

The Promise and Peril of Cities and Immigration Policy

Rick Su*

INTRODUCTION

In recent years, progressives have begun to embrace cities as meaningful sites of reform. From gay rights to environmental protection, a host of progressive movements now look to urban policymaking as an important part of their political playbook. Even as this enthusiasm for the city grows, however, there remains one policy arena in which local involvement continues to raise substantial concerns: immigration. To be sure, much of the concern revolves around what powers, if any, cities even have to regulate or respond to immigration.¹ Yet another reason for this appears to be that, when it comes to immigration, the instinct is to see local involvement as a threat to progressive policymaking.²

But is this really an accurate assessment? Since the civil rights era, progressives have long associated the local level with parochial interests and petty prejudices.³ Given how this assessment is changing in other policy arenas, however, particularly with regard to the role of cities, is it right to import that framework wholesale into the immigration context today? In this essay, I suggest it is not. Rather than a bastion of racism and intolerance, the city, I argue, promises to be an important site for progressive reforms. As federal policies have increasingly turned to more aggressive enforcement-oriented strategies, cities are one of the few political institutions drawing attention to the costs and consequences of such an approach. Cities are also offering a pragmatic and moderating voice to what is increasingly becoming an ideologically driven debate. Either as an alternative to federal policymaking and enforcement, or as a political platform in the national immigration debates, I argue here that progressive immigration advocates would do well to pay attention to the role that cities can play.

At the same time, progressives are right to be concerned about the involvement of cities in immigration policymaking and enforcement. We've just been looking in the wrong place. While the focus thus far has largely

* Associate Professor of Law, SUNY Buffalo Law School; B.A., Dartmouth College; J.D., Harvard Law School. Special thanks to Justin Tresnowski and the editors of the Harvard Law & Policy Review for their insightful comments and helpful suggestions in the editing process.

¹ Compare, e.g., Huyen Pham, *The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution*, 31 FLA. ST. U. L. REV. 965, 967 (2004), with Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179, 183 (2006).

² See, e.g., Kevin R. Johnson, *Immigration and Civil Rights: State and Local Efforts to Regulate Immigration*, 46 GA. L. REV. 609, 617–19 (2012).

³ See, e.g., WILLIAM H. RIKER, *FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE* 155 (1964).

been on how cities are affecting immigration policymaking, much of the danger of immigration localism actually lies in how federal immigration policymaking is also shaping the nature of cities and the urban policies that they may want to pursue. On the one hand, the expansion of immigration as a policy issue is shrinking the sphere of the city's authority. On the other hand, by portraying immigrants as effectively a federal population, detached from and outside of the communities in which they reside, immigration policy is affecting how cities see and respond to immigrant residents. In these respects, while cities are steering immigration towards a more progressive orientation, the manner in which immigration has evolved as a federal issue might be steering the position of cities in the opposite direction.

By calling attention to the two competing progressive visions at play in the relationship between cities and immigration, this essay highlights what I refer to as the promise and peril of the convergence of cities and immigration policymaking. In Part I, I describe this convergence—which I refer to as “immigration localism”—in more detail. Tracing the ways in which federal immigration efforts have been pushing down toward the local, and how in response the local is also pushing back, I argue that a new federal-local dynamic is emerging in the immigration context.

In Parts II and III, I outline how this new federal-local structure of immigration policymaking and enforcement is affecting both immigration and cities. Foregrounding the limits and disappointment of federal immigration policymaking and enforcement, Part II shows how cities are steering national immigration policy in a progressive direction, and shaping the national debate as a result. This, I argue, is the promise of immigration localism. In Part III, however, I shift the analysis to focus on the city. Here, I argue that the manner in which federal policies have framed immigration as an issue, and immigrants as a population, threatens progressive visions of the city. This, I suggest, is the peril.

Both of these aspects of local involvement in immigration—the promise and the peril—are often overlooked. As such the main goal of this essay is to bring them to light. But this essay also suggests that the next step forward for progressives interested in both immigration and the city is to find policy proposals that can better reconcile these two sides of the same coin. It is with these suggestions that I conclude.

I. THE FEDERAL-LOCAL CONVERGENCE IN IMMIGRATION

The promise and peril that I identify in this essay are based on the mutual influence that the federal government and cities have on one another. But how can such mutual influence exist when traditional theories of our federal structure state that the federal government, cities, and the respective policy matters assigned to them occupy separate jurisdictional spheres? The answer I suggest here is that, like a number of other controversial policy issues, there has been a steady convergence between the federal and local on the issue of immigration.

I refer to this growing federal-local convergence as “immigration localism,” and I argue here that it is changing the relationship between the federal government and the city in a number of interesting ways. On the one hand, while local participation has drastically increased the capabilities of the federal government’s interior enforcement efforts, it is also expanding the influence and power of cities to shape immigration policies at the federal level. On the other hand, while cities are now in a better position to exert pressure on how immigration policies are developed and the manner in which they are implemented on the ground, the role and power of cities are also increasingly being defined by federal immigration priorities. Taken together, this back-and-forth is creating a political dynamic based less on jurisdictional authority and more on political negotiations and interactions. In other words, as the traditional divide between the federal and the local breaks down, the influence between the two spheres is mutual and growing.

A. *The Devolution of Immigration Regulation*

Immigration is no longer exclusively federal, which is to say that when it comes to immigration enforcement, the federal government is increasingly reliant on the cooperation and assistance of state and local governments. This devolutionary shift represents a departure from how the issue of immigration is normally conceived in our federal system. Yet it has greatly expanded the scope and reach of the federal government when it comes to its immigration enforcement efforts. Indeed, of the nearly 400,000 immigrants that have been deported annually in recent years—a record in and of itself⁴—up to a quarter were brought to the attention of federal authorities by local officials.⁵

It is easy to assume that the growing role of localities in the immigration arena is simply another case of jurisdictional overreach in the name of localism or state rights. In reality, however, much of this development is the result of shifting priorities at the federal level. In other words, localities are being drawn into immigration enforcement because many see them as better suited to the kind of federal enforcement initiatives that have recently been gaining favor. There was little interest in local involvement when focus of federal immigration regulations remained largely at the borders. But as inte-

⁴ See Julia Preston, *Record Number of Foreigners Were Deported in 2011*, *Officials Say*, N.Y. TIMES, Sept. 7, 2012, at A12.

