

# The “Era of the City” as an Emerging Challenge to Liberal Constitutional Democracy

Ran Hirschl\*

Urban agglomeration is one of the most significant phenomena of our time. The figures are striking. In 1900, approximately 150 million people—representing less than 10 percent of the world population at that time—lived in cities. As of 2021, approximately 4.5 billion people, or 57 percent of the world population, lived in cities.<sup>1</sup> In other words, over the last century, the world’s urban population has increased nearly thirtyfold. In recent decades, urbanization has been particularly acute in the so-called Global South. Africa’s urban population has grown from 18 percent (55 million) of that continent’s population in 1960 to approximately 45 percent (600 million) of its overall population today. In absolute numbers, that is an elevenfold increase in a sixty-year span. Over the same period, the Latin American and Caribbean urban population has grown fivefold, from approximately 110 million (49 percent of the region’s population) to approximately 600 million (83 percent), while Asia’s urban population has grown sevenfold from approximately 360 million (21 percent of the region’s population) in the 1960s to a whopping 2.5 billion (55 percent) today.<sup>2</sup> Reflecting this trend, official UN projections suggest that by 2100, the

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Ran Hirschl, University of Texas at Austin, Austin, Texas, United States ([ran.hirschl@austin.utexas.edu](mailto:ran.hirschl@austin.utexas.edu))

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world's hundred largest cities will host a quarter of the planet's population and the world will see the emergence of megacities with 50 million or even 100 million inhabitants, mostly in the Global South. In many Global South megacities, density has already reached near-dystopian levels, with the increased density far outpacing any ability to provide the necessary infrastructure and resources for the population.<sup>3</sup> In short, what has been termed the “urban era” and “the century of the city” marks a major and unprecedented transformation of the organization of society, both spatially and geopolitically.

In this essay, I highlight the near-complete silence of constitutional law and constitutional thought with respect to this critical trend. Of particular concern to liberal constitutional democracy, I argue, is the rise of the urban-rural divide as a key factor in contemporary politics. Fresh thinking about constitutionalism and urbanization, and, more concretely, about the potential role of constitutional design in fostering or mitigating the rural-urban divide, is desperately needed. To that end, in the essay's final part I identify several constitutional design ideas that appear to hold some intellectual promise in thinking creatively about mitigating the urban-rural divide, and about the mounting urban challenge more generally.

## THE DEAFENING CONSTITUTIONAL SILENCE REGARDING URBANIZATION

The rise of the city has caught the attention of leading thinkers across the human sciences. A few examples include Henri Lefebvre's *The Right to the City* (*Le droit à la ville*), Saskia Sassen's account of “global” cities, Paul Krugman's work on economies of scale, Richard Florida's focus on the city as magnet for the creative classes, and Manuel Castells's studies of urban social movements. Prominent public intellectuals have penned best-selling popular books—such as Benjamin Barber's *If Mayors Ruled the World*—that point to the rising significance of cities, and perhaps also to the desirability of urban power as an alternative to sluggish or bureaucratic national governments.<sup>4</sup> Echoing a similar sentiment, Rahm Emanuel, the former mayor of Chicago, argues in his recent book *The Nation City* that cities stand at the center of innovation and effective governance in a variety of areas, from education to environmental policies, and may therefore be successful drivers of change in an “age of dysfunction” in American politics.<sup>5</sup>

However, very little of this vision and energy has extended into canonical constitutional thought. Although we live in the century of the city, we are still captives

of constitutional structures, doctrines, perceptions, and expectations that were developed with the nation-state in mind, and that developed during a longer historical process that saw the sovereign city become increasingly subjugated to those states. Most current constitutional orders, and virtually all those adopted prior to the great urbanization of the last few decades, treat cities—including some of the world's most significant urban centers—as “creatures of the state,” fully submerged within a Westphalian constitutional framework and assigned limited administrative local governance authority.<sup>6</sup>

American cities, for example, lack constitutional personality and are at the mercy of state governments. Doctrines formulated in the nineteenth century (such as Dillon's Rule and the Cooley Doctrine) and endorsed by the U.S. Supreme Court in the early twentieth century continue to govern the constitutional status of American cities today (such as *Atkin v. Kansas* [1903]; *Hunter v. City of Pittsburgh* [1907]).<sup>7</sup> American constitutional jurisprudence on city power therefore represents a very small fraction of the country's federalism case law. Meanwhile, America's dated yet rigid constitutional structure equips states with the powers to draw electoral district boundaries in a way that frustrates urban representation and, most importantly, allows state legislatures to “preempt” or override city legislation.<sup>8</sup> Several states have also enacted laws that prohibit cities from joining international city networks. Cities and urbanization are largely absent from the voluminous American federalism literature, too. As Heather Gerken writes, “American federalism scholars have typically confined themselves to states, the only subnational institutions that possess sovereignty.”<sup>9</sup>

Lacking any direct constitutional powers, cities and municipalities in Canada, to give another example, exist only as bodies of delegated provincial authority, entirely dependent on provincial legislation for their power and sources of revenue. Large Canadian cities, the frontline delivery agents of Canadian multiculturalism and social integration—hallmarks of Canada's constitutional order—are governed by a constitutional order that dates back to 1867 (at which time metro Toronto's population was less than fifty thousand; today it is 7.5 million).<sup>10</sup> In this reckoning, “municipal institutions” are creatures of provincial governments, controlled exclusively by provincial authority (through section 92 of the Constitution Act, 1867) alongside “charities,” “eleemosynary institutions” (nonprofits), “shops,” and “saloons and taverns.”<sup>11</sup> Constitutional jurisprudence follows suit. A recent landmark Supreme Court of Canada ruling, *Toronto (City) v. Ontario (Attorney General)* (2021), for example, confirmed a provincial

premier's constitutional authority to slash in half the number of city council seats, even while a municipal elections campaign was already underway.<sup>12</sup>

Recent studies further suggest that in first-past-the-post electoral systems (not only in the United States, U.K., Canada, and Australia, but also in India, Pakistan, Bangladesh, and Nigeria—anticipated sites of some of the world's most dramatic urban growth in the coming decades), urban centers tend to be underrepresented, mainly as a result of the historic concentration of left-leaning voters in cities and the correspondingly wide margin of progressive candidate wins in urban electoral districts compared to more moderate right-leaning candidate wins in rural districts.<sup>13</sup>

