

## DEMOCRACY IN RURAL AMERICA\*

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*The conventional wisdom is that rural America has an outsized influence on American politics. Yet, rural residents increasingly feel disempowered, devalued, and divorced from the policy decisions that affect their everyday lives. This Article argues that this widespread political disaffection cannot be entirely explained by rural decline. Such disaffection is also the product of how rural local governments are legally constructed in American law. Focusing on counties and towns, this Article reveals the legal developments that have made these entities poor vehicles for democratic empowerment. It also shows the extent to which the role of counties and towns in rural governance has been displaced by the federal government and the states. The result is that rural residents are not only denied avenues for local self-governance in ways that are different from their urban counterparts, they are also limited in their ability to respond collectively to the challenges facing their communities. From this perspective, addressing the crisis in rural America will require attention be paid to the crisis of rural democracy.*

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## INTRODUCTION

Every presidential election in America has a theme, and these themes tend to revolve around different segments of the American population. 1996 was the year of the soccer mom.<sup>1</sup> 2004 centered on the NASCAR dad.<sup>2</sup> In 2016, however, no group seemed more instrumental in deciding the election than the disaffected rural voter.<sup>3</sup> To be sure, rural America has long played a central role in presidential politics; every four years, it seems, candidates and reporters venture out from cities in search of small-town values and simple country living. Yet what they uncovered in the last election deviated from the traditional script. Rural America seemed beset by “urban” problems. Abandoned houses and storefronts dot the rural landscape.<sup>4</sup> Factories are leaving and, with them, good jobs and prospects for economic security.<sup>5</sup> Vital institutions like churches, civic organizations, and the nuclear family are showing signs of strain.<sup>6</sup> Even the

1. See, e.g., Chapman Rackaway, *Soccer Moms, Hockey Moms, National Security Moms: Reality Versus Fiction and the Female Voter*, in *WOMEN AND THE WHITE HOUSE: GENDER, POPULAR CULTURE, AND PRESIDENTIAL POLITICS* 75, 83–85 (Justin S. Vaughn & Lilly J. Goren eds., 2013).

2. See *id.* at 81–82.

3. See, e.g., Helena Bottemiller Evich, *Revenge of the Rural Voter*, *POLITICO* (Nov. 13, 2016), <http://www.politico.com/story/2016/11/hillary-clinton-rural-voters-trump-231266> [<https://perma.cc/T8GC-ZV4J>]; Robert Leonard, Opinion, *Why Rural America Voted for Trump*, *N.Y. TIMES* (Jan. 5, 2017), <https://www.nytimes.com/2017/01/05/opinion/why-rural-america-voted-for-trump.html> [<https://perma.cc/J8LZ-QTR2> (dark archive)].

4. See, e.g., Ann M. Eisenberg, *Rural Blight*, 13 *HARV. L. & POL’Y REV.* 187, 188 (2018); Alana Semuels, *Ghost Towns of the 21st Century*, *ATLANTIC* (Oct. 20, 2015), <https://www.theatlantic.com/business/archive/2015/10/ghost-towns-of-the-21st-century/411343/> [<https://perma.cc/X59B-JFPD> (dark archive)].

5. See Semuels, *supra* note 4.

6. See, e.g., JENNIFER SHERMAN, *THOSE WHO WORK, THOSE WHO DON’T: POVERTY, MORALITY, AND FAMILY IN RURAL AMERICA* 10–11, 106–09 (2009); Janet Adamy & Paul Overberg, *Rural America Is the New ‘Inner City,’* *WALL ST. J.* (May 26, 2017), <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008> [<https://perma.cc/Q8XG-4F9U> (dark archive)]; Mike Kilen, *Why Fewer Rural Iowans Are Going to Church*, *DES MOINES REG.* (Oct. 23, 2015), <https://www.desmoinesregister.com/story/news/2015/10/23/christian-churches-face-decline-rural-iowa/73993340/> [<https://perma.cc/L3QA-ATCM>].

scourge of drugs—long a hallmark of urban dysfunction—is fast becoming a symbol of rural decline.<sup>7</sup>

Rural plight is one of the central issues facing America today. Rural grievances are also reshaping the partisan landscape of American politics.<sup>8</sup> Concerns are now being raised about the effect of these rural developments on the state of American democracy.<sup>9</sup> Yet what does all of this say about the state of democracy *in* rural America? The rise of the Tea Party and the election of President Donald J. Trump provide only a partial picture. Equally important is the extent to which democratic participation and community self-determination are still possible in the counties and towns that govern our rural areas. In his famed treatise on American democracy, Alexis de Tocqueville celebrated the energy and spirit that he encountered in rural communities.<sup>10</sup> It was in these places, and not the big cities, that he believed one finds the foundation of American democracy.<sup>11</sup> But how has that energy and spirit held up over the years? And what faith do we still have in rural democracy and local policymaking by rural residents?

This Article is on local governments in rural America. More specifically, it focuses on the counties and towns that govern rural areas. It argues that rural communities currently lack the power to address many of the challenges they face today and that this powerlessness is rooted in the manner in which rural local governments are defined in American law. Their political organization and legal construction make them poor vehicles for democratic empowerment.<sup>12</sup> Their jurisdictions are often too large or artificially constructed to serve as bona fide representatives of rural communities.<sup>13</sup> Their long-standing status as administrative subdivisions of the state—and increasingly administrative

7. See, e.g., Chris McGreal, *America's Poorest White Town: Abandoned by Coal, Swallowed by Drugs*, GUARDIAN (Nov. 12, 2015), <https://www.theguardian.com/us-news/2015/nov/12/beattyville-kentucky-and-americas-poorest-towns> [<https://perma.cc/H2QM-F7UG>]; Haeyoun Park & Matthew Bloch, *How the Epidemic of Drug Overdose Deaths Rippled Across America*, N.Y. TIMES (Jan. 19, 2016), <https://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html> [<https://perma.cc/NG44-93GU> (dark archive)] (“In fact, death rates from overdoses in rural areas now outpace the rate in large metropolitan areas, which historically had higher rates.”).

8. See Jonathan Martin & Alexander Burns, *For Both Parties, a Political Realignment Along Cultural Lines*, N.Y. TIMES (Nov. 7, 2018), <https://www.nytimes.com/2018/11/07/us/politics/elections-divided-nation.html> [<https://perma.cc/R4M7-WU42> (dark archive)].

9. See WILLIAM A. GALSTON, ANTI-PLURALISM: THE POPULIST THREAT TO LIBERAL DEMOCRACY 2–3, 10 (2018); William A. Galston, *The Populist Challenge to Liberal Democracy*, BROOKINGS (Apr. 17, 2018), <https://www.brookings.edu/research/the-populist-challenge-to-liberal-democracy/> [<https://perma.cc/A2UE-LN2S>].

10. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 55–56 (Henry Reeve trans., 3d American ed. New York, Adlard 1839).

11. *Id.* at 288–89.

12. See *infra* Part II.

13. See *infra* Section II.A.

apparatuses of the federal government<sup>14</sup>—undermines their ability to serve as forums for robust political negotiations.<sup>15</sup> Rural local governments are also commonly denied the power and authority to pursue tailored and innovative policies on their own, especially in a way that makes democratic participation meaningful.<sup>16</sup> All of this explains why, even as attention to rural suffering grows, so little attention is paid to how rural local governments might respond. These limitations also suggest why rural politics today are driven to such a large degree by antigovernment sentiment and anti-establishment fervor, especially when translated onto the national stage.

At the most basic level, this Article expands the current focus of local government law. There are nearly 39,000 local governments in the United States.<sup>17</sup> But looking at the dearth of existing literature, one might come to believe that there are only a handful. Cities, particularly the nation's largest, dominate the conversation. As a result, the study of local government law can sometimes feel like a series of case studies of New York, Chicago, and Los Angeles. If smaller localities are considered, they are mostly those in the suburbs surrounding these major cities. If local governments other than municipalities are examined, it is primarily the county governments that make up our metropolitan regions. Of course, America is an urban country; more than eighty percent of all Americans live in urbanized areas in or around a city center.<sup>18</sup> The emphasis on these areas, however, means that we often overlook those who live beyond the metropolitan fringe. By focusing on cities, we tend to neglect other local government forms, like counties and towns.<sup>19</sup> It is these institutions that dominate local governance in rural areas. Yet we know so little about them and the role they play in the lives of rural residents.

At a deeper level, this Article is about our understanding of American democracy. For too long, legal scholars and political theorists have assessed the

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14. See Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 994 (2010) (“[Counties] serve as the only general purpose local government for unincorporated areas, the second level of general purpose local government for incorporated areas, administrative subdivisions of state government, and bureaucratic units for the delivery of federal services.”).

15. See *infra* Section III.C.

16. See *infra* Part III.

17. See Carma Hogue, *Government Organization Summary Report: 2012*, U.S. CENSUS BUREAU (2013), <https://www.census.gov/content/dam/Census/library/publications/2013/econ/g12-cg-org.pdf> [perma.cc/FMP8-5EEU]. The count here refers to general-purpose local governments like cities, towns, and counties. If special-purpose local governments like school districts, public authorities, and special districts are included, the number climbs to over 90,000. See *id.*

18. *New Census Data Show Differences Between Urban and Rural Populations*, U.S. CENSUS BUREAU (Dec. 8, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html> [https://perma.cc/TD9U-PL9R].

19. I use towns in this Article to refer to both towns and townships, with a particular focus on those that are unincorporated.

prospect for “strong democracy”<sup>20</sup> by invoking models of rural or small-town governance.<sup>21</sup> These accounts draw upon the sociological distinction between “*gesellschaft*” societies based on impersonal ties and “*gemeinschaft*” communities based on interpersonal relationships.<sup>22</sup> The tendency is to romanticize rural governance by invoking Tocquevillian mythologies of town hall meetings and Jeffersonian visions of yeoman republics.<sup>23</sup> Yet little attention is paid to whether the rural communities upheld as models of democratic participation actually function in that manner. Even less focus is directed towards whether rural local governments offer a means by which community sentiments can be translated into tangible actions. This Article suggests that the legal organization of counties and towns across America may not be as democratic as we commonly assume. And the consequences of this are not limited to the current rural crisis and the political response; it also has implications for American democracy as a whole.

This Article is divided into four parts. Part I outlines the plight of rural America. Parts II and III provide a legal and historical account of why rural local governments are organized as powerless administrative subdivisions and the doctrinal developments that led to this organization. Part II illustrates how the romantic vision of rural democracy that dominates political theories does not reflect the institutional and legal structure of rural local government in American law or its development over the years. Part III examines how the role of rural local governments is constrained by their relationship with the state and federal government, both of which have expanded their involvement in rural governance in recent decades. Part IV seeks to begin a conversation on whether rural democracy might be revived by expanding the role of rural local governments.

Before proceeding, a note on the scope of the subject may be necessary. I focus here on local governments in rural America. I acknowledge, however, that there is considerable debate over what counts as rural. For many of the statistical trends, I use the census definition common in quantitative studies. The census defines certain parts of the country as “urbanized areas”; those not

20. See BENJAMIN BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* 117 (2003).

21. See, e.g., HANNAH ARENDT, *ON REVOLUTION* 252–62 (1963); LEWIS MUMFORD, *THE CULTURE OF CITIES* 483–84 (1938); see also Garrett Dash Nelson, “*The Town Was Us*”: *How the New England Town Became the Mythical Landscape of American Democracy*, *PLACES* (July 2018), <https://placesjournal.org/article/the-town-was-us/> [<https://perma.cc/78GU-HS5M> (staff-uploaded archive)].

22. See, e.g., CHARLES W. EAGLES, *DEMOCRACY DELAYED: CONGRESSIONAL REAPPORTIONMENT AND URBAN-RURAL CONFLICT IN THE 1920S* 2 (1990).

23. See, e.g., JEFFREY M. BERRY, KENT E. PORTNEY & KEN THOMSON, *THE REBIRTH OF URBAN DEMOCRACY* 1, 3–4 (1993).

so designated are often considered to be “rural.”<sup>24</sup> While this differentiation is useful in the aggregate, “urbanized areas” often include many communities that are considered by their residents and the general public to be “rural.”<sup>25</sup> As a result, to better capture the rural identity that has emerged, I draw examples from “rural” communities that may not be recognized as such by census administrators. I do not distinguish between urban and rural areas on the basis of their local economies (i.e., agricultural or manufacturing) or socioeconomic profiles (i.e., class inequality or racial diversity). As will be clear soon, the erosion of these divides is an important part of the transformation giving rise to the new rural America.

### I. DECLINE AND DISAFFECTION IN RURAL AMERICA

Rural America faces a number of challenges. One such challenge, I argue, is a crisis of democracy. By democracy, I am referring to the kind of “participatory democracy” in which ordinary citizens are empowered to set the political agenda, deliberate about possible solutions, and respond collectively through governmental action.<sup>26</sup> The crisis stems from the fact that most rural residents are denied this kind of participation at precisely the level where it is most likely to occur: the local governments that serve their communities. In Part II, I outline the legal developments responsible for this state of affairs. The goal here is to detail why democracy, and the democratic capacity of local governments in particular, is useful for understanding the plight of rural America today.

I make three claims. First, the trouble with rural America lies not only in its decline but also in the political disaffection now widespread among rural residents. Second, this political disaffection reflects a democratic deficit in how rural residents participate in the governance of their communities. Third, the roots of that democratic deficit lie in the legal structure of rural local governments. None of this is to suggest that ongoing efforts to assist rural communities at the state and federal level are not important or worthwhile. But rural residents need more than just help. They also need the power to help themselves.

24. See *Defining Rural at the U.S. Census Bureau*, U.S. CENSUS BUREAU (Dec. 8, 2016), <https://www.census.gov/library/publications/2016/acs/acsgeo-1.html> [https://perma.cc/KE4L-GZYW].

25. See Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 177–79 (2006).

26. See, e.g., MICHAEL MENSER, *WE DECIDE!: THEORIES AND CASES IN PARTICIPATORY DEMOCRACY* 11 (2018). The concept of “participatory democracy” that I use in this Article also draws upon democratic models developed under different names. See generally BARBER, *supra* note 20 (“strong democracy”); FRANK M. BRYAN, *REAL DEMOCRACY: THE NEW ENGLAND TOWN MEETING AND HOW IT WORKS* (2004) (“real democracy”); SUSAN CLARK & WODEN TEACHOUT, *SLOW DEMOCRACY: REDISCOVERING COMMUNITY, BRINGING DECISION MAKING BACK HOME* (2012) (“slow democracy”); JANE J. MANSBRIDGE, *BEYOND ADVERSARY DEMOCRACY* (1980) (“unitary democracy”).

A. *The Trouble in Rural America*

Rural America is struggling. Poverty rates, already high, are growing.<sup>27</sup> Jobs, already scarce, are disappearing.<sup>28</sup> Statistics at the individual level bear this out, including alarming figures about the health and mortality of rural residents.<sup>29</sup> Equally disturbing is the effect of these challenges on the rural communities in which they live. Many of these communities are buckling under the weight of supporting those who have fallen into poverty and despair. For others, the prospect of becoming a “ghost town” is now a startling reality.<sup>30</sup> Amid all of this, many rural residents feel that the “moral order” of their community is breaking down.<sup>31</sup>

But the plight of rural America is more than a story of deprivation, dislocation, and decline. It is also reflected in the widespread political disaffection among rural residents. In study after study, a troubling picture of rural consciousness is emerging, characterized by a loss of hope, a sense of powerlessness, the feeling that no one is listening, and the gnawing fear that nothing can be done.<sup>32</sup> Rural residents attribute these sentiments to a number of external factors: globalization, bureaucracy, and antirural bias, to name a

27. See, e.g., James J. Sandman & Ronald S. Flagg, *Foreword*, 13 HARV. L. & POL'Y REV. 1, 1 (2018); see also RURAL POVERTY IN THE UNITED STATES, at xiii (Ann R. Tickamyer, Jennifer Sherman & Jennifer Warlick eds., 2017).

28. See, e.g., CLARA HENDRICKSON, MARK MURO & WILLIAM A. GALSTON, BROOKINGS, COUNTERING THE GEOGRAPHY OF DISCONTENT: STRATEGIES FOR LEFT-BEHIND PLACES 9–10 (2018), [https://www.brookings.edu/wp-content/uploads/2018/11/2018.11\\_Report\\_Countering-geography-of-discontent\\_Hendrickson-Muro-Galston.pdf](https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Report_Countering-geography-of-discontent_Hendrickson-Muro-Galston.pdf) [<https://perma.cc/Y4EN-T5VW>].

29. Anne Case and Angus Deaton were the first to note the increasing mortality rate among low-educated white non-Hispanic males. See Anne Case & Angus Deaton, *Rising Morbidity and Mortality in Midlife Among White Non-Hispanic Americans in the 21st Century*, 112 PNAS 15078, 15078 (2015). Disaggregating the data for different geographic units, Stephen Snyder suggested that the rising mortality rate was greatest in rural areas. See Stephen Edward Snyder, *Urban and Rural Divergence in Mortality Trends: A Comment on Case and Deaton*, 113 PNAS E815, E815 (2016). For a more in-depth analysis of the challenges that rural communities face with respect to healthcare, see Nicole Huberfeld, *Rural Health, Universality, and Legislative Targeting*, 13 HARV. L. & POL'Y REV. 241, 242 (2018).

30. See Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1376 (2012).

31. See J.D. VANCE, HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS 5 (2016); ROBERT WUTHNOW, THE LEFT BEHIND: DECLINE AND RAGE IN RURAL AMERICA 6–7 (2018) [hereinafter WUTHNOW, THE LEFT BEHIND].

