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# FOSTERING EQUALITY AND DIVERSITY AT LOCAL LEVEL

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## HUMAN RIGHTS AS A MEANS TO ADVANCE EQUITY AND EMBRACE DIFFERENCE: LESSONS FROM US CITIES

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Within the United States, human rights remain a contested framework for governance. While human rights principles are increasingly used by social justice advocates and grassroots movements to shape demands, these norms are rarely explicit in national or local law. But the momentum is shifting, and human rights have been elevated by a number of social movements in recent years. The Movement for Black Lives, for example, is founded on the idea that liberation requires centring the most marginalised and prioritising the “full humanity and dignity of all people” (Movement for Black Lives, n.d.). Demands for economic justice, community control and participation are central to the movement’s platform. The national women’s marches launched in the wake of the 2016 presidential election have also been squarely grounded in women’s rights as human rights, with the stated goal of “creat[ing] a society in which women – including Black women, Indigenous women, poor women, disabled women, Jewish women, Muslim women, Latinx women, Asian and Pacific Islander women, lesbian, bi, queer, and trans women – are free and able to care for and nurture their families, however they are formed, in safe and healthy environments free from structural impediments” (Women’s March, n.d.).

The US Right to the City Alliance (RTC), founded in 2007, predates the prior two examples. The Alliance stresses that “everyone, particularly the disenfranchised, not only has a right to the city, but as inhabitants, have a right to shape it, design it, and operationalize an urban human rights agenda” (RTC, n.d.).<sup>1</sup> With a focus on housing and land ownership, the RTC Alliance aims to build a “truly intersectional national social justice movement” (CarsonWatch, n.d.).

The right to the city – by its nature local – incorporates core international human rights norms, often thought of as falling within the purview of national governments. Primary is the notion that all residents share the ability to have basic needs met, enjoy all facets of city life, and participate meaningfully in decisions that impact their lives. Understood with regard to the right to difference, the goal of universal enjoyment of urban life requires governance to respond to the diverse needs of residents in proactive and affirmative ways. In a domestic context where economic and

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1. The author wishes to thank colleagues Rob Robinson and Columbia Law School Research Assistant Madeleine Durbin for their contributions regarding the Right to the City in the United States.

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social rights are consistently challenged, and where the predominant legal framework focuses on equal access, rather than equality of outcomes, these principles (the right to the city and the right to difference) have the potential to disrupt and transform decision-making.

The advocacy platforms emerging in the US are powerful because they demonstrate a growing appetite for this type of change. They not only recognise the inherent worth of every individual regardless of identity, but also highlight that identities matter because they shape the experiences each of us have on a daily basis, be they race, gender, gender identity, sexual orientation, ability or origin. Rather than seeking to erase difference, these platforms embrace it. They aim to ensure that governments respond to the intersectional identities that exist across communities not only in law, but in policy. In particular, these platforms highlight that full humanity and dignity require governments to ensure that basic needs are met in the form of safe and healthy environments, as well as economic security. The Movement for Black Lives expressly articulates the need for economic and political transformation so that historically marginalised communities can participate directly in decision-making, and benefit economically.

As human rights demands become increasingly visible, it is vital to assess how cities – often the closest government level to the people – are responding. To contribute to this assessment, this piece explores three main questions: (1) To what extent are the human rights norms that undergird the right to the city and the right to difference – the rights to non-discrimination and equality, and economic and social rights – reflected explicitly in local law and policy in the United States; (2) who are the key actors in current efforts to fulfil fundamental rights; and (3) how do local government efforts fit into fostering the transformative change that human rights demands ultimately require?

The following discussion will be grounded in local initiatives to foster racial and gender equity, as well as to recognise the right to housing – areas where global norms have most visibly permeated local governance.<sup>2</sup> This piece contributes a brief snapshot to inform a larger national and transnational dialogue. Indeed, US cities have much to learn from counterparts around the world, such as Kwangju, Barcelona, Madrid and Mexico City, where commitments to human rights have been the basis for concrete and sustained action.

