Cities, Subsidiarity, and Federalism

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Introduction

My aim here is to use the city as an analytic category, a lens through which to examine the principle of subsidiarity and the justification of federalism. I will argue that two powerful justifications for subsidiarity seem as if they should be mutually supporting, but in fact pull us in different directions with respect to the justification of particular institutional strategies for realizing autonomy for distinct groups. I conclude by drawing out some implications of my analysis for the justification of federalism. I begin by explaining the ideas of subsidiarity and federalism, and explaining my chief aims more fully, before turning to cities to advance my analysis.

Subsidiarity and Federalism

Subsidiarity, when applied to politics, counsels that decisions be made at the lowest feasible scale of organization. As a principle, the idea admits of several distinct formulations, and is often taken to be consonant with federalism.[1] Consider the case—although doing so will first require clarification of what is meant by 'federalism', and then reflection on why subsidiarity might be

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1 Indeed, one recent survey finds subsidiarity "at the heart of federalism" (Josselin and Marciano 2004), although that may be more rhetorical flourish than sober assessment. Daniel Elazar suggests a tension between federalism and the historical purpose of subsidiarity, as it originated in Catholic doctrine, to "soften hierarchy by vesting and protecting the powers of its lower levels" (Elazar 2001, 42). In contrast, federalism is often framed as a challenge and alternative to hierarchical structures of authority, asking us to think in terms of "'orders' not 'levels' of government, each of which is sovereign in its own competencies" (Norman 2006, 77). Elazar overstates the tension, however: subsidiarity may well have been articulated in Catholic doctrine for this purpose, but plausible formulations of the principle are entirely consistent with – and indeed, supportive of – federalism thus understood. Indeed one of the earliest rationales for federal arrangements seems surprisingly consonant with the later Catholic doctrine, yet without any sense of hierarchy as being fundamental to political life. After elaborating the fundamentally symbiotic understanding of human associations that grounds Johann Althusius's account of federalism, Thomas Hueglin characterizes this as pointing "to a subsidiary organization of political power: the more limited associations submit themselves to the broader ones only to that degree which is necessary and useful to fulfill the purpose for which the broader association has been established" (Hueglin 1978, 36).

thought of as a complementary idea.

We can usefully distinguish, as several scholars have,[2] between *federalism* as describing a normative commitment to non-unitary territorial political arrangements, and *federal systems* or *federal arrangements* as descriptive categories subsuming particular ways of realizing federalism, such as federations, confederations, leagues, and other kinds of unions that involve territorially variegated structures of authority. Under federal arrangements, powers and responsibilities are distributed, by constitution or treaties, between a central authority and smaller territorial authorities, and the latter have more than merely administrative functions: they possess distinct governments with autonomous legislative and executive powers. The latter condition is constitutive: a state with highly decentralized administrative apparatus is not a federation if regional authorities are merely administrative conveniences, possessing no independent legislative and executive authority.

Scholars have found in Western political thought several distinct rationales for federalism: facilitating harmonious and mutually supportive relations between the several vital spheres of human association (Althusius, Montesquieu); preserving liberty against authority, or worse, tyranny, while also enjoying the security of a larger state (Montesquieu, the American Federalists); the enhancement of democratic virtues and their exercise, by bringing power closer to the people (Tocqueville); and securing peace between peoples and republics (Kant, Mill).[3] Among one tradition of scholarship, federalism is chiefly about limiting government excesses and promoting efficient service provision. For others, particularly comparative political scientists and some theorists, federalism is often considered as a promising way to address significant group differences that play out territorially, such as national, ethnic, and linguistic identities concentrated within a particular geographic region.[4] In some cases, groups with territorially distinct identities have their own civic associations and governing institutions, and might find themselves considering union with other groups. The stories of American and Canadian federation roughly fit this narrative. In other cases, whether by legacies of conquest or past treaties, a distinctive group finds itself within a broader political union, and may seek more autonomy, recognition, or redress for

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2   See Watts (2002), following King (1982), and also consider Hueglin and Fenna (2006, esp. chs. 2 and 4).

3   On these antecedents see Winthrop (1976), Hueglin (1999), Weinstock (2001), and Föllesdal (2010).

4   In my judgement, Levy (2007) is the first normative-theoretic effort to take both of these traditions seriously in thinking through justifications for federalism, although Föllesdal's (1998) careful treatment of subsidiarity is also a unified analysis in this sense.

past injustices.[5]

Now, if you think that many political issues typically matter at different spatial scales and for different constituencies, and if you further believe that political decisions ought generally to be made as close as possible to those most directly and persistently affected by them and who have a legitimate claim to exert influence over those decisions – which is to say, you affirm subsidiarity as an attractive ideal – then you will likely also affirm federalism as a rough approximation of that ideal. Issues of local and regional concern are dealt with by states or provinces (or länders, or cantons, etc.), while issues of broader import are left to the central authority.

A reasonable approximation, perhaps, but federalism, as typically studied and practiced, is insensitive to a glaringly obvious feature of the world. Cities are ubiquitous to every human civilization, and they are vital to the culture and economies of existing sovereign states. Cities and their surrounding regions are the spatial scale at which a great many people experience the consequences of political decisions most directly. Yet cities are rarely given their due in existing federal arrangements, and are rarer still in scholarly treatments of either federalism or subsidiarity.

I am interested in the relationship between cities and subsidiarity. In exploring that relationship, I hope to cast some light on what may at first blush seem to be a curious, even paradoxical property of this principle: implementing subsidiarity under conditions of social complexity and diversity will typically require coordination and oversight at broader scales of

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5   The territorial condition is useful for distinguishing federalism from other ways of accommodating difference, particularly those that have no clear territorial dimension, such as group-differentiated rights schemes or various consociational arrangements. On group-differentiated rights in multinational and multicultural societies, see Kymlicka (1996), who has voiced considerable scepticism about federalism as a viable approach in just these settings (1998); on consociational arrangements, see Lijphart (1977), (1985), and (2004). Norman (2006, 77-79) provides a succinct overview of the distinction. For my purposes here I need not distinguish the various ways in which the electoral and administrative structures of federal systems vary—for instance, the many distinctions evident between "parliamentary" or "executive" federalism versus federal systems with separation of legislative and executive functions and powers (see, e.g., Watts 1989). Nor do I worry much about the distinctions (prominent especially in U.S. studies but also apparent in comparative research) between cooperative, dual, competitive, or coercive features of various federal arrangements (see, e.g., Kincaid 1990; Inman and Rubinfeld 1997), or the various dimensions of asymmetry – i.e. of spatial scale, population, degrees of autonomy, special rights – that characterize various federal systems. In practice, efforts at precise categorization of federal systems tend to be confounded by the messiness and fluidity of actual political institutions, but analytic clarity is certainly possible, and helpful: again, see Hueglin and Fenna (2006). Finally, on this point of historical complexity: I will not be engaging with the rich and growing body of historically informed empirical work in comparative federalism that takes path dependence seriously, e.g. Aroney (2006) and Broschek (2011).

organization. Moving authority closer to those most affected will, to be effective, typically require authority applied at some distance from those directly affected. Thus, to the degree that subsidiarity mandates decentralization of authority, efforts to implement that mandate will generally require counterbalancing that pulls authority back towards a recognizable center, or at the very least toward overarching levels of authority.

I say that this property of subsidiarity may seem *prima facie* paradoxical, but it comes as no mystery to those who study various federal arrangements, and the many ways in which groups can and do coordinate to regulate common property and provide public goods. One of the great insights in ongoing research on complex polycentric systems has been to show that the debate between centralization and decentralization is often miscast. The really interesting questions tend to be about what gains and costs attend (de)centralization for which sorts of goods, at which scales; how benefits are harnessed, and costs contained, through coordination and cooperation across multiple and often-overlapping spatial and institutional scales.[6] While decentralization is certainly not synonymous with federalism, we should probably expect something similar to be true of federal systems more broadly. Still, I will suggest that, while uncontroversial among social scientists, this property of complex polycentric systems may have frustrating implications for any normative-theoretic justification and application of subsidiarity, in particular for the justification of federalism. Perhaps 'frustrating' is too strong; but it certainly complicates one's justificatory efforts. Or so I shall argue.