⁵ Secure Communities and the 287(g) program are the two main federal programs that involve federal-local cooperation. In 2011, 78,246 individuals were removed through Secure Communities. See U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, U.S. DEP’T OF HOMELAND SEC., SECURE COMMUNITIES: IDENT/IAFIS INTEROPERABILITY, MONTHLY STATISTICS THROUGH SEPTEMBER 20, 2011, at 2 (2011), available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf. Data on the 287(g) program has not yet been released for 2011, but, in 2010, it was responsible for the removal of 26,871 individuals. See U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, U.S. DEP’T OF HOMELAND SEC., 287(G) IDENTIFIED ALIENS FOR REMOVAL 6 (2010), available at <http://www.ice.gov/doclib/foia/reports/287g-masterstats2010oct31.pdf>.

rior enforcement became a priority in the 1980s and the 1990s as the number of undocumented immigrants in this country grew, the prospect of local officials as “force multipliers” for federal immigration enforcement efforts began to draw more attention.⁶

Federal efforts to recruit local governments into federal immigration enforcement efforts started slowly but accelerated soon afterwards. In the mid-1990s, as so-called “sanctuary cities” began to resist cooperation in federal immigration enforcements efforts,⁷ Congress not only enacted legislation to bar these noncooperation policies but also authorized a more enduring model of federal-local cooperation through the adoption of what is now widely known as the 287(g) program.⁸ By the early 2000s, these legislative efforts to open the door to local participation gave way to more aggressive recruitment efforts in the executive branch. Many federal initiatives, like Operation Community Shield, were designed specifically with federal-local cooperation in mind.⁹ In addition, then-Attorney General John Ashcroft went out of his way to encourage more local participation in immigration enforcement efforts, in part by asserting that local governments had “inherent authority” to do so with or without federal authorization.¹⁰ More recently, the Obama Administration not only unveiled another federal-local initiative as its flagship interior enforcement strategy but also reversed course on earlier assurances by making participation in the program mandatory for all local jurisdictions.¹¹

Federal policy, however, is not the only reason why immigration has increasingly become a local affair. Another is the growing number of states that have passed laws mandating that local law-enforcement officials participate in federal immigration enforcement efforts on their own. Early on, many states enacted antisantuary provisions prohibiting local policies that deprioritized immigration enforcement in any way, a step up from the antisantuary measure in federal law.¹² Following the passage of Arizona’s controversial immigration measure in 2010,¹³ however, it became more common for states like Alabama and South Carolina to outrightly require that

⁶ See generally Kobach, *supra* note 1 (discussing local officials’ roles as “force multipliers” in the immigration context).

⁷ See, e.g., Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 IOWA L. REV. 1449, 1455 (2006).

⁸ See 8 U.S.C. § 1357(g) (2006); LISA M. SEGHEITTI ET AL., CONG. RESEARCH SERV., RL 32270, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 14–18 (2009), available at <http://www.au.af.mil/au/awc/awcgate/crs/rl32270.pdf>.

⁹ See Jennifer M. Chacón, *Whose Community Shield?: Examining the Removal of the “Criminal Street Gang Member,”* 2007 U. CHI. LEGAL F. 317, 327–33.

¹⁰ See PHILIP KRETSEDEMAS, *THE IMMIGRATION CRUCIBLE: TRANSFORMING RACE, NATION, AND THE LIMITS OF THE LAW* 79–80 (2012).

¹¹ See Jerry Markon, *‘Hard Look’ at Immigration Law; Memo From 2002 Could Complicate Action Against Arizona*, WASH. POST, May 18, 2010, at A17.

¹² See, e.g., Mick Hinton, *States Double Migrant Laws*, TULSA WORLD, Aug. 8, 2007, at A4; Tim Hoover, *Immigration Restrictions Get Bipartisan Support: Missouri Senate OKs Bill*, KAN. CITY STAR, Apr. 27, 2006, at B1.

¹³ See SB 1070, 2010 Ariz. Sess. Laws 0113, amended by 2010 Ariz. Sess. Laws 0211 (codified as amended at ARIZ. REV. STAT. ANN. § 11-1051 (Supp. 2010)).

local officials take certain steps to confirm the immigration status of an individual in specific circumstances.¹⁴ Moreover, in many of these laws, provisions were included to increase the monitoring of local governments' policies and ensure their compliance. For example, Arizona's law includes a novel provision allowing any legal resident of the state to sue a local government jurisdiction for implementing policies that deprioritize immigration enforcement in any way,¹⁵ while Georgia's version creates an "Immigration Enforcement Review Board" charged with investigating and sanctioning any state or local government entity that fails to comply with the state's immigration mandate.¹⁶

B. *The Cities Respond*

These efforts to recruit (or compel) cities and other local governments into federal immigration enforcement efforts have raised concerns about federal overreach and whether local officials are being unduly conscripted into administering a federal program. Despite these fears about the loss of local autonomy, however, it can be argued that the increasing reliance of the federal government on cities has actually increased the influence and power of cities with respect to the issue of immigration. Cities have little control when federal officials descend upon their community to perform an immigration sweep on a local neighborhood or an immigration raid of a local business. But when a federal initiative depends upon the cooperation of the city, local officials are also in a much better position to raise concerns, limit their cooperation, or alter the manner in which the federal policy is implemented by varying the local conditions on the ground.

So how have cities responded to the growing pressure to participate? To be sure, a small number of smaller cities have eagerly jumped in, even going beyond what federal and state laws require.¹⁷ A larger proportion has taken steps to comply, though with little enthusiasm.¹⁸ At the same time, a significant number of cities are not only actively resisting participation in federal immigration enforcement efforts but doing so in ways that are reshaping how federal policies on enforcement are implemented on the ground. Notwithstanding federal and state efforts to prohibit noncooperation

¹⁴ See Brian Lawson, *Law Puts State at Center of Debate on Immigration*, BIRMINGHAM NEWS, Aug. 14, 2011, at 14A.

¹⁵ See ARIZ. REV. STAT. ANN. § 11-1051(H).

¹⁶ See GA. CODE ANN. § 50-36-3 (2012); see also Jeremy Redmon, *Vidalia Faces Immigration Probe*, ATLANTA J.-CONST., June 30, 2012, at B3 (discussing an investigation by the Board into allegations that a Georgia city was harboring illegal immigrants).

¹⁷ See, e.g., *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 521-29 (M.D. Pa. 2007); see also Editorial, *Immigration Battlefronts: Farmers Branch Should Sit Out Appeals Process*, DALL. MORNING NEWS, Aug. 2, 2007, at 20A (discussing an ordinance passed by the City of Farmers Branch to prevent illegal immigrants from renting apartments).