2. The US cities that have declared themselves “human rights cities” via resolution are not the focus of this analysis. However, more information on US human rights cities can be found at <https://ushrnetwork.org/national-human-rights-city-alliance>.
3. The umbrella association of state, city and county civil and human rights agencies is the International Association of Official Human Rights Agencies (IAOHRA), <http://www.iaohra.org/> (last visited February 15th 2019).
4. Alabama, Arkansas and Mississippi lack a state-level civil or human rights agency or equivalent body.

## I. State and local civil and human rights agencies as agents of change: addressing bias and discrimination, fostering equality

A valuable starting point for a discussion of human rights in the United States is the work of city, state and county human and civil rights agencies – agencies that have been established by law in cities, counties and states to monitor and enforce anti-discrimination laws, as well as to conduct research and public education.<sup>3</sup> Civil and human rights agencies exist in all but three US states.<sup>4</sup> While their mandates vary, these agencies collectively aim to “encourag[e] and facilitat[e] institutional change through policy and practice to eradicate discrimination and promote equal opportunity” (Kaufman, 2011: 91).

Most of the human rights commissions that exist today trace their origins to three distinct moments in time, each of which coincides with racial violence and tension in the United States: (1) the aftermath of WWI, when there was a surge in race riots across the United States; (2) the 1940s and 1950s, when racially motivated violence again swept across US cities; (3) the 1960s when landmark federal legislation was enacted to address discrimination in education, employment, voting and public accommodations, establishing a national civil rights enforcement regime and complementary state and local infrastructure (Kamuf Ward, 2017: 156–158).

A significant portion of the work of these agencies has always been responding to individual complaints of discrimination in the contexts of employment, housing and public accommodations. Yet, many also take a broader approach to eradicating discrimination, making policy recommendations and working in partnership with communities to ensure that local government is effectively responding to the needs of the multi-dimensional communities they serve. In the past ten years, agencies in cities including Seattle and Los Angeles have embraced efforts to address discrimination more systemically, while working to recognise and celebrate difference. Seattle’s Office of Civil Rights has been a leader in effort[s] to end institutionalized racism and race-based disparities within City government through a focused race and social justice initiative (RSJI)<sup>5</sup> Across Los Angeles County, which includes one of the United States’ largest and most diverse cities, the government has developed a strategic approach to addressing implicit bias within government through training and other measures.<sup>6</sup> This is part and parcel of the Los Angeles Human Relations Commission’s strategic priority to enhance fairness and equity on several issues, including in the arena of criminal justice. The commission has acknowledged that “When the likelihood of being arrested, jailed, shot, executed, or rearrested after being released from incarceration in LA County is tied to one’s race, ethnicity, gender or other protected characteristics, fundamental human rights are at issue” (Los Angeles County Human Relations Commission, n.d.) and that it is committed to changing the system to get at the root causes of disparities within the justice system, including through support systems for individuals that re-enter communities after incarceration. This work sits at the nexus of civil rights and economic and social rights. For communities impacted by mass incarceration – disproportionately communities of colour – to thrive, it is incumbent on local governments to address the discrimination that perpetuates disparities and to target resources to these communities in order to mitigate inequality. Individuals who come into contact with the criminal justice system often face barriers to housing, education, voting and employment opportunities, which jeopardise their ability to fully engage in civic life, or to thrive as residents of cities or other communities.

In other localities, human rights have been embedded more holistically into multiple prongs of governance. In the city of Eugene, Oregon, the Human Rights Commission, with the support of the mayor, has also expressly embraced human rights, which manifests in governance in a number of ways. An important step occurred in 2011 when the commission’s mandate was formally expanded to support and promote the full range of rights in the Universal Declaration of Human Rights (UDHR), and centred on the International Convention on the Elimination of All

Human rights commissions respond to complaints of discrimination in the contexts of employment, housing and public accommodations.

Local governments have to address the discrimination that perpetuates disparities.

5. See Seattle Race & Social Justice Initiative, <https://www.seattle.gov/rsji> (last visited February 15th 2019).

6. See “Countywide Implementation of Implicit Bias and Cultural Competency Training”, L.A. County Board of Supervisors Motion by Supervisor Mark Ridley-Thomas (April 11th 2017), (accessed on February 15th 2019) <http://ridley-thomas.lacounty.gov/wp-content/uploads/2017/03/Countywide-Implementation-of-Implicit-Bias-and-Cultural-Competency-Training.pdf>.

