

I Would, but I Need the Eggs: Why Neither Exit Nor Voice Substantially Limits Big City Corruption

David Schleicher*

I. INTRODUCTION

When I told the Dean at my law school, the estimable Dan Polsby, that I was going to Chicago to deliver a lecture on political corruption, he said, “I lived there a long time, and, as the saying goes, that sounds like bringing coals to Newcastle.”¹ This is certainly a common belief. The term “Chicago politician” has become national shorthand for a corrupt public official.² New York, where I grew up, also figures in stories of political corruption in America, with Thomas Nast’s cartoons of the Tammany Tiger and Boss Tweed (and, much later, Martin Scorsese’s version of him in the movie *Gangs of New York*³) serving as warnings to all Americans about the sordidness of big city government.⁴

Some of this is hype. After all, there is corruption to be found in every area of the country and at all levels of government. And

* Assistant Professor, George Mason University School of Law. This paper was presented as a speech at the Loyola University Chicago Law Journal’s wonderful conference, “The Scandal of Political Corruption and The Law’s Response.” I would like to thank the participants in the conference for their comments.

1. The first known use (at least as far as I can find) of this term comes from THOMAS FULLER, *ANGLORUM SPECULUM, OR THE WORTHIES OF ENGLAND, IN CHURCH AND STATE* 552 (1684) (“To carry Coals to Newcastle. That is . . . to busy one’s self in a needless employment.”).

2. For instance, in the 2008 Presidential campaign, Senator John McCain used the term repeatedly as a criticism of then-Senator Barack Obama. Chicagoans seem to revel in similar beliefs about their local officials. As Dick Gregory noted, “In most places in the country, voting is looked upon as a right and a duty, but in Chicago it’s a sport. In Chicago not only your vote counts, but all kinds of other votes—kids, dead folks, and so on.” DICK GREGORY, *DICK GREGORY’S POLITICAL PRIMER* 69 (1972).

3. *GANGS OF NEW YORK* (Miramax Films 2002).

4. See KENNETH D. ACKERMAN, *BOSS TWEED: THE RISE AND FALL OF THE CORRUPT POL WHO CONCEIVED THE SOUL OF MODERN NEW YORK* 6–8, 134–39, 252–54 (2005) (discussing Nast’s cartoons); *GANGS OF NEW YORK* (Miramax Films 2002). The best movie about big city political corruption is surely Preston Sturgis’s *The Great McGinty* (Paramount Pictures 1940). The movie’s famous quote—memorable to students of urban politics—was said by Daniel “Dan” McGinty to a party boss about getting paid for voting: “Never mind the applesauce! How do I get the bucks?”

determining the relative susceptibility to corruption of levels of government is an impossible empirical question, as it requires some baseline understanding of what the expected rate of corruption at each level ought to be.

Still, it is hard to shake the popular belief that there is something about big city government that makes corruption particularly likely. This article intends to lay out, from the perspective of economic and political theory, why it might be the case that big city governments suffer more from corruption than other types of governments. It will also discuss the traditional responses to the problem of big city political corruption, the costs of those responses, and what might be done to help cure the problem of corruption in big cities without imposing these costs.

This will require a bit of wind-up, but I will tell you where I am going.

First, successful big cities are more likely than suburbs or small towns to have corruption problems not merely because of the size of their governments but because of exactly what makes them successful—what economists call agglomeration economies.⁵ Big cities draw residents and businesses because they provide people with a number of attractions—things like deep labor and consumption markets, and information spillovers—and drive them away because of congestion, or the high cost of urban land. Government policies play a role in determining whether individuals stay in or leave a big city, but only a secondary one; the choice is largely driven by whether the benefits and costs of city living are worth it. In contrast, when someone is deciding which small town or suburb to live in, government policies like the quality of schools or property tax rates play a crucial and often decisive role. As a result, big city residents are less likely to punish bad governmental policies by exiting the jurisdiction, and this makes corruption more likely. Further, the more successful big cities are as economic centers, the less likely its residents will be responsive to governmental corruption. It is like the joke from *Annie Hall* about a man who tells his doctor that his brother is crazy and thinks he is a chicken. When the doctor asks the man why he does not turn his brother in, the man responds, “I would, but I need the eggs.”⁶ Cities may be crazy and corrupt, but their residents need the eggs.

5. See *infra* Part II (describing why exit only imposes a weak constraint on big city political corruption).

6. See ANNIE HALL (Rollins-Joffe Productions 1977) (“After that it got pretty late, and we both had to go, but it was great seeing Annie again. I . . . I realized what a terrific person she was,

Second, the fact that national political parties contest local elections, but do so without rebranding themselves at the local level on local issues, has left cities without regular political party competition, the traditional tonic for political corruption.⁷ The lack of local partisan competition is caused by the interaction between election laws unsuited to the problems of local elections and predictable aspects of voter behavior.

