

Urban Constitutionalism

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Ran Hirschl, [City, State: Constitutionalism and the Megacity](#) (2020).

Ran Hirschl's *City, State: Constitutionalism and the Megacity* (hereafter, *City, State*) addresses a significant gap in the constitutional law literature. Cities are economically, politically and culturally important and their importance will only grow. (P. 8.) Yet, Hirschl argues, constitutional theory and practice have not kept pace. Constitutional law scholarship does not have the “conceptual language and constitutional categories” (P. 10.) to account for the rise of cities. And constitutional orders typically assign cities a subordinate status, “as ‘creatures of the state’, fully submerged within the Westphalian constitutional framework, and assigned limited administrative local governance authority.” (P. 10.) *City, State* diagnoses this neglect and offers proposals for how constitutional orders can address it.

The Introduction sets the stage for the arguments that follow. Hirschl describes the rise of cities and the policy challenges posed by this rise. Among the most striking trends he identifies is the change in percentage of the world's population who live in cities: “In 1800, 3% of the world's population lived in cities. In 1950, less than 30% did; by 1990 43% of us were city dwellers. By 2019, this proportion has grown to 56%.” (P. 1.) Seventy percent of the world's population is projected to live in cities by 2050. (P. 2.) These raw numbers tell only part of the story. The distribution of growth is uneven: “about 9 of every 10 urban dwellers since 1960 reside in Asia, Africa or Latin America.” (P. 4.) The rise of megacities—defined variously as cities with more than 5 or 10 million—has been similarly vertiginous. In 1950 New York was the only city in the world with a population of 1 million. By 2018, 33 cities had populations of at least 10 million. And studies predict that there will be cities with populations of 50–100 million in the next century. (P. 6–7.) These demographic changes create policy challenges. In today's cities, poverty is concentrated and extreme, public health is threatened, and the environment degraded. (P. 5.) Hirschl further identifies problems that flow from cities' “constitutional non-status,” including deficits in democratic representation and an absence of jurisdictional autonomy. (P. 9.)

With this context set, Hirschl turns in chapter two to flesh out his claim that cities are neglected in constitutional law. He provides a *tour d'horizon* of how cities have been considered in political theory, the social sciences, urban planning and innovation studies, journalism, and international and global law scholarship. He contrasts this vast body of scholarship with the paucity of writing in the field of constitutional law and criticizes the field's focus on the state. Hirschl then turns to describe briefly how constitutions around the world describe cities. He closes the chapter by describing “neo-secessionism”, which he defines as “an explicitly counter-convergent mode of response to various globalization trends, constitutional or otherwise.” (P. 41.) He notes that although neo-secessionist movements around the globe have focused on “the local” they have not identified this concept with the “the urban”, at least in part, because “cities lack the constitutional power to bring their own local interests to the fore.” (P. 48.)

Chapter two describes the subordinate status of cities in the Global North. Hirschl surveys the relevant bodies of positive law in the United States, Canada, Australia and several European countries. He contrasts how the status of cities is debated in litigation in North America with the way that “megacity discussion in Europe is largely taking place in central government and policy making circles.” (P. 101.) Yet despite these differences, argues Hirschl, the constitutional orders of the Global North are united in their neglect of cities.

Chapter three provides a counter-point to chapter two. Hirschl describes innovations in Asia, Latin America and Africa that create constitutional space for cities, and he attributes these changes to the relevant polities' need to respond to rapid changes in their urban environments, their constitutions' amenability to change and specific alignments of

“political power holders, national and subnational governments’ interest.” (P. 104.)

