

Metropolitan Cities, Federalism and Socio-economic Challenges*

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1. Introduction

This contribution takes as its point of departure the increased importance that cities have acquired in recent decades and, consequently, the need for a more robust discussion of their legal space. In fact, besides their demographic and spatial growth, large cities continue to be the engines of development, innovation, cultural and social interaction and cohesion in light of their being ‘specific kind[s] of human settlement[s]’¹ with a unique history and sociology. Cities are places of business relations, commerce, market, as well as cultural and educational centres, and provide basic, essential services to citizens, such as housing, transportation, or power.² Furthermore, they represent ‘plurality and differentiation’ being they places where various trades, arts, professions and corporations coexist, all side by

* *Double-blind peer reviewed in accordance with the Journal guidelines.*

1 Y. Blank, *The City and the World*, in *Columbia Journal of Transnational Law*, vol. 44 (2006), p. 881.

2 E. Meehan, R. Chiarelli & M.-F. Major, *The Constitutional Legal Status of Municipalities 1849-2004: Success is a Journey but also a Destination*, in *National Journal of Constitutional Law*, vol. 22, no. 1 (2007), p. 12.

side.³ This reality, however, also poses challenges, and metropolitan areas can be regarded as expressing the tensions between diversity and social cohesion: in fact, people living in larger cities are faced with deeper socio-economic divides and inequalities than those living in more rural areas, with more serious environmental and criminal problems, social and ethnic tensions, zoning and housing concerns.

In light of the complex issues surrounding metropolitan areas, a substantive body of scholarship has blossomed – particularly in the social sciences – exploring this reality from different perspectives, including the demographic, environmental, geographic, historic, anthropologic, or socio-economic angles.⁴ Yet, for a long time cities as a subject of study have been largely neglected by legal theorists, with only sparse academic accounts of the legal/constitutional dimension of cities, especially larger metropolitan areas.⁵ However, although cities are already studied by legal scholarship through specific disciplines such as urban law, municipal law, or land/zoning/planning, legal scholars are now becoming increasingly interested in carving out a more robust legal/constitutional space for them.

The purpose of my contribution is to discuss some very preliminary ideas on the role and place of larger/metropolitan cities, with particular regard to decentralized (federal and quasi-federal) systems. To this extent, the paper proposes a definition of

³ R. Cavallo Perin, *Beyond the municipality: the city, its rights and its rites*, in *Italian Journal of Public Law*, vol. 5, no. 2 (2013), p. 309.

⁴ Y. Blank, *City and the World*, *op. cit.*, p. 877-878. See also J. Jacobs, *The Death and Life of Great American Cities. The Failure of Town Planning*, Harmondsworth, 1964; S. Sassen, *The Global City. New York, London, Tokyo*, Princeton & Oxford, 2001.

⁵ Y. Blank, *City and the World*, *op. cit.*, p. 877-878; R. Schragger, *City Power*, Oxford, 2016; E. Meehan et al., *The Constitutional Legal Status of Municipalities*, *op. cit.*; G. Frug, *The City as a Legal Concept*, in *Harvard Law Review*, vol. 93, no. 6 (1980)

metropolitan city as a unique socio-economic and political space and suggests construing it as a new level of governance where to experiment innovative legal tools that would equip it to balance and reconcile diversity and social cohesion.

The paper is structured as follows: part I sketches the meaning of diversity and social cohesion and illustrates the specific type of inequality (socio-economic) that are of specific relevance to this contribution. Part II briefly retraces the historical importance of cities, while part III maps the relationship between cities and federal theory. In part IV, I propose a definition of socio-economic and political space as a useful way to characterize metropolitan cities. Finally, part V offers a draft normative agenda to vest more autonomy to metropolitan areas in federal and quasi-federal systems.

I. Some preliminary definitions: diversity, social cohesion, economic inequalities

This paper advances the idea that large, metropolitan cities can be regarded as expressing the tensions between diversity and social cohesion. Consequently, by rethinking their legal/constitutional role in decentralized systems, metropolitan cities could become strategic places where to build new modes of governance that are better suited to balance their economic and social dimensions and ultimately reconcile unity and diversity. For this reason, the first aspect that needs to be clarified is one of terminology: what do we mean by diversity and by social cohesion in the specific context of metropolitan areas? And what types of diversity are we looking at? Diversity and social cohesion. Although the meaning of diversity and of social cohesion might be easily intuited, these are non-univocal, broad terms

that are open to a multiplicity of definitions. While acknowledging that other meanings are possible, this paper construes diversity as a wide-ranging notion that encompasses ethnic, linguistic, racial, gender, lifestyle, demographic, health and wellbeing, income, educational, political, intellectual, religious, or socio-economic differences. All these disparities might cause social tensions, social exclusion, polarization and segregation of various nature,⁶ and may result in opposing opportunities available to individuals. Furthermore, diversity may assume a horizontal (ie differences in age, gender, ethnicity) and a vertical (ie income, social, status, education) dimension.⁷ In its various forms, diversity is almost intrinsic to human condition and, as such, it displays both a macro- and a micro-dimension: in other words, it may exist at the level of the state (national), of the region or of the city (local).