Third, responses to the problem of urban political corruption have been partially successful, but not without substantial costs.⁸ These costs include imposing severe limits on the ability of locals to determine local policy and extensive inter-local governmental externalities.

Finally, the problems of urban corruption are best addressed by increasing, rather than decreasing, local democracy, particularly by encouraging local partisan competition. This article will conclude by suggesting a few ideas about how to achieve this goal.⁹

II. "I DON'T WANT TO MOVE TO A CITY WHERE THE ONLY CULTURAL ADVANTAGE IS BEING ABLE TO MAKE A RIGHT TURN ON A RED LIGHT"¹⁰: WHY EXIT IMPOSES ONLY A WEAK CONSTRAINT ON BIG CITY POLITICAL CORRUPTION

Albert Hirschman famously divided the ways citizens can influence politics into two categories: exit and voice.¹¹ Citizens can influence a government by either leaving or entering a jurisdiction (or threatening to leave or enter) or can attempt to influence its decisions directly through voting or other methods of popular participation. Hirschman suggested there were trade-offs between these options: where exit is less available, citizens will try harder to use voice to influence government decisions, and where popular participation is difficult, exit becomes more likely.¹²

and . . . and how much fun it was just knowing her; and I . . . I, I thought of that old joke, y'know, the, this . . . this guy goes to a psychiatrist and says, 'Doc, uh, my brother's crazy; he thinks he's a chicken.' And, uh, the doctor says, 'Well, why don't you turn him in?' The guy says, 'I would, but I need the eggs.' Well, I guess that's pretty much now how I feel about relationships; y'know, they're totally irrational, and crazy, and absurd, and . . . but, uh, I guess we keep goin' through it because, uh, most of us . . . need the eggs.'").

7. See *infra* Part III (explaining why party competition is an inefficient constraint on corruption in big cities).

8. See *infra* Part IV (describing various attempts at political reform).

9. See *infra* Part V (proposing new methods for reigning in political corruption in big cities).

10. This, again, is from ANNIE HALL, *supra* note 6.

11. ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY 37 (1970) (explaining that voice can function as an alternative or a complement to exit).

12. *Id.* at 34.

Both exit (and the threat thereof) and voice give citizens tools to influence government. Similarly, both exit and voice should serve to constrain governmental corruption. The term “corruption” is notoriously difficult to define. But whatever the definition, we can say that corrupt acts are not for the general good and are not preferred by the majority of the citizenry.¹³ Although there is disagreement about most policies, we can be relatively certain city residents do not like governmental officials enriching themselves at the public trough. Corruption is, for my purposes here, just a special case of an ordinary problem where government actions and popular preferences diverge. As both exit and voice serve to give local residents influence over local governments, they both should constrain bad behavior by local politicians.

There is a long literature on why local governments are generally good at matching preferences to policies. The explanation lies with exit and the threat of exit by residents. Charles Tiebout developed the most well-known economic model of local government, and he argued that, if residents are perfectly mobile, employment does not depend on housing location, and if there are many local governments providing exclusively local public services, local public services will be provided at the most efficient level.¹⁴ Individuals in Tiebout’s model “sort” to their preferred package of taxes and services by moving between local governments, and everyone gets what they want. There is no need for voice—exit does all the work. The same forces that make policy responsive to voter preferences serve as a check on local corruption. If local politicians are corrupt, mobile residents will leave (and others will not want to come), driving down property prices and depriving the city of residents and tax revenue.¹⁵

Tiebout’s model has been criticized for utilizing unrealistic assumptions and for promoting a privatized notion of local government, but there is substantial evidence that sorting does occur.¹⁶

13. One notable problem for people studying corruption is that it is difficult to distinguish between governmental policy-making that is venal and policy-making that is just bad or dumb. For my purposes, no distinction needs to be drawn: corruption is simply a special category of policies that is likely to be disfavored by residents.

14. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 419–24 (1956). “The dominant law and economics model of local government, based on the work of Charles M. Tiebout, assumes that decentralization of power to local governments promotes the efficient delivery of public goods and services.” Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 503 (2002).

15. Willie Sutton once noted that he robbed banks because that was where the money is. A city without many resources is not a particularly attractive target for corrupt politicians.

16. See, e.g., GERALD FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING*

Capitalization, or the degree to which the quality of public policies are captured in housing prices, is a real empirical phenomenon—people pay more to live in local governments with good schools and low taxes.¹⁷ Other scholars, particularly William Fischel, have added voice to the Tiebout model by explaining why small city voters are likely to demand good behavior. Exiting a jurisdiction is costly, and by controlling policy, homeowners can reduce the variation in the value of their house—most people’s most important asset.¹⁸ In small towns, local policies are highly responsive to “homevoters” seeking to protect the value of their investment, and the quality of those policies is reflected in housing prices.

