

From Global to Local: The Transformative Potential of Human Rights Cities

by

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On November 7, the day before the election, political scientist Benjamin Barber appeared on the Tavis Smiley show, a Washington, D.C.-based talk show that airs on some PBS stations. Barber is a political scientist, the author of the book “If Mayors Ruled the World” and founder of the Global Parliament of Mayors, a new world governance body that held its first meeting in the Hague this past September.

Looking back at the taping one month later, knowing how the election turned out, Barber appears unbelievably naïve and just astonishingly optimistic. He not only confidently predicts a Hillary Clinton victory, he says that the election will be viewed by history as a turning point, the moment when the country definitively left behind a legacy of segregation and misogyny and embraced instead a cosmopolitan, global future, powered by the nation’s cities.

Of course, that’s not how it happened.

But Barber gave an interview two days after the election in which he reiterated his overarching message – that, while that pivotal turning point will have to wait, the future of our country, and indeed, of the globe, is in cities.

I don’t mean just the future of the democratic party – but the future of the country’s fundamental values of diversity and inclusion, like the values espoused by sanctuary cities including San Francisco, Oakland, Los Angeles, New York, Chicago

and Washington, D.C. And of course, cities hold the future in terms of sustainability, as cities take the lead in combatting – and preparing for – climate change: that is, the values espoused by sustainable cities such as Des Moines, Iowa; San Diego; and New York

“Cities are going to become the most important, constructive alternative to a Trump agenda,” said Barber. Importantly, he acknowledges that it may be hard for a single city, acting alone, to be brave and to take on the federal government. But working together, they have tremendous power, particularly because all together, they represent the majority of Americans who voted against a Trump presidency.

Just in the weeks since the election, we have seen mayors stepping up into their newly prominent role, as protectors of basic American values.

Maybe part of this is a partisan reaction – most of the big city Mayors in the US are democrats. In fact, according to the US Census bureau, at the beginning of 2016, 23 of the mayors from the 25 largest cities in the US were members of the democratic party.

But on the other hand, maybe it's not as partisan as one might think – because the bottom line is, regardless of their party affiliation, Mayors have to get stuff done for their neighbors and their constituents and their communities.

Regardless of elections on the national level, regardless of climate change denial, and trying to build a wall and other populist rhetoric and symbolism, City mayors have to deliver water, sewage treatment, trash removal, road maintenance, public

transportation, public safety, education. They don't have the luxury of standing on abstract principle; they have to deal with day to day realities and facts.

As is the premise of this Institute, in fulfilling these local mandates, mayors and regional government leaders are addressing the human rights of their constituents – rights to water, sanitation, education, fairness, and dignity. So cities are addressing human rights in their day to day operations, whether they acknowledge it or not.

As advocates, we argue that local governments have an obligation to take their constituents' human rights into account as they set city policy. We also argue that this is a win-win proposition, that recognizing the human rights framework that undergirds the city's or regional government's work is a highly effective and responsible way of carrying out these functions of local government.

The human rights framework creates a unique connection between local constituents and governments. As we heard earlier this afternoon, the idea of local human rights implementation energizes and empowers grassroots activists. And the idea of local human rights implementation can help a city act affirmatively to address human rights issues before they fester and grow: through human rights education, and shared understandings and processes between community residents and institutions.

As we heard, cities and local activists around the world have taken up this challenge of local human rights implementation – from Accra (Ghana) to Vienna,

Austria and York, England, and here in the US, from Chapel Hill, North Carolina, to Washington, DC.

At the same time – we all recognize, and it is obvious -- that it is not always easy going. Human rights at any level of government is not a panacea and local implementation of human rights is a significant challenge.

Some of the challenges are a matter of persuasion and political will, but some are baked into the current conceptions of international human rights and its engagement with issues of governance. These “baked-in” challenges are really structural challenges, or as I would like to frame them today, design challenges for human rights cities.

The title of this talk includes the word “transformation.” The “transformation” I’m talking about is connected to these design challenges – because I think that taking on the design challenges outlined here will not just improve local human rights capacity and implementation but will actually transform the landscape of international human rights governance

I want to talk this evening about 3 design challenges that are facing the human rights cities movement:

- First, the challenge of hierarchy: by that, I mean the need to redesign the Vertical relationships of cities to national and international Human rights institutions and to national governments;

- Second, the challenge of Unity: by that, I mean the horizontal relationships between subnational governments – localities and regions – implementing human rights norms; and finally,
- The Challenge of balance: that is, achieving the breadth and balance of participation and power between the people and the state, and the development of methodologies to channel that power, including the process of co-design.