Protection of economic and social rights is quite unique in the US, where they have not been widely embraced.

A number of municipal governments have recognised housing as a human right.

Forms of Racial Discrimination, or ICERD (Columbia, 2012: 12). The new ordinance resulted from wide-ranging community engagement and community calls for the commission to address vital basic needs, such as housing and a lack of services for immigrant communities. The change was not only to update the language, but also to signal a new approach to meeting multifaceted and diverse community needs. To address the priority issue of homelessness, in 2011 the city developed a Community Task Force on Homelessness to study the issue and develop a set of policy recommendations to improve housing access (see City of Eugene, 2012). Like Los Angeles and Seattle, and a growing number of other cities internationally, Eugene also recognised that how decisions are made impacts who benefits from them. To promote more deliberate decision-making and foster greater equity, city agencies, in concert with the Human Rights Committee, now apply a triple bottom line analysis (TBL) to decision-making. The aim is to identify how a proposed policy or decision will impact social equity, the environment and economic prosperity for all Eugene's residents, which includes a review of civil, political, social, economic and cultural rights implications, as well as community participation (Columbia, 2012: 23; City of Eugene, n.d.).

This specific recognition and protection of economic and social rights as such is quite unique in the United States, where they have not been widely embraced. The limited recognition and protection of economic and social rights that does exist is found in state constitutions, not in the federal constitution (Davis, 2006: 360, 372). While the pace is slow, there are a growing number of local governments that are embracing human rights to catalyse action to meet the needs of residents, particularly those most in need of a social safety net. Eugene provides an instructive example because the city deliberately aimed to improve outcomes. Additionally, the processes used to amend local law and respond to the housing crisis are rooted in community participation. These explicit human rights initiatives are further consistent with foundational components of the right to the city. By formally recognising that cultural identity and economics influence outcomes, Eugene has also demonstrated respect for the right to difference.

The following section broadens the scope of the discussion to look at additional municipal actors fostering change.

## **II. City councils and mayors as human rights change-makers: using law to promote and protect economic and social rights and gender equity**

In recent years, a number of municipal governments have recognised housing as a human right, using aspirational resolutions as a catalyst for action. One positive example comes from Madison, Wisconsin, where the city council adopted a "housing as a human right" resolution. Through the resolution, adopted in 2011, Madison made a commitment to improve access to affordable housing, grounding the call for action in human rights treaties the US has ratified: the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination. The resolution highlights specific identity groups that face significant barriers to basic housing rights, including people of colour, LGBTQ individuals, immigrants and older persons. It

calls for the city to adopt a long-term housing strategy to improve the availability of adequate housing, reduce the number of homeless children in local schools, and prevent the criminalisation of homelessness; it should dedicate staff to taking action, and provide public funds to support affordable housing (City of Madison, 2011). And action has followed. The city put a strategy in place, and committed \$20 million over five years to an Affordable Housing Fund, in order to build more affordable rental units and support home ownership. This example demonstrates that human rights can pave the way to change.

Developments in Madison and Eugene highlight not only that there is an appetite for human rights – including economic and social rights – but also that actually putting these rights into practice requires political will and resources. This has always been challenging (Columbia, 2012: 25–26). Yet in the current political context, where the federal government is peddling a “small government” agenda, and actively penalising cities and localities that seek to expand rights protections, the barriers are significant. The example of sanctuary cities, where cities that affirmatively took action to protect immigrants’ rights were threatened with loss of funding, offers one example. In some cases, US states are also impediments to city action, as we have seen in the arena of efforts to expand the minimum wage and prohibit discrimination against LGBTQ individuals, where states have used legal doctrines to prevent more expansive municipal protections.<sup>7</sup>

Despite the challenges, cities continue to be at the forefront of human rights implementation. City level advances in the arena of women’s human rights illustrate how mayors and legislators are proactively fostering equality in outcomes, and realising that real progress will require an explicit recognition of difference.