However, capitalization works less well in big cities, and the reason lies in each of us big city residents.¹⁹ When we make arguments for and against living in a big city, we necessarily include many factors unrelated to the quality of government services. Economists studying why cities develop have come up with three central types of what they call “agglomeration economies,” or reasons people locate near one another.²⁰

WALLS 167–73 (1999) (criticizing Tiebout’s vision of local government); Sheryll B. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1991–2015 (2000) (commenting on Tiebout’s prediction that citizens would migrate to certain areas of a metropolis based on their desired blend of taxes and services); Richard C. Schragger, *Consuming Government*, 101 MICH. L. REV. 1824, 1834 (2003) (explaining that the ability to pay for public services largely affects how they are distributed); cf. Richard Briffault, *Our Localism, Part II: Localism and Legal Theory*, 90 COLUM. L. REV. 346, 399–419, 426 (1990) (praising Tiebout for providing a more accurate picture of local governmental power than other scholars, but claiming the model does not properly address the problem and ubiquity of externalities created by local policies).

17. See Wallace E. Oates, *The Many Faces of the Tiebout Model*, in THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES 25–27 (William A. Fischel ed., 2006) (summarizing research on capitalization); Wallace E. Oates, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*, 77 J. POL. ECON. 957, 968 (1969) (same).

18. WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT, TAXATION, SCHOOL FINANCE, AND LAND USE POLICIES 8 (2001) [hereinafter FISCHEL, HOMEVOTER HYPOTHESIS] (developing a Tiebout consistent theory of local voting); Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUD. 205, 211 (1975).

19. See David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 2, 32 (forthcoming 2010) [hereinafter Schleicher, *The City*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1471555 (suggesting that individual sorting for policies among local governments “reduces agglomerative efficiency”).

20. The literature on the topic is extensive. For summaries, see MAHISA FUJITA, PAUL KRUGMAN & ANTHONY J. VENABLES, THE SPATIAL ECONOMY: CITIES, REGIONS AND INTERNATIONAL TRADE 1–6 (1999); EDWARD L. GLAESER, CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM 1–12 (2008); Edward L. Glaeser, *Are Cities Dying?*, 12 J. ECON. PERSP. 139, 139–50 (1998) [hereinafter Glaeser, *Are Cities Dying?*]; Roderick M. Hills, Jr. & David

The first is reducing transport costs for goods—factories and their suppliers often locate near one another in order to reduce shipping costs.²¹ This was once the dominant explanation for city development, but as domestic shipping costs have fallen, it has become less important.

The second is market size. Both individuals and firms like locating in places with deep labor markets. Employees in deep labor markets can specialize and hence become more productive, face reduced search costs, and have insurance against firm-specific risk (that is, they know they will likely be able to get a new job without moving if their employers go belly up).²² Similarly, many residents like living in places with large and diverse consumption and entertainment markets for the same reasons—specialization, reduction in search costs, and insurance that you will find what you are looking for when you go there.²³ For instance, people like being able to choose between the dozens of blues clubs on Beale Street in Memphis or one of the thousands of diamond dealers on 47th Street in Manhattan.²⁴ Big city market size even affects the quality of dating. Single people like living in cities because their deep pools of other single people reduce search costs (i.e., there are crowded bars full of other single people), provide opportunities for specialization, and provide insurance against “firm” specific risk, like a break-up.²⁵

Schleicher, *The Steep Costs of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing*, 77 U. CHI. L. REV. 249, 262–63 (2010); Schleicher, *The City*, *supra* note 19, at 11–29; Richard C. Schragger, *Rethinking the Theory and Practice of Local Economic Development*, 77 U. CHI. L. REV. 311, 318–19 (2010).

21. This can explain why Chicago developed. It was the center of the rail transportation network necessary to get the products of farms from the Midwest. Once that occurred, it made sense for final goods manufacturers to locate near the rail hub, and then for other factories to locate near the final goods factories. *See* Edward L. Glaeser & Janet Kohlhase, *Cities, Regions and the Decline of Transport Costs*, 83(1) REGIONAL SCI. 197, 198–99 (2004) (explaining that Chicago was built as a transport hub enabling the movement of lumber, wheat, and cattle to the east coast and to Europe); Edward L. Glaeser & Giacomo A.M. Ponzetto, *Did the Death of Distance Hurt Detroit and Help New York?*, NBER Working Paper No. 13710 (Dec. 2007) (“[W]hen firms and people are located near each other in cities and in industrial clusters, they benefit in various ways.”). However, other explanations are needed for why Chicago has prospered in a post-industrial age.

22. *See* Glaeser, *Are Cities Dying?*, *supra* note 20, at 146 (noting that large labor markets provide insurance to workers whose jobs may disappear due to industry-specific shocks).

23. *See* Schleicher, *The City*, *supra* note 19, at 17 (discussing how urban consumption markets feature a wider range of products that make it more likely that a consumer will find a particular good, which thus drives people to shop and live in cities).

24. *Id.*

25. *Id.* at 20.