The increasing concentration of huge populations in fewer but larger urban centers affects democratic governance in multiple ways. Dated yet hard-to-change electoral systems do not reflect the changing spatial distribution of voters, resulting in the systemic underrepresentation of entire populations. Growing demands on municipal authorities to deliver goods and services, such as affordable housing, transportation, education, healthcare, and public safety, that go beyond the authorities' control or capacity reflects both a democratic deficit and the chronic dependence of cities on both higher levels of government and big business. Fierce competition among cities for scarce resources may ensue. What is more, cities stand at the forefront of mounting challenges related to governing in conditions of "superdiversity"—providing for large newcomer populations, handling high human density, and managing tensions arising from the close proximity between the wealthy and the poor, often living just a couple of bus or subway stops away from each other. All these challenges are tackled within the confines of rigid national constitutional frameworks that seldom recognize cities as a full-fledged order of government and, in some instances, proactively subordinate city government.

As the stark gap between the centrality of cities in society and the near-complete constitutional silence on urban power widens, ambitious cities and city leaders have advanced notions such as local democracy; international city networks; human rights cities; sanctuary cities; environmentally friendly cities; and, in some instances, "urban citizenship" schemes—often in the form of residency-based certificates or identification cards that allow their holders to access essential city services. For the most part, these initiatives have had a socially progressive undercurrent, addressing policy areas such as air quality, energy-efficient construction, affordable housing, alleviating poverty, enhanced community representation, and accommodating policies toward refugees and asylum seekers. In a

similar vein, urban activists have occasionally been able to advance considerable city-level reforms in the areas of public housing and rent control,<sup>14</sup> or participatory budgeting and direct democracy.<sup>15</sup> However, with few exceptions, these city initiatives are *constitutionally* toothless if and when they meet resistance from other levels of government.<sup>16</sup>

## THE RESURGENCE OF THE URBAN-RURAL DIVIDE

Perhaps the most consequential political effect of extensive urbanization is the rise of the urban-rural divide. In an increasing number of countries, the economic realities of “left-behindness”—that is, gaps in access to quality education and healthcare, differences in social mobility, and perceived or real exclusion of the geographic and cultural hinterlands—foster a growing social divergence between rural and urban populations, and oftentimes strong “us vs. them” narratives. In a considerable number of countries (mostly but not exclusively in the Global South), rural areas are home to indigenous populations or members of historically marginalized and disenfranchised ethnic groups. The rise of indigenous movements in several Latin American countries, such as in Mexico, Bolivia, Ecuador, and Peru, is closely associated with a rift between the center and the periphery, the “haves” and “have-nots.” These movements have reacted against systemic patterns of exploitation and neglect of the periphery and its residents. This tension manifests itself in voting patterns and electoral politics, and features centrally in debates about distributive and restorative justice more generally. Meanwhile, in African countries such as Kenya, Ethiopia, and Nigeria, center-periphery tensions have long been associated with ethnic politics, clientelism, and unequal access to collective goods. While correlated with other factors such as education, occupation, age, and mobility, over the last two decades, and in an increasing number of polities in the West and elsewhere, the spatial dimension of political ideologies—that is, attributes of space and place—have proven a key factor in predicting support for traditional, nationalist, and socially conservative ideological platforms (often enjoying larger support in rural areas), or alternatively, support for liberal, cosmopolitan, and socially progressive worldviews (often enjoying a larger following in urban areas). Considerable ideational and political differences are closely associated with the urban-rural divide.

To be sure, the urban-rural divide has preoccupied political thinkers for millennia. Concern for demographic imbalances led the Athenians to link urban and rural areas together in “tribes” in order for the city and the hinterlands to balance

each other out, and later to develop concrete strategies to manage intersections between the urban and the rural people.<sup>17</sup> Likewise, one of Thomas More's explanations for the stability of society in the fictitious *Utopia* (1515) was the fact that its fifty-four cities were all the same size, suggesting an implicit critique of the already large city of London, which in the early sixteenth century overpowered the rest of the country. Classical works of political theory, from Plato's *Republic* to Niccolò Machiavelli's *The Prince* to Marx and Engels's *The German Ideology*, address the tension between town and country. Similarly, Jean-Jacques Rousseau, Johann Gottfried von Herder, and Ralph Waldo Emerson despised the city and glorified the pastoral countryside.

In contemporary popular culture as well, the city and its relations with its surroundings is a common theme. Clark Kent (aka Superman) was born on the planet Krypton, educated in the American countryside, and resides in the fictional American city of Metropolis. Fritz Lang's now-classic film *Metropolis* is a gigantic futuristic city-state. Ridley Scott's *Blade Runner* depicts twenty-first century Los Angeles as a daunting, robotized megalopolis. In Truman Capote's *Breakfast at Tiffany's*, Holly Golightly is a country girl turned New York socialite who is overtaken by the big city's temptations. And in the young adult novel and subsequent series of films *The Hunger Games*, the protagonist Katniss Everdeen leads residents of systematically deprived nonmetropolitan districts to resist a tyrannical and manipulative central authority based in the fictitious capital city of Panem. These are but a few examples among many.

