

DECENTRALIZATION AND DEVELOPMENT

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Significant intellectual and financial resources have been committed to decentralization projects in the developing world based on the idea that federal constitutional systems and local government autonomy will encourage economic growth. These efforts have been premised in part on scholars' claims that the federalism of nineteenth and early twentieth century America generated the nation's enormous economic growth. This Article challenges the claim that political decentralization promotes economic development in two ways. First, by looking closely at the legal history of local autonomy in the United States, it shows that the shifting legal status of cities vis-à-vis their states—which has resulted in alternative bouts of centralization and decentralization—did not cause economic growth. If anything, shifts in the degree of formal local power can be better understood as a consequence of economic growth. Second, it invokes newer work in economic geography that suggests that economic development is unavoidably uneven across jurisdictions and that the reason some places do well economically and others do poorly may have more to do with luck or path dependency than with particular legal institutions. For lawyers the stakes are high for we are told that law and legal frameworks—like the vertical division of authority—can make a great deal of difference to economic welfare. But this understanding of law does not take into account the spatial reality of economic development or the circular relationship between economic growth and legal change. This does not mean that the vertical distribution of powers does not matter—it does, but not in the ways that the decentralization-growth thesis presumes.

* Professor of Law, University of Virginia School of Law. Many thanks to Risa Goluboff for reading previous drafts. Nicholas Dumais and Zachary Williams provided excellent research assistance. Paul Mahoney provided detailed comments at an early stage. The initial ideas for this paper were presented at the Chicago Law School at a symposium organized by Lee Fennell and Richard Epstein. I also received helpful comments from Heather Gerken and the students in her Local Government Law seminar at the Yale Law School and from participants in a faculty workshop at the University of Virginia School of Law.

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INTRODUCTION

DOES federalism promote economic development? A significant body of scholarship asserts that more decentralized political systems encourage economic growth.¹ This literature has been extremely influential in international development circles. Because of the supposed economic benefits of decentralization, institutional designers have encouraged emerging nations to favor

¹ See, e.g., Lars Feld et al., *Fiscal Federalism, Decentralization and Economic Growth*, in *Public Economics and Public Choice* 103 (Pio Baake & Rainald Borck eds., 2007) (collecting studies); Barry R. Weingast, *Second Generation Fiscal Federalism: The Implications of Fiscal Incentives*, 65 *J. Urb. Econ.* 281, 281–82 (2009) [hereinafter *Second Generation Fiscal Federalism*]; Barry R. Weingast, *The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development*, 11 *J.L. Econ. & Org.* 1, 1–5 (1995) [hereinafter *Market-Preserving Federalism*]; see also Jan K. Brueckner, *Fiscal Federalism and Economic Growth*, 90 *J. Pub. Econ.* 2107, 2107–08 (2006); Wallace E. Oates, *Fiscal Decentralization and Economic Development*, 46 *Nat'l Tax J.* 237, 237–38 (1993).

federal constitutional systems over unitary ones.² And international development agencies have embarked on numerous programs to strengthen local governments in developing countries, arguing that economic growth will be one consequence.³

On the domestic side, the relationship between decentralization and economic growth has been somewhat less explicit. Legal scholars who write about federalism or local government law tend to argue about whether political decentralization promotes efficiency, liberty, accountability, or participation; economic development is not usually their main concern. Nevertheless, the decentralization-growth thesis has made its way into our legal consciousness—that America’s economic dynamism is closely associated with its tradition of decentralized government is a relatively common assumption.⁴ And, as noted already, this idea has become a staple of law reform at the international level.

In its own right then, assessing the decentralization-growth thesis is of central importance to legal scholars. Further, the thesis is important because it is a version of the larger argument that law more generally is causally related to economic growth, a claim that underpins rule of law efforts in the developing world. A particularly potent version of this claim has been made by the “new institu-

² See, e.g., Merilee S. Grindle, *Going Local: Decentralization, Democratization, and the Promise of Good Governance* 5–7 (2007); Weingast, *Second Generation Fiscal Federalism*, *supra* note 1. For additional sources, see Luis Eslava, *Decentralization of Development and Nation-Building Today: Reconstructing Columbia from the Margins of Bogota*, 2 *Law & Dev. Rev.* 282, 283–85 (2009).

³ See, e.g., U.N. Dev. Programme, *Decentralised Governance for Development* (2004); U.S. Agency for Int’l Dev., Ctr. for Democracy & Governance, *Decentralization and Democratic Local Governance Programming Handbook* (2000). The United Nations and the World Bank have been active in decentralization efforts. See U.N. Human Settlements Programme [U.N.-HABITAT], *International Guidelines on Decentralization and the Strengthening of Local Authorities* (2007); World Bank, *2004 World Development Report: Making Services Work for Poor People* (2004). For useful summaries of decentralization efforts, see *Decentralization and Local Governance in Developing Countries: A Comparative Perspective* (Pranab Bardhan & Dilip Mookherjee eds., 2006); Javed Burki et al., *Beyond the Center: Decentralizing the State* (1999); James Manor, *The Political Economy of Democratic Decentralization* (1999); Pranab Bardhan, *Decentralization of Governance and Development*, 16 *J. Econ. Persp.* 185 (2002) (“All around the world in matters of governance, decentralization is the rage.”).

⁴ Alexis de Tocqueville was perhaps the first to assert this connection. See 1 Alexis de Tocqueville, *Democracy in America* (Henry Reeve trans., Schocken Books 1961) (1835).

tional economists,” who have asserted that institutions—and particularly legal institutions—precede and are prerequisites for economic development.⁵ To these economists, law matters.⁶ Good laws and good legal systems produce good economic outcomes.⁷ And a central component of a good system of law is federalism or, put more generally, some form of institutionalized political decentralization.⁸

⁵ See Douglass C. North, *Institutions, Institutional Change and Economic Performance* 107–10 (1990) [hereinafter *Institutions*]; Douglass C. North, *Understanding the Process of Economic Change* (2005); Oliver Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 *J. Econ. Literature* 595, 598 (2000); see also Daron Acemoglu et al., *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 117 *Q.J. Econ.* 1231, 1231 (2002); J. Bradford De Long & Andrei Shleifer, *Princes and Merchants: Government and City Growth Before the Industrial Revolution*, 36 *J.L. & Econ.* 671, 671–74 (1993); Rafael La Porta et al., *The Quality of Government*, 15 *J.L. Econ. & Org.* 222, 222 (1999). For a critical examination of this literature, see Adam Przeworski et al., *Democracy and Development: Political Institutions and Well-Being in the World 1950–1990*, at 143–44 (2000); Edward Glaeser et al., *Do Institutions Cause Growth?*, 9 *J. Econ. Growth* 271 (2004).

⁶ The argument that law affects economic development has also been asserted in the legal origins literature, which holds that nations with a common law tradition have done better economically than nations that have inherited a civil law tradition. See, e.g., Rafael La Porta et al., *Law and Finance*, 106 *J. Pol. Econ.* 1113, 1113, 1116 (1998); Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 *J. Legal Stud.* 503, 503–04 (2001). For a summary and critique of this literature, see Kenneth W. Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* 31–32 (2006). The link has been further asserted by those who argue that formal property rights are a necessary precondition for economic development. See, e.g., Hernando De Soto, *The Other Path: The Invisible Revolution in the Third World* 177–79 (1989). For a summary and critique of this literature, see, e.g., Michael Trebilcock & Paul-Erik Veel, *Property Rights and Development: The Contingent Case for Formalization*, 30 *U. Pa. J. Int'l L.* 397 (2008); David Kennedy, *Some Caution about Property Rights as a Recipe for Economic Development* (Harvard Law Sch. Pub. Law & Legal Theory Working Paper Series, Paper No. 09-59, 2009). These literatures are sometimes at odds, but like the decentralization-growth thesis, they all posit a law-growth nexus. See Dam, *supra*, at 35.

⁷ Dam, *supra* note 6, at 5.

⁸ Interestingly, much of the literature examining the relationship between legal institutions and growth has been produced by economists and economic historians and not by legal scholars. See, e.g., North, *Institutions*, *supra* note 5. That is not to say that legal scholars have not engaged the literature, only that lawyers have come somewhat late to the table. See Frank B. Cross, *Law and Economic Growth*, 80 *Tex. L. Rev.* 1737, 1737 (2002) (collecting sources but noting the “relative paucity” of legal scholarship addressed to the issue); Kevin Davis, *Taking the Measure of Law: The Case of the Doing Business Project*, 32 *Law & Soc. Inquiry* 1095, 1096 (2007) (“One of the remarkable ironies of contemporary legal scholarship is that some of the most ambi-

This Article challenges both the connection between decentralization and economic growth and the larger claim that institutions matter—at least as it is currently formulated. The Article does so by looking closely at the development of American cities and the corresponding development of American local government law in the nineteenth and twentieth centuries.⁹

My claim can be stated fairly simply: the ascendance and decline of the great American industrial cities over the last one hundred and fifty years or so has had little to do with political decentralization, i.e., those cities' relative formal legal autonomy or legal subordination. The shifting legal status of cities vis-à-vis their states—which has resulted in alternative bouts of centralization and decentralization—did not cause economic growth. If anything, shifts in the degree of formal local power can be better understood as a consequence of economic growth.

Why look at the relative political autonomy of municipal government? First, if the decentralization-growth thesis is correct, then the history of local government law in the states should reflect a

tious and influential research on the relationship between law . . . and economic outcomes . . . is being produced outside the legal academy.”). For a recent symposium, see *Law and the New Institutional Economics*, 26 Wash. U. J.L. & Pol'y 1 (2008). Law and development scholars have engaged the literature, but again many of those scholars come from outside the legal academy. But see, e.g., Dam, *supra* note 6; *The New Law and Economic Development: A Critical Appraisal* (David M. Trubeck & Alvaro Santos eds., 2006); Kevin Davis & Michael Trebilcock, *The Relationship Between Law and Development: Optimists Versus Skeptics*, 56 Am. J. Comp. L. 895 (2008). The law and society scholarship, which is centrally concerned with the causal relationship between law and other aspects of social life, seems relatively uninterested in the claims made by institutional economists. Legal historians—even economically inclined ones—also tend not to engage these literatures. But see Ron Harris, *The Uses of History in Law and Economics*, 4 *Theoretical Inquiries L.* 659 (2003); Brian Z. Tamanaha, *The Primacy of Society and the Failures of Law and Development* (Wash. Univ. in Saint Louis Sch. of Law Faculty Research Paper Series, Paper No.10-03-02, 2010).

⁹This paper is thus prefigured by three previous articles. See Richard Schragger, *Cities, Economic Development, and the Free Trade Constitution*, 94 Va. L. Rev. 1091 (2008) [hereinafter *Cities, Economic Development*]; Richard Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 Harv. L. Rev. 482 (2009) [hereinafter *Mobile Capital*]; Richard Schragger, *Rethinking the Theory and Practice of Local Economic Development*, 77 U. Chi. L. Rev. 311 (2010) [hereinafter *Rethinking the Theory and Practice*]. Those articles engage questions at the intersection of local government law, economic development, and federalism, but they do not directly address the decentralization-growth thesis or the law and development literature.

relatively robust and stable form of institutionalized political decentralization over the course of the nineteenth and twentieth centuries. I argue that we have seen the opposite—a highly contingent and politically unstable division of authority between states and localities. Second, if the thesis is correct, we should find that those *states* that have more highly decentralized constitutions are doing better economically than those with less decentralized constitutions. I find that implausible and unsupported. And third, if the thesis is correct, it should be able to explain why some *cities* do better economically than other cities; that is, it should be able to explain intra-national and regional differences in economic outcomes. The thesis seems unable to do that either.

This last point requires some elaboration. In support of the decentralization-growth thesis, economic historians often invoke nineteenth-century American federalism, arguing that states competed to create economically favorable conditions in the nascent industrializing United States. And, econometric tests of the decentralization-growth thesis tend to involve cross-national comparisons of growth rates in federal versus unitary countries using the United States as a baseline. The results have been contradictory.¹⁰

More importantly, there is a problem with the general approach. The focus on national economies and federal systems likely misses how economies form, grow, and decline. As the great urbanist Jane Jacobs famously argued—and economic geographers have more recently emphasized—“nations are political and military entities,” but that does not mean that they are also the “salient entities of economic life.”¹¹ Economic growth within a nation happens in particular *places*—in fact, “most nations are composed of collections . . . of very different economies, rich regions and poor ones.”¹²

¹⁰ For a summary of the empirical studies, which come to competing conclusions, see Feld et al., *supra* note 1, at 116; Brueckner, *supra* note 1, at 2108; see also Cross, *supra* note 8. The econometric studies of the relationship between law and growth have engendered skepticism more generally. See Dam, *supra* note 6, at 56.

¹¹ See Jane Jacobs, *Cities and the Wealth of Nations: Principles of Economic Life* 31–32 (1984) [hereinafter *Cities and the Wealth of Nations*]; Jane Jacobs, *The Economy of Cities* (1969); Pierre-Philippe Combes et al., *Economic Geography: The Integration of Regions and Nations* 27 (2008) (quoting Jacobs, *Cities and the Wealth of Nations*, *supra*); Edward L. Glaeser & Joshua D. Gottlieb, *The Wealth of Cities: Agglomeration Economies and Spatial Equilibrium in the United States*, 47 *J. Econ. Literature* 983, 983 (2009).

¹² Jacobs, *Cities and the Wealth of Nations*, *supra* note 11, at 32.

In the United States, the top ten metropolitan regions account for about thirty percent of national economic output; those same ten regions account for about eight percent of global economic output.¹³ To talk about the U.S. (and the global) economy then is to talk about the economy of specific regions in the United States (and around the globe). To talk about economic development is to talk about the development of cities.¹⁴

The task of figuring out why economic growth happens in particular places and not in other places is a difficult one, of course.¹⁵ Institutionalists argue that an appropriately decentralized constitutional structure will lead to good local policies and thus to economic growth.¹⁶ But because cities are the central actors in economic development,¹⁷ that assertion has to apply at the sub-federal level. In other words, proponents of the decentralization-growth thesis have to explain the existence of regional economic disparities within nations, not just cross-national ones. Proponents must link local (and not just national) economic growth to decentralization; if they cannot do so, the thesis is in trouble.

This Article proceeds in four Parts. Part I describes the decentralization-growth thesis and the possible mechanisms by which a

¹³ See Global Insight, Inc., *The Role of Metro Areas in the U.S. Economy* (2006); World Bank, *World Development Indicators Database*, <http://data.worldbank.org>.

¹⁴ Jacobs, *Cities and the Wealth of Nations*, supra note 11, at 32. Economists have echoed this claim, with some arguing that we can figure out how economies work by figuring out why cities exist. See, e.g., Paul Krugman, *The Self-Organizing Economy* 3–5 (1996); Glaeser & Gottlieb, supra note 11, at 983–85; Robert E. Lucas, *On the Mechanics of Economic Development*, 22 *J. Monetary Econ.* 3, 37–39 (1988).

¹⁵ See Michael Storper, *Why Does a City Grow? Specialization, Human Capital or Institutions*, 47 *Urb. Stud.* 2027, 2027 (2010).

¹⁶ Conventionally, economic growth is measured by a change in per capita gross domestic product, see 2 *New Palgrave Dictionary of Economics* 675 (Steven N. Durlauf & Lawrence E. Blume eds., 2d ed. 2008), though GDP has been criticized for being too limited a measurement. See, e.g., Amartya Sen, *Development: Which Way Now?*, 93 *Econ. J.* 745 (1983); Amartya Sen, *Development as Freedom* (1999). For the purposes of this Article, I use growth and economic development interchangeably to refer generally to improvements in standards of living. And because I believe that the appropriate unit of economic development is the city or metropolitan region, I am not particularly interested in national GDP. Growth or economic development, as I use it here, generally refers to improvements in local GDP or to rising populations coupled with rising incomes.

¹⁷ See Paul Bairoch, *Cities and Economic Development: From the Dawn of History to the Present* 496 (1988); Jacobs, *Cities and the Wealth of Nations*, supra note 11, at 32; Lucas, supra note 14, at 38.

decentralized political system might contribute to economic growth. Part II examines American cities and the development of local government law, which is primarily concerned with the distribution of powers between cities and states. The story that I tell is a familiar one in some respects and a new one in others. The familiar story is that the distribution of powers between states and their cities has shifted over time *in response to* local and national economic conditions. In other words, legal change mostly followed economic change. This story supports a common critique of the “institutions matter” literature. That critique highlights the inevitable causal problems that arise when one proposes that “law” precedes (and causes) “economy.”¹⁸ Law and society scholars have already undermined such linear accounts of the relationship between law and the rest of human activity.¹⁹

The less familiar story concerns the possible reasons for why some cities or regions do well economically and some do poorly. When one examines the current distribution of economic activity across the United States, the relative degree of political decentralization does not seem to play much of a role. States grant varying degrees of autonomy to their local governments, but economic growth and decline do not respect jurisdictional lines—these tend to occur across large regions of the country or across metropolitan regions that do not abide state boundaries. Moreover, a review of the explanations for why some cities have stabilized or grown over the last twenty years suggests that this recent urban resurgence is not attributable to changes in the institutional relationship between states and municipalities.

In Part III, I discuss the inevitability of uneven economic development, relying on the insights economic geographers have generated over the last thirty years. Echoing Jane Jacobs, that literature observes that economic development is and has always been geographically uneven.²⁰ Economic activity is not distributed evenly throughout a nation or the globe. Development takes place within

¹⁸ See, e.g., Adam Przeworski, *The Last Instance: Are Institutions the Primary Cause of Economic Development?*, 45 *Archives Eur. Soc.* 165, 166 (2004); Tamanaha, *supra* note 8, at 3–4.

¹⁹ See, e.g., Robert Gordon, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, 11 *Theoretical Inquiries L.* 441, 444–45 (2010).

²⁰ See Glaeser & Gottlieb, *supra* note 11, at 983–84.

an urban hierarchy and that hierarchy is difficult to dislodge once it is established.²¹ This characteristic of economies suggests that the cities that are doing better are not doing so because they are winning a good governance race. It is just as likely that the cities that are prospering are doing so because of luck, path dependency, or the long-run persistence of the spatial economy. It also suggests that while there are policies that might mute the effects of geographically unequal economic development, those policies are unlikely to generate economic development where there was none before or where other prerequisites for development are nonexistent.