The final category of agglomeration gains is knowledge spillovers.²⁶ Firms and individuals learn from one another if they are close together. Software firms do not set up shop in Silicon Valley for the low rents or the vibrant social scene; they do it for the intellectual ferment.²⁷ This is reflected in wage growth, which is higher in cities than it is in rural areas. Employers pay for productivity, and urban workers learn from others at higher rates, causing their wages to rise.²⁸

On the other side of the equation is the problem of congestion, or high rents. If you look for a downtown apartment, it is going to be much more expensive per square foot than a house in the suburbs. Residents make a decision balancing the agglomeration benefits of living downtown against the costs of real estate and the other assorted hassles of city living. Robert Lucas summed this up when he said, “What can people be paying Manhattan or downtown Chicago rents for, if not for being near other people.”²⁹

Some agglomeration economies are regional. For instance, virtually everyone in a region gets the benefits of depth in most labor markets because people can live in one place and commute to another. But others are highly local.³⁰ You do not go to lunch with, and hence get knowledge spillovers from, someone who lives 100 miles away. You cannot have a choice of dozens of neighborhood bars and walk home if you do not live near them. And it is really hard to date someone who lives on the other side of a metropolitan area.

These localized agglomeration economies make individual location decisions sticky. They are not, however, transaction costs. Individuals stay in cities because they like the people there, and do so despite the fact that those other people might have very different preferences for local policy.³¹ Exit is thus limited as a way to constrain government

26. Alfred Marshall, the leading macroeconomist of the turn of the last century and the first major theorist of agglomeration economics, described the effect of industrial concentration on information: “[T]he mysteries of the trade become no mystery but are, as it were, in the air” ALFRED MARSHALL, *PRINCIPLES OF ECONOMICS* 271 (8th ed. 1940).

27. See Glaeser, *Are Cities Dying?*, *supra* note 20, at 148 (explaining that learning occurs through interaction between specialists in a particular industry).

28. Edward L. Glaeser & David C. Maré, *Cities and Skills*, 19(2) *J. LAB. ECON.* 316, 316–19 (2001). There is roughly a 33% urban wage premium. *Id.*

29. Robert Lucas, *On the Mechanics of Economic Development*, 22 *J. MONETARY ECON.* 3, 39 (1988) (emphasis omitted).

30. See Schleicher, *The City*, *supra* note 19, at 37–38 (explaining that the spreading caused by extensive zoning has a negative effect on agglomerative efficiency because as people spread out, the degree to which they are a part of the same labor, consumption, and social markets decreases).

31. *Id.* at 37–42.

policy because people do not want to abandon their favored set of neighbors.

Both the benefits of agglomeration and the costs of its flip side—congestion and high rents—are felt most heavily in big cities.³² When you decide to live in Chicago rather than some suburb, you are doing it because you like the amenities of living downtown and because you are willing to pay the increased cost per square foot in order to get them. A single person who likes the ability to go out to Chicago bars every night is not going to want to move to Arlington Heights merely because she cannot stand Mayor Daley.

Now, this should not be overstated. City residents do frequently leave cities because they do not like city services, be it schools, policing, or something else. But city residents are less sensitive to government policies than someone choosing between two suburbs, where tax rates, land use regulation, and school quality are likely to be the determinative factors. The result is that exit and entrance—the ways in which current and future residents affect policies by deciding where to live—is less of a constraint on big city policymaking than it is on suburban policymaking.

This has effects on what types of policies are chosen. It also affects how much agglomeration there is; sorting reduces the efficiency of agglomeration, as I have argued elsewhere.³³ For our purposes here, however, it provides an explanation for why big cities may be less resistant to corruption than suburbs. Corrupt suburban governments will be punished by a strong fall in property values and tax revenue because people leave (and do not come back to) governments that squander public money. People in Chicago hear about political corruption and just go to their favorite hot dog place (of which they have many, many choices) and write it off as another cost of living in a big city.

III. “YOU’RE LIKE NEW YORK, JEWISH, LEFT-WING, LIBERAL,
INTELLECTUAL, CENTRAL PARK WEST, BRANDEIS UNIVERSITY, THE
SOCIALIST SUMMER CAMPS AND THE, THE FATHER WITH THE BEN SHAHN
DRAWINGS”³⁴: THE FAILURE OF BIG CITY PARTY COMPETITION

If exit does not constrain big city political corruption as much as it does in the suburbs, what about voice? Why does political competition

32. *Id.*

33. *Id.* at 43–48.

34. You are catching on to the theme. ANNIE HALL, *supra* note 6.

not cause corrupt politicians to lose power and reward squeaky-clean reformers?