This suggestion may seem curious to those who study federalism, as well as to those who look at particular implementations of the subsidiarity principle, such as in the European Union. These scholars study politics and law *as they are*, and so the question of justifying particular institutional arrangements and legal principles is rarely foremost in their minds. When it does surface, the question of legitimacy is normative, to be sure, but often largely empirical—studying 'legitimacy deficits' in the European Union, for instance.[7] In this literature, philosophers and theorists are often cited in passing, but deeper moral-philosophical justifications are not typically on the agenda.

6   I refer here to Elinor and Vincent Ostrom's longstanding Workshop in Political Theory and Policy Analysis at Indiana University, and the rich bodies of work that have either emerged from, or been informed by, that research group—see, e.g., Ostrom and Parks (1987), and Ostrom (2003) and (2012). The concept of *accountable autonomy*, developed by Archon Fung (2006) to examine how local participation can be effectively integrated into broader regulative structures, also reflects this sophisticated approach—on this more shortly.

7   e.g. Banchoff and Smith, eds. (1999); on this see a helpful review by Föllesdal (2006).

For most political theorists, however, moral justification looms large. Are there decisive moral reasons for federal rather than more unitary arrangements? for particular federal forms? What are the moral grounds for favouring subsidiarity as a guiding principle in designing and evaluating institutions? Can a principle of subsidiarity justify federalism? particular federal arrangements? If not, how ought such justifications to proceed? These are the questions that motivate me here.

A Curious Absence of Cities

Before making my case, I should justify my accusation above: if political theorists and philosophers pay too little heed to the city, then this is even more apt a concern about scholars of federalism and subsidiarity.[8]

Theorists in sociology, geography, and urban studies have long been preoccupied with the city, exploring themes – power, citizenship, inequality, exclusion – that are of great interest to political philosophers and theorists.[9] Political theorists and philosophers, while less attentive to the city than their colleagues in other disciplines, do pay heed on occasion, although interest has in the past ebbed and waned.[10] In studies of federalism, however, and certainly in the practice of federal

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8   One of the great scholars of federalism, Daniel Elazar, did, however, address urban themes on several occasions, most notably Elazar (1967) and (1975).

9   The literature here is vast and diverse, but very roughly, we could align a great many contributions around two centers of attraction: Marxist scholars, on the one hand, and more radically critical scholars of a postmodern orientation, on the other. Classic contributions from the first camp include Lefebvre (1968), Castells (1972), and Harvey (1973). In the latter, far more diverse and cacophonous camp, we might notice Soja (1989), Isin (1992), and Roy (2011), to name but a few. Other important contributions fit less easily into this mapping: Sennett (1970), Katznelson (1982), Smith (1994), Mitchell (2003), Amin (2006), Sassen (2008), Imbroscio (2010), Fainstein (2010), MacLeod (2011)—again, to name only a few important works drawn from a vast body of scholarship.

10 Here the literature is more manageable in scope, although quickly becomes less so if we include the many political theorists and philosophers who have attended to moral questions about community, and who are then often drawn to the fabric of city life to explore such themes as, for instance, civic education and neighbourhood schools (Walzer 1983), possibilities for inclusive and effective local deliberation (Fung 2006), race, class, and power in housing and education (Fiss 2003, Hayward 2000), the privatization of public space (Kohn 2004), and the civic consequences of sprawling suburban developments (Williamson 2010). Those who have looked explicitly at the city to illuminate political-theoretic and related moral-philosophical questions include Haworth (1966), Dagger (1981), Young (1990), Ryan (1997), Bickford (2000), King (2003) and (2010), Meagher (2007), Leeuwen (2010), Shapiro (2010), Williamson (2010), Bell and de-Shalit (2011)—again, not an exhaustive list, and drawn from a literature that is slowly but steadily growing.

politics, cities are typically an afterthought or complication: they are the neglected stepchildren of both federal politics and scholarship.

Think of any political system that is recognizably federal in structure: how many have formal, durable provisions that recognize the city or municipality as a distinct level of government, with considerable autonomy – comparable to a Canadian province, for example – to collect taxes and other revenues, and to legislate a range of laws and policies particular to the city and its surroundings?

Exceptions here prove the rule. There are a smattering of formally recognized capital cities and urban regions such as Addis Ababa, Berlin, Buenos Aires, Brasília, Brussels, the capital territory of Delhi, Moscow, and Washington DC. We can find a few historically or economically significant cities distinguished in federal constitutions, such as Dire Dawa in Ethiopia, Saint Petersburg in Russia, and the old Hanseatic city of Bremen and its port city Bremerhaven, which together comprise a distinct (if topographically awkward) federal state in Germany. For the most part, however, existing federations are overwhelmingly the descendants of the Westphalian moment in European history,[11] imagining the sovereign territorial state as variegated along ethnic and linguistic cleavages and historical patterns of conquest, settlement, and economic activity. Aside from highly urbanized capital regions, cities are rarely recognized as a significant part of those geographic patterns.

Thus, unsurprisingly, scholarship and policy debates mirror these territorial and imaginative realities. While it is true that local and regional government feature prominently in certain academic literatures and legal debates about certain federal systems (largely in public economics and related work in political science and policy studies), those studies – usually of fiscal decentralization and public services[12] – rarely imagine the city as a coherent, historically durable spatial and imaginative scale of civic life and political organization. Indeed when this literature looks specifically to local and metropolitan governance, it is more often than not concerned with patchworks of jurisdictions that subsume and surround existing urban centers. These debates tend

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11 This is an historical over-simplification for the sake of a pithy label: there was no 'moment' of the sovereign territorial state so often associated with the peace at Westphalia, and the territorial and imaginative architectures of those states were well-established long before the legal principles that emerged after 1648. On this see, generally, Spruyt (2006).

12 See, e.g., Buchanan (1950); Tiebout (1961); Oates (1968) and (1999); Chubb (1985); Weingast (1995); Inman and Rubinfeld (1997); Bardhan (2002); Rodden (2006); Berry (2008); Weingast (2009).

to recognize municipalities and urban regions, not *cities* as such.[13]

Beyond this vast but specialized and often very technical literature, scholarship on federalism is by and large preoccupied with the sovereign territorial states of modernity. The single great exception is the burgeoning literature on the European Union as itself a species of federation,[14] rooted in shared principles of subsidiarity[15] and proportionality. In countless studies and entire journals[16] devoted to federal politics, the abiding focus is on the legal and legislative features of sovereign federal states and, increasingly, of broader associations, such as the EU. Formal theoretical work on decentralization and federalism has attended to the structure of incentives involved in devolution of authority from a central power to territorial subunits,[17] and there is growing attention in normative political theory to the moral dimensions and justifications of federal arrangements.[18] Here again, however, the dominant geographical and imaginative scale is the sovereign Westphalian state.[19]

Given that subsidiarity and federalism are often taken as complementary, and given that cities have been a durable and vital part of human civilization through the ages, it is tempting to amend these historical oversights by arguing – as some city charter and regional secession movements have, and as Weinstock might be thought to imply in his analysis[20] – that cities, or perhaps municipalities, ought to be formally recognized as a distinct level of authority within many

13 A selective sampling from this vast and multifaceted literature yields Ostrom, Tiebout, and Warren (1961); Ostrom (1972) and (1976); Long (1978), Teske *et. al.* (1993); Fischel (2005); Feiock (2009).

14 e.g. Scharpf (1988); Blichner and Sangolt (1994); Hueglin (1994); Kersbergen and Verbeek (1994); Bednar, Ferejohn, and Garret (1996); Golub (1996); Kosloski (1999); Burgess (2000); Josselin and Marciano (2007); Schütze (2009).

15 Although in this case, not necessarily a principle that anyone can precisely agree upon; see e.g. Peterson (1994), Föllesdal (1998), and Aroney (2007, 162).

16 Most obviously *Publius*, but also *Regional and Federal Studies*, and the *Journal of Common Market Studies*.

17 e.g. Besley and Coate (2003); Filippov, Ordeshook, and Shvetsova (2004); Myerson (2006); Bednar (2009).