We thus return to the question of the role of political decentralization—and of law more generally—in economic development. Part IV argues that the history of local government law in the United States undermines the institutionalists' conception of institutions as separable from interests, law as separable from politics. It then argues that we should be skeptical about claims that a particular form of governance, a particular set of laws, or a particular set of practices explains why some economies do well and others poorly. As some in the international development community have concluded, economic growth is simply much less susceptible to policy than is sometimes assumed.²²

This Part also begins a conversation between law and development and local government law scholarship in an effort to generate a more nuanced account of the problem of economic development for both.²³ Local government scholars and policy-makers have been struggling with the problem of lagging economies for a long time. In the Victorian era it was the problem of the slums; for much of the twentieth century it was the problem of the ghetto; in the latter half of the twentieth century it was the problem of declining cities

²¹ Mario Polèse, *The Wealth and Poverty of Regions: Why Cities Matter* 54–55 (2009); see Krugman, *supra* note 14, at 14–15; World Bank, *2009 World Development Report: Reshaping Economic Geography* 50–52 (2009).

²² See Schragger, *Rethinking the Theory and Practice*, *supra* note 9, at 331–38; Polèse, *supra* note 21, at 16.

²³ The “crisis” in law and development scholarship has been long observed. See David Trubeck & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 *Wis. L. Rev.* 1062, 1063 (1974). For recent discussions, see Davis & Trebilcock, *supra* note 8, at 896–97; Tamanaha, *supra* note 8.

and expanding suburbs; more recently, it is the problem of declining inner-ring suburbs.

Law and development scholarship, by contrast, tends to focus on the national scale. Perhaps this is so because nation-states have traditionally controlled monetary and trade policy and so there are some important policy levers at their disposal. Nevertheless, the almost exclusive preoccupation with nation-states is a mistake. Economic geographers do not approach economic growth as a function of which policy tools are available to which jurisdictions. Economic activity occurs or does not occur at all scales. Indeed, as Jacobs asserted, the city may be the more relevant economic unit for purposes of studying economic processes. If that is true, then any theory that can only explain cross-national disparities in economic development is incomplete. If institutions matter, they should matter within nations as much as between them.²⁴ And obviously, Detroit, Caracas, and Kinshasa all face the challenge of economic development.

As for political decentralization, let me be clear: I am not arguing that it serves no purpose.²⁵ In prior work, I have asserted that local government is a core and under-appreciated component of a robust federalism.²⁶ Nevertheless, I am skeptical of the specific claim that political decentralization fosters economic growth. That claim often has a deregulatory valence, for it tends to assume that local governments are in a competition for capital that will lead them to adopt “business-friendly” policies conducive to growth. The connection between decentralization and economic growth thus justifies a whole host of subsidiary policies, including minimal redistributive taxation, relatively low levels of economic regulation, and local capital attraction and subsidization efforts. Whether undertaken by struggling American cities or by struggling developing

²⁴ Cf. Storper, *supra* note 15, at 2028 (applying international growth economics to metropolitan growth).

²⁵ Some scholars have expressed skepticism about the role of political decentralization in the present-day United States. See, e.g., Malcolm Feeley & Edward Rubin, *Federalism: Political Identity and Tragic Compromise* 2 (2008). Others have challenged the empirical claims made on decentralization’s behalf. See Daniel Treisman, *The Architecture of Government: Rethinking Political Decentralization* 5 (2007).

²⁶ See, e.g., Schragger, *Mobile Capital*, *supra* note 9; Richard Schragger, *The Role of the Local in the Doctrine and Discourse of Religious Liberty*, 117 *Harv. L. Rev.* 1810 (2004).

countries, those programs often favor local land-based elites, business interests, or large multinational corporations.

If economic growth is deeply spatial—that is, if economies are more geographically resistant to government interventions than these competitive accounts suggest—then policy-makers will have to turn to more nuanced explanations for why certain places flourish economically and certain places do not. Moreover, those who favor political decentralization may have to justify their policy prescriptions based on criteria other than economic growth. I am open to such justifications. Indeed, while economic growth is undoubtedly important, it is only a portion of what political decentralization might offer to human flourishing.

Finally, I do not argue that legal institutions are irrelevant to economic development, but only that the causal story is much more complicated than some policy-makers suppose. Even if legal institutions do not directly contribute to economic growth, those institutions certainly have effects on the distribution of existing economic resources. Law does so by structuring how people and firms occupy economic space. What governments do matters, but how and why governance matters is a different story.

I. DECENTRALIZATION AND ECONOMIC GROWTH

The assertion that decentralization and economic development are linked is a relatively familiar one to those who consume the fiscal federalism literature. That connection, however, is not as straightforward as the literature might make it seem. One first has to define decentralization and then figure out the mechanism by which political decentralization translates into the expansion of a particular local or national economy. In this Part, I raise some definitional questions and then describe a particular version of the decentralization-growth thesis, the concept of “market-preserving federalism.” I then discuss three ways that political decentralization might encourage economic growth: (1) by limiting predation, (2) by fostering efficiency, and (3) by encouraging innovation.

A. What is Decentralization?

The first difficulty—defining decentralization—is a particularly thorny problem. Here, I highlight a few challenges—though I will not solve them before arriving at a workable definition.

An initial problem is figuring out when a legal or political system is decentralized or federal (they might not be the same thing²⁷) and to what degree. Roughly speaking, one can contrast administrative decentralization, which merely connotes a vertical division of responsibilities, with political decentralization, which implies some form of constitutionally-protected local self-government.²⁸ Many large organizations are administratively decentralized, but few embrace local self-government. This distinction between political and administrative decentralization tracks Malcolm Feeley and Edward Rubin's distinction between federalism and decentralization. As they observe, federalism is a trump wielded by local units against central units whether or not local units are advancing the benefits of administrative decentralization.²⁹ To the extent that decentralization is driven by efficiency or participation goals, for example, federalism may or may not achieve them.³⁰ The essence of a federal system is that local units may depart from such aims if they so choose.

It may be better to speak of relative local political autonomy, though we then need to make some conceptual decisions about what counts as autonomy. Is there an effective decentralization of power if the central government is merely weak or takes a *laissez-faire* attitude toward regulation? Or does the distribution of powers need to be formalized in a constitution or some other set of institutions? Should we be examining the power of bureaucrats who are paid by the central government or should we be more concerned about the power of a central legislature? And what if sub-national governments and local communities are represented in the central legislature, as in the United States? Is the central govern-

²⁷ Feeley & Rubin, *supra* note 25, at 20–21; Frank B. Cross, *The Folly of Federalism*, 24 *Cardozo L. Rev.* 1, 1 (2002).

²⁸ Treisman, *supra* note 25, at 23–25.

²⁹ Feeley & Rubin, *supra* note 25, at 20–29.

³⁰ *Id.* at 20–32; see also Cross, *supra* note 27, at 23.

ment in charge if the center is made up of representatives from the provinces?

Debates over federalism in the Supreme Court often involve competing definitions of local autonomy. Is it more centralizing when the federal government requires the cooperation of local officials in the pursuit of national ends or when the federal government creates a parallel national bureaucracy to pursue those same ends?³¹ For formalists, commandeering local officials is an invasion of local sovereignty even if, as a political matter, the creation of a new national bureaucracy to do the same task might constitute a more severe encroachment on local prerogatives.³² Indeed, even in nations that are highly centralized as a formal matter, the provinces, the primary city, or a particular region of the country might exercise extensive influence in the national councils. In France, a highly unitary system, the mayor of Paris exercises a great deal of power and influence because of that city's position at the top of France's economic and political hierarchy.³³ All of which is to say that the formal powers of the sub-national governments might not tell you much about whether a country is relatively politically decentralized or centralized. As Sidney Tarrow famously put it, the question is whether the periphery moves the center or the center moves the periphery.³⁴

Sometimes, what counts as decentralizing to one set of eyes looks awfully centralizing to another set. Thus, some theorists argue that the early U.S. Constitution created a highly decentralized political system with very little interference from the federal government in state and local affairs.³⁵ But to the Anti-Federalists the new Constitution was dramatically centralizing. The new United States had overthrown a king (though query how much the king actually "ruled" the far away colonies) and its respective states were jealous of their own prerogatives and worried about regional

³¹ See *Printz v. United States*, 521 U.S. 898, 905 (1997).

³² See *id.* at 918–22.

³³ See Walter J. Nicholls, *Power and Governance: Metropolitan Governance in France*, 42 *Urb. Stud.* 783, 788 (2005). I discuss this further in Richard Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 *Yale L.J.* 2542, 2561 (2006).

³⁴ Sidney Tarrow, *Between Center and Periphery: Grassroots Politicians in Italy and France* 15–47 (1977).

³⁵ See Weingast, *Market-Preserving Federalism*, *supra* note 1, at 8.

domination. But the respective powers of the federal and state governments matter a lot. For example, in addressing the deficiencies of the Articles of Confederation, the new Constitution gave almost exclusive power to the central government to regulate interstate and international commerce. Certain decentralization-growth theorists treat the creation of a common market as a background condition for an effective federal system.³⁶ If one views the creation of a common market in the United States as the signal event over the course of the eighteenth and nineteenth centuries, however, then the story that emerges is one of massive centralization—not decentralization.

Indeed, the nineteenth and twentieth centuries witnessed the rise of the nation.³⁷ The states gave up their power to regulate their borders, ceding that authority to a central legislature and, in many cases, to federal courts. What is left for the states to do once they have ceded control over entry and exit; once they have committed to a common currency and (eventually) a national bank; once immigration and international trade (on which they heavily depend) is centrally regulated; and once any issue related to war, peace, and the high seas is given over to the central authorities? In the European Union, a number of these kinds of decisions still have not been centralized, and many countries continue to resist them as significant invasions of their sovereignty.

Putting aside definitions of decentralization, there are significant questions about what constitutes a “federal” state. This problem creates difficulties for cross-national growth comparisons.³⁸ The United States, Switzerland, and Germany are considered federal, but so are Argentina, Brazil, Mexico, China, and Russia.³⁹ These are such different political entities—some one-party states, some ruled by oligarchs, some without meaningful democracy at all or with highly underdeveloped economies—that the term “federal”

³⁶ See *id.* at 4.

³⁷ These centuries also witnessed the rise of the states. See Jon Teaford, *The Rise of the States: Evolution of American State Government* 5 (2002).

³⁸ See Treisman, *supra* note 25, at 21; see generally Feld et al., *supra* note 1, at 116 (discussing the studies).

³⁹ See Mikhail Filippov et al., *Designing Federalism: A Theory of Self-Sustainable Federal Institutions*, at ix, 16 (2004); see also Jonathan Rodden & Susan Rose-Ackerman, *Does Federalism Preserve Markets?*, 83 *Va. L. Rev.* 1521, 1524–25 (1997).

seems to be stretched out of all bounds.⁴⁰ One has to wonder what work it is doing.

These problems of definition challenge those of us who wish to generalize about decentralization; comparative federalism and comparative local government scholars most directly face this problem.⁴¹ That being said, we can try to articulate a few characteristics of a system that is meaningfully decentralized as a political matter. An independent politics seems like a prerequisite—a local electorate should be able to elect its own officials regardless of the party in power at the center. Being able to act initially without instructions from a central authority seems like a requirement, but a locality must also be somewhat immune from commands from the center. Fiscal autonomy—*choosing* how to raise and spend local monies—appears to be important. But we should also remember fiscal capacity—the *ability* to raise monies once one has chosen to do so. The sub-national jurisdiction must have some governance responsibilities—it must have something to do and the capacity to do it. It is not a real test of local power if there is a limited need for government services (because the population is so small or transient). On the flip side, if the locality has the authority to act but not the resources, then its relative formal autonomy is a fiction.

Importantly, one has to define “government” in the first instance to figure out if it is decentralized. In a world in which the government’s primary task was to engage in foreign wars and amass wealth on behalf of the crown, the concept of decentralization did not mean very much. Decentralization becomes salient when the state is taxing and spending to provide an array of services, regulating significant amounts of private activity, and engaging in monetary and fiscal policy on a large scale.

⁴⁰ Moreover, according to market-preserving federalists, the United States no longer meets their definition of an operative federal state, and has not since the New Deal. Rodden & Rose-Ackerman, *supra* note 39, at 1554; see Weingast, *Market-Preserving Federalism*, *supra* note 1, at 26–27.

⁴¹ Filippov et al., *supra* note 39, at 9 (observing that there is an absence of consensus on what constitutes a federal system); Shama Gamkhar & Jill Vickers, *Comparing Federations: Lessons from Comparing Canada and the United States*, 40 *Publius* 351, 352 (2010) (discussing difficulty in defining federalism). See generally *Comparing Local Governance: Trends and Developments* (Bas Denters & Lawrence E. Rose eds., 2005).

In truth, when proponents of the decentralization-growth thesis talk about decentralization or federalism, they are embracing a particular package of centralized and decentralized components based on some fairly hefty background assumptions about what government does and should do. In most cases, this form of decentralization is a variant of competitive federalism, based on Tieboutian assumptions about the benefits of inter-jurisdictional competition. Market-preserving federalism (“MPF”), which I have already mentioned, explicitly embraces this model.⁴² MPF has a number of major components: (1) there must be at least two levels of government with clearly delineated scopes of authority; (2) that delineation must be institutionalized in a manner that makes federalism’s restrictions self-enforcing; (3) sub-national governments have primary responsibility for regulating their own economies; (4) the central authority guarantees and polices a national common market, ensuring capital and labor mobility; and (5) sub-national governments face hard budget constraints—that is, they mostly raise and spend their own tax monies, they cannot print money, and they cannot expect to be bailed-out by higher level governments.⁴³

These characteristics are intended to ensure a market in governments that will resist invasion by central authorities. The criteria tend to parallel Tiebout’s for the efficient delivery of public goods, with (1) being a kind of no-externalities condition and (4) being the mobility condition.⁴⁴ In short, a decentralized system is one in which you have a competitive market of sub-national governments that absorb the costs and benefits of their own decision-making (no externalities, no bailouts). And you need easy exit and entry of persons, goods, and capital—enforced presumably by a central government. This may not constitute a decentralized or federal political system in all senses of the term, but it constitutes the heart of the decentralization-growth literature.

⁴² Weingast, *Market-Preserving Federalism*, supra note 1, at 5. For a critique, see Rodden & Rose-Ackerman, supra note 39, at 1523.

⁴³ Weingast, *Market-Preserving Federalism*, supra note 1, at 4.

⁴⁴ See Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. Pol. Econ.* 416, 419 (1956).

B. What are the Mechanisms of Transmission?

Once we have a rough sense of what decentralization-growth advocates embrace as a decentralized or federal system, what can we say about how such a system contributes to economic growth? The literature emphasizes a number of possible ways that political decentralization can lead to economic growth, which fall roughly under the following headings: (1) limiting predation, (2) fostering efficiency, and (3) encouraging innovation.⁴⁵ Each might be a consequence of a system of decentralized government, but to show that decentralization promotes economic growth, we have to connect them to a theory of how economies develop. Moreover, each mechanism of transmission depends importantly on assumptions about how and why government officials act. And finally, each mechanism demands that political decentralization be both necessary and self-sustaining. If unitary governments can achieve these same ends through smart policies⁴⁶ or if the decentralized regime is easily subject to political collapse, then the transmission route will fail.

1. Limiting Predation

Consider first a central tenet of market-preserving federalism, which is that the existence of sub-national governments induces interjurisdictional competition and “interjurisdictional competition provides political officials with strong fiscal incentives to pursue policies that provide for a healthy local economy.”⁴⁷ Among these policies is the efficient (i.e., non-corrupt) provision of public goods. As Barry Weingast argues, “[m]arket-preserving federalism limits the exercise of corruption, predation, and rent-seeking by all levels of government.”⁴⁸

This claim has a number of parts. First, it assumes that the cost of capital flight drives public officials’ behavior. In the presence of interjurisdictional competition, public officials limit their predatory

⁴⁵ Cf. Feld et al., *supra* note 1, at 103–11 (discussing efficiency and innovation), 115 (discussing predation).

⁴⁶ See Feeley & Rubin, *supra* note 25, at 20–29; Treisman, *supra* note 25, at 11–12, 14.

⁴⁷ Weingast, *Second Generation Fiscal Federalism*, *supra* note 1, at 281.

⁴⁸ *Id.* at 282.

behavior because they will have to live with the *financial* costs of exit. The public-choice assumption is that officials seek to enhance local revenues and thus will not engage in predatory behaviors to the extent those behaviors result in tax base flight or the equivalent. In a unitary state, by contrast, officials have little incentive not to engage in confiscatory, redistributive, or rent-seeking activities because there is no place for capital to go.⁴⁹ Second, good local behavior involves maximizing local revenue (as a means of maximizing officials' revenues or budgets), and the mechanisms for maximizing local revenue are fostering markets, attracting capital and labor, and avoiding over-taxation.

Third, public officials have the ability to adopt policies that can foster markets and attract capital and labor. A core assumption of the theory is that we know what those policies are and that government officials can implement them. Fourth, these policies will do more than simply move existing economic development from old territories to new ones; these policies will, instead, induce new economic growth, either in the local jurisdiction or in the nation as a whole. And finally, fifth, there is a political mechanism by which the gains made by local economies will be protected from centralized confiscation. Because central officials would otherwise behave predatorily in the absence of interjurisdictional competition, we have to explain why those same central officials will permit interjurisdictional competition in the first place, or will not override it once they see how well it is working out.

Much of this is old hat for fiscal federalists, but there are a number of difficult links in the chain of transmission. First, why is it assumed that central officials always act badly and local officials always act virtuously? It is not at all clear why central officials will act in a predatory manner without the threat of capital exit hanging over their heads. The threat of exit need not be the only mechanism; presumably electoral pressure will induce officials to act in one way or another.⁵⁰ Moreover, it is not at all self-evident that local actors, rather than central actors, are more likely to engage in

⁴⁹ But cf. Ronald Gilson & Curtis J. Milhaupt, *Economically Benevolent Dictators: Lessons for Developing Democracies 1* (Columbia Law & Econ. Working Paper, Paper No. 371, 2010) (describing centralized, authoritarian regimes that do not engage in predation).

⁵⁰ See Rodden & Rose-Ackerman, *supra* note 39, at 1532–34.

revenue-enhancing behaviors; it is certainly in the interest of central actors to promote economic development to the extent it enhances national revenue.⁵¹ Similarly, we would want to know why central officials would be willing to enforce common market norms if they are otherwise inclined to act predatorily.