In small towns, there is evidence that voters are relatively well informed and police local government actions.³⁵ They do so because of the possibility of influence and the effect on their biggest investment, their home. However, big cities do not work this way; voters are as distant from the government of the City of Chicago or the City of New York as they are from state and national governments.³⁶ In larger governments we generally rely on party competition to constrain corruption, but big American cities do not have party competition.³⁷

Why not? Well, this is a puzzle. Most big cities favor one party in national elections.³⁸ Under basic theories of how parties compete, we might expect this fact not to matter in local elections. The local branch of the minority party should, following Anthony Downs's famous Median Voter Theorem model, tack to the middle of the local electorate on local issues to make local elections competitive.³⁹ But it does not happen. This is particularly surprising because there is a lot of evidence that opinions about national politics—war, income taxes, health care reform—do not track closely with preferences about local issues (e.g., zoning, methods of teaching reading, whether to build sports stadia, etc.).⁴⁰

35. FISCHEL, HOMEVOTER HYPOTHESIS, *supra* note 18, at 1–10.

36. Fischel argues that cities of over 100,000 do not have the same dynamics as smaller ones, but the number is merely an approximation (and is probably too high). *Id.* at 14–16, 89–94.

37. There is a massive literature on political party machines and their utility in acclimating immigrant groups into a modern economy. *See generally* DENNIS R. JUDD & TODD SWANSTROM, CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY 64–68 (1998) (discussing how urban party machines brokered a deal: business elites gave control over the local governments to working-class ethnic politicians, and machine politicians promised to leave business alone). This article will not address this literature except to note that one-party dominance has lasted long after the machines and their ethnic patronage mills left the political scene. To the extent that we want to explore lack of competition in modern cities, we need a generalizable theory.

38. *See* David Schleicher, *Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law*, 23 J.L. & POL. 419, 438–39 (2007) [hereinafter Schleicher, *City Council Elections*] (noting that most American cities are dominated by one party).

39. *See* ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 114–17 (1957) (explaining that, in a two-party system, each party would move toward the ideological “middle” of the electorate to attract the majority of voters).

40. *See* Schleicher, *City Council Elections*, *supra* note 38, at 439–45 (arguing that national policy preferences do not correlate strongly with local policy preferences). In fact, a growing body of research shows that partisan affiliation tells us almost nothing about local politicians. Fernando Ferriera and Joseph Gyourko have found that the party of the winning candidate in close mayoral elections has no effect on the size of local government, the allocation of local spending, or crime rates. Fernando Ferriera & Joseph Gyourko, *Do Political Parties Matter? Evidence from U.S. Cities*, 124 Q. J. ECON. 349, 399 (2009). Elizabeth Gerber and Daniel

The best explanation (or at least the one I have offered elsewhere) lies in the interaction between election laws and predictable aspects of voter behavior.⁴¹ In cities with partisan elections, a variety of laws guarantee that national parties—the Democrat and the Republican—get on the ballot. Further, election laws and party rules create substantial costs for individuals who wish to switch parties between elections. Finally, parties have a constitutional right to use funds raised for one type of office to conduct campaigns for another.

Election laws guarantee that voters see Democrats and Republicans on the ballot. This turns out to be crucial if we make a basic assumption about big city voters—that they do not know much about individual local candidates. This assumption makes sense. Voters everywhere have little incentive to become well-informed about politics, and there is a great deal of empirical evidence that most voters know very little about most candidates and policy issues at any level of government.⁴² Certainly, upon reflection, very few of us know much about the policy positions of our alderman or city councilman. However, voters do develop impressions of political parties over time. In political scientist Morris Fiorina’s famous term, voters use whatever impressions they have about politics to develop “running tallies” of their preferences about parties.⁴³ When it comes time to vote, they can use their collected recollections about parties as a guide. This can work at the national level. As long as parties are consistent, both internally and over time, running tallies allow voters to use elections to hold politicians accountable for their decisions.⁴⁴ Relevant and useful party labels on

Hopkins found that the mayoral party does affect spending on local police and fire-fighting departments (Republican and Independent mayors spend more than Democratic mayors) but not any other public policy variable. Elizabeth Gerber & Daniel Hopkins, *When Mayors Matter: Estimating the Impact of Mayoral Partisanship on City Policy* (Sept. 28, 2010) (working paper), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1475237.

41. See Schleicher, *City Council Elections*, *supra* note 38, at 449–51 (detailing the set of election laws and party rules that form the causal mechanisms that permit national parties to dominate local elections, e.g., a rational and uninformed voter will vote for her preferred national party).

42. See *id.* at 457–60 (showing that, absent partisan identification, voters have little useful policy-based information about candidates); David Schleicher, *What if Europe Held an Election and No One Cared?*, 52 HARV. INT’L L.J. (forthcoming 2011) [hereinafter Schleicher, *What if Europe?*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525015.

43. MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN ELECTIONS* 89 (1981).

44. Schleicher, *What if Europe?*, *supra* note 42, at 61–67; see also FIORINA, *supra* note 43, at 65–78, 193–200 (1981) (discussing retrospective voting, voter rationality, and electoral accountability). This brief article is not the place to rehash the long debate about how good party heuristics are at making uninformed voters (or voting populations) act as if they were informed. See Schleicher, *What if Europe?*, *supra*, at 61–67 (maintaining that voters use a scorecard to keep track of a political party’s past that serves as a guide for their future votes). However, suffice to

the ballot are tools for voters; with them, voters can use their vote (at least to a degree) to comment on the successes and failures of different public policies.