Focusing predominantly on advanced industrial societies, contemporary social science has offered a number of explanations for the significance of place as an emerging cleavage in contemporary politics, ranging from the culmination of historical demographic processes originating in the Industrial Revolution, to globalization and its spatially differential economic effects, to the tendency to seek out like-minded people, leading to geographic self-sorting by political preference.<sup>18</sup> Much of the pertinent literature addresses Bill Bishop's important book *The Big Sort*, which posits, in a nutshell, that individuals sort themselves by choosing a community to live in that reflects their lifestyle and personal values.<sup>19</sup> Some urban studies theorists speak about the "mobile class" and the "stuck class," determined by people's ability to relocate in response to changing market conditions and economic incentives.<sup>20</sup> Other accounts suggest that place may affect political attitudes, in particular with respect to social and cultural diversity; everyday exposure to multiculturalism and immigration may lead to greater openness toward the Other, while lack of exposure leads to greater suspicion.<sup>21</sup>

To be sure, the urban-rural divide may be an oversimplification of what some scholars prefer to term the “rural-urban continuum.”<sup>22</sup> However, even if visualized as a continuum rather than a dichotomy, the political salience of urban-rural differences is undisputed. In most countries where right-wing populism has risen as a significant political force, voters in urban areas are more likely to favor a more liberal, cosmopolitan, or socially progressive set of values and policy preferences relative to the national median voter position, while voters in nonurban areas are more likely to support traditionalist or socially conservative worldviews. Examples are numerous. The recent evidence from the United States has been widely discussed, but is worth revisiting. In the 2016 U.S. presidential election, for example, Democrats in large metro areas received 67 percent of the vote, while in small metro areas they got 52 percent, and in rural areas, 43 percent. In the South and interior West, the percentages were 54, 44, and 32 respectively to these locations. The urban-rural divide was even greater in the 2020 presidential elections. The Democrats’ margin of victory in large metro areas increased compared to 2016; the margin of support for Republicans was the largest in rural areas, followed (in declining order) by rural areas with small towns, small metro areas and deep suburbs, and by midsize metro areas or suburbs of big cities. The data show that in nearly half of counties with fewer than one hundred people per square mile, Joe Biden won about 30 percent of the vote on average. In the 170 counties with more than two thousand people per square mile, he won about 55 percent on average.<sup>23</sup> The divide was also clearly evident within single states in the tightly contested elections in Georgia, Pennsylvania, and Michigan. A critical gap emerges between the state-based Electoral College system and state-based federalism more generally, and increasingly salient intrastate county-by-county divisions along urban-rural lines.

The urban-rural divide has taken hold north of the border too. Extensive longitudinal studies suggest that it has become a key factor in Canadian politics, manifesting itself in federal elections since the early 1990s.<sup>24</sup> Similar patterns are evident in many other settings worldwide, whether federal (for example, in Austria or Switzerland, where residents of Vienna or Zürich consistently prefer parties, platforms, leaders, and worldviews to the left of the national or cantonal median voter) or unitary (for example, in Israel, where Tel Aviv is often referred to as *medinat Tel Aviv*, or “the state of Tel Aviv,” describing the city’s cosmopolitan, liberal, and socially progressive character, in contrast with much of the rest of the country). Even in Hungary, Poland, and Turkey—three of the most

exhaustively studied examples of democratic backsliding and constitutional retrogression—the rural-urban divide is glaringly evident. In Hungary, an explicitly anti-Orbán candidate won the Budapest mayoral election in 2019. Similarly, most support for the six-party opposition alliance that tried unsuccessfully to topple Orbán in the 2022 general elections came from the urban intelligentsia in Budapest and in other major cities. Residents of Istanbul have elected an anti-Erdoğan mayor in two separate elections, despite the president’s warnings to his supporters that losing Istanbul would mean losing Turkey. And in Poland, while Rafał Trzaskowski, the liberal mayor of Warsaw, made it to the second, winner-take-all round of the country’s 2020 presidential election, he narrowly lost to incumbent president Andrzej Duda—a leading figure associated with the populist right-wing Law and Justice Party—in what Polish media described as a “cities against countryside” election.<sup>25</sup>

As the world urbanizes at an extraordinary rate, and economic globalization and political populism trends persist, the rural-urban gulf is not likely to fade away. It may even intensify. And it is evident that neither extensive urbanization nor the political manifestations of the resurging rural-urban divide tend to observe national borders. Whether in the United States, the U.K., Canada, Brazil, India, Hungary, Poland, the Philippines, Turkey, or Israel, the spatial dimension of political preferences is significant. To be sure, each polity and constitutional setting presents its own unique sociopolitical, economic, demographic, and cultural circumstances, which in turn determine how the urban-rural divide plays out. However, the key point remains: in an increasing number of countries, the urban-rural divide has become one of the main vectors behind challenges to democratic governance and to its supporting constitutional order.

So far, liberal constitutional theory has failed to turn its attention to this crucial trend. Across different polities, traditional subnational unit boundaries do not capture new demographic trends and locality-based divisions. An alarming disconnect has emerged between federalism theory (and constitutionalism’s spatial imagination more generally) and the reality of geographically localized concentration of worldviews and political identities. Yet with very few exceptions, the burgeoning comparative constitutional design literature addressing phenomena such as democratic backsliding, constitutional capture, illiberal constitutionalism, and threats to judicial independence and the rule of law has failed to respond to the significance of place as an emerging cleavage in contemporary politics. The time is ripe to pay closer attention to the spatial dimension of constitutional



governance, and the territorial distribution of powers and its impact on the rise of anti-establishment political resentment.

## NEW CONSTITUTIONAL DESIGNS?

Several areas of constitutional law and theory appear to hold some intellectual promise in thinking creatively about mitigating the urban-rural divide. Formal recognition of the urban-rural divide in national constitutions, along with an explicit commitment to addressing it, is an intuitive response to complaints that certain areas have been left behind. Several national constitutions, virtually all of which are in the so-called Global South, have experimented with this kind of recognition, with varying degrees of success. Brazil's 1988 constitution was the first to address matters discussed in Lefebvre's *Right to the City*, such as urban development, self-governance, and collective ownership of city assets.<sup>26</sup> It was followed by the adoption of the City Statute in 2001. An array of additional constitutional provisions further protect rural land, rural property, and the rights of rural area dwellers, with Article 194(2) establishing "uniformity and equivalence of benefits and services for urban and rural populations."<sup>27</sup> In India, the 73rd and 74th constitutional amendments of 1992 aimed to enhance the constitutional autonomy of local government and articulate a vision of decentralized power and responsibility through the provision of constitutional status to urban centers. Interestingly, the Indian constitution distinguishes between rural settlements (addressed in the 73rd Amendment) and cities (74th Amendment), thereby formally recognizing the difference between, yet equality of, rural and urban areas. In general, the 73rd Amendment has been more effective at promoting the political voice in and of rural areas (including by increasing the representation of women in rural areas, for example, through village councils) compared to the impact that the 74th Amendment has had on the status of cities. Arguably, the most expansive constitutional protection of local government on offer today is featured in the 1996 South African constitution, where a nexus of provisions, notably chapter 7 (sections 151–64) of the constitution, guarantee local government standing and empower municipalities' planning and fiscal autonomy.