32. See generally KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER 12 (2016) (coining the term “rural consciousness” to refer to the collective lens through which people living in rural communities interpret politics and describing how rural consciousness is “infused with . . . a sense that rural folks don’t get their fair share”); JUSTIN GEST, THE NEW MINORITY: WHITE WORKING CLASS POLITICS IN AN AGE OF IMMIGRATION AND INEQUALITY (2016) (explaining how these sentiments drive the white middle class away from centrist politics and towards radical, populist fringes in both the United States and Britain); JOAN C. WILLIAMS, WHITE WORKING CLASS: OVERCOMING CLASS CLUELESSNESS IN AMERICA (2017) (discussing the destabilizing effects of alienating rural Americans from political discourse); ROBERT WUTHNOW, SMALL-TOWN AMERICA: FINDING COMMUNITY, SHAPING THE FUTURE (2013) (unpacking common assumptions about living in small towns through in-depth interviews and comparative modeling).

few.<sup>33</sup> Taken together, however, they reflect the frustration of a group that has traditionally valued individual self-reliance and community self-determination but increasingly finds itself lacking both agency and control.<sup>34</sup>

Rural decline and rural disaffection are, of course, interconnected, not just because deprivation breeds discontent but also because both are tied to a dramatic transformation now reshaping rural America. Stereotypes of rural life as “static, homogenous, and traditional” may still be common.<sup>35</sup> Yet, as Lisa Pruitt has argued, “evidence abounds that rural America is in the midst of significant change—demographically, economically, and culturally.”<sup>36</sup> The growth of rural manufacturing in the twentieth century replaced many of the agricultural jobs lost to automation and industry consolidation.<sup>37</sup> But this shift also made the rural economy more vulnerable to deindustrialization, global competition, and the cost-cutting calculus of corporate management.<sup>38</sup> Rural communities have long struggled with depopulation.<sup>39</sup> But in many communities, this demographic challenge is also compounded by growing racial and socioeconomic diversity as increasing numbers of immigrants and urban residents relocate to rural areas for work, recreation, or a new start.<sup>40</sup> Even the social and cultural foundations of rural America seem to be in flux: traditional

33. See, e.g., CRAMER, *supra* note 32, at 6, 67; VANCE, *supra* note 31, at 7.

34. See WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 110–13.

35. Lisa R. Pruitt, *Gender, Geography & Rural Justice*, 23 BERKELEY J. GENDER L. & JUST. 338, 348–49 (2008).

36. *Id.*

37. See GENE F. SUMMERS ET AL., *INDUSTRIAL INVASION OF NONMETROPOLITAN AMERICA: A QUARTER CENTURY OF EXPERIENCE* 11–12 (1976); David A. McGranahan, *How People Make a Living in Rural America*, in *CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY* 135, 135–37, 143 (David L. Brown & Louis E. Swanson eds., 2003); Dennis Roth, *Thinking About Rural Manufacturing: A Brief History*, RURAL AM., Jan. 2000, at 12, 15–16.

38. See Peter Cole, *A Tale of Two Towns: Globalization and Rural Deindustrialization in the U.S.*, 12 WORKINGUSA 539, 539–41 (2009).

39. See ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *ECONOMIC INFORMATION BULLETIN 200, RURAL AMERICA AT A GLANCE: 2018 EDITION 2* (2018), <https://www.ers.usda.gov/webdocs/publications/90556/eib-200.pdf?v=5899.2> [<https://perma.cc/2FUP-6GAD>]. It should be noted, however, that population trends vary significantly across rural communities. See *id.*; see also WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 6–8.

40. See generally Daniel T. Lichter, *Immigration and the New Racial Diversity in Rural America*, 77 RURAL SOC. 3 (2012) (examining new patterns of Hispanic migration to rural areas and resulting tensions); Peter B. Nelson, Alexander Oberg & Lise Nelson, *Rural Gentrification and Linked Migration in the United States*, 26 J. RURAL STUD. 343 (2010) (tracing class, ethnic, and racial trends contributing to rural gentrification in certain counties); Gregory Sharp & Barrett A. Lee, *New Faces in Rural Places: Patterns and Sources of Nonmetropolitan Ethnoracial Diversity Since 1990*, 82 RURAL SOC. 411 (2017) (showing that increases in raciaethnic diversity are most likely to occur in nonmetropolitan communities with abundant economic opportunities, among other characteristics); Jennifer Sherman, *“Not Allowed To Inherit My Kingdom”: Amenity Development and Social Inequality in the Rural West*, 83 RURAL SOC. 174 (2018) (describing shifting social values in part due to demographic changes).



family structures are eroding,<sup>41</sup> church attendance and membership in civic organizations are shrinking,<sup>42</sup> and rates of drug addiction and alcoholism are growing.<sup>43</sup>

These changes explain why efforts to address rural decline are so difficult. For many communities, the prospect of restoring what's lost is remote. To survive and ultimately thrive, these communities need to reinvent and reimagine themselves for the twenty-first century. What will be the new rural economy, and how should it be structured? What will be the new rural community, and who will be included? What will be the new rural identity, and which norms and values will be associated with it? These are political questions involving delicate trade-offs. Resolving them will require serious conversations about the relationship of rural residents with corporations, newcomers, and themselves. It is unlikely that any effort can be successful without some degree of buy-in from existing residents. And for such buy-in to be achieved, there will likely need to be a high degree of civic engagement and public participation among the residents themselves.

Yet these changes are also why rural disaffection is so concerning. If civic engagement and public participation are necessary to address the transformation facing many rural communities, they also appear to be precisely what is missing in rural politics today. Many rural residents have lost faith in politics altogether, convinced that neither government nor democracy can bring about meaningful change.<sup>44</sup> Others are mired in a "politics of resentment," fueling a populist movement focused more on what (and who) they stand against rather than what they stand for.<sup>45</sup> On the one hand are the external forces perceived to be responsible for their struggles: globalization, immigration, and cosmopolitanism.<sup>46</sup> On the other are the institutions that rural residents believe have repeatedly let them down: the government and, more specifically, the

41. See, e.g., Diane K. McLaughlin & Alisha J. Coleman-Jensen, *Economic Restructuring and Family Structure Change, 1980 to 2000*, in *ECONOMIC RESTRUCTURING AND FAMILY WELL-BEING IN RURAL AMERICA* 105, 105–07 (Kristin E. Smith & Ann R. Tickamyer eds., 2011).

42. See, e.g., ROBERT WUTHNOW, *LOOSE CONNECTIONS: JOINING TOGETHER IN AMERICA'S FRAGMENTED COMMUNITIES* 135–38 (1998).

43. See, e.g., Joel Achenbach & Dan Keating, *A New Divide in American Death*, WASH. POST (Apr. 10, 2016), <http://www.washingtonpost.com/sf/national/2016/04/10/a-new-divide-in-american-death/> [<https://perma.cc/RDQ2-ZHJR> (dark archive)].

44. See, e.g., JENNIFER M. SILVA, *WE'RE STILL HERE: PAIN AND POLITICS IN THE HEART OF AMERICA* 161 (2019).

45. See CRAMER, *supra* note 32, at 220–23; ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* 102, 136–39 (2016).

46. See JONATHAN RODDEN, *WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE* 254 (2019); see also CHRISTOPHER D. JOHNSTON, HOWARD G. LAVINE & CHRISTOPHER M. FEDERICO, *OPEN VERSUS CLOSED: PERSONALITY, IDENTITY, AND THE POLITICS OF REDISTRIBUTION* 242–44 (2017).

political “establishment.”<sup>47</sup> Perhaps nothing better captures all these strands in rural politics than its growing animus against cities.<sup>48</sup> To be sure, the urban-rural divide has long been a feature of American politics.<sup>49</sup> But as many now see it, our divided politics today are increasingly along rural and urban lines.<sup>50</sup>

There is, of course, a certain irony to the rural backlash against cities. After all, the “rural crisis” that many communities are facing today bears a striking similarity to the “urban crisis” that confronted America’s big cities in the twentieth century. A generation earlier, it was city leaders who negotiated the fraught economic relationship between management and labor and struggled to reinvent their communities when deindustrialization restructured the urban economy.<sup>51</sup> It was inner-city neighborhoods that suffered most from the devastating effects of depopulation and wrestled with the racial and class divisions left in its wake.<sup>52</sup> It was the conditions of “urban living”—the crowded living arrangements, the weakness of social ties, the coming together of strangers—that many believed lay at the roots of moral decline, the rise of out-of-wedlock births, and the drug epidemic.<sup>53</sup> Given these similarities, one might suppose that rural communities might look to cities, if only to learn from their experience. But the divide between rural and urban America is only widening, and the possibility of finding common ground seems increasingly remote.

47. See Frank Rich, *No Sympathy for the Hillbilly*, N.Y. MAG. (Mar. 20, 2017), <http://nymag.com/intelligencer/2017/03/frank-rich-no-sympathy-for-the-hillbilly.html> [<https://perma.cc/U76A-GN63>].

48. See, e.g., CRAMER, *supra* note 32, at 5–6; WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 98–101.

49. See, e.g., STEVEN CONN, *AMERICANS AGAINST THE CITY: ANTI-URBANISM IN THE TWENTIETH CENTURY* 17–18 (2014) (describing the urban-rural divide during the populist uprising at the turn of the twentieth century); MORTON GRODZINS, *THE AMERICAN SYSTEM: A NEW VIEW OF GOVERNMENT IN THE UNITED STATES* 220–23 (Daniel J. Elazar ed., 1966).

50. See, e.g., RODDEN, *supra* note 46, at 253.

51. See, e.g., Andrew E. G. Jonas, *Labor and Community in the Deindustrialization of Urban America*, 17 J. URB. AFF. 183, 184–86 (1995). Indeed, the connection between urban and rural deindustrialization is arguably even more direct. Many of the industries that left the inner cities in the twentieth century—meat packing, furniture manufacturing, textiles—initially relocated to rural areas and were the reason for the industrialization of the rural economy. See, e.g., GARY ARMES MATTSON, *AMERICAN HOMETOWN RENEWAL: POLICY TOOLS AND TECHNIQUES FOR SMALL TOWN OFFICIALS* 9–10 (2017).

52. See, e.g., KEVIN M. KRUSE, *WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM* 234–35 (2005); THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 5–6 (1996). Even today, large metropolitan regions and small rural communities share one demographic trend: both are disproportionately dependent on international migration for population growth. Jed Kolko, *How Much Slower Would the U.S. Grow Without Immigration? In Many Places, a Lot*, N.Y. TIMES (Apr. 18, 2019), <https://www.nytimes.com/2019/04/18/upshot/how-much-slower-would-the-us-grow-without-immigration-in-many-places-a-lot.html> [<https://perma.cc/H6YT-2B6C> (dark archive)].

53. See, e.g., PAUL A. JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* 4–6 (1997); STEVE MACEK, *URBAN NIGHTMARES: THE MEDIA, THE RIGHT, AND THE MORAL PANIC OVER THE CITY* 1–2 (2006); BRIAN TOCHTERMAN, *THE DYING CITY: POSTWAR NEW YORK AND THE IDEOLOGY OF FEAR* 14 (2017).

In short, rural America is at a crossroads. The need for short-term relief—in the form of assistance, investment, and attention—is real. Yet, such relief is no substitute for the political negotiations that will be required for many rural communities to arrive at a long-term strategy for where they need or want to go. This crossroads is not altogether unfamiliar in American history; it has long been the backdrop against which urban policies are made.<sup>54</sup> What is new is that rural communities now face the difficult task of navigating this transformation.

#### B. *The Crisis of Rural Democracy*

Rural decline and rural disaffection are not only interconnected but also mutually reinforcing. Taken together, I suggest here, the crisis in rural America is also a crisis of rural democracy. Rural residents feel disempowered, devalued, and increasingly divorced from the policy decisions that affect their everyday lives. Having experienced little of the agency and control that democratic participation promises, many have lost faith in democracy altogether. These feelings are certainly exacerbated by the economic forces that are reshaping the lives of rural residents. Equally important is the governmental structure that determines how rural residents participate in the affairs of their community. In other words, rural decline and disaffection reflect not only the effects of rural restructuring; they also reflect the democratic deficit in rural communities.

To be sure, democracy is not the usual lens through which the plight of rural America is framed. Rather, the prevailing view is that democracy is one of the few areas where rural residents are thought to have an advantage. Those who study “participatory democracy” often commend rural communities for their democratic capacity. It is in these places—where thick social ties proliferate and face-to-face interactions are still possible—that many believe the social conditions still exist for robust political participation.<sup>55</sup> Similarly, for those concerned about “representative democracy” and how political influence is exercised at the polls, the most common complaint is that rural residents have too much political power, not too little.<sup>56</sup> Indeed, recent calls to abolish the electoral college, restructure the composition of the Senate, or ban partisan

54. See Edward L. Glaeser, *Reinventing Boston: 1630–2003*, 5 J. ECON. GEOGRAPHY 119, 125–26 (2005); see also EDWARD GLAESER, TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER 8–9 (2011) (arguing that the cities that survived deindustrialization were those able to reinvent themselves).

55. See, e.g., DAVID L. BROWN & KAI A. SCHAFFT, RURAL PEOPLE AND COMMUNITIES IN THE 21ST CENTURY: RESILIENCE AND TRANSFORMATION 56 (2011); see also GRODZINS, *supra* note 49, at 206; Mildred E. Warner et al., *Organizing Communities To Sustain Rural Landscapes: Lessons from New York*, 30 COMMUNITY DEV. J. 178, 181–83 (1999). On the importance of face-to-face interactions, see BERRY ET AL., *supra* note 23, at 10–11.

56. See RODDEN, *supra* note 46, at 254.

gerrymandering are largely based on the belief that rural residents are given far more political influence than their numbers justify.<sup>57</sup>

But if political disaffection remains far more prevalent in rural America than elsewhere, it may be because true participatory democracy requires more than the social conditions thought necessary for participatory politics. The existence of governmental outlets as forums for political discourse and for translating community sentiments into collective action is also important.<sup>58</sup> Political commentators have long recognized the “pervasiveness of politics in rural life.”<sup>59</sup> Social observers have also long noted the mutual trust and shared commitments that bind rural communities together.<sup>60</sup> These and other features of “civil society” have led many researchers to uphold small towns as fertile ground for participatory democracy.<sup>61</sup> Yet what is often overlooked is that the civic capacity in rural America does not directly translate into democratic capacity in rural governance.<sup>62</sup> In other words, democratic scholars today too often assume that “governments are *manifestations* of the civic process.”<sup>63</sup> But “[t]he idea that a government could itself be an important, even primary component of civil society has been pretty much abandoned.”<sup>64</sup>

Moreover, if democracy is understood not simply as a mechanism for aggregating individual preferences through the casting of votes but instead as a means for ordinary citizens to take an active role in policymaking and agenda setting, then the scale at which democratic participation takes place is also important.<sup>65</sup> Channeled through the machinery of partisan politics, rural residents have been given a powerful avenue for expressing their frustration

57. See Emily Badger, *How the Rural-Urban Divide Became America's Political Fault Line*, N.Y. TIMES (May 21, 2019), <https://www.nytimes.com/2019/05/21/upshot/america-political-divide-urban-rural.html> [<https://perma.cc/6LU2-VGMD> (dark archive)].

58. Indeed, one of the characteristics of rural disaffection that Jennifer Silva noted in her interviews is “a focus on self-efficacy over collective efficacy, and a dismissal of larger social concerns that do not seem to affect them personally and immediately,” which she fears “prove[s] a shaky foundation for collective action.” SILVA, *supra* note 44, at 158–59.

59. ARTHUR J. VIDICH & JOSEPH BENSMAN, *SMALL TOWN IN MASS SOCIETY: CLASS, POWER AND RELIGION IN A RURAL COMMUNITY* 109 (1960).

60. See WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 13–43.

61. ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 119, 205–06 (2000).

62. See, e.g., GRODZINS, *supra* note 49, at 209 (“Unremitting civic participation is more characteristic of totalitarianism than of democracy, and the greater participation of rural than urban citizens in the affairs of both local and federal governments cannot be equated with the citizen control of those governments.”).

63. BRYAN, *supra* note 26, at 14; see also Sarah Dewees, Linda Lobao & Louis E. Swanson, *Local Economic Development in an Age of Devolution: The Question of Rural Localities*, 68 RURAL SOC. 182, 188, 203 (2003).

64. BRYAN, *supra* note 26, at 14.

65. *Id.* at 69–81; CLARK & TEACHOUT, *supra* note 26, at 181. See generally ROBERT A. DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* (1973) (considering the impact of population and geographic size on democratic processes and outcomes).

with the political establishment in Washington and state capitals. Representation at higher levels, however, has not translated into a feeling of empowerment at the local level. For many rural residents, state and national politics are simply too remote and inaccessible to be a meaningful forum for democratic participation.<sup>66</sup> Their perception is that policymaking at those levels is dominated by moneyed “special interests” whose influence outstrips that which can be exercised by ordinary residents. And while partisan gerrymandering has increased the influence of rural voters, it has often done so by creating legislative districts that increasingly combine rural and suburban areas in ways that dilute the salience of rural issues, especially those tied to specific communities.<sup>67</sup> Ironically, then, partisan gerrymandering may be increasing the voting power of rural Americans while at the same time undermining the representation of rural interests.

All of this is to say that in assessing rural democracy, we must pay attention to *governmental* institutions at the *local* level. This means focusing on the role of local governments in assessing the state of rural democracy. After all, Alexis de Tocqueville once celebrated rural local governments as the foundation of American democracy because he saw them as venues for democratic participation and vehicles for community self-determination. It was the sense of agency that they afforded to their residents, and not their role as administrative subdivisions, that Tocqueville believed central to the American experiment.<sup>68</sup> Tocqueville recognized that local democracy did not necessarily ensure wise decisions or efficient administration.<sup>69</sup> But the vibrancy, energy, and collective spirit that he witnessed in his travels through America convinced him that the virtue of democracy lay in the agency and control that Americans exercised over their own lives.<sup>70</sup> Laws are treated with more respect and viewed as legitimate because of the role that individuals can play in their design and implementation at the local level.<sup>71</sup> Collective action is more likely, and public participation more robust, because of the natural affections and attachments that people feel towards their communities.<sup>72</sup> Everywhere, Tocqueville described the buzz of activity that Americans were engaged in to advance the interests of themselves and of their neighbors.<sup>73</sup> It was this public spirit that he celebrated most in his

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66. See, e.g., CRAMER, *supra* note 32, at 60–65.

