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## THE NEW YORK CITY CHARTER AND THE QUESTION OF SCALE

RICHARD BRIFFAULT\*

A central issue for the New York City Charter—from the consolidation of Greater New York City a century ago until today—has been the question of scale. Or perhaps I should say the *questions* of scale. There really have been two questions: Is New York City large enough to deal with problems of regional scope? Does New York City have the necessary mechanisms to deal with problems that are of sublocal scope? In other words, can the City of New York provide both the regional and local governance New Yorkers need?

The creation of Greater New York was driven largely by regional concerns. Greater New York was established to create one government large enough to deal with the regional issues of economic development, land improvement, infrastructure finance, port and harbor development, and transportation.<sup>1</sup> Greater New York was to provide a regional government that matched the regional scale of the area's economy and pattern of development.<sup>2</sup> Greater New York did not include the entire New York region. Given the constraints of federalism, the inclusion of the communities on the New Jersey side of the Hudson River was never a serious possibility. But the consolidated city was of substantial territorial scope, including farms, open space, countryside, and villages, as well as the principal cities of the region.<sup>3</sup>

As a regional government, Greater New York had considerable success. Consolidation was followed by the rapid development of the Bronx and Queens, and the construction of new physical infrastructure and improvements, including streets, sidewalks, electric lighting, and rapid transit. The crushing density of population in lower Manhattan was

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1. See Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775, 780 (1992); see also WALLACE S. SAYRE & HERBERT KAUFMAN, *GOVERNING NEW YORK CITY: POLITICS IN THE METROPOLIS* 11 (W.W. Norton & Co. 1965) (1960).

2. See SAYRE & KAUFMAN, *supra* note 1, at 19-20 (explaining how New York became the primary transportation center for the exchange of raw materials which contributed to its huge economic growth).

3. See *id.* at 29.

relieved by the development of upper Manhattan and the outer boroughs.<sup>4</sup> For the next fifty years, much of New York City's "suburban" growth occurred within the city's boundaries. Brooklyn grew by 135%, peaking at 2.3 million people in 1950.<sup>5</sup> The Bronx grew by an astronomical 625% to 1.5 million people in 1950.<sup>6</sup> Queens exploded by 1200 percent, before finally peaking at 2 million people in 1970.<sup>7</sup> Staten Island, which had just 67,000 people at the turn of the century, is still growing as it approaches a population of 400,000.<sup>8</sup> Thus, as a result of consolidation, the city retained a considerable portion of the tax base resulting from economic and demographic growth within its boundaries.

Even today, due to consolidation, New York City looms larger in its metropolitan area than any other major Northern or Eastern city in its respective metropolitan area. New York City accounts for 37% of the population of its Consolidated Metropolitan Statistical Area ("CMSA")—compared to 33% for Chicago's share of its CMSA, 26% for Philadelphia, 20% for Detroit, 18% for Cleveland, 16% for St. Louis, and 10.5% for Boston.<sup>9</sup> New York City's importance in its region is even more sharply reflected in data comparing the population of a central city to that of its Primary Metropolitan Statistical Area ("PMSA")—the core of the metropolitan area. In 1990, New York City had approximately 87% of the population of the New York PMSA, compared to Chicago's 38%, Philadelphia's 32%, Detroit's 24%, Cleveland's 23%, and Boston's 18%.<sup>10</sup> Similarly, as a result of consolidation, New York City plays an unusually large role in its state. No other major city constitutes nearly as high of a percentage of state population, employment, or personal income.<sup>11</sup>

Yet, it is clear that with the expansion of the region and the dispersal of population and jobs to previously outlying areas, Greater New York is no longer a regional government. Indeed, the New York City area has no effective regional government. To some extent, a true regional government

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4. See SAYRE & KAUFMAN, *supra* note 1, at 18 (demonstrating that the Bronx increased from about 89,000 by 1890 to 200,000 by 1900; Brooklyn increased from 838,000 to over 1,160,000; and Queens increased from 87,000 to 153,000).