I want to spend some time on each of these design challenges.

I should emphasize, these design challenges are structural, and are distinct from critiques of the content of human rights. This is about mechanisms for delivering and implementing human rights. And I like to think of these as design challenges, because I think it gives us agency – it allows us to make adjustments to the existing structure and to think about experimenting with different approaches. It also focuses us on functionality and human behavior as we explore what works in the real world, what human-centered design might bring to the system.

First, the challenge of hierarchy.

There are two aspects to this in the US – the relationship of cities to international entities, and the status of globally active, out-front cities within the US federal system.

The relationship of cities to global governance entities has been problematic for some time. The UN system -- indeed, the very notion of treaties -- assumes that

the nation state is the representative of its population on the international stage. But increasingly, as cities accrue greater power and greater responsibility, and operate globally as economic entities, there is pressure on that assumption. The UN has started to respond, with a study group set up several years ago to examine the issue.

Resulting from that were recommendations that nations should consult with subnational governments as they prepare reports for UN bodies – treaty-monitoring bodies, for example. That has happened to some extent in the United States. The US government has made efforts to solicit input from cities and states about local initiatives, and has even included some local actors in its delegations to Geneva.

In addition, UN bodies like UNESCO and especially Habitat are routinely reaching out to ensure that cities are represented as these international bodies grapple with global challenges.

But these measures remain ad hoc. There is no clarity over the formal role of cities in world governance. Indeed, it is this lack of clarity that creates space for the creation of the Global Parliament of Mayors (GPM). In their concluding statement of action, the GPM indicated that it will work with and advise international organizations like the OECD, the World Bank and especially the United Nations, underscoring the informal role that cities and even this organized Parliament, still continue to play within the world governance hierarchy. This lack of clarity is accentuated within the US federal system, especially when cities take human rights positions that differ from those of the national government.

In fact, when studying this issue, the UN put it back on nation states.

According to the 2015 statement of the Human Rights Council Advisory Committee looking at local governments, the problem is an internal one. As the Committee stated:

"A problem also arises where laws regarding the competence sharing between central government and local government are not simple, accessible and clear. A clear-cut division of powers between the different tiers of government is the precondition for the establishment of accountability, and hence the precondition for the implementation of human rights. It must become self-understood that every authority provided with public powers has to respect, protect and fulfil human rights. The linkage between the exercise of public powers and the observance of human rights is often/sometimes neglected at the local level."

How far can US cities go, and how far should they be able to go, to implement human rights under our federal system? The answer is murky.

For example, San Francisco has adopted CEDAW, the Women's Rights Convention, as its municipal law, though the US has failed to ratify the Convention. Further, representatives of the San Francisco Commission on the Status of Women have informally reported on the city's implementation to the UN Commission on the Status of Women. Do these city officials run afoul of the US Constitution, which permits only the national government to enter into a treaty and to represent the nation on the world stage?

Further, do cities and states tread on the federal elected branches' foreign affairs prerogatives when they establish independent policies with regard to the UN

or its branches, as the US Supreme Court's decision in *Crosby v. National Foreign Trade Council* suggested? There, the Supreme Court disallowed Massachusetts' law restricting state purchases from companies doing business in Burma, on human rights grounds. According to the Supreme Court, such laws "compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments."

In contrast, when President Bush tried to enforce the Vienna Convention on Consular Affairs, ratified by the US, in Texas, the state objected and the US Supreme Court upheld the objection. The case arose when the state of Texas denied consular contact to Jose Medellin, a Mexican national on death row in Texas.

Seeming to by-pass the plain meaning of the Supremacy Clause, the Supreme Court in *Medellin v. Texas* ruled that:

"While a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be "self-executing" and is ratified on that basis."

Together, the Massachusetts case and the Medellin case suggest the untenable position that subnational governments cannot implement human rights norms when the federal government has taken no action on the norms and is silent,

but when the federal government has spoken to endorse the human rights norms, subnational governments are free to violate them.

Certainly, this issue of hierarchy is a central challenge facing Sanctuary Cities, as they carve out positions on immigration that respond to local needs and politics but that differ, perhaps dramatically, from federal positions.