We would also want to be certain that local officials are properly incentivized to encourage economic growth and, by extension, revenue enhancement. There is no reason to think they will be.⁵² For example, local actors may not see any real political (as opposed to fiscal) gains from an increase in a locality's economic activity. Because the government budget is not their own money, being profligate with it—along particular dimensions—might bring political gains, not losses.⁵³ Moreover, local officials might be wary of economic growth for obvious reasons. Economic activity brings in outsiders, induces competition, and dilutes local monopolies. A local official's political power may turn on keeping outsiders at bay, fostering local monopolies, and preventing new firms from competing with existing ones.⁵⁴ And even if local officials do seek growth, they may not do so on the proper timeframe. Because their tenures are relatively short, local officials may pursue short-term gains at the expense of long-term economic stability. As Roderick Hills has observed, the public choice literature assumes that “sub-national officials want to maximize the land values, revenues, or tax base of their jurisdiction,” but it does not explain why they would want to do so or along what kind of timeline.⁵⁵

Another question to ask is why we believe that local officials can implement policies that will have positive effects on local or national economic growth. What if government policy only has a tangential relationship to growth? I will return to this possibility below, but for now, it is enough to observe that it is not apparent that

⁵¹ China seems to be an example of this. See Gilson & Milhaupt, *supra* note 49, at 7.

⁵² See Daryl Levinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 *U. Chi. L. Rev.* 345, 347 (2000).

⁵³ See *id.* at 355–56.

⁵⁴ Cf. Oliver Blanchard & Andrei Shleifer, *Federalism With and Without Political Centralization: China Versus Russia*, 48 *IMF Staff Papers* 171, 172 (2001) (observing that decentralization to local governments in Russia led to the capture of local governments by existing firms).

⁵⁵ Roderick Hills, *Federalism and Public Choice* 10 (N.Y. Univ. Sch. of Law, Pub. Law & Legal Theory Research Paper Series, Working Paper, Paper No. 09-07, 2009).

local efforts can generate economic growth in the context of national labor and international capital markets.⁵⁶ Certainly, there is much debate over whether local subsidies or infrastructure investments generate economic growth or whether those efforts simply move economic activity around.⁵⁷ Market-preserving federalists talk about how decentralization will induce the provision of “market-enhancing public goods”—but they never tell us what those goods are, nor do they provide evidence for how such goods produce economic gains.⁵⁸

Finally, we would want to know why “predatory” central actors would feel constrained by a decentralist political structure if and when economic gains are realized locally.⁵⁹ Here we might have to appeal to some other set of constraints—political, constitutional, ideological, or social—that are likely to be independent of the decentralized system itself. Or one can imagine how a political system that starts with some degree of decentralization might generate a class of local public officials and political actors who have the capacity and interest to resist the efforts of an aggrandizing central

⁵⁶ Cf. Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 *Am. J. Soc.* 309, 320–21 (1972).

⁵⁷ For a discussion, see Schragger, *Rethinking*, *supra* note 9, at 332.

⁵⁸ The problem is partly conceptual. Constraining predation and inducing economic growth are two different things. Once one puts aside predatory government officials, there must be some mechanism that drives economic growth. For that, market-preserving federalists turn to the “market”—a system by which prices are set (by some appropriate criteria). The market is presumed to operate effectively as long as government ensures (presumably through the laws of property and contract) that debts, investments, and profits will be honored, enforced, and protected from confiscation. But here is where some circularity creeps in, for the problem of confiscation looks a lot like the problem of predation. For market-preserving federalists, economic growth is achieved if governments respect markets—but markets are a black box, and the myriad legal tools that construct markets are put to the side, separated from the predation that must be constrained once markets get going. This separation is artificial, however: limiting confiscation and constraining predation are one and the same.

Thus, one would be forgiven for thinking that the market-preserving federalist’s prescription for economic growth is “create markets and let them run”—which is simply *laissez-faire* economics under a fancier name. Oddly, despite the invocation of “market-enhancing public goods,” there seems to be relatively little role for affirmative government intervention, let alone a specification of what those interventions might look like. Particularly absent are the myriad investments in human capital that might generate economic returns—like public education.

⁵⁹ Cf. Daryl Levinson, *Parchment and Politics: The Positive Puzzle of Constitutional Commitment* 20 (Mar. 24, 2010) (unpublished manuscript, available at <http://ssrn.com/abstract=1577749>) (asking similar question).

power.⁶⁰ To answer that question we may want to know how local elites fare in the national political process and to what extent local elites are able to communicate the benefits of decentralization to their constituents. Market-preserving federalists argue that institution-makers can embed institutional barriers that will be “self-enforcing,” thus preventing the deterioration of the existing structure.⁶¹ This embedding is achieved when the political costs of violating the barriers are sufficiently high. Whether raising political costs is possible through institutional design (or whether political costs are dependent on more contingent factors⁶²) is a key question.⁶³

2. *Fostering Efficiency*

A second way that decentralization may promote economic growth is premised on the efficiency-promoting quality of inter-jurisdictional competition.⁶⁴ This account, drawn directly from Tiebout, does not assume that any actors in the political system will be inclined to act in a predatory manner. The market in government services solves the problem of public goods provision, for it aligns the supply and demand for government-provided goods. One can assume a perfectly beneficent government and still advocate the decentralized provision of government services. Indeed, a beneficent state would adopt a decentralized scheme because it would be in the interests of its citizens to do so.

There are many critiques of Tieboutian accounts—at heart is skepticism that the decentralized provision of government services promotes efficiency.⁶⁵ Recall that Tiebout requires absolute mobility and no diseconomies of scale. Those paying for and consuming

⁶⁰ This is the story that Weingast tells about China. Weingast, *Market-Preserving Federalism*, supra note 1, at 22.

⁶¹ Rodden & Rose-Ackerman, supra note 39, at 1523. For a definition of “self-enforcing,” see Filippov et al., supra note 39, at 15.

⁶² Such factors include political parties, the popularity of a particular president, or civic culture.

⁶³ Rodden and Rose-Ackerman believe that the effort is doomed. See Rodden & Rose-Ackerman, supra note 39, at 1565 (“As it stands, MPF only restates and elaborates on the fundamental political dilemma at the heart of Weingast’s work without providing an adequate solution.”).

⁶⁴ See Tiebout, supra note 44, at 418.

⁶⁵ See Treisman, supra note 25, at 12.

local public goods must be identical. But mobility is less than ideal and externalities tend to crop up everywhere, wreaking havoc on the theory. This is particularly so at the local government level where the decisionmakers, the purchasers of local public goods, and the consumers of local public goods do not often align.⁶⁶

For present purposes, however, let us assume that the market in public services works. The key question then is how does that market contribute to economic growth? One possibility is that the efficient targeting of infrastructure investment could raise an economy's growth rate. It seems sensible that infrastructure and human capital policies that are responsive to local or regional conditions are more effective in encouraging economic development than centrally determined policies that ignore geographical differences.⁶⁷ Because a competitive, decentralized system of local government goods provision would be more tailored to local conditions than a centralized one, one would expect economic development to follow. It is worth noting, however, that such a decentralized regime does not require political decentralization—a central government could embrace administrative decentralization quite easily without giving local governments rights against central invasion.⁶⁸

Another possibility is that decentralization reduces corruption—which looks a lot like “limiting predation” above—or that it limits the amount of income redistribution in the political system.⁶⁹ Of course, we would have to show that a decentralized political system reduces corruption and income redistribution and that growth rates are responsive. Nevertheless, the intuition that better government will result in faster economic development seems initially plausible.

But how solid is that intuition? In fact, it is not at all clear that the efficient provision of public goods has anything to do with economic growth. Tiebout himself did not draw any particular growth-related consequences from his public goods model.⁷⁰ The difficulty

⁶⁶ This is a common critique of Tiebout. See, e.g., Richard Schragger, *Consuming Government*, 101 *Mich. L. Rev.* 1824, 1831–33 (2003); Hills, *supra* note 55, at 10–11.

⁶⁷ See Oates, *supra* note 1, at 237–40.

⁶⁸ See Treisman, *supra* note 25, at 53–55.

⁶⁹ See Oates, *supra* note 1, at 237, 240–41.

⁷⁰ Tiebout wrote about local economic growth, but in the context of the debate between economic base theory and import substitution. See Charles M. Tiebout, *The Urban Economic Base Reconsidered*, 32 *Land Econ.* 95, 95, 98–99 (1956); Charles M. Tiebout, *Exports and Regional Economic Growth*, 64 *J. Pol. Econ.* 160, 160 (1956).

in formulating the relationship is that one has to make claims about how public finance affects private activities, innovation, and investment decisions. And those effects can be quite indirect. For instance, Jan Brueckner suggests that better government targeting of public goods might affect private individuals' incentives to save.⁷¹ This savings, he argues, gets plowed into increased individual investments in human capital, which in turn leads to economic growth.⁷²

The other difficulty is that efficiency and growth do not have to correspond at the local level. Remember that in a Tieboutian scheme, citizen preferences are matched to local governments. There is nothing at all that assures that citizens will prefer policies that encourage economic growth over policies that do not. Thus, in Tieboutian terms, it would be entirely efficient for many (or all) citizens to choose a local government that is dominated by anti-growth forces. But those choices might retard economic development in the whole if too many citizens prefer policies that limit economic development.

One can see how this might be the outcome in a region where many communities are willing to pay a high price (in terms of taxes foregone) to keep out industrial, commercial, retail, or other facilities. Economic growth is always being balanced against congestion or other negative effects. If local governments have to internalize the costs and benefits of economic growth, then they might make the appropriate trade-off, though some localities would certainly disfavor growth. The problem is that local governments never fully internalize the costs and benefits of their local economic policies. One therefore has to explain the reason that, in a competitive system of governments in which each government is trying to obtain the benefits of growth without the attendant costs, the system as a whole will favor growth.

3. Encouraging Innovation

A final way that decentralized government might promote economic development is by encouraging local innovation and experimentation in public policies. Policy entrepreneurs might find it

⁷¹ See Brueckner, *supra* note 1, at 2107–08.

⁷² See *id.* at 2107–09.

more conducive to take risks in a decentralized regime in which they will reap the benefits through higher local revenues or the production of better services. By contrast, central actors may be less inclined to adopt policy experiments that apply to the entire nation and may not have the incentive if they do not reap any unique rewards.

That state and local governments are valuable as laboratories of experimentation is a popular assumption, most famously asserted by Louis Brandeis in *New State Ice Co. v. Liebmann*.⁷³ It is based in part on the notion that competition will induce innovation. To stay ahead, one has to be constantly experimenting with new products and new processes. Of course, it is possible that local officials will not act towards their governing responsibilities as entrepreneurs act toward their businesses. To the extent that local actors are risk adverse, they may not want to deviate from the bundle of services that other jurisdictions are already providing. As Susan Rose-Ackerman has argued, local officials may have a strong political incentive to play it safe. A local official has little incentive to depart from the current menu of options and lots of incentives to wait and adopt only those policies that turn out to be successful. Because there is little advantage to being the first mover, local governments may produce little innovation.⁷⁴

But assuming that government innovation is an outcome of decentralization, what is the link between public policy entrepreneurship and private side economic development? One possibility is that public policy mavericks figure out new ways to enhance the efficiency of local businesses or markets. This may induce economic development, as long as the innovations are not exclusionary or protectionist.⁷⁵

⁷³ 285 U.S. 262, 310–11 (1932) (Brandeis, J., dissenting).

⁷⁴ See Susan Rose-Ackerman, Risk Taking and Reelection: Does Federalism Promote Innovation?, 9 J. Legal Stud. 593, 593–94 (1980); see also Brian Galle & Joseph Leahy, Laboratories of Democracy? Policy Innovation in Decentralized Governments, 58 Emory L.J. 1333, 1333, 1337 (2009).

⁷⁵ In a decentralized system in which local officials reap the benefits of development, local officials are inclined to either subsidize local businesses or treat them more favorably than out-of-jurisdiction businesses. They are also inclined to “steal” business from other jurisdictions, since they are only interested in the location of development and not in development per se. The central government would need to enforce fairly serious limitations on the kinds of innovative policies that local governments could adopt.

Some observers of the Chinese economy have made this argument, suggesting that decentralization has led to local and regional market-friendly innovations. These scholars argue that China's economic success is partly a result of the devolution of governance to provinces and local governments—a system of what one commentator has called “experimentation under hierarchy.”⁷⁶

One should be cautious about the Chinese example, however. First, China is not politically decentralized in any meaningful sense. Provinces have leeway only to the extent that local party officials pursue ends dictated by the central government. There is thus no institutionalized protection for localities if the rulers at the center decide to act in a predatory manner.⁷⁷ Second, China's decentralization is selective. The coastal provinces initially granted discretionary authority by the Chinese government were already closer to potential trading partners and had access to port facilities. Central officials chose the most viable economies for market-style experiments. And it was the central government that spurred investment in local infrastructure by designating those areas as special economic zones, making them eligible for generous subsidies.⁷⁸ Inland provinces have had a much more difficult time innovating and competing. Third, “federalism, Chinese style”⁷⁹ serves the interests of particular political actors in the center. In the 1990s, those political actors were reformers who sought to “smuggle changes into the system” and effectively control those changes by introducing them at a local, experimental scale.⁸⁰ “[D]ecentralized experimentation minimized the risks and the costs to central policy-makers by placing the burden on local governments and providing welcome scapegoats in cases of failure.”⁸¹

⁷⁶ See Ronald J. Gilson & Curtis J. Milhaupt, *Economically Benevolent Dictators: Lessons for Developing Democracies* 59–62 (March 4, 2010) (unpublished manuscript, available at <http://ssrn.com/abstract=1564925>) (internal quotations and citation omitted).

⁷⁷ Sebastian Heilmann, *Policy Experimentation in China's Economic Rise*, 43 *Stud. Comp. Int'l. Dev.* 1, 11 (2008) (noting that giving provinces and local governments some administrative autonomy has not “eliminated the weight of hierarchy and ad hoc central interference in China's political economy”).

⁷⁸ Treisman, *supra* note 25, at 93.

⁷⁹ Barry R. Weingast et. al., *Regional Decentralization and Fiscal Incentives, Federalism, Chinese-Style*, 89 *J. Pub. Econ.* 1719, 1719 (2005).

⁸⁰ Heilmann, *supra* note 77, at 21.

⁸¹ *Id.*

On this account, Chinese decentralization is less about Brandeisian bottom-up innovation than it is a political strategy for top-down reform in a world of political and policy uncertainty. Local officials are tools of central ones—they operate in a hierarchy in which they are almost exclusively responsive to superiors and not to local constituents. This form of decentralization constitutes inter-jurisdictional competition only in the most attenuated sense.⁸² Moreover, it generates some perverse consequences: “Since local experimenters tend to do everything possible to overstate the positive results of pilot projects in their jurisdictions, ill-conceived and impracticable experiments often were detected only when they were being [scaled-up].”⁸³

There may be a socialization effect of localism, however, that is not captured by an exclusive focus on local officials’ incentives. Perhaps entrepreneurial behavior on the government side induces entrepreneurial behavior on the private side. Tocqueville famously observed that nineteenth-century Americans were in constant motion, forming local governments, constructing public works, and entering into associations both public and private to improve the material condition of the citizenry.⁸⁴ He argued that a decentralized political system induces individuals to become self-reliant, entrepreneurial, and innovative. And he implied that this form of politi-

⁸² Certainly, the form of administrative decentralization that China has embraced might better align local officials’ governance incentives with economic growth—as long as that is what the center desires. But in China, much of that alignment is accomplished by the fact that local officials get to take profits from local state-owned enterprises and the selling of local public services. The truly private sector itself is still quite limited; in such an economic system, the idea of market preserving federalism as a mechanism to prevent government officials from crowding out the private sector is incoherent. In China, the state has its hands in everything—the only question is how to get specific state actors to act as investors (with long-term horizons) rather than as predators (with short-term horizons). Political decentralization is not necessarily responsive to that problem and might be contrary to it. See Oliver Blanchard & Andrei Shleifer, *Federalism With and Without Political Centralization: China Versus Russia*, 48 *IMF Staff Papers* 171, 176 (2001) (arguing that Chinese development depends “very much on political centralization” in the form of the Communist Party).

⁸³ Heilmann, *supra* note 77, at 21. Inter-local competition has also produced significant examples of waste. As Daniel Treisman points out, China experienced a boom in airport construction in the 1980s and 1990s as local governments competed for investment. Almost ninety percent of those airports lose money. See Treisman, *supra* note 25, at 97.

⁸⁴ Tocqueville, *supra* note 4, at 291–97.

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cal socialization spills over into the private sector, creating a nation of go-getters. Does political decentralization induce changes in individual behavior, inducing Americans or the Chinese to become innovators, good capitalists, aggressive market-participants? Tocqueville argued that local government was necessary to create a free people because it taught them how to self-govern. To the extent those skills are important for economic development, local democracy might be a prerequisite.

If so, then central officials must be incentivized not to interfere once local governments make good. If public officials are benign, then they will adopt a decentralized political system if they are convinced of its benefits. But if public officials are predatory, they will have to be constrained, or the decentralized system will collapse. As always, there must be a relatively self-enforcing institutional structure that makes it difficult for central officials to aggrandize local efforts. This is where law comes in.

II. LOCAL GOVERNMENT LAW AND ECONOMIC DEVELOPMENT

What does the development of local government law tell us about the relationship between decentralization and growth? The relative powers of municipal governments are an obvious place to look for evidence of how localism translates into economic growth, but a clear focus on those powers has been missing from the literature. In arguing that decentralization leads to development, market preserving federalists instead usually invoke nineteenth and early twentieth century American federalism. What they see in that period are states aggressively building canals, subsidizing railroad construction, chartering banks, and generally hungering for economic development. What they claim is that robust inter-state competition and the absence of an interventionist national government fostered economic development in the industrializing United States.⁸⁵

Whether this image is accurate, I leave for another day. What I want to emphasize instead is how the story focuses on state-

⁸⁵ See Weingast, *Market-Preserving Federalism*, supra note 1, at 8–9; John Joseph Wallis & Barry R. Weingast, *Equilibrium Impotence: Why the States and not the American National Government Financed Economic Development in the Antebellum Era 23–26* (NBER, Working Paper, No. 11397, June 2005).

national relations. In this way, the literature elides the difference between states and local governments. But the vast bulk of economic development in the nineteenth-century United States happened in cities. Urbanization and industrialization were the twin economic trends in the nineteenth and early twentieth centuries, and urbanization continues to be the leading trend of the twenty-first century on the global scale. Economic development happens in particular *parts* of states—in cities and metropolitan regions.⁸⁶ And, importantly for our story, cities were and are differently situated from states, constitutionally, economically, and politically. An analysis of the national economy based on state decentralization thus tells us very little. One has to look at the institutional status and economic development of the nation's cities and metropolitan areas.

