Basic Books

Castells M. 1983. *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements*. Berkeley: Univ. Calif. Press

Chakrabarti V. 2013. *A Country of Cities: A Manifesto for an Urban America*. New York: Metropolis Books

Clark G. 2016. *Global Cities: A Short History*. Washington, DC: Brookings Inst. Press

Curtis S. 2016. *Global Cities and Global Order*. Oxford, UK: Oxford Univ. Press

Davis MF. 2017. Design challenges for human rights cities. *Columbia Hum. Rights Law Rev.* 49(1):27–66

Davis MF. 2018. The upside of the downside: local human rights and the federalism clauses. *St. Louis Univ. Law J.* 62(4):921–38

Davis SR. 1978. *The Federal Principle: A Journey Through Time in Quest of a Meaning*. Berkeley/Los Angeles: Univ. Calif. Press

de Shalit A. 2018. *Cities and Immigration*. Oxford, UK: Oxford Univ. Press

Elazar DJ. 1987. *Exploring Federalism*. Tuscaloosa: Univ. Ala. Press

Fassbender B. 2018. The state's unabandoned claim to be the center of the legal universe. *Int. J. Const. Law* 16(4):1207–14

Florida R. 2002. *The Rise of the Creative Class*. New York: Basic Books

Florida R. 2017. *The New Urban Crisis: How Our Cities Are Increasing Inequality, Deepening Segregation, and Failing the Middle Class, and What We Can Do About It*. New York: Basic Books

Fontana D. 2017. Federal decentralization. *Va. Law Rev.* 104:727–95

Foster S, Iaione C. 2016. The city as a commons. *Yale Law Policy Rev*. 34:281–349

Fraser N. 1996. *Social justice in the age of identity politics: redistribution, recognition, and participation*. Lect., Tanner Lect. Hum. Values, Stanford Univ., Stanford, CA

Fraser N, Honneth A. 2004. *Redistribution or Recognition? A Political-Philosophical Exchange*. London/New York: Verso

Frazier M. 2019. *The Power of Place: Contentious Politics in Twentieth-Century Shanghai and Bombay*. Cambridge, UK: Cambridge Univ. Press
Frug G. 1980. The city as a legal concept. *Harvard Law Rev*. 93(6):1057–154
Frug G, Barron DJ. 2008. *City Bound: How States Stifle Urban Innovation*. Ithaca, NY: Cornell Univ. Press
Gerken H. 2010. Foreword: federalism all the way down. *Harvard Law Rev*. 124(1):6–74
Gerken H, Revesz J. 2017. Progressive federalism: a user's guide. *Democracy*, Spring. **https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/**
Glaeser E. 2011. *Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier*. New York: Penguin
Goldsmith M. 2012. Cities in intergovernmental systems. In *Oxford Handbook of Urban Politics*, ed. P John, K Mossberger, SE Clarke, pp. 133–51. New York: Oxford Univ. Press
Gould R. 1995. *Insurgent Identities: Class, Community and Protest in Paris from 1848 to the Commune*. Chicago: Univ. Chicago Press
Grigolo M. 2019. *The Human Rights City: New York, San Francisco, Barcelona*. Abingdon, UK/New York: Routledge
Hartog H. 1983. *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730–1870*. Chapel Hill: Univ. N.C. Press
Harvey D. 2003. The right to the city. *Int. J. Urban Reg. Res.* 27(4):939–41
Harvey D. 2012. *Rebel Cities: From the Right to the City to the Urban Revolution*. London/New York: Verso
Himsworth C. 2015. *The European Charter of Local Self-Government: A Treaty for Local Democracy*. Edinburgh: Edinb. Univ. Press
Hirschl R. 2020. *City, State: Constitutionalism and the Megacity*. New York: Oxford Univ. Press
Hirschl R, Shachar A. 2019. Spatial statism. *Internatl. J. Const. Law*. 17(2):387–438
Hooghe L, Marks G. 2001. *Multi-Level Governance and European Integration*. Lanham, MD: Rowman & Littlefield
Hoornweg D, Pope K. 2017. Population predictions for the world's largest cities in the 21st century. *Environ. Urban.* 29(1):195–216
Hughes S, Chu E, Mason S, eds. 2018. *Climate Change in Cities: Innovations in Multilevel Governance*. Cham, Switz.: Springer
Hunter v. City of Pittsburgh, 207 U.S. 161 (1907)
Jacobs J. 1961. *The Death and Life of Great American Cities*. New York: Random House
Jung C, Hirschl R, Rosevear E. 2015. Economic and social rights in national constitutions. *Am. J. Comp. Law* 62(4):1043–94
Kalb J. 2017. The state of the city and the future of human rights: a review of global urban justice. *Columbia Hum. Rights Law Rev*. 48(3):75–97
Katz B, Bradley J. 2013. *The Metropolitan Revolution: How Cities and Metros Are Fixing Our Broken Politics and Fragile Economy*. Washington, DC: Brookings Inst. Press. Repr. ed.
Katz B, Nowak J. 2018. *The New Localism: How Cities Can Thrive in the Age of Populism*. Washington, DC: Brookings Inst. Press
King L. 2014. Cities, subsidiarity and federalism. In *Federalism and Subsidiarity: NOMOS LV*, ed. JE Fleming, JT Levy, pp. 291–331. New York: N.Y.U. Press
Kirchmair L. 2015. International law and public administration: the European Charter of Local Self-Government. *Pro Publico Bono* 3:124–35
Kohn M. 2016. *The Death and Life of the Urban Commonwealth*. New York: Oxford Univ. Press
Krugman P, Masahisa F. 2000. A monopolistic competition model of urban systems and trade. In *Economics of Cities: Theoretical Perspectives*, ed. JM Huriot, JF Thisse, pp. 167–216. Cambridge, UK: Cambridge Univ. Press
Lefebvre H. 1996 (1968). *Le droit à la ville*. Paris: Ed. Anthropos [Translated into English as Lefebvre H. 1996. The right to the city. In *Writings on Cities*, ed. E Kofman, E Lebas, pp. 63–184. Oxford, UK: Blackwell]
Le Galès P. 2002. *European Cities: Social Conflicts and Governance*. New York: Oxford Univ. Press
Levy JT. 2007. Federalism, liberalism and the separation of loyalties. *Am. Political Sci. Rev.* 101(3):459–77
Lin J. 2018. *Governing Climate Change: Global Cities and Transnational Lawmaking*. Cambridge, UK: Cambridge Univ. Press