18 Norman (1994) – the seminal normative-philosophic contribution on the question of how best to justify federalism – and (2006); Kymlicka (1998); Rosen (1998); Föllesdal (2001); Weinstock (2001); King (2005); Levy (2007); de Schutter (2011); see also Eulau (1941) and Hueglin (1978) and (1999) on important historical antecedents to, and implications for, contemporary normative analyses of federalism.

19 And not without some plausible justification, as Levy (2007) suggests: the expansive territorial states of modernity solve several problems of scale that attend other plausible attempts at either explaining or justifying federal arrangements as they exist in the world.

20 Here, and also Weinstock (2011).

federal systems. Indeed, and again, some federations do concede such status to one or a few prominent cities in their domain. Other federations, for a variety of idiosyncratic reasons, have formally recognized some local governments.[21]

My analysis in what follows is certainly consonant with attention – evident for some time in certain areas of federalism scholarship – to the institutional complexity of existing federations, especially the varied relationships between local, regional, and federal institutions, and how these *de facto* relationships evolve and are codified within existing *de jure* constitutional constraints (most of which leave cities and localities as utterly dependent wards of state or provincial governments). Cities feature prominently in some of this literature.[22] In Canada, this orientation is evident in the rising prominence of scholarship on multilevel governance,[23] and the complexities of a "deep federalism"[24] that takes cities and municipalities seriously, as distinct from a longstanding scholarly focus on provincial-federal government relations.[25] Some voices in the United States have evinced a similar shift in scholarly attention toward local powers and their relations with other levels of authority, and the complexity within, and interplay between, federal and state law and policy.[26]

Still, while this scholarly attention is a welcome recognition of real-world complexities in actual federal systems and of the critical importance of cities and their regions therein, I think the idea of simply adding cities or municipalities as distinct levels of government is not clearly justified by appeal to subsidiarity. An implication of my analysis in what follows is that the political temptation simply to renegotiate the terms of federal constitutions, inserting urban centers or their broader regions as a distinct 'third tier' of authority, would likely often be frustrated by a

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21 See, e.g., the contributions to Steytler, ed. (2006). The reasons behind federal recognition of some cities and local governments, especially capital cities and districts, are not, however, obviously predicated on commitments to subsidiarity as a guiding principle of institutional design.

22 e.g. Elazar (1967); David and Kantor (1983); Thomas (1986); Gibbins (2001); Sellers (2002); Bulkeley and Betsill (2003); Lazar and Leuprecht, eds. (2007).

23 e.g. Young (2009); Sancton and Young, eds. (2009); Horak and Young, eds. (2012).

24 Leo (2006) and (2009).

25 Roger Gibbins in particular anticipates that "local communities and their governments will play a larger role in the lives of citizens in federal political systems. The continued neglect of this reality in the institutional design of federal systems therefore threatens the normative appeal of federalism as a system of government, the legitimacy and relevance of federal institutions, and the efficiency of federal public policy" (2001: 169).

26 See, e.g., Frug (1987); Oakerson and Parks (1989); Schapiro (2009); Ryan (2012).

careful understanding of what cities are and how they are important in arguments about subsidiarity. The problem is not simply that cities, while historically ubiquitous, tend to resist clear legal and territorial demarcation—although this is true: cities are not especially stable categories in time or space.[27] As will become clear in what follows, the philosophical problems that cities pose go beyond this, and are not likely to be resolved merely by constitutional tinkering. I do find, however, that another prominent justification of federalism, also critical of subsidiarity, may in fact recommend constitutional recognition of some cities or urban regions.

What is a City?

I have promised to use cities as a lens to examine the principle of subsidiarity and the moral terrain of federalism, and I mean to use Daniel Weinstock's contribution here, and his related recent work, as an anchor for these efforts. What do he and I mean by *cities*?

Historians, geographers, economists, and sociologists have offered various refinements on the rough intuition that cities are dense and complex human settlements, characterized most obviously by *centrality* and *density*. Operant social-scientific definitions tend to emphasize spatial concentration of settlement, but also the emergence of spatial and associated socioeconomic differentiation and specialization. Throughout the *longue durée* of human history, cities have often had ceremonial significance, as the site of sacred places and rituals. Indeed, cities have sometimes been only this: the sites of grand monument and spectacle, evidence of the might of emperors and kings, inscribed into place. Closely related, cities have often been defined by their political centrality as capitals of countries, kingdoms, and empires. As often they have been vital military centers, the home of garrisons, and centers of command and control for empires.[28]

Cities have almost always also been commercial centers. Indeed, even when cities are primarily ceremonial or military sites, they inevitably also serve vital economic functions. For many modern observers – most notably Jane Jacobs, but also Max Weber and the great Belgian historian of Europe, Henri Pirenne – the economic roles of cities in the West were of special interest. Cities saw the emergence of a distinct commercial class and powerful merchant

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27 Andrew Sancton (2008) makes his case against the viability of autonomous city-regions largely on this ground.

28 Astute readers will notice that these are essentially variations and elaborations of Max Weber's famous distinctions of ancient, oriental, and occidental city forms; see Weber (1921). On the significance of cities in early civilizations, see Yoffee (2004).

associations; they were the sites of innovations in products and processes;[29] of commerce, and thus concentrations of capital and attendant innovations in banking; and they were often, in Jacob's famously evocative phrase, "natural generators of diversity."[30] Today these economic roles, and a range of associated social and political consequences (many would say pathologies), remain a focus for many scholars of cities, especially those studying neoliberal trends in major and especially so-called 'global' or 'world cities'.[31]

Notwithstanding these conceptual refinements and rich empirical categories, our interest here is primarily philosophical and normative-theoretic, so I begin simply, as Weinstock does, by taking cities to be characterized by a sufficiently high degree of spatial integration. "There is a city," Weinstock writes, "where the inhabitants of a certain area exhibit a density of spatially mediated interaction with one another in their work, leisure and patterns of residence that mark them off from other areas."[32]

Intuitively this definition makes a great deal of sense. Still, it may be worth clarifying how these demographic and relational features coalesce into a widely shared idea of a particular city. We know cities in this way not when we categorize them by population, or extant political boundaries, or various economic measures. Rather, we *experience* cities as durable yet dynamic sites of dense integration—of people, practices, sites, traditions. Benedict Anderson famously argued that nations are "imagined communities," and something like this is surely true of cities.[33] For Anderson, what is striking about the nation as a durable source of identification is that it truly is an imagined thing: we feel solidarity with people we will never meet, and whose lives will touch ours, if ever, in only the most ephemeral ways.[34] In contrast, when we imagine the coherence of a city, and when we identify with that city and fellow residents, our imagined coherence and identity are grounded in visceral experiences of elements of the city. True, we many never meet most of our fellow city dwellers, but our imagination is spurred here by features that ultimately supervene on

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29 Weber (1921); Pirenne (1923); Jacobs (1969) and (1984).

30 Jacobs (1961).

31 See, e.g., Sassen (1991); Isin, ed. (2000); Taylor (2004).

32 Weinstock (2011, 378).

33 Thomas Bender and Alev Çinar develop this parallel in their contributions to Çinar and Bender (2007), and it is usefully applied by several of the contributors to that collection.

34 For Anderson (1991, chs. 2-3), the emergence and eventual ubiquity of certain technologies are critical in this respect, allowing simultaneous encounters, over vast distances, with the same images, ideas, and debates.

dense integration that is far less ephemeral than the influences that co-nationals typically have on one another in a modern sovereign territorial state.

Drawing on some of the definitional richness we find in the historical and social-scientific literatures on cities, then, I would add to the *dense integration* criterion two further, related factors, and a consequence: the spatial integration typical of cities is not merely dense, but multifaceted and often characterized by subtle forms of *interdependence*, both of which help to establish an *imagined coherence*, even a widely accepted identity of some sort, to *the city* as such.

The imagined coherence of such a complex and fluid thing as a city is at once a tantalizing and frustrating social fact, inviting us, as theorists and philosophers, to make claims about the moral and political substance and consequences of that coherence, and especially of any particular identifying features that come to be durably associated with this widely shared imaginative construct. We should, however, be exceedingly cautious in doing so, as evidenced by one such recent effort. Daniel Bell and Avner de-Shalit argue that several famous cities not only have distinct identities, but that each such identity constitutes a distinct and coherent *ethos* of sentiments and values – Paris and romance, New York and ambition – amounting essentially to a way of life. They further claim that these distinctive ways of life are widely shared across diverse national, ethnic, and socioeconomic class divisions in each city; that these 'spirits' are likely the source of the widespread appeal of these cities; and that, so long as the prevailing *ethos* is consistent with a certain moral threshold of openness and basic rights, dissenting residents ought to respect and obey the 'spirit' of their city.