Voter ignorance of local candidates is more costly, as national party membership tells us very little about candidates at the local level. Knowing someone is a Democrat or Republican may tell you a great deal about her preferences about abortion or health reform but will not tell you much about her preferences about zoning. However, this does not make it less likely that voters rely on party labels in local races. Party labels may tell voters very little about local candidates, but as voters have little other information, it is better than nothing. So an individual's preference in national elections is reflected in local voting.

But why does the minority party not respond by taking popular issue stances on local issues, as we would expect them to in a Downsian model?⁴⁵ If the local Republicans (or Democrats) are losing local races, they could theoretically adopt popular positions about schools or policing and make races competitive. This does not happen for two reasons.⁴⁶ First, laws require the use of primary elections at the local level. If preferences on national issues and local issues do not track each other particularly closely, then members of the minority party will not be consistent on local issues. Its candidates, chosen in primaries, will not be consistent across town and across time. This makes it difficult for local parties to successfully brand themselves on local issues. Second, the limits on party switching mean that voters (and more crucially candidates and activists) will not switch parties for the purpose of local elections and local primaries. This means that the minority local party will not attract voters who do agree on local issues and produce consistent candidates. Further, the minority party will not attract popular potential politicians because these ambitious types will not be able to climb the ladder and run for other types of office after they have joined the local minority party. The result is a lack of competition between the major parties—the party that is popular in national elections is guaranteed to win local elections—and the

say that voters without useful party heuristics are worse than those armed with them.

45. Downs, *supra* note 39, at 114–17.

46. See Schleicher, *City Council Elections*, *supra* note 38, at 450–53 (explaining that local legislative elections are low salience, and it is nearly impossible to convince voters to pay attention to a purely local party and even more impossible to convince voters to abandon their pre-set party identification; the only way around these barriers is to compete at both the national and local level, which is also nearly impossible as national campaigns are extremely competitive and costly).

elections end up telling us very little about local preferences of local issues.

Despite the lack of competition, there is not much entry by local-only third parties.⁴⁷ Local-only third parties face the same hurdles that all third parties in American politics do—what political scientists call Duverger's Law, or the desire of voters not to waste their votes (and the desires of donors and activists to support winners and not also-rans).⁴⁸ Further, the limits on party switching doom these local-only parties to be without candidates, organizers, and a representative primary electorate. And the constitutionally protected right of major parties to use their financial and organizational muscle in local elections puts local-only parties at an even greater disadvantage.

Thus, the lack of competition between parties is caused by a mismatch between the level of the election and the level of the party system. But what about primaries? Why are primaries inside the local majority party not enough to produce locally representative results? The fundamental flaw of urban elections is that uninformed voters do not have access to a high-value informational heuristic, the party label, that allows them to vote based on policy preferences.⁴⁹ In general elections in big cities, party labels are only very weak guides to the local policy preferences of politicians. But in primaries, voters have no heuristic whatsoever. There are no party labels on a primary ballot—every candidate runs on his or her own. And as a result, primaries do not regularly feature ideological competition, and winners are determined by things like ethnic voting, interest group effort, or campaign spending.⁵⁰

Absent political parties that push one another over time to produce representative results, political officials have a great deal of slack. This breeds corruption. Reformers win now and again, when things get really bad, but absent the ability to organize and access the ballot, they are doomed to have only a passing influence on politics in a big city. As George Washington Plunkitt, the bard of New York City's Democratic Party Tammany Hall Machine once said, "[Reform committees] were mornin' glories—looked lovely in the morning and

47. *Id.* at 452. There is only one major local-only third party in the United States, the Charter Party of Cincinnati. *Id.*

48. AREND LUPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES 165–70 (1999) (stating that plurality representation systems tend to marginalize small political parties and encourage two-party systems).

49. Schleicher, *City Council Elections*, *supra* note 38, at 460–63. The same thing goes for non-partisan elections.

50. *Id.*

withered up in a short time, while the regular machines went on flourishing forever, like fine old oaks.”⁵¹

Competition permits voice, and voice checks government corruption. Given the lack of competition in local elections, we should expect corruption—political competition, far more than sunlight, is the best disinfectant.⁵² Unlike small cities, where it is easy to monitor local officials and the threat of exit constrains government choices, big cities need functioning elections to check corruption. But they do not have them.

IV. “EVERYTHING OUR PARENTS SAID WAS GOOD IS BAD. SUN, MILK, RED MEAT . . . COLLEGE”⁵³: REFORM AND ITS DISCONTENTS

This section will only briefly discuss prior efforts to limit urban political corruption (one could go on endlessly on the topic, as the desire to limit corruption has driven much of the development of local government law in the twentieth century). However, this short section will suggest one basic theme has run through a huge number of very different attacks on local corruption: reformers regularly throw the proverbial baby of local democracy out with the corrupt bathwater of big city politics.