Hirschl finds in Japan, Korea and China examples of megacities being developed “economically and politically, as a means of nationwide modernization, economic transformation, and global branding.” (P. 104.) For example, a series of national government decisions resulted in the Metropolis of Tokyo’s being given the status of a prefecture in 1943. Moreover, several provisions of Japan’s post-war constitution protect the Tokyo Metropolitan Government’s fiscal and regulatory autonomy. (Pp. 105–06.) As a consequence, approximately 82% of Tokyo revenue is generated from local taxation (P. 106) and the metropolis is at liberty to pursue progressive policies that diverge from those of the national government. (P. 107.) Hirschl concludes that the national government, by granting Tokyo a significant measure of constitutionally protected autonomy, has harnessed “the city’s size and stature to stimulate national economic development and enhance the nation’s competitiveness and both regionally and globally.” (P. 108.)

The evidence of cities benefitting from constitutional autonomy elsewhere is mixed. In South Africa, the 1996 post-Apartheid Constitution granted municipal governments in major urban centres significant regulatory and fiscal autonomy. (P. 129.) Municipal governments are further entitled to an equitable share in nationally raised revenue in order to “provide basic services and perform the functions allocated to them.” (P. 130.) Hirschl contrasts the South African case with those of India and Brazil, where, because of confluences of national political factors, the constitutional status of cities has not consistently yielded on-the-ground autonomy. Hirschl closes the chapter by surveying the cases of Buenos Aires, Mexico City, Nairobi, Cairo and Dhaka in order to “illustrate the significance of political shifts in explaining shifts in national governments’ willingness to bolster the constitutional status of cities.” (P. 133.)

Chapter 4 looks at means of enhancing the power of cities, outside of granting them constitutional status. Hirschl first examines how international networks of cities have achieved significant gains in environmental protection by committing their members to climate change mitigation plans (P. 153) and by influencing transnational and international policy. (Pp 153–54.) Hirschl then turns to various cities’ attempts to protect human rights and promote social inclusion. These efforts range from city-level rights charters, such as the *Montreal Charter of Rights and Responsibilities*, to declarations committing cities (e.g., San Francisco) to international rights instruments (e.g., the *Convention on the Elimination of All Forms of Discrimination Against Women*), to the creation of city-level human rights bodies (e.g., New York City’s Commission on Human Rights). (Pp 158–65.) Hirschl concludes the chapter by discussing various urban citizenship initiatives, including municipal identity cards, that aim to recognize the affiliation residents (including undocumented migrants) have with their cities and formalize the ways that cities regulate their everyday lives. (P. 167.) Throughout the chapter Hirschl praises these various attempts to increase the power of cities, while noting that each initiative falls short. Because most cities in the world do not have constitutional status, Hirschl argues, they ultimately cannot wield effective political power.

Chapter 5 offers a variety of ways of rethinking the constitutional status of cities. Some of what Hirschl offers takes the form of concrete proposals. He proposes: (i) redesigning electoral systems to address the systematic under-representation of urban voters (Pp. 179–81); (ii) giving “enhanced political and constitutional voice to more vulnerable residents of megacities in the Global South” (P. 175); and (iii) implementing fiscal equalization measures that would reduce economic inequalities within metropolitan regions. (Pp. 213–19.) Chapter 5 also provides policy diagnoses. For example, Hirschl argues that because cities lack constitutional status—and thus do not have the regulatory capacity to bargain on more equal terms with corporations—they are overly deferential to big business. (P. 183.) In a similarly diagnostic vein, Hirschl argues that global policy challenges, including climate change and economic inequality, can only be effectively addressed if cities have constitutionally guaranteed powers to, for instance, build public housing that is adequate to their populations’ needs (Pp. 192–94) and develop infrastructure that will protect residents from climate change’s most devastating effects. (P. 196.) Hirschl concludes the chapter by challenging theorists to develop constitutional concepts, such as subsidiarity and “community standards,” in order to give metropolitan governments the constitutional powers they need to safeguard the distinctive “super-diversity” (P. 226) that characterizes the modern metropolis.

City, State: Constitutionalism and the Megacity is a magisterial work: bold in its ambitions and sweeping in its coverage. With it, Hirschl has seeded the field of urban constitutionalism. I am confident that as the field flourishes, scholars and practitioners will have occasion, time and again, to draw inspiration from his insights.

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