It is also a lurking issue in the human rights cities movement. The tension between national and local authority to address human rights issues has also surfaced in Europe, as made clear in the Graz Declaration on Implementation of Human Rights, issued in 2015. The statement concludes that “the point of time has come at which it is indispensable to respond to the threats to human rights and fundamental freedoms by . . . cooperation between authorities at all levels . . . in order to pursue a common strategy to enhance inclusion and make human rights a reality in Europe’s cities and regions.” In Europe, as in the US, there is a perception that national governments stand on unworkable, extreme principles and leave cities without sufficient power to deal with the realities on the ground. That is particularly the case with the refugee influx.

But despite national resistance, cities continue to accrue power through their constituencies. This is a train that will not stop. In a recent article in Foreign Affairs, Rodrigo Tavares, a UN University Fellow, noted that “the international activism of cities and states is rapidly growing across the world, discreetly transforming diplomatic practices and the delivery of public services.”

In short, the international governance structure in place no longer responds adequately to human needs and capacities. This is a classic design challenge. To allow for local implementation of human rights, we need to begin redesigning the hierarchical relationships between cities and international bodies, and in the US, between cities and the national government.

Perhaps it is time to explore more formal status for cities in international governance. And perhaps statute or case law could clarify the role of cities in implementing human rights norms. In some countries, this is a matter of constitutional law. At the very least, scholars in the US might explore a more nuanced, one-way ratchet approach that allows local governments to get ahead of the federal government in human rights implementation, but not to fall behind – an approach that would permit CEDAW ratification but not derogation from the Vienna Convention.

Let me turn to the second design challenge for human rights cities, which I've called Unity. This is not a vertical challenge, but a horizontal challenge.

On the screen is the image of the World Subway map, which connects all of the subway systems in the world. If the whole world's subways can be connected, at least on paper, how should human rights cities be connected, and what should those connections look like?

Embedded in the concept of the human rights city are, no surprise, human rights norms. But as you know, human rights is not just an amorphous concept, but

is a set of international treaties and declarations that set out specific standards and expectations. If we forget the “legal” and “formal” aspects of human rights when we start talking about cities and other local governments, then we lose the benefits that can come with that formality – such as the application of common standards across jurisdictions, and the ability to measure progress towards universal human rights goals over time and across space.

Again, San Francisco is a good example of this. Its human rights reports to the Commission on the Status of Women, while informal in the sense that they are not mandated, nevertheless provide an opportunity for public – and even international -- scrutiny of the city’s progress against the larger goals of its municipal CEDAW.

Now, there are several efforts to bring human rights cities together for collaboration. The World Human Rights Cities Forum, convened in Korea, is the best example. City and civil society representatives have convened annually for the past 6 years to share best practices and to develop common approaches and to network. Outcomes have included declarations and statements of action.

A recent convening of European human rights cities in Graz, Austria, had a similar outcome, with the Graz Declaration on Human Rights Implementation as a final consensus product.

These loose coalitions of human rights cities and regions stand in contrast, though, to the parallel structure for nation states operating on a different plane,

which includes formal obligations undertaken by nations as part of the UN system. While far from perfect, the UN system of reporting – to treaty monitoring bodies and through the Universal Periodic Review -- at least promotes some transparency, and provides an opportunity for exchanges and critiques between governments and civil society.

The questions are, are some formal human rights standards, measurements and goals appropriate for subnational governments? And how might we design an appropriate review and assessment structure for cities addressing human rights that links different cities and takes advantage of the common platform provided by the human rights framework?

There is ample room for innovation in this area – for example, the recent Global Parliament of Mayors discussed the benefit of forming connections between refugee-sending cities and refugee-receiving cities. Along these lines, one can imagine the benefits of interest-groups or regional city coalitions that collaborate to address different aspects of human rights issues, with results presented to other human rights cities or civil society through a formal reporting and review process. Innovative technology uses might certainly contribute to new types of assessment approaches as well.

In sum, this is a design challenge extraordinaire – how might we design mechanisms to connect human rights cities and use those connections to ensure continued progress toward human rights goals?

I should add that addressing these first two challenges, of vertical and horizontal connections, would significantly transform the existing human rights system. It's not a matter of cities simply adapting to the existing system, but of changing the system to reflect the roles and capacities of cities. One byproduct of that might be a re-ordering of international priorities as well. While the international system and nation states see economic, social and cultural issues as second level rights, it is those rights that are often front and center at the local and regional levels, and that would take on greater importance in a more integrated human rights system that takes local governments seriously.

Finally, let me turn to the design challenge of balance – including breadth of participation.