When one looks at federalism in this way, one finds that cities have never enjoyed the formal constitutional status of states, that cities' institutional powers have waxed and waned according to economic circumstances, and that institutional reform of the relationship between states and cities has mostly *followed* economic development, not the other way around. One also sees that city power continues to be quite vulnerable, and that the shifting of political power up or down the scale of government is really a mechanism by which political interests obtain rewards. Those political interests may or may not favor economic growth—there is no institutional settlement that points in one direction or the other.

This story undermines the three transmission mechanisms discussed above. Neither political decentralization nor the good governance that decentralization is supposed to induce satisfactorily explains why some places do well economically and others do poorly. Indeed, despite the significant political resources and policy energy that have been poured into local economic development efforts, economic growth is notoriously difficult for local governments to produce.

⁸⁶ See Jacobs, *Cities and the Wealth of Nations*, *supra* note 11, at 31–32; Krugman, *supra* note 14, at 9, 22–30; Polèse, *supra* note 21, at 16.

A. City Subordination in the Nineteenth Century

Let us begin with the legal status of cities. Institutionalists need a stable, self-enforcing form of decentralization for the decentralization-growth thesis to obtain. If the political system cannot make credible commitments to preserving a decentralized system, then the institutional mechanism will collapse. For that, institutionalists turn to “institutions”: constitutional arrangements, laws, and a set of practices that result in a political equilibrium that sustains them.⁸⁷ That is, they need a set of higher-order practices that are somewhat resistant to change through ordinary politics.⁸⁸

In local government law, however, we have the opposite—an oft-changing, arguably cyclical battle between political interests (often “reformers” and “machines”⁸⁹) that results in a grab bag of institutional constraints, some favoring the centralization of power and some favoring the decentralization of power. Localism is forever contested.⁹⁰ Thus, the leading shift in the late nineteenth century and through the twentieth century was from a crabbed version of city autonomy to one that was (on the surface) more protective of local autonomy, but only in certain respects. This is the shift

⁸⁷ An “institution” has been defined as a “relatively enduring collection of rules and organized practices, embedded in structures of meaning and resources that are relatively invariant in the face of turnover of individuals and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances.” James G. March & Johan P. Olsen, *Elaborating the “New Institutionalism,”* in *The Oxford Handbook of Political Institutions* 3, 3 (R.A.W. Rhodes, Sarah A. Binder & Bert A. Rockman eds., Oxford University Press 2006). North distinguishes institutions from organizations. Institutions are rules and constraints on behavior; organizations are groups of individuals acting in concert. See Douglass C. North, *The New Institutional Economics and Development* 5–6 (1993 Working Paper) (unpublished manuscript, on file with author). For a discussion, see Oliver E. Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 *J. Econ. Literature* 595, 595–96 (2000); see also Peter A. Hall & Rosemary C.R. Taylor, *Political Science and the Three New Institutionalisms*, 44 *Pol. Stud.* 936, 936–37 (1996).

⁸⁸ As I have noted, U.S. federalism, especially in the late nineteenth and early twentieth centuries, is often held up as an example of a credible commitment mechanism, though I think there are ample questions as to whether that is the case. See Levinson, *supra* note 59, at 20–21.

⁸⁹ Cf. Jessica Trounstine, *Political Monopolies in American Cities: The Rise and Fall of Bosses and Reformers* 1–14 (The University of Chicago Press 2008).

⁹⁰ I think federalism has always been contested as well but do not argue that here. See Levinson, *supra* note 59, at 10–11, 22.

from Dillon's Rule to home rule, and it was arguably a *result* of economic growth, not a *cause*.

In fact, the battle over the city's relative autonomy from the state was joined at the moment when urbanization and industrialization were concentrating enormous wealth in the cities. It was in the late nineteenth and early twentieth centuries that the great industrial cities were at their apex, and it was at this moment that the old institutional regime was seen to be deficient. Why? Because the state legislature and other state political actors were eagerly expropriating the wealth that was being generated in the cities: "The large rewards which lay in cities' offices, their contracts, and the franchises in their streets became the mark of the political spoilsman in the state legislature."⁹¹ Institutional reforms meant to limit the center's intervention into local affairs were a direct result of this grasping for wealth; they were not a cause of the wealth.

One could argue that this shift supports the thesis that centralization produces more predation than decentralization; this is the "predatory-center" story that is so crucial to the decentralization-growth thesis. But that would be wrong, for the growth in cities that aroused legislators' pecuniary interests occurred under a legal regime that was as skeptical of local power as it was of central power. The home rule movement did comparatively little to curtail that view.

Indeed, it is instructive to remember how city power was effectively subordinated from the colonial period to the mid-nineteenth century. In that period, during which time the city moved from a closed trading corporation to a modern municipality, power (as a matter of institutional design) migrated up to state legislatures, rather than down to cities.⁹² Certainly, cities were growing rapidly, building infrastructure and constructing public improvements of all kinds. But this coincided with a set of formal institutional arrangements that limited the city's power and authority in dramatic ways.

This curtailment of local power occurred along a number of dimensions, as Gerald Frug, Hendrik Hartog, and others have shown. First, city officials began to look to the state legislature for

⁹¹ David Barron, *Reclaiming Home Rule*, 116 *Harv. L. Rev.* 2257, 2286 (2003).

⁹² See Gerald Frug, *The City as a Legal Concept*, 93 *Harv. L. Rev.* 1057, 1095-99 (1980).

confirmation of their authority. The colonial city was an independent corporation, often a chartered entity, with the privileges and duties of all “private” corporations. In this way, it was conceptually autonomous in the ways that all private property owners are conceptually autonomous. But relatively early on, the city had become subject to the dictates of the state legislature.⁹³ Indeed, the city’s subordination to the state legislature is of a piece with republican political theory, which could not countenance the existence of corporate bodies not subject to democratic will. Classical ideology condemned corporate privilege and to the extent that cities were corporate bodies, they were targets of control by the late eighteenth and nineteenth century state legislatures. This transformation expressed itself in both subtle and not-so-subtle ways. Local political actors began to seek “permission” from the state legislature to support actions they may have previously undertaken without seeking such a grant. Meanwhile, state legislatures began to assert their authority over city charters, property, services, and boundaries.⁹⁴

Second, as cities lost the character of autonomous corporations, they became entirely subject to state control for purposes of constitutional doctrine. Industrial-era cities had no formal constitutional status under the federal constitution—indeed, they still do not. They were and are, as the Court states in *Hunter v. Pittsburgh*, a 1907 case: “political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.”⁹⁵ Further,

[t]he 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 State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality In all these respects the State is supreme, and its legisla-

⁹³ See *id.*; Hendrick Hartog, *Public Property and Private Power* 1–5 (The University of North Carolina Press 1983).

⁹⁴ Hartog, *supra* note 93, at 1–7.

⁹⁵ 207 U.S. 161, 178 (1907).

tive body . . . may do as it will, unrestrained by any provision of the Constitution of the United States.⁹⁶

The third way in which city power was constrained was through Dillon's Rule. Articulated by the jurist and treatise-writer John Dillon in the mid-nineteenth century, the rule is an interpretive command that requires the strict construction of state grants of municipal authority.⁹⁷ Adopted by almost all the states in the nineteenth and well into the twentieth century, Dillon's Rule asserts that municipal corporations can only exercise those powers expressly granted by the state legislature and essential to the purposes of the corporation, and that "[a]ny . . . doubt concerning the existence of power is resolved by the courts against the corporation."⁹⁸

The impetus for Dillon's Rule was the great municipal debt crises of the early and mid-1800s.⁹⁹ The problem for reformers was not too little local investment in productive infrastructure, but too much. Dillon's Rule was an effort to rein in local debt and spending initiatives, particularly those initiatives that went to subsidize railroad construction. These local efforts had gotten out of control, and they exposed local governments to ruin in the context of the boom and bust economic cycles of the mid-1800s. The effects of that ruin were local and state defaults.¹⁰⁰

Dillon's Rule is a nice example of how institutional design follows economic development. The disempowerment of the cities happened in response to local economic and political behavior brought about by the newly wealthy or wealth-seeking municipalities. Those municipalities were providing many new services that cities had not provided before: sewer and water systems, roads, sanitation, ports, parks, schools, electricity, streetcars, street lights, and public buildings. Those services had to be funded, and fran-

⁹⁶ *Id.* at 178–79.

⁹⁷ See 1 John F. Dillon, *Commentaries on the Law of Municipal Corporations* 448–51 (5th ed. 1911).

⁹⁸ *Id.* at 449–50.

⁹⁹ See Richard Briffault & Laurie Reynolds, *State and Local Government Law* 639–48 (7th ed. 2009); see generally Richard McCormick, *The Discovery that Business Corrupts Politics: A Reappraisal of the Origins of Progressivism*, 86 *Am. Hist. Rev.* 247 (1981).

¹⁰⁰ Briffault & Reynolds, *supra* note 99, at 640; Jon C. Teaford, *The Unheralded Triumph: City Government in America, 1870–1900*, at 283–84 (1984).

chises for provision of those services had to be granted—thus opening the way for local officials to engage in self-dealing and for transportation and utility interests to line their pockets. Dillon’s Rule thus “sought to protect private property not only against abuse by democracy but also against abuse by private economic power.”¹⁰¹ Predation was a rampant problem: the initial and still enduring solution was to move power *up* the scale of government, not *down* it.

The home rule movement that followed was also a response to these circumstances—an observation that David Barron has made in an important article.¹⁰² And although it cut back on the need for explicit legislative grants of authority, home rule efforts did little to change the basic framework of state legislative supremacy. What it did was give cities a modicum of protection from state legislative invasion, first, by limiting so-called “special legislation” that state legislatures used to require cities to undertake specific activities, and second, by giving cities some ability to run their affairs without having to receive dispensation from the state legislature.¹⁰³

These institutional devices did give cities somewhat more authority over their own affairs, but in reality these devices had the same purpose as Dillon’s Rule: to constrain political officials who were prone to exploiting urban wealth and resources. Those efforts were driven by the political pathologies that had been induced by economic growth. Dillon’s Rule was an attempt to limit local corruption, overspending, and giveaways to vested interests. City officials had shown themselves too susceptible to the siren call of mobile capital, railroads, infrastructure schemes, land speculators, and utility magnates. But the home rule movement represented an equally unpleasant reality: state legislators were not immune from these nefarious influences either.

To think of these efforts as taking power away from the state and giving it to the city, however, would be a mistake. Often city officials and the city’s state legislative delegation represented one political machine or competing machines, pursuing in parallel the economic interests of particular urban constituencies. To talk

¹⁰¹ Frug, *supra* note 92, at 1110.

¹⁰² Barron, *supra* note 91.

¹⁰³ *Id.* at 2286–88.

about city versus state, or decentralized versus centralized power, thus misstates the political dynamic. Home rule was not an effort to shift power to the representatives of the local government; it was oftentimes instead an effort to limit the lawmaking role of the city's legislative delegation, which was (according to reformers) responding too readily to every costly demand of their urban constituents.¹⁰⁴ Urbanization and industrialization created equal opportunities for political rent seeking at different levels of government, but mostly it created opportunities for politicians who represented city districts, whether those politicians served on the city council or in the state legislature.

B. Institutions, Corruption, and Growth at the Turn of the Century

The Progressive Era institutional landscape of local-central relations in the states was thus quite complicated and improvisational.¹⁰⁵ States continued with Dillon's Rule as a rule of construction (and many have some version of it to this day).¹⁰⁶ There were also widespread popular movements to adopt home rule grants and constitutional bans on special legislation. But these grants of local prerogative were often part of a package of state constitutional reforms that also limited local power. For example, constitutional public purpose requirements limited the government's authority to engage in economic development activities that privileged private entities; constitutional debt limitations restricted the borrowing capacity of local (and state) governments; city charter reforms transferred important local government functions to non-political professional city managers; and states shifted power away from locally elected officials to state regulatory bodies and to administrative professionals—thus the rise of administrative law and regulation in the states.¹⁰⁷ The ban on special legislation arguably reduced city

¹⁰⁴ Teaford, *supra* note 100, at 103–04.

¹⁰⁵ See *id.*

¹⁰⁶ See U.S. Advisory Comm'n on Intergovernmental Relations, *State Laws Governing Local Government Structure and Administration* (1993); Jesse Richardson et al., *Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management* (Brookings Inst. Ctr. on Urban & Metro. Pol'y, Discussion Paper, Jan. 2003), available at http://www.brookings.edu/~media/Files/rc/reports/2003/01metro_politanpolicy_jesse%20j%20%20richardson%20%20jr/dillonsrule.pdf.

¹⁰⁷ See Teaford, *supra* note 100, at 103–04.

power, for it limited the city legislative delegation's ability to push through city-specific laws in the legislature. Now all laws would have to be "general" in nature.

Importantly, institutional efforts to protect some sphere of local autonomy were not driven by the belief that localism per se led to economic growth. Rather, to the extent that business interests joined with good government groups to promote institutional reform, the idea was that good government, whatever its source, would promote prosperity. Moreover, good government meant spending less on services demanded by urban constituents. Sometimes good government could be obtained by granting locals more power; sometimes it could be obtained by granting locals less power.

Whether the reformers were right in connecting good government with economic growth is an open question. At the peak of their economic prowess, the great industrial cities were often beset by some of the worst political pathologies. Observers of late nineteenth century urban government could declare city governance a "conspicuous failure" even as the country's urban centers grew dramatically.¹⁰⁸

Did municipal corruption indicate a lack of economic growth? It does not seem so. Rebecca Menes notes that between 1880 and 1930, "the dominant economic feature of American cities was growth."¹⁰⁹ She also notes that urban corruption was at its height during this period.¹¹⁰ American cities were booming; they were also fairly corrupt. This apparent paradox is only puzzling to those who believe that bad government hinders growth and that inter-local competition will ferret out bad government.¹¹¹ Neither seems to have happened in the heyday of the great industrial cities, indicat-

¹⁰⁸ Id. at 1, 308.

¹⁰⁹ Rebecca Menes, *Limiting the Reach of the Grabbing Hand: Graft and Growth in American Cities, 1880–1930*, in *Corruption and Reform: Lessons from America's Economic History* 69 (Edward L. Glaeser & Claudia D. Goldin eds., 2006). There is a growing literature on the relationship between decentralization and corruption. Some argue that decentralized regimes are less corrupt than unitary ones. Others claim the reverse. See Daniel Treisman, *The Causes of Corruption: A Cross-National Study*, 76 *J. Pub. Econ.* 399, 440–41 (2002) (arguing that federal governments are more corrupt). For a summary of the studies, see Treisman, *supra* note 25, at 254–55.

¹¹⁰ Menes, *supra* note 109, at 64–66.

¹¹¹ Id. at 64.

ing that governance and growth are not so closely tied. Indeed, at the turn of the century, local (and national) prosperity was increasing despite some rather bad governance. Industrial-era cities built the great bridges and tunnels, parks, and public works.

One might think “competition” was responsible for this expansion. Of course, city boosterism was a part of the industrial and urban landscape in the nineteenth and early twentieth centuries, and the rhetoric of inter-city competition has always been a feature of local government. But one has to be clear about the nature of this “competition.” First, there is the question of causation: Did local investments in infrastructure foster growth or were they a response to it? To be sure, in some cases, investment in municipal services may have preceded the great influx of people into certain places. For example, small settlements competed to be blessed by a stop on a railway line. In those cases, supply created demand.

Nevertheless, it would be a mistake to think that municipal investment in infrastructure always or usually preceded growth. Urbanization and industrialization were occurring at a rapid pace. Some kinds of infrastructure investment may have made a difference as to where development would happen, but most municipal services were a result of demand: in-migrants needed and demanded street paving and lighting, water works, sewers, parks, and utilities. And these large projects were possible because cities or private providers could access the increasing wealth being generated in place.

Certainly there is an element of circular causation here—cities grow, which leads to the construction of municipal services, which allows them to grow more. But the urban infrastructure that arose as rural-urban migration accelerated is better understood as an outcome of growth, rather than impetus for it. Communities were growing and urban infrastructure had to grow with it.

Second, one should take note of how institutional reformers viewed inter-city competition. For legal thinkers like Dillon (as well as the home rule advocates who came after him), inter-city competition did not promote good economic practices but quite detrimental ones. Competition did not promote efficiency, but rather corruption. Competitive pressures brought about races-to-the-bottom that had to be solved with better institutional checks, many of which took power away from local jurisdictions.

And finally, we should be clear about whose interests were being advanced by inter-jurisdictional competition. Inter-city races were driven by the interests of urban elites in particular cities. And importantly, local landowners or businessmen were interested in economic growth in their jurisdiction, not economic growth in the whole. Competition was arguably zero-sum. The railroad had to go somewhere—that it ended up in Chicago rather than some other place did not mean that the national economy would grow more, just that it would grow in a different place.

Moreover, city boosters did not favor a competitive inter-jurisdictional economy when it came to their own regions. The nineteenth and early twentieth century boosters' vision was for ever-larger cities.¹¹² New York grew by joining with Brooklyn—then the fourth largest city in the country.¹¹³ Chicago, Philadelphia, St. Louis—they all grew by annexing miles of territory.¹¹⁴ The big city, not the decentralized one, was the goal of local growth machine forces. And, in fact, nineteenth century economic growth fostered ever larger political jurisdictions, the equivalent at the time of the mega-cities of the twenty-first century.

The central point is that this growth operated in a fluid and relatively unstable institutional environment. The city had little formal powers; it certainly was only minimally protected from central government intervention. Moreover, municipal reform was a continual business. Before home rule reforms, the city's powers were adjusted on an almost yearly basis. But even after the adoption of home rule charters, the impetus to adjust institutions continued. As Jon Teaford observes, constitutional home rule movements in Missouri and California “ended the [state legislative] practice of per-

¹¹² See William Cronon, *Nature's Metropolis: Chicago and the Great West* 42–43 (1992).

¹¹³ Ira Rosenwaike, *Population History of New York City* (1972); U.S. Census Bureau, *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990*, (Population Division Working Paper, Paper No. 27, 1998), available at <http://www.census.gov/population/www/documentation/twps0027/twps0027.html>.

