

Axial Shift

Benjamin Gussen

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City Subsidiarity and the World System in the 21st
Century

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AL LA AMO DE MIA VIVO

PREFACE

Die Stadtluft macht frei

(Old German saying: The city air makes you free)

Every year, from around mid-February to early May, the city of Venice celebrates its history with a unique festival, the Carnival of Venice (Venetian: *Carnevàl de Venexia*). The origins of the Carnival can be traced back to the Venice Republic (Venetian: *Serenìsima Repùblica Vèneta*) (697–1797). Venice emerged in the 5th century from the ruins of the *Roman Empire* as a haven from persecution. It was first subjected to the authority of Constantinople. Later on, it became a thalassocracy that dominated trade in the Mediterranean and had an outreach as far as Asia. It is said that the Carnival is held in remembrance of an 1162 victory over attempts to bring the Republic under German subjugation. The Germans had to wait until 1797.

The distinctive masks and costumes that Venetians get to wear during the Carnival are unique to this event. These masks were introduced to escape the rigid class system present in Europe at the time. The masks allowed people to circumvent the sumptuary laws that restrained expenditure on extravagance (according to social class). What is even more fascinating, although not as spectacular, is that the Carnival was resurrected in 1979, almost 200 years after it was banned by an Austrian Emperor. Since the mid-17th century, the Westphalian nation-state has been floccinaucinihilipilificating the legal personality of cities. The return of the Carnival can be seen as a shift back to celebrating the unique character of Venice. My thesis is that this shift is not just a Venetian affair; it can be seen

today on a global scale. The *Fourth Industrial Revolution* is finally resurrecting cities as the dominant polity in a new world system. This dynamic is part of a helix pattern that saw each one of the previous industrial revolutions modulate the optimal scale for political organization. Each wave of technological innovation saw a reduction of the jurisdictional footprint of polities. In this monograph, I unpack this ‘axial shift’ over 14 chapters, offering in the process analytical perspectives from law, economics, politics, art, and philosophy.

The monograph, however, is not only descriptive. It has a decisively normative message—normative, not because the envisaged axial shift requires any policy intervention. In fact, such intervention would be futile in preventing the political change brought about by the *Fourth Industrial Revolution*. It is normative because there is a first-mover advantage. Those who recognize the forces in action today, and ready their institutions to fit into a new world system driven by sovereign cities rather than nation-states, will be in a position to leverage higher economic growth and to expand their economic development.

The seminal ideas for this book can be traced back to a 2010 article by David Schleicher.¹ In that article, Schleicher developed a law-and-economics framework for analyzing local government law. His analysis suggests a trade-off between benefits from agglomeration and gains from Tieboutian sorting. While ruminating on this article in 2011, just after embarking on my PhD in law at the University of Auckland, I began to realize that the dichotomy between agglomeration and sorting that Schleicher identifies has also a constitutional dimension. Schleicher looks at the city as exogenous. The city is modeled as an administrative unit under the Dillon doctrine. Under this rule, cities have no independent legal personality and are a creation of, and controlled by, state legislatures.²

¹David Schleicher, ‘The City as a Law and Economics Subject’ (2010) 5 *University of Illinois Law Review* 1507.

²Schleicher discusses the Dillon Rule and its successor, the ‘home rule,’ on pages 1513 and 1515 and in pages 1546–1555. Schleicher proposes to use the economic analysis of local government law to explain how powers are best allocated between local and state governments. His analysis, however, does not envisage an independent legal personality for cities. He states that ‘[s]tate legislatures retain control over those policies that limit the negative effect of Tiebout sorting...’ (at 1515). He also states, as an example, that ‘[state control of higher education policy] makes sense: funding a major university is outside of the abilities of any one locality’ (at 1560). The departure from Schleicher’s analysis, in the spirit of constitutional economics, is to go beyond accepting the supremacy of state legislatures over cities. This is the research question for this monograph.

Moreover, for Schleicher, Tieboutian sorting inevitably results in small local government.³

My own interest in the legal personality of cities began much earlier. I began looking at cities as politics back in 2003, when I was on an exchange program at the Stockholm School of Economics (from the University of Otago in Dunedin, New Zealand). In Stockholm, I was introduced to the writings of Leopold Kohr and E. F. Schumacher on the ‘problem of scale.’ Their analysis suggests that economics does not have a characteristic scale. In other words, changes in scale, in relation to jurisdictional footprints, do not have an impact on economic policy and outcomes. This critique was the starting point for a 15-year journey in search of the optimal scale for political organization. Parts of my research hence appeared first as journal articles.

I gratefully acknowledge permission to use material that has previously appeared elsewhere. This includes parts of Chap. 3, which appeared in ‘The Evolutionary Economic Implications of Constitutional Designs: Lessons from the Constitutional Morphogenesis of New England and New Zealand’ (2014) 6(2) *Perspectives on Federalism* E319. Chapter 4 is based on *The Tower of Babel Syndrome: Locality and Governance in Response to the Ecological Crisis* (LLB Honours thesis, University of Auckland, 2011) and ‘The Marginalisation of Localism in Current Responses to the Ecological Crisis’ (2012) 16 *New Zealand Journal of Environmental Law* 167. Parts of Chap. 6 appeared in ‘On the Problem of Scale: A General Theory of Morphogenesis and Normative Policy Signals for Economic Evolution’ (2015) 12(1) *Evolutionary and Institutional Economics Review* 81 and in *Ranking Economic Performance and Efficiency in the Global Market* (IGI Global, 2018) Chap. 1. Chapter 8 is based on ‘The State is the Fiduciary of the People’ (2015) *Public Law* 440. Parts of Chap. 10 appeared in ‘The Evolutionary Economic Implications of Constitutional Designs: Lessons from the Constitutional Morphogenesis of New England and New Zealand’ (2014) 6(2) *Perspectives on Federalism* E319. Chapter 11 appeared in ‘On the Territorial Evolution of the Australian Federation in the 21st Century’ (2017) 22 *James Cook University Law Review* 15. Chapter 12 is based on ‘Reflections on La Fata Morgana: Watsonian “Prestige” and Bagehotian “Efficiency”’ (2017) 12(1) *The Journal of Comparative Law* 80. Parts of Chap. 13 appeared in ‘Can Charter Cities “Anabolize” the Australian Federation?’ (2017) 20(1) *Public*

³Ibid., 1507, 1513.

Administration and Policy: A Hong Kong and Asia-Pacific journal 18. Other parts of Chap. 13 are based on ‘Two Strategies for Diffusing Tension in the Middle East’ (2016) *Harvard Journal of Middle Eastern Politics and Policy* 8; ‘On the Problem of Scale: Hayek, Kohr, Jacobs and the Reinvention of the Political State’ (2013) 24(1) *Constitutional Political Economy* 19; and *Ranking Economic Performance and Efficiency in the Global Market* (IGI Global, 2018) Chap. 6.

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Melbourne, VIC, Australia
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Benjamin Gussen

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