Social cohesion – on the other hand – refers to those instances whereby, in spite of the differences, it is possible to offer as much as possible equal access of opportunities and basic, minimal conditions of well-being. Likewise, social cohesion entails the development of a net of social relations, and helps shaping a feeling of belonging that contributes to create a sense of communal identity: it also orientates towards a common good.⁸ Social cohesion is ‘a key element of societal stability and highly relevant in urban communities’⁹ and can be achieved in many ways: for example, building on universal, principles such as solidarity and equality, it could be pursued through a variety

6 L. Scheurer & A. Haase, *Diversity and social cohesion in European cities: Making sense of today’s European Union-urban nexus within cohesion policy*, in *European Urban and Regional Studies* vol. 25, no. 3 (2018), p. 338.

7 *Ibid.* p. 338.

8 *Ibid.* p. 337.

9 *Ibid.* p. 338.

of policies and institutional arrangements targeting social mobility and local economic performances.¹⁰

The inevitable tensions between diversity and social cohesion require to find points of reconciliation between them. Reconciling diversity and social cohesion becomes a particularly important challenge in the specific context of larger metropolitan areas, as it is here that the phenomenon often reaches exponential dimensions. This reconciliation can be pursued in many ways and through an array of different tools, spanning from urban and architectural planning and design to specific educational and health policies. By carving out a novel legal/constitutional dimension of the large city in decentralized systems, this paper proposes to contribute to the debate by specifically looking at its legal perspective, as the next sections will better illustrate.

Socio-economic diversity or inequalities. As noted, although diversity is expressed in many ways, this paper mainly focuses on the socio-economic dimension. Again, socio-economic diversities, asymmetries or inequalities¹¹ can take different forms and become a global (or local) phenomenon. In fact, economic inequalities are present when regions in a given country display profoundly different levels of socio-economic development, or when natural resources are concentrated in specific parts of a territory only, causing imbalances of various nature, as often happens particularly in the Global South.¹² But socio-economic inequalities can also have a more local dimension,

¹⁰ *Ibid.*

¹¹In this paper, the terms *diversity*, *inequalities* and *asymmetries* will be used indistinctively as synonyms.

Although the term is often contested, *Global South* generally refers to those countries and regions in the world (such as for instance Central/Latin and South America, Africa, Asia) which are still developing or in the process of industrialization, although not necessarily located in the geographic south.

finding expression in the asymmetrical levels of basic needs (education, health services, housing, transportation, etc.) available to different parts of the same metropolitan area (richer vs poorer neighbourhoods): all these local disparities might cause social tensions, social exclusion, polarization and segregation.

In general, economic inequalities have been treated only marginally in comparative constitutional law and even in federalism scholarship (with the exception, perhaps, of fiscal federalism). This contribution proposes to consider legal ways to deal with socio-economic inequalities from a very specific perspective. On the one hand, it focuses on local economic inequalities (not on inequalities among nation states or between various regions of the same country); second, it does not focus on traditional actors (such as the state and its organs or supranational institutions such as the EU) but on the local dimension, the dimension of the city. In fact, differently than the national and sub-national levels of government in federal and quasi-federal states, cities and metropolitan areas often lack the appropriate legal tools to face the several challenges they need to tackle, because in so many ways they depend on decisions made at – or funding coming from – higher levels of government.

It shall be pointed out, however, that although the discussion on the legal/constitutional dimension of cities is quickly emerging as an important issue in comparative constitutional law, carving out a novel space for metropolitan cities in decentralized systems is a complex phenomenon that is not open to univocal solutions; rather, it needs to be adapted to the unique dimension of each reality considered.

II. The historical prominence of cities

Historically speaking, cities as central socio-economic and financial hubs are not an invention of contemporary times, but they have always played a fundamental socio-economic, political, cultural and religious role. For example, the Greek πόλις (polis) was a well-developed and self-sufficient entity on which the whole system of ancient Greece was based, and whose influence also extended to the Roman time, where some cities were granted self-rule and considered free entities.¹³ The importance and development of cities continued during the Middle Ages: at that time, cities were also physically protected spaces, considering that they were all equipped with walls and ‘gates’ that were opened or closed based on time, needs and circumstances. Although they faced important challenges (ie they were ‘not democratic but hierarchical’ and presented several internal social and economic tensions, and did not offer the same bundle of services that are normally expected in contemporary times) cities were nonetheless considered communities of people who defended their autonomy.¹⁴ The power of medieval towns rests on the fact that they ‘represented economic-political-communal unit that allowed their citizens to achieve a new status within feudal society.’¹⁵ During the Middle Ages and Renaissance, some European cities in countries like Italy, France, Spain, Germany or the Netherlands became the core centres of life, business, development, innovation, ideas, arts, crafts, religion, encounters, trade fairs, etc. Cities represented the pulsing centres of society, people gravitated around them to the point of developing a sense of identity with the city they lived in. In other