¹⁸ See, e.g., Karen Brandon, *U.S. Weighs Local Role on Immigration; Some Police Fear Dual Duty Would Hurt Minority Ties*, CHI. TRIB., Apr. 14, 2002, at C10 (discussing the mixed feelings of police in San Diego and Chicago about local law enforcement's role in immigration).

policies at the local level, creative drafting and sheer political will have ensured that “sanctuary cities” have not only survived but also proliferated.¹⁹ Similar resistance can also be seen in the response that many cities and local governments have adopted toward the now-mandatory implementation of Secure Communities. Unable to block the data sharing with federal immigration authorities that is at the heart of Secure Communities, many local jurisdictions, including Los Angeles, San Francisco, and Cook County in Illinois, have simply announced that they will no longer comply with federal immigration detainers as a matter of course, but will do so only if the immigration referral is also in accordance with their own internal policies.²⁰

Cities are not only taking a stand on immigration by resisting efforts to draw them into enforcement efforts but also making their case known in the courts of law and public opinion. For example, when Arizona’s controversial immigration mandate was enacted in 2010, not only did local leaders in cities such as Tucson and Phoenix submit affidavits in support of the federal challenge against the law,²¹ but cities both in and outside of Arizona also submitted amicus briefs when the case was appealed.²² Even before all of this, cities that were not directly affected by this immigration enforcement law or its progeny took action both to stake a position in the immigration debates and to convey a particular image of their city. Cities as diverse as Durham, San Francisco, Boulder, St. Paul, Boston, and Oakland, among others, reacted in a variety of ways, such as passing formal resolutions that denounced S.B. 1070 and taking steps to boycott Arizona for municipal travel or business dealings.²³ More interestingly, appealing to intercity camaraderie, Portland issued a resolution specifically offering support to the legal efforts of cities in Arizona opposing the Arizona law,²⁴ while then-

¹⁹ See, e.g., Susan Sachs, *Mayor’s New Immigrant Policy, Intended to Help, Raises Fears*, N.Y. TIMES, July 23, 2003, at A1 (discussing the implementation of a “don’t ask” policy in New York City and noting that similar policies have been adopted in Portland, Oregon; Fresno, California; and Minneapolis, Minnesota).

²⁰ See, e.g., Stephen Dinan, *Sanctuary Cities May Be Facing Legal Action; Obama’s County Among Targets*, WASH. TIMES, July 11, 2012, at A1; Ian Lovett, *Los Angeles to Cease Transferring Immigrants*, N.Y. TIMES, Oct. 5, 2012, at A14.

²¹ See, e.g., Declaration of Roberto Villaseñor, *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010) (No. CV-01413 PHX-SRB), available at <http://www.justice.gov/opa/documents/declaration-of-roberto-villaseñor.pdf> (Tucson Police Chief); Declaration of Phoenix Police Chief Jack Harris, *United States v. Arizona*, 703 F. Supp. 2d 980 (No. CV-01413 PHX-SRB), available at <http://www.justice.gov/opa/documents/declaration-of-jack-harris.pdf>; Declaration of Tony Estrada, *United States v. Arizona*, 703 F. Supp. 2d 980 (No. CV-01413 PHX-SRB), available at <http://www.justice.gov/opa/documents/declaration-of-tony-estrada.pdf> (Sheriff of Santa Cruz County, Arizona).

²² See Brief for the Arizona Cities of Flagstaff, Tolleson, San Luis, and Somerton in Support of Plaintiff-Appellee, *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011) (No. 10-16645); Amicus Curiae Brief Submitted by the City of Tucson in Support of Plaintiff-Appellee, *United States v. Arizona*, 641 F.3d 339 (No. 10-16645).

²³ See *Who Is Boycotting Arizona?*, AZCENTRAL.COM (Aug. 27, 2010, 3:51 PM), <http://www.azcentral.com/business/articles/2010/05/13/20100513immigration-boycotts-list.html>.

²⁴ See Editorial, *Joining Forces Against Arizona’s Law*, OREGONIAN, June 17, 2010, available at http://www.oregonlive.com/opinion/index.ssf/2010/06/joining_forces_against_arizona.html.

Mayor Gordon of Phoenix personally requested that other mayors reconsider their cities' boycotts of Arizona out of consideration for the plight of Phoenix.²⁵

In addition, cities have been able to exercise influence over immigration policy by taking steps to accommodate undocumented immigrants in the face of the growing number of liabilities imposed by federal (and increasingly state) law. For example, the Los Angeles Police Department recently announced that it would no longer impound cars driven by unlicensed drivers, many of whom are undocumented immigrants who cannot apply for a driver's license under California state law.²⁶ Another effort that has attracted much attention in recent years, and is starting to gain momentum in communities across the country, is the issuance of municipal identification cards. One of the biggest liabilities to being undocumented is the inability to acquire official government identification, which limits the ability of undocumented immigrants to interact with government officials on routine matters and transact business in the private sector. This liability, of course, is by design: it is imagined that by making life difficult in the United States, many undocumented immigrants will simply leave. Yet forcing them to the margins of society also creates difficulties for government and law-enforcement officials who need to reach them. Some cities started to address this issue for Mexican immigrants by accepting "Matrícula Consular" identification cards, which were issued by the Mexican consulate to nationals outside the country, as a form of identification for certain transactions.²⁷ Others, however, are going further and issuing municipal identification cards of their own. The municipal identification program was pioneered in New Haven in 2007.²⁸ Since then, similar programs have been adopted in a number of cities, including Trenton, New Jersey,²⁹ and San Francisco and Oakland, California.³⁰ Just recently, Los Angeles also announced plans to institute such a program and is currently taking steps to bring it online.³¹ The goal of municipal identification cards is to facilitate transactions between undocumented immigrants and the city, private employers, and other service providers like hospitals and banks.³² They also aid in interactions between undocumented immigrants and the police.³³

²⁵ See Ryan Lillis, *Kevin Johnson Urges, Then Rejects, Arizona Economic Sanctions*, SACRAMENTO BEE, Apr. 29, 2010, at B1.

²⁶ See Editorial, *Impounding Is Not the Answer*, L.A. TIMES, Apr. 29, 2011, at A22.

²⁷ See Rachel L. Swarns, *Old ID Card Gives New Status to Mexicans in U.S.*, N.Y. TIMES, Aug. 25, 2003, at A1.

²⁸ See Kirk Semple, *In Trenton, Issuing IDs for Illegal Immigrants*, N.Y. TIMES, May 17, 2010, at A17.

²⁹ *Id.*

³⁰ See Ian Lovett, *IDs for Illegal Immigrants Take a Step in Los Angeles*, N.Y. TIMES, Oct. 17, 2012, at A23.

³¹ *Id.*

³² See Semple, *supra* note 28.

³³ *Id.* ("[T]he cards give illegal immigrants who fear detection and deportation more confidence about reporting crimes, and allow officials to help immigrants who are crime victims.").