67. See, e.g., Matthew Yglesias, *The Real Fix for Gerrymandering Is Proportional Representation*, VOX (Nov. 6, 2017, 12:38 PM), <https://www.vox.com/policy-and-politics/2017/10/11/16453512/gerrymandering-proportional-representation> [<https://perma.cc/YM53-QR9N>] (describing an “arbitrary” district that combines “some of the suburbs of San Antonio and some of the suburbs of Austin plus a big disconnected patch of rural Texas”).

68. See TOCQUEVILLE, *supra* note 10, at 82.

69. See *id.* at 85–86.

70. See *id.* at 87–89.

71. See *id.* at 88–89.

72. See *id.* at 62–63.

73. See *id.*

account of American democracy, and rural towns and villages were the institutions that he believed most responsible. As Tocqueville explained: “It is not the *administrative*, but the *political* effects of the local system that I most admire in America.”<sup>74</sup>

But if this was the rural vision that underlay Tocqueville’s description of American democracy, its erosion is what pervades modern accounts of rural life. Economic dislocation and social dysfunction may be at the root of what we now refer to as the rural crisis. Just as troubling is how all of this has shaken the confidence and outlook of rural residents. Even when rural issues are being addressed, rural residents repeatedly complain that their voices are not being heard—on agricultural practices, rural land use, even the opioid epidemic.<sup>75</sup> To get anything done, they believe that they must “look up”—to draw the attention of a state representative or federal official who is willing to both listen and champion their cause.<sup>76</sup> Increasingly in short supply is the simple idea that rural residents might be able to take governmental action collectively, locally, and without the need for state or federal intervention. As a result, despite the proliferation of political discussions in diners and around kitchen tables all across rural America, participants understand these to be largely talk without outlets for action. Similarly, when candidates and officials descend upon rural communities for “town hall” events, attendees neither experience nor expect the kind of participatory policymaking typical of the New England town hall meetings that share the name.<sup>77</sup> From this perspective, the solution to the rural crisis is going to require more than policy choices designed to help rural residents. It will have to address the fact that local governments today offer rural residents so few opportunities to help themselves.

During the depth of the urban crisis, we learned that it was not enough to provide relief to cities; city residents also had to be given a greater voice in determining their fate.<sup>78</sup> Ironically, many of the democratic movements during that time looked to rural communities for inspiration. They sought ways to replicate the social ties and community engagement that were assumed to proliferate in small towns across America and proposed further decentralization of urban governance—little city halls, neighborhood associations—to achieve

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74. *Id.* at 88.

75. See, e.g., WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 102–05; Patricia Strach, Katie Zuber & Elizabeth Pérez-Chiqués, *Listen*, ROCKEFELLER INST. GOV’T (June 6, 2018), <https://rockinst.org/blog/stories-from-sullivan-listen/> [<https://perma.cc/XUC7-K8WB>].

76. See WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 9, 90–91.

77. See BRYAN, *supra* note 26, at 52–53. Indeed, when mentioning “town hall meetings” to my colleagues, I’ve been struck by how often their first and sometimes only impression is the televised-campaign-event version.

78. See, e.g., JOHN H. MOLLENKOPF, *THE CONTESTED CITY* 180–81 (1983); James Q. Wilson, *Planning and Politics: Citizen Participation in Urban Renewal*, 29 J. AM. INST. PLANNERS 242, 244–45 (1963).

those aims.<sup>79</sup> What was left unquestioned was whether the rural models that advocates drew upon actually worked in the rural communities that they idealized. Urban problems have become rural problems. The question that remains is whether democracy in rural America will receive the same attention that has been paid to democracy in the urban context.

C. *The Neglect of Rural Local Governments*

Addressing the challenges facing rural America is no easy task. National and state policies will likely be part of the equation, and efforts by individuals, businesses, and civic organizations will also be important. But it is hard to imagine an effective response without the involvement of rural communities themselves. Meaningful state and federal policies require input from rural residents and lobbying by local leaders. The capacity of civic and religious organizations is tied to the ability of rural communities to build connections and bridge differences. And when assistance from government and private sources are not forthcoming, rural residents need a way to be able to tackle these problems on their own. In our federal system, local governments have historically served that role—not only in the services they provide but also as a forum for political negotiation. We have also long celebrated the ability of local governments to develop tailored policies and experiment with novel approaches.<sup>80</sup>

Why is it then that rural local governments are largely invisible in discussions about the plight of rural America? Among those advocating for a more robust response to the struggles of rural communities, the role of local governments is widely ignored. Among those who study local governments, attention to rural communities is largely absent. All of this contrasts sharply with the national response to the urban crisis in the twentieth century. Even during the depth of urban decline, cities were widely acknowledged as playing an important role in the response.<sup>81</sup> Even as urban policies were developed at the state and federal level, no one believed that they would be effective without the buy-in and participation of city leaders and local residents.<sup>82</sup> Indeed, even those who blamed the urban crisis on the cities themselves viewed reforms to city governance as a vital part of the solution.<sup>83</sup> But as rural decline drags on, one strains to hear any mention of rural local governments. Not by national or

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79. See BERRY ET AL., *supra* note 23, at 292–94; ERIC A. NORDLINGER, DECENTRALIZING THE CITY: A STUDY OF BOSTON'S LITTLE CITY HALLS 30–41 (1972).

80. See, e.g., Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 WASH. U. L. REV. 1219, 1221–22 (2014); Rick Su, *Intrastate Federalism*, 19 U. PA. J. CONST. L. 191, 198 (2016) [hereinafter Su, *Intrastate Federalism*].

81. See Wilson, *supra* note 78, at 243.

82. See *id.*

83. See, e.g., ROBIN PAUL MALLOY, PLANNING FOR SERFDOM: LEGAL ECONOMIC DISCOURSE AND DOWNTOWN DEVELOPMENT 129–41 (1991).

state leaders. Not by the media or general public. Indeed, not even by the rural residents themselves.

Some of this, I suspect, is because of the move away from the study of local governments generally that took place throughout the twentieth century.<sup>84</sup> Or perhaps it simply reveals the urban bias of academics and political leaders who, as Frank Bryan argues, tend to come from cities and suburbs rather than the countryside.<sup>85</sup> But maybe the invisibility of rural local governments is no mere oversight. Rather, their limited place in public consciousness may be a result of the limited role that they currently play in political life, even among the rural residents that they serve. And that limited role, I argue, is due in part to how rural local governments are structured and organized in American law.

In other words, if rural communities have thus far struggled to respond to the challenges they face, the reason may also lie in the legal and political standing of the kinds of local governments that govern in rural areas. Despite their democratic structure, rural local governments tend to be imperfect representatives of the communities that they purport to serve. Although politically organized as general-purpose governments, their legal status is primarily as administrative apparatuses of the state. Indeed, even among local governments in general, those that govern rural areas tend to possess even less power to enact tailored or innovative policies on their own. In short, rural communities are not just suffering; they also lack the democratic capacity to mount a meaningful response.

Below, I trace the legal and political developments that have contributed to these facets of rural local governments. The point I wish to make here is simply how much the legal standing of rural local governments goes unexamined and unquestioned. For some, the belief that rural communities are where American democracy flourishes obscures the realities of how rural governance is structured and organized as a matter of law.<sup>86</sup> For others, the conviction that rural local governments are nothing more than administrative subdivisions is so entrenched that it is hard to imagine an alternative, or why such an alternative may be necessary.<sup>87</sup> It may be, as many have claimed, that this passivity simply reflects the inherent nature of rural residents and their distrust of government in general. But perhaps the chain of causation is reversed: the disaffected rural

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84. Local government studies peaked at the turn of the twentieth century, as reflected in the works of Frank Goodnow, Woodrow Wilson, and others in the burgeoning field of public administration. See, e.g., FRANK J. GOODNOW, *POLITICS AND ADMINISTRATION* 43–48 (1914) (discussing the legal development of local government within the United States); Woodrow Wilson, *The Study of Administration*, 2 *POL. SCI. Q.* 197, 221 (1887) (“This interlacing of local self-government with federal self-government is quite a modern conception.”).

85. See BRYAN, *supra* note 26, at 14.

86. See *supra* notes 56–61 and accompanying text.

87. See Clarence J. Hein, *Rural Local Government in Sparsely Populated Areas*, 42 *J. FARM ECON.* 827, 836–37 (1960).



voter may be a product of the legal structure through which their most immediate governmental institution is defined.

## II. THE LAW OF RURAL LOCAL GOVERNMENTS

To understand the decline and disaffection in rural America then, we have to consider the democratic capacity of rural local governments. We must examine not only their political organization but also how they are legally defined. This part delves into the historical record to reveal the roots of local governance in rural areas. It argues that the democratic deficit in rural America today can be traced back to the manner in which rural local governments like counties and towns were constructed and the purpose for which they were created. Although rural residents have been able to exercise meaningful control in the past, these early developments in the organization and construction of rural local governments also set the stage for the erosion of their democratic capacity later on. In other words, the current state of rural democracy is the result of legal and political choices made in the initial organization of rural local governments in American law and the lingering influence of those choices on their development.

### A. *The Political Organization of Rural Local Governments*

Understanding rural democracy means understanding the type of local government that tends to govern rural areas. Cities may dominate the discussion of local power in the academic literature, but in rural America, cities are rare. Instead, counties and towns tend to be the predominant forms of rural governance. Their relative importance, of course, varies from state to state. In New England, for example, towns tend to govern with little involvement by counties.<sup>88</sup> The reverse is true in the South and Southwest, where towns generally do not exist as separate legal entities, and counties serve as the lowest level of government in rural areas.<sup>89</sup> A hybrid system can be found in the Mid-Atlantic and the Midwest, where counties are subdivided into towns.<sup>90</sup> The structure of rural local governments in America then can generally be described as constituting three diagonal bands, each tracking the system that early settlers brought with them from Europe and their migration westward.<sup>91</sup>

It is easy to assume from this diversity that little could be said about the democratic structure of rural America as a whole. But similarities exist, and they

88. 2 JAMES BRYCE, *THE AMERICAN COMMONWEALTH* 220–23, 230–32 (London, MacMillan & Co. 1888).

89. *See id.* at 220, 223–25, 232–34; *TOWN AND COUNTY: ESSAYS ON THE STRUCTURE OF LOCAL GOVERNMENT IN THE AMERICAN COLONIES* 3–4 (Bruce C. Daniels ed., 1978).

90. *See BRYCE, supra* note 88, at 220–21, 225, 234–35.

91. *See id.* at 220–21.

reveal how little democratic representation factors into the institutional design of rural local governments.

First, counties and towns are largely artificial constructs.<sup>92</sup> Indeed, their creation reverses the ordinary presumption that local governments represent an existing social community. The incorporation of a city or a village traditionally begins with a community of residents that petition for legal recognition.<sup>93</sup> As a result, their boundaries tend to reflect the initial footprint of that community and subsequent annexations tracking its growth.<sup>94</sup> Rural counties and towns, however, are often designated on a map long before settlement patterns have emerged. Once drawn, their boundaries almost never change.<sup>95</sup> This is why counties and towns tend to be relatively uniform in both size and shape. The typical Midwest township, for example, “is a square with straight line boundaries, containing an area of thirty-six square miles” (mirroring the six-by-six mile “survey townships” drawn by the federal government upon which they are based).<sup>96</sup> Similarly, as one early commentator remarked, “[o]ver five-sixths of the Union each county presents a square figure on the map, with nothing distinctive about it, nothing ‘natural’ about it.”<sup>97</sup> Even the boundaries of many

92. *See id.* at 249–50, 254; *see also* CLYDE F. SNIDER, LOCAL GOVERNMENT IN RURAL AMERICA 20 (1957) (“The geographical townships marked out by the rectangular land surveys of the national government commonly provided the areas for new civil townships (except in eastern Ohio); and the artificial nature of these areas has been an important factor in preventing the township in these regions from attaining the social unity and political importance of the New England town.”).

93. *See* NANCY BURNS, THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS 7, 123–24 (1994). Although villages are often used interchangeably with towns and townships in common speech to refer to small communities, the village form of government in nearly all states is a municipal government similar to that of cities. Unlike counties and unincorporated towns and townships, they are created voluntarily through the will of their inhabitants. *See, e.g.*, WIS. LEGISLATIVE REFERENCE LIBRARY, STATE OF WIS., THE WISCONSIN BLUE BOOK 136 (1952) (“Cities and villages constitute the only general local units of government in Wisconsin which came into existence solely because of the wishes of the inhabitants thereof . . . [T]he boundaries of counties and towns are largely arbitrary and do not necessarily indicate a community of interests among those living therein . . .”). It should be noted that in some states, especially those without unincorporated towns and townships, an incorporated community can opt to refer to itself as a city, town, or village. *See, e.g.*, N.C. GEN. STAT. § 160A-1(2) (2019) (“‘City’ means a municipal corporation organized under the laws of this State . . . . The term ‘city’ does not include counties or municipal corporations organized for a special purpose. ‘City’ is interchangeable with the terms ‘town’ and ‘village’ . . . .”); *see also id.* § 160A-101(2) (“The city may be styled a city, town, or village.”).

94. *See, e.g.*, KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 155 (1985).

95. *See* Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1140–41 (2008).

96. JOHN A. FAIRLIE & CHARLES MAYNARD KNEIER, COUNTY GOVERNMENT AND ADMINISTRATION 451 (1930). For a description of the origins and legacy of the “survey townships,” *see generally* Vernon Carstensen, *Patterns on the American Land*, 18 PUBLIUS 31 (1988).

97. BRYCE, *supra* note 88, at 254; *see also* HARLAN PAUL DOUGLASS, THE LITTLE TOWN: ESPECIALLY IN ITS RURAL RELATIONSHIPS 50–51 (1919) (“Even the counties generally became rectangular areas, showing nothing informing as to social structure within, nor as to the larger social relationships.”).

New England towns, which are often described as true communities, were initially drawn by colonial governors, as was the case for the 251 towns in Vermont.<sup>98</sup>

The consequence of this artificial form is that rural local governments tend to be imperfect representations of the communities that they serve. Rural residents may have deep attachments to their community, but that community can sometimes bear little relationship to the local government that governs them.<sup>99</sup> This is certainly the case for counties, whose size means that they often encompass a large number of self-identified communities that do not necessarily see themselves as a cohesive whole. Writing in the late nineteenth century, James Bryce observed that “the county, even in the South, has continued to be an artificial entity, and has drawn to itself no great part of the interest and affections of the citizens.”<sup>100</sup> In theory, towns should better approximate the social ties of rural residents, especially given their smaller size. But again, not only are towns entirely absent as a legal and political institution in much of rural America, the manner in which they are created in the parts of the country where they exist also means that they are often an imperfect fit.<sup>101</sup> As John Fairlie explained, the “economic and social centers” of rural life often emerge only after township boundaries have already been established.<sup>102</sup> Consequently, the social boundaries of rural communities may encompass residents of many towns, while simultaneously dividing the residents of any given town.<sup>103</sup> Indeed, this is often the case when the centers of rural communities emerge on the boundaries or corners of an existing town’s jurisdiction.

What all of this suggests is that despite the importance of community to rural residents, counties and towns do not correspond all that well to their lived experiences on the ground. This brings us to my second point about the political organization of rural local governments: democratic representation was not the purpose for which they were created. The towns of New England and their town hall meetings are still celebrated today as models of participatory democracy. But as Michael Zuckerman points out, New England towns were initially founded on principles of religious harmony, and their town hall

98. BRYAN, *supra* note 26, at 110.

99. My discussion of towns here focuses on unincorporated towns and townships. In contrast, incorporated towns and villages in the states that allow for them often better track the natural community that petitioned for their creation. But similar to metropolitan fragmentation between city and suburb that has long drawn the attention of urban scholars, town and village incorporations often divide rural communities between “town” and “country.” See DOUGLASS, *supra* note 97, at 14.

100. BRYCE, *supra* note 88, at 254.

101. See, e.g., LANE W. LANCASTER, *GOVERNMENT IN RURAL AMERICA* 62 (2d ed. 1952) (noting that town boundaries often “did not correspond either to the social groupings of the people or to the methods of land cultivation [and thus] seldom embodied a real community”).

102. FAIRLIE & KNEIER, *supra* note 96, at 461.

103. *Id.*

meetings achieved consensus by actively suppressing dissent and excluding from the community those who did not fit in.<sup>104</sup> More importantly, the New England model never spread outside of the Northeast. Instead, counties and towns in the rest of America were explicitly created as administrative subdivisions of the state—convenient tools for states to exercise control over their vast territorial jurisdictions.<sup>105</sup>

The administrative orientation of rural local governments is most evident in the kinds of local officials that were historically designated to serve. Early in the development of cities, mayors and city councils emerged as the central governing officials.<sup>106</sup> As legislative bodies, city councils passed ordinances and bylaws. Urban administration—police, sanitation, roads—fell under the mayor’s authority.<sup>107</sup> In rural America, however, the earliest local officials consisted largely of sheriffs, constables, judges, and justices of the peace.<sup>108</sup> Though their governmental roles were broader than those labels might now suggest, their responsibilities were still largely the administration and enforcement of state laws—criminal justice, tax collection, and state elections.<sup>109</sup> Many were appointed directly by the governor.<sup>110</sup> They were not considered a representative of the people that they governed, and certainly not in a legislative capacity.<sup>111</sup> Indeed, even today, town and county officials tend to be defined primarily by their administrative function: clerk, supervisor of elections, assessor, highway superintendent. And in many states, they continue to be legally construed as *state* officials who happen to be assigned to a particular local jurisdiction.<sup>112</sup>

Even when elections for county and town officials became common,<sup>113</sup> the ability of ordinary residents to influence their activities were constrained in practice. In the early decades of the republic, when voting rights were restricted

104. See MICHAEL ZUCKERMAN, PEACEABLE KINGDOMS: NEW ENGLAND TOWNS IN THE EIGHTEENTH CENTURY 69–70, 111–13, 126–40 (1978).