13 E. Meehan et al., *op. cit.*, p. 4.

14 G. Frug, *The City as a Legal Concept*, *op. cit.*, p. 1085.

15 *Ibid.* p. 1125.

words, cities actively contributed to the economic and social development of the territory also because they were the seat of professional guilds. The growth of cities continued also during modern times: however, the parallel emergence of the nation state in the XVII and XVIII centuries drastically shrank the centrality of cities, although some urban centres (like London or Paris) have remained crucial in the social and economic development of their respective territories and countries.

But, as discussed, in recent years the demographic and spatial growth of cities has triggered a certain awareness among scholars of their changing role not only domestically but also at international level. In fact, cities are acquiring international authority and have to comply with ‘duties states have assumed as signatories to international charters and covenants’.¹⁶ Cities continue to significantly lead the economic and social development of the territory. As noted, in many developing countries of the Global South, the dimension of the phenomenon has reached exponential levels, as the uncontrolled expansion of megacities has brought along significant socio-economic inequalities and serious environmental concerns. The problem is that this transformation has not always been matched by an adequate change in the legal tools available to cities to adequately perform the duties and tasks they are called to play. Before proceeding to this discussion, however, a brief illustration of the role of cities in federal theory will be sketched in the next section.

16Y. Blank, *City and the World*, *op. cit.*, p. 900.

III. Cities and Federalism

As noted, this paper takes the legal/constitutional dimension of cities more seriously, first by proposing a definition of metropolitan cities as unique socio-economic and political spaces and, second, by suggesting to construe the metropolitan city as a new level of governance in decentralized systems, where to experiment innovative legal tools that would better equip it to face the increasing challenges it is to tackle, and ultimately reconcile socio-economic diversity and social cohesion. Although some of the arguments presented in this paper are not restricted to decentralized systems but may have a broader relevance for comparative constitutional law more in general, this contribution focuses in particular on federal and quasi-federal systems only¹⁷ for a number of reasons. First, federalism is itself traditionally construed as an ideal mechanism to reconcile unity and diversity through the implementation of a multi-tier system of government that accommodates ‘self-rule’ and ‘shared-rule’: it has thus been extensively used in a variety of situations, particularly when there was a need to reconcile unity with socio-linguistic-cultural diversity (as the cases of Spain, Belgium, Canada, Ethiopia, well illustrate).¹⁸ Second, differently than comparative constitutional law in

17 This paper embraces a very generous understanding of federalism, one which includes not only *classic* or *pure* federations (those moulded on the archetypal US federal system), but also decentralized, devolved, regional, or otherwise quasi-federal systems: this allows to expand the scope of the research and be more inclusive of different realities.

18 Ex multis, see for example R. Agranoff, ed., *Accommodating Diversity: Asymmetry in Federal Systems*, Baden Baden, 1999; M. Burgess & J. Pinder, eds., *Multinational Federations*, London & New York, 2007; A. Gagnon & J. Tully, *Multinational Democracies*, Cambridge, 2001; J. Loughlin, J. Kinkaid & W. Swenden, eds., *Routledge Handbook of Regionalism and Federalism*, London & New York, 2013; F. Palermo & Karl Kössler, *Comparative Federalism. Constitutional Arrangements and Case Law*, Portland, 2017

general, federalism theory has displayed some minimal attention to socio-economic diversity through specific tools such as equalization funds and other fiscal federalism mechanisms. Although this paper focuses on something else than fiscal federalism, it nonetheless represents one way of reconciliation.

Most importantly for my narrative, however, federalism has not been completely insensitive to the importance of cities. In fact, if we look back at the work of the German theologian and philosopher Johannes Althusius – who is considered the moral godfather of federalism – he had already conceived of a society built up from below, where cities were one of the several rings of the societal chain (along with families, collegia, provinces and the commonwealth). In his *Politica Methodice Digesta* published in 1604, Althusius embraced a rather inclusive idea of multi-layered society, where cities were key players and performed a fundamental role. As mixed and public associations, Althusius described cities as communities of citizens ‘dwelling in the same urban area (urbs), and content with the same communication and government (jus imperii).¹⁹ Each city had to be administered by a ‘prefect’ or ‘superior’ (sometimes also referred to as ‘consul’) assisted by ‘counselors’ and ‘senators’ constituting the ‘senatorial collegium.’²⁰ The senate was composed of ‘wise and honest select men’ entrusted with the ‘care and administration of the affairs of the city’ and representing the entire city.²¹

In spite of Althusius’ ideas, however, classic federations modelled on the US federal constitution of 1787 have mainly concerned themselves only with two levels of government: the federal and the subnational. In fact, as a general rule, in traditional federal

19 J. Althusius, *Politica*, Indianapolis, 1995, ch. V-VI, §48.

20 *Ibid.* ch. V-VI, §49-50.