C. *Immigration Policymaking in an Era of Devolution*

In recent years, responsibility for immigration enforcement is being pushed down to cities and other local governments. At the same time, cities are pushing back, either by resisting efforts to recruit them or by pursuing immigration policies of their own. What has emerged is a system of immigration policymaking that is not tied to jurisdictional authority, but the product of interlevel negotiations and interactions. It also suggests a political structure in which both federal and local actors are given more influence over one another.

This dynamic is very different from the traditional federalism framework, which assigns issues like immigration to be decided and implemented at specific sovereign spheres. Yet it also fits better with the way that many legal and political observers are describing how controversial policy issues are resolved today. But how should we feel about this development from a progressive standpoint? In the next two parts, I suggest that the answer depends in large part on which perspective—immigration or the city—one adopts.

II. PROGRESSIVE IMMIGRATION POLICY AND THE PROMISE OF THE CITY

Progressives in recent years have endorsed a number of key reforms to our immigration system: a path to citizenship for the millions of undocumented immigrants now working and living in the shadows; an enforcement regime that avoids the societal and human costs of indiscriminate and mass deportations; and an admission system that is better attuned to the needs of our economy and the immigrant roots of our country.³⁴ To be sure, these goals cannot be achieved without implementing changes to our nation's immigration laws, which explains why progressive advocates have largely focused their efforts at the federal level. Yet this is not the only, or even the most effective, means to reform. Indeed, as I argue here, a promising path also runs through the city.

This Part makes a progressive case for city involvement in immigration policymaking and enforcement. It does so by showing how the position and perspective of cities complement the federal government in useful ways in the immigration context. Federal policymaking and enforcement, I argue, are simply too detached from the costs and benefits of federal actions, and unaccountable to the communities and individuals that are affected the most. City leaders and other local officials, who often see the issue of immigration in the opposite light, not only are more often aligned with progressive princi-

³⁴ See, e.g., MARSHALL FITZ & ANGELA KELLEY, CTR. FOR AM. PROGRESS, PRINCIPLES FOR IMMIGRATION REFORM: GUIDELINES FOR FIXING OUR BROKEN IMMIGRATION SYSTEM 2–4 (2009), available at <http://www.americanprogress.org/wp-content/uploads/issues/2009/12/pdf/immigrationreform.pdf>; see also Alvaro Huerta, *We Need Real Immigration Reform*, PROGRESSIVE (Mar. 20, 2013), <http://www.progressive.org/we-need-real-immigration-reform>.

ples but also bring a valuable and unique perspective that is too often lost in national conversations. For progressive advocates then, the city not only constitutes an alternative venue for immigration policymaking, but it can also serve as a powerful political platform for shaping the federal debates.

A. *The Dangers of Political Centralization*

There are many advantages to federal policymaking and enforcement in the immigration context. Yet there are important limitations as well from a progressive perspective. If the city holds promise in the context of immigration, it is because it complements federal policymaking and enforcement in ways that address the dangers that these limitations produce. This section discusses the dangers of political centralization in the immigration context—not only with respect to how immigration policies are made, but also with respect to how they are enforced.

One problem with political centralization is that it breeds a worrisome detachment between regulators and both the targets and beneficiaries of regulations. This detachment is of particular concern with respect to policies on immigration enforcement. To be sure, centralization expands the scope of immigration as a policy issue; no longer a regional matter, it is now understood to be a matter of national concern. Yet the uneven distribution of immigrants across the country means that most of the policymakers involved in crafting immigration policies represent areas with little or no experience with the immigration influxes that federal law is intended to address.³⁵ Moreover, given the diversity of the immigrant population, from migrant farmworkers in America's rural communities to highly skilled immigrant entrepreneurs operating in the country's bustling urban cores, there is rarely a common ground upon which to carry out a federal negotiation. What this means is that, when it comes to immigration policymaking, not only are the individual policymakers situated differently with respect to the issue, but many of them do not have much skin in the game.

To be sure, this detachment is sometimes upheld as a reason for federal policymaking; being above the fray, it is imagined, allows federal policymakers to consider the issue with a broad and dispassionate outlook and craft policies that would privilege national interests over parochial prejudices.³⁶ Yet as history shows, detachment from the actual costs and benefits of the law that they are making usually drives policymakers to decide the outcome with respect to ideological principles rather than practical

³⁵ According to the 2000 census, more than two-thirds of all the foreign-born residents in the United States lived in just six states: California, New York, Texas, Florida, Illinois, and New Jersey. CONG. BUDGET OFFICE, A DESCRIPTION OF THE IMMIGRANT POPULATION 1 (2004), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/60xx/doc6019/11-23-immigrant.pdf>. It is also estimated that nearly half of the undocumented immigrant population is in either California or Texas. *Id.* at 8.

³⁶ See *Henderson v. Mayor of N.Y.*, 92 U.S. 259, 270–71 (1875).

considerations.³⁷ This might be a reason why federal immigration policies often tend to be narrow in their outlook, while veering at times toward unenforceable extremes. For example, in recent years, even as it was becoming clear that our current system of immigration admissions was both unenforceable and disconnected from our nation's needs, federal immigration policy continued to fixate on its own enforcement: more punitive measures against undocumented immigrants,³⁸ more grounds upon which legal migrants could be removed,³⁹ and further streamlining of the removal process.⁴⁰

Another danger with political centralization lies in the enforcement context, and it has to do with the fact that federal immigration officials are largely unaccountable to the communities in which they operate. While the success of federal enforcement officials is measured largely in terms of the number of undocumented immigrants identified and the speed with which they are processed and removed, this is not necessarily aligned with the interests of the actual communities in which the officials' actions take place. Moreover, because of the nature of the federal bureaucracy that enforces our nation's immigration laws, complaints and protests about officials' tactics and conduct often go unanswered.⁴¹ This lack of local political accountability is made all the more worrisome by the fact that many immigration enforcement initiatives, especially the kinds that have been preferred by federal officials in recent years, are highly disruptive: neighborhood sweeps and workplace raids not only disrupt the routine flow of urban life for all residents, immigrants, and natives alike but also leave deep scars on the social and political fabric of the local communities.⁴²

To be sure, when compared to local officials, it is often said that federal agents are preferred because they have more specialized training on federal immigration law and a better understanding of the constitutional constraints under which they operate. Yet even with this training and knowledge, their lack of political accountability may explain why federal agents routinely overstep constitutional protections and engage in racial profiling, while also becoming increasingly resistant to *any* kind of oversight. Indeed, one of the most striking developments in recent years is the fact that federal immigra-

³⁷ Cf. LISA L. MILLER, *THE PERILS OF FEDERALISM: RACE, POVERTY AND THE POLITICS OF CRIME CONTROL* 4–5 (2008).

³⁸ See Daniel Kanstroom, *Criminalizing the Undocumented: Ironic Boundaries of the Post-September 11th "Pale of Law,"* 29 N.C. J. INT'L L. & COM. REG. 639, 651 (2004).