A second set of constitutional design ideas concern territorial decentralization of government institutions in an attempt to preempt and diffuse, at least at the symbolic level, animosity toward a distant, supposedly elite-controlled center of power that has lost touch with the people and places it is supposed to understand

and govern.<sup>28</sup> In addressing the rural-urban divide in the United States, for example, a handful of legal scholars have suggested that a more decentralized, region-based notion of federalism may be required to diffuse the concentration of power in Washington.<sup>29</sup> South Africa's core government institutions, to pick another example, are spread around the country: the national assembly sits in Cape Town, the government in Pretoria, the Constitutional Court in Johannesburg, and the Supreme Court of Appeal in Bloemfontein. In a similar vein, the German Federal Constitutional Court—arguably the strongest political institution in postwar Germany and one of the strongest national apex courts in the world—is based in Karlsruhe, a midsized city of three hundred thousand in southwest Germany, some 450 miles away from the capital, Berlin. To achieve decentralization of this nature, some national constitutional orders grant several cities that are geographically spread throughout the country a constitutional status that is equivalent to that of a region of a subnational unit. Of the seventeen constitutionally recognized subnational units in South Korea, for example, eight are designated “first-level” cities, spread throughout the country (such as Gwangju in the southwest, Busan and Ulsan in the southeast, Daejeon and Sejong—as of 2012, the *de facto* administrative capital—in the center, and Seoul in the north). To be sure, such territorial spread of constitutional institutions and constitutional status does not address many of the deep economic and sociological root causes of the urban-rural divide. However, at least at the symbolic level, a multiplicity of constitutionally recognized centers in a given polity may have some mitigating effect on hinterland residents' sense of estrangement and animosity toward a single powerful “center,” whether real or perceived.

Another intriguing avenue for reform is in creative electoral system designs that take into account the spatial dimensions of politics. One option to consider is joint or mixed urban-rural electoral districts. Initial arguments about the advantages of such districts, and how they function, have already been put forth. For example, in their quest for an optimally inclusive electoral and party system, Frances Rosenbluth and Ian Shapiro advocate for larger electoral districts that encompass both rural and urban areas, and include more diverse populations to enhance the competitiveness of congressional elections.<sup>30</sup> Another route for reform along the same lines would be the introduction of mixed member proportional systems, versions of which are currently used in Germany, New Zealand, Thailand, South Korea, and the Scottish and Welsh assemblies. Essentially, this system provides an amalgam of local district-based first-past-the-post system and polity-wide

proportional representation. Another intriguing idea in this context is an electoral system termed “rural-urban proportional representation” (RUP). In a RUP system (as advanced by the think tank Fair Vote Canada), proportional representation exists across the map, but representation is structured differently in urban areas than it is in rural areas.<sup>31</sup>

One of the obvious divisions between the urban and the rural is in the degree of human density. An interesting possibility in this context is to allow people living in dense inner city neighborhoods or remote rural areas to have additional political power over specific areas of policy, such as education, healthcare, sanitation, transportation, and connectivity, that have a particular connection to extremely high or extremely low density conditions.<sup>32</sup> We can plausibly speculate that these measures, when applied to policy issues that are directly affected by very high or very low density, hold some potential in alleviating alienation in both poor, densely populated city neighborhoods and left-behind, sparsely populated rural areas. The idea of density-based enhanced voice is also likely to increase pressure on elected officials to pay attention to and allocate more resources for addressing the grievances of those whose quality of life and range of opportunities are heavily affected by conditions of density.<sup>33</sup>

A fourth approach to this challenge draws on the idea of measured deference to local traditions and preferences in interpreting constitutional norms, while keeping the core constitutional framework and set of values intact. It draws inspiration from principles of subsidiarity and from jurisprudential notions such as “community standards” developed in Anglo-American constitutional law, and the notion of “margin of appreciation,” which features in international human rights law and in contemporary pan-European constitutional rights discourse.

For example, the emerging pan-European constitutional order is based on balanced accommodation of national differences within a unified supranational order. In the realm of private law, a multiplicity of legal traditions within a fully functional, unified constitutional order is common. (Civil law-based private law exists to varying degrees in Quebec, Scotland, Louisiana, and Puerto Rico, to name but a few examples.) In addition to the many federal constitutions that commonly assign separate and joint legislative authority along national/subnational boundaries, constitutional orders around the world assign special status to ethnicity (such as in Ethiopia, Lebanon, and Bosnia and Herzegovina), or to linguistic specificity (such as in Belgium and Switzerland), often in association with designated territorial boundaries, and always in tandem with general principles of

constitutional law. Likewise, a host of modern constitutions carve out partly autonomous jurisdictional enclaves within a general constitutional framework—from the recognition and accommodation of customary law in the constitution of South Africa to the recognition and accommodation of indigenous traditions in the constitutions of Bolivia and Ecuador. As concrete evidence about the formation and significance of place-based identities keeps accumulating, thinking about integration of the rural-urban divide into a pluralized notion of constitutional law is certainly a design possibility to consider.

A closely related way to think creatively about better representation for urban and rural interests is to draw on principles of so-called nonterritorial federalism. Unlike classical federalism, in which representation is territory based, in nonterritorial federalism, certain communities and interests that are geographically spread across a given polity may be granted fixed, quota-based representation or autonomy over community-defining issues. Nonterritorial federalism is usually thought of as a response to multiethnic, multireligious, and multilingual tensions, offering secure representation to different constituent groups in major decision-making bodies. While far from an ideal solution, in part due to its tendency to ossify the lines of distinction that define the represented groups (ignoring the messier reality of intersecting and overlapping identities), nonterritorial federalism has the potential to add new dimensions of representation in deeply diverse societies. In New Zealand, for example, the Maori have a reserved quota in the 120-member national parliament. Belgium features a mix of territorial and nonterritorial representation, with Flemish-, Walloon-, and German-speaking communities given autonomy over core language and education policies. Brussels, Belgium's capital and a bilingual enclave within the monolingual Flemish region, is governed through a consociational model that guarantees the representation and rights of the city's Dutch-speaking minority (approximately 15–20 percent of the city's population).<sup>34</sup> A similar logic could be applied to address certain rural-specific or city-specific interests that get lost due to systemic patterns of rural or urban underrepresentation in national and subnational legislatures.