While Bell and de-Shalit struggle to avoid uncritical acceptance of obvious clichés, and to explain carefully the complex histories of the cities they dwell on, their efforts nonetheless begin with a well-established prior sense of what characteristics define a particular city, and they then seek to amass evidence that these characteristics indeed constitute a prevailing *ethos* in terms of which many residents understand their city, all while freely admitting that other *ethos*-defining narratives may well be constructed for each of their cases. More troubling is that, in one glaring case, they seem to dismiss their own evidence that a particular *ethos* is obviously not widely shared by a particular class of residents.[35]

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35   I am thinking here of their chapter on Oxford, which concludes with an informal interview of several residents of the troubled council estate at Blackbird Leys, one of Oxford's poorest outlying neighbourhoods. The results are predictable (2011, 188-89): residents associate 'Oxford' with a litany of problems familiar to any scholar of urban issues, rather than confirming the authors' thesis that Oxford's prevailing *ethos* ('the city of learning') is a significant part of how these marginalized residents imagine

There is, to be sure, much of interest in Bell's and de-Shalit's explorations in their favoured cities. My inclination, however, is to understand how people come to imagine cities as coherent things, not to seek confirmation that a city is indeed widely imagined as it has been constructed, most often by strong state actors and dominant economic and cultural elites.[36] The aim, rather, is to identify imaginative constructs of actual people: cities as they are experienced, in all their messy diversity and fluidity, by those who imagine a coherent city; but not always, or primarily (or even at all), in terms set by the allegedly definitive *ethos*.

Cities, as imagined coherent things (whether bound by an allegedly shared *ethos* or not), are characterized by dense patterns of *complex integration* and thus considerable *interdependence* —think here of daily activity in any city, whether it be pedestrian traffic around a broken water main or damaged section of sidewalk, or the seemingly mundane fact that downtown farmers' markets happen at all, without much by way of overt coordination and regulation. We become integrated into one another's lives in cities, but in ways that sometimes mask the extent of our interdependence: stop suddenly in a crowded throughfare, or fail to put your garbage in the right place for weekly pickup, and those subtle patterns of interdependence are suddenly (but often only

the city. Yet the implications of these findings are roundly ignored by the authors, dismissed with a few unanswered questions ("Is it possible that Oxford is not that bad for immigrants, not so bad for the working classes? But can they see that?"), after which the discussion quickly moves on.

More generally, it is strange that Bell and de-Shalit claim their method as data- rather than hypothesis-driven (2011, 10), when quite the opposite seems to be true. They suppose that their encounters with *ethos*-related evidence in each city are random (although this is debatable), but their selection of cities is most certainly not. As they readily admit, their sample selection was largely based on their personal experiences as comparatively affluent well-travelled academics, intimately familiar with famous urban centers steeped in just the historical, literary, and political identities that they indeed find upon closer examination. Their methodological approach to case-selection and hypothesis-formulation is essentially confirmatory, not exploratory. To be clear, this is not a complaint about qualitative methodologies or insufficient detachment from one's subject matter: there is nothing wrong with participant observation, ethnography, or engaged research—Benjamin's *flâneur* really could tell us interesting and important things about Paris and capitalism. Rather, the methodological problems here are threefold: (i) selecting cases for reasons intimately related to conclusions that one actively seeks, rather than discovers; (ii) not thinking carefully about what sorts of control cases would be appropriate comparisons with one's test cases; and then (iii) simply interpreting countervailing evidence in light of one's favoured conclusions.

36 Indeed, Bell and de-Shalit offer some of these historical facts as one of the enabling conditions for cities to have an *ethos*, i.e. a history of a strong independent planner to shape the city's built form (2011, 13). The legacy of giving planners and architects either state- or market-sanctioned reign to shape the city is, however, hardly without moral controversy, especially for those whose neighbourhoods are trammelled to make way for great monuments or other *ethos*-fostering features of the urban built form.

fleetingly) broken. The city typically seems simply to repair these minor and momentary rifts in the urban fabric, as crowds make way for obstructions, or neighbours step in to help injured or harried fellow residents, or subtly (and sometimes not) express frustration and direct gentle (and sometimes not so gentle) penalties at persistent violators of established norms of everyday life in the city.

The temptation here for political theorists is to focus on the part of our definition of the city most obviously germane to our academic interests: the moral dimensions of various forms of integration and interdependence, and the normative lessons we might draw from understanding these moral features. This is important, but I think we also need to take seriously the other part of this definition of cities: the *spatial* features of these forms of interaction. The subjective experience of the spatial integration that Weinstock and I take as defining cities will, I believe, be dramatically different depending on where we stand in particular spatial relations. Furthermore, those experiences – and the material and institutional structures that mediate them – may profoundly affect the moral and epistemic features of cities, features vital to any use of cities for arguments about subsidiarity, jurisdictional autonomy, and institutional design.

Subsidiarity and Epistemic Features of City Life

To see this, consider two rationales for subsidiarity. One rationale appeals to personal autonomy and liberal-democratic legitimacy: leave political decisions at the institutional scale closest to those affected by those judgements, just because legitimate authority rests – in the first and most critical instance – with the free and informed consent of those moral agents most obviously affected by political decisions. Political decisions are always ultimately backed by coercion, and such coercion can only be legitimately authorized by reasons that are responsive to each citizen's equal moral standing as at once both the subject and final author of that coercion. Decisions made closest to those most affected are more likely to satisfy this criterion of legitimacy, treating us as properly autonomous citizens.

Another rationale is (moderately) communitarian in spirit. Our most cherished relationships tend to be in our families and communities, churches and neighbourhoods—a variety of associations we are either born and raised into, or sometimes choose to enter on the basis of our considered values and aspirations. It is typically within such communities that our broader conceptions of justice and the good life are formulated and affirmed. This associative richness is to be applauded, and if government must interfere with civic or non-public associations, best that they

do so in ways that are least intrusive and most carefully tailored to achieve whatever public purpose necessitated interference in the first place. This degree of informed and judicious interference is more likely, the argument goes, if decisions are kept as close to those affected as is feasible, given the nature of the public interest at stake.

There may be other rationales for subsidiarity, but I conjecture that many, perhaps most of them can be framed in light of these broad justificatory categories. The 'liberal autonomy' and 'moderate communitarian' stances seem to capture much of what intuitively appeals about subsidiarity: attention to freedom from domination under, and inefficiencies resulting from, indifferent, ill-informed, or corrupted distant authorities; but also recognition of the social conditions necessary for the meaningful exercise of such freedom.[37] They also converge – albeit for different reasons – on something like a *spheres of concern* principle,[38] and are consistent with moral individualism. This latter consistency claim may seem suspect for the communitarian rationale, but while that argument gives much weight to our varied relationships and associations, it is not a strong claim about the ontological or moral priority of the group over the individual. Rather, the moderate communitarian rationale merely accepts the uncontroversial sociological thesis that who we are and what we value is deeply implicated in our formative and chosen relationships with significant others, and that these relationships are most often rooted in durable place-bound communities and their characteristic traditions and associations.[39]

I also emphasize these two rationales because they converge on another important argument: the possible *epistemic superiority* of individuals – situated in their families,

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37 The most rigorous systematization of justifications for subsidiarity available is provided by Föllesdal (1998, 198ff). I leave it to interested readers to either confirm or challenge my conjecture against the arguments from liberty and efficiency ably elaborated there. In my judgment, the conjecture holds.

38 More precisely, by "sphere" I mean the scope of relevance or influence, over space and across agents, with respect to some issue or action. Burdens and benefits attending to these issues and activities tend to be differentially distributed roughly along these lines as well. Why this clumsy formulation? Why not simply call this an *affected interests* principle? I avoid this popular phrasing because I am largely persuaded by Saunders (2011), who suggests that we worry less about trying to define democratic membership in terms who is affected by some decision, and focus instead on the consequences of, and reasonable constraints upon, democratic agency. The question of whose interests are affected is less helpful, Saunders suggests (and I agree), than asking when group decisions should be constrained because of unjustifiable burdens imposed on others. Also, see Song (2012) on problems with the principle of affected interests as the basis for an account of democratic membership and franchise.