³⁹ See Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,* 56 AM. U. L. REV. 367, 381–86 (2006).

⁴⁰ See Teresa A. Miller, *Lessons Learned, Lessons Lost: Immigration Enforcement's Failed Experiment With Penal Severity,* 38 FORDHAM URB. L.J. 217, 233 (2010).

⁴¹ See Julia Preston, *Groups Protest Operation by Immigration Agents,* N.Y. TIMES, Oct. 17, 2012, at A25 (describing local alarm that the "immigration agency had broken an earlier promise to avoid arrests near schools and other community gathering points").

⁴² See, e.g., Maggie Jones, *Our Town Could Be Yours,* N.Y. TIMES MAG., July 15, 2012, at MM34.

tion agents, led by their union, have been actively resisting efforts by the Obama Administration to redirect their mission and reorient their priorities.⁴³

B. The View From the City

The progressive promise of the city lies in how its involvement addresses some of the limitations of political centralization. To be sure, there are many different kinds of cities and, as a result, a range of different local responses to immigration. Yet, as set forth above, though a few have prioritized immigration enforcement in their communities, most cities have been resistant to or critical of the enforcement-centered approach of federal and state policy. This section suggests that the reason for this opposition lies not only in how urban policymakers and officials see themselves in relation to immigration policymaking and enforcement but also in how their perspectives differ from those at the federal level.

It may seem counterintuitive at first, but the smaller jurisdictional scale of cities is an important reason why they tend to be less enthusiastic about immigration enforcement than federal authorities. The reason for this goes directly to the political detachment of political centralization outlined above: whereas federal officials are often removed from the consequences of enforcement actions, local leaders know that any such efforts will necessarily be taking place in their own backyards.⁴⁴ In contrast to the federal agents who might swoop into a community for an operation, local leaders and officials are repeat players. This is not to say that cities do not sometimes favor immigration enforcement when they believe that it will serve the interests of their communities. But, as is the case with law enforcement more generally, this stance is often tempered by the fact that the targets of immigration enforcement are also a part of the communities that cities and local law-enforcement officials are charged with serving.

At the same time, police departments, which often find themselves on the front lines of the federal government's immigration enforcement efforts, cannot and do not measure their effectiveness solely with respect to the number of immigrants deported. In stark contrast to the narrow institutional mission of a federal agency like Immigration and Customs Enforcement, immigration enforcement is but a part of a police department's broader mission to protect and serve its community. It makes sense then that local leaders and officials often demand a more compelling reason for why law-enforcement resources should be dedicated to immigration enforcement and whether such a focus will serve broader goals of public safety. Even in localities that have taken a strong stance against undocumented immigration, local law-enforcement officials often continue to balance those policy objec-

⁴³ See Julia Preston, *Agents' Union Delays Training on New Policy on Deportation*, N.Y. TIMES, Jan. 8, 2012, at A15.

⁴⁴ Cf. William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 1973-74 (2008) (describing the benefits of local political accountability in the criminal-justice context).

tives with the need to maintain community relations and public trust with immigrant residents.⁴⁵

A major reason why cities find themselves differently situated with respect to the issue of immigration is that there is simply more democratic accountability at the local level than at the federal level. But the internal political pressure that city leaders feel is only one source of influence on their actions when it comes to immigration. Another is the reputation and image that many cities want to portray to the outside world. As the legal challenges and economic boycotts that cities instituted in response to state immigration enforcement mandates show,⁴⁶ many cities have an interest in staking a particular political position on immigration even if they are not directly affected by the law that they are challenging.

The fact is, despite the formal hierarchy of local, state, and federal government in the United States, cities have long transcended—both socially and economically—the territorial jurisdictions of which they are a part. On the one hand, this local involvement is a reflection of the degree to which cities are connected into and reliant upon the global economy, as the growing literature on “global cities” describes.⁴⁷ On the other hand, it is a reflection of the cosmopolitan culture and diversity that has long attracted people to cities.⁴⁸ Given all of these influences, it is not surprising then that cities often have different interests with respect to immigration. They want to attract foreign capital, recruit and retain foreign entrepreneurs, draw foreign tourists, and foster a vibrant cosmopolitan environment.⁴⁹ But more importantly, many cities simply want to appear to be a welcoming place to live, work, and visit.

With all this said, however, it is worth noting that cities are not necessarily eager to jump into the national debate on immigration. In most cases, cities are “responding” to immigration simply because they have to. With immigrants once again an integral part of the city’s social and economic fabric, most of a city’s attention with respect to immigration is directed to pragmatic issues and services that we look to cities to address. To be sure, these tasks are not without their share of controversy; municipal policies are often accused of inappropriately favoring one side or another in the ongoing immigration debates—either by being too accommodating to immigrants or not accommodating enough. At the same time, with immigration affecting

⁴⁵ See, e.g., Sid R. Fuller, *Police Response to Political Controversies: Illegal Immigrants in Farmers Branch*, POLICE CHIEF MAG. (Aug. 2008), http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1581&issue_id=82008.

⁴⁶ See *Who Is Boycotting Arizona?*, *supra* note 23.

⁴⁷ For a summary of the global cities literature, see M. Mark Amen, et al., *Thinking Through Global Cities*, in *RELOCATING GLOBAL CITIES: FROM THE CENTER TO THE MARGINS* 1, 1–6 (M. Mark Amen, et al., eds., 2006).

⁴⁸ See, e.g., Jeff Malpas, *Cosmopolitanism, Branding, and the Public Realm*, in *BRANDING CITIES: COSMOPOLITANISM, PAROCHIALISM, AND SOCIAL CHANGE* 189, 191–92 (Stephanie Hemelryk Donald et al. eds., 2009).

⁴⁹ See, e.g., Atlanta, Ga., Resolution 11-R-0685 (May 2, 2011), available at <http://citycouncil.atlantaga.gov/2011/images/adopted/0502/11R0685.pdf>.

more and more cities, municipal responses are commonly more a matter of practical necessity than partisan politics. This doesn't mean, however, that these actions do not have impacts that resonate more broadly in the policy arena.

C. The Progressive Promise of the City

Given the limits of federal policymaking and enforcement, and the progressive orientation of cities to immigrants and immigration, there is good reason to think that cities can be valuable sites of progressive reform. Indeed, as the following shows, they have already been effective in steering federal immigration policymaking towards a progressive orientation. How might progressives take advantage of cities in the immigration context?

