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WHO DECIDES WHO DECIDES

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People often think of city governance in terms of local democracy: the goal is to make city officials more responsive to the local population. In the United States, this certainly is one of the issues that needs addressing. But it is not the whole story – indeed, it is less than half the story. It fails to mention that the design of city governance is not in the hands of local residents or city officials. It is the product of state law – the product, that is, of decisions made by each of the fifty states that make up the United States. Sometimes states allocate power to city governments in a way that requires them to provide for public participation in decision-making and accountability to local citizens. But sometimes states seek instead to ensure that public decision-making is accountable not to local residents but to the state itself. This dual focus of the structure of city government – sometimes responsive to local will, sometimes responsive to state policy – is a fundamental ingredient of city governance in the United States. It cannot be overcome – and should not be overcome – by choosing one perspective over the other. Local responsiveness is sometimes undesirable, and so is state policy. Instead, the primary task of city governance reform in the United States is to redesign this dual focus to better align state policy with the exercise of decentralised power.

This essay will suggest one possible such redesign. But before turning to the suggestion, it is important to better understand the current system – the system that needs to be redesigned. Let's start with the ways in which state policy, rather than local responsiveness, guides local decision-making. First of all, states have delegated a substantial portion of

decision-making on local issues not to democratically-elected city governments but to state-run public authorities. These authorities – such as the Massachusetts Bay Transportation Authority, New York State's Empire State Development, and the Oregon Department of Environmental Quality – make decisions about transportation in Boston, economic development in New York, and environmental protection in Portland without the participation of local citizens or city governments. Other issues – the design of local finance and the regulation of private economic decision-making, to name but two – are normally decided by state governments themselves without city input. It is simply a mistake to think of local decision-making as being largely in the hands of local citizens and their elected city government. Alongside words like participation, transparency, and accountability, one needs to add to the vocabulary of city governance another much less familiar but no less important word: preemption. The doctrine of preemption provides that once state policy is set on a particular issue, city decision-making on that issue cannot contradict it. Indeed, states can determine city policy not just expressly but by implication – an extensive state law regime is interpreted to mean that no city role is allowed on the issue at all.

Why would the state make policy in this way? One reason is local parochialism. Any city decision – and I mean any – has an effect not only on insiders but on neighbouring jurisdictions. Decisions about transportation, economic development, the environment, crime, housing, zoning, education – you name it – all of these issues have inter-local effects. Worse still, the way that the states have

empowered cities in the United States fosters this parochialism. The current structure encourages cities to compete with each other for revenue, economic development, and high-income residents. As a result, cities all too often favour themselves over outsiders. Not always. Just too often. For that reason, someone – and the state and state-created authorities are the usual choice – has to look out for outsiders. Another reason states over-ride local decision-making is that cities sometimes make decisions that disadvantage a portion of their own population. Think, for example, about the cities that have sought to harass recent immigrants rather than to attract them. It's not surprising that many people want state or federal policy to preempt these kinds of actions. There are many other reasons justifying state control as well: local corruption, local favouritism to powerful interests, even sheer incompetence. Romanticising local decision-making is not a good idea.

And yet, local democracy is a vital form of human freedom. Cities ought to be able to make policies that improve the lives of their own citizens. Why, after all, do we elect local officials? People favour decentralisation because local democracy seems more meaningful – closer to the people affected – than state or national democracy. Popular participation is possible on the local level in ways that don't exist for more centralised governments. Moreover, tailoring decision-making to the circumstances of individual cities often makes sense: the minimum wage in big cities should be different than in the countryside. Besides, there's no reason to think that the states themselves don't suffer from the same kinds of defects as cities. They too can favour themselves (or their favoured constituents) over others; they too can threaten the lives of immigrants; they too can be overtaken by corruption and incompetence. For these kinds of reasons, among others, states should delegate a portion of decision-making power to cities. And they do.