39 I think this distinction between moderate sociological communitarianism and stronger variants may address some of the concerns raised by Föllesdal (1998, 203) about the communitarian features of an Althusian justification of subsidiarity.

neighbourhoods, and various associations, in contrast to distant legislators and bureaucrats – in deciding matters that affect them directly (jurisdictional autonomy), and perhaps even deciding what matters those generally are (meta-jurisdictional autonomy).

So, insofar as different relationships create distinct spheres of concern and associated patterns of benefits and burdens, the subsidiarity principle tells us how to organize political authority in light of these spheres of concern. Furthermore, by virtue of being situated in particular spheres of concern, we are likely to possess important epistemic advantages over more distant actors who might reflect on our political concerns.

I admit the structure of my analysis here is somewhat convoluted: I take the two rationales detailed above – 'liberal autonomy' and 'moderate communitarianism' – to converge on the two arguments for subsidiarity: 'epistemic superiority' and 'spheres of concern'. The idea is that the rationales together constitute a broad set of distinct but complementary assumptions and arguments about the value of both personal autonomy, on the one hand, and the structure and consequences of our background of relationships, on the other—all of which can provide support for the two arguments for subsidiarity. The methodological analogy here is a Rawlsian overlapping consensus: there are many paths from a range of reasonable views about persons and their social embeddedness that lead to the two arguments for subsidiarity.

Cities Clarify Mechanisms, but also Reveal Problems

Facts about city life can help us illustrate in sharp relief the key mechanisms identified in each argument. Take each argument in turn.

1. *Spheres of Concern*. If you think cities are defined by complex patterns of spatial integration and interdependence, then it is uncontroversial to assume that some – indeed, probably many – of those relationships will be quite closely bounded in physical space. That is not to deny that there are (perhaps just as many) ways that city dwellers affect distant others, and vice versa. I simply mean to note, following Weinstock's argument, that many of the cultural and economic forms of integration and interdependence that characterize city life will give rise to similarly bounded claims of concern, specific to those spaces and characteristic activities therein. Facts about city life, then, make clear a powerful argument for subsidiarity: to the extent that cities generate spatially bounded patterns of benefits and burdens, fairness demands that residents have some meaningful say

over the laws, policies, and institutions that disproportionately matter to them as city dwellers.

2. *Epistemic Superiority*. The second argument appeals to the kinds of information and motivations that these urban dwellers can reasonably be expected to possess by virtue of living in the city. The idea is that proximity to some issues gives us better information, and makes us more likely to reason through the consequences of relevant actions and policies in light of these facts, rather than simply appealing to prior ideological commitments.

The two arguments do seem as if they should hang together nicely. The issues most important to us are often (although of course not always) the ones closest to us in time and space. These are the issues we are mostly likely to understand well, and that we will be motivated to think about in light of relevant facts and arguments. Together, then, these arguments amount to a powerful justificatory framework for subsidiarity.

Daniel Weinstock presents the epistemic argument as premised on an empirical hypothesis – call it *the proximity conjecture* – but there are actually two empirical hypotheses at work here: the first is *informational*, the second *motivational*. First, we hypothesize that proximity has the expected epistemically favourable effect: we're more familiar with what we experience directly, and so we have better information about these matters. Second, we suppose that those epistemic capabilities are more likely to be expressed in constructive rather than divisive ways by those closest to the relevant issues and problems.

What do I mean by *constructive exercise* of our knowledge and capabilities? Weinstock doesn't use the constructive/divisive distinction, but I think it better suits his purposes than his chosen contrast of "ideological distortion," on the one hand, versus "correctly appreciating the impact of different policy options on the real-world realization of the relevant principles," on the other.[40] This is because, for many disputes over policy, there may be several plausible ways to implement shared normative principles, yet those several policy options may have secondary consequences that offend other principles, on which there is no such agreement. In these cases, policy disputes are ultimately rooted in principled disagreement, but not in a way that reflects incorrect reasoning about consequences. Indeed, the fact that we can reason correctly about the full gamut of likely consequences is precisely what motivates such principled disagreement: we share a correct understanding of the full consequences of implementing our shared values into particular

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40 See Weinstock (2011, 379ff).

policy options, but we disagree on how we ought to weigh the importance of the sweep of consequences that attend each candidate policy.

Yet we can still imagine ways of approaching these disagreements that are more or less divisive. Simply asserting my favoured interpretation and ordering of normative principles seems divisive, whereas attempting to find interpretive convergence, and perhaps some shared meta-principle, that together minimize the scope of normative disagreement, seems constructive. Indeed, the latter approach may reveal less-contentious policy options that we hadn't given much thought to beforehand. It seems to me, then, that the constructive/divisive distinction correctly distinguishes cases of ideological distortion from normatively informed consequentialist reasoning (the former will always be divisive, on my definition), yet accounts for the likelihood that normatively informed consequentialist reasoning can be consistent with divisive disputes rooted in principled normative disagreement.

We can now formulate the proximity conjecture in light of my favoured distinction. Again, the conjecture has two parts, one informational, the other motivational: *proximity to an issue ought to make us better informed, and more likely to reason about policy in constructive ways*.

Are these plausible expectations? They seem obviously plausible at first blush. How could proximity and relevance *not* influence our knowledge of a given issue, and affect our desire to use that knowledge in constructive ways with those are also affected by the issue at hand? Matters may, however, be more complex than they at first seem.

Consider a set of policy issues as mundane as they are ubiquitous in cities: local public services. Is it safe to assume that residents – simply by virtue of proximity and use – will be reasonably well-informed about the effectiveness of, say, different road surface treatments? Damage repair protocols? What about the optimal location of fire stations, or police road and foot patrols? School catchment boundaries? Curriculum design? Will residents of given neighbourhoods be equally likely to become informed on these issues, and contribute to public discussion and judgements in constructive ways in light of these varied facts?

Clearly, even for residents roughly equidistant to specific urban facilities, our level of familiarity, and our desire to learn the relevant information, will be strongly affected by a variety of factors: our patterns of use; our age and professions; whether or not we have school-age children; our ethnicity and socioeconomic class. On these latter distinctions, think of the dramatic difference in how Black or Middle-Eastern citizens subjectively assess their informal encounters with police officers in urban settings, or how single working mothers experience the school system compared

to affluent parents. What modest evidence is available on citizen evaluations of, and satisfaction with, public service quality suggests that the matter is complicated and ambiguous.[41]

Now, consider situations where these complicated questions of local public policy inevitably provoke contentious disputes over moral principles—the use of public school facilities by religious groups, for example, or the question of regulating traditional practices in public spaces if they offend norms of gender equality or child rights. On the latter sorts of issues: how many of us have been deeply ambivalent when seeing a parent physically disciplining their child while walking through a park or pedestrian thoroughfare? Class, race, culture, and reasonable disagreements about best practices in parenting all conflict in such fleeting moments.

Still, suppose we assume – with the preceding caveats in mind – that proximity to, and relevance of, an issue roughly correlate (at least on average) with residents being more informed and more motivated with respect to that issue. Is it reasonable to further assume that we will then be more likely to reason in constructive rather than divisive ways about that issue? Think again of the parent slapping their misbehaving toddler in a playground: what would a constructive and morally principled approach be in these instances? Is there such a thing? Again, it's complicated.

