

Can cities shape future tech regulation?

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US cities are regulating private use of technology more actively than the federal government, but the likely effects of this phenomenon are unclear. City lawmaking could make up for national regulatory shortfalls, but only if cities can thread the needle of special interests and partisanship.

Despite a widespread bipartisan consensus that consumer technology has created problems ungoverned or even ungovernable by current law, there hasn't been relevant comprehensive federal legislative reform in decades. Though [presidents](#) and [administrative agencies](#) have tried to push forward reform, such efforts are highly circumscribed relative to what legislation can accomplish. [One resulting narrative](#) has focused on the potential role of US states to regulate problematic technology issues. But many, or possibly most, state regulatory efforts have largely been preoccupied with a narrow slice of incendiary topics, such as [social media](#) and [internet pornography](#). These topics are particularly tricky as targets of regulation both due to [concerns about civil liberties](#) and also due to a [lack of satisfying technological solutions](#). Cities have taken a more pragmatic route to tech regulation, offering a promising alternative to fill the regulatory void left by federal inaction and state [culture warriors](#). Cities are developing tech regulations in their areas of traditional regulatory competence, resulting in incremental and pragmatic tech policy development. This Comment proposes that such 'tech regulation localism' deserves more attention by theorists of legal diffusion and by pragmatic policy analysts interested in better tech regulation.

US cities are increasingly regulating how private citizens use or experience consumer technology. New York City (NYC) recently [made national headlines](#) with notification and audit requirements for hiring algorithms, and it previously enacted a host of rules for private sector technology: [a biometric privacy law](#), [a permit system for self driving vehicles](#), [minimum wages and maximum fees](#) for food delivery apps, and [minimum certification standards for e-mobility batteries](#), among others. Examples can be drawn from other cities too, including Portland, Oregon's [ban on certain commercial uses of facial recognition](#) and Los Angeles's real-time data sharing requirements for e-mobility companies; the latter of which was [successfully defended](#) against challenges made by Uber and the American Civil Liberties Union. Cities are innovating through the judicial system too ([for example the Seattle school district's lawsuit against social media companies](#)), offering novel legal theories of harm. Cities are also dominating tech regulation in certain key areas as [first movers in regulating](#) a host of important sectors, such as homeshare and rideshare platforms¹.

US cities' active policy development for private uses of technology is distinct from an earlier privacy localism trend that emerged in a period of post 9/11 growing pains²⁻⁴, in which cities reined in their own technology use. Examples of such privacy localism², and its near cousin

artificial intelligence localism⁵, include a [NYC automated decision systems task force](#) and a Santa Cruz [prohibition of predictive policing](#). Such localism has directly shaped the face of government most familiar to American citizens, local government, but has also percolated upwards as persuasive thought leadership to higher levels of government and laterally to other cities. The state of California and the city of Seattle both adopted portions of Santa Cruz's police surveillance regulations². Likewise, the state of Texas and some [other Texan cities](#) followed the [city of Austin](#) in regulating hands-free driving. Innovation can travel downwards too, making cities de facto multipliers of federal policy initiatives, as when Miami-Dade county, Florida, emulated a federal policy initiative in [prohibiting county employees from using TikTok on government devices](#).

Theorizing the diffusion of law

A nascent body of legal scholarship has identified the phenomenon of localism in technology regulation^{2,5}. Spurred by the newly developed competencies cities enjoy as a result of regulating their own uses of technology, some cities now turn to questions of digital tech regulation for the private sector, sometimes with sophisticated functionalities already in place. To date, however, little if any scholarly work has examined the trend of cities regulating private uses of technology, including key questions as to which cities or what kinds of regulation could succeed in making tech regulation localism a significant force in US tech policy.

Another body of scholarship that has not yet addressed burgeoning tech regulation localism is the study of soft power and extra-jurisdictional legal effects. These effects describe the phenomenon by which the law of influential jurisdictions affects behaviour outside their borders, as in the [Brussels effect](#)⁶ and in its older cousin, the [California effect](#). In some cases – as in the case of California's de jure regulation of vehicle emission standards – extra-jurisdictional effects are baked into a formal statutory scheme⁷. In other cases, as in the European Union's General Data Protection Regulation, the extent of informal extra-jurisdictional effects [can be substantial](#). Influential jurisdictions need not be geographically large. Corporate law offers an example of a small jurisdiction (that is, Delaware) exercising outsize power⁸, but legal scholars and empiricists alike have yet to systematically account for or make predictions about how small but mighty jurisdictions might emerge in other contexts. Thus, tech regulation localism challenges existing scholarship on soft power and other forms of legal diffusion, with legal scholars largely silent on the prospects for successful tech regulation localism.