A fifth promising direction for using constitutional design to think creatively about mitigating the rural-urban divide concerns fiscal federalism. Specifically, we can envision an adaptation of the concept of equalization—commonly deployed for redistributive and standardization purposes among subnational units—being used to address the urban-rural divide, and possibly also

intrametropolis socioeconomic gaps. In its common guise, fiscal equalization aims to mitigate inequalities in the revenue/expenditure ratios of “have” and “have-not” subnational units for reasons of solidarity, distributive justice, and national standardization. Considerable disparities between subnational units may undermine the sense of solidarity and collective responsibility that federalism relies upon. Such disparities may also have considerable consequences for the realization of certain core commitments, such as education and healthcare. This theory suggests that principles of responsible government entail a duty to ensure roughly equal provision of public services throughout a given polity’s territory.<sup>35</sup> As some national subunits within the polity are likely to be in better economic shape than others (due, for example, to predetermined geographical and environmental conditions, availability of natural resources, demographic characteristics, and/or availability of employment opportunities), fiscal transfers among subunits are warranted inasmuch as they help equalize or standardize the provision of basic services across the polity.

Fiscal equalization is constitutionally entrenched and commonly implemented in dozens of polities.<sup>36</sup> Germany, for example, employs an elaborate constitutional equalization system designed to reduce inter- and intra-regional fiscal gaps between its federal states (or *Länder*). The actual equalization effect on “have-not” *Länder* has been very significant. In 2020, for example, each of the former East German *Länder* had lower self-generated financial capacity than all but one of the former West German *Länder*. Even the most well-off former East German *Länd*, Brandenburg, was 16.3 percent lower in its financial capacity than the national preequalization average. By contrast, eight of the ten former West German *Länder* had financial capacities that were at least 97 percent of the national equalization index. The data for 2020 indicate that, as a result of equalization, the financial capacity of Bavaria (the wealthiest *Länd*, itself once a consistent recipient of equalization transfers) was reduced from 121.5 percent to 108 percent. On the other hand, Bremen (the least well-off *Länd* in 2020) went from a fiscal capacity of 71.8 percent of the equalization index to a percentage that was just about the national average postequalization, while Berlin (Germany’s largest and most diverse city) went from a financial capacity of 74.6 percent of the equalization index to 97.7 percent.<sup>37</sup> Additional mitigation of fiscal capacity gaps between urban and rural areas is achieved through an intricate, constitutionally warranted system of intra-*Länd* distribution aimed at equalizing have and have-not gaps within subnational units.

Another intriguing approach centers on economic and social rights. Canonical constitutional theory discourse concerning these rights tends to focus on guaranteed “minimum core” arguments that emphasize the availability of basic social goods.<sup>38</sup> What tends to be overlooked is the distinctive spatial, on-the-ground conditions that make the fulfillment of these basic goods structurally unattainable. Among the commonly acknowledged multipliers of social and economic disadvantage in rural areas are lack of access to quality healthcare and education, and a lack of roads and transport (especially public transit) connecting rural areas to regional centers. Unsurprisingly, urban-rural disparities in health outcomes persist.

A recent study of voting patterns in France, for example, found that radical-right parties and candidates perform well in areas where locals’ access to services and opportunities is compromised, in turn leading to economic grievances and anti-establishment impulses.<sup>39</sup> Another recent study commissioned by the government of Australia found considerable gaps in access to healthcare between urban centers and rural settings in that country. Consequently, life expectancy in the country decreased as remoteness increased, for both men and women, and total disease burden rate in remote and very remote areas was 1.4 times higher than in major cities. Potentially preventable hospitalization was 1.8 times higher in remote areas and 2.6 times higher in very remote areas, than in cities.<sup>40</sup> A recent study by Israel’s Ministry of Health shows that Israelis living away from the country’s central urban hubs are severely disadvantaged when it comes to their healthcare options.<sup>41</sup> Long travel times to reach essential healthcare services in Chiapas, Mexico’s poorest state (and home of the rural Zapatista movement), has had a critical impact on healthcare outcomes in the area.<sup>42</sup> This finding is indicative of a persisting urban-rural gap in access to healthcare throughout Mexico.<sup>43</sup> Similar trends are evident in other developed countries.

It is hardly surprising that residents of rural areas are more likely than their urban and suburban counterparts to say that access to good doctors and hospitals is a major problem in their community.<sup>44</sup> This is the kind of dissatisfaction that eventually becomes resentment and then resistance.<sup>45</sup> Though few would argue that differences in access to healthcare, stark as they are, are a major root cause of the urban-rural divide, the healthcare issue demonstrates how lack of government responsiveness to social problems that exist in rural areas can lead to rural resentment. From a constitutional theory standpoint, such systemic inequalities and their considerable political consequences are often concealed by the dominant

discourse around minimum entitlements. A complementary discourse of economic and social rights that goes beyond the core minimum directive to consider real equal access to core services, not merely their availability per se, may have a long-term mitigating effect on the sense of alienation and “left-behindness” in rural areas.

Preliminary as the ideas discussed here may be, taken together, they offer a repertoire of constitutional design possibilities that hold some promise in mitigating the resurging rural-urban gulf.