The problem of big city political corruption has, from time to time, become a major national political issue, and when it has, a number of different tools have been used to slay the old political machines (which largely have gone the way of the dodo bird). These changes have had some successes in limiting local political corruption—there are not the old-school political machines and corrupt docks that there used to be—but have come with their own costs.

I will only use a few examples. Financial crises in cities that funded railroads led to the development of Dillon’s Rule, the state court rule that cities had no powers that were not directly delegated to them by the state government and that all delegations should be interpreted

51. WILLIAM L. RIORDON, *PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS* 30–31 (Bibliolife 2009) (1905). Plunkitt makes clear that the failure of reformers to form parties that engage in politics is the reason they could not dent Tammany Hall’s power over the long term. “The fact is that a reformer can’t last in politics.” *Id.* at 34.

52. There is an interesting debate about the importance, or usefulness, of transparency in politics. See Mark Fenster, *The Opacity of Transparency*, 91 *IOWA L. REV.* 885, 942 (2006) (proposing that a better informed public would result in more accountability on the part of the government).

53. Once again, ANNIE HALL, *supra* note 6.

narrowly.⁵⁴ Although most big cities are now governed by some version of “home rule,” which gives cities more power to initiate policies and sometimes provides state constitutional protection against state legislative incursion on local autonomy, the powers of local governments are still substantially circumscribed.⁵⁵ This may limit corruption, but it also limits local democratic decision making and the amount of local variation in policies, and hence the fit between individual preferences and policies.

The Progressive Movement at the turn of the century pushed for a number of reforms of city governance in response to the political control exercised by party machines, but this article will only discuss two: non-partisan elections and special-purpose governments. Removing all party notations from local ballots did not, as was claimed, produce politics that were more competitive. Voters are even more ignorant in non-partisan local elections than they are in partisan ones. Just as in primaries, voters do not have labels on the ballot that allow them to determine a candidate’s position on the issues. As a result, turnout falls, and non-policy variables determine who wins elections.⁵⁶ Non-partisan elections have generally been successful in removing party machines in favor of reform alliances but have done so at the cost of limiting the ability of locals to shape local policy.

Similarly, special-purpose governments have reduced local political autonomy. Unelected or specially elected bodies provide many local services.⁵⁷ The most well known of these are school boards, but water, roads, transportation, and many of the other major local services are provided by these institutions. Whether these organizations provide better or worse services (or less corruption) is an open question, but, as elections to them are even less likely to be salient when they occur, they have the effect of removing political autonomy from locals about local policies.

Even more centrally, America’s most important local government policies are rules that encourage the creation of many local governments

54. JOHN F. DILLON, TREATIES ON THE LAW OF MUNICIPAL CORPORATIONS 101–02 (1872); see RICHARD BRIFFAULT & LAURIE REYNOLDS, STATE AND LOCAL GOVERNMENT LAW 314–17 (7th ed. 2009); Joan Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83, 92–95 (1986) (discussing how Dillon’s Rule, by making cities subservient to the state, limited cities’ power to undertake any activity, not only in the context of selling bonds to help finance railroads, which was a typical scenario that emerged after the Civil War, but in all activities).

55. BRIFFAULT & REYNOLDS, *supra* note 54, at 331–36.

56. Schleicher, *City Council Elections*, *supra* note 38, at 465–67.

57. BRIFFAULT & REYNOLDS, *supra* note 54, at 13–16.

in every region. As noted earlier, small governments, unlike big ones, are usually very democratically responsive, giving residents the influence by means of both exit and voice. But having lots of small governments has costs as well. First, it reduces the extent of agglomeration gain across a region by encouraging sorting to places that are not necessarily where people would have located absent the existence of lots of local governments.⁵⁸ Second, it increases the likelihood of externalities between localities, particularly because contracting between local governmental entities is costly.⁵⁹

Finally, cities have an internal system of separated powers. For example, district attorneys—and often other officials—are elected separately from mayors and county executives. This may have benefits, but limiting corruption is not likely one of them. As Richard Pildes and Daryl Levinson have shown on the national level, separation of powers is not likely to create checks where one party controls all the different entities.⁶⁰ Local officials usually come from the same party and thus will have little incentive to check one another. If an official criticizes a co-partisan, the party becomes less popular, and they both will be harmed politically. Further, individual politicians rely on support inside local parties, giving them little incentive to investigate their patrons and co-partisans. There is simply no reason to believe that local officials in big city governments are likely to check one another.⁶¹

58. If the governments were small enough, perhaps, there would be no harm to agglomeration because it would not cause anyone to move from their preferred neighborhood; if each small tract had its own government, the agglomeration costs of sorts would fall. But this would increase the harms of externalities and would ensure that local governments were not the optimal size to provide public goods efficiently. See Schleicher, *The City*, *supra* note 19, at 37 n.161 (noting that zoning will distort housing choices among both non-residents of a jurisdiction, by barring them from entering, and residents of a jurisdiction, by affecting their housing choices).