On the one hand, it might be worthwhile to consider how, in certain contexts, cities might be a more appealing alternative to immigration enforcement than the federal government. In other words, maybe cities should be given a more expansive role with regard to immigration enforcement, including more discretion over how it should be implemented. Not only might the excesses of federal immigration enforcement be tempered by the political accountability of local officials but an expanded role for cities also would allow for a more flexible process for designing policies. Indeed, cities might even pave the way for effective ways of addressing immigration without resorting to draconian government dragnets or the logic of self-deportation.

On the other hand, irrespective of what role, if any, cities should assume in the immigration context, immigration progressives should recognize that cities are a valuable ally. As cities have become a more central part of the federal government's own immigration enforcement efforts, they are gaining influence and sway over policymaking and implementation at the federal level. In this respect, cities are now powerful political platforms upon which efforts to effect progressive immigration reforms might be staged. And in a policy arena prone to political stalemates and ideological extremes, the ability to shift the political debate or shape how policies are actually carried out on the ground can go a long way toward defining what the policy actually is. Indeed, as outlined above, cities have already been using their unique position to temper the excesses of immigration enforcement efforts and offer pragmatic solutions and a moderating voice in an increasingly volatile debate.

III. PROGRESSIVE URBANISM AND THE PERILS OF IMMIGRATION POLICY

We have looked at how cities are shaping our nation's approach to immigration, which I have suggested is a promising development from a progressive standpoint. But just as cities are shaping this nation's approach to immigration, our nation's approach to immigration is also shaping the role and power of our cities. For those progressive advocates who are primarily

interested in progressive reforms to immigration policy and enforcement, cities are an invaluable tool and a useful ally. But for those who are primarily interested in advancing a progressive vision of city governance and administration, the entanglement of cities in federal immigration policy poses certain dangers.

The issue here is not with the actual impact of immigration per se, but rather the manner in which the dominant federal approach is affecting the nature of the city. More specifically, I argue that developments on the immigration front are advancing a disempowered and depoliticized vision of the city while perpetuating an image of immigrants as a federal population that is socially and politically outside of the local communities within which they reside. As I suggest below, these two trends threaten progressive visions of the city in very fundamental ways.

A. *Progressive City Building*

Much of the engagement with cities in the progressive literature thus far has focused primarily on how cities might contribute to progressive causes that will likely be settled at a higher level. This posture has been the case with respect to issues like climate change, marriage equality, and financial regulations; it was also how the “promise” of city involvement was outlined above with respect to immigration. Yet, in recent years, there has also been a growing interest in the city as a progressive project itself. Some are interested in how the physical structure of cities might be built or transformed with progressive aims in mind, such as the push for so-called “green cities.” Others are interested in how cities promote the kind of social interactions and political engagement that promote a just and equal society.⁵⁰ Indeed, political theorists like Iris Young have even begun to look to the plurality and social interactions commonly associated with city life as a normative model for a deep and meaningful democratic engagement.⁵¹

These progressive visions of the city, however, cannot be taken for granted. Cities might be important sites for progressive policies, but they are not themselves automatically inclined towards progressive ends—much depends on how their power is defined as a matter of law, a formulation that not only affects their ability to respond to issues that they might face but also defines their role in American society. As legal scholars have long noted, the legal and political structures of, and surrounding, cities go a long way toward defining how cities will behave, and to what ends they will use their power.⁵² Whether cities pursue exclusionary policies in order to attract wealthy residents and exclude the poor, or embrace a more inclusionary

⁵⁰ See, e.g., GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 173–79 (1999).

⁵¹ See IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 240 (2d ed. 2011).

⁵² See, e.g., GERALD E. FRUG & DAVID J. BARRON, *CITY BOUND: HOW STATES STIFLE URBAN INNOVATION* 7–9 (2008).

agenda aimed at enhancing the economic prospects and quality of life of a diverse range of its residents, depends in large part on the power and incentive structure within which cities operate.

B. The Distortion of Immigration

The peril that immigration policymaking poses to the project of progressive cities, I argue, lies in how it threatens to shape the power and incentives of the city. With respect to power, the problem is that the expanding scope of immigration regulations not only threatens to “crowd out” local policy innovations, especially those that target urban problems in new and creative ways, but may lead to a more radical restructuring of the power and purpose of cities themselves. With respect to incentives, the danger lies in how the rhetoric and framework of the national immigration debates might begin to affect how cities understand and perceive the challenges that they face and how they view their relationship and role with respect to immigrant residents. Taken together, I suggest that involvement in immigration can have a corrosive effect on the progressive orientation of cities—not only with respect to immigration or immigrants, but also affecting local governance more generally.

1. Immigration Policy and Local Power

At the most basic level, the expansion of federal immigration law into areas of traditional domestic and local concern is threatening to crowd out urban policymaking at the local level. By expansion, I am referring to the way in which the techniques of immigration control are now embedded in a number of different areas once thought of as the province of domestic policy. This trend would not be a problem if immigration played nice with other regulatory systems. But because immigration has traditionally been given broad latitude to preempt state and local laws, and because the politics surrounding immigration often demand that immigration regulations take precedence over most other issues, this expansion risks crowding out other governmental regulatory innovations meant to address related but distinct policy interests.

It is important to note that the displacement being discussed here is both legal and political. In other words, the risk is not only that a local regulation on, say, labor or working conditions that doesn't take into account immigration status might run afoul of federal preemption because it happens to “reward” undocumented immigrants in its implementation.⁵³ The risk is also that local leaders, especially those in smaller cities or towns, might be chilled from acting on a specific policy matter because of fears that they will be swept into intense national immigration debates.

⁵³ Cf. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 149–50 (2002).

Viewed from this broader perspective, the encroachment of immigration on urban policymaking is widespread. For example, during the 1990s, debates over how best to educate English learners were all but hijacked by referendum battles organized by immigration advocates.⁵⁴ Pedagogical disagreements over the relative efficacy of bilingual education and English-immersion programs suddenly turned into a bigger battle over immigration policy and the ability of new immigrants to assimilate into American society.⁵⁵ Similarly, recent local efforts to establish day-laborer centers—relatively innocuous attempts to address problems of loitering, littering, and worker exploitation when day laborers congregate on the street to solicit work—have attracted fierce national scrutiny simply because it is suspected that many of these day laborers are undocumented.⁵⁶ But when legal and political pressures cause localities to close down their centers and protesters to leave, cities are simply left with the same local problems. What is worth noting is that, in the vast majority of these policy disputes, there is a sensible, pragmatic, and oftentimes progressive-minded solution to an urban problem. But because of the importance now ascribed to immigration regulations and enforcement, any proposed solution is automatically placed under legal and political scrutiny.