Loughlin M. 2018. The state: condition sine qua non. *Internatl. J. Const. Law* 16(4):1156–63
Marcuse P. 2009. From critical urban theory to the right to the city. *City* 13(2):185–97
Mayer M. 2009. The 'Right to the City' in the context of shifting mottos of urban social movements. *City* 13(2–3):362–74
Mitchell D. 2003. *The Right to the City: Social Justice and the Fight for Public Space*. New York: Guilford
North DC, Thomas RP. 1973. *The Rise of the Western World: A New Economic History*. Cambridge, UK: Cambridge Univ. Press
North DC, Weingast B. 1989. Constitutions and commitment: the evolution of institutions governing public choice in seventeenth-century England. *J. Econ. Hist.* 49(4):803–32
Ogorzalek T. 2018. *The Cities on the Hill: How Urban Institutions Transformed National Politics*. New York: Oxford Univ. Press
Oomen B. 2018. Human rights cities: the politics of bringing human rights home to the local level. In *Mobilising International Law for 'Global Justice,'* ed. J Handmaker, K Arts, pp. 208–32. Cambridge, UK: Cambridge Univ. Press
Oomen B, Davis MF, Grigolo M, eds. 2016. *Global Urban Justice: The Rise of Human Rights Cities*. Cambridge, UK: Cambridge Univ. Press
O'Sullivan A. 2018. *Urban Economics*. New York: McGraw Hill/Irwin. 9th ed.
Palermo F, Kössler K. 2017. *Comparative Federalism: Constitutional Arrangements and Case Law*. Oxford, UK/Portland, OR: Hart Publ.
Peterson PE. 1981. *City Limits*. Chicago: Univ. Chicago Press
Pieterse M. 2017. *Rights-Based Litigation, Urban Governance and Social Justice in South Africa: The Right to Joburg*. Abingdon, UK/New York: Routledge
Prak M. 2018. *Citizens Without Nations: Urban Citizenship in Europe and the World, c.1000–1789*. Cambridge, UK: Cambridge Univ. Press
Pritchett WE. 2017. City power in a new era of localism. *Fordham Urb. Law J.* 44:1449–61
Purcell M. 2004. Globalization, urban enfranchisement, and the right to the city: towards an urban politics of the inhabitant. In *Rights to the City*, Vol. III. *Home of Geography Publication Series*, ed. D Wastl-Walter, L Staeheli, L Dowler, pp. 11–24. Rome: Soc. Geogr. Ital.
Purcell M. 2014. Possible worlds: Henri Lefebvre and the right to the city. *J. Urb. Aff.* 36(1):141–54
Rajan R. 2019. *The Third Pillar: How Markets and the State Leave the Community Behind*. New York: Penguin
Rapport M. 2017. *The Unruly City: Paris, London and New York in the Age of Revolution*. New York: Basic Books
Reference re Secession of Quebec, (1998) 2 S.C.R. 217 (Can.)
Rodden J. 2010. The geographic distribution of political preferences. *Annu. Rev. Political Sci.* 13:321–40
Rodden J. 2019. *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. New York: Basic Books
Rosenfeld M, Sajó A, eds. 2012. *The Oxford Handbook of Comparative Constitutional Law*. Oxford, UK: Oxford Univ. Press
Rosevear E, Hirschl R, Jung C. 2019. Justiciable and aspirational social rights in national constitutions. In *The Future of Economic and Social Rights*, ed. K Young, pp. 37–65. Cambridge, UK: Cambridge Univ. Press
Rucho v. Common Cause, No. 18–422, 588 U.S. ___ (2019)
Samet RH. 2013. Complexity, the science of cities and long-range futures. *Futures* 47:49–58
Sancton A, Young RA, eds. 2009. *Foundations of Governance: Municipal Government in Canada's Provinces*. Toronto, Can.: Univ. Tor. Press
Sansom G, Dawkins J. 2013. Australia: Perth and South East Queensland. In *Governance and Finance of Large Metropolitan Areas in Federal Systems*, ed. E Slack, R Chattopadhyay, pp. 10–48. Toronto, Can.: Oxford Univ. Press
Sassen S. 2001. *The Global City: New York, London, Tokyo*. Princeton, NJ: Princeton Univ. Press
Saunders C. 2005. Constitutional recognition of local government in Australia. In *The Place and Role of Local Government in Federal Systems*, ed. N Steytler, pp. 47–63. Johannesburg: Konrad-Adenauer-Stiftung
Scharff E. 2016. Powerful cities? Limits on municipal taxing authority and what to do about them. *N.Y. Univ. Law Rev.* 91(2):292–343
Scharff E. 2018. Hyper preemption: A reordering of the state-local relationship? *Georgetown Law J.* 106(5):1469–522