The city governance problem in the United States is that both positions just outlined – for state power and for local power – are correct. Yet they contradict each other. The governance problem, then, is to figure out how to deal with this contradiction. Most of the fashionable ideas one hears repeated over and over again at urban conferences do not address this problem. Some people, for example, want to talk

about goverNANCE, as opposed to governMENT, as if the inclusion of “stakeholders” in decision-making will lead to better outcomes. But who are these stakeholders – and at what level of government do they operate? One worries that the answer is that they are powerful business interests and selected civic organisations – groups that have no vote in a democracy but want more influence over it – and that they operate at whatever level of government seems most amenable to their influence. Other people talk not about “stakeholders” but about “the community.” This term shifts the focus to groups smaller than the city at large: neighbourhood groups are a prime example. From this perspective, the city is simply another form of a centralised government. Empowering neighbourhood groups, however, reproduces the central-local contradiction at another level. Who represents the “community”? What are its boundaries? And when should it, rather than the larger polity, make decisions? Certainly not always. The list of ideas that restate the state power vs. city power contradiction is too long to elaborate further here. But don't get me wrong: of course the government needs to work with the private sector when formulating public policy. Of course community involvement is an essential ingredient in a democracy. I'm trying to raise a more fundamental question. It's not just the need to determine whether the state, a public authority, the city, stakeholders, or the community should decide what any particular local policy should be. The more basic question is: who decides who decides? Who has the power to allocate decision-making authority?

In the United States, the answer to these questions is clear: the state government decides. The problem posed by this answer for cities is that they have no role in the decision-making on this critical issue. One might have hoped that the election of state legislators from locally-drawn election districts would have given localities a role in this decision, but it hasn't worked out that way. Cities are not represented in the legislature. Election districts divide cities and combine them. Moreover, elected officials at the state level are much more attuned to political party discipline than they are to local voices. And executive officials, like the governor, think of themselves as representing the state as a whole, an attitude that often means over-riding local concerns. Local mayors have become just another group of lobbyists – and not the most powerful

group of lobbyists (money talks louder). It is not enough for cities to wrest decision-making authority from state control on particular issues one by one. They need to be involved in decision-making about how governmental power is structured – on the role of cities, as distinguished from the alternatives, in city governance. If cities are not part of this process, decentralisation will always be in jeopardy.

It is difficult to see how such a reform can be accomplished at the state level in the United States. It would require state legislators to approve a reform which could put all of them out of office. Moreover, the federal government does not have the authority to overcome their resistance. (Perhaps elsewhere this problem could be overcome.) I have suggested in other work that the better approach in the United States would be to shift the power to allocate decision-making authority from the state to a new kind of regional institution. One often hears these days that the “real” city has already become the metropolitan area, and that the individual cities no longer matter. This simply isn’t true as a governance matter in the United States. (Portland, Oregon and a few other cities are the rare exceptions.) Decision-making is now in the hands of whomever the state government selects, and that has normally meant the state government itself, public authorities, or cities. Regions do not make policy in the United States. To empower a new regional institution, however, it has to be carefully designed. It cannot simply be another form of centralised government. There is no support in the United States for yet another institution that can undermine local decision-making. The goal should not be to limit the power of cities but to increase it.

What this means is that the regional institution should be a forum for collective decision-making by the region’s cities. Every city in the region should be represented (with votes weighted by population), and the decisions they collectively make about the allocation of power should be decisive. One should note that this is not a call for city autonomy. No city, acting alone, will have authority over an issue unless the cities collectively agree that it should. In this way, the regional organisation can help overcome the parochialism that now undermines efforts to decentralise power. Neighbouring cities affected by any decentralised decision would be part of the decision-making process: they can make sure the

allocation of power takes their interests into account. The key difference for city power in this proposal lies in the fact that cities – if they work together – will be able to design the decentralised system. Since cities are likely to agree on one important issue – the need to decentralise power – I expect that they will try to achieve this goal. To be sure, there are countless issues that need to be worked out in setting up such an institution: how to organise it democratically given the different size of cities; what the voting rules should be (unanimity is not to be expected); where to draw the regional boundary line; how to protect smaller jurisdictions from control by larger ones. And, of course, there is the question of how one persuades the state government to create such an institution. (In the United States, a majority of the population in most states lives in metropolitan regions. If the region’s cities worked together, rather than against each other, they could control the state as it is currently organised.) Given space constraints, I cannot explore these details here. (For more, see Gerald Frug and David Barron, *City Bound: How States Stifle Urban Innovation*.)

Empowering cities to control the allocation of decision-making power is not the only item on the reform agenda for city governance. As mentioned at the outset of this essay, there is also the question of how to make city officials themselves more responsive to the local population. This problem has many dimensions: at large elections versus district elections; the power of the mayor versus the power of the city council; enabling long-term decision-making when local officials come and go every four years. These issues are debated now. But they become even more pressing if cities are “at the table” when “who decides” is on the agenda.