21 *Ibid.* ch. V-VI, §54-56.

systems cities do not enjoy a constitutionally protected right to self-government, they have no sovereignty or autonomy of their own, and are only minimally protected from state government intervention,²² since everything that pertains to the city level is normally dealt with at subnational (not at the constitutional) level. This lack of constitutional recognition in classic federations of cities as autonomous tiers of government might be explained – at least in part – by the fact that, when the first federal systems emerged, the level of sophistication of the urban context was very different from today: communications were slower, most people still populated the countryside, transportation between distant cities was still at the onset, and the types of services that local governments and cities were providing were not as complex as today. Cities existed, of course, and some of them already were important economic and political centres, but they were nowhere close to the urban conglomerations of millions of people of different races, languages, and faiths that characterise metropolitan areas today, so there was no need to secure a special legal/constitutional space for them reflective of their unique socio-economic and political role. Another reason may be linked to the path followed to create the first federal systems. In fact, if we look at the US archetypal federal model, it emerged from the ‘coming together’ of thirteen independent states, which joined and became part of the federal covenant: this has been so influential in subsequent federal models and explains why federalism is mainly a pact between the federal and sub-national levels, with little role for the urban/city/metropolitan levels. And this is the case even when the population of the subnational entities that compose the federation is

22 R. Schragger, *City Power*, op. cit., p. 68.

concentrated mainly in the major cities, to the point that the state population mostly coincide with the city population.²³

However, in spite of this general neglect for cities as autonomous entities in federalism, exceptions exist. One example is represented by the special treatment that some federal systems reserve to their capital cities: that is the case of Washington DC in the United States, Canberra ACT in Australia, Abuja in Nigeria or Brasilia in Brazil. Here, the special legal treatment granted to these cities is justified not so much by the size or economic/cultural power of the city, but by its status and role as a federal capital: in fact, these cities are often merely political hubs with no historical relevance, as they have been created *ex novo* for the specific purpose of serving as capital cities. In other cases, however, the capital city of a federation does coincide with its most populous urban area, as is the case with Buenos Aires in Argentina, Mexico City or Addis Ababa in Ethiopia: here, the special legal status is reserved to the city that is not only the capital, but also the most populated and economically advanced.

Besides federal capitals, other examples of cities in federal systems having a special legal status include German city-Länder (where the three Länder of Berlin, Hamburg and Bremen are actually city-states due to historical reasons) or the city of Brussels in Belgium, as it enjoys a unique asymmetrical treatment as a region reflective of the bi-national nature of the state (in addition to being the seat of offices of some supranational institutions such as the EU).²⁴ More

²³ As an example, in Australia the metropolitan area of Perth is home of about 75% of the population living in the state of Western Australia, and similar figures are true for Melbourne and the state of Victoria.

²⁴ On the subject, see *ex multis* N. Steytler & J. Kinkaid, eds., *Local Government and Metropolitan Regions in Federal Countries*, Montreal & Kingston, 2009; E. Slack & R. Chattopadhyay, eds., *Finance and Governance of Capital Cities in Federal Systems*, Montreal & Kingston, 2009.

recently, also Italy has constitutionally entrenched metropolitan cities as one of the several tiers that compose this unique regional system,²⁵ while in the United Kingdom special status has been granted to London;²⁶ a special, federacy-like relationship exists between Hong Kong and mainland China.²⁷ More informally, in United States some cities have recently carved out for themselves autonomous powers in specific areas such as immigration or the environment, often in contrast with federal policies (a phenomenon broadly referred to as ‘sanctuary cities’).²⁸

In addition to the aforementioned examples, the most recent wave of constitutional drafting has increasingly turned its attention if not to the city or metropolitan area to the local/municipal sphere, elevating this other tier of government to constitutionally protected status, often in association to (or as an expression of) the principle of subsidiarity (see *infra*): in federal and quasi-federal systems, examples include, but are not limited to, Brazil, Germany, Italy, South Africa, Spain, Switzerland. Yet, even when the fundamental law offers constitutional recognition to the local or municipal tier of government, local governments do not usually stand on equal footing

²⁵ See E. Longo & G. Mobilio, *Territorial government reforms at the time of financial crisis: the dawn of metropolitan cities in Italy*, in *Regional and Federal Studies*, vol. 26, no. 4 (2016); G. Boggero, *The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian Regionalism?*, in *Perspectives on Federalism*, vol. 8, no. 3 (2016).

