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Foreword: Cities on the Cutting Edge

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Foreword

By DAVID J. JUNG*

From abortion protests to homelessness, affirmative action to welfare reform, many of today's most controversial legal and policy issues find cities on the cutting edge. Yet, those most directly involved in the legal issues cities confront—city attorneys—sometimes find the discussions of local government law in the academic literature only marginally relevant. As a step in the direction of bringing law schools and local governments into a closer partnership, the Public Law Research Institute at Hastings College of the Law and the League of California Cities Municipal Law Institute Committee,¹ in collaboration with the *Hastings Constitutional Law Quarterly*, sponsored this Symposium.² The Symposium's goal was to bring together city attorneys, judges, legislators, and academics to address emerging issues in municipal law.

The Symposium's keynote panel, "The Role of Cities in Governance," consisted of Associate Justice Stanley Mosk of the California Supreme Court, California Assembly Member and Chair of the Assembly Local Government Committee Michael Sweeney, Professor Kathleen Sullivan of Stanford Law School, and Manuela Albuquerque, City Attorney for Berkeley, California and past president of the City Attorney's Department of the League of California Cities. In the afternoon, the Symposium divided into workshops on three topics: "Regulating Commercial Speech under the State and Federal Constitutions;"³ "Allocating Power between State and

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1. The Municipal Law Institute is a project of the City Attorney's Department of the League of California Cities. Among its goals, it seeks to encourage the study of municipal law in law schools and to promote, through research and scholarly exchange, innovative analysis of municipal law issues.

2. Mr. David Hirsh, President of the League's City Attorney's Department, Ms. Joanne Spears, of the League of California Cities, Ms. Heidi Gewertz, the Hastings Public Law Research Fellow, and Ms. Julie Conboy, Symposium Editor for the *Hastings Constitutional Law Quarterly*, deserve special thanks for their efforts in organizing this Symposium.

3. Mr. Dan Wallace, City Attorney of Santa Barbara, moderated the panel. Professor Joseph Grodin, Hastings College of the Law, Mr. Paul Bruno, Thelen, Marrin, Johnson and Bridges, and Mr. James Chadwick, the Genesis Law Group, participated.

Local Governments;”⁴ and “Local Government Fiscal Constraints: Predicting the Public Policy Outcomes.”⁵ Papers by Ms. Albuquerque and Professor John J. Kirlin of the University of Southern California and edited remarks by Professor Sullivan are included in this issue of the *Quarterly*.

Ms. Albuquerque’s paper, “California and Dillon: The Times They are a-Changing,” challenges the way the California Supreme Court’s opinion in *Santa Clara County Local Transportation Authority v. Guardino*⁶ portrays the relationship between the state and its cities. Ms. Albuquerque demonstrates that the court’s suggestion that the power of cities to enact local taxes depends on legislative authorization is inconsistent with the text of the California Constitution and with the court’s own prior decisions. Home rule, not Dillon’s Rule, defines the role of local government in California. Ms. Albuquerque notes that “the search for a coherent definition of the role and responsibilities of local government in American society as we approach the twenty first century” is complicated by a “simultaneous commitment to both individuals and shared community values.”

Professor Sullivan’s edited remarks from the Symposium describe how the conflict between these commitments plays out when cities regulate expressive conduct. Drawing on her experience representing cities struggling to draft ordinances that regulate peddling without running afoul of the First Amendment, and on the abortion protest cases, Professor Sullivan articulates five principles to guide municipal regulation of speech.

Finally, Professor Kirlin’s paper, “The Impact of Fiscal Limits on Governance,” explores the direct and indirect effects of the fiscal constraints on local government that came into being with the passage of Proposition 13. Among the direct effects, Professor Kirlin identifies a reduction in the rate of growth of local government revenues, a political culture that emphasizes governmental restraint, and rules that tightly constrain fiscal choices. More is at stake, however, than simply requiring local governments to make do with less. Other direct effects of fiscal constraints—for example, the increased reliance on plebiscites associated with the tax revolt and the increased transaction costs and intergovernmental competition for revenues—have actually “reduced the usefulness of gov-

4. Mr. Don Benninghoven, Executive Director of the League of California Cities, moderated the panel. Professor Richard Cunningham, Hastings College of the Law, Mr. Phil Isenberg, Center of California Studies, CSU Sacramento, and Mr. Buck Delventhal, Chief Deputy City Attorney, San Francisco, were the panelists.

5. Ms. Betsy Strauss, Special Counsel to the League of California Cities, moderated the panel. Professor Daniel Rodriguez, Boalt Hall School of Law, Professor John Kirlin, University of Southern California, and Mr. Richard Dixon, Chairman of IDEA Associates, were the panelists.

6. 902 P.2d 225 (Cal. 1995).

ernment as an instrument of collective action for a community.”

Fiscal constraints have also had indirect effects that challenge the capacity of local government to govern. Governmental authority has become more fragmented, as governments resort to creating new governmental entities or forging new relationships with other governments in order to avoid fiscal constraints. Moreover, these new techniques of public finance are less visible and understandable to citizens, compared to the relative simplicity of annual budgeting based on property, income, and sales taxes. In turn, fragmentation of authority and reduced visibility have resulted in reduced accountability. Thus, the strategies local governments have adopted in response to fiscal constraints “make the whole enterprise [of government] less intelligible and accountable.”

In short, the theme of this Symposium, “Cities on the Cutting Edge,” was the role of cities in governance. Of course, it is not really news to anyone that cities’ roles are often in flux, changing over time as politics struggle to find the right allocation of authority between the federal, state, and local levels of government. However, there is some reason to think that the pendulum now is swinging toward greater local control. For example, a recent study by the Urban Institute identifies California as one of nine states in which the devolution of governmental responsibility from the federal level to the states may be mirrored by devolution from state to local level.⁷ Despite a constitutional structure that contemplates, as Ms. Albuquerque’s paper points out, local governments with plenary power over their own affairs, Professor Kirlin’s description of the implications of fiscal constraints raises serious questions about the capacity of local governments to meet the challenge of devolution.

7. Keith Watson and Steven D. Gold, *The Other Side of Devolution: Shifting Relationships between State and Local Governments* (Urban Institute, 1997). This paper can be seen at <http://newfederalism.urban.org/html/other.htm>.