105. See LANCASTER, *supra* note 101, at 49 (“The county, in the contemplation of the law, is a more or less convenient area laid out under state authority for the local performance of functions regarded as largely or primarily of state concern.”); see also DOUGLASS, *supra* note 97, at 187–88.

106. See 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 235–37 (3d rev. ed. Boston, Little, Brown & Co. 1881); HEADS OF THE LOCAL STATE: MAYORS, PROVOSTS AND BURGOMASTERS SINCE 1800, at 192–93 (John Garrard ed., 2007).

107. See DILLON, *supra* note 106, at 38–39 & n.1.

108. See, e.g., EDWARD CHANNING, TOWN AND COUNTY GOVERNMENT IN THE ENGLISH COLONIES OF NORTH AMERICA 44–52 (Herbert B. Adams ed., Baltimore, Murray 1884).

109. See *id.* at 45–46.

110. JOHN A. FAIRLIE, LOCAL GOVERNMENT IN COUNTIES, TOWNS AND VILLAGES 33–35 (1906); see also John A. Fairlie, *Judicial and Administrative Control of County Officers*, 28 MICH. L. REV. 250, 273 (1930).

111. See, e.g., BRYCE, *supra* note 88, at 224–25, 253–54.

112. See *infra* Section III.A.

113. See FAIRLIE, *supra* note 110, at 46 (describing the move towards elections for county and town officials in the 1850s).

to white male landowners, county governance in the South was controlled by plantation owners and local elites.<sup>114</sup> Even after the elective franchise was expanded in the mid-nineteenth century, the influence of rural residents on county governments continued to be constrained. In metropolitan counties anchored by a central city, the electorate that selected county officials was often disproportionately influenced by urban and suburban voters despite the fact that county functions tended to focus on rural areas where city services were not provided.<sup>115</sup> In counties that were entirely or largely rural, county government often fell under the influence of the so-called “courthouse gang”: “a more or less permanent group of elective and appointive officeholders together with private individuals whose business normally brings them into contact with public officials.”<sup>116</sup> Though the activities of the “courthouse gangs” mirror in some ways the political machines that dominated city governments at the same time, voter suppression rather than mobilization tended to be the primary means by which rural elites maintained control.<sup>117</sup>

Another area where the administrative origins of rural local governments left its mark is in the functional fragmentation that still typifies their structure. Earlier, I pointed out the large number of single-purpose offices that constitute the organization of county and town governments. What makes these offices so different from their city counterparts is that they are generally structured as independent silos with few formal linkages between them.<sup>118</sup> Thus, in most states, the county sheriff operates independently of the county clerk, who performs her functions separately from the county assessor, the county

114. Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 429 (2017); see also BRYCE, *supra* note 88, at 223–24.

115. See, e.g., Vincent L. Marando & Mavis Mann Reeves, *Counties as Local Governments: Research Issues and Questions*, 13 J. URB. AFF. 45, 50–51 (1991). Some states do recognize this divergence of county responsibilities, at least with respect to certain matters. For example, in New York, county charters can only be amended if it is approved by residents living outside of incorporated cities irrespective of the vote of the county as a whole. See *Town of Lockport v. Citizens for Cmty. Action at the Local Level, Inc.*, 430 U.S. 259, 261–62 (1977).

116. LANCASTER, *supra* note 101, at 57. For a contemporary critique of rural local officials, see generally Lexye L. Shockley, *Regulating Boss Hogg—Citizen Empowerment and Rural Government Accountability*, 4 SAVANNAH L. REV. 225 (2017).

117. See VIDICH & BENSMAN, *supra* note 59, at 122–23, 279–80. For a contemporary account of business elite’s control of local politics, see CYNTHIA M. DUNCAN, *WORLDS APART: POVERTY AND POLITICS IN RURAL AMERICA* 14–18 (2d ed. 2014).

118. See, e.g., DOUGLASS, *supra* note 97, at 193; FAIRLIE, *supra* note 110, at 68–69. The organization of county and, to a lesser extent, town governments bears similarities to the “commission” form of city government, which experienced a sharp rise and fall in popularity during the Progressive Era at the turn of the twentieth century. Under the commission model, city government consisted of a number of independent commissioners, each in charge of a different municipal department. See AMY BRIDGES, *MORNING GLORIES: MUNICIPAL REFORM IN THE SOUTHWEST* 58–59 (1997); see also SAM BASS WARNER, JR., *THE PRIVATE CITY: PHILADELPHIA IN THREE PERIODS OF ITS GROWTH* 10 (1968) (describing a commission form of government for the *town* of Philadelphia in the eighteenth century).

treasurer, and the county highway supervisor. This organization initially made sense because, as a legal matter, county and town officials are largely understood to be local agents of the state—each charged with performing a discrete task within the state’s administrative organization. After all, if city offices are traditionally defined by municipal charters, those of counties and towns are often designated by state constitutions.<sup>119</sup> But even when county and town boards emerged in the nineteenth century with legislative and executive powers over their jurisdiction, these boards continued to be denied much, if any, authority over those local offices.<sup>120</sup> This is not to say that informal coordination did not exist between locally elected officials. Moreover, by the end of the nineteenth century, all of these offices would be chosen through local elections.<sup>121</sup> Yet, unlike the predominant forms of cities, the political structure in rural areas fragmented responsibilities in ways that made it harder to assign accountability, mobilize for reform, and coordinate local policies.

Nor did the rise of county and town boards necessarily expand the legislative capabilities of rural communities outside of their administrative obligations.<sup>122</sup> County and town boards were frequently given the power to manage “local affairs.”<sup>123</sup> But what constituted such affairs was narrowly defined by state law. With cities and villages, their structure and responsibilities are usually set forth in municipal charters, which reflect, at least in part, the desires and interests of their residents.<sup>124</sup> The “affairs” of counties and towns, however, are generally found in state statutes<sup>125</sup> and thus tend to be limited to the enforcement and implementation of state policies.

119. See DILLON, *supra* note 106, at 16.

120. See, e.g., VIDICH & BENSMAN, *supra* note 59, at 142 (“The actual legal jurisdiction of the board is much broader than the interest in roads would suggest . . . . However, most of these jurisdictions, either by tradition or by default, have reverted to other agencies of government. Police and welfare functions are performed by the county and state, usually through special administrative arrangements worked out in state bureaus. Licensing of all kinds falls within the administrative scope of the clerk, who performs these functions more as an agent of the state than of town government. The forms and the legal requirements which surround them are derived from state agencies which set procedures and require reports. In this function the clerk is an administrative arm of the state and much of what he does in the daily course of business is not known to the other officials of town government.”); Beverly A. Cigler, *County Governance in the 1990s*, 27 ST. & LOC. GOV’T REV. 55, 58–59 (1995) (“Although the elected county commissioners are more heavily involved in [executive] operations than are city councilmembers, only in counties are specific agencies directly managed by the county governing body. Commissioners compete with a wide variety of autonomous or partially autonomous elected and appointed officers, boards, and commissions.” (internal citation omitted)).

121. See, e.g., FAIRLIE, *supra* note 110, at 45–46.

122. See *id.* at 41–45, 68.

123. See *id.* at 68, 75.

124. See DILLON, *supra* note 106, at 55–56.

125. See FAIRLIE, *supra* note 110, at 85; see also James R. Donoghue, *County Government and Urban Growth*, 1959 WIS. L. REV. 30, 43 (“Perhaps, the distinguishing feature [in Wisconsin] is that [cities and villages] are given a broad grant of general power to govern, whereas the county’s powers are listed in a detailed series of provisions.”).

Combined with the fact that these legislative powers frequently excluded control over other county and town officials, the authority that these boards exercised in practice did not encompass the full affairs of the county or town.<sup>126</sup>

As time went on, the role of towns also withered. The hybrid system in the Mid-Atlantic and Midwestern states subdivided their counties into towns in order to balance the competing interests of administrative efficiency (counties) and local control (towns).<sup>127</sup> But subsequent reforms in those states largely emphasized the former to the detriment of the latter. To be sure, *suburban* towns in urbanized areas were eventually given more power and control, mirroring those of the cities that they surrounded.<sup>128</sup> Rural towns, however, saw many of their powers and responsibilities transferred to the county, leading to a “weakening of the township as a political institution; and in some instances this transfer has proceeded to the point where the township has been virtually or completely eliminated.”<sup>129</sup> Consequently, at the same time that towns became more democratic, their standing in rural life also diminished. Along with this is the fact that “twenty-five of our states never had townships and that eleven others never gave them any important powers.”<sup>130</sup> Robert Wuthnow may be right in declaring that “[t]owns are the centerpiece of rural America,” especially when viewed as what he refers to as “moral communities.”<sup>131</sup> But from a legal standpoint, they serve a distinctly limited role.

In short, while counties and towns are the main governmental institutions where rural democracy is practiced, democratic participation was not central to their initial creation or their subsequent development. By decentralizing state administration to local units, rural communities are better able to influence the implementation of state laws and programs than if the state did it entirely on its own. But this influence was not necessarily exercised by ordinary residents, nor through formal democratic channels. All of this plays a role in defining the contemporary role of rural democracy and how rural residents understand their agency through rural local governments.

#### B. *The Legal Construction of Counties and Towns in American Law*

Democratic participation in rural America is shaped by more than the types of local governments that were created and the manner in which they were organized. It is also, as I show here, a product of how these local governments were defined as a matter of law. In the nineteenth century, all local governments

126. See *supra* notes 118, 120 and accompanying text.

127. See BRYCE, *supra* note 88, at 225.

128. See, e.g., SNIDER, *supra* note 92, at 43.

129. *Id.* at 27, 44.

130. LANCASTER, *supra* note 101, at 68–70.

131. WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 4–5.

came to be understood as “creatures” of the state. Even as this doctrine was developed, however, judges continued to distinguish rural local governments from their urban counterparts in terms of their relationship to their residents.<sup>132</sup> Further, when “home rule” was adopted in states across the country to expand local control and limit state intervention, rural local governments like counties and towns were largely left out.<sup>133</sup> Both of these developments—the legal construction of local governments and the adoption of home rule—have been written about extensively from the perspective of cities.<sup>134</sup> But as this section shows, these developments also played an important role in the conceptualization of rural local governments in American law.

In many ways, the emergence of cities as a “legal concept”<sup>135</sup> in the nineteenth century is tied to the legal construction of rural counties and towns. For cities, their journey began with the now-curious fact that early English and American common law drew no legal distinction between municipal corporations like cities and what we now refer to as private corporations.<sup>136</sup> Both were considered corporate entities chartered by the state.<sup>137</sup> As such, both were believed to wield corporate power derived from their members (as associations) and their property (as owners).<sup>138</sup> It was only when courts began to emphasize the public-private divide in defining corporations that a unique body of law reserved for “municipal corporations” took shape. Courts redefined cities as governmental institutions by equating them with counties and towns,<sup>139</sup> which were presumed to possess few, if any, corporate rights at all, especially against the state. As Hendrick Hartog explained, “Just as moral reformers worked to create urban institutions that replicated agrarian values and discipline, so the

132. See, e.g., DILLON, *supra* note 106, at 29–30.

133. See *infra* text accompanying notes 163–69.

134. See, e.g., David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2257, 2278–80 (2003) [hereinafter Barron, *Reclaiming Home Rule*].

135. See generally Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980) (tracing the legal history of the city through time).

136. See *id.* at 1095–96.

137. *Id.* at 1101–02.

138. See *id.* at 1097–98.

139. See, e.g., *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 668–69 (1819) (“Another division of corporations is into public and private. Public corporations are generally esteemed such as exist for public political purposes only, such as towns, cities, parishes, and counties; and in many respects they are so, although they involve some private interests; but strictly speaking, public corporations are such only as are founded by the government for public purposes, where the whole interests belong also to the government.”); *Terrett v. Taylor*, 13 U.S. (9 Cranch) 43, 52 (1815) (“In respect, also, to *public* corporations which exist only for public purposes, such as counties, towns, cities, . . . the legislature may, under proper limitations, have a right to change, modify, enlarge or restrain them, securing however, the property for the uses of those for whom and at whose expense it was originally purchased.”); see also HENDRIK HARTOG, *PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730–1870*, at 193, 200, 210 (G. Edward White ed., 1983).



makers of the law of municipal corporations worked to make cities conform to an idealized polity based on the primacy of small-town America.”<sup>140</sup>

But if courts embraced the legal equivalence between urban and rural local governments in denying cities many of the private corporate rights that they had once exercised against the state, they were nevertheless reluctant to accord counties and towns rights associated with “municipal corporations.” Here, we come to a second distinction common in American local government law—that between “municipal corporations” and “quasi-corporations.” Cities (and, in some states, villages) are the prototypical municipal corporation.<sup>141</sup> Counties and towns, especially those not formally chartered, are differentiated as quasi corporations.<sup>142</sup> And the difference was not just in name; each outlines a different legal standing with respect to the state.<sup>143</sup> Even as state creatures, municipal corporations possess some degree of independence, especially with respect to “proprietary” interests and those connected with their ownership and control of property.<sup>144</sup> Quasi corporations, however, were presumed to be wholly and “involuntary subdivisions of the state created . . . for convenience and for more expeditious state administration.”<sup>145</sup> Thus, in states like Wisconsin, quasi corporations like counties and towns were prohibited from directly challenging the constitutionality of a state law,<sup>146</sup> creating the office of a town attorney,<sup>147</sup> or invoking constitutional protections against special legislation.<sup>148</sup>

Counties were most likely to be construed as quasi corporations, and this reflects their initial creation as instruments of state power, separate and detached from the people they govern. In his celebration of local democracy, Tocqueville hardly mentions counties at all despite the fact that they were already becoming the predominant form of rural governance in the United

140. HARTOG, *supra* note 139, at 263.

141. See DILLON, *supra* note 106, at 29–30.

142. See *id.*

143. See *id.* at 28; see also FAIRLIE, *supra* note 110, at 64–65.

144. Indeed, much of the debate surrounding the legal standing of cities has centered on what aspects of a city’s corporate status still remain, and in what context did it matter. After their transformation into “state creatures,” cities continued to assert, and courts often recognized, that some residual corporate rights persisted, especially against state efforts to “take” municipal property. See, e.g., *Hunter v. City of Pittsburgh*, 207 U.S. 161, 179–80 (1907); HARTOG, *supra* note 139, at 240, 260. Even today, when it comes to the issue of municipal liability, courts continue to bifurcate municipal functions as “governmental” and “proprietary” in deciding the extent to which the state’s sovereign immunity applies.

145. *Curtis v. Eide*, 244 N.Y.S.2d 330, 332 (N.Y. App. Div. 1963). Indeed, colonial towns, including those in New England, generally lacked property rights at all. See, e.g., HARTOG, *supra* note 139, at 22 n.3.

146. See *Columbia County v. Bd. of Trs. of Wis. Ret. Fund*, 116 N.W.2d 142, 146 (Wis. 1962).

147. See *State ex rel. Thompson v. Supervisors of Town of Lake*, 109 N.W. 564, 564 (Wis. 1906).

148. See *Cathcart v. Comstock*, 14 N.W. 833, 840–41 (Wis. 1883).

States.<sup>149</sup> Decades later, James Bryce wrote about counties largely as artificial and administrative constructs of the state, which he contrasted with the towns of New England.<sup>150</sup> Even John Dillon's influential treatise on the "law of municipal corporations"—widely recognized as the foundational text of American local government law—acknowledges counties only to explain why he considers them outside the scope of his inquiry.<sup>151</sup> Counties may be "invested with a few functions characteristic of a corporate existence," Dillon remarked, yet they are at heart "local subdivisions of the state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them."<sup>152</sup> In other words, a municipal corporation is "asked for, or at least assented to, by the people it embraces," whereas counties are "superimposed by a sovereign and paramount authority."<sup>153</sup>

Towns, on the other hand, have sometimes been treated as corporate entities, especially in New England.<sup>154</sup> Nevertheless, after the legal category of municipal corporations took shape, they too were frequently relegated to the category of quasi corporations and deprived the associational rights connected with corporate status.<sup>155</sup> In Wisconsin, for example, courts refused to recognize unchartered towns as "municipal corporations" as the term is used in the state's constitution, referring to them instead as "quasi corporations"<sup>156</sup> in the same vein as counties and school districts.<sup>157</sup> In states where towns had corporate status, like New York, town officials were nevertheless strictly construed as agents of the state, responsible for duties that "in no respect concern[ed] the strictly corporate interests of the towns" nor were "limited to their effects on the towns as political bodies."<sup>158</sup> Indeed, by the mid-nineteenth century, even New England towns began to shed their "peculiar character"<sup>159</sup> as independent political units possessing powers derived from their residents as communal associations.<sup>160</sup> In Maine, for example, where towns are "declared to be a body politic and corporate by the statute," courts nevertheless began to classify them

149. See TOCQUEVILLE, *supra* note 10, at 86–87.

150. See BRYCE, *supra* note 88, at 224–25.

151. DILLON, *supra* note 106, at 29 ("The phrase 'municipal corporations,' in the contemplation of this treatise, has reference to *incorporated villages, towns, and cities*, with power of local administration, as distinguished from other public corporations, such as counties and *quasi* corporations.").

152. *Id.* at 30.

153. *Id.*

154. See, e.g., *Mower v. Inhabitants of Leicester*, 9 Mass. (9 Tyng) 247, 249 (1812).

155. See FAIRLIE, *supra* note 110, at 167.

156. See *Norton v. Peck*, 3 Wis. 714, 721–22 (1854).

157. See *State ex rel. Bare v. Schinz*, 216 N.W. 509, 510 (Wis. 1927) (counties); *Stroud v. City of Stevens Point*, 37 Wis. 367, 371 (1875) (school districts).