¹¹⁴ See Gerald E. Frug, *Beyond Regional Government*, 115 *Harv. L. Rev.* 1763, 1766–67 (2002) (“All the major cities of the period—Boston, New York, Philadelphia, Chicago, Pittsburgh, St. Louis, Cleveland, Denver—grew by incorporating their suburbs. And the growth was substantial: these cities became four to sixty-five times larger.”) (citing Roderick Duncan McKenzie, *The Metropolitan Community* (1933), among others).

petual tinkering,” thus creating a more rigid and permanent structure for state-local relations:

Yet the social and economic currents of change continued to propel the cities of Saint Louis and San Francisco inexorably onward. Populations soared, demands for new services increased, expectations rose, and fads in municipal reform appeared and disappeared. But whereas the needs and desires of many of the city’s residents changed, the home-rule system of municipal government proved inflexible. Thus during the 1880s and 1890s some of the very citizens who had demanded an end to legislative interference found themselves yearning for additional flexibility. . . . By 1900 some viewed the previously desired permanence as a form of paralysis, and realized that in a changing world stability was a close cousin of stagnation.¹¹⁵

Institutional reforms were thus cyclical, partial, and reactive. During economic shocks, when economic downturns revealed the vulnerability of local governments to boom and bust, we see the imposition of constraints on certain local actors. When that form of centralization showed itself to be as corrupt as the more local-favoring regime before it, institutions were adjusted to protect some local autonomy while maintaining restrictions on city power in other areas. Institutional design mostly responded to perceived policy crises, and those designs represented the outcomes of politics, not some durable institutional scheme. Meanwhile, the “economic currents of change continued to propel [the city] inexorably onward.”¹¹⁶

C. Selective Localism in the Twentieth Century

The institutional framework that developed in reaction to the urbanization and industrialization of the nineteenth and twentieth centuries and that continues to operate today is still reactive, fluid, and driven by economics and politics. First, the legal doctrines that set the terms of local-central relations during the Progressive Era are easily manipulated in response to perceived policy needs. The supposed institutional settlement is never settled. Second, in the

¹¹⁵ Teaford, *supra* note 100, at 111.

¹¹⁶ *Id.*

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twentieth and early twenty-first centuries, the great industrial cities no longer exercise the political power they once had, and both economic and political power has shifted to the suburbs. The nature of the legal division of authority between states and localities has predictably followed this movement of people out of the cities.

As to the first point, the manipulation of institutions began almost immediately in the early twentieth century. Home rule principles in particular were and have been readily diluted by courts or openly flouted by legislatures. Home rule itself has turned into less of a bulwark against state intervention than a mechanism to restrict local power. Courts tend to interpret state constitutional home rule grants as limitations on local power—cities have authority under state constitutional grants only to the limits of their home rule powers, and those home rule powers are restricted to matters of “local concern.”¹¹⁷ Issues of “statewide concern” are entrusted to the state legislature and—because most issues can be understood as having statewide effects—the exception tends to swallow the rule.¹¹⁸ Moreover, most home rule grants do little to protect localities from state laws that preempt local laws; it is relatively easy for states to legislate in areas of traditional local concern as long as there is some minimally rational justification for it. Even the prohibition on “special legislation” has become diluted, as courts defer to state legislatures when they regulate classes of cities, even if the “class” only includes one municipality.¹¹⁹

¹¹⁷ For a discussion, see Gerald Frug, *City Making: Building Communities Without Building Walls* 50 (1999).

¹¹⁸ See *id.* Local governments are also constrained by the “private law exception.” They have never had the authority to adopt laws pertaining to contract, property, or other “private law” subjects. The fact that this wide swath of law-making is relatively centralized seems to cut against the decentralization-growth thesis. One might think that the power to define property and contract is the ultimate instrument of predation because public officials can simply change the definition of property. See, e.g., *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992) (holding that the state does not have unlimited power to change the definition of nuisance). Decentralizing this power would be consistent with the predatory-center thesis. However, a different division of labor has prevailed over time with little change. Indeed, the center seems to have taken a significant role in protecting property rights from state or local confiscation. See *id.*; *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819) (holding that the New Hampshire legislature could not rescind the Dartmouth College charter).

¹¹⁹ See Frug, *supra* note 117, at 50.

Another set of institutional constraints that have easily been avoided are constitutional limitations imposed on local governments by state constitutional public purpose requirements or by constitutional debt limitations. Both have become weak or non-existent restrictions on local action. State constitutional public purpose requirements have been essentially overridden by courts interpreting the requirement as simply mandating a rational basis for local legislation.¹²⁰ Local monies may be used for private projects as long as there is a stated public purpose. Debt limitations, which impose a hard budget constraint on local governments, can be avoided.¹²¹ Cities need merely to create a special purpose government, a quasi-public authority that can issue debt over and above the municipality's debt limitation. State legislatures have authorized this form of constitutional avoidance and courts have countenanced it.¹²² Though cities have gained more flexibility, the hard budget constraints favored by market-preserving federalists have become somewhat less robust. Expediency has trumped institutional constraint.

The institutional landscape of central-local relations is again ad hoc, improvised, and responsive to economic concerns. In the case of home rule and debt limitations, it is difficult not to conclude that courts and legislatures are interpreting institutional constraints in order to further specific public policies. Immediate needs seem to trump long-term constitutional commitments.

More recent institutional innovations also seem to be responsive to politics and economics. Consider one of the most important developments in local government finance in the last fifty years—state constitutional taxation and spending limitations.¹²³ Starting with Proposition 13 in California, many states began to severely limit local governments' ability to tax and spend.¹²⁴ In the California case, these limits were spurred in large part by rapid rises in property values as newcomers found their way to California in the

¹²⁰ See Briffault & Reynolds, *supra* note 99, at 639–48.

¹²¹ See *id.*

¹²² See *id.* at 790, 872–77 (noting “the many legal techniques state and local governments have developed to avoid those limitations”).

¹²³ See *id.* at 672–703 (discussing Proposition 13 and tax and expenditure limitations).

¹²⁴ *Id.*

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1970s.¹²⁵ Again, an institutional reaction *followed* economic growth—California was growing rapidly, and existing residents were concerned about the fiscal effects brought about by the influx of in-migrants. One effect of these limitations across the country was to centralize government funding of public services, as locals' ability to raise revenue decreased.

The relatively easy ability to govern from the legislature, to amend local charters, to adjust state constitutions, and to engage in proposition-driven government means that local-central relations in the states are not particularly institutionally embedded. Those relations often reflect politics in its rawest form and can be explained by the tension between existing residents and future ones, anti-tax sentiment, the city-suburban divide, the power of land-based elites or business interests, or the reality of racial conflict. As Joan Williams has pointed out, local government's constitutional status is easily manipulated in the service of other aims.¹²⁶ The shifting of powers up and down the scale of government is a proxy for political battles that have nothing to do with local power.

In particular, in the twentieth century local autonomy became a proxy for political battles between cities and suburbs, and (predictably) the suburbs won. This should not come as a surprise. That the economic power of the suburbs is reflected in a certain form of state-local relations, one that privileges suburban jurisdictions over urban ones, has been a common complaint of urban scholars for some time.¹²⁷ Local "autonomy" is preserving suburbanites' land use powers—their ability to zone out low-income households and prevent city annexation and expansion. Suburban autonomy also involves restricting local taxing capacity, so that municipalities are encouraged to favor low-tax growth, and limiting schools to local residents, so that suburbanites can preserve their public service advantage.

¹²⁵ William Fischel had offered a competing explanation. See William Fischel, *The Homevoter Hypothesis* chs. 5–6 (2001) (arguing that school finance equalization led to Proposition 13). For my take on this debate, see generally Schragger, *supra* note 66, at 1842–47.

¹²⁶ See Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 *Wis. L. Rev.* 83 (1986).

¹²⁷ See generally Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 *Colum. L. Rev.* 1 (1990); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 *Colum. L. Rev.* 346 (1990).

Cities, conversely, have struggled with limited fiscal capacity since the middle of the twentieth century. Their “local autonomy” is more of a curse than a blessing, because it means that they are responsible for providing services to a relatively needy population, their fiscal resources are limited, and state intervention is selective.¹²⁸ State legislators—in many cases dominated by suburban interests—are unwilling to share their economic largesse with the cities. But they are more than willing to limit the city’s taxing capacity, and are also willing to intervene to prevent cities from accessing new revenue sources—like taxes on commuters—that would help off-set urban costs.¹²⁹

This “selective localism” is growth-related—to a point. Certainly, local governments of all stripes are seeking fiscal stability, and fiscal stability means attracting the “right kind of growth.” In cities, much of the quest for growth is short-term as politicians and land-based elites seek to turn land into money as quickly as possible. In the suburbs, by contrast, growth is only desirable to the extent that it preserves a certain relatively pastoral lifestyle—it is seen as a means to an end. To the extent possible, the physical manifestations of economic growth—houses, factories, commercial enterprises, office parks, industrial sites—should be kept to a minimum. If they can be located elsewhere, all the better. Long term, regional economic stability is not a goal; local policies may in fact reduce regional economic development.¹³⁰

The capacity question is an important one. Fiscal federalists concentrate on what kinds of restrictions are necessary to encourage local governments to act in the interests of efficiency or innovation. They focus on hard budget constraints, own-source revenue, and

¹²⁸ See Schragger, *supra* note 33, at 2558–61.

¹²⁹ It is worth noting that suburbanization did not occur against the backdrop of national non-intervention. The massive federal subsidization of highways and home mortgages and the nationalization of land use law were leading causes of the form of spatial economic development that has dominated the United States in the last seventy-five years and for the movement of wealth out of cities into suburbs.

¹³⁰ Regionalists have long urged cities and suburbs to work together to advance regional economic competitiveness. For arguments that cities and suburbs will do better economically if they cooperate, see Richard Voith, *Do Suburbs Need Cities?*, 38 *J. Reg. Sci.* 445 (2002) and Andrew Haughwout & Robert Inman, *How Should Suburbs Help Their Central Cities? Growth- and Welfare-Enhancing Intrametropolitan Fiscal Distributions*, 39 *Annals of the Am. Acad. of Pol. Sci.* 626 (2009).

spending discipline.¹³¹ But cities are already brimming over with constraints. Those constraints leave them with little affirmative capacity to make the investments in local infrastructure, human capital, efficient service provision, or innovation that might generate economic development. Constraints mount, while capacity diminishes.

The discipline of fiscal federalism in fact may not produce good outcomes, as localities that are behind in the public services/development race give up on the assumption that they will never catch up.¹³² Or cities may adopt hare-brained, desperate schemes to generate some short-term economic growth. These kinds of schemes are exactly what motivated Progressive Era state constitutional reforms, yet they are also precisely what local governments continue to do as those Progressive Era institutional restrictions decay in the face of political and economic pressures. The cycles of centralizing and decentralizing continue.

D. Local Policies and the Urban Resurgence

The foregoing counsels a great deal of skepticism about the claim that there can be an institutional settlement that preserves a relatively robust vertical distribution of powers. If, however, we were able to get the institutions right, would it make any difference? Recall that decentralization-growth theories require that governments be capable of implementing policies that improve their economic prospects—otherwise the competition between them serves no growth-related purpose. But beyond some set of basic preconditions—the absence of internal war, some stability in entitlements, a citizenry that is not beset by basic threats to health¹³³—it turns out that it is notoriously difficult for governments

¹³¹ Weingast, *Market-Preserving Federalism*, supra note 1, at 4.

¹³² See Hongbin Cai & Daniel Treisman, *Does Competition for Capital Discipline Governments? Decentralization, Globalization, and Public Policy*, 95 *Am. Econ. Rev.* 817 (2005).

¹³³ Whether these are preconditions for development or are a product of development is a significant question which I do not want to entirely elide. For my purposes, however, I am prepared to assume that some preconditions for growth can be asserted. The debates over the determinants of economic prosperity are long-running and have produced a huge literature. For a short summary, see Glaeser et al., supra note 5; De Long & Shleifer, supra note 5, at 671–72.

(whether cities or nations) to figure out how to generate economic growth.

This argument may seem overwrought. Surely cities (and other governments) can adjust their economic circumstances through good institutions and/or good policy-making.¹³⁴ Yet the causal relationship between good institutions and city economic health is far from self-evident.¹³⁵ I have already noted how turn-of-the-century cities were growing rapidly at the moment when they were arguably the most corrupt.¹³⁶ Longer-term growth or decline also seems relatively impervious to good institutions. As Professor Menes points out, Detroit, Buffalo, and Cleveland all had relatively clean government at the turn of the century and they adopted significant institutional reforms during the Progressive Era that remain in place.¹³⁷ Those reforms have not stemmed those cities' massive declines, however. Douglas Rae, in his book on New Haven, argues that even the best of mayors and government administration could not have prevented that city's decline in the face of deindustrialization.¹³⁸ A similar skepticism often attaches to international devel-

¹³⁴ The scholarship on the determinants of economic growth often distinguishes between "institutions" and "policies." When theorists speak of democracy versus absolutism, federalism, property rights, constitutionally limited government or the like, they are speaking about "institutions." When theorists speak about macro-economic policy, trade liberalization, national investment decisions or the like, they are talking about "policies." A country with a dictator has "bad" institutions. On some accounts, therefore, we should expect growth to suffer. On the other hand, a dictator might be able to pursue "good" policies. If policy matters more than institutions, then we should see growth advance. Compare Glaeser et al., *supra* note 5, at 271 (arguing that human capital investments cause growth, not institutions, and that dictators can pursue good policies), with De Long & Shleifer, *supra* note 5 (arguing that limited government promotes growth and presenting evidence of preindustrial city growth tending to show that absolutist regimes retard growth but constitutionally constrained ones promote it). I am somewhat skeptical of the distinction between policy and institutions; it tends to break down especially when one is taking about relative decentralization, as I have argued in Part II. See also Levinson, *supra* note 59, at 21.

¹³⁵ But see De Long & Shleifer, *supra* note 5. At the national level, there are ongoing debates about whether democracy is a precondition for economic development or a consequence of development. See Adam Przeworski et al., *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990*, at 88 (2000).

¹³⁶ Menes, *supra* note 109, at 64-67.

¹³⁷ *Id.* at 90. Between 1930 and 2000, those cities' populations shrank by thirty-nine percent, forty-nine percent, and forty-seven percent, respectively. *Id.*

¹³⁸ Douglas Rae, *City: Urbanism and Its End* at x-xii, xviii (2003).

opment efforts, with some theorists arguing that economic growth is elusive even under the best of intentions.¹³⁹

Closer to home, one can consider the role of local governance in the urban resurgence of the last fifteen to twenty years. There has been a surprising “reversal of fortunes” as old, cold cities have regained some of their formal glory.¹⁴⁰ For a period beginning in the middle of the twentieth century, the trend toward sunbelt cities and far-flung suburbs seemed inexorable. The old industrial cities did not appear to have a chance against newer, sunnier, lower-cost places in the competition for residents and firms.¹⁴¹ Yet cities like New York and Chicago are thriving, and cities like Pittsburgh and Philadelphia are seeing their populations and property values stabilize after a long period of relative decline. Some old downtown business districts are doing much better; gentrification is fast occurring in places like Washington, D.C. and even—though to a lesser extent—places like Richmond and Baltimore.

A change in the relative formal powers of cities and states does not seem to be a reason for this resurgence. We have seen improvement in cities across different state constitutional regimes, and most cities have either the same limited complement of powers they had at the turn of the century, or have considerably fewer powers because of tax and expenditure limitations.

¹³⁹ See, e.g., William Easterly, *The Elusive Quest for Growth* 21–140 (2001) (describing the many growth policies that have failed); *What Works in Development? Thinking Big and Thinking Small* 1 (Jessica Cohen & William Easterly eds., 2009) (“[T]here is no consensus on ‘what works’ for growth and development.”). Indeed, there is a respected literature that argues that economic development over the course of world history is mostly a product of environmental factors, not man-made ones. See, e.g., Jared Diamond, *Guns, Germs, and Steel: The Fate of Human Societies* 25 (1997); Jeffrey Sachs, *Tropical Underdevelopment* 1 (Nat’l Bureau of Econ. Research, Working Paper No. 8119, 2001); see also Robert Kaplan, *For Greece’s Economy, Geography Was Destiny*, *N.Y. Times*, Apr. 24, 2010.

¹⁴⁰ Michael Storper & Michael Manville, *Behaviour, Preferences, and Cities: Urban Theory and Urban Resurgence*, 43 *Urb. Stud.* 1247, 1247 (2006); see Edward Glaeser & Joshua Gottlieb, *Urban Resurgence and the Consumer City*, 43 *Urb. Stud.* 1275, 1275 (2006); cf. Ingrid Gould Ellen & Katherine O’Regan, *Reversal of Fortunes? Lower-income Urban Neighborhoods in the US in the 1990s*, 45 *Urb. Stud.* 845, 866 (2008) (finding strong evidence that “an urban resurgence of sorts did take place in the 1990s and that it extended to the lowest income neighborhoods” but that higher income neighborhoods did not experience it).

¹⁴¹ Storper & Manville, *supra* note 140, at 1247–48.

Another possible explanation is that the federalism revolution of the 1980s forced cities to fend for themselves. On this argument, the reduction in federal support for cities forced them to innovate or die; it also gave the cities more room to maneuver by eliminating or reducing federal mandates. This story seems unlikely, however. The 1980s witnessed a severe decline in urban fortunes, though a decline that had begun with deindustrialization much earlier in the century. The federal government was hard-pressed to stem this decay, but it would be quite a feat to argue that its retreat from the field in the 1980s sparked an urban renewal some twenty years later.

Perhaps instead, the old, cold cities have simply gotten better at governing. If it is true that the competition with the sunbelt cities and the suburbs have forced the old-cold cities to do better, then decentralization has served a purpose. The problem is that better governance—whether in the form of education improvements, crime reduction, or the provision of urban amenities—does not seem to have prefigured the urban resurgence.¹⁴²

Consider education policy first. It has been a common claim that school reform must precede urban growth. One cannot bring the middle class back into the cities without providing better education services. But education gains do not seem to have preceded the urban resurgence in places like New York, Chicago, or Boston.¹⁴³ Nor

¹⁴² I have made this argument elsewhere, albeit for different purposes. See Schragger, *Rethinking the Theory and Practice*, supra note 9, at 312.