²⁶ J. Stanton, *Decentralisation and empowerment under the coalition government: An empirical study of local councils in London*, in *Journal of Planning and Environment Law*, vol. 9.

²⁷ See C. Chan, *Reconceptualising the Relationship between the Mainland Chinese Legal System and the Hong Kong Legal System* in *Asian Journal of Comparative Law*, vol. 6, no. 1 (2011)

²⁸ On US ‘sanctuary cities’ see R. Cuison Villazor, *What is a “Sanctuary” in Southern Methodist University Law Review*, vol. 61 (2008); R. Cuison Villazor, *“Sanctuary Cities” and Local Citizenship*, in *Fordham Urban Law Journal*, vol. 37 (2010), p. 573.

with the main actors of the federal or quasi-federal system: in fact, municipalities mostly enjoy delegated/devolved (and not autonomous) powers, and cities are still anchored to the idea that they are mere subdivisions of states.

The problem with the existing structure is that the legal tools available to local governments – and to (metropolitan) cities – do not always serve the ‘real dimension of contemporary urban entities’ as they were designed at a time when societies were essentially rural, and they were never adapted to the effective shape of contemporary urbanization.²⁹ More specifically, the fiscal and financial powers of cities continue to reduce while their challenges have increased and the tasks they are called to perform have multiplied.³⁰ Furthermore, many state or national constitutions provide for specific constraints (ie balance budget requirements, use of public money only for public purposes, limitations on the acquisition of debts, etc...),³¹ and this limits the way in which cities (or other local governments) can spend and raise money and, consequently, function.³² These constitutional constraints reduce the ability of localities to respond to changes in economic circumstances,³³ thus forcing them to either find indirect ways to fund their services or to depend on transfers coming from the centre.³⁴ Consequently, traditional local institutions such as municipalities might be ill-adapted to the real size of urban issues.³⁵ As scholars have contended,

29J.-B. Auby, *Droit de la ville. An introduction*, in *Italian Journal of Public Law*, vol. 5, no. 2 (2013), p. 304.

30 L. Scheurer & A. Haase, *op. cit.*, p. 340.

31R. Schragger, *op. cit.* p. 220 with regards to the US, but similar considerations can be made for other jurisdictions.

32 *Ibid.* p. 221.

33 *Ibid.*

34 *Ibid.*

35 J.-B. Auby, *op. cit.*, p. 304.

[t]he intersections of urban diversity and cohesion should be addressed via policies that allow for solutions shaped and owned predominantly by political and societal actors at the local level (emphasis added).³⁶

Building upon their historical role and the renewed attention on the part of legal scholarship, I thus propose a new understanding of metropolitan cities as unique socio-economic and political spaces. The experience of federalism as naturally articulated in multiple tiers of government, coupled with its innate capacity to reconcile unity and diversity also of the socio-economic type, and the experience in treating cities asymmetrically as briefly sketched above helps painting the ideal canvass where to experiment new forms of (legal) reconciliation between competing forces and social and interpersonal solidarity within the specific context of large metropolitan areas.

IV. Proposing a new understanding of metropolitan cities as unique socio-economic and political spaces

Building upon the traditional role of cities as entities that contribute to the social and economic development of the territory, in this section I will propose a definition of (metropolitan) cities as unique socio-economic and political spaces. In this way, I suggest to (re-)place metropolitan cities ‘at the centre of our economic and constitutional thinking’³⁷ by vesting them with more autonomy and powers within the decentralized system. Before doing so, however, I propose a definition of metropolitan city that is not univocal but tailor-made to the specific, contingent reality.

36 L. Scheurer & A. Haase, *op. cit.*, p. 340.

37 R. Schragger, *op. cit.*, p. 18.

What is a socio-economic and political space?

The idea that larger cities could be understood and conceived of as ‘socio-economic and political spaces’ with unique features and needs, and that they could play a role in the economic development and well-being of the people who live in them, is a longstanding one. For example, one scholar has argued that cities are ‘the chief economic engines in their regions, states, and nations’ or that, historically speaking, they have a tradition of being productive places and the primary cause of economic development.³⁸ Particularly after the fall of barriers to trade, the economic influence of cities has grown to the point that they can now be seen as important trade nodes allowing the flow of capital, persons and goods.³⁹ Furthermore, although the nation-state has been traditionally considered the ‘basic unit of economic analysis’, cities ‘are relevant economic concepts in ways that nations are not.’⁴⁰ Because of this dominance of the nation-state in economic analysis, however, the (metropolitan) city has generally not been treated as ‘core economic concept[s]’ in spite of its pivotal role in cultural, political and economic life.⁴¹ For example, Jane Jacobs argued that cities could be construed as economic units and ‘engines of economic growth’⁴² whilst national economies are a ‘collection of city economies’⁴³ because, within nations, cities ‘account for a disproportionate share of gross domestic product and income’⁴⁴ and, consequently, cities play a fundamental role in ‘fostering economic innovation.’⁴⁵

38 *Ibid.*

39 *Ibid.*

40 *Ibid.* p. 18-19.