Though this kind of crowding out is a matter for concern in the near term, an even bigger problem is whether policy conflicts over immigration might lead to more substantial structural reforms of city power and responsibilities. The biggest concern here is not so much the preemptive powers of the federal government but rather the plenary power that states have over their local governments.⁵⁷

Fear of this kind of broader structural reform is not entirely speculative. Indeed, many of the major structural changes that cities faced in the past were the result of immigration controversies involving state and local governments, particularly in the decades surrounding the turn of the twentieth century. Some of these reforms were temporary, such as Massachusetts's takeover of the Boston police department because the city had elected its first Irish American mayor, and the state legislature felt the police force was

⁵⁴ See Edward B. Fiske, *Backtracking on Bilingual School Plan*, INT'L HERALD TRIB., Feb. 12, 2001, at 18; see also Kevin R. Johnson & George A. Martinez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227 (2000) (discussing constitutionality of ballot initiatives to ban bilingual education in public schools).

⁵⁵ See Fiske, *supra* note 54.

⁵⁶ See Editorial, *Herndon, Va.'s Labors*, N.Y. TIMES, Aug. 18, 2007, at A12; Richard Simon, *Day Labor Site Mandate Riles D.C.; Burbank's Order That Home Depot Build a Hiring Center Prompts Action on Capitol Hill*, L.A. TIMES, Apr. 23, 2006, at A8 (describing cities that have conditioned the construction of home-improvement stores on the store's willingness to construct and operate day-laborer centers and a proposal in Congress to forbid such requirements).

⁵⁷ See *United States v. R.R. Co.*, 84 U.S. (17 Wall.) 322, 329 (1872) ("A municipal corporation like the city of Baltimore, is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State.").

too heavily dominated by Irish immigrants.⁵⁸ Others have left more permanent marks, such as the municipal reform movement of the early twentieth century, which sought to depoliticize local governments and narrow the scope of urban governance in order to minimize the perceived dominance of ethnic political machines and the immigrant voters who supported them.⁵⁹

To be sure, in contrast to the early twentieth century, there is far less attention being paid today to the power and structure of cities and other local governments. And with the exception of fiscal crises, the threat of state takeovers is relatively remote. Yet as the immigration controversy at the national level has been boiling over into state politics, there are signs to suggest that a new round of urban restructuring is possible. In many state-houses, there is once again the growing perception that cities are too aligned with immigrant interests. At the same time, the most recent wave of state laws on immigration shows that state policymakers are often eager to both target and constrain local discretion, even over local issues that just happen to be tied to the immigration debates.

2. *Immigration Policy and Local Incentives*

The threat to city power outlined above focuses on the external pressures that cities now face in the immigration arena from the federal and state level. Another concern, however, is with respect to how immigration is distorting the incentives that cities and local leaders face and the impact this has on the internal workings of urban governance. I focus on two such distortions here—the first is with respect to the economic cost of immigrants, and the second is the more subtle issue of how immigrant residents are perceived.

With respect to cost, the issue is that efforts to regulate immigration through incentives and disincentives to immigrate are also changing the economic calculus cities and other local governments face when it comes to their immigrant populations. In short, because of recent developments in federal law, the “cost” of immigrants to local governments is now different from that of natives, even when compared to those who are similarly situated. Legal immigrants who had not yet naturalized became more costly in 1996 when the federal government decided to bar them from receiving several federal means-tested benefits,⁶⁰ many of which were subsequently reinstated by states and local governments out of their own coffers.⁶¹ Moreover, because undocumented immigrants are denied access to most federally

⁵⁸ See JACK TAGER, *BOSTON RIOTS* 156–57 (2001).

⁵⁹ For a summary of this historical development, see Rick Su, *Urban Politics and the Assimilation of Immigrant Voters*, 21 *WM. & MARY BILL RTS. J.* 653, 673–76 (2012).

⁶⁰ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 400(5), (7), 110 Stat. 2105, 2260.

⁶¹ See Michael Fix & Wendy Zimmermann, *The Legacy of Welfare Reform for U.S. Immigrants*, in *INTERNATIONAL MIGRATION: PROSPECTS AND POLITICIES IN A GLOBAL MARKETPLACE* 335, 337–38 (Douglas S. Massey & J. Edward Taylor, eds., 2004); see also Peter H. Schuck, *The Treatment of Aliens in the United States*, in *PATHS TO INCLUSION: THE INTEGRA-*

funded and many state-funded services, local governments often have to fund vital services on their own⁶² (often indirectly, lest they run afoul of federal and state laws), or suffer the consequences that result when the needs of these residents are unmet. Of course, given the federal government's interest in tackling undocumented immigration, it sometimes changes the cost calculus on purpose. There are already many accounts of how local sheriffs responsible for county prisons have turned to screening for undocumented immigrants because of the per diem the federal government offered to pay once they have been so identified.⁶³

Even more troublesome than how federal immigration policy has altered the fiscal "costs" of immigrants from a local perspective is how the immigration debate is starting to affect how cities view immigrant residents in relation to their role as urban policymakers. The issue is the degree to which cities are being encouraged to view immigrants as essentially a federal population, and thus a federal responsibility, distinct and separate from even the local communities within which they reside. To be sure, the Supreme Court has long adopted the view that immigrants are guests and wards of the federal government.⁶⁴ Even though the origins of this view can be traced to early judicial efforts to protect immigrants from restrictive state regulations,⁶⁵ it has since become the basis for portraying them as, by definition, outside of all political communities—national or subnational.⁶⁶ As Professor Ngai suggests, it is as if the "nation's borders (the point of exclusion) collaps[ed] into and bec[ame] indistinguishable from the interior (the space of inclusion)."⁶⁷

TION OF MIGRANTS IN THE UNITED STATES AND GERMANY 203, 232–33 (Peter H. Schuck & Rainer Münz, eds., 2001).

⁶² These kinds of cost shifting are more common than one might think in the immigration context. For example, although the Texas law challenged in *Plyler v. Doe*, 457 U.S. 202 (1982), is often remembered as one prohibiting undocumented students from receiving a free public education in the state, it actually operated by depriving local governments any state funding for students who did not have legal status—leaving it up to the local school districts to decide whether to fund these students on their own, ask them to pay, or bar them altogether. See also *In re Alien Children Educ. Litig.*, 501 F. Supp. 544, 555 (S.D. Tex. 1980) ("Even though some school districts have opted to admit undocumented children, the State's financing scheme penalizes them for that decision; they receive less money per pupil from the State than school districts which exclude undocumented children.").

⁶³ See Kristin Collins, *Sheriffs Help Feds Deport Illegal Aliens*, NEWS & OBSERVER (Raleigh), Apr. 22, 2007, at A1 ("[Sheriff] Johnson said the [section 287(g)] program has dual benefits for Alamance County. It brings in money, because the federal government pays about \$66 a night for every immigration detainee who stays in the jail. And it rids the county of illegal immigrants, who he contends sponge public resources and are more prone to commit crimes than legal residents.").