## CONCLUSION: A CALL FOR FRESH THINKING

While there has been a burst of novel thinking about urbanization, cities, and the urban-rural divide throughout the human sciences, little of this innovative energy has extended into the world of constitutional theory. This oversight may well reflect a broader shortcoming of constitutional discourse when it comes to territorial or spatial governance. Modern constitutionalism’s spatial or territorial imagination, conceived in the pre-urbanization era, is predicated on an overwhelmingly statist (or Westphalian) outlook that conceives of the nation-state and its established subnational units (whether states, provinces, regions, Länder, or cantons) as legitimate constituent units, and sees cities and local governments, more generally, as submerged within this constitutional framework and therefore as deserving limited governance authority.<sup>46</sup> New demographic or spatial formations (such as the “urban,” “suburban,” or “rural”) do not map neatly onto the classical national or subnational conception of the constitutional territorial ordering, and so tend to be overlooked or altogether dismissed—despite their overwhelming real-life significance.

Either way, urban agglomeration and its various social, political, and economic consequences is a burning policy challenge. The current figures are mind boggling and the issue is set to gain even greater prominence in the coming years as urbanization marches on. In the face of unequivocal evidence from across the human sciences, the silence of constitutional thought with respect to the mounting urban challenge is striking. Fresh thinking about constitutionalism and urbanization, and, more concretely, about the potential role of constitutional design in fostering or mitigating the rural-urban divide, is desperately needed.

### NOTES

<sup>1</sup> “Urban Population (% of Total Population),” World Bank, [data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS](https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS).

<sup>2</sup> See United Nations, Department of Economic and Social Affairs, *World Urbanization Prospects: The 2018 Revision* (New York: United Nations, 2019).

- <sup>3</sup> In Dhaka and Manila, to pick two examples, citywide density is approximately 120,000 people per square mile. This is five times denser than New York City, seven times as dense as Hong Kong, twelve times as dense as Paris, sixteen times Toronto, and nearly thirty times Melbourne. If the entire world population (7.7 billion) lived in similar density conditions as Dhaka or Manila, it would fit within an area the size of Oklahoma. By stark contrast, in Nunatsiavut, an Inuit semi-autonomous area in Newfoundland and Labrador, Canada, the density is 0.08 people per square mile—over 1.5 million times less dense than Dhaka! And sixteen and seventy-five times, respectively, less dense than Alaska (1.5 people per square mile) and Wyoming (6 people per square mile)—the United States’ two least dense states.
- <sup>4</sup> Benjamin R. Barber, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (New Haven, Conn.: Yale University Press, 2013). See also Vishaan Chakrabarti, *A Country of Cities: A Manifesto for an Urban America* (New York: Metropolis Books, 2013); Bruce Katz and Jennifer Bradley, *The Metropolitan Revolution: How Cities and Metros Are Fixing Our Broken Politics and Fragile Economy* (Washington, D.C.: Brookings Institution Press, 2013); and Edward Glaeser, *Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier* (New York: Penguin Books, 2011).
- <sup>5</sup> Rahm Emanuel, *The Nation City: Why Mayors Are Now Running the World* (New York: Knopf, 2020).
- <sup>6</sup> For a full account of these trends, see Ran Hirschl, *City, State: Constitutionalism and the Megacity* (New York: Oxford University Press, 2020).
- <sup>7</sup> Formulated by jurist John Dillon in the 1860s, Dillon’s Rule (applied in forty U.S. states) requires that all exercise of city power be traced back to a specific legislative grant of authority. The presumption is that cities do not have legislative authority unless it is explicitly granted to them through an identifiable piece of legislation. The so-called Cooley Doctrine stipulates that in “home rule” jurisdictions (ten U.S. states) an article of amendment in the state constitution grants cities and municipalities law-making power to govern themselves as they see fit, provided they comply with state and U.S. constitutions. In practice, however, even in states that follow the home rule principle, legislatures can (and often do) override municipal laws with ordinary legislation.
- <sup>8</sup> See Richard Briffault, “The Challenge of the New Preemption,” *Stanford Law Review* 70, no. 6 (2018), pp. 1995–2027; and Richard C. Schragger, “The Attack on American Cities,” *Texas Law Review* 96, no. 6 (2018), pp. 1163–233.
- <sup>9</sup> Heather K. Gerken, “Foreword: Federalism All the Way Down,” *Harvard Law Review* 124, no. 1 (November 2010), pp. 4–74, at p. 21.
- <sup>10</sup> Two of Canada’s largest cities—Toronto and Vancouver—are, respectively, the world’s first- and third-most diverse cities, with 49 percent of Toronto’s population and 41 percent of Vancouver’s population born outside of the country.
- <sup>11</sup> Constitution Act, 1867, Section 92(7) & Section 92(9) (Can.).
- <sup>12</sup> *Toronto (City) v. Ontario (Attorney General)*, [2021] SCC 34 (decision released Oct. 1, 2021). For a broader discussion of the (non)status of cities in the Canadian constitution, see Ran Hirschl, “The Urban Gap,” in Kate Puddister and Emmett Macfarlane, eds., *Constitutional Crossroads: Reflections on Charter Rights, Reconciliation, and Change* (Vancouver: UBC Press, 2022), pp. 472–490.
- <sup>13</sup> See, for example, Jonathan Rodden, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide* (New York: Basic Books, 2019).
- <sup>14</sup> The ongoing popular rent control initiative in Berlin (Germany’s largest, poorest, and most diverse city) is a prime example. To date, public support for aggressive rent control measures in the city, including seizure of the assets of private housing companies (those with three thousand rental units or more), have been blocked by the federal government and by the Federal Constitutional Court. In 2021, for example, the court decided (2 BvF 1/20, Order of March 25, 2021), in a nutshell, that the Berlin Act governing the rent cap for residential premises was void, as the city authorities had overstepped their regulatory authority vis-à-vis applicable federal regulations.
- <sup>15</sup> See, for example, the Budget Participatif initiative in Paris, modeled after a similar program in the Brazilian city of Porto Alegre.
- <sup>16</sup> Local pressure for city constitutional empowerment stands a much higher chance to succeed when it is well aligned with the interests and strategic considerations of national political power holders. The 2017 constitutional transformation of Mexico City from a federal territory to a fully fledged state within the Mexican confederation is a prime example.
- <sup>17</sup> See Charles Nathan, “The Urban/Rural Divide in Athenian Political Thought,” *American Political Science Review* 116, no. 4 (2022), pp. 1490–1502.
- <sup>18</sup> The social science literature on the subject is too vast to cite. For a few recent examples, see Suzanne Mettler and Trevor Brown, “The Growing Rural-Urban Political Divide and Democratic Vulnerability,” *ANNALS of the American Academy of Political and Social Science* 699, no. 1 (2022),