There is some evidence from diverse urban settings that citizens can be encouraged to inform themselves about complex issues, to reason carefully about the facts, and to engage in

41 Many of these studies are plagued with severe data problems and curious, sometimes questionable statistical judgements related to model specification and interpretation. That said, a plausible and interesting recent study finds that residents do respond sensibly to information about service quality; see James (2010). Relevant to the causal complexity of citizen service evaluations is DeHoog, Lowery, and Lyons (1990). So far as I am aware, there are no empirical studies of the various causes of degree of *motivation* to become informed about the quality of particular local public services. There is a long tradition of studies – Ostrom (1976) is an early instance – that attempt to determine whether or not residents' reported satisfaction with some service can be used as a reliable indicator of the quality of that service. The chief difficulty in this empirical literature has been finding plausible measures of competence for assessing citizen evaluations, as this requires some objective measure of the actual quality of the service being evaluated. For this reason, what research there has been on this question has focused on services where citizen satisfaction reports provide an uncontroversial quantitative measure of the service (such as fire or police service response times to distress calls), and where the agency in question also measures that quantity. So, for example, citizen satisfaction with police and fire response times can be compared with actual dispatch data from agencies and service vehicles. For some sense of the conceptual and empirical murkiness that attends even this very limited range of citizen evaluations, see, for instance, Percy (1986) and – especially serious methodological reservations notwithstanding – Kelly (2003). A careful study of parent knowledge and information-seeking about school performance is Schneider, Teske, and Marschall (2000), who find among other things that, predictably, concerned low-income parents face considerable hurdles in finding reliable information about school quality.

constructive argument with fellow citizens to clarify disputes and find points of agreement on both principles and policies. These tend, however, to be carefully regulated deliberative settings, and the informational and practical material costs for citizens are high, at least comparable to the demands of jury duty.

Consider the most famous favourable results from small group deliberations on complex political issues: those associated with James Fishkin's *deliberative polls*.[42] These are carefully crafted settings, in which statistically representative groups of citizens are given carefully balanced evidence, vetted by experts and stakeholders, and their deliberations are moderated to avoid well-known epistemic and behavioural pathologies associated with small group dynamics.[43]

More generally, the structure and regulation of citizen deliberation – how they become informed, and how they interact with one another when discussing issues – matters a great deal in some of the prominent cases of constructive group deliberations leading to practicable policy recommendations. For example, consider the increasingly prominent participatory budget movement, precipitated by the successes of several Brazilian cities.[44] In these cases, success seems largely to rest on the careful integration of local participation into well-structured networks of representation and accountability. Furthermore, citizen judgements are limited largely to determining funding priorities with respect to basic public services with which they are already familiar in their everyday activities (rather than, for instance, demanding judgements on more substantive and potentially controversial policy issues, or detailed technical questions).[45]

All of this suggests that we should not move too quickly from the presumed epistemic superiority of city dwellers to the institutional expression of that presumed superiority in jurisdictionally autonomous institutions. The epistemic argument depends on the proximity conjecture, which turns out to be far more complicated than we might at first have suspected.

Furthermore, the presumed epistemic gains associated with the informational and motivational hopes of the proximity conjecture may be only be realized, or may be better realized,

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42 See, e.g., Fishkin (1996) and (2009, esp. 132ff).

43 See, e.g., Stokes (1998); Sunstein (2000).

44 The great success story is Porto Alegre, after which other cities adopted the model, including Belo Horizonte and São Paulo, and now many others, with more modest results; see Avritzer (2006).

45 Again, see Avritzer (2006) and also (2002). Important in the Sao Paulo case in particular seems to be the ways in which the interests of the poor and disenfranchised are represented by civic organizations, and the relationships of those organizations to conventional political actors; see Lavalle, Acharya, and Houtzager (2005); and also Hernández-Medina (2010).

when some overarching authority can foster inclusive and productive local deliberations, and provide rapid dissemination of reliable information about how particular policies and initiatives actually work in a variety of urban settings. Think here of another study of small group deliberation: Archon Fung's pioneering work on community decision-making in Chicago, which suggests how appropriately structured community institutions can be given considerable authority – in that case, to formulate and monitor school curricula and community policing practices – but within particular overarching institutional settings that provide what Fung and his collaborators have aptly called "accountable autonomy". The core theoretical intuition here is that "realizing autonomy" – understood less as local independence from a central authority, and more as the effective power of local actors to achieve their constructive public aims – " requires the sensitive application of external guidance and constraint."[46]

By virtue of its political history and rich tradition of neighbourhood activism, Chicago provided Fung with a kind of natural laboratory to trace how an especially participatory and effective form of citizen engagement took hold in Chicago, allowing residents – even in very poor and historically marginalized areas – real influence over their neighbourhood schools and community policing. This influence is mediated, however, within a city-wide system of "bottom up, top-down accountability" in which "local groups enjoy wide discretion in setting priorities and developing strategies to achieve them" but are also required "to produce plans that document their deliberations."[47] City authorities monitor the activities of local groups and hold them accountable for their stated plans, but these broader agencies also help coordinate and disseminate information across local groups,[48] and more generally, provide "resources for mobilization, training, and facilitation to maintain the integrity of deliberations" at the local level.[49]

Chicago is in several ways a very special case for neighbourhood and city politics, and Fung is candid about that history, and the path dependence and contextual specificity of some of his findings. Still, his results resonate with earlier and subsequent studies of effective local deliberation, and it seems plausible to expect that the epistemic superiority of city dwellers concerning urban issues may typically require just the kinds of overarching institutions he identified in Chicago, the workings of which will likely blur any straightforward drawing of

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46 Fung (2006, 8)

47 Ibid., 79.

48 Ibid., 86ff.

49 Ibid., 224.

autonomous jurisdictions in terms of either issues or territories. If we think that epistemic considerations justify the lines of jurisdictional autonomy for cities, then we need to account for the role (and jurisdictional scope) of institutions that make those epistemic gains not only possible but likely; that seems to me to complicate our view of what jurisdictional autonomy involves, and thus what is being endorsed by subsidiarity arguments for such autonomy.

Rather than being mutually supporting, the two arguments for subsidiarity – appealing to spheres of concern and epistemic superiority – seem to pull us in different directions with regard to spatial scales and considerations of jurisdictional independence. An appeal to spheres of concern and differential burdens and benefits, whether on 'liberal autonomy' or communitarian grounds, pulls us toward jurisdictional autonomy not only for cities, but for even smaller communities of concern: whenever it can be shown that a stable constituency, bound to particular places, is directly and routinely impacted by decisions made on some issue disproportionately relevant to those places and those agents, then the subsidiarity principle asks that we tailor political arrangements to ensure that, so far as is feasible, the relevant decisions are made at the scale appropriate for that constituency.

In contrast, the epistemic argument allows that, as an empirical matter, the actual practice of jurisdictional autonomy based on those spheres of concern may depend critically on how overarching institutions sort information, monitor practices, and motivate citizens to actually exhibit the epistemic superiority we are attributing to them. Where the first argument pulls us inward and invites us to demarcate complex and overlapping spheres of influence and concern, the second argument complicates matters by revealing the degree to which effective subsidiarity will be a messy affair, spanning several spatial and institutional scales, and fostering considerable interdependence across jurisdictional lines to foster and nurture the epistemic promise of city dwellers.

Let me draw out this contrast more starkly with an example provided by Daniel Weinstock. Suppose you argue that long-time residents of Montreal or Paris have a far better sense of how cultural policies will actually play out once implemented. Better to let those residents decide these matters – of who may wear what in public, say – rather than some distant gaggle of judges appealing to constitutional principles and statistical data. To be sure, the values behind those principles are important: that's understood, and accepted. But the long-time city dwellers will have a better sense of how to implement those values in the places where these issues most often play out for the people most closely affected by them. This is how the epistemic and 'spheres of

concern' arguments for subsidiarity are supposed to work together.

Complicating matters, however, is a growing body of empirical research that suggesting that city dwellers may not in fact be more likely to reason in constructive ways about just the sorts of dilemmas they are allegedly best situated to address. There is mounting evidence from several countries – but especially Robert Putnam's recent surveys of U.S. communities – that city dwellers have fewer close friends, vote less, watch more television, read fewer newspapers, and generally avoid people who don't look, act, and think like themselves.

To elaborate: one might plausibly think that exposure to diversity is likely to foster solidarity within ethnic and racial groups, and to increase conflict among them. This is typically referred to as the *conflict* conjecture. More hopefully, we might suspect that diversity will diminish the significance of group distinctions, as people become familiar with those who look and act differently from themselves, finding common ground across these differences—the *contact* conjecture. Instead, strikingly, Putnam (2007) finds little support for either the contact or conflict conjectures. Racial diversity instead seems to inspire a generic withdrawal from public life and social ties, and pessimism about political leaders and public agencies.