¹⁴³ At best, student achievement during the 1990s shows mixed results. See *A Decade of Urban School Reform: Persistence and Progress in the Boston Public Schools* 133–34 (S. Paul Reville & Celine Coggins eds., 2007); G. Alfred Hess, Jr., *Understanding Achievement (and Other) Changes under Chicago School Reform*, 21 *Educ. Eval. & Pol. Analysis* 67, 79–80 (1999); Diane Ravitch & Joseph P. Viteritti, Introduction, in *City Schools: Lessons from New York* 1, 3–5 (Diane Ravitch & Joseph P. Viteritti eds., 2000). As for New York City, the data arguably shows some gains starting in 2002. See generally Nat'l Assessment of Educ. Progress, *2007 Trial Urban District Assessment: New York City Highlights* (2007), available at http://schools.nyc.gov/daa/reports/2007_NAEP_TUDA_Results.pdf (visited Oct. 27, 2009) (detailing the standardized test results of fourth and eighth graders in New York City and comparing the results to 2002–2003 levels). But see Diane Ravitch, *Mayor Bloomberg's Crib Sheet*, N.Y. Times, Apr. 10, 2009, at A23 (arguing that any gains in the New York City schools have been overstated); Sharon Otterman & Robert Gebeloff, *Triumph Fades on Racial Gap in City Schools*, N.Y. Times, Aug. 15, 2010. City-suburban gaps across all major cities—including sunbelt cities—are still dramatic. See

do improved education outcomes seem to have generated the growth of places like Las Vegas or other sunbelt cities.¹⁴⁴

A different possibility is that cities played a role in reducing crime. And, in fact, many cities did become safer in the 1990s. The crime explanation founders, however, when one tries to determine causation. As criminologists have pointed out, crime has fallen everywhere in the last twenty years, regardless of what cities did. The reasons for this trend are complex but many criminologists now reject a robust link between crime reduction and particular policing policies.¹⁴⁵ And even where crime was not initially a problem or where crime did not fall, cities are doing better. For example, European cities have improved despite not having experienced a significant crime wave in the preceding decades.¹⁴⁶ Moreover, in growing sunbelt cities, crime has sometimes increased. Cities are undoubtedly more pleasant, but the decline in crime mostly coincided with the popularity of urbanized places. If crime reduction is a cause of the urban resurgence, it is a minor cause.¹⁴⁷ More impor-

Sam Dillon, Large Urban-Suburban Gap Seen in Graduation Rates, N.Y. Times, Apr. 22, 2009, at A14.

¹⁴⁴ For a summary of Las Vegas's progress, see Roberta Furger, Full House: The Las Vegas Building Boom Has Stretched the Creativity and Resources of the Fastest-Growing School District in the Nation, *Edutopia*, Sept./Oct. 2004, at 31; cf. Dillon, *supra* note 143, at A14.

¹⁴⁵ Steven D. Levitt, Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not, 18 *J. Econ. Persps.* 163, 163–64 (2004); Philip Cook, Crime in the City, *in* *Making Cities Work: Prospects and Policies for Urban America* 297, 297, 301 (Robert Inman ed., 2009) [hereinafter *Making Cities Work*] (noting that “[n]o expert predicted [the decline in crime] and it remains something of a mystery” and that the decline of the 1990s made any policy intervention “look good”). For a summary of the literature, see Vanessa Barker, Explaining the Great American Crime Decline: A Review of Blumstein and Wallman, Goldberger and Rosenfeld, and Zimring, 35 *Law & Soc. Inquiry* 489, 490–92 (Spring 2010) (observing that “researchers have had a difficult time explaining the [crime] decline . . . there is no consensus, no single most important cause”).

¹⁴⁶ For evidence of resurgence in European cities, see Ivan Turok & Vlad Mykhnenko, Resurgent European Cities?, 1 *Urb. Res. & Prac.* 54, 58 (2008). For crime statistics showing a slight uptick in crime in Europe in the mid-1990s, see Martin Killias & Marcelo F. Aebi, Crime Trends in Europe from 1990 to 1996: How Europe Illustrates the Limits of the American Experience, 8 *Eur. J. on Crim. Pol’y & Res.* 43, 54–55 (2000).

¹⁴⁷ See Ingrid Gould Ellen & Katherine O’Regan, Crime and Urban Flight Revisited: The Effect of the 1990s Drop in Crime on Cities, 68 *J. Urb. Econ.* 247, 257 (2010) (finding that the decline in crime in the United States during the 1990s had little posi-

tantly, the reduction in crime cannot be attributed to particular city policies.

More sophisticated explanations of the urban resurgence turn on the economic gains of urban agglomerations or the fact that skilled workers are attracted to urban places, out of an aesthetic preference or a preference for a large diversity of consumption amenities.¹⁴⁸ As to the first, the argument is that cities generate productivity gains through the transmission of information. Firms want to be in cities because of the knowledge spillovers that propinquity to other firms and industries generates. The city's spatial structure provides firms with benefits that other locations do not.¹⁴⁹ As a result cities have become preferred sites for knowledge-economy firms. Moreover, deindustrialization has made cities more pleasant and amenable to these kinds of firms. Without heavy industry, cities are now cleaner, less noisy, and less polluted. Cities can thus recapture their historical role as centers of innovation, knowledge, learning, and skill-building.

To be sure, I share the view that cities are drivers of economic growth—this is a theme to which I will return later. For now, the question is whether city policies have encouraged either the agglomeration or amenities trends, or whether it is more accurate to say that cities are trying to take advantage of those trends. Few cities made long-term plans to become knowledge factories as the post-industrial future loomed. Most cities attempted to entice new industries as old ones faded; others relied on one industry until it was too late; a number sought to reframe themselves as tourist and cultural destinations.¹⁵⁰ Few cities explicitly diversified their economies—and it is not entirely clear how they would have done so in any case. Deindustrialization was not a specific city policy. The old-line industrial cities did not push their factories to close; they desperately tried to maintain them.

Amenity-provision serves as another possible route by which cities can pursue prosperity. Some have argued that the skilled labor

tive effect on overall city growth and that while the crime decline did abate some amount of urban flight, it did not reverse it).

¹⁴⁸ Storper & Manville, *supra* note 140, at 1247.

¹⁴⁹ See *id.*

¹⁵⁰ For a case study of Philadelphia, see Guian Mckee, *The Problem of Jobs: Liberalism, Race, and Deindustrialization in Philadelphia* (2008).

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necessary for knowledge industries has a special preference for cities.¹⁵¹ Individuals with high human capital might desire urban amenities. Firms might follow those individuals, or, alternatively, a virtuous circle will be produced in which firm choices to locate in cities and labor choices to access certain amenities reinforce each other. Perhaps cities that are now doing well invested in the right kind of infrastructure for an emerging urban class.

This explanation has some adherents, but it seems incomplete. First, the infrastructure improvements of the late twentieth century are comparatively modest. Indeed, urban infrastructure continues to decay and massive new infrastructure projects in the major cities (akin to the Brooklyn Bridge or Central Park) are a thing of the past. During industrialization, cities provided clean water, electricity, paved roads, and streetlights. The modest infrastructure improvements of late twentieth-century cities simply do not compare.

Second, cities have always tried to attract desirable residents by offering certain amenities. They have built festival marketplaces, convention centers, museums, arts and entertainment venues, and stadiums. Urban renewal itself was an effort to improve the urban product, to attract suburbanites back to the city, and it, like many of these efforts, mostly failed. The amenities brought in a few more suburbanites to the city, but those suburbanites did not stay. Consumption items must exert a more profound pull to entice residents back into the city permanently. Urban gentrification these days seems to be driven by the popularity of pre-war housing and industrial loft living, a preference that cities probably did not predict and over which they have limited control.

Some have argued that cities can do well by keeping costs down and services high, by avoiding overtaxing wealthy residents, and by providing a business-friendly, relatively unregulated marketplace.¹⁵² But consider the dramatic rise of New York City since the 1970s. New York has very high construction and development costs, relatively high taxes and regulatory burdens,¹⁵³ and a significant

¹⁵¹ See Glaeser & Gottlieb, *supra* note 140, at 1275.

¹⁵² See, e.g., Making Cities Work, *supra* note 145, at 17.

¹⁵³ N.Y. Bldg. Cong. & N.Y. Bldg. Found., *Rising Construction New York's Costs: Issues and Solutions 1-2* (2008) (reporting that nonresidential construction costs in New York City average sixty percent more than in Dallas, fifty percent more than in Atlanta, and that total construction costs for high-rise office towers can exceed \$400

amount of corruption.¹⁵⁴ Moreover, the city redistributes from rich to poor relatively generously, and according to economic theory—which predicts that people will flee local redistributive activities—this should cause the city to decline.¹⁵⁵ Finally, New York’s schools have only recently shown some slight improvement, and much of its recent population increase comes from the arrival of immigrant, low-wage workers, not highly skilled knowledge workers.

Of course, New York City has benefited from its role as a center for financial innovation, but that path was set over two hundred years ago. And New York has never had the power to regulate the financial industry, at least not directly, so the industry’s location there cannot be said to arise out of a particularly benign regulatory environment. Moreover, New York’s reliance on the financial services industry—which arguably has led to its prosperity—has been recently shown to be short-sighted.¹⁵⁶ Massive federal aid has been needed to buttress the industry; the city would not have been able to save Wall Street on its own.

Our intuition is that good governance matters to local prosperity, but when one examines those cities that have recently become more prosperous and those that continue to experience declining or low rates of growth, other factors loom large: deindustrialization, suburbanization, globalization. The ability for cities and regions to adjust to larger economic and technological trends might be limited. If local good governance is a minimal or negligible contributor to local economic growth, then the competition between localities that might lead to local policy improvements is unlikely to have much effect on growth generally.

per square foot (“psf”) in New York, compared to \$180 psf in Chicago). New York’s overall tax burden places it in the top fourth of big cities. See Gov’t of D.C., *Tax Rates and Tax Burdens in the District of Columbia—A Nationwide Comparison* 14 (2008). New York City residents pay the highest income tax rate in the country. See Posting of Josh Barro to Tax Policy Blog, Tax Foundation, NYC Income Taxes Going from Ridiculous to Ridiculouser, <http://www.taxfoundation.org/blog/show/24013.html> (Dec. 5, 2008).

¹⁵⁴ One commentator observes that New York City’s Department of Investigation—the chief corruption investigator for the city—arrested half the city’s building inspectors, half its plumbing inspectors, and a substantial number of elevator inspectors in the 1990s. Larissa MacFarquhar, *Busted*, *New Yorker*, Feb. 1, 2010, at 57.

¹⁵⁵ See generally Paul Peterson, *City Limits* 167 (1981).

¹⁵⁶ For further discussion of this point, see Schragger, *Rethinking the Theory and Practice*, *supra* note 9.

More importantly for our purposes is that political decentralization absent local economic power has little to recommend it. New York City, Chicago, and other large, global cities—London, Paris, Tokyo¹⁵⁷—have not succeeded in the global marketplace because of their relative degree of legal or political autonomy from central authorities. Nor have they lost ground because they are too centralized—too big—and should be broken apart. They have succeeded because structural changes in the economy now favor large cities that have the kind of labor force necessary to manage a global, transnational economy.

This is worth some elaboration considering that there are fifty different state-local regimes within the United States. If decentralization matters, then states with a more decentralized constitutional regime should be outperforming states with a less decentralized constitutional regime. The few internal national studies of American local government, however, suffer from serious endogeneity problems, and arrive at mixed results.¹⁵⁸ And anecdotally, such state-to-state differences seem unlikely. The sunbelt cities have grown; the rustbelt cities have generally declined—these patterns seem to be regional as opposed to state-specific.

The fiscal federalism literature predicts that the appropriate fiscal discipline will lead to better economic outcomes. As cities become less corrupt, more efficient, and more innovative, they will reap the gains of development. But the urban resurgence does not provide significant evidence for this claim. In particular, there is little evidence that improvement in local service provision, investment in infrastructure, or innovation in local policies has caused the recent growth in these places. More likely, the economic

¹⁵⁷ See Saskia Sassen, *The Global City: New York, London, Tokyo* (1991).

¹⁵⁸ For a discussion of these studies, see Feld et al., *supra* note 1, at 115–26 (noting one study of state or local decentralization found no effect on U.S. GDP but another study did find a relationship). Two studies that found some relationship are: Dean Stansel, *Local Decentralization and Local Economic Growth: A Cross-Sectional Examination of US Metropolitan Areas*, 57 *J. Urb. Econ.* 55, 56 (2005); Nobuo Akai & Masayo Sakata, *Fiscal Decentralization Contributes to Economic Growth: Evidence from State-Level Cross-Section Data for the United States*, 52 *J. Urb. Econ.* 93, 94 (2002). Both studies note that their findings contradict prior studies' empirical results.

growth in these places has caused some improvement in local services.¹⁵⁹

III. UNEVEN ECONOMIC DEVELOPMENT

The decentralization-growth thesis assumes that decentralization will induce government behaviors that will, in turn, favor economic development. The thesis is neutral as to location, as to geography. Presumably every locality or region within a nation can be induced to adopt better policies through the appropriate institutional framework. This geography-blind view holds for neighborhoods, cities, and states, as well as for nations within a community of nations and for global regions—the developed north, the underdeveloped south.

But what if geographically uneven economic development is a deep feature of economies at all scales—local, national, and international? If economic activity occurs in physical clumps, in particular places and not in other places, then there will almost always be a disjuncture between the situs of economic activity and the boundaries of political jurisdictions. The existence of leading and lagging economies will be a long-term feature of the landscape. This Part first describes this characteristic of economies, summarizing some of the features of the “new economic geography.” It then describes some policy repercussions that follow. These repercussions do not point toward more political decentralization but likely toward less.

A. Economic Geography

That economic activity happens in space, and in particular spaces, is obvious: the city is itself a reflection of the fact that economic activity happens in territorial clumps. Indeed, the bulk of economic activity happens in a limited number of places; as I have already noted, almost 30% of U.S. economic activity occurs in ten metropolitan areas. The top ten metropolitan regions in the world

¹⁵⁹ Cf. Richard Deitz & Jaison R. Abel, Have Amenities Become Relatively More Important Than Firm Productivity Advantages in Metropolitan Areas? (Fed. Reserve Bank of N.Y. Staff Report No. 344, Sept. 2008) available at http://www.newyorkfed.org/research/staff_reports/sr344.pdf. (observing that it is difficult for any region to change its relative amenity position over a decade).

account for 2.6% of the global population but over 20% of global economic activity.¹⁶⁰ Why cities exist and, more generally, why economic activity happens in one place but not another are questions with no easy answers.¹⁶¹ What economic geographers have taught us, however, is that there is a spatial regularity to economic processes.¹⁶² That regularity manifests itself in the distribution of economic activity in space—in the fact of economically leading and economically lagging places.

We can restate the central insight of economic geography in the following way: “the world is not flat.”¹⁶³ Maps of the density of economic activity show it is concentrated in very specific places: in cities first; in regions within nations second; and in particular nations within the world third. Economic activity exhibits a core-periphery structure, whereby development happens mostly in particular regions and not at all in others.¹⁶⁴ The industrial belt of the United States and the Ruhr Valley in Germany are examples. Another example is the concentration of technology firms in Silicon Valley. Economic geographers explain that these patterns are a result of the tension between forces that encourage the dispersion of economic activity and forces that lead to the agglomeration of economic activity.¹⁶⁵ Those forces operate discontinuously; growth and decline are non-linear and feedback effects are endemic.¹⁶⁶ Thus,

¹⁶⁰ Richard Florida et al., *Global Metropolis: The Role of Cities and Metropolitan Areas in the Global Economy* 6 (Martin Prop. Inst. Working Paper Series, Mar. 2009), available at <http://www.creativeclass.com/rfcgdb/articles/Global%20metropolis.pdf>.

¹⁶¹ See Mario Polèse, *The Wealth and Poverty of Regions: Why Cities Matter* 16 (2009).

¹⁶² See id.; Krugman, *supra* note 14, at 3; see also Masahisa Fujita et al., *The Spatial Economy: Cities, Regions and International Trade* 2 (1999); Masahisa Fujita & Paul Krugman, *The New Economic Geography: Past, Present and the Future*, 83 *Papers Reg. Sci.* 139, 140 (2004). David Schleicher is the first local government scholar to address this work directly. See David Schleicher, *The City as a Law and Economic Subject*, *U. Ill. L. Rev.* (forthcoming); see also Schragger, *Cities, Economic Development*, *supra* note 9, at 1100–06, 1156 (discussing Jacobs and economic geography); Schragger, *Mobile Capital*, *supra* note 9, at 494–95 (discussing economic geography); Schragger, *Rethinking the Theory and Practice*, *supra* note 9, at 312.

¹⁶³ Combes et al., *supra* note 11, at 365.

¹⁶⁴ See id.; Polèse, *supra* note 21, at 2–3; World Bank, *Reshaping Economic Geography*, *supra* note 21, at 8.

¹⁶⁵ Krugman, *supra* note 14, at 22–30.

¹⁶⁶ Id.

Paul Krugman—who recently won a Nobel Prize for his work—has modeled how a city forms even if individuals and firms start out evenly distributed throughout a geographical space.¹⁶⁷ Adjust the parameters and a uniform distribution of businesses will evolve into a city with two concentrated business districts, or, altering the parameters some more, into a metropolis with four business districts.¹⁶⁸

The central idea is that there is a spatial regularity to economic activity and that it emerges systematically and spontaneously—that spatial economies are “self-organizing.”¹⁶⁹ For example, theorists have observed that cities in an urban system exhibit a fairly stable pattern: the population of any city is inversely proportional to its rank. Thus, the second largest city has half the population of the first largest city; the third largest city has one-third of the population of the largest city; and the tenth largest city has one-tenth of the population of the largest city.¹⁷⁰ There are of course exceptions, but this rank-size rule seems to hold across times and places. Economic activity seems to abide by rules that determine where in space it will occur. The urban hierarchy is a result.¹⁷¹

This self-organization happens at all scales. Thus, we see a core-periphery structure—in which some areas seem to have much economic activity and some have very little—within metropolitan areas, within nations, and across global regions.¹⁷² Importantly, these patterns are not necessarily the result of the innate characteristics of particular places. Rather, the patterns result from small differences in initial conditions. Those initial conditions generate feedback effects that are self-reinforcing, and that create an equilibrium that is quite lopsided.¹⁷³ These feedback effects mean that locations—cities, regions, and nations—with almost identical initial endowments might end up in diametrically opposite economic cir-

¹⁶⁷ *Id.* at 26–27.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 39–43; see also Xavier Gabaix, *Zipf’s Law for Cities: An Explanation*, 114 *Q.J. Econ.* 739 (1999).

¹⁷¹ Krugman, *supra* note 14, at 39–43.