⁶⁴ See, e.g., *Henderson v. Mayor of N.Y.*, 92 U.S. 259, 273–74 (1875) (describing "the protection which the foreigner has a right to expect from the Federal government when he lands here a stranger, owing allegiance to another government, and looking to it for such protection as grows out of his relation to that government").

⁶⁵ See, e.g., *id.*

⁶⁶ See *Cabell v. Chavez-Salido*, 454 U.S. 432, 439–40 (1982).

⁶⁷ MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 63 (2003).

There are already signs that the “federalization” of the immigrant population in contemporary immigration debates is starting to affect how cities view local issues when immigrants are involved. When immigrants overcrowd inadequate housing or residents flee a community experiencing an immigrant influx, too often the traditional local-government concerns about affordable housing and the propensity of existing local-government laws to promote metropolitan sprawl are cast aside to focus on the federal immigration policies that sanctioned, or failed to restrict, the immigrant’s entry into this country in the first place.⁶⁸ When immigrant residents burden local services, questions regarding the funding structure are frequently neglected to concentrate on the lack of federal support for the “federal” population of immigrants.⁶⁹ When immigrants deviate from local community norms by committing crimes that are largely defined by state and local governments, the most pressing concern is too often not how they will be punished or rehabilitated pursuant to local laws, or how local policies can be adopted to make our communities safer, but whether their actions constitute cause for deportation.⁷⁰ Indeed, even when cities erupt in violence, as they did during the Los Angeles riots of 1992, the presence of immigrants in the midst of this chaos leads many to demand a moratorium on future immigration instead of focusing on the concentration of poverty, racial tensions, and economic dislocation that the current local legal framework has engendered.⁷¹

C. *The Progressive Perils of Immigration Policy*

The expansion of federal immigration regulations is impinging on policy arenas ordinarily viewed as local matters. At the same time, there is the risk that the way immigrants are portrayed in the federal immigration debates is affecting how they are viewed as residents by the cities themselves. As we saw in Part II, cities have been effective in shaping federal immigration policymaking and enforcement. But as this Part suggests, they might be affected by these developments as well.

⁶⁸ See, e.g., Editorial, *Blaming Immigrants*, N.Y. TIMES, Oct. 14, 2000, at A18 (describing a campaign by Federation for American Immigration Reform blaming immigration for traffic congestion and suburban sprawl); Charisse Jones, *Crowded Houses Gaining Attention in Suburbs*, USA TODAY, Jan. 31, 2006, at A5 (describing how anger over immigration is being played out through the issue of overcrowded housing in many communities).

⁶⁹ See Peter Skerry, *Many Borders to Cross: Is Immigration the Exclusive Responsibility of the Federal Government?*, 25 PUBLIUS 71 (1995); see also *Texas v. United States*, 106 F.3d 661 (5th Cir. 1997); *Arizona v. United States*, 104 F.3d 1095 (9th Cir. 1997); *California v. United States*, 104 F.3d 1086 (9th Cir. 1997); *New Jersey v. United States*, 91 F.3d 463 (3d Cir. 1996); *Padavan v. United States*, 82 F.3d 23 (2d Cir. 1996); *Chiles v. United States*, 69 F.3d 1094 (11th Cir. 1995).

⁷⁰ See Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936, 1949–50 (2000).

⁷¹ See, e.g., Otis L. Graham Jr. & Roy Beck, *To Help Inner City, Cut Flow of Immigrants*, L.A. TIMES, May 19, 1992, at B7; Edward N. Luttwak, *The Riots: Underclass vs. Immigrants*, N.Y. TIMES, May 15, 1992, at A29; Jack Miles, *Blacks vs. Browns*, ATLANTIC MONTHLY, Oct. 1992, at 41.

Though the focus is on how immigration policy and perception of immigrants might be shaping urban governance, the danger I suggest here is more than just how immigrants might be treated at the local level. Even more important is how immigration policy might distort how cities approach urban governance more generally. One such concern is that city leaders will have a misguided view of local problems and the steps necessary to address them. In other words, not only might immigrants be unfairly blamed but the fundamental roots of the problem might be overlooked as well.

A related danger is that cities will begin to demand federal solutions to what are essentially local problems. In other words, instead of being crowded out of a policy area of local concern, cities may be tempted to withdraw from a specific sphere of urban policymaking because they believe that it is ultimately the federal government's responsibility to fix these problems.

IV. CONCLUSION: RECONCILING THE PROMISE AND THE PERIL OF IMMIGRATION LOCALISM

Cities across the United States are now actively engaged with federal immigration policymaking and enforcement. As I argue above, this poses both promise and peril for advocates of progressive policies. For those interested in immigration, I argue, cities are moderating the excesses of federal immigration enforcement and plotting a pragmatic path to more meaningful reform. For those focused on cities, however, this engagement has distorted a number of local policy issues and threatens to undermine the relationship between the city and its immigrant residents. Given the promise and peril of this relationship, what is a progressive to do?

It is probably too late to think that we can avoid this problem by disengaging the city from immigration policymaking and enforcement. Even if we wanted to, it is unlikely that the expansion of our federal immigration laws, which are responsible for the increasing overlap between federal immigration regulations and spheres of domestic and local control, can be rolled back. In other words, having expanded their reach into the workplace and the criminal-justice system, it is unlikely that immigration regulations will ever retreat back to the borders. And as long as that overlap exists, there will simply be no agreement on what noninvolvement actually looks like. When a city establishes a day-laborer center that does not check the immigration status of its users, swarms of demonstrators descend to protest the city's "immigration policy." Yet if a city does the opposite, and decides that it wants to check the immigration status not only of day laborers but of all employees in the town, there will likely be others eager to denounce the city's effort to regulate immigration. The problem with the popular appeal for city disengagement is that disengagement looks very different from different perspectives.

If disengagement is not a possible solution, then maybe the solution is to find ways to reconcile the two—in other words, to enhance the promise of city engagement in federal immigration policymaking and enforcement, while minimizing the danger this engagement poses to progressive visions of the city. Instead of disengagement, a solution along these lines may require more formal recognition of the city's role. Might they be institutionally integrated into the policymaking process? Might they be formally consulted when designing interior enforcement strategies? Maybe they should take a more active role in spearheading federal immigration enforcement efforts in their communities—informed by federal immigration objectives on the one hand, while moderated by local political accountability on the other.

If we are to reconcile the promise and peril of city involvement, finding ways not only to restore but also to strengthen the connections between the federal and the local may be the best alternative for progressives to pursue. At this point, however, it might be enough to simply recognize that when it comes to the interaction between cities and immigration policy, there are indeed two sides to the equation—immigration and the city—that need to be considered.