The US has yet to ratify the Convention on the Elimination of Discrimination Against Women (CEDAW), yet nine local governments have adopted laws based on the convention, and dozens of others have committed to use CEDAW’s principles as a guide (Columbia, 2016: 3–4, 8).<sup>8</sup> San Francisco broke new ground with the first CEDAW law in 1998. Recognising that traditional anti-discrimination protections had failed to ensure true equality for women, it put in place a more proactive approach to identifying and eliminating barriers to gender equality. Consistent with the human rights framework, the ordinance defines prohibited discrimination to include distinctions on the basis of sex and race that limit women’s enjoyment of human rights, and focuses on discriminatory impacts. It further calls for a gender analysis of city departments’ employment, budgets and services, and requires that agencies undergo a gender analysis to develop action plans to better integrate human rights into their operations, working in partnership with the Department on the Status of Women, which is the body that monitors progress on action plans.

Los Angeles passed a similar CEDAW law shortly after San Francisco, but little action was taken to implement the law until 2015, when Mayor Eric Garcetti revitalised the law through executive action on gender equity, requiring each city agency to adopt gender-equity strategies and to submit action plans to the Mayor’s Office, which tracks progress based on target goals and metrics (Columbia 2016: 10–11).<sup>9</sup> Action in Los Angeles was

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7. Through the doctrine of pre-emption, US states have the ability to adopt laws that set specific standards (i.e. defining which groups qualify as protected classes for the purposes of protection against discrimination) and prohibit localities within the state from adopting a more expansive set of protections. See e.g., American Constitution Society, 2017.
8. The status of local activities is tracked on a Cities for CEDAW webpage: <http://citiesforcedaw.org/> (last visited February 28th 2019).
9. See Los Angeles Mayor, “Gender Equity”, <https://www.lamayor.org/GenderEquity> (last visited February 28th 2019).

CEDAW was proposed as a framework for creating more equitable gender policies at local level.

Effective governance must account for intersecting identities.

part of a resurgence of municipal CEDAW action, and six additional local governments have since passed CEDAW Laws. Los Angeles has been quite explicit that the aim of this initiative is to eliminate disparities grounded in “CEDAW’s recognition ‘that the intersections of multiple forms of discrimination have compounding negative effects on women’” (Columbia, 2016: 5–6). This focus on intersectionality is also found in the 2016 Pittsburgh, Pennsylvania CEDAW law. This law establishes a Gender Equity Commission to advise city agencies and monitor and implement gender analyses of city departments, which include “an intersectional examination of the cultural, economic, social, civil, legal, and political relations between women and men ... recognizing ... that these differences... affect how decisions, including budgetary decisions, and policy are made” (Council of the City of Pittsburgh, 2016). The Pittsburgh Ordinance, in the nascent stages of implementation, requires the city to establish a Gender Equity Commission comprised of government actors alongside community members. Commission members must have experience in issues that include development, health, labour and education. Additionally, at least one must hail from the local Cities for CEDAW campaign that advocated for the law, and at least one must be active in “minority communities.” In this way, the ordinance seeks to imbed participation into legal implementation and include an array of perspectives specifically to address areas where women and marginalised communities have been absent from decision-making.

In the CEDAW context, community participation has also been a means to assess community needs. Salt Lake, Utah, where a CEDAW law has been considered, but not yet adopted, offers one such example. The Salt Lake City Mayor’s Office of Diversity and Human Rights worked with the Salt Lake Human Rights Commission to convene community dialogues specifically on the status of women. These dialogues exposed that many women in the city had concerns that were not being addressed, including unequal educational opportunities and employment. As part of the dialogue process, CEDAW was proposed as a framework for creating more equitable gender policies at local level (Columbia 2012: 20).

As CEDAW laws evolve, they can build upon the progress that has been made by governments in San Francisco and Los Angeles, where local authorities point to an array of tangible outcomes. Results include increased numbers of women in leadership positions and in hiring across city agencies, as well as improvements in pay equity. Local governments also point to improved responses to gender-based violence and harassment, and initiatives that enhance the safety of women. There is also an opportunity to deepen and expand community participation in shaping and addressing local concerns. Indeed, advocates across the country have been working through the Cities for CEDAW coalition to share information and strategies to enhance the impacts of human rights laws on the equity for women and girls of all identities.