41 *Ibid.* p. 20.

42 *Ibid.* p. 19.

43 *Ibid.* p. 20.

44 *Ibid.* p. 21.

45 *Ibid.* p. 19.

I use the expression ‘socio-economic and political spaces’ to define metropolitan areas as they display some unique, de facto asymmetrical political and socio-economic traits that are different compared to the rest of the territory. Large metropolitan areas are not only capable of generating wealth and economic growth but they are also competent at promoting good governance.⁴⁶ This is where the ‘socio-economic’ and the ‘political’ components meet, to denote that these areas have a potential for self-government or autonomous powers that is directly proportional to their socio-economic influence. In other words, the more socio-economically powerful, the more they feel the need and desire for independent decision-making. Furthermore, larger cities that are fully socially and politically active and integrated – and thus privileged in comparison to other, more depressed, areas – might perceive a sense of inadequacy for the lack of tools/resources available to them, with upper tiers of government allegedly ignoring or neglecting their needs.

Metropolitan cities can thus be construed as unique socio-economic and political spaces facing exceptional challenges, their uniqueness emerging from their powerful economic muscle, their political potential and their socio-cultural distinctiveness and diversity. Consequently, an argument can be made in the sense that more legal and constitutional autonomy could be extended to them in federal and quasi-federal systems. Before discussing any normative agenda, however, one important aspect that still needs to be addressed is that of boundaries, or of the definition of a metropolitan city.

46Y. Blank, *Localism in the New Global Legal Order*, in *Harvard International Law Journal*, Vol. 47, No. 1 (2006), p. 264.

What is a (metropolitan) city? How do we define a city, or how big should a city be so as to be considered a metropolitan area and, consequently, a unique socio-economic and political space deserving to be elevated to the rank of autonomous federated entity for purposes of this paper? Defining the geographical element of metropolitan areas is a task riddled with difficulties. Quite intuitively, metropolitan cities are large territorial spaces displaying certain common features typical of densely populated areas as defined above. But the same, concurrent concepts of large and densely populated are relative, as they depend on local perceptions. Instinctively, metropolitan areas are the largest and biggest cities but, again, this is not enough: how do we determine whether a city is big enough to be considered a metropolitan city? Besides the geographical (or spatial) method – which does not take into account contingent situations – other methods may include population: but this is also an inaccurate indicator, as it significantly varies across states and continents (ie a city with 2 million people can be seen as a metropolitan area in Italy or Switzerland but not in China). Graizbord classifies cities both by size and function.⁴⁷ In terms of size, he contends that cities with at least one million inhabitants are defined millionaire cities, whereas those with more than ten million people are classified as megacities.⁴⁸ Metropolitan areas, on the other side, include ‘one central city and a set of politico-administrative units (municipalities) that are incorporated if the continuous urbanized area covers part of their territory.’⁴⁹ By function, Graizbord describes metropolitan zones as areas where ‘a local jurisdiction is included if it develops some

47 B. Graizbord, *Governance of Megacities in Federal Orders*, in *Forum of Federations* (ed.), 4th international conference on federalism: conference reader, p. 72.

48 *Ibid.*

49 *Ibid.*

interaction with the city centre or with an area already considered part of the metropolis.⁵⁰ City-regions or metropolitan regions are recognized functional units when ‘the population and economic activities in [their] hinterland, and the cities located within, are dependent to the central city.’⁵¹ Finally, two additional classifications include the concepts of megalopolis (such as the complex US north-eastern part) and the topical world city, to define urban agglomerations where ‘the location of transnational firms’ command functions and related activities play an important role in the global economic order.’⁵² Important to this narrative are also the so-called clusters of cities (or ‘economies of agglomeration’), meaning the proximity of businesses generating specialized industries: for example, the Ruhr Valley, the Silicon Valley, or certain financial districts in London, Tokyo or New York.⁵³

Although the classification by size is more objective, I find the functional definition of a city quite elusive. Because of different local perceptions, in this paper I will thus prefer not to propose a univocal definition of metropolitan city but instead suggest that each country should carve out its own definition based on a combination of factors that include not only demographics, but also the size of the metropolitan area, the socio-economic context, the asymmetries with less urbanized territories, etc.