5. See DAVID RUSK, *CITIES WITHOUT SUBURBS* 18 (1993).

6. See *id.*

7. See *id.*

8. See RUSK, *supra* note 5, at 18; see also SAYRE & KAUFMAN, *supra* note 1, at 18.

9. See U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES: 1997*, at 41-47 (117th ed. 1997).

10. See *id.*

11. See James C. Musselwhite, Jr., *A Comparative View*, in *THE TWO NEW YORKS: STATE-CITY RELATIONS IN THE CHANGING FEDERAL SYSTEM* 25, 31 (Gerald Benjamin & Charles Brecher eds., 1988); see also Matthew P. Drennan, *The Economy*, in *THE TWO NEW YORKS: STATE-CITY RELATIONS IN THE CHANGING FEDERAL SYSTEM* 55, 70 (Gerald Benjamin & Charles Brecher eds., 1988).

was never really possible in an area bisected by an interstate boundary—an area that now sprawls across New York, New Jersey, and Connecticut. The American federal system limits the ability to create a local government that crosses state lines. Even on the New York side of the line, the steady movement of population and employment from the city to the suburbs has limited New York City's ability: to reap the benefits of economic growth, to provide regional transportation structures or land use planning, to undertake regional environmental initiatives, or to provide assistance to the poor.<sup>12</sup> The tri-state area is a regional economic unit, engaged in a global competition with comparable regional economic units. It lacks, however, a regional political structure capable of effective action on behalf of the whole region.<sup>13</sup> Instead, regional initiatives are too often held hostage to local and interstate conflicts and competition.

In this regard, the New York City area is typical of other metropolitan regions in the United States. There is no region in the United States with an effective metropolitan government coextensive with the region.<sup>14</sup> The 1898 consolidation makes New York stronger than other Northern and Eastern cities—but it still does not have a regional government.

The question of the regional scope of Greater New York is, of course, beyond the city level's control. It cannot be determined simply by a revision of the Charter. Although the city may be given a voice, the matter really is one for state and national resolution.

The next question concerns sublocal government: what sort of neighborhood, community, or subcity government should be used to address neighborhood concerns. This matter has been addressed by the City Charter and its revisions. As consolidation sought to create a government capable of dealing with regional issues, the first Charter sought to provide a mechanism for dealing with smaller, "local" matters, that did not effect the entire city.<sup>15</sup> A central focus of the 1897 Charter—along with the 1901, 1936, 1961, 1975, and 1989 Charters—was the relationship between the city and subcity units.<sup>16</sup> The Charter drafters had to determine what powers could be given to smaller units and what powers must be held by the central city government. They have also had to consider what role subcity units ought to have in the central government. City-subcity relations

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12. See Musselwhite, *supra* note 11, at 29.

13. See generally ROBERT D. YARO & TONY HISS, A REGION AT RISK: THE THIRD REGIONAL PLAN FOR THE NEW YORK-NEW JERSEY-CONNECTICUT METROPOLITAN AREA (1996).

14. See RUSK, *supra* note 5, at 89, 95.

15. See SAYRE & KAUFMAN, *supra* note 1, at 14-17.

16. See *id.*

have, surely, not been the sole focus of Charter revision, but subcity governance has been a consistent theme in the Charter revision process.<sup>17</sup>

The 1897 Charter invented the idea of the borough.<sup>18</sup> The Bronx was created out of the portion of preconsolidated New York located on the mainland of the United States. The borough of Queens was created out of Long Island City and the villages and unincorporated land in the western portion of Queens County. The former City of Brooklyn, the island of Manhattan, and Richmond County became boroughs as well.<sup>19</sup>

In the 1897 Charter, the boroughs, headed by borough presidents, were given the limited responsibilities of mapping their territories and initiating local improvements, subject to the approval of the Municipal Assembly. Borough presidents, however, had no power to actually undertake the improvements. Their function was essentially advisory.<sup>20</sup>