Now I will admit, in choosing “balance” out of all the design principles, I was swayed by the fact that it started with a “B.”

But “Balance” is a perfectly fine word to define the design challenge here for human rights cities, which is to avoid capture and engage with a broad range of constituents in a balanced and open way, and to achieve balance between competing human rights interests. This, of course, gets into the nitty, gritty issues of human rights implementation on the ground, which many of you have grappled with.

Some cities have used human rights commissions as mechanisms to achieve this balance – Vienna, Austria, for example.

As we heard from Ken Neubeck, the city of Eugene, Oregon adopted the Triple Bottom Line to assess city policies, which incorporates a human rights assessment into decision making.

The proposed human rights resolution in New York City would have adopted a town hall forum-type mechanism, along with other benchmarks for the city council.

As Benoit Frate writes in *Global Urban Justice*, Montreal has established an ombudsperson to address human rights issues. This is a mechanism promoted by the UN's report on local administration as well as throughout the European Union.

The design challenge of balance also refers to the necessary balance between civil society and government.

In some cities, such as Washington, D.C. and here in Boston, for example, the human rights city implementation has thus far been all on civil society side with little to no government leadership or engagement – the government has been purely reactive, if that. But as we can see, a human rights city that reflects a balance of responsibilities and input – perhaps Barcelona, where the city itself has provided significant leadership, or Utrecht, where the mayor has worked closely with civil society, can be more successful and productive in a range of areas. “Co-design” is the label often used to describe deep collaborations between stakeholders, and that may be an effective model for the collaborations needed to form and strengthen a human rights city. I know that model has been one that has been used in

developing the human rights city platform in Sweden, a process that Anna Lindstrom has been heading.

Particularly in terms of extending deep and ongoing human rights education to local government workers and local residents, this sort of balanced, collaborative approach is critical.

Balance may also refer to the actual space within the city, and the human right to the city, which demands a balance in terms of access and usage. For example, might cities be physically designed to promote human rights, by facilitating and encouraging inclusion?

In fact, Detroit, Michigan has already been designated by UNESCO as its first-in-the-United States “City of Design” – a designation that UNESCO says “aims to foster international cooperation with and between cities committed to investing in creativity as a driver for sustainable urban development, social inclusion and cultural vibrancy.” Perhaps this provides an important opening for bringing together design and human rights on that city.

To sum up, the final design challenge for human rights cities is: how might we achieve a productive and healthy balance between civil society and government in the implementation of a human rights city, including in city spaces? How might we ensure breadth of participation in addressing these design challenges facing human rights cities?

When designers are presented with human centered design challenges, they begin by observing human behavior, then they start to innovate and iterate, testing

approaches in ways that reflect the human capacities and needs that they have observed.

I suggest that those of us working on local human rights implementation in the US adopt a similar mindset, the mindset of a designer.

For example, we can test various methods of implementing local human rights. Perhaps an ombudsman is effective in Montreal or in Stockholm, but would never be utilized in Des Moines. There are certainly ways to test that proposition through short-term experimentation, perhaps utilizing the free resources and entrepreneurial spirits of law school human rights clinics.

We are in a political climate now that demands innovation. And cities and regions command power and attention that has not been fully taken into account. 50% of the world's population lives in urban areas. By 2050 this will increase to 80%. Yet our human rights structures continue to focus on nation states.

This new approach to local human rights – designing to address Hierarchy, establish Unity and achieve Balance and breadth – can lead to transformation through new global collaborations, changes in international capacities, and transformations of domestic power.

Here in the US, we will have many challenges over the next few years. I believe that local human rights implementation is one of the most important responses to these challenges, and that we will rise to the design challenges that we now confront.

Benjamin Barber was clearly wrong when he predicted a Clinton victory. But I think that he is already proving himself right on the more general rise of cities and the significance of that rise.

It was an achievement to convene the Global Parliament of Mayors – and it really demonstrates the momentum behind cities at this moment in time. At the same time, while mayors at the GPM discussed refugees and climate change, inequality and security, human rights was not on the formal agenda of the Global Parliament, and there's a real possibility that the rise of cities could be accompanied by a return to a wild west mentality, and the idea that cities do not have to answer to higher authorities as they deliver services and make policy, that they represent a law unto themselves.

The Human Rights Cities movement is a counterweight to this – and a way to ensure that the rise of cities is accompanied by a rise in human rights globally, but this will only happen if civil society continues to demand that human rights are a design imperative for local governments.