50 *Ibid.*

51 *Ibid.* p. 73.

52 *Ibid.* p. 73. Saskia Sassen would then use the expression *global city* to refer to the same concept.

53 R. Schragger, *op. cit.*, p. 21 and 23

V. The normative agenda

In proposing a definition of metropolitan cities as unique socio-economic and political spaces, this paper offers to rethink their constitutional status in decentralized systems and vest them with more autonomy and powers, fit to the role and challenges they are called to perform every day, including contrasting the socio-economic inequalities that are typical of these areas. In other words, the argument is that metropolitan cities can become strategic places where to build new modes of governance that are better capable of balancing the economic and social dimensions and ultimately fight economic inequalities, at least those of a local/urban nature. This need is prompted by the fact that cities are not always adequately equipped with the legal tools needed to face the challenges and perform the tasks required by them. The next question thus becomes: what legal tools could be discussed or considered?

As indicated above, this paper focuses mainly on federal and quasi-federal systems, a choice that is grounded on two main premises. First, federalism is traditionally construed as an ideal mechanism to reconcile unity and diversity through the implementation of a multi-tier system of government. Second, because of its natural articulation in different levels, it is easier to think of metropolitan cities as the new levels of governance to accommodate their unique traits, reconcile diversity and social cohesion and face economic challenges. However, federalism can also be construed simply as a theoretical framework, and ‘export’ some of the suggested proposals to realities that are more unitary.

In drafting a (very preliminary) normative agenda, the following aspects might need to be taken into account.

a. Constitutional entrenchment of metropolitan cities

The first aspect to consider is whether metropolitan cities, however delimited and defined, should be constitutionally entrenched as an autonomous level of government reflective of their being unique socio-economic and political spaces according to the description offered above. This would provide them with an additional layer of protection from unduly and untimely reforms. Constitutional entrenchment, however, would immediately generate challenges, as it may be very difficult to pursue, especially in those federal and quasi-federal states where constitutional amendment is rigid. Furthermore, while one of the purposes of entrenching metropolitan cities as separate tiers of government might be efficiency (see *infra*), it could also be argued whether the entrenchment of an additional level of governance would be welcomed by citizens, because of the increased risk of administrative and legislative costs that this would entail.

b. Constitutional entrenchment of legislative powers for metropolitan cities

The next aspect that needs to be discussed is the provision of constitutionally protected legislative powers for the metropolitan city: a clear formulation of legislative powers in key areas (for example, immigration, environment, criminal law, certain personal/fundamental rights, economic/social matters but, most importantly, fiscal aspects), might help carving some autonomous legal space for the city.

In general, delegation of powers to the bottom has been both praised and questioned. For example, Blank argues that many theories advocating delegation of authority from central to local governments emphasize increased economic advantages and economic efficiency: in this sense, subsidiarity (defined as a principle favouring the exercise of powers at the level of government closest to the citizens, unless a higher level might be better placed for that) is understood as an

exemplification of 'libertarian ideals that marry individual freedom with economic efficiency by promoting liberty, experimentation, and healthy competition'.⁵⁴ Among its disadvantages, he posits that delegation of powers can also create an array of collective action problems that cause just the opposite, eg inefficiency and deterioration of public goods.⁵⁵

If an agreement is reached in the sense of empowering metropolitan cities with entrenched autonomous legislative powers, Frug suggests that there must be 'a genuine transfer of power to the decentralized units'.⁵⁶ Likewise, a clear formulation of competences and mechanisms of coordination between the different tiers of government should also be encouraged.

c. Fiscal autonomy

In line with a definition of metropolitan cities as unique socio-economic and political spaces, whereby large cities are capable of fostering not only good governance but also 'generate wealth and economic growth', they need to be financially viable and self-reliant.⁵⁷ Concrete financial autonomy is one of the most important elements that are missing in city governance, thus limiting their powers and efficiency. Consequently, this aspect needs to be seriously considered when carving cities' financial and fiscal powers.

d. Representation at the centre

In line with most traditional federal and quasi-federal practices, representation refers to the presence of representatives of the different tiers of government within central institutions. Representation at the

54 Y. Blank, *Localism*, *op. cit.*, p. 270-271.

55 *Ibid.* p. 271.