- pp. 130–42; James G. Gimpel, Nathan Lovin, Bryant Moy, and Andrew Reeves, “The Urban–Rural Gulf in American Political Behavior,” *Political Behavior* 42, no. 4 (December 2020), pp. 1343–68; Gregory J. Martin and Steven W. Webster, “Does Residential Sorting Explain Geographic Polarization?,” *Political Science Research and Methods* 8, no. 2 (April 2020), pp. 215–31; Christopher Lizotte, “Where Are the People? Refocusing Political Geography on Populism,” *Political Geography* 77 (May 2019), pp. 139–41; Will Jennings and Gerry Stoker, “The Divergent Dynamics of Cities and Towns: Geographical Polarisation and Brexit,” in Gavin Kelly and Nick Pearce, eds., *Britain beyond Brexit* (Chichester, U.K.: Wiley, 2019), pp. 155–66; Andrés Rodríguez-Pose, “The Revenge of the Places That Don’t Matter (and What to Do about It),” *Cambridge Journal of Regions, Economy and Society* 11, no. 1 (March 2018), pp. 189–209; and Italo Colantone and Piero Stanig, “Global Competition and Brexit,” *American Political Science Review* 112, no. 2 (May 2018), pp. 201–18.
- <sup>19</sup> See Bill Bishop (with Robert G. Cushing), *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart* (Boston: Houghton Mifflin Harcourt, 2008).
- <sup>20</sup> See, for example, Richard Florida, “The Geography of America’s Mobile and ‘Stuck’ Mapped,” CityLab, Bloomberg, March 5, 2019, [www.bloomberg.com/news/articles/2019-03-05/mobile-vs-stuck-who-lives-in-their-u-s-birth-state](http://www.bloomberg.com/news/articles/2019-03-05/mobile-vs-stuck-who-lives-in-their-u-s-birth-state).
- <sup>21</sup> See, for example, Rahsaan Maxwell, “Cosmopolitan Immigration Attitudes in Large European Cities: Contextual or Compositional Effects?,” *American Political Science Review* 113, no. 2 (May 2019), pp. 456–74.
- <sup>22</sup> See, for example, Dante J. Scala and Kenneth M. Johnson, “Political Polarization along the Rural–Urban Continuum? The Geography of the Presidential Vote, 2000–2016,” *ANNALS of the American Academy of Political and Social Science* 672, no. 1 (2017), pp. 162–84; and Daniel T. Lichter and David L. Brown, “Rural America in an Urban Society: Changing Spatial and Social Boundaries,” *Annual Review of Sociology* 37 (August 2011), pp. 565–92.
- <sup>23</sup> See Dan Kopf, “The Rural–Urban Divide Is Still the Big Story of American Politics,” Quartz, November 6, 2020, [qz.com/1927392/the-rural-urban-divide-continues-to-be-the-story-of-us-politics/#](https://qz.com/1927392/the-rural-urban-divide-continues-to-be-the-story-of-us-politics/#).
- <sup>24</sup> David A. Armstrong II, Jack Lucas, and Zack Taylor, “The Urban–Rural Divide in Canadian Federal Elections, 1896–2019,” *Canadian Journal of Political Science* 55, no. 1 (March 2022), pp. 84–106.
- <sup>25</sup> *Polityka*, quoted in “Poland’s Duda Narrowly Beats Trzaskowski in Presidential Vote,” News, BBC, July 13, 2020, [www.bbc.com/news/world-europe-53385021](http://www.bbc.com/news/world-europe-53385021). The BBC article refers to a headline in *Polityka*, one of Poland’s popular news magazines: “Young against Old, Cities against Countryside.”
- <sup>26</sup> Articles 182–183, Constitution of the Federative Republic of Brazil, October 5, 1988.
- <sup>27</sup> Article 194(2), Constitution of the Federative Republic of Brazil, October 5, 1988. Brazil’s federal Ministry of Cities, established by leftist president Lula in 2003 to advance the fight against urban poverty and decay, was abolished in early 2019 by the right-wing populist president, Bolsonaro.
- <sup>28</sup> For an elaboration of such an argument in the U.S. context, see David Fontana, “America’s Hidden Crisis of Power and Place,” *Washington Post Magazine*, August 2, 2021, [www.washingtonpost.com/magazine/2021/08/02/americas-hidden-crisis-power-place/](http://www.washingtonpost.com/magazine/2021/08/02/americas-hidden-crisis-power-place/).
- <sup>29</sup> Yishai Blank and Issi Rosen-Zvi, “Reviving Federal Regions,” *Stanford Law Review* 70 (June 2018), pp. 1895–993; and David Fontana, “Federal Decentralization,” *Virginia Law Review* 104 (2017), pp. 727–95.
- <sup>30</sup> Frances McCall Rosenbluth and Ian Shapiro, *Responsible Parties: Saving Democracy from Itself* (New Haven, Conn.: Yale University Press, 2018), pp. 24, 64, 239.
- <sup>31</sup> “Rural–Urban Proportional: PR Tailored for Canada’s Geography,” Fair Vote Canada, [www.fairvote.ca/rural-urban-proportional](http://www.fairvote.ca/rural-urban-proportional). The RUP system is partly based on the electoral system that Alberta and Manitoba used provincially early in the twentieth century. There, cities had proportional representation in multimember ridings with a single transferable voting system, while rural ridings were single member. A deficiency with the old Alberta–Manitoba approach was that it left rural voters out of proportional representation. RUP fixes this problem by adding rural, top-up (or “adjustment”) seats, common in Northern European electoral systems, notably Sweden, Denmark, and Iceland, as a means for addressing spatial underrepresentation, whether urban or rural.
- <sup>32</sup> See United Nations, *World Urbanization Prospects*. It should be noted that density-based criteria are already commonly deployed in various areas of the law, such as occupational and workplace safety licensing, minimum space requirements for persons held in correctional facilities, zoning codes, social assistance law (for example, entitlement to public housing), old-age homes, and the regulation of seasonal labor migration living conditions.
- <sup>33</sup> I discuss the idea of density-based representation in Hirschl, *City, State*, pp. 197–206. Initial experimentation with density-sensitive representation matrices is already endorsed by several national constitutions worldwide. In Nepal, to pick one example, a constitutionally protected (and non-challengeable

for twenty years) corrective of 10 percent in seats allocation is granted to sparsely populated provinces where the proportional space share far exceeds the overall population share.