In 1901, the Charter took a sharp move in the direction of greater borough power.<sup>21</sup> Indeed, much of what we assume about the structure of city-borough relations in the years following consolidation was really a product of the 1901 revision and not the original 1897 Charter.<sup>22</sup> The borough presidents were given seats on the Board of Estimate, which previously consisted solely of citywide elected and appointed officials. The five borough presidents were given a total of seven votes—the presidents of Manhattan and Brooklyn had two votes apiece while the other presidents each had just one vote—and the citywide officials had a total of sixteen votes. The 1901 Charter also gave the borough presidents seats on the Board of Aldermen. Moreover, the borough presidents were given operational responsibilities over streets, sewers, and public buildings within their boroughs. Under the 1901 Charter, they could actually undertake public improvements. Compared to the 1897 Charter, the 1901 Charter represented considerable decentralization of city government.<sup>23</sup>

In 1936, the pendulum swung back. The borough presidents lost most of their powers over public works, which shifted to the new Department of City Planning and to the City Planning Commission.<sup>24</sup> With the abolition

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17. *See id.*

18. *See* N.Y. CITY CHARTER REVISION COMM'N, BRIEFING BOOK II-D-15 (Jan. 12, 1988) [hereinafter BRIEFING BOOK].

19. *See id.*

20. *See id.* at II-D-16 to II-D-18.

21. *See id.* at II-D-18.

22. *See id.* at II-D-18 to II-D-19.

23. *See id.*; *see also* Joseph P. Viteritti, *The Tradition of Municipal Reform: Charter Revision in Historical Context*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM 22-24* (Frank J. Mauro & Gerald Benjamin eds., 1989).

24. *See* BRIEFING BOOK, *supra* note 18, at II-D-19 to II-D-20.

of the Board of Aldermen, the borough presidents lost their seats in the City's legislative body.<sup>25</sup> In 1961, the borough presidents lost their remaining independent powers over streets, highways, and sewers.<sup>26</sup> From 1961 to 1989, the power of the borough presidents grew out of their seats on the Board of Estimate, where they cast five votes to the citywide officials' six.<sup>27</sup> In 1989, of course, they lost the Board of Estimate as well.

Today, the borough presidents have relatively few formal powers. They can make appointments to the Board of Education—a power they have due to state law, not the City Charter.<sup>28</sup> They can make appointments to the City Planning Commission.<sup>29</sup> They can make recommendations with respect to increments in the capital budget.<sup>30</sup> They participate in the ULURP—the Uniform Land Use Review Process—and may make recommendations concerning proposed land use changes in their respective boroughs.<sup>31</sup> But their principal power is informal and political, rather than formal and legal. They have a bully pulpit that gives them the opportunity to use their titles and their positions as representatives of large subcity constituencies and to speak out on issues of concern to them and their constituents. But there is little they can actually do.

The boroughs are not the sole, or even the principal, focus of subcity governance. Given the large size of the boroughs, it is not clear how much decentralization of service-delivery or how much of an opportunity for grassroots citizen participation in governance even empowered borough governments could provide. Two of the five boroughs have populations of two million apiece; two other boroughs have more than a million people each. Even Staten Island is as large as Pittsburgh and larger than Buffalo. In any place but New York, the boroughs would be full-sized city governments. Therefore, in New York City, meaningful subcity governance requires the creation of units that are smaller than the boroughs.

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25. *See id.*

26. *See id.* at II-D-20 to II-D-21; *see also* Viteritti, *supra* note 23, at 26-27.

27. *See* Briffault, *supra* note 1, at 790-91.

28. *See* N.Y. EDUC. LAW § 2590-b (McKinney 1997).

29. *See* N.Y. CITY CHARTER ch. 8 § 192 (1989) (each borough president shall appoint one member of the City Planning Commission; the mayor may appoint the chair and six other members; the president of the Council shall appoint one member).