The local initiatives introduced here embrace human rights principles as a foundation for addressing longstanding impediments to ensuring basic needs for all. They also recognise that effective and responsive governance must account for intersecting identities and elevate the needs of historically marginalised and disenfranchised communities. Local CEDAW initiatives in San Francisco, Salt Lake and Pittsburgh in particular reflect efforts to include underserved groups in assessing the effectiveness of existing policy and shaping change.



These human rights initiatives move beyond the more traditional anti-discrimination approach, which aims for formal equality, but has failed to deliver equal outcomes or opportunities. This reality is borne out by statistics across a wide range of indicators. Despite strong anti-discrimination law at the federal, state and city levels, disparities exist in health outcomes, employment and housing affordability. For example in New York, for major racial and ethnic groups, across all education levels, women have higher rates of educational attainment, but receive lower earnings than men (Lewis & Sharp, 2018: 7, 11–13, 161–162). Health outcomes for pregnant women also reflect strong disparities based on race, income and neighbourhood, with high rates of maternal mortality (New York Women’s Foundation 2013: 4, 5, 13). Recent studies indicate that the availability of affordable housing is one of the most essential needs for women, girls and transgender and gender non-conforming persons in the city (New York Women’s Foundation 2018: 6, 13, 56).

Just this snapshot of New York City demonstrates how the dominant approach to governance continues to deny basic rights for many, particularly when analysed across identities. As a result, outcomes in social, economic and political life are driven in large part by gender, age, racial and ethnic background, sexual orientation, income and neighbourhood. The failure of governments to fully acknowledge and accommodate differences has entrenched inequality, harming the most historically disadvantaged communities.

The right to the city framework offers a means to re-imagine city governance in the US, and to build upon current human rights-based initiatives, which are somewhat limited in substantive focus and scope. Conceptually, the right to the city provides an overarching umbrella under which city agencies and officials can fashion a more holistic approach to improving the lives of residents, working in partnership with residents who live and work within cities.

The examples above highlight some ways that local governments are enhancing community participation and strengthening the political agency of historically marginalised groups, consistent with the social movement platforms outlined at the outset. Yet, these efforts have not yet achieved (or in some cases, even aimed for) the economic transformation that the Movement for Black Lives and the Right to City Alliance require. Resource distribution is most cognisable in the right to housing resolution cited above. However, rights-based advocacy that puts resource distribution front and centre remains somewhat on the periphery, and has yet to gain significant political traction in the United States.<sup>10</sup>

### III. Conclusion

Responding to growing calls for greater recognition and protection of fundamental human rights from community advocates and attorneys, US cities have been using human rights principles as a basis for more proactive identification and elimination of barriers to equality. This includes measures to address structural and systemic discrimination through initiatives to eradicate bias at the state and local agency levels. Mayors and legislators have also begun to account for differences on the basis of race and gender in more proactive and intentional ways, such as

The right to the city framework offers a means to re-imagine city governance.

10. There are encouraging counter-examples, such as the Right to the City Alliance’s Homes for All campaign, which is advocating for comprehensive national policies to ensure dignified and affordable housing as a human right, and which has member organisations around the country fighting for city laws that guarantee strong protections for renters and putting in place community land trusts, among other initiatives, as steps towards building collective power for change. See Jimmy Tobias, “A New Housing-Rights Movement Has the Real-Estate Industry Running Scared”, *The Nation* (February 9th 2018), <https://www.thenation.com/article/a-new-housing-rights-movement-has-the-real-estate-industry-running-scared/> (last visited March 9th 2019).

Local officials are embracing efforts to meet city residents' basic economic and social needs.

adopting a more expansive definition of discrimination to include unintentional discrimination, and developing racial and gender analysis tools. Increasingly, local officials are embracing efforts to meet city residents' basic economic and social needs.

These important strides have been driven by advocacy campaigns and social movements focused on political, economic and social transformation. The confluence of advocacy and local action holds powerful potential to strengthen economic and social rights protections within the United States on a national scale. To date, successes are limited to a small number of locations. Broader change will only be possible with greater public awareness and dialogue on the ways traditional approaches have failed to meet the needs of most Americans. This must be coupled with action. Specifically, laws and policies that fulfil government obligations to provide economic and social protections for all, including the most marginalised, are vital for sustainable change. These steps require bold leadership and political will that is absent at the national level – at least for the time being.

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