- <sup>34</sup> Consociationalism commonly entails cooperative, power-sharing governance mechanisms agreed upon among elites in ethnically divided polities and aimed at protecting the core interests of all groups. See, famously, Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, Conn.: Yale University Press, 1977). In this particular context, over the last two centuries, Brussels, historically a Dutch-speaking city, has undergone what is commonly referred to as the “Francization of Brussels.”
- <sup>35</sup> See, for example, Robin Boadway, “The Theory and Practice of Equalization,” *CESifo Economic Studies* 50, no. 1 (March 2004), pp. 211–54; and Robin Boadway, “Intergovernmental Transfers: Rationale and Policy,” in Ehtisham Ahmad and Giorgio Brosio, eds., *Handbook on Multilevel Finance* (Cheltenham, U.K.: Edward Elgar, 2015).
- <sup>36</sup> The United States is an exception among leading federal countries. Here, fiscal equalization lacks formal constitutional recognition and is only applied sporadically and indirectly.
- <sup>37</sup> Federal Ministry of Finance, *Financial Relations between the Federation and the Länder on the Basis of Constitutional Financial Provisions 2021* (Berlin: Federal Ministry of Finance, February 11, 2022), pp. 52–55, [www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press\\_Room/Publications/Brochures/financial-relationships-federation-2021.html](http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/financial-relationships-federation-2021.html).
- <sup>38</sup> For elaborations of the minimum core approach, see David Bilchitz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (Oxford: Oxford University Press, 2007); and Katharine G. Young, “The Minimum Core of Economic and Social Rights: A Concept in Search of Content,” *Yale Journal of International Law* 33 (2008), pp. 113–75.
- <sup>39</sup> Paulina Patana, “Residential Constraints and the Political Geography of the Populist Radical Right: Evidence from France,” in “Revisiting Populism,” special section, *Perspectives on Politics* 20, no. 3 (September 2022), pp. 842–59.
- <sup>40</sup> “Rural and Remote Health,” Australian Institute of Health and Welfare, last updated 2022, [www.aihw.gov.au/reports/rural-remote-australians/rural-remote-health/contents/access-to-health-care](http://www.aihw.gov.au/reports/rural-remote-australians/rural-remote-health/contents/access-to-health-care).
- <sup>41</sup> Adrian Filut, “Israelis Living in Rural Areas Are Severely Disadvantaged in Terms of Healthcare, Report Says,” CTech, Calcalist, February 27, 2020, [www.calcalistech.com/ctech/articles/0,7340,L-3797175,00.html](http://www.calcalistech.com/ctech/articles/0,7340,L-3797175,00.html). According to the report, urban centers Tel Aviv and Haifa had 2.4 hospital beds per thousand people, while the country’s rural northern district only had 1.4 beds per thousand people.
- <sup>42</sup> Fernando Carrillo-Villaseñor, Zachary Fowler, Ellie Moeller, Lina Roa, Valeria Macias, Rachel Koch, Sebastián Mohar, et al., “Access to and Essential Surgical Care in Chiapas, Mexico: A System-Wide Geospatial Analysis,” *World Journal of Surgery* 45 (February 2021), pp. 1663–71.
- <sup>43</sup> Jennifer J. Salinas, Soham Al Snih, Kyriakos Markides, Laura A. Ray, and Ronald J. Angel, “The Rural–Urban Divide: Health Services Utilization among Older Mexicans in Mexico,” *Journal of Rural Health* 26, no. 4 (Fall 2010), pp. 333–41.
- <sup>44</sup> See, for example, Clair Tran, “For Rural Americans, Healthcare and Hospitals Can Be Far Away,” CityLab, Bloomberg, December 17, 2018; Onyi Lam, Brian Broderick, and Skye Toor, “How Far Americans Live from the Closest Hospital Differs by Community Type,” Pew Research Center, December 12, 2018, [www.pewresearch.org/fact-tank/2018/12/12/how-far-americans-live-from-the-closest-hospital-differs-by-community-type/](http://www.pewresearch.org/fact-tank/2018/12/12/how-far-americans-live-from-the-closest-hospital-differs-by-community-type/).
- <sup>45</sup> See, for example, Katherine J. Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (Chicago: University of Chicago Press, 2016).
- <sup>46</sup> For a development of this argument, and a critique of the “spatial blindness” of much of contemporary constitutional theory more generally, see Hirschl, *City, State*; and Ran Hirschl and Ayelet Shachar, “Spatial Statism,” *International Journal of Constitutional Law* 17, no. 2 (April 2019), pp. 387–438.

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Abstract: Extensive urbanization is one of the most significant demographic and geopolitical phenomena of our time. Yet, with few exceptions, constitutional theory has failed to turn its attention to this crucial trend. In particular, the burgeoning constitutional literature aimed at addressing phenomena such as democratic backsliding, constitutional retrogression, and populist threats to judicial independence and the rule of law has failed to respond to the significance of place as an emerging cleavage in contemporary politics. An alarming disconnect has emerged between constitutionalism’s overwhelmingly statist (or Westphalian) outlook and the reality of geographically localized concentration of worldviews, policy preferences, and political identities. In this essay, I identify urban agglomeration and the accompanying resurgence of the urban-rural divide as posing a critical challenge to liberal constitutional democracy, and argue that the time is ripe to pay closer

attention to the spatial dimension of constitutional governance and its impact on the rise of anti-establishment political resentment. To that end, in the essay's final part I identify several areas of constitutional law and theory that appear to hold some intellectual promise in thinking creatively about mitigating the urban-rural divide, and about the mounting urban challenge more generally.

Keywords: urbanization, cities, urban-rural divide, constitutional theory, constitutional design