Insofar as racial and ethnic diversity are likely often associated with a diversity of beliefs and practices, this seems consonant with Diana Mutz's findings about ideological diversity and the deliberation/participation tradeoff. In a careful study of both survey data and experimental results, Mutz (2006) found that those political activities which encourage participation do not seem to foster civil and constructive argument about competing opinions and challenging evidence. In contrast, when citizens are exposed to a diversity of beliefs, viewpoints, and arguments, they tend to participate less in politics. None of this bodes well for citizens in diverse urban settings either possessing special epistemic powers, or if they do, being motivated to use them in constructive ways with fellow city residents.

Given these unsettling trends, we cannot safely assume that mere proximity and relevance are likely to make urban residents approach complex policy issues in constructive ways. Granted, they are the people most directly affected by the issue in question, but there is no compelling evidence that they can or will think through the issues more carefully than judges and scholars—at least not without considerable oversight and assistance.

By appealing to facts about cities, then, and citing either liberal concerns for autonomy and legitimacy, or communitarian concerns for the situatedness of those same moral agents, we can clarify an argument for subsidiarity based on spheres of concern. There are also, however, good

reasons to think that any epistemically favourable implementation of the subsidiarity principle –
based on the issues and territories defined by durable spheres of concern – will be a complicated
matter, involving considerable interaction and interdependence across several spatial and
institutional scales. Clarifying the assumptions of the epistemic argument makes this clear. Thus
the justificatory framework for subsidiarity that at first seemed so promising in fact pulls us in two
different spatial directions and complicates our endorsement of autonomy for those within some
particular sphere of concern, be it a city or some broader region, say, within a federation.

Federalism?

Let me conclude by attempting to deliver on an ambitious promise made at the outset: that these
reflections about subsidiarity and cities might tell us something useful about normative-theoretic
justifications of federalism.

I have argued that most any feasible implementation of the subsidiarity principle under
conditions of social complexity and diversity will require coordination and oversight at broader
scales of organization. Focusing on cities – specifically, on subsidiarity-based arguments for cities
being more autonomous than they generally are under existing federal arrangements – makes this
relationship clear. The same reasoning seems to hold, however, when we look outward, to
subsidiarity-based arguments for federalism.

Recall an intuitive motivation for the thought that subsidiarity and federalism may be
complementary commitments: many political issues typically matter at different spatial scales, and
for different constituencies. This is almost trivially true. For instance, many of the issues of greatest
concern to professional residents in the heart of a major city are simply not relevant to rural farmers
far from that city. Similarly, the issues that animate coastal communities in Eastern Canada and the
United States are not those of prairie farmers, Alberta tar sands communities, Houston
suburbanites, or Montana ranchers. The famous difficulty for advocates of federalism is to explain
why some sort of union is desirable given communities with distinct and not always compatible
interests, yet not so unified as to be an undifferentiated sovereign state. Jacob Levy states the
attendant theoretical problem succinctly:

> We have political theories based on ideas of equality before the law and
> consistent treatment that push toward unitary states. We have political theories
> based on ideas of jurisdictional competition or democratic participation that push
> toward more-radical decentralization. We do not, however, have a political

theory to match the real federalist practice of a large share of the world's constitutional democracies.[50]

Levy demonstrates that a range of plausible approaches to generating such a theory ultimately fail to satisfy. Efficiency-related arguments, appealing to competitive or market-preserving federalism, on the one hand, and Tiebout sorting, on the other, seem well-suited to prescriptions about the structure of local jurisdictions and service provision, but do not seem to justify the kinds of territorial divisions we find in existing federations. These approaches certainly can make a plausible case against a unitary and strongly centralized regime, but they don't tell us much else about what the resulting system should look like, nor provide much by way of justificatory resources for distinguishing between a decentralized unitary state and a federal system. Arguments from participation and voice fail in a similar way, failing to justify the contours of actually existing federations, instead drawing the boundaries of meaningful citizen engagement at rather modest territorial scales.[51]

Advocates of either approach could reply that existing federal arrangements are not in fact justifiable, and that jurisdictions should be much, much smaller, so as to encourage efficient and responsive government to self-selecting communities organized around shared values and preferences, with considerable independence at jurisdictional scales where residents have a reasonable expectation of political influence. My inclination is to give this species of argument a fair hearing, however radical and improbable it's recommendations may seem. I agree with Levy, however, that this is probably not the most promising way for theorists to proceed: there really may be something morally attractive about actually existing federal arrangements, most obviously the tendency to entrench in constitutions the boundaries and powers of provinces (cantons, länders, states, etc) when they serve reasonable ends. At the very least, our normative-theoretic efforts ought to take that likelihood seriously.

A thought here is that the arguments already marshalled for subsidiarity could provide an elegant theoretical solution that avoids the pitfalls Levy identifies with extant approaches. Political power both reflects and defines spheres of concern for particular constituencies and specific issues. Authority ought to rest as close as possible to those whose interests and agency helps determine

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50 Levy (2007, 459).

51 On this point, consider Oliver (2000), testing the Dahl's (1967) conjecture about the likely maximum size of a community in which citizens have meaningful influence over, and engagement in, democratic politics.

particular spheres, because that is where agents (be they citizens or various offices and agencies) will be sufficiently informed and motivated to engage constructively in political problem-solving. In this way, decisions that emerge from an appropriately variegated political system will be epistemically superior to a more unitary regime. Where several of those spheres of concern are territorially limited in roughly the same way, there will be a distinct jurisdictional threshold. Where the sphere is broad (military security, coordinated regulation to capture various externalities, such as in policing and environmental standards), there will be another threshold. Practical considerations may dictate imposing certain thresholds somewhat arbitrarily, but it is easy to imagine this way of thinking settling on a two or three distinct jurisdictional scales, within which governing arrangements are relatively independent with respect to the issues that define their spheres of concern.

To be sure, the same complexity and ambiguity that complicated our arguments when applied to cities will likely apply as well to the case for subsidiarity as grounds for federal arrangements. Here too we ought to expect spheres of concern to overlap, and to change in complex and dynamic ways; furthermore, the epistemic performance of particular actors – be they citizens, representatives, or entire offices and agencies – will likely be just as dependent on a range of complicating factors as in the case of city residents.

Perhaps, however, we have been misconceiving the significance of this complexity? Perhaps the ways in which the epistemic and 'spheres of concern' arguments pull us in different directions is a virtue of these arguments paired as a justification of subsidiarity, not an unwanted complication? Whereas spheres of concern are myriad, and invite recognition of several distinct and sometimes-overlapping territorial jurisdictions, the epistemic argument balances this fragmenting tendency by requiring that jurisdictional boundaries and related powers be regulated in ways that ensure epistemic competence. If anything, the social-scientific literature on polycentricity is hopeful here that multiple stable institutional equilibria may be attainable.

Alas, I think Levy gives us strong grounds to doubt, or at the very least significantly constrain, any such hope. As Levy suggests, and the empirical literature attests,[52] the one great case of implementing a subsidiarity principle in practice, the European Union, should give us grave reservations: the principle is stated and interpreted in several distinct and conflicting ways within the EU, and it seems often to generate as much disagreement and hostility among member states as it clarifies and resolves. Further, in Levy's assessment, subsidiarity makes extraordinary demands

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52 Levy cites Föllesdal (1998), and again, see Peterson (1994) and Aroney (2007).

on the time, resources, and competence of various government actors and agencies bound by the principle; a similarly heroic demand for impartiality is placed on the overarching authority that must moderate disputes and ultimately decide, for each issue at hand, which jurisdiction is best able to discharge the relevant regulatory function.[53]

There are good reasons, Levy suggests, for federations to opt, as they often have historically, for constitutional entrenchment of rigid territorial boundaries and associated divisions of powers. Levy's argument, drawing on passages of the *Federalist Papers* rarely cited by the extant literatures on federalism, points to the virtues of divided loyalties between state and federal governments: "the core thought is that authority can be safely vested in the central government in part because, and perhaps just to the degree that, the people are inclined to be loyal and attached to their states rather than to the center." This makes sense, Levy argues, of the sizes and rigidity of states and provinces as they tend to arise in existing federations: "Provinces that are large enough, stable enough, and aligned with cleavages of sentiment and loyalty can usefully counterbalance the central state. Localities without those traits cannot."[54]

This is a powerful rationale for just those applications of federalism prominent in much political science, and certainly in theories of nationalism that make a normative case for federal strategies of multinational accommodation.[55] Territorially concentrated ethnic and linguistic groups seem to have just the kind of loyalty that Levy identifies as essential to balancing against commitment to a central regime. Furthermore, they are loyal in this way just because of how ethnocultural and linguistic identities evolve in place, and how national identities emerge out of both ethnocultural identities, and distinct civic traditions and policies. Whether we are considering the federation of already-established civic communities with reasonably clear territorial settlements, or the establishment of boundaries that roughly track linguistic or ethnocultural groups, Levy's approach seems to find normative purchase in thinking about the design of a federal constitution.