158. See *Lorillard v. Town of Monroe*, 11 N.Y. 392, 394–95 (1854).

159. DILLON, *supra* note 106, at 34–35.

160. See, e.g., *Frug*, *supra* note 135, at 1096.

as “quasi corporations” whose “whole capacities, powers and duties are derived from legislative enactments.”<sup>161</sup>

What is striking about the legal distinction between urban and rural local governments is not just that they endured the emergence of “municipal corporations” as a concept in American law. It is also that the distinction persisted even when the basic structure of the state-local relationship was reformed in later years.

Take, for instance, the widespread adoption of “home rule” at the turn of the twentieth century.<sup>162</sup> For cities, home rule represented a radical expansion of local autonomy.<sup>163</sup> It rejected the traditional view, commonly known as “Dillon’s Rule,” that local governments could only exercise those powers that had been specifically delegated to them through statutory authorization by the state.<sup>164</sup> Instead, state after state granted cities broad powers to initiate local action on their own, adopt local regulations, and structure their own government.<sup>165</sup> Home rule also imposed limits on state interference, especially with respect to local affairs.<sup>166</sup> To be sure, many scholars (including myself) have argued that state legislatures and courts have subverted the initial promise of home rule with workarounds and narrow judicial constructions.<sup>167</sup> Yet, it is also the case that arguments for city power today tend to revolve around some effort to reinvigorate, reclaim, or restore the local authority that was granted through the adoption of home rule.<sup>168</sup>

But as both a movement and a set of legal reforms, home rule largely left rural America out. A disproportionate number of rural states are among the minority of those that have not yet adopted home rule into the state constitution.<sup>169</sup> And among those that have adopted home rule, it tends to be

161. *Hooper v. Emery*, 14 Me. 375, 377 (1837) (internal quotation marks omitted).

162. See Barron, *Reclaiming Home Rule*, *supra* note 134, at 2277–88.

163. See, e.g., DALE KRANE, PLATON N. RIGOS & MELVIN B. HILL JR., *HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK* 10–12 (2001).

164. Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 307–08 (1968).

165. See GORDON L. CLARK, *JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY* 78 (1985).

166. See *id.* at 78–79.

167. See, e.g., GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 51 (1999); Kenneth A. Stahl, *Local Home Rule in the Time of Globalization*, 2016 BYU L. REV. 177, 181–82; Rick Su, *Have Cities Abandoned Home Rule?*, 44 FORDHAM URB. L.J. 181, 193–95 (2017).

168. See, e.g., Barron, *Reclaiming Home Rule*, *supra* note 134, at 2377–82; Stahl, *supra* note 167, at 184–86.

169. By one estimate, thirteen states have not adopted constitutional home rule for any local government. See U.S. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, *STATE LAWS GOVERNING LOCAL GOVERNMENT STRUCTURE AND ADMINISTRATION* 20–21 (1993), <https://library.unt.edu/gpo/acir/Reports/information/M-186.pdf> [<https://perma.cc/257H-NVEG>] (including Alabama, Arkansas, Delaware, Idaho, Indiana, Kentucky, Mississippi, Nevada, New

reserved for cities, and often the state's largest.<sup>170</sup> In Texas, for example, only cities with more than 5,000 residents can opt into home rule; counties, meanwhile, are categorically prohibited regardless of population.<sup>171</sup> Both Illinois and Missouri make similar demographic and categorical distinctions.<sup>172</sup> In Wisconsin, home rule turns on incorporation: incorporated cities and villages are included, unincorporated localities like counties and townships are not.<sup>173</sup> Not surprisingly, most incorporated municipalities in the state are in its metropolitan regions, whereas unincorporated local governments are largely found in rural areas.<sup>174</sup> Even in states that now grant home rule more broadly, the expansion to rural local governments only happened later. For example, when Ohio and New York adopted home rule in the nineteenth century, both excluded counties and towns; it was only decades later, and through subsequent constitutional amendments, that counties in both states and towns in New York were included.<sup>175</sup>

Even where home rule has been expanded to rural local governments, the tendency has been to extend it in a much more limited way. For cities, the promise of home rule centered on the broad delegation of authority—allowing

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Hampshire, New Jersey, North Carolina, Vermont, and Virginia). Although eleven of these states have granted some home-rule authority by statute, they differ from their constitutional counterparts because the home-rule powers can be amended or revoked by the legislature. Among the ten states with the highest rural population as a percentage of their total population in 2010, half have no constitutional home rule provision (Alabama, Arkansas, Kentucky, Mississippi, and Vermont). *See 2010 Census Urban and Rural Classification and Urban Area Criteria*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html> [<https://perma.cc/9CPE-HN2V>] (linking to an Excel spreadsheet, titled *Percent Urban and Rural in 2010 by State*). Nine of the thirteen states without constitutional home rule are in the top half of states in terms of percentage of rural population. It should also be noted that many “rural” states that have adopted home rule in name may not have home rule in practice. *See KRANE ET AL.*, *supra* note 163, at 16 (analyzing the state of Nebraska as an example).

170. *See* Vanlandingham, *supra* note 164, at 278.

171. *See* ASHLEY D. ROSS, *LOCAL DISASTER RESILIENCE: ADMINISTRATIVE AND POLITICAL PERSPECTIVES* 118 (2014). County home rule was temporarily authorized in 1933, but the application process was so difficult that no county succeeded in becoming a home-rule county. County home rule was subsequently repealed in 1969. *See* STEFAN D. HAAG, GARY A. KEITH & REX C. PEEBLES, *TEXAS POLITICS AND GOVERNMENT: IDEAS, INSTITUTIONS, AND POLICIES* 381, 396 (2d ed. 2001).

172. *See* ILL. CONST. art. VII, § 6(a) (setting a population requirement of 25,000 for counties to qualify for municipal home rule without referendum); MO. CONST. art. VI, §§ 18(a), 19 (setting the home-rule charter population requirement for counties and cities at 85,000 and 5000, respectively).

173. *See* LEAGUE OF WIS. MUNICIPALITIES, *HANDBOOK FOR WISCONSIN MUNICIPAL OFFICIALS* 2 (2002), [https://icma.org/sites/default/files/301956\\_Wisconsin%20Handbook.pdf](https://icma.org/sites/default/files/301956_Wisconsin%20Handbook.pdf) [<https://perma.cc/YW8R-3QR6>].

174. *See id.*

175. *See* STEVEN H. STEINGLASS & GINO J. SCARSELLI, *THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE* 37 (2004); James D. Cole, *Constitutional Home Rule in New York: “The Ghost of Home Rule,”* 59 ST. JOHN’S L. REV. 713, 725–26 (1985). Indeed, county home rule did not become common until the 1970s and 1980s. *See* DAVID K. HAMILTON, *GOVERNING METROPOLITAN AREAS: RESPONSE TO GROWTH AND CHANGE* 259 (Richard D. Bingham series ed., 1999).

cities to take actions and pursue regulations without prior state authorization.<sup>176</sup> But as Clyde Snider notes, “[c]ounty home-rule provisions, in contrast, are confined almost exclusively to matters of charter-making and organizational forms and do not carry any broad grant of substantive authority over local affairs generally.”<sup>177</sup> To be sure, charter-making authority is not insignificant, especially given the extent to which states have meddled in the organization of county governments and the number and type of officials that served. But it has also meant that, with respect to their policymaking authority, counties must continue to rely on specific delegations from the state.<sup>178</sup>

Of course, it is worth noting that rural interest in home rule has never been strong. It is estimated, for example, that less than ten percent of the counties that are eligible to adopt a home-rule charter have done so,<sup>179</sup> and those are typically urban counties that are part of major metropolitan regions.<sup>180</sup> Additionally, proposals to adopt township home rule in the few states that allow it are routinely rejected at the polls.<sup>181</sup> Perhaps rural residents do not see a need for local self-governance. Or perhaps they recognize that the limited form of home rule available to them does not truly enable meaningful local control. As I have suggested earlier, the functions of rural local governments have historically been limited, and the practice of rural democracy has never been strong.<sup>182</sup> Moreover, as largely administrative subdivisions, it makes sense that rural residents would see the question of home rule largely through the lens of administrative costs and bureaucratic bloat. Indeed, the democratic values of home rule are seldom discussed at all.

176. See CLARK, *supra* note 165, at 7.

177. SNIDER, *supra* note 92, at 104; see also KRANE ET AL., *supra* note 163, at 478 (displaying a table showing that the vast majority of county home-rule provisions are limited to “structural” powers over their governmental form, not “functional” powers regarding policymaking).

178. See, e.g., LANCASTER, *supra* note 101, at 307–09. Even relatively strong county home-rule provisions are often weakened by courts in response to state intervention. See, e.g., PETER J. GALIE & CHRISTOPHER BOPST, THE NEW YORK STATE CONSTITUTION 242–43 (2d ed. 2012).

179. See HAMILTON, *supra* note 175, at 259–60.

180. For example, Tennessee allowed for a county home-rule charter in 1965, but only two counties have passed it. Both of these counties were in urban metropolitan areas and did so in order to prevent the creation of a metropolitan-wide government through county-city consolidation. KRANE ET AL., *supra* note 163, at 129, 394 (describing Cook County, which is part of metropolitan Chicago, as the only county in Illinois with home rule).

181. See, e.g., Ad Crable, *Martic, Conestoga Township Voters Deny Study of Home Rule*, LANCASTERONLINE (May 19, 2015), [https://lancasteronline.com/news/local/martic-conestoga-township-voters-deny-study-of-home-rule/article\\_5c784146-fe7d-11e4-84a7-c77b5393e528.html](https://lancasteronline.com/news/local/martic-conestoga-township-voters-deny-study-of-home-rule/article_5c784146-fe7d-11e4-84a7-c77b5393e528.html) [<https://perma.cc/Q3F3-8A4F>] (discussing how two townships rejected proposals to adopt township home rule).

182. See *supra* Section I.B.

C. *Reassessing the Practice of Rural Democracy*

So were early commentators mistaken about the democratic capacity of rural local governments? Were Tocqueville and Bryce wrong to celebrate the rural town as the foundation of American democracy? It is important to recognize here that the structural and legal constraints described above did not necessarily foreclose meaningful democratic participation by rural residents. Artificial jurisdictions may not reflect natural communities on the ground, but they may nevertheless give rise to “imagined communities” that instill similar feelings of membership and belonging.<sup>183</sup> The administrative orientation of rural local governments may limit their ability to set policies themselves through the political process, but local discretion can still be exercised through the implementation of those policies. And even if rural local governments lack inherent powers without explicit state authorization, specific powers can still be gained by petitioning the state for enabling legislation.

Indeed, the early history of rural local governments include many examples where rural communities were able to exercise a meaningful degree of local control despite the structural and legal constraints that I described. This was especially true in the eighteenth and nineteenth centuries. The town hall meetings of New England may not have initially been designed as a forum for political negotiation or as a platform for asserting local autonomy. But during the Revolutionary period, they became powerful vehicles for community self-determination and resistance to centralized control.<sup>184</sup> County officials were initially appointed by the state and focused primarily on the implementation and adjudication of state laws. Yet as Laura Edwards’s study of rural North and South Carolina in the early nineteenth century reveals, local sheriffs and judges were attuned to community norms in how they interpreted and applied the law and often did so to the benefit of disenfranchised residents like slaves and lower-class whites.<sup>185</sup> The lack of a corporate identity for counties and towns also sometimes cut in favor of rural communities. Governors and state legislatures in the eighteenth and nineteenth centuries frequently deferred to rural communities in deciding which local officials to appoint and what governmental powers to delegate.<sup>186</sup> Moreover, when it came to liability for harms caused by the local governments themselves, it was precisely because their officials were legally understood as agents of the state, rather than representatives of their

183. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 6–7 (rev. ed. 2006).

184. See ZUCKERMAN, *supra* note 104, at 220–58.

185. See LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* 7–8 (2009).

186. On appointments, see, for example, WARREN M. BILLINGS, *THE OLD DOMINION IN THE SEVENTEENTH CENTURY: A DOCUMENTARY HISTORY OF VIRGINIA, 1606–1700*, at 97–100 (rev. ed. 2007). On delegation, see DOUGLASS, *supra* note 97, at 197–200; and Nancy Burns & Gerald Gamm, *Creatures of the State: State Politics and Local Government, 1871–1921*, 33 *URB. AFF. REV.* 59, 70–90 (1997).

residents, that counties and towns continued to be shielded by the state's sovereign immunity in ways that cities were not.<sup>187</sup>

All of this is to say that in the early nineteenth century, rural communities found ways to both work around and benefit from their political and legal constraints. Yet the manner in which this control was exercised also reveals the early limits of democracy at the local level. The towns of New England might have become beacons for decentralized authority, but efforts to expand their structure and practices beyond New England largely failed.<sup>188</sup> The role that counties played in executing state laws allowed local norms to temper their application, but it was the administrative rather than the political roles of rural officials that were reinforced in the process.<sup>189</sup> Rural local governments and their officials may have been insulated from liability as a result of their legal subsidiarity to states, but that also underscored the limited accountability they owed to their residents.<sup>190</sup> All in all, although democratic energy may have existed on the ground, the early structure of rural local governments channeled that energy towards administrative responses rather than political action.

Perhaps more important, however, is how the political organization and legal construction of rural local governments that arose in the nineteenth century set the trajectory for later. We have already seen that when home rule was widely adopted at the turn of the twentieth century, counties and towns were largely excepted or granted home-rule authority on more limited terms. These early legal distinctions—between different forms of local governments and contrasting municipal corporations from quasi corporations—would reappear again in the evolving relationship between rural local governments and the state and federal governments. It is to this we now turn.

### III. INTERGOVERNMENTAL RELATIONS IN THE RURAL CONTEXT

The political organization and legal structure of rural local governments offer one reason why political disaffection is spreading across rural America. Another reason, which I outline below, is the growing role of the state and federal government in rural affairs. Over the years, many of the traditional functions of rural counties and towns have been transferred to state and federal agencies that are not directly responsive to local constituents. At the same time, the expansion of state and federal regulations in the twentieth century has not

187. See HARTOG, *supra* note 139, at 189–90.

188. See Farbman, *supra* note 114, at 475–77 (describing failed efforts to establish a New England town system in the South after the Civil War).

189. Moreover, rural residents face growing challenges in accessing the legal system at all. See Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15, 18–23 (2018). In addition, localized judicial systems in rural areas may actually make it more difficult for rural residents to navigate the legal system because of their use of unique forms, procedures, and rules. See Sandman & Flagg, *supra* note 27, at 3–4.

190. See, e.g., Edwin M. Borchard, *Government Liability in Tort*, 34 YALE L.J. 1, 2–4 (1924).

only been in ways that disproportionately affect rural areas but also in a manner that displaces the regulatory authority of rural local governments.

To be sure, there are good reasons why rural local governments have ceded ground in this manner. Yet these developments also shed light on why rural residents might feel disempowered when it comes to rural affairs, or why they have turned away from local governments as a means for addressing local concerns. The problem is not just, as I suggested above, that rural local governments are currently poor vehicles for democratic participation. It is also, as I suggest here, that rural residents do not believe that local democratic participation is meaningful or effective given the increasingly limited role that rural local governments now play.<sup>191</sup>

#### A. *Rural Relationship with the State*

When Katherine Cramer ventured into the Wisconsin countryside to write about rural consciousness in the early 2010s, she was surprised to discover the strong resentment that rural residents bore against the state.<sup>192</sup> After all, Scott Walker, the governor of Wisconsin at the time, had ascended to office largely through the support of rural voters.<sup>193</sup> It was also widely believed that rural Wisconsin was disproportionately represented in the state legislature—a consequence of urban concentration and partisan gerrymandering.<sup>194</sup> But partisan politics and political control were not foremost on the minds of the rural residents that Cramer encountered. Rather, they spoke about their frequent interactions with state officials, many of whom they believed descended on rural communities with little knowledge or concern for the interests or conditions of local residents.<sup>195</sup> As they described it, the state was hardly the “local” government portrayed in federalism theory and doctrine.<sup>196</sup> In their mind, the state was just as remote and coercive as the federal government.<sup>197</sup>

191. See MANSBRIDGE, *supra* note 26, at 127–30 (describing how state centralization diminished the power of Vermont towns in the 1960s and the effect it had on the attendance at their traditional town hall meetings).

192. CRAMER, *supra* note 32, at 3.

193. See *id.* at 185–86, 208–09.

194. See Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018); Michael Wines, *How a Wisconsin Case Before Justices Could Reshape Redistricting*, N.Y. TIMES (Oct. 1, 2017), <https://www.nytimes.com/2017/10/01/us/wisconsin-supreme-court-gerrymander.html> [<https://perma.cc/8NM2-JY56> (dark archive)].

195. See CRAMER, *supra* note 32, at 127–31, 156–58, 195, 201–03.

196. See *id.* at 127–31 (recounting conversations with rural residents who had experiences with state government officials in multiple departments that left them with the impression that the government was out of touch with rural life).

197. See *id.*



The experiences and perceptions of rural residents in Wisconsin are not unique. Indeed, they reflect more broadly how the “rise of states”<sup>198</sup> in the late nineteenth and early twentieth centuries consolidated state authority over rural areas and how that consolidation displaced the already limited role that rural local governments played. Rural counties and towns may have long been construed as agents of the state.<sup>199</sup> But as the capabilities of state governments expanded, it no longer seemed necessary for states to rely on “[t]he sleepy pace and hayseed rule of the county court houses and rural town halls” in state administration.<sup>200</sup> In managing rural affairs, the state can govern directly. In regulating rural activities, state laws can substitute for local regulations. All of this comported with the attitude of the Progressive movement at the turn of the twentieth century and its emphasis on administrative expertise over political accountability.<sup>201</sup> While many rural communities initially welcomed this shift and its attendant state resources, the change further eroded the agency rural residents could exercise over local affairs.