59. See Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 192–209 (2001) (discussing attractiveness and difficulties with inter-city contracting); Clayton P. Gillette, *The Conditions of Interlocal Cooperation*, 21 J.L. & POL. 365, 367–82 (2005) (same).

60. See Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311, 2315 (2006) (noting that when the legislative and executive branches are controlled by a single party, competition may disappear entirely).

61. Rick Hills, in probably the best law review article written about local political corruption, makes a provocative claim about how we should prosecute bad local political actors. Roderick M. Hills, Jr., *Corruption and Federalism: (When) Do Federal Criminal Prosecutions Improve Non-Federal Democracy?*, 6 THEORETICAL INQUIRIES L. 113, 144 (2005). He claims that differences in the kind of democracy practiced at the federal and local levels makes it unwise to apply federal anti-corruption and conflict of interest laws to local actors. Democracy at the federal level is “bureaucratic populism,” or a system in which the people selecting Congress, because of the high salience of its decisions, are able to monitor it through elections. At the local level, the model is different; it is according to Hills, “participatory populism,” which “mix[es] professional and lay decision-making” as the “elected legislators are often—indeed, usually—part-time, under-paid officers with substantial private interests in the community,” and where the

These policies have benefits and costs, and this is not the place to resolve these debates. Instead, this article will suggest that there are other ways of dealing with local corruption and the lack of representativeness in big city local politics.

V. "I HAVE TO GO NOW, DUANE, BECAUSE I, I'M DUE BACK ON THE PLANET EARTH"⁶²: BRINGING ORDINARY POLITICS TO BIG AMERICAN CITIES

If exit and voice are two ways to check urban political corruption, which should be encouraged? Encouraging exit, or rather encouraging it further, is problematic. As it stands, the multitude of local governments in most metropolitan areas already encourages exit. Although this promotes gains from Tiebout sorting, it also reduces the efficiency of urban agglomeration.⁶³ Systems with many small local governments encourage people to move away from their ideal location in a metropolitan area to receive their preferred package of governmental policies, and this reduces regional economic efficiency. Further, if there are any fixed costs in providing public services (and there surely are), reducing the size of local government by too much will increase the average costs of providing public services.

However, the pathways of political competition could be improved. Instead of mandating non-partisan elections, which makes the lack of competition worse, states could pass laws that would either enable local branches of national parties to better differentiate themselves from their national parents or encourage the development of purely local parties.

The most attractive ideas are those that encourage rebranding at the local level. A city could, as Chris Elmendorf and I have recommended, give high profile mayoral candidates the ability to endorse other local

"whole structure of lay decision-making is pervasively subjected to neighborhood, municipal, and state-wide plebiscites." *Id.* at 115. Conflicts of interest are a major problem in bureaucratic populism, as they interfere with the ability to trust government actors, but strong limits on conflicts of interest may interfere with the way local governments create responsiveness through their encouragement of broad participation. With respect to smaller cities, I think this an extremely powerful argument. Its logic does not extend in an uncomplicated fashion to megacities like Chicago, however. The prudential concerns Hills identifies about federal prosecution of local officials only apply if there are relevant differences in the way residents of big cities approach their local government than the federal government. It is an open question—one that bears future study—whether "participatory populism" describes big city politics. That said, there is no reason to believe that federal prosecution provides much of a check on institutionalized local corruption in places like Chicago. At best, it would be like a game of whack-a-mole played at an extremely fast speed. No prosecutor has a fast-enough hammer to hit all local corrupt actors.

62. Last one, guaranteed. ANNIE HALL, *supra* note 6.

63. Schleicher, *The City*, *supra* note 19, at 42–48.

candidates on the ballot.⁶⁴ This would leverage what people know about high profile figures, like Mayor Daley, into a quasi-party democracy at the local level. Or states could use election law to create real local party democracy. States could repeal laws that guaranteed ballot placement in local elections to parties that did well in gubernatorial elections, and could pass laws that in a number of ways reduce the penalties for switching parties between elections (e.g., same day registration).⁶⁵ This would make it more likely that the national party that is the minority at the local level could rebrand itself for local elections. More radically, states and cities could permit fusion at the local level only, or even bar parties registered at the state-wide level from ballot access in local elections.

There are many ways one can think of achieving the goal of increasing competition at the local level. I am not sure I have all or the best of them. But I do think that the best way to fight the problem of urban political corruption is with more rather than less politics.

64. Chris Elmendorf & David Schleicher, *Making Democracy Work in San Francisco*, S.F. CHRON., Feb. 28, 2010, at E4, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/02/27/IN931C4HQ4.DTL>.

65. Schleicher, *City Council Elections*, *supra* note 38, at 468–73.