We might think that Levy's argument only solves half of the normative puzzle: it explains why federations that look roughly like many existing federal states ought not to be unitary, but does not yet justify federal union in the first place. Why shouldn't every community of loyalty have it's

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53 Invoking a different analytic vocabulary, we might say that the subsidiarity advocate is too optimistic about transaction costs, and far too sanguine on the likelihood of agency capture.

54 Levy (2007, 465).

55 e.g. Norman (2006).

own state? Here, however, I think the normative stakes are less pronounced: there are the familiar classic reasons for federation offered by Montesquieu, and the American Federalists in the more familiar passages of the *Papers*: greater security, curbing the mischiefs of faction. Furthermore, the promise of economies of scale in public works and capturing externalities are perfectly sound instrumental justifications for some kind of union among of distinct communities or already-sovereign states who share a greater territory. The more difficult puzzles are, once such a union is obviously attractive, how to achieve it, and on what terms? Commitment to some sort of union is loyalty of a sort, just of a different kind and degree than the more bounded affective loyalties central to Levy's approach.[56]

I find Levy's argument largely persuasive and consonant with the scepticism that emerges from my urban-focused analysis of the epistemic and 'spheres of concern' arguments for subsidiarity. That said, I think we may reasonably qualify his claims that subsidiarity "fails as an institutional decision rule" and that trying to allow subsidiarity-inspired flexibility in the design of federal regimes renders pointless "the attempt to constitutionally entrench a federal system" (2007, 462-3). Courts and constitutions are, of course, institutions, and the questions of how these institutions could be rendered more responsive to changing spheres of concern, and the institutional requirements of epistemic competence, seem worth asking. A clear understanding of subsidiarity, its strongest grounds and possible formulations, can help us here. Still, I think Levy is correct that, even granting this qualification, subsidiarity cannot stand alone as a justification of federalism. After all, "a formally unitary state is as capable as a formally federal one of creating subordinate jurisdictions, of giving them authority and then taking it away again" (463).

We could, I suppose, frame this less as a contest between arguments – Levy's bulwarks and separation of loyalties versus subsidiarity-based justifications – and more as a clarification of available choices. We can favour either, on the one hand, a subsidiarity-inspired conception of federalism predicated on meaningful but flexible boundaries and distributions of authority, with attendant bureaucratic complexities, jurisdictional ambiguities, and likely frustrations and instability; or, on the other hand, constitutional entrenchment of boundaries, functions, and responsibilities for two or three distinct tiers of government, securing stability and certainty through a balancing of loyalties in sufficiently large provinces, but at the cost of rigidity, and thus potential difficulties in adapting to changing demographic, ethnocultural, and socioeconomic

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56 It need not be of a different kind and degree: we may have comparably intense loyalties to the idea of Quebec as a nation, but also Canada as a federation; similarly for Belgium and Walloon, say. In arguing for federalism as fairness, de Schutter (2011) makes good use of this likelihood.

realities.

Loyalties, Cities, and Federations

Here again, I think attention to cities and their regions might complicate the picture in interesting ways. The critical empirical assumption motivating Levy's approach is that some territorial region – at the scale of, say, a German länder or Canadian province – is likely to be the site of loyalty sufficient to allow union with other such groups, but not so complete a union as to threaten or forfeit outright those distinctive loyalties. On the face of it, cities are too local, too easy to exit, to ground the sort of loyalty Levy has in mind. What is needed, he suggests, is something on a spatial scale of Kymlicka's societal cultures, or Rawls's relatively closed society that, for many, is entered by birth and left by death, with only occasional departures.[57]

Cities are indeed typically only loosely bounded, if at all, and are generally open in a way that larger jurisdictions are not, either for practical (great territorial expanse) or legal (imposed costs of entry or exit) reasons. We move in and out of cities relatively freely, and their characteristic spaces are constantly in flux. Indeed, new uses of established places have always been part of the vitality of cities, and a source of both subversive and revolutionary change. Yet the imagined coherence of cities, and those visceral physical parts of them that provide 'secure contexts of choice'[58] for those raised in and around them, are often quite durable over generations, even when they see changes in how particular places are used, and buildings augmented and reshaped.

Think here of the great buildings that come to define cities in the imagination of residents and outsiders alike. These are sometimes corporate legacies, to be sure, monuments to the vanity of the rich and powerful—the Carnegies and Trumps of the world, but also the conceits of Napoleon III and Baron Haussmann, and Al Smith and Robert Moses, in dramatically shaping the built form of great cities (Paris and New York, respectively), for considerable public benefit but also at great monetary, civic, and cultural costs that continue, so many years later, to inspire both admiration

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57 See, e.g., Levy (2007, 474): "... larger provinces may feel more like complete regional economies, and so "communities of shared fate," in Rawls's phrase. They may have cultural and political-cultural characteristics that are more distinctive, and durably distinctive. And they will certainly have greater institutional and organizational resources ..."

58 This is a term of art introduced by Will Kymlicka to explain the importance of societal culture to liberal freedoms. Societal cultures provide the institutional and imaginative contexts of choice for their members. We all need such contexts to make meaningful judgements in life—about who we are, who we wish to be, what values we ought to affirm, and what ends are worth pursuing.

and fury in similar measure. As often, they are public works such as the museums, galleries, and libraries of the world's great cities. Sometimes, they are historically complicated combinations of commercial and public efforts and aims.

We don't have to go all the way with Bell's and de-Shalit's 'urban *ethos*' thesis to agree with them that many major cities do in fact amount to sites of considerable and enduring loyalty for residents, who spend much of their lives in, or in the spatial and imaginative orbits of, *their* city. While I have grave reservations about their methodological approach to grounding normative political-theoretic arguments in the complex realities of cities, I do think that they are on exactly the right path in this respect: many of the features that liberal nationalists and multicultural liberals cite as defining a societal culture – features that would also be essential, I suspect, to generating the kind of loyalty Levy identifies – are intimately bound up with city life. Bell and de-Shalit usefully demonstrate that urban environments form a backdrop of symbols, routines, and expectations against which residents come to define their own identities. Cities provide many of the institutions, the actual physical sites – schools, churches, unions, museums, parks, and the like – that constitute secure contexts of choice. Even when elements of a societal culture are tied to much broader processes of nation-building, cities feature prominently.[59]

As clusters of towns and cities come to define massive urban regions in many advanced industrial, but also many rapidly industrializing societies, the distinction between city-based and other kinds of loyalties are further blurred. If there are cities – and especially urban regions anchored around a major city (or city-pair) and satellite towns, industrial regions, and smaller cities – that inspire durable loyalty of the sort Levy describes; and if, furthermore, these regions are vital engines of the economic security and vitality for their broader surrounding populations – indeed for entire national states and multistate regions – then presumably they would be candidates for recognized membership as distinct parties to a federal union.

Perhaps curiously, then, while Levy's analysis gives us further reasons to question subsidiarity as the sole or chief grounds for justifying federalism, his 'bulwarks' argument from the separation of loyalties may well, in some cases, be rather friendly to the idea that certain cities and their regions can be legitimate candidates for formal constitutional recognition in the design of a federation.

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59 Consider the processes Eugene Weber (1976) uncovers, of transforming peasants into Frenchmen, rooted in a national vision of French history and identity firmly centred in modern Paris; or the prominence of Montréal in the financial and cultural energies of Québec's 'quiet revolution'.

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