30. *See id.* ch. 4 § 82; ch. 9 § 211.

31. *See id.* ch. 8 § 197-c. Borough presidents may also propose plans for the development, growth and improvement of land within their respective boroughs. To take effect, however, such plans must be submitted to, and approved by, the City Planning Commission, and then they must be submitted to review, and possibly disapproved, by the City Council. *See id.* ch. 8 §§ 197-c, 197-d.

The 1961 Charter revision sought to address this concern through the creation of community districts and community boards.<sup>32</sup> The fifty-nine community districts vary considerably in size, but most have about 125,000 residents and come much closer to the neighborhood or community scale than do the boroughs. The community boards have relatively limited powers. They can make non-binding recommendations concerning proposed land use changes within their boundaries, and concerning city services and the city budget.<sup>33</sup> Community board members are appointed, not elected,<sup>34</sup> which limits their ability to speak as representatives of community residents. Moreover, they have very limited budget resources,<sup>35</sup> which constrain their ability to analyze proposals and make recommendations.

As advisory bodies, community boards have had some influence on land use decisions, especially at the margins. But their success is variable and reflects the abilities of different community boards to tap into differing community political resources.<sup>36</sup>

There are other forms of sublocal governance. Community school boards are elected and have some control over public school resources.<sup>37</sup> The community school boards have been controversial. They may be able to articulate community viewpoints,<sup>38</sup> but it is not clear whether they have had any positive impact on public education. This is due in part to the limits on their powers to determine educational policy, and in part to their failures to use effectively the powers they do enjoy—failures that led to the state's recent curtailment of school board autonomy.<sup>39</sup>

New York City also has forty business improvement districts ("BIDs").<sup>40</sup> Some of these have been quite successful in providing services, including sanitation, policing economic development, and in

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32. See BRIEFING BOOK, *supra* note 18, at II-D-22. The community districts are codified at chapters 69 and 70 of the current City Charter.

33. See N.Y. CITY CHARTER ch. 70 § 2800 (1989).

34. See *id.*

35. See, e.g., Ray Bromley, *Globalization and the Inner Periphery: A Mid-Bronx View*, 551 ANNALS AM. ACAD. POL. & SOC. SCI., 191, 193 (1997) (describing the low-income constituency of Bronx Community Board 6).

36. See Robert F. Pecorella, *Community Governance: A Decade of Experience*, in RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM 97-109 (Frank J. Mauro & Gerald Benjamin eds., 1989).

37. See N.Y. EDUC. LAW § 2590-c(2) (McKinney 1997).

38. See, e.g., Randal C. Archibold, *3 Community School Boards Resist Mandatory Uniforms*, N.Y. TIMES, Mar. 27, 1998, at B3.

39. See 1996 N.Y. LAWS 720.

40. See generally N.Y. GEN. MUN. LAW § 980 (McKinney 1997).

financing physical improvements.<sup>41</sup> But BIDs have also proven to be controversial.<sup>42</sup> They are elected by property owners rather than by community residents, and their dependence on district-based resources limits their usefulness as models of neighborhood governance outside of commercial districts.<sup>43</sup> Moreover, questions have been raised concerning the accountability of BIDs even to their business and commercial constituents.<sup>44</sup>

There is also the City Council. With fifty-one districts,<sup>45</sup> and district constituencies of approximately 150,000 people, the Council provides an opportunity for subcity voices to be heard in city government through their council members.<sup>46</sup> However, as a result of the "one person-one vote" doctrine and the requirement of decennial population-based reapportionment, council districts cannot be drawn exclusively along community or neighborhood lines.<sup>47</sup> Smaller neighborhoods may not get their own council member, and larger communities may sprawl across multiple districts. Moreover, although a central thrust of the 1989 Charter revision was to increase both the power and representativeness of the Council, it is not clear whether even a stronger and expanded Council can be said to provide an opportunity for community-level participation and neighborhood decision-making concerning neighborhood conditions and services.