56 G. Frug, *op. cit.*, p. 1070.

57 Y. Blank, *Localism*, *op. cit.*, 264.

centre may take different forms, but the most classic is represented by an Upper Chamber (or Senate) where the interests of the peripheral government may find an ideal platform for discussion, or through some form of representation within the Constitutional (or Supreme) Courts. When this is not possible, more informal avenues of representation may be explored, such as intergovernmental relations and conferences. An eventual constitutional entrenchment of metropolitan cities might call the aspect of representation at the centre into question: it will thus be necessary to explore the most appropriate forms of representation for this new tier government.

e. International treaty-making powers

Reflective of the international dimension and role that larger cities have informally acquired in certain areas, it might be worth exploring their international position and role through the creation of networks. This aspect is linked to the fact that metropolitan cities have no legal personality in formal international law, as only states can usually be members of the UN or other international institutions, and the legal principle that denies metropolitan cities or localities to be legal persons in international law is rarely mentioned.⁵⁸

f. Direct or indirect election of city representatives

As Blank posits, for residents to learn that their participation matters, localities need to be meaningfully represented in decision-making. Yet, merely granting authority, duties and rights to metropolitan cities will not advance democracy without 'supplementary measures' such as direct elections.⁵⁹ There are many advantages in directly electing organs of metropolitan cities. Frug contends that there must be some genuine transfer of powers to the decentralized units, as power and participation are inextricably linked:

58 Y. Blank, *City and the World*, *op. cit.* p. 892.

59 Y. Blank, *Localism*, *op. cit.*, p. 275-276.

in fact, nobody 'is likely to participate in the decisionmaking of an entity of any size unless that participation will make a difference in his life.'⁶⁰

g. Solidarity and city identity

Finally, two additional points need to be addressed more thoroughly: solidarity and city identity. Metropolitan cities can be seen as places of solidarity, and solidarity (and equality) represent the foundational values upon which social cohesion in the metropolitan city might be achieved. Solidarity is not a concept that can be easily defined, although it is closely linked to positive values such as brotherhood, friendship, mutual help, etc. But solidarity in strictly legal terms may also be associated to the *obligatio in solidum* originating in Roman Law, whereby it connotes a shared responsibility for the whole common objective (*solidum*) and not just the care for an individual. In the specific urban/metropolitan context, solidarity may find expression in different ways and assume different connotations. It may run among individuals who share the same common spaces (horizontally) but also among institutions of local governance and citizens (vertically). It is thus possible to talk about forms of interpersonal/intergenerational solidarity but also socio-economic solidarity.

The second point refers to city identity as opposed - or parallel - to regional or state/national identity. Social cohesion entails the development of a net of social relations and helps shaping a feeling of belonging that contributes to create a sense of communal identity.⁶¹ The element of identity also contributes to frame the definition of metropolitan cities as unique socio-economic and political spaces, as

60 G. Frug, *op. cit.*, p. 1070.

61 L. Scheurer & A. Haase, *op. cit.*, p. 337.

some city-based identity may emerge among the people living in a given metropolitan territory. Although a thorough discussion on identity is beyond the scope of this paper, it is perhaps worth pointing out that, similarly to solidarity, also identity can take different forms. At city level this sense of identity has the power and potential to transform and influence local and national policies, because of the weigh and robust leading role played by the city. This identity aspect strengthens the argument in favour of a broader legal/constitutional role for the city.

Conclusion

The modest purpose of this paper was to simply begin a discussion on the opportunity to rethink the legal/constitutional role of metropolitan cities in federal and decentralized systems in light of their being unique socio-economic and political spaces. The paper mainly focused on decentralized systems, as their intrinsic articulation in different tiers of governments might facilitate the creation of a more robust constitutional space for the city. The rationale behind the creation of a legal entity called metropolitan city – embedded in, and protected by, the constitution – and specifically tailored on the unique traits of large metropolitan areas is mainly that in a more and more globalized and connected world, the raise in importance of metropolitan areas testifies to a parallel return to the bottom, to the local dimension, to the very basic core of the social community: this is where the principle of subsidiarity comes into play.

Of course, the argument that supports an increase in city power and the alleged benefits accompanying it shall be taken cautiously, as it is a nuanced one: in fact, there is no single solution that would perfectly fit all models. As an example, in certain smaller and homogeneous European countries such as Austria or Switzerland, – countries which have a rather uniform level of economic development

with less rural/urban divide – the challenges faced by cities are quite different than those encountered in more asymmetric realities that are more typical of certain developing countries or larger states where the urban/rural divide is much deeper both economically and culturally. Consequently, the argument for more city power could paradoxically damage the former (thus deepening the socio-economic divide) while benefitting the latter. However, this work might acquire particular relevance in developing countries located in the Global South, particularly characterized by economic inequalities and socio-economic tensions, densely populated and constantly growing.

Abstract: This paper takes as its point of departure the increased importance that cities have acquired in recent decades and, as a result, the need for a more robust discussion of their legal space. To this extent, it proposes a definition of metropolitan city as a unique socio-economic and political space and suggests construing it as a new level of governance where to experiment innovative legal tools that would equip it to balance and reconcile diversity and social cohesion.

Keywords: Metropolitan cities, diversity, social cohesion, federalism, solidarity

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