There are several reasons to believe that cities can be effective tech regulators. Cities can credibly police uses of technology that are intrinsically localized, as they have done with success in the case of ride-sharing, home-sharing and e-mobility⁶. There are few consumer technologies of which the use is not in some way tied to location, suggesting substantial play for cities. Also, US cities are significant customers and employers. Their rules about technology in city-controlled venues (such as schools), when being used by city-supervised people (such as municipal employees or public school students) or

for city acquisitions (such as software for use in city agencies) can shape technology markets, especially when a critical mass of cities regulate in similar ways.

There are of course some potential obstacles for tech regulation localism. US cities overwhelmingly lean liberal, but many US states (at least 22 out of 50) are dominated by conservatives, suggesting that city–state interfaces could create new venues for tech regulation culture wars. Conservative states have increasingly taken steps against local liberal initiatives, such as when [Texas overrode Austin's ride share regulations](#). Cities could face opposition from Big Tech too, which could invest more heavily in lobbying and litigation efforts to shape municipal policies; [such firms have already done so at the state level](#). These political or business challenges need not be inevitable or insuperable. Much municipal tech policy is politically uncontroversial and unlikely to provoke conservative ire. Further, cities may prove sufficiently dispersed, such that they become extremely expensive targets for tech lobbying to address all efforts in such a diffuse category. Also, many of the firms affected by city regulations are far smaller than Big Tech and thus unlikely to thwart a rising trend of municipal legal innovation.

Cities as laboratories of democracy

It's not obvious that cities should want to be leaders in the domain of tech policy regulation. There are two reasons, however, to expect that cities will either be forced into the role or will seek it out. First, cities will be effectively forced into that role when new consumer tech affects typical areas of local legal competence, such as housing and education. Second, where federal or state lawmakers continue to leave a void, local lawmakers could face direct and powerful constituent pressure to fill that regulatory void. Cities that choose to become active tech regulators can do much to facilitate the empirical evaluation of their efforts – a valuable exercise so that the successes and failures of such efforts can be clearly documented. Reliable and rapid assessments of such efforts by cities could in turn enable cities nimbly to identify and then pivot to effective policies.

Cities can be most effective as thought leaders if they actively and responsibly embrace their role as regulatory laboratories⁹. Cities can do this quite literally, running experiments to develop evidence-based tech policy. Cities can experiment within their own borders, both over geography and over time. Cities can run intra-jurisdictional experiments, such as varying policies over location. NYC rolled out free WiFi services to a number of pilot locations in its extensive network of public housing, effectively testing a policy across locations. Cities can also run inter-temporal experiments, such as when St. Louis banned e-scooters before re-integrating their use into the downtown with a curfew and restrictions on available app features. Chicago took a similar inter-temporal experimental approach to e-scooters.

Cities can make choices to enhance the informativeness of their regulatory experiments by emphasizing the use of transparent and easily inspectable policymaking, like NYC's recent auditing requirements for artificial intelligence hiring algorithms. This law came into effect on a specific day with enumerated, inspectable elements of compliance, and researchers will be able to easily study the effects of such a law. Cities can also enhance their experimental yield by maximizing the quantity and quality of open government data available about their tech policy experiments. The more formally cities experiment and

craft their policies for experimentation, the more can be learned from their diverse experiences.

An empirical research agenda

It's time for empirical researchers to take tech regulation localism seriously, both to understand how cities can effectively govern technology and also to deepen the study of evergreen theoretical questions about soft power and extra-jurisdictional effects of lawmaking. A serious and urgent research agenda therefore presents itself in the guise of a potential NYC effect, posited here, that one large and sophisticated city (it need not be NYC, but it may be) could significantly influence tech policy through both direct effects on technology markets and indirect effects of persuasion on other city actors.

But empirical researchers need to develop an understanding of whether the NYC effect happens, and if so, under what conditions. Do city tech policies make a difference? Municipal regulations are only meaningful opportunities to develop regulatory experience if such laws do in fact change behaviour. Further, do the laws achieve their intended policy goals or have unintended, even adverse effects? When do other cities follow a leading jurisdiction that demonstrates a successful regulatory regime? Most importantly, what distinguishes successful city innovation – that is, city innovation that makes a difference in the direction sought – from innovation that produces unwanted effects or no effects at all?

The spate of municipal tech regulation showcased in this Comment is just the latest example of cities attempting to solve complex problems; they've done so before, as with climate change¹⁰, and they'll likely be forced to do so again. But so far, legal theorists and empiricists have remained silent as to whether cities can plausibly establish themselves as a force to be reckoned with in tech law; that silence should not continue. The rising tide of tech regulation localism offers an ideal research opportunity as well as a key policy lever, given the current state of American politics. Cities may be America's best hope for responsive and responsible tech policy in the near future.

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