In short, although we can bring about community governance by amending our Charter, it is not clear whether we really want such governance, or whether we know what we ought to do. If we look at the history, there has never been any real governing power exercised at the community level. Recent years have witnessed the limited rise of community boards and BIDs, and the rise and partial fall of the community school boards, but at no time has substantial authority been delegated to sublocal governments.

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41. See Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 517 (1997).

42. See David J. Kennedy, *Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership*, 15 YALE L. & POL'Y REV. 283, 289-94 (1996).

43. See *id.* at 289, 294.

44. See, e.g., THE COUNCIL OF THE CITY OF NEW YORK, MANAGING THE MICROPOLIS: PROPOSALS TO STRENGTHEN BID PERFORMANCE AND ACCOUNTABILITY (Staff Report to the Committee on Finance, Nov. 12, 1997); THE COUNCIL OF THE CITY OF NEW YORK, CITIES WITHIN CITIES: BUSINESS IMPROVEMENT DISTRICTS AND THE EMERGENCE OF THE MICROPOLIS (Staff Report to the Committee on Finance, Nov. 15, 1995).

45. See N.Y. CITY CHARTER ch. 2 § 22 (1989).

46. See Briffault *supra* note 41, at 503.

47. See Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 403-04 (1993).



If we did really value subcity governance, how would we go about creating it? We would have to grapple with several significant problems. First, subcity governments would need to have real powers—not just the power to give advice, but the power to take action. This would be necessary if only to draw the attention of people who might want to get involved in them by running for community-level office and participating in community affairs. Significant grass-roots participation would require real grass-roots power.

Second, these governments would need adequate financial resources. Funds are necessary to study land use and service-delivery questions, to engage in advocacy of community interests, and to provide services. The successes of BIDs are closely tied to the existence of district-based assessments that fund BID activities; in contrast, community boards have been limited by their lack of financial resources.<sup>48</sup>

Third, we would have to deal with the potential for community-city conflict. More powerful community-based governments would certainly add to the already protracted process of approving certain contracts and zoning changes, and would probably make it more difficult for the city government to take action. Indeed, community governments might seek to block land use developments or service terminations that the city proposes. When do we want to require the city to give way in the face of community opposition? Right now, the city may have to solicit and listen to community input, but it is not bound by community positions. The hardest issue in thinking about sublocal governance may be the determination of when, if ever, the sublocal government ought to prevail in cases of city-sublocal conflict.

Finally, there is the question of the accountability of sublocal governments to the people they are supposed to represent and serve. The goal of sublocal governments—whether borough, community, or neighborhood—is to assure the existence of public structures more responsive to the different concerns of people in different areas of the city. This assumes that smaller, sublocal governments will be more accountable to their constituents than is the city government. But the Achilles' heel of community government may be the question of accountability. Community governments are supposed to be closer to the grass roots—closer to the people—but in fact there tends to be relatively little direct community involvement in most community-based governments. Community political structures have relatively little visibility, and they are relatively poorly monitored even by people in their communities.<sup>49</sup> Of course, community institutions presently have relatively little power. But the need for effective

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48. See Kennedy, *supra* note 42, at 291-92.

49. See *id.*

community monitoring and control of community governing institutions would grow if these institutions were given power and resources.

This is the paradox: one goal of community governance is to strengthen communities, but community government is not likely to be accountable to community residents unless there are already other community institutions—such as community-based newspapers or other community-oriented media, or community social or civic organizations—that can monitor the performance of community governments. One of the problems in New York is the lack of strong community-based institutions. Community government could help to build communities and stimulate the growth of community-oriented media and community civic organizations, but community government also requires that some of these community institutions already exist in order to assure community government accountability. Community government and community institutions need each other if they are to succeed.

If the past is any indication, the question of scale, and especially of city-community relations, is likely to be an issue in any future Charter revision. History also indicates that developing effective and accountable subcity governance structures and resolving city-subcity conflicts will be a significant challenge to future Charter revisers.