¹⁷² See Combes et al., *supra* note 11, at 130; Polèse, *supra* note 21, at 74–75; World Bank, *supra* note 21, at 81.

¹⁷³ Krugman, *Self-Organizing Economy*, *supra* note 14, at 22–30.

cumstances. Indeed, one region's initial success limits other regions' potential.

Economic geographers predict this kind of development pattern, arguing that because economic growth is self-reinforcing, the gap between economic leaders and laggards will increase dramatically before it decreases.¹⁷⁴ They have also shown—at least on the international level—that the distance from the core of economic activity is negatively correlated with economic growth.¹⁷⁵ Rich places tend to get richer; poor places tend to remain poor. Space and distance matter.

How do geographically poor laggards and rich leaders come to be? Contingency is at work, but also path dependence. Because small initial differences can have huge consequences over the longer term, luck and happenstance play a large role.¹⁷⁶ If Hewlett Packard had initially settled in Oakland instead of Silicon Valley, Oakland might now be the global center of technological innovation. This possibility is consistent with economic geographers' assertion that historical accident may lead to long-run differences in economic outcomes. Firms are willing to pay to be closer to other firms and to larger markets; labor desires the added value that comes with density. And once the ball is rolling, it is difficult to stop. Indeed, the city can become a self-fulfilling prophecy as firms and individuals come to believe that other firms and individuals are planning to settle there.¹⁷⁷

Once a city or other location has established a virtuous cycle, whereby economic development reinforces additional economic development, path dependence kicks in. Economic activity tends to follow existing economic activity.¹⁷⁸ This fact may explain the persistence of urban and national economic hierarchies.¹⁷⁹ It may also

¹⁷⁴ Combes et al., *supra* note 11, at 130; World Bank, *supra* note 21, at 82–83.

¹⁷⁵ Combes et al., *supra* note 11, at 14–15.

¹⁷⁶ Krugman, *supra* note 14, at 35–37.

¹⁷⁷ Paul Krugman, *History Versus Expectations*, 106 *Q.J. Econ.* 651, 654 (1991).

¹⁷⁸ See Krugman, *supra* note 14, at 43–46.

¹⁷⁹ Cf. Christian L. Redfearn, *Persistence in Urban Form: The Long-Run Durability of Employment Centers in Metropolitan Areas*, 39 *Regional Sci. & Urb. Econ.* 224, 224–25 (2009) (proposing that early fixed investments in an urban area partially explain the persistence of urban hierarchies); see generally Donald R. Davis & David E. Weinstein, *Bones, Bombs and Break Points: The Geography of Economic Activity*, 92 *Am. Econ. Rev.* 1269, 1269–70 (2002) (describing increasing returns theories, which consider the effects of path dependence on the distribution of city sizes).

explain why economic laggards have a hard time catching up while economic leaders remain leaders even when exposed to significant external shocks. Moreover, path dependence explains why the economic integration of lagging and leading areas (through free trade regimes) will not necessarily promote development in the lagging areas. What might happen instead is that economic activity will flow even faster into leading areas, causing lagging areas to do worse as trade and labor barriers fall.¹⁸⁰ Those disparities might eventually be smoothed-out, but the initial result would be an increase in inequality.

Institutions *might* play a role in a world of uneven economic development.¹⁸¹ Because of path dependence, it is possible that some formative institutions might make a long-run difference—though the success of those formative institutions may have more to do with luck than design.¹⁸² As noted above, once one region or city gets a head start, it might become difficult to dislodge it because of spatial persistence. Whether institution-makers can identify what has worked and implement it, however, is another question altogether.¹⁸³ Many of the narratives written about successful economies over the long-term read like “just so” stories: by picking a particular time period (during which growth occurs), and ignoring others (in which growth stagnates) one can make claims about the impact of certain institutions.¹⁸⁴ But without knowing exactly what set the economic ball rolling and when, the correspondence of eco-

¹⁸⁰ See World Bank, *supra* note 21, at 10–11; see also Combes et al., *supra* note 11, at 157–59.

¹⁸¹ See Storper, *supra* note 15, at 2037–40, 2045.

¹⁸² Ronald Gilson has argued that differences in state competition law, which have led to a more fluid employment market in California than in Massachusetts, might explain why Silicon Valley has prospered more than Route 128 in Boston. Ronald J. Gilson, *The Legal Infrastructure of High Technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete*, 74 N.Y.U. L. Rev. 575, 577–78 (1999) (arguing that a more fluid employment market produces more start-up ventures).

¹⁸³ This difficulty is noted by Glaeser & Gottlieb, *supra* note 11, at 1014–15 (observing that because small initial advantages can result in large outcomes, a “small push” could create big benefits, but that it is very difficult—if not impossible—to figure out what that small push should be).

¹⁸⁴ See, e.g., Dam, *supra* note 6, at 38–39 (observing, in a critique of the legal origins literature, that France’s economic growth outpaced Britain’s over the period from 1820 to 1998).

conomic development and particular institutions can easily be coincidence.¹⁸⁵

Historical accident, path dependence, spatial persistence—these features of economic geography suggest that uneven economic development is not an aberration but rather a salient feature of economic life. It also suggests that chance and very small perturbations in an existing equilibrium can make a big difference to outcomes. Economic growth does not start from a clean slate whereby each political jurisdiction can act to ensure its own prosperity. Geography is not incidental to economy; it is a key feature of economy.

B. Economic Geography and Decentralization

Economic geography suggests that government policies to improve economic performance are up against a spatial economic structure that is resistant to alteration, or, at the very least, difficult to manipulate.¹⁸⁶ To the extent that policy interventions are possible, however, they tend to point away from decentralization rather than towards it.

There are two reasons for this. First, decentralized, local policy-making will lead to public investments that are unlikely to bear fruit. Not every jurisdiction can be in the vanguard of the economy—just like not every jurisdiction can become a Silicon Valley. In fact, a growing economy is one in which certain areas are fading (rural America for instance) and certain areas are growing (large metropolitan areas). Urbanization itself is a sign of economic activity; it should not be resisted through attempts to “even-out” development or channel it into fading locations.¹⁸⁷

Indeed, decentralized policy-making often leads to competitive races between laggards and leaders—the fiscal federalism literature in fact argues for such competition as a spur to innovation and economic growth. The economic geographers, however, suggest an

¹⁸⁵ See *id.* at 56 (quoting *In Search of Prosperity: Analytic Narratives on Economic Growth* 9–10 (Dani Rodrik ed., 2003)) (“Econometric results can be found to support any and all . . . categories of arguments. However, very little of this econometric work survives close scrutiny . . . or is able to sway the priors of anyone with strong convictions in other directions.”).

¹⁸⁶ See Davis & Weinstein, *supra* note 179.

¹⁸⁷ See World Bank, *supra* note 21, at 5–6 (“[E]conomic growth is seldom balanced. Efforts to spread it prematurely will jeopardize progress.”).

opposite effect: the attempt to bring development where it currently is not may retard overall economic growth, by artificially truncating agglomeration economies.¹⁸⁸ Growth happens in particular places because of the advantages that accrue when people and firms collect in a relatively circumscribed geographic place. The attempt to fight agglomeration by assuming that growth can happen everywhere is misguided, and in fact misunderstands the nature of economic development.¹⁸⁹

Thus, economic geographers tend to reject location subsidies or other spatially targeted investments in infrastructure.¹⁹⁰ These include government attempts to create cities where there were none before, or attempts to bring industry to lagging areas or spread it out among different jurisdictions.¹⁹¹ Put more generally, they tend to favor geographically neutral policy-making.¹⁹² Attempts by cities or regions to jump-start their economies are likely to fail if the city or region is already running against the tide of agglomeration forces. It is therefore better to provide a baseline of services to everyone, foster the economic development that exists, and not discourage the migration of people from lagging areas to leading areas.¹⁹³

Decentralized decision-making, however, is inherently local-favoring: it reinforces the misguided assumption that if we could just get our local policies right, we could grow as large as New York City. That mindset might actually be counterproductive. After repeated failures, it becomes quite rational for lagging areas to give up in such a race and fail to provide even minimally sufficient basic services.¹⁹⁴

The second reason that economic geography points away from decentralization has to do with the provision of local government services. In a healthy economy, the migration of labor from lagging areas to leading areas—from rural to urban areas, from villages to cities, and from smaller cities to mega-cities—should reflect the

¹⁸⁸ See *id.*; see also Schleicher, *supra* note 162, at 47–48.

¹⁸⁹ See World Bank, *supra* note 21, at 5–6.

¹⁹⁰ See *id.* at 25 (“[S]patially targeted interventions should be used least and last.”).

¹⁹¹ See *id.* at 5–6.

¹⁹² *Id.* at 25.

¹⁹³ See *id.*

¹⁹⁴ See Cai & Treisman, *supra* note 132, at 818.

productivity gains that accrue to people and firms because they are participating in agglomeration economies.¹⁹⁵ This is a basic idea of economic geography: that agglomeration is what generates productivity increases and grows economies.¹⁹⁶ And in fact welfare has historically increased as individuals move from the country to the city and as cities have grown.¹⁹⁷ The reason seems to be that economic activity fosters additional economic activity. Jane Jacobs made this argument well before the new economic geographers. She maintained that cities are the engines of national economic growth because they are both economic units in themselves (representative of rising economic activity) and by their very nature foster new kinds of work, thus fostering growth.¹⁹⁸

Getting people into economically vibrant places (like cities) is good, but only if done for the right reasons. This is why economic geographers favor geographically-neutral government policies. If cities are competing over providing public goods or quasi-public goods—schools, clean water, sanitation, medical care, housing—then people might make moves that improve their welfare but that do not increase economic productivity. In other words, mobility should be encouraged to the extent that it reflects a considered choice by individuals to increase their welfare by allowing them to access the benefits of agglomeration economies—more jobs, more opportunities, more innovation leading to more prosperity. Mobility should be discouraged, however, to the extent that it is driven by the unequal provision of basic public services and the individuals' attempts to access those services.¹⁹⁹

The competitive account that underpins the economic argument for decentralization points in exactly the opposite direction, however, for it holds that local jurisdictions should compete to produce

¹⁹⁵ World Bank, *supra* note 21, at 147 (“Movements of capital and labor are driven by the benefits of agglomeration.”); see also Schleicher, *supra* note 162, at 43.

¹⁹⁶ See Schleicher, *supra* note 162, at 3–5 (summarizing this literature). Schleicher suggests additional reasons for why Tieboutian sorting may be inconsistent with growth. If growth depends on agglomeration effects, Tieboutian sorting may result in suboptimal densities, thus undermining those effects.

¹⁹⁷ See Jacobs, *Cities and the Wealth of Nations*, *supra* note 11, at 41–42, 232.

¹⁹⁸ How they do so is described in Jacobs, *The Economy of Cities*, *supra* note 11, at 49–51. Schleicher, *supra* note 162, provides a good summary.

¹⁹⁹ See World Bank, *supra* note 21, at 167–68 (observing that migration in search of “basic schooling and health care . . . is economically inefficient”).

good public services at a low cost. In fact, it celebrates the divergence of public service provision across jurisdictions. That divergence allows people to sort themselves into the jurisdiction (and thus the public-goods package) that they favor. Moreover, this form of Tieboutian, or public-goods sorting, is understood as efficient, for it delivers services to those who want them and allows those who do not want them to move to a different jurisdiction.

But this kind of competition between governments—which may provide for the efficient provision of public services—does not provide for economic growth and might be counter to it.²⁰⁰ Inter-jurisdictional competition and the sorting that follows is problematic to the extent that it generates significant disparities in basic service provision among localities. That is because such differences might induce individuals to move for the wrong reasons—not because they are gaining through economic advancement, but because they are trying to access services that they cannot access in their home jurisdiction.²⁰¹ This may generate a welfare improvement, but it does not foster economic development. Indeed, it suggests that “competition” between decentralized governments in providing services is not the way toward economic growth.²⁰²

The recent World Development Report for 2009 goes out of its way to address the issue of decentralization on just these grounds.²⁰³ The Report, entitled “Reshaping Economic Geography,” adopts policy recommendations based in large part on the work of economic geographers. Throughout, it advocates geographically-neutral policies.²⁰⁴ It then asks parenthetically and somewhat defensively, “Are the policy messages of this Report ‘anti-decentralization’?”²⁰⁵ The formal answer the report gives in a brief four-paragraph sidebar is “no,” but the subtext is clearly “yes.” The Report is quite clear that decentralization is likely to hinder

²⁰⁰ See Schleicher, *supra* note 162, at 43. Schleicher makes the strongest argument along these lines, asserting that Tieboutian sorting is inconsistent with external agglomeration economies. See *id.* I would not go that far, as I am not convinced that external economies work at a significant enough distance.

²⁰¹ World Bank, *supra* note 21, at 167–68.

²⁰² See *id.*; see also Schleicher, *supra* note 162, at 1.

²⁰³ World Bank, *supra* note 21, at 231.

²⁰⁴ *Id.* at 6, 230–59.

²⁰⁵ *Id.* at 231.

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development unless resource allocations and basic public service provision are heavily controlled by central governments.²⁰⁶

C. Amelioration and Pro-City Policies

Aside from a general approach to decentralization, economic geography has some implications for current mid-level policy questions in domestic local government. The first implication is that growth policies are probably less important than amelioration policies. Current efforts in domestic economic development tend to revolve around the question of jobs: how to get them and how to keep them. For most of the twentieth century, local economic development officials have sought to attract industry and investment to underperforming areas and to create incentive zones or other mechanisms to bring work to places without work. In the international arena, we see governments subsidizing industry, creating new industrial cities out of whole cloth, or spreading economic activity across the countryside in an effort to bring work there.

This approach, however, has had little success over time, and might, in fact, be mistaken. Instead, it may be that in those jurisdictions or parts of jurisdictions that are lagging, the best policies for economic development are those that provide good basic services: health care, public safety, education, sanitation. Instead of treating lagging areas as deficient because they do not provide jobs, we should treat them as deficient because they do not provide a sufficient baseline of welfare and the means by which their residents can move to higher opportunity areas. This change in emphasis counsels giving local governments the capacity to provide basic services instead of charging them with fostering a good business environment or attracting investment. In other words, local governments should not have an industrial policy because it is probably unlikely to succeed and it addresses the wrong problem. Concentrating on providing the means for their citizens' mobility might be better.

The change in emphasis from creating jobs in place to bringing lagging residents closer to work relates to a second implication of

²⁰⁶ Id. The defensiveness might be explained by the fact that the World Bank has and continues to promote decentralization in developing economies. The 2009 World Development Report undercuts those recommendations.

economic geography: the need to reduce barriers to entry. The economic geographers' emphasis on eliminating inter-local barriers to mobility is consistent with those policy-makers who emphasize regional approaches to managing economic growth. For example, reformers have argued that for residents of the inner-city, getting to jobs is a central difficulty—this is the so-called “spatial mismatch” that has been amply documented by urban scholars.²⁰⁷ Exclusionary zoning rules that keep lower income people out of growing suburbs, lack of transportation alternatives from city locations to new job centers in the periphery, and sprawling exurban development are seen as barriers to economic advancement.²⁰⁸ City-suburb consolidation has been promoted as one response to these problems; formal regional government is another.²⁰⁹ Both embrace centralization as a mechanism for reducing barriers to mobility.

Indeed, reformist local government law scholars have long criticized the division of metropolitan areas into hundreds of municipalities, both suburban and urban, competing for residents and investment.²¹⁰ The view that the multiplication of jurisdictional boundaries is damaging to the regional economy is consistent with economic geography's emphasis on reducing or eliminating jurisdictional barriers. Moreover, geographically neutral policy-making counsels the regional, or even the national, provision of important public goods like schools. Inter-municipal disparities in the provision of education, public safety, and other municipal services will generate inefficient migration. This position is again consistent with reformist local government law scholarship, which has long advocated inter-local equalization efforts like school finance reform.

²⁰⁷ For the original formulation, see John F. Kain, *Housing Segregation, Negro Employment, and Metropolitan Decentralization*, 82 *Q.J. Econ.* 175, 179–80 (1968).

²⁰⁸ See, e.g., Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 *Stan. L. Rev.* 1115, 1136–37 (1996).

²⁰⁹ See, e.g., David Rusk, *Cities Without Suburbs* 101, 103–04 (3d ed. 2003); Briffault, *supra* note 208, at 1122. For a general treatment, see *Reflections on Regionalism* (Bruce Katz ed., 2000); cf. Frug, *supra* note 114, at 1766 (proposing “a new kind of metropolitan organization . . . that is based on ideas derived from, while modifying, the structure of the European Union”).

²¹⁰ See, e.g., Briffault, *supra* note 208, at 1120–21; Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 *Wash. L. Rev.* 93, 93–94 (2003).

As for specific growth policies, economic geographers tend to be pro-urbanization, arguing that the process of densification has some relation to economic growth.²¹¹ As already noted, a number of economists have argued that cities are a precondition for economic development.²¹² Cities appear to be necessary to the process of generating innovation; the interaction of individuals and firms within and across industries seems to take place more readily and more productively in cities than in rural and other non-urban environments.²¹³ To the extent that metropolitan-area fragmentation leads to sprawl—and many commentators believe that it does²¹⁴—a highly decentralized and fragmented local government system should be discouraged.

Importantly though, this relationship between urbanization and growth may hold only in those places where there are a large number of firms of varying sizes. Jane Jacobs argued that policy-makers should encourage small and medium-sized businesses, as those kinds of organizations will more likely be generators of innovation than large, vertically-integrated ones.²¹⁵ She claimed—as do others—that the drivers of economic growth are “start-ups” and “breakaways” and that an economy that is growing is one that is hospitable to those forms of development.²¹⁶

²¹¹ See Schleicher, *supra* note 162, at 7–8 (observing the anti-agglomerative bias in local government law).

²¹² Jane Jacobs, *The Death and Life of Great American Cities* 156–59 (1961).

²¹³ The reason is external or agglomeration economies, as I have already noted. See generally Edward L. Glaeser et al., *Growth in Cities*, 100 *J. Pol. Econ.* 1126, 1126–27, 1129 (1992); Robert E. Lucas, Jr., *On the Mechanics of Economic Development*, 22 *J. Monetary Econ.* 3, 38–39 (1988) (“What can people be paying Manhattan or downtown Chicago rents *for*, if not for being near other people?”); Jacobs, *Cities and the Wealth of Nations*, *supra* note 11, at 39; Krugman, *supra* note 14, at 33; World Bank, *supra* note 21, at 127–29 (summarizing forms of externalities); Schleicher, *supra* note 162, at 12 (citing Alfred Marshall, *Principles of Economics* 267–77 (8th ed. 1938)).