One way in which state governments consolidated their control over rural governance was by taking over responsibilities that had once been the province of its local governments. We have already looked at how, in many “hybrid” states where counties and towns coexisted, town functions were increasingly transferred to counties.<sup>202</sup> But the perceived need for greater efficiency also led many of those functions to be transferred directly to the state itself. Road building, which local governments handled throughout the nineteenth century, was in the twentieth managed primarily by state agencies in rural areas.<sup>203</sup> Law enforcement, which had largely been handled by county sheriffs, was increasingly supplanted by the rise of the state police.<sup>204</sup> The provision of vital services like water, sewers, and transit were taken from local governments and given to single-purpose public authorities.<sup>205</sup> Even social welfare services, like “poor relief,” became a matter of state (and eventually federal)

198. See JON C. TEAFORD, *THE RISE OF THE STATES: EVOLUTION OF AMERICAN STATE GOVERNMENT* 11–12 (2002).

199. See *supra* Section II.B.

200. TEAFORD, *supra* note 198, at 11.

201. See, e.g., BRIDGES, *supra* note 118, at 9–12; MARTIN J. SCHIESL, *THE POLITICS OF EFFICIENCY: MUNICIPAL ADMINISTRATION AND REFORM IN AMERICA, 1800–1920*, at 8 (1977); see also BRYAN, *supra* note 26, at 28–29. Ironically, the Progressive thinkers themselves were quite enamored with “community values of small-town life.” See PUTNAM, *supra* note 61, at 378.

202. See *supra* Section II.A.

203. See, e.g., TEAFORD, *supra* note 198, at 125–26; Hal S. Barron, *And the Crooked Shall Be Made Straight: Public Road Administration and the Decline of Localism in the Rural North, 1870–1930*, 26 J. SOC. HIST. 81, 82 (1992) [hereinafter Barron, *Decline of Localism*]. In contrast, cities largely retained their road-building responsibilities.

204. See H. KENNETH BECHTEL, *STATE POLICE IN THE UNITED STATES: A SOCIO-HISTORICAL ANALYSIS* 5–6, 40, 49–61 (1995).

205. See ANNAMARIE HAUCK WALSH, *THE PUBLIC’S BUSINESS: THE POLITICS AND PRACTICES OF GOVERNMENT CORPORATIONS* 16–17 (1978).

administration.<sup>206</sup> Through each of these reassignments, the role of the state in rural governance was expanded. The type of institutions that were created to assume these responsibilities were also more specialized than the general-purpose governments from which these functions were taken. Moreover, they were far less politically accountable to local residents. Indeed, in the case of the state police and public authorities, they were specifically designed to be insulated from local political demands.<sup>207</sup>

Institutional reorganization is not the only reason that rural residents might feel that the state, rather than their local communities, is primarily in control of rural affairs. Another is the increasing role that state law plays in displacing local regulations. As Laura Edwards described, the “localized laws” that rural officials developed in accordance with local norms were, by the late nineteenth century, largely displaced by the consolidation of what we now know as the *state* common law.<sup>208</sup> This judicial consolidation also took place at around the same time that state legislatures began to expand their regulatory reach, often into areas that had a disproportionate effect on rural communities. In the early twentieth century, state after state developed comprehensive regulations with respect to all manner of natural resources—from coal and timber to fish and game<sup>209</sup>—and deployed a “veritable army of wardens, foresters, rangers, scouts, and soldiers to ensure compliance with these measures.”<sup>210</sup> Decades later, the rise of the environmental protection movement led to the widespread adoption of state environmental laws and the creation of state environmental and conservation agencies dedicated to its enforcement.<sup>211</sup> In many states, the expansion of these state laws meant a displacement of local regulatory authority. Rather than simply setting a regulatory baseline, the comprehensive nature of many of these laws led courts to conclude that the state had “occupied the field,” leaving no room for further regulations at the local

206. See, e.g., LANCASTER, *supra* note 101, at 276–78.

207. See BECHTEL, *supra* note 204, at 62; WALSH, *supra* note 205, at 24–39. Annmarie Walsh argues that public authorities, contrary to common portrayals, are not necessarily apolitical. Rather, they simply tend to be attuned to a narrower scope of political interests, such as those of the banking and business communities and thus result in private control of public management. WALSH, *supra* note 205, at 334.

208. See EDWARDS, *supra* note 185, at 203–19.

209. KARL JACOBY, CRIMES AGAINST NATURE: SQUATTERS, POACHERS, THIEVES, AND THE HIDDEN HISTORY OF AMERICAN CONSERVATION 20 (2014) (“For many rural communities, the most notable feature of conservation was the transformation of previously acceptable practices into illegal acts . . .”).

210. *Id.* at 249; see also RALPH A. WEISHEIT, DAVID N. FALCONE & L. EDWARD WELLS, CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA 117–18 (3d ed. 2006); David Falcone, *America’s Conservation Police: Agencies in Transition*, 27 POLICING 56, 56–57 (2004).

211. See, e.g., EVAN J. RINGQUIST, ENVIRONMENTAL PROTECTION AT THE STATE LEVEL: POLITICS AND PROGRESS IN CONTROLLING POLLUTION 61–79 (1993).

level.<sup>212</sup> In some states, like Indiana, home-rule authority was specifically withheld from matters entrusted to a state agency.<sup>213</sup> Thus when local concerns arose, rural residents had little choice but to turn to the state. In turn, the administrative bureaucracy of the state, rather than the democratic processes of local governments, became the primary means by which many rural conflicts were resolved.

In addition to crowding out through displacement, more and more states in recent years have also turned to express preemption. Thus far, the rise of state preemption laws has largely been discussed as a problem facing cities and their attempt to address “urban” issues.<sup>214</sup> But rural local governments are facing a preemption wave as well and on matters that are dividing their communities. Nearly all states have enacted “right to farm” statutes that prohibit local regulation of agricultural and livestock activities, including those targeting intensive practices associated with agribusiness and industrial livestock production.<sup>215</sup> “Seed laws” prohibiting local regulations of genetically modified crops have been adopted in twenty-nine states, barring local laws aimed at protecting organic farmers and those who sell to foreign markets that ban genetically modified foods.<sup>216</sup> The controversy over fracking has produced state preemption laws on both sides, with some states banning the practice entirely<sup>217</sup>

212. See, e.g., *Ne. Nat. Energy v. City of Morgantown*, No. 11-C-411, 2011 WL 3584376, at \*8 (W. Va. Cir. Ct. Aug. 12, 2011).

213. See IND. CODE § 36-1-3-8 (2019) (“[A] unit does not have . . . [t]he power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.”); see also *Triple G Landfills, Inc. v. Bd. of Comm’rs of Fountain Cty.*, 774 F. Supp. 528, 532 (S.D. Ind. 1991), *aff’d*, 977 F.2d 287 (7th Cir. 1992); *Bd. of Comm’rs of LaPorte Cty. v. Town & Country Utils.*, 791 N.E.2d 249, 255–56 (Ind. Ct. App. 2003); *Hopkins v. Tipton Cty. Health Dep’t*, 769 N.E.2d 604, 608–09 (Ind. Ct. App. 2002).

214. See, e.g., Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018); Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1504 (2018). Indeed, state preemption is frequently described as the result of rural representatives seeking to frustrate the will of urban residents. See Paul A. Diller, *Reorienting Home Rule: Part 1—The Urban Disadvantage in National and State Lawmaking*, 77 LA. L. REV. 287, 290 (2016).

215. See, e.g., Nadia S. Adawi, *State Preemption of Local Control over Intensive Livestock Operations*, 44 ENVTL. L. REP. NEWS & ANALYSIS 10506, 10512–13 (2014) (“Finally, every state has a ‘Right to Farm’ law that limits private and public nuisance claims against farms, and in recent years, many of these laws have been broadened to prohibit nuisance claims against even industrial-scale operations and to explicitly preempt local ordinances governing nuisance actions.”). For an account of local rural resistance, see CLARK & TEACHOUT, *supra* note 26, at 51–54.

216. See Kristina Johnson, *29 States Just Banned Laws About Seeds*, MOTHER JONES (Aug. 21, 2017), <https://www.motherjones.com/food/2017/08/29-states-just-banned-laws-about-seeds/> [https://perma.cc/9TQS-G5R4]; see also Jacob Garner & Ian Wesley-Smith, *State Preemption of Local GMO Regulation: An Analysis of Syngenta Seeds, Inc. v. County of Kauai*, 47 URB. LAW. 275, 300–03 (2015).

217. See Thomas Kaplan, *Citing Health Risks, Cuomo Bans Fracking in New York State*, N.Y. TIMES (Dec. 17, 2014), <https://www.nytimes.com/2014/12/18/nyregion/cuomo-to-ban-fracking-in-new-york-state-citing-health-risks.html> [https://perma.cc/A5MV-MX2A (dark archive)].

and others categorically exempting it from local regulations.<sup>218</sup> Local regulation of fertilizers,<sup>219</sup> the siting of manure storage facilities,<sup>220</sup> and pesticides<sup>221</sup> has also come under attack. Even municipal broadband services—which many believe are the best way to expand internet access in rural communities underserved by private operators—are now outlawed in four states and severely restricted in fifteen others.<sup>222</sup>

### B. *Rural Relationship with the Federal Government*

The direct control that the state now exercises over many aspects of rural affairs explains why many rural residents today are frustrated with state government and its officials. Yet this frustration pales in comparison to the particular disdain that rural residents have long reserved for the federal government.<sup>223</sup> Common explanations for this tend to center on the “values” of rural Americans. Given their belief in individualism and self-reliance, we are told, rural residents naturally scorn “big government.”<sup>224</sup> Rooted in insular communities and accustomed to face-to-face politics, it is said, rural residents are inherently suspicious of policies made in Washington and the bureaucratic processes of the administrative state.<sup>225</sup>

But perhaps the reason for this discontent can also be found in how federal authority is exercised in rural areas. After all, rural affairs are increasingly governed by federal law. Rural residents are also more likely than their urban counterparts to encounter federal regulations and officials in their everyday lives.<sup>226</sup> And the manner in which federal policies are implemented in rural

218. See Russell Gold, *Texas Prohibits Local Fracking Bans*, WALL ST. J. (May 18, 2015, 4:51 PM), <https://www.wsj.com/articles/texas-moves-to-prohibit-local-fracking-bans-1431967882> [<https://perma.cc/2B97-28UP> (dark archive)].

219. See, e.g., S.D. CODIFIED LAWS § 39-1-17 (Westlaw through 2020 Reg. Sess.).

220. See, e.g., IND. CODE § 15-16-2-50 (2019) (“[A] political subdivision . . . does not have authority to regulate by ordinance the storage or use of fertilizer material.”)

221. See Terence J. Centner & Davis Clarke Heric, *Anti-Community State Pesticide Preemption Laws Prevent Local Governments from Protecting People from Harm*, 17 INT’L J. AGRIC. SUSTAINABILITY 118, 119 (2019).

222. See John T. Cobb, *Broad-Banned: The FCC’s Preemption of State Limits on Municipal Broadband and the Clear Statement Rule Comments*, 68 EMORY L.J. 407, 416–17 (2018). For an argument on why even limited state restrictions can have the effect of foreclosing municipal broadband development, see John Blevins, *Death of the Revolution: The Legal War on Competitive Broadband Technologies*, 12 YALE J.L. & TECH. 86, 111 (2009).

223. See, e.g., WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 96.

224. See *id.* at 98–99; James G. Gimpel & Kimberly A. Karnes, *The Rural Side of the Urban-Rural Gap*, 39 PS 467, 468–69 (2006).

225. See, e.g., WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 98–99, 111.

226. See, e.g., GRODZINS, *supra* note 49, at 199–201 (noting that in contrast to rural farmers, “the urban resident does not find the federal government ‘closest’ to him in terms of services rendered[; rather, m]ost of the governmental services benefitting him directly are conducted by state and local authorities even as they are beneficiaries of federal aid in various forms”); see also WEISHEIT ET AL., *supra* note 210, at 118.

areas, I argue, tends to displace more than support local governments and officials.<sup>227</sup> Federal programs in urban areas have historically been designed with city partnerships in mind.<sup>228</sup> In rural communities, however, that kind of partnership is rare and routinely eschewed in favor of a more top-down approach.

If rural residents seem far more concerned about the expansion of the federal government than city residents, it may be because federal policies have long played an outsized role in rural affairs. Federal domestic policies in the nineteenth century were disproportionately focused on the settlement of rural America—from homesteading, to frontier justice, to Native American removal.<sup>229</sup> Even more targeted regulations followed the expansion of the federal government in the early twentieth century. Federal policies were implemented to control agricultural prices and production.<sup>230</sup> Federal programs were designed to spur infrastructure development, such as rural electrification.<sup>231</sup> While national interests led Congress to enact federal environmental regulations, like the Endangered Species Act of 1973,<sup>232</sup> the impact of those regulations was disproportionately focused on activities and land use in rural areas.<sup>233</sup> Moreover, as interjurisdictional conflicts proliferated—between states over water access<sup>234</sup> and between tribes and local governments over jurisdiction<sup>235</sup>—the federal government assumed a more active role in resolving rural disputes.

Another reason why the federal government looms so large in the consciousness of rural Americans is its control of federal land. In a country founded on the private ownership of property, we often forget that the largest

227. See WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 101–03; see also *infra* notes 242–49 and accompanying text.

228. See MOLLENKOPF, *supra* note 78, at 15–16, 62.

229. See, e.g., Douglas W. Allen, *Homesteading and Property Rights; or, “How the West Was Really Won,”* 34 J.L. & ECON. 1, 4 (1991).

230. See, e.g., JEAN CHOATE, *DISPUTED GROUND: FARM GROUPS THAT OPPOSED THE NEW DEAL AGRICULTURAL PROGRAM* 147 (2002); see also WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 102–05.

231. See, e.g., RONALD R. KLINE, *CONSUMERS IN THE COUNTRY: TECHNOLOGY AND SOCIAL CHANGE IN RURAL AMERICA* 153–54 (2000).

232. Pub. L. No. 93-205, 87 Stat. 884.

233. Claire A. Montgomery, Gardner M. Brown, Jr. & Darius M. Adams, *The Marginal Cost of Species Preservation: The Northern Spotted Owl*, 26 J. ENVTL. ECON. & MGMT. 111, 121–26 (1994); Barton H. Thompson, Jr., *The Endangered Species Act: A Case Study in Takings & Incentives*, 49 STAN. L. REV. 305, 346 (1997).

234. See JOSEPH F. ZIMMERMAN, *INTERSTATE WATER COMPACTS: INTERGOVERNMENTAL EFFORTS TO MANAGE AMERICA’S WATER RESOURCES* 64 (2012).

235. See, e.g., LAWRENCE D. BOBO & MIA TUAN, *PREJUDICE IN POLITICS: GROUP POSITION, PUBLIC OPINION, AND THE WISCONSIN TREATY RIGHTS DISPUTE* 48–86 (2006). See generally JANE M. SMITH, CONG. RESEARCH SERV., R43324, *TRIBAL JURISDICTION OVER NONMEMBERS: A LEGAL OVERVIEW* (2013) (discussing the history of federal recognition of tribal courts’ civil and criminal jurisdiction over nonmembers under certain circumstances).

property owner in the United States is the United States itself.<sup>236</sup> More than a quarter of this country's landmass is held by the federal government and managed by the Bureau of Land Management, the United States Forestry Service, the Fish and Wildlife Service, and the National Parks Service.<sup>237</sup> Not only are the vast majority of these holdings in rural areas, but the natural resources that they contain—fish, game, pastures, fossil fuels, minerals, timber—are often central to the lifestyle and economies of many rural communities.<sup>238</sup> Some of the controversy surrounds the manner in which federal land-use decisions are made, including the increasing reliance on bureaucratic processes and administrative expertise. Others concern the substance of the decisions themselves, which has become all the more politically charged in recent decades as national attention and competing local interests are brought to bear.<sup>239</sup> At the same time, rural residents themselves are often divided on the decisions, as competing rural interests jockey for particular outcomes. Over the years, various “sagebrush rebellions” have arisen to challenge the federal government's ownership and control of federal lands, arguing that they should instead be sold off or transferred to the control of state or local authorities.<sup>240</sup> Sometimes these rebellions have even manifested in acts of violence or sensational armed standoffs against federal officials by rural residents.<sup>241</sup>

But for rural residents, the concern with the expansion of federal authority is not limited to this scope; it is also the manner in which that authority has been exercised. Here, it is important to recognize that federal policies and local control are not mutually exclusive. In the early to mid-twentieth century, for example, federal urban policies on public housing, highway construction, and urban renewal were implemented through partnerships with city governments and other local agencies.<sup>242</sup> And when it became clear that many of these policies did more harm than good, they were restructured by Congress to require even more input by residents and community groups.<sup>243</sup> But federal regulations in

236. See, e.g., Sterling Brubaker, *Issues and Summary of Federal Land Tenure*, in *RETHINKING THE FEDERAL LANDS* 1, 1 (Sterling Brubaker ed., 1984).

237. See, e.g., HOLLY LIPPKE FRETWELL, *WHO IS MINDING THE FEDERAL ESTATE?: POLITICAL MANAGEMENT OF AMERICA'S PUBLIC LANDS* 1, 9–24 (2009).

238. SCOTT LEHMANN, *PRIVATIZING PUBLIC LANDS* 4 (1995); see also Sandra K. Davis, *Fighting over Public Lands: Interest Groups, States, and the Federal Government*, in *WESTERN PUBLIC LANDS AND ENVIRONMENTAL POLITICS* 11, 11–13 (Charles Davis ed., 1997).

239. See, e.g., Christopher Ketcham, Opinion, *A Trojan Horse Threatens the Nation's Parks*, N.Y. TIMES (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/opinion/national-parks-threatened-utah.html> [<https://perma.cc/TF2H-NUXY> (dark archive)].

240. See, e.g., JACQUELINE VAUGHN SWITZER, *GREEN BACKLASH: THE HISTORY AND POLITICS OF ENVIRONMENTAL OPPOSITION IN THE U.S.* 171–89 (1997).

241. See Michael Kimmel & Abby L. Ferber, “*White Men Are This Nation:*” *Right-Wing Militias and the Restoration of Rural American Masculinity*, 65 RURAL SOC. 582, 586, 591 (2000).