Schragger RC. 2016. *City Power: Urban Governance in a Global Age*. New York: Oxford Univ. Press
Schragger RC. 2018a. The attack on American cities. *Tex. Law Rev.* 96(6):1163–233
Schragger RC. 2018b. When white supremacists invade a city. *Va. Law Rev Online* 104:58–73
Scott JC. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale Univ. Press
Soohoo C. 2016. Human rights cities: challenges and possibilities. In *Global Urban Justice: The Rise of Human Rights Cities*, ed. B Oomen, MF Davis, M Grigolo, pp. 257–75. Cambridge, UK: Cambridge Univ. Press
Spruyt H. 1994. *The Sovereign State and Its Competitors*. Princeton, NJ: Princeton Univ. Press
Stahl K. 2017. Preemption, federalism and local democracy. *Fordham Urban Law J.* 44:133–79
Stahl K. 2020. *Local Citizenship in a Global Age*. New York: Cambridge Univ. Press
Stasavage D. 2014. Was Weber right? The role of urban autonomy in Europe's rise. *Am. Political Sci. Rev.* 108(2):337–54
Stone C, Stoker R, eds. 2015. *Urban Neighborhoods in a New Era: Revitalizing Politics in the Post-Industrial City*. Chicago: Univ. Chicago Press
Swiney CF, Foster S. 2019. Cities are rising in influence and power on the global stage. *City Lab*, April 15. **https://www.citylab.com/perspective/2019/04/city-leadership-international-policy-mayors-u20-uclg-c40/587089/**
Taylor PJ. 2004. *World City Network: A Global Urban Analysis*. London/New York: Routledge
Tierney S. 2018. Federalism and constitutional theory. In *Comparative Constitutional Theory*, ed. G Jacobsohn, M Schor, pp. 45–65. Cheltenham/Northampton, UK: Edward Elgar Publ.
Tilly C. 1992. C*oercion, Capital and European States, AD 990–1992*. Malden/Oxford, UK: Blackwell
Vertovec S. 2007. Super-diversity and its implications. *Ethn. Racial Stud.* 30(6):1024–54
Walker N, Mac Amhlaigh C, Michelon C. 2018. Law, polity and the legacy of statehood: an introduction. *Internatl. J. Const. Law* 16(4):1148–55
Weinstock D. 2014. Cities and federalism. In *Federalism and Subsidiarity: NOMOS LV*, ed. JE Fleming, JT Levy, pp. 259–90. New York: N.Y.U. Press
Wyman K, Spiegel-Feld D. 2020. The urban environmental renaissance. *Calif. Law Rev.* 108(2):305–77
Zielonka J. 2014. *Is the EU Doomed?* Cambridge, UK: Polity

Annual Review of Law and Social Science

Volume 16, 2020

Contents

Indexes

Errata

An online log of corrections to *Annual Review of Law and Social Science* articles may be found at http://www.annualreviews.org/errata/lawsocsci