²¹⁴ See Edwin S. Mills, *Sprawl and Jurisdictional Fragmentation*, *Brookings-Wharton Papers on Urban Affairs* 231, 252–54 (2006); Frug, *supra* note 114, at 1770–72.

²¹⁵ Jacobs, *The Economy of Cities*, *supra* note 11, at 70–79; see also Edward L. Glaeser et al., *Urban Economics and Entrepreneurship*, 67 *J. Urb. Econ.* 1, 4 (2010); Schleicher, *supra* note 162, at 25–26.

²¹⁶ See Jacobs, *The Economy of Cities*, *supra* note 11, at 65–66, 74; see also Gilson, *supra* note 182, at 578–79 (arguing that a more fluid employment market produces more start-up ventures); Edward L. Glaeser et al., *Clusters of Entrepreneurship*, 67 *J. Urb. Econ.* 150, 150 (2010) (finding that employment growth is strongly predicted by smaller average establishment size).

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If one's goal is economic growth, then one might want to be pro-cities and pro-small business. Political decentralization *might* affect the degree to which a polity is pro-city and pro-small business, but that connection is not necessary or obvious. In fact, as earlier noted, the current local government structure in the United States tends to reinforce suburban political dominance insofar as it limits the resources available to cities, blocks annexation, and protects suburban autonomy. The current form of decentralization may also reinforce the power of transnational corporations. The current regime explicitly protects large-scale, cross-border economic activity while encouraging the inter-governmental competition for capital. This combination can lead to the deregulation and subsidization of large, cross-border enterprises—the much-remarked upon “race-to-the-bottom.”²¹⁷

A final lesson from economic geography is that “going it alone” is not an option for traditionally lagging areas.²¹⁸ Their economic development is intertwined with the economic development of the whole, as all economies are spatial systems. On the regional level, this means that local efforts to ensure economic prosperity by becoming self-sufficient or by walling off outsiders are destined to fail. Sheryll Cashin has made just this argument about newly emerging middle-class black suburbs.²¹⁹ She argues that despite gains made by middle-class blacks, the bulk of economic development will tend to follow preexisting patterns. As Cashin points out, in the Washington, D.C. area much wealth is flowing to the Northern Virginia suburbs rather than to the emerging middle-class black suburbs in southeast Maryland.²²⁰ The flow of resources to an already prosperous part of the region is a predictable outcome of economic geography. It is further predictable that black suburbs are likely to lose out as economic growth continues to flow toward existing economic activity.

²¹⁷ See Cai & Treisman, *supra* note 132, at 817.

²¹⁸ See David J. Barron, *The Community Economic Development Movement: A Metropolitan Perspective*, 56 *Stan. L. Rev.* 701, 724 (2003).

²¹⁹ Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 *Cornell L. Rev.* 729, 730, 755–58 (2001).

²²⁰ *Id.* at 755–58.

The experience of black suburbs is an example of the intersection between economic geography and legal geography. Economically lagging places will always exist; they are a feature of self-organizing economies in space. There is no reason, however, that African-Americans or other minority groups need to be overrepresented in such lagging places. There is nothing about such places or such people that entails such a coincidence. Nevertheless, it is no surprise that economically lagging places tend to coincide with the locations of otherwise traditionally marginalized groups.

To be sure, this has not always been the case—the vast migration from rural areas to urban ones stranded many whites in declining places. To the extent that urban poverty has disproportionately afflicted blacks and Hispanics, however, that differential effect is the product of an accretion of institutions, rules, and laws that have reinforced racial, ethnic, and socio-economic segregation. A highly decentralized local government system can create a legal geography that overlaps or coincides with a region's economic geography. But that is quite different from saying that decentralization has a causal connection with economic development. That poor people of a certain race or ethnicity are in poor places is not a product of economic geography itself, but rather a product of how the spatial economic reality has been populated. And that process is emphatically shot-through with law.

IV. WHAT DOES DECENTRALIZATION DO?

This brings us back to the function of the vertical division of powers as it is “institutionalized” by local government law. As argued in Part II, local government law is driven by the developmental demands of local economies. The shifting of government scales through Dillon's Rule and the home rule movement was and is a response to local tax and spending efforts aimed at generating private economic activity. When institutional reformers shift power up or down, they are often attempting to address the political pathologies inherent in the relationship between city and capital, government and private enterprise.²²¹ The current hodge-podge of local governmental powers and constraints is a result. The apparent doctrinal vacillation is a product of the polities' ambivalent atti-

²²¹ See Schragger, *Mobile Capital*, supra note 9, at 485.

tude towards the use of public power to promote and develop private economic resources.²²²

What does this tell us about the relationship between legal institutions and economic growth? Methodologically, it lends force to the endogeneity critique of institutional economics. This critique asserts that legal institutions and economic growth are not conceptually separable and that attempts to treat the spheres of economy and law (or markets and regulation) as independent are destined to fail. Local government law—with its alternating bouts of reform and machine political regimes, centralization and decentralization—is a nice example, for it reinforces the idea that economic development is part and parcel of a legal and political culture, not separate from it. Indeed, it may be that the integration of economy and polity can be most easily appreciated by paying attention to municipal government. As urban scholars have repeatedly pointed out, a sharp distinction between government and business does not hold when one explains urban politics.²²³ The city is often both a product of the amassing of private interests and a tool of those interests. The city's relationship to private asset holders is at the center of the urban political economy.²²⁴ Accordingly, institutions and economies are constituted simultaneously. As Adam Przeworski has written, "Institutions and development are mutually endogenous and the most we can hope for is to identify their reciprocal impacts."²²⁵

Relatedly, the development of local government law undermines the private/public and law/politics distinctions upon which institutionalist accounts of economic development seem to rely. The decentralization-growth literature assumes that markets (private) can be preserved or fostered by governments (public), but it does not tell us how to distinguish these two realms. As is well-known, these categories are not natural.²²⁶ They are contested and redefined with

²²² See *id.*

²²³ See, e.g., Sam Bass Warner, Jr., *The Private City: Philadelphia in Three Periods of Its Growth* 79–80, 206–09 (1st ed. 1968); see also John R. Logan & Harvey L. Molotch, *Urban Fortunes: The Political Economy of Place* 151–52 (1987).

²²⁴ See Stephen Elkin, *City and Regime in the American Republic* 42 (1987).

²²⁵ Przeworski, *supra* note 118, at 185.

²²⁶ See Kennedy, *supra* note 6, at 1.

every act of law-making. Both legislatures and courts are in the business of working out the content of these respective spheres.

Consider for example the question raised in the famous case of *Kelo v. City of New London*²²⁷: Can local governments condemn private property and transfer it to a third party on the basis that the new owners will employ the property more productively? Consider also the issue raised in *DaimlerChrysler Corp. v. Cuno*²²⁸: Can states and localities offer public subsidies that shift tax dollars from local taxpayers to a transnational corporation in order to induce the corporation to settle in the jurisdiction? Or consider the question raised in *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Management Authority*²²⁹: Can local governments favor a publicly-owned monopoly provider of goods and services over private providers?

Answers to these questions often turn on a proprietary/regulatory distinction that is not at all self-evident. The lines that courts draw between government and market entail an allocative decision. There is no “correct” way to disburse the relevant entitlements, at least not one that is independent of social, economic, and political judgments. Indeed, the “market” is being created and recreated all the time—it arises from the “soup”²³⁰ of social, legal, and political life.²³¹

Similarly, the institutionalists’ distinction between “institutions” and “interests” seems to reproduce the distinction between law and politics that has been repeatedly undermined by critical accounts of law. Local government law is again a good illustration for it shows that the vertical distribution of power between states and localities has always served particular interests. As already pointed out, in most cases suburban interests are aided by the current form of local autonomy that is most common in the United States. This is no surprise—wealth and population have been moving to the suburbs for at least seventy-five years. Nonetheless, it is possible for political power to shift. Industrial-era cities exercised certain powers that would be unthinkable today. For example, forcible annexation

²²⁷ 545 U.S. 469, 469, 472–75 (2005).

²²⁸ 547 U.S. 332, 332, 337–38 (2006).

²²⁹ 550 U.S. 330, 330 (2007).

²³⁰ Kennedy, *supra* note 6, at 19.

²³¹ *Id.*

was the rule in most states prior to the mid-twentieth century. Cities could take unincorporated—and some incorporated—territory at will, despite objections from residents of the annexed land.²³² Early twentieth century cities also more routinely engaged in extra-territorial regulation and exercised the power of eminent domain outside their boundaries.²³³ Again, in an era of the ascendant city, these powers were uncontroversial; that fewer cities can exercise them now reflects a shift in the city's economic and political salience.

Relative economic and political status is not permanent, however, so it is not surprising to see new interests emerge and new forms of local-central relations emerge to support those interests. Because power arrangements are not static, the institutions that emerge from those power arrangements are not static either.²³⁴ This holds for the vertical distribution of power as much as any institutional arrangement. For the institutionalist claim to have any traction, institutions and interests must be separable. But they are not.

Finally, the story of local government law lends some ammunition to the law and development skeptics—domestically and abroad. The fact that institutionalized decentralization seems not to have been a factor in the rise of American industrial cities does not tell us that decentralization does not cause or contribute to economic growth more generally. But it does undermine the descriptive claims of those who look to the nineteenth century United States as a model of institutionalized decentralization.

My argument that local economies are more resistant to good governance than many assume is more far-reaching. It is not that institutions or certain public policies *never* matter for growth—they might in both positive and negative ways. But it is not at all clear *how* they matter in light of the unevenness of economic development. The geographic nature of economic growth means that cities

²³² Forcible annexation was the general rule in the nineteenth and early twentieth centuries. See, e.g., *Hunter v. City of Pittsburgh*, 207 U.S. 161, 161–64 (1907).

²³³ See, e.g., *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 60 (1978); *The Merchants' Ass'n of N.Y., An Inquiry into the Conditions Relating to the Water-Supply of the City of New York* 508–09 (1900) (citing statutes related to the extra-territorial use of eminent domain by New York City).

²³⁴ Cf. Rodden & Rose-Ackerman, *supra* note 39, at 1540 (discussing India and the political entrepreneurship that likely followed decentralization efforts and that created a new political equilibrium).

might be able to do things that neoclassical economics predicts they should not be able to do—like redistribute from rich to poor.²³⁵ It also might mean that lagging places can do little to improve their fortunes because of the long-run persistence of geographically concentrated economic activity. Cities or nations might be able to engage in short-term policies that shift development in their direction (for example, by subsidizing the entry of a new industrial plant). But a region's long-term growth may depend on factors that are not within its control.

What are the implications of these observations for the relationship between law and development? The most radical claim would be that legal reform makes relatively little difference to economic development. The law and development skeptics take this view, observing that despite spending billions of dollars on rule of law efforts in the developing world, the gains have been either “usually modest”²³⁶ or “pretty depressing.”²³⁷ As Robert Gordon writes, “most of the Rule of Law projects haven't worked out too well.”²³⁸ As for decentralization efforts in the developing world, Daniel Treisman argues that the choice to “decentralize, in most settings, requires a leap of faith rather than the application of science. To devote hundreds of millions of dollars to persuading others to decentralize, given the current state of knowledge, seems odd to say the least.”²³⁹

More modestly, one might conclude that certain policies will at least not be counter-productive. Whether or not stable institutional settlements can be achieved through rule of law efforts, certain policies might matter along a relatively narrow dimension. The spatial and fiscal health of cities matters because economic innovation seems to happen in cities more than in other places. Urbanization itself appears to be a precondition of economic growth or con-

²³⁵ Cf. Schragger, *Mobile Capital*, supra note 9, at 533 (seeking to explain why cities are able to redistribute contrary to neoclassical economic theory).

²³⁶ Tamanaha, supra note 8, at 13 (quoting Thomas Carothers, *The Rule-of-Law Revival*, in *Promoting the Rule of Law Abroad: In Search of Knowledge* 3, 11 (Thomas Carothers ed., 2006)).

²³⁷ Tamanaha, supra note 8, at 14 (quoting Laure-Hélène Piron, *Time to Learn, Time to Act in Africa*, in *Promoting the Rule of Law Abroad*, supra note 236, at 275, 289).

²³⁸ Gordon, supra note 19, at 445.

²³⁹ Treisman, supra note 25, at 6.

tributes to it, as long as urbanization does not result from the flight away from poor services.²⁴⁰ More importantly, redistributionist policy matters because it ameliorates the inequalities that uneven economic growth generates.

At a minimum, one should have a healthy skepticism that competitive inter-governmental settings will generate good policies that will in turn generate good economic outcomes. Economically lagging places do not exist because they are badly governed; the sometimes-assumed connection between the efficient provision of public goods and economic growth is misguided. The notion that competition will induce growth is far too primitive.²⁴¹ In fact, fragmented local government may retard growth if it is anti-urban, impoverishes human capital, limits mobility, or increases the distance between workers and employers.²⁴² Local industrial policy is likely a mistake. Government should concentrate on providing basic public goods, and those public goods should be provided on a geographically-neutral basis.

These lessons can be applied to developing economies as well. The World Bank's 2009 Development Report—already mentioned—is candid in its recognition that economic growth will be uneven, as the economic geographers describe. By acknowledging the reality of economic concentration, the report implicitly undermines the idea that every locality can achieve economic progress through good local policies. The report instead emphasizes seemingly more modest (though perhaps equally unattainable) goals: the more universal provision of basic goods and the facilitation of cross-border mobility.²⁴³ Growth policy has essentially given way to amelioration and mobility policies.

²⁴⁰ See Jacobs, *supra* note 212, at 213–14; World Bank, *supra* note 21, at 141.

²⁴¹ Schragger, *Rethinking the Theory and Practice*, *supra* note 9, at 317; Schleicher, *supra* note 162, at 60.

²⁴² World Bank, *supra* note 21, at 141–42.

²⁴³ See *id.* at 84–87. One well-known development theorist puts it this way:

“[I]t is not clear that the best way to get growth is to do growth policy of any form. Perhaps making growth happen is ultimately beyond our control. . . . Perhaps we will never learn where it will start or what will make it continue. The best we can do in that world is to hold the fort until that initial spark arrives: make sure there is not too much human misery, maintain the social equilibrium, and try to make sure that there is enough human capital around to take advantage of the spark when it arrives.”

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Does this skepticism mean that society should give up on lagging cities or lagging nations? Not at all. Law matters for many reasons unrelated to economic growth. Law also matters to the extent that it generates a legal geography that overlaps with an economic geography. That relationship, however, is about the distribution of economic benefits, not about creating them in the first place. Governments should thus concentrate on doing the best for their citizens by providing sufficient education, health care, public safety, and sanitation services, regardless of geography, caste, gender, race, or ethnicity. To the extent that political decentralization retards the provision of basic goods along these lines, it should be done away with; to the extent it fosters the provision of basic goods along these lines, it should be encouraged. This approach dispenses with the need to justify all policies by reference to growth when those policies are easily and rightly justified by reference to justice.

Indeed, to the extent that the focus on institution-building in the developing world distracts us from providing basic human goods, it may be damaging to welfare. Investing in constitutions, laws, and good governance is beneficial for many reasons, but those investments only have indirect effects on welfare. And when institutional reforms fail to generate economic results, the emphasis on governance can lead to the view that those in undeveloped economies are simply incapable of learning obvious lessons.

CONCLUSION

This Article began with the proposition that economic growth is highly localized: economic activity arises in particular places and not in others. Urbanization is an economic process; cities are economic facts as much as they are jurisdictional ones. Thus, if we can explain why certain cities or metropolitan regions flourish and others fail, we will have gone a long way toward answering the question of how institutions affect economic growth. In particular, we will be able to say something about whether relative political decentralization has some relationship to a city's rise or fall.

My conclusion is that in the United States political decentralization seems to have little relationship to a city's economic fate. First,

state-local relations have gone through spates of centralization and decentralization. The best that can be said is that there has not been a particularly robust institutional settlement one way or the other. Second, economic growth seems to have preceded institution-making. In general, governance followed growth. In particular, the boom and bust cycles of the 1800s drove much of the reform in American state-local relations. Third, institutional movements to centralize or decentralize political power have always served particular political interests. Sometimes those political interests desire growth and sometimes they do not. There is no reason to believe that growth-related political interests will desire or reinforce decentralization; to the contrary, often they will pursue centralization. Fourth, economic growth and corruption do not seem to be mutually exclusive. At their industrial heights, American cities were arguably as corrupt as they have ever been. Fifth, particular city policies or improvements in local governance do not necessarily lead to economic development. Nor does relative decentralization seem to predict city prosperity. Spatial economies are contingent and path dependent: luck and history both play an outsized role in determining which localities do well and which do poorly. Moreover, spatial economies are inter-related: economic growth in one locality may be the flip side of economic decline in another.

There simply is not a good consensus as to what generates economic growth; to say otherwise is to join the long history of failures of prediction both domestically and abroad. One can argue that “institutions matter”—but how do the institutions come to be and which ones matter? The problems of circularity are endemic and leave one grasping for ultimate causes.

The stakes for lawyers, however, are high. We are told that law and legal frameworks—like the vertical division of political authority—can make a great deal of difference. The rule of law is itself understood as a precondition for economic progress.²⁴⁴ Intuitively this seems to be correct, yet societies flourish despite significant betrayals of the rule of law while others decay despite a long tradition of rule of law values.

²⁴⁴ See Dam, *supra* note 6, at 5.

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At the very least, this difficulty should make us much more modest in our ambitions.²⁴⁵ Political decentralization may have benefits. It may be that locally scaled organizations are more easily governed than giant ones—an idea that has a long pedigree in progressive decentralist thought.²⁴⁶ It is unlikely, however, that decentralized government produces the minimalist, market-augmenting state, nor would such a state be desirable if it were possible. This, however, is a disagreement over values, not a disagreement over what political decentralization is capable of.

²⁴⁵ Cf. Treisman, *supra* note 25, at 6 (concluding that the work's analysis should at least "cast doubt on widely shared assumptions" about decentralization).

²⁴⁶ *The Curse of Bigness: Miscellaneous Papers of Louis D. Brandeis* 109–10, 122–23 (Osmond K. Fraenkel ed., 1934); see generally Richard C. Schragger, *The Anti-Chain Store Movement, Localist Ideology, and the Remnants of the Progressive Constitution, 1920–1940*, 90 *Iowa L. Rev.* 1011 (2005).