242. See MOLLENKOPF, *supra* note 78, at 3, 6–7, 180–81.

243. See BERRY ET AL., *supra* note 23, at 46–49.

rural areas have historically opted for a more direct and top-down approach.<sup>244</sup> Federal officials tend to operate parallel to local officials, rather than in partnership with them or through them as intermediaries.<sup>245</sup> This is certainly the case with environmental regulations and enforcement.<sup>246</sup> There is also the proliferation of “federally engineered local governments” operating in rural areas independent from rural local governments<sup>247</sup>—a development that led one observer in the 1940s to note that “the federal government was on the way to establishing its own system of local government to match that of the state.”<sup>248</sup> Indeed, Morton Grodzins argues that the government closest to the people in rural areas is clearly the federal government, at least with respect to the provision of services.<sup>249</sup> All of this is further evidence of the limited role that rural local governments play in our federal system. While the federal government recognizes that few urban issues can be addressed at the national level without the participation of city governments and leaders, it is largely understood that such local participation is entirely unnecessary with respect to federal regulation in rural America.

244. See, e.g., CHOATE, *supra* note 230, at 147. But see GRANVILLE HICKS, *SMALL TOWN* 213–17 (2004) (offering a more nuanced view of the Tennessee Valley Authority and democracy); DAVID E. LILIENTHAL, *TVA DEMOCRACY ON THE MARCH* 3–6 (8th ed. 1944).

245. See, e.g., GRODZINS, *supra* note 49, at 191–92.

246. Indeed, as a study of counties in Idaho reported, “[r]ural county commissioners see a higher level of environmental conflict as well as a more conflictual relationship with state and federal agencies tasked with environmental protection.” Leslie R. Alm & Stephanie L. Witt, *The Rural-Urban Linkage to Environmental Policy Making in the American West: A Focus on Idaho*, 34 SOC. SCI. J. 271, 280 (1997). This may also be tied to the fact that rural county commissioners saw environmental protection as a less important issue relative to their urban counterparts. *Id.*

247. GRODZINS, *supra* note 49, at 191 (internal quotation marks omitted). Grodzins does note that the leadership of many of these “federally engineered local governments” are selected through local elections. See *id.* at 192. But it is interesting to note that the nominations and elections are separate from the existing rural local government with which they run parallel. Moreover, these largely rural institutions contrast with the largely urban institutions that fall under a separate category in Grodzins’s typography, in which the city leaders act as intermediaries and administrators for the federal program. See *id.* at 192–93.

248. PAUL N. YLVISAKER, *INTERGOVERNMENTAL RELATIONS AT THE GRASS ROOTS: A STUDY OF BLUE EARTH COUNTY, MINNESOTA, TO 1946*, at 42 (William Anderson & Edward W. Weidner eds., 1956). Grodzins notes that the Department of Agriculture is primarily responsible for these “little governments.” See GRODZINS, *supra* note 49, at 191. Even today, agricultural policies are largely the product of lobbying by agricultural interest groups—often representing the largest corporate growers—rather than individual residents represented by their counties or towns. See Alexis Guild & Iris Figueroa, *The Neighbors Who Feed Us: Farmworkers and Government Policy—Challenges and Solutions*, 13 HARV. L. & POL’Y REV. 157, 159–60 (2018); Ian T. Shearn, *Whose Side Is the American Farm Bureau on?*, NATION (July 16, 2012), <https://www.thenation.com/article/whose-side-american-farm-bureau/> [<https://perma.cc/R3SN-V7ST> (staff-uploaded archive)].

249. See GRODZINS, *supra* note 49, at 199 (“Where in the American system is government closest to the people as a provider of services? The answer is clearly in the rural areas, and there it is the federal government that provides more services to the people it serves than any other governments provide for the people they serve.”).

It also doesn't help that the types of issues where federal intervention is most common are those associated with the urban-rural divide.<sup>250</sup> Restrictions on water usage in agricultural communities are implemented in order to ensure that water is available for city residents downstream.<sup>251</sup> Rural land use is limited, it is widely believed, in order to protect endangered species and urban sensibilities.<sup>252</sup> And when decisions are made by states about where to dispose of, say, low-level radioactive waste—much of which is created in urban hospitals and universities and in accordance with federal statute—the choice is often in rural communities.<sup>253</sup> All of this fuels the impression that federal regulations are for the interests of those living somewhere else. Few of these decisions are made in meaningful consultation with rural communities or their representatives.

### C. *Reassessing Intergovernmental Relations in the Rural Context*

The democratic capacity of rural local governments, I have suggested, is constrained not only by their internal governance but also by the expansion of federal and state involvement in rural affairs. My goal, however, is not to disparage this expansion; there are good reasons why previously local functions are now handled by the state. Indeed, in many cases, the involvement of the state was welcomed by the rural communities themselves.<sup>254</sup> Moreover, I do not question the importance of state and federal regulations on issues such as the environment or natural resources, even if they happen to impact rural parts of the country more than other places. Instead, my goal here is more limited: to illustrate why rural residents might feel especially disempowered with respect to local affairs, and why this feeling of disempowerment is often connected to state and federal policies.

From this perspective, it is worth recognizing that administrative and regulatory centralization, even if thought necessary, is not without its costs. And those costs have democratic implications. First, rural interests and practices were often displaced as a result of centralization. As Hal Barron noted, state control of road building meant that the farm-to-market routes preferred by local residents gave way to roads that prioritized cross-state travel.<sup>255</sup> Second,

250. See James B. Wadley & Pamela Falk, *Lucas and Environmental Land Use Controls in Rural Areas: Whose Land Is It Anyway?*, 19 WM. MITCHELL L. REV. 331, 345 (1993) (describing the view that land-use regulations exist to “keep rural areas pure and unspoiled for urban purposes”).

251. See Michael Wines, *West's Drought and Growth Intensify Conflict over Water Rights*, N.Y. TIMES (Mar. 16, 2014), <https://www.nytimes.com/2014/03/17/us/wests-drought-and-growth-intensify-conflict-over-water-rights.html> [<https://perma.cc/8T67-DDEB> (dark archive)].

252. See Montgomery et al., *supra* note 233, at 111, 126–27.

253. See DANIEL J. SHERMAN, NOT HERE, NOT THERE, NOT ANYWHERE: POLITICS, SOCIAL MOVEMENTS, AND THE DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE 47, 123 (2011); see also Su, *Intrastate Federalism*, *supra* note 80, at 224–26.

254. See Barron, *Decline of Localism*, *supra* note 203, at 97.

255. *Id.* at 95. Many rural communities favored greater involvement by the state because of the funding it provided to supplement road-building costs. However, because rural residents were often



democratic influence was also undermined and sometimes purposefully so. Both the creation of the state police and public authorities, for example, were intended to limit the social and political influence of rural residents in how laws were enforced<sup>256</sup> and services provided.<sup>257</sup> Third, centralized control severed the social connection between governmental services and the people that they served. Despite the many advantages that state administration of social welfare services offered, for example, Lane Lancaster maintains that there might still be an argument for the *local* welfare administration: “Men and women who, in the intimacy of the rural neighborhood, know something about the deserts of their fellow-citizens, may judge better than a distant bureau chief when benevolence is justified.”<sup>258</sup> Indeed, this might explain why rural residents frequently oppose welfare even when their communities are reliant on it—divorced from the local context, they fixate on the undeservingness of those “out there.”<sup>259</sup>

If one set of concerns involves the responsiveness of rural policies to local interests, another is the effect that centralization has on the role of rural local governments as a forum for negotiating political conflicts. In other words, it reduces the range of issues that rural residents can turn to their local governments to address and limits their experiences with navigating political conflicts on their own. Of course, we often do not recognize the extent to which local conflicts exist. We assume that because farming is important in rural communities, “right to farm” statutes are inherently “pro-rural.” Similarly, because environmental regulations are said to threaten certain rural industries, we assume that they are inherently “anti-rural.” But at the local level, rural interests are often divided. The reason why “right to farm” statutes are needed at all is because many rural communities are divided over agricultural and livestock practices—a divide that splits conventional farmers from organic farmers or agribusinesses from family operations.<sup>260</sup> While the employment of

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labor-rich but capital-poor, the move to taxation to round out the funding eventually imposed greater costs on rural residents despite the overall efficiency that it enabled. *See id.* at 85.

256. *See* BECHTEL, *supra* note 204, at 54–55, 62.

257. Public authorities are quasi governmental subdivisions, often created for a single purpose and usually serving a broad jurisdiction much larger than counties. They are not considered general-purpose governments like cities, counties, or towns. Modeled after private corporations, they are often led by a board of directors appointed directly by the state or elected on the basis of property ownership rather than individual votes. *See* WALSH, *supra* note 205, at 5. Moreover, their funding often comes from the imposition of user fees and assessments rather than taxes. *Id.* at 4.

258. LANCASTER, *supra* note 101, at 284.

259. *See* HOCHSCHILD, *supra* note 45, at 137–40.

260. *See* Leah Douglas, *Big Ag Is Pushing Laws To Restrict Neighbors’ Ability To Sue Farms*, NPR (Apr. 12, 2019, 7:00 AM), <https://www.npr.org/sections/thesalt/2019/04/12/712227537/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms> [<https://perma.cc/8MND-ZR6K>]; *Factory Farms*, FAMILY FARM DEFENDERS, [http://familyfarmers.org/?page\\_id=62](http://familyfarmers.org/?page_id=62) [<https://perma.cc/H5UC-S9UX>]; Kristofor Husted, *Missouri Constitutional Amendment Pits Farmer Against Farmer*, NPR (Aug. 6,

some rural residents may be affected by state and federal environmental regulations, those regulations may also be seen by other rural residents as necessary to protect their health or livelihood. What this means is that some rural interests are likely to be served whenever the state or federal government intervenes. But because decisions are often made at the state and federal level, rural residents are foreclosed from the experience of negotiating, on their own, the tensions within their communities. Rather than turning to one another in resolving local conflicts, regulatory centralization encourages them to petition directly to higher authorities.

The extent to which these local democratic interests should be balanced against the state and national interests at stake is open to debate. What we often overlook, though, is that there are any local democratic interests worth considering at all in the rural context. The result is the continued erosion of rural local governments as vehicles for deliberative democracy or meaningful self-actualization. It is no wonder then why rural residents feel disaffected and disempowered and harbor antigovernmental sentiments.

#### IV. TOWARDS A NEW RURAL DEMOCRACY

The plight of rural America today, I have argued, is rooted both in the decline of rural communities and the disaffection of rural residents. Both their decline and disaffection, I have suggested, is tied to the democratic deficit of rural local governments and their limited ability to channel the interests of their residents. Taken together, efforts to address the suffering of rural communities in the short term should be joined with efforts to expand their democratic capacity in the long term. But is local empowerment still possible in the rural context? Would it be effective in addressing rural decline or even welcomed by rural residents themselves? I consider each of these questions in turn.

##### A. *Possible?*

It is difficult to imagine how the democratic capacity of rural local governments can be enhanced without addressing the legal and political structures that define their role. Yet it is also difficult to imagine how the legal and political structure of rural local governments can change given its long and deep roots in American history. After all, the erosion of local democracy in rural America draws in part from the initial organization of rural local governments and the persistence of that organization over the years. Moreover, to the extent that the limited role of towns and counties have been further displaced by the expansion of state and federal authority, one might question whether this consolidation can be rolled back. But even if we are unlikely to recapture the

kind of rural democracy celebrated by Tocqueville and Bryce in the nineteenth century, I believe that meaningful steps can be taken to broaden the democratic capacity of rural local governments and restore to rural residents a greater sense of agency and control over their lives and their communities.

Indeed, meaningful steps can be taken at the state and federal level that do not require wholesale transformation of the basic legal and political organization of counties and towns. At the most basic level, rural local governments could simply be given a more prominent role in the design and implementation of state and federal policies. Programs intended to tackle rural problems could be designed to allow communities to channel the resources into what they feel are the root problems and experiment with what they believe might be effective solutions. The “notice and comment” procedure for proposed regulations can also deliberately solicit comment from affected rural communities, rather than relying on the traditional feedback system that is so often co-opted by special interest organizations and business lobbies. Small reforms like these might restore some of the agency and control that rural residents feel they have lost, especially as the policy avenues for addressing local problems increasingly run through distant bureaucracies. And for state and federal policymakers, courting rural local governments as experts and partners might also make for more effective policies. Tailored responses to the rural drug epidemic might be possible if communities had more say in what kinds of initiatives to fund,<sup>261</sup> or whether to tackle opioids versus methamphetamines.<sup>262</sup> Efforts to improve rural healthcare access might benefit from local experience with respect to how best to recruit, train, and retain healthcare providers, or whether to fund regional hospitals or local clinics. Expansion of rural broadband might be accelerated if rural local governments are seen as potential internet providers and supported as such. More importantly, as general-purpose governments, counties and towns might even help develop innovative approaches that tackle these and other rural problems as interrelated rather than separate issues.

What interests me in these kinds of reforms is not only how policymaking at the state and federal level might better accommodate rural interests but also the effect it may have on the role and perception of rural local governments themselves. Rather than simply entities to which taxes are paid and from which services are provided, rural residents might begin to see their local governments as a forum for shaping state and federal policies and the manner in which they are implemented. In turn, local leaders may come to see their responsibility as

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261. See Strach et al., *supra* note 75.

262. See Carmen Heredia Rodriguez, Elizabeth Lucas & Orion Donovan-Smith, *Federal Grants Restricted to Fighting Opioids Miss the Mark, States Say*, NPR (June 13, 2019, 5:00 AM), <https://www.npr.org/sections/health-shots/2019/06/13/731512068/federal-grants-restricted-to-fighting-opioids-miss-the-mark-states-say> [https://perma.cc/GTZ3-7ACJ].

involving more than how best to comply with state and federal mandates but also how to negotiate, represent, and give voice to the varied political interests of their communities. Through their local governments, rural communities might begin to find their collective voice and a platform for its expression. What is our community's position on Medicaid expansion and the anticipated effect it might have on our neighbors? What is our community's official comment on proposed regulations regarding hydraulic fracturing and water safety, especially with respect to the economy and health? Rural residents are already debating questions like these in diners and coffee shops across the country. But the experience of arriving at a collective position—working through disagreements among neighbors where all sides are situated within a shared local context—might provide an avenue for communal self-determination that is otherwise lacking.

If rural local governments are to play a more significant role in enhancing the democratic capacity of rural communities, then they must actually be representative of those communities. In other words, a second set of reforms might seek to ensure a better fit between rural communities and rural governance. Part of this might require adjusting the physical boundaries that delineate one rural local government from the next. Perhaps, like the decennial redistricting of legislative districts, state legislatures might review and redraw county and township boundaries that have, in many cases, persisted since colonial times.

Alternatively, legal avenues might be created for rural communities to establish or redefine local government boundaries on their own—whether through some form of rural reincorporation or a negotiated process by which county and township borders are readjusted. Steps might also be taken to “right size” rural local governments to fit rural communities of interest. In some states, counties may be too large to serve as the government closest to the people. In others, towns and townships might be too small. I do not presume that an “optimal size” exists; geography, tradition, culture, and local economies vary, and each affects how residents define their communal boundaries. What is important is to start thinking about the structure of rural local governments with an eye towards their democratic potential. Indeed, establishing political jurisdictions that align with natural communities may be even more important today as the gerrymandering of state and federal legislative districts increasingly eschews geographic and community ties in favor of partisan advantage.

Aside from the physical jurisdiction of rural local governments, another aspect worth considering is their internal governance. What might be done to both ensure and enhance the participation of rural residents in their local governments? At the most basic level, this means that the vote should not be diluted or denied, especially when it comes to historically underrepresented minorities. In communities where the immigrant population is growing, steps

might be taken to expand the local franchise to include noncitizens, or at least ensure that their voices are represented in local decisionmaking. It might even be time to consider whether the tradition of the New England town hall—where all residents have the opportunity to assume a direct role in local policymaking—might be revived and finally exported beyond the New England states. Beyond voting, it might also be necessary to reexamine the structural organization of rural local governments themselves. Designed as administrative subdivisions of the state, many county and town governments continue to be organized around officials and offices that operate independent of one another and at a distance from the political process. The effect, however, is to make it difficult for rural residents to navigate these competing spheres, know which official to hold to account, and coordinate policy responses across these independent silos.<sup>263</sup> And this fragmentation is even worse once we factor in the jurisdictional divide between rural counties and towns and their relationship with public authorities and state agencies. Ironically then, decentralizing power to rural local governments may involve increased centralization of the local governments themselves.

Third, the baseline powers of rural local government might be increased. Home rule could be expanded to cover more rural local governments and on the same terms as their urban counterparts. More power and authority can be granted to rural counties and towns to enact laws and regulations, especially on issues that affect their communities. State preemption statutes, especially those that simply deny local governments the ability to regulate entirely, might be rolled back. The goal here is not just to empower rural local governments; it is also to convince rural residents that engagement through local politics is worthwhile. At the very least, rural local governments might provide a forum through which local grievances can be aired and conflicts can be negotiated. In time, it may also lead to the kind of policy innovations and experimentation that have long been associated with true and meaningful decentralization.

Indeed, in thinking about how to reallocate power between the state and rural local governments, it may be that we need to rethink the traditional political-administrative divide between the two. There is a certain irony to how the current system is set up. We assume that politics and policymaking is the

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263. See DOUGLASS, *supra* note 97, at 193–94 (“In each civil unit down to the smallest the division of responsibility tends to be exact and minute. Not only does the distinction between the executive, legislative and judicial departments of government obtrude into the civil machinery of the little town, but such matters as schools, libraries and public health are taken ‘out of politics’ and delegated to other and various hands. In consequence there is a multitude of minor officials, all inexpert, performing small functions informally and incidentally while carrying on private vocations. . . . Now civic improvement must use such officials as American local government furnishes. It must struggle with cumbersome and divisive machinery. It must work through a bewildering variety of local officials, many of them not primarily elected by the town’s people, nor directly amenable to civic purpose. It needs at least to be disentangled from this embarrassing complexity of jurisdiction.”).

province of states. If rural local governments have a role, it is largely concerned with the implementation of state policies, the delivery of services, and increasingly—with the rise of “unfunded mandates” from the federal government and the state—the need to raise revenue to accomplish those charges.<sup>264</sup> Given this divide, it is no wonder that critics of rural local governments abound. As Progressive reformers argued at the turn of the twentieth century, rural local governments have neither the expertise nor economy of scale to implement policies or deliver services efficiently.<sup>265</sup> From this perspective, it makes sense why so many argue that instead of empowering rural towns or townships, more of them should be abolished.

But administrative efficiency might simply be the wrong metric. As noted earlier, many of the challenges facing rural America require political negotiations. Even if the funding and delivery of services can be done more efficiently at the state or federal level, local political processes can still be useful in setting priorities and tailoring their implementation. More importantly, rural local governments may be a useful forum for determining what kinds of services are necessary and what kind of investments should be made. This, no doubt, will require an expansive reconceptualization of the role of counties and towns—one that contrasts sharply with how they were initially imagined and have developed over time. It will also require a reorientation of how we understand state and federal authority, which we often assume is responsible for political decisions that are then carried out by local government units. But politics at the local level is important, and the sense of agency and control that it imparts should not be overlooked in the name of administrative efficiency and expertise.

Each set of reforms that I have proposed for rural local governments—increasing their role in state and federal policymaking, increasing their democratic capacity, and expanding their political power—are meaningful in and of themselves. But it is also important to recognize that all three are interrelated. It is unlikely, for example, that rural local government can be an effective partner in the design and implementation of state and federal programs if they are not also recognized by rural residents as a meaningful sphere for political participation. They are also not likely to be a meaningful sphere for political participation if they are not organized or structured in a way to empower rural residents and offer some concrete means by which they can enact policies. And of course, in a world where the fate of rural America is affected by state and federal policies, true local empowerment comes from not just independent authority but also through the ability of rural local governments to affect state and federal policymaking. In short, we need not

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264. See J. Edwin Benton, *The Impact of Structural Reform on County Government Service Provision*, 84 SOC. SCI. Q. 858, 859–60 (2003).

265. See TOCQUEVILLE, *supra* note 10, at 85–86.

accept rural local governments as they currently exist. It may be necessary to reconsider their role in a more expansive and holistic fashion.

B. *Effective?*

Even if a reinvigoration of rural democracy is possible, would it be effective in addressing or reversing rural decline? In other words, what are the chances that local empowerment can lead to beneficial policies or meaningful reform? Indeed, if rural local governments have thus far been absent in discussions about addressing the plight of rural America, it is because there is widespread doubt that there is anything that they can do. Lacking resources and expertise, it is not clear how local leaders can effectively respond to the suffering of their residents. Given their jurisdictional limits, rural local governments also seem ill-suited to dealing with the increasingly national and international roots of rural decline. Moreover, even if enthusiasm for “localism” is growing, especially as a response to partisan gridlock at the federal level, most of that enthusiasm today is centered on cities.<sup>266</sup> Rural counties and towns do not attract the same kind of experts that fill the ranks of city administrations. They do not have the charitable foundations and business communities that have historically supported urban initiatives with private dollars. A solution to the rural crisis then appears only possible through policies at the national or state level. And if that solution is to be successfully implemented, more centralized control, not less, seems necessary over the administrative function of rural local governments.

I do not deny the challenges that rural local governments face or the need for rural-centered policies at the state and federal level. But the reality is that aside from the attention that rural America receives during electoral cycles, their struggles and concerns rarely factor into policymaking at higher levels. If anyone is concerned about rural communities in America today, it is the rural communities themselves. In addition, the ability to address local issues at the local level is all the more important in the rural context because of the different sets of challenges that they face. There is no guarantee that a national or even statewide rural policy can be developed to address the diversity of rural economies, demographic trends, and cultural contexts in which solutions are needed. Resources and expertise are helpful, but they cannot wholly compensate for the kind of local knowledge that ordinary residents possess or

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266. See generally BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD: DYSFUNCTIONAL NATIONS, RISING CITIES* (2013) (explaining how cities can and do save the world); BRUCE KATZ & JEREMY NOWAK, *THE NEW LOCALISM: HOW CITIES CAN THRIVE IN THE AGE OF POPULISM* (2017) (describing the advent of new localism mainly in terms of city growth and governance); RICHARD SCHRAGGER, *CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE* (2016) (advocating for broader city power).

the kind of cultural fluency that is so often required for policies to be effectively implemented in a given community.<sup>267</sup>

Indeed, there is no reason to believe that the benefits commonly associated with decentralization apply any differently once we move from the urban to the rural context. We have already discussed how empowering rural local governments might allow for the development of tailored policies fitted to a particular context. Equally important, in my mind, is the possibility that rural local governments might engage in the kind of policy experimentation and innovation that is currently taking place in urban settings. Rather than relying on a national policy or corporate initiatives, rural communities themselves might be given more leeway to experiment with how best to expand access to broadband internet service, address public health concerns,<sup>268</sup> or promote food security.<sup>269</sup> Some of these experiments will fail, but others might succeed. Some may serve as templates for state or national policies, while others might simply be what works in a particular community. We should not forget that many of the most successful rural policies in the past have been adapted from local practices. Even if local policy experimentation does not produce a model that can be exported, the widespread proliferation of varying local solutions might, as a whole, constitute precisely the kind of national strategy that we need.

Moreover, policy tailoring and experimentation may be all the more important in rural areas today because of the dramatic change that they are experiencing. The challenges that many rural communities face is not just the erosion of their traditional economic, demographic, and cultural identities but, more importantly, how these developments require rural communities to reinvent and redefine themselves. As many researchers are now pointing out, resilient communities are not those that can resist change. Instead, as the pace of economic restructuring and technological innovations quicken, resilience often lies in the capacity of a community to adapt. This kind of adaptation, in my view, is only possible if local communities are willing and if local residents feel they have some voice in the direction that it takes. This kind of buy-in and agency, I believe, requires a robust local forum in which different visions of the community can be debated and negotiated. This is already happening to some degree, as many rural communities have redirected local economic development efforts in search of avenues for future revitalization—whether it be recreation and tourism, advanced manufacturing, farm-to-table agriculture, or even “server

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267. See Jack Kloppenburg, Jr., *Social Theory and the De/Reconstruction of Agricultural Science: Local Knowledge for an Alternative Agriculture*, 56 RURAL SOC. 519, 529 (1991).

268. See Staci Matlock, *A Team on Their Side*, MEDIUM (July 1, 2016), <https://medium.com/small-towns-big-change/a-team-on-their-side-e8459eba6f25> [<https://perma.cc/AAJR2-5P2H>].

269. See generally JOEL SALATIN, EVERYTHING I WANT TO DO IS ILLEGAL: WAR STORIES FROM THE LOCAL FOOD FRONT (2007) (describing local efforts to deregulate local food sales in rural areas to encourage more farm-to-table access).



farms” connected to cloud computing. But local democratic participation might also be important for those communities facing insurmountable odds and what appears to be inevitable decline. How should a community “downsize” or “right-size” to better accommodate the new baseline? What support should be given to assist rural residents where they are, and how much should be dedicated to helping them find opportunities elsewhere? These debates are already happening in policy circles at the highest levels of government, but it might still be helpful to give some meaningful voice to the communities themselves.

It would be naive, of course, to assume that true self-determination is possible in our interconnected world. But expanding the capacity for individuals to exercise some agency over their lives or participate in making decisions affecting their communities is still a worthwhile goal.<sup>270</sup> Indeed, democratic capacity may be even more important in rural communities given the political nature of so many of the challenges that they face. Sure, deprivation is the lens through which the contemporary rural crisis is ordinarily perceived: the loss of jobs, the departure of people, and the decline in cultural norms. The way forward, however, depends on not only restoring what has been lost but also engaging in serious conversations about how rural communities will reinvent and reimagine themselves for the twenty-first century. What will be the new rural economy, and how will it be structured? Who will be a part of the new rural community, and how will that identity be constructed? What will be the values and culture that define rural America, and how will those be established and maintained? There is no reason to believe that all rural communities will follow the same path. The need for reinvention, and the manner in which it might be carried out, also varies from one community to another. Moreover, for any changes to be effective, buy-in from rural residents will be necessary. There is no shortage of top-down reforms that have failed to penetrate because of resistance from those they intend to help. Increasing the capacity for bottom-up approaches not only instills residents themselves with ownership and agency, it also makes it more likely that meaningful reforms can be carried out.<sup>271</sup>

270. See DAHL & TUFTE, *supra* note 65, at 140 (“It seems evident to us that among the units most needed in the world as it is has been evolving lie several at the extremes: we need some very small units and some very large units. . . . Very large units that transcend the parochialism and inadequate system capacity of the nation-state are evolving, but too slowly—quite possibly too slowly for human survival. If the giant units are needed for handling transnational matters of extraordinary moment, very small units seem to us necessary to provide a place where ordinary people can acquire the sense and the reality of moral responsibility and political effectiveness in a universe where remote galaxies of leaders spin on in courses mysterious and unfathomable to the ordinary citizen.”); HICKS, *supra* note 244, at 193 (“To me the problem of practical democracy in a large and complex society seems exceedingly difficult, and it is not going to be solved by slogans. The very difficulty of that problem, however, makes me all the more certain that people should have as much power as possible over the things that directly affect their lives.”).

271. See Linda Lobao & David Kraybill, *Poverty and Local Governments: Economic Development and Community Service Provision in an Era of Decentralization*, 40 GROWTH & CHANGE 418, 444–46 (2009).

All of this is to say that effectiveness of rural policies should not be judged based on whether a “solution” to the rural crisis can be found, much less one that would work for all rural communities. Equally important is the process by which rural policies are made. Here we have to remember that in addition to the policy challenges that rural America now faces are the political challenges of reimagining rural communities for the twenty-first century.

C. *Desired?*

My assessment of rural democracy thus far has largely focused on the structure of local governance. More specifically, I have argued that the limited role of counties and towns as meaningful forums for democratic participation is one reason why political disaffection is so pervasive in rural areas. But do rural residents actually want a more expansive role for local governments? Is this the kind of “democracy” that is desired in rural America? After all, rural residents often reject reform efforts to expand the authority of their counties and towns.<sup>272</sup> Rural voter turnout at the local level has historically been lower than in urban areas.<sup>273</sup> Moreover, most accounts of rural disaffection do not center on local governments at all.

Indeed, given the values and norms commonly associated with rural culture, perhaps “government” is the wrong place to look for rural democracy.<sup>274</sup> The self-reliance and individualism prized by rural residents, some argue, make it difficult for them accept governmental assistance or put faith in collective action.<sup>275</sup> The hierarchical organization of rural life, others note, engenders a deference to authority<sup>276</sup> that undermines grassroots political participation. It is also argued that because rural communities have historically been bound together by ethnic, religious, and cultural ties,<sup>277</sup> there is little common ground for political negotiations when those communities find themselves fractured by diversity and inequality. From these perspectives, rural disaffection simply reflects the disconnect between traditional rural culture and the new realities facing rural America.

272. See *supra* notes 179–82 and accompanying text.

273. See, e.g., GRODZINS, *supra* note 49, at 201.

274. Rather, rural “democracy” is commonly tied to the communities in which rural residents are embedded. It is through norms, not regulations, that communal obligations are established. It is primarily through social sanctions, not governmental enforcement, that communal expectations are maintained. See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1994) (referring to these norms as “order without laws”); NANCY L. ROSENBLUM, *GOOD NEIGHBORS: THE DEMOCRACY OF EVERYDAY LIFE IN AMERICA* (2016) (describing the social interactions that constitute the “democracy of everyday life”).

275. See, e.g., HICKS, *supra* note 244, at 217–18.

276. See, e.g., MARC J. HETHERINGTON & JONATHAN D. WEILER, *AUTHORITARIANISM AND POLARIZATION IN AMERICAN POLITICS* 33–42, 60 (2009).

277. See, e.g., JON GJERDE, *THE MINDS OF THE WEST: ETHNOCULTURAL EVOLUTION IN THE RURAL MIDDLE WEST, 1830–1917*, at 247 (1997).

I believe that understanding rural culture and identity is central to understanding democracy in rural America. Nevertheless, I think it is equally important to recognize the limits of describing rural disaffection solely through generalization about rural culture and identity. Part of the problem is that, once extrapolated into broad principles and values, contradictions are inevitable.<sup>278</sup> It is difficult to reconcile, especially in the abstract, rural pride in individualism with rural commitments to community, or the values placed on self-reliance with traditional deference to authority. Like all cultural representation, different facets of rural culture tend to manifest in different situations. The popularity of the Tea Party in rural America led many to conclude that rural residents believed in small government and an even smaller social safety net. But the rise of the populist wave that gave way to the election of Donald Trump reflected yet another view of rural residents—one that sought even more governmental intervention and support in bolstering rural industries and aid for rural residents. The same contradictions, I argue, exist in how rural residents see democracy.

But even if norms rather than laws serve as the foundations of rural governance, I believe it is important to recognize the degree to which those norms are shaped by the structural organization of local governments. If rural residents have learned to depend on themselves rather than the government, it might be because the counties and towns that serve rural areas have become such poor vehicles for collective action.<sup>279</sup> If rural residents draw a sharp distinction between community support and governmental assistance, part of the reason may lie in the manner in which rural local governments have historically been structured—not as a representative of their community but as an administrative agent of central governments. And there is reason to believe that the experiences of rural residents with their local governmental institutions shape their perspectives of democracy as a whole. After all, local governments have long been described as a “schoolhouse” for democracy.<sup>280</sup> It is the daily interactions of citizens with the lowest level of government, many argue, that define what it means to be a citizen in our democratic system. But if democratic capacity is lacking at the local level, is it that surprising that faith in democracy as a whole is waning in rural communities?

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278. For an exploration of the complexities of and tensions within rural politics, see Loka Ashwood, *Rural Conservatism or Anarchism? The Pro-State, Stateless, and Anti-State Positions*, 83 RURAL SOC. 717, 733–36 (2018).

279. See, e.g., GRODZINS, *supra* note 49, at 209 (“Frustration of scope of control, if a universal of the American system, is nevertheless felt most acutely in the small local governments of rural America.”).

280. See, e.g., BRYCE, *supra* note 88, at 261 (“[T]he Town or township with its popular primary assembly is . . . the most educative to the citizens who bear a part in it. The Town meeting has been not only the source but the school of democracy.”).

Indeed, it may be that formal democratic institutions are more important today precisely because the foundations of informal rural governance are deteriorating. Rural residents complain that community ties are fraying—unraveled by years of rural depopulation and the rise of inequality and growing diversity. They are chafing against the influence of corporations and big businesses, many of which they believe are detached from the local communities in which they operate. All of this undermines the ability of rural communities to shape their own development through communal norms. Yet this may be precisely the void that local government institutions can fill. In communities that can no longer rely on ethnic, religious, or cultural ties to resolve conflicts and disputes, local governments might provide precisely the kind of neutral forum that is needed and where grievances can be aired. Local democracy might serve as the “civil religion”<sup>281</sup> that allows rural residents to continue to see themselves as a community and act as a collective whole. Local regulations might be used to control rural activities undertaken by actors that are not susceptible to social sanctions. All of this, of course, would require a rethinking of how rural local governments are currently organized and their role in rural life. But perhaps this rethinking is all the more necessary precisely because the foundations of informal rural governance are eroding.

I have suggested here that rural local governments might be the basis for building a new rural identity. I have argued that local governments might be the bridge that is necessary to achieve a new, and perhaps more inclusive, definition of rural communities. But is that likely to happen? Given the fierce partisan divide that has dominated American politics at the state and national level, can we expect local democracy to do more than simply reflect the growing fault lines in rural America—between older-timers and newcomers,<sup>282</sup> between ethnic majorities and minorities, between partisan insiders and outsiders? I readily admit that there are no guarantees when it comes to democratic politics. Yet there are also some signs that shared local contexts do matter and can sometimes temper partisan divisions.<sup>283</sup> Rural voters overwhelmingly support immigration restrictions at the national level.<sup>284</sup> Yet when it comes to immigrants within their own communities, their views are often more nuanced and far less likely to be

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281. See Robert N. Bellah, *Civil Religion in America*, in *AMERICAN CIVIL RELIGION* 21, 26 (Russell E. Richey & Donald G. Jones eds., 1974).

282. See, e.g., LYN C. MACGREGOR, *HABITS OF THE HEARTLAND: SMALL-TOWN LIFE IN MODERN AMERICA* 24–26 (2010); WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 74–75.

283. See WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 10 (suggesting that in daily rural life, partisan positions are “nuanced” and “reflect[] the compassion that may be present for a neighbor who has had an abortion or a best friend who is gay”).

284. See Katherine Fennelly & Christopher Federico, *Rural Residence as a Determinant of Attitudes Toward US Immigration Policy*, *INT’L MIGRATION*, Mar. 2008, at 151, 172.

in support of immigration enforcement.<sup>285</sup> Rural voters are more likely to deny the existence of man-made climate change.<sup>286</sup> But when it comes to, say, “fracking” or gas pipelines in their backyards, concerns about the environment, property values, and public health often spark local opposition.<sup>287</sup> Indeed, unlikely alliances often arise when grounded upon a shared rural context.<sup>288</sup>

Moreover, we need to confront the fact that many of us, including those in the so-called “establishment” have long harbored deep distrust of local policymaking in general, and that in rural areas in particular. The elephant in the room, of course, is the fear that, left to their own devices, rural residents will make “bad” decisions. Fear of mob rule has long defined our perception of urban democracy.<sup>289</sup> In rural America, that same fear is compounded by worries that racism, bigotry, and intolerance will rule the day.<sup>290</sup> These feelings are no doubt shaped in large part by the extent to which “local control” was used to justify Jim Crow and racial segregation during the civil rights movement.<sup>291</sup> But it was also the lack of true local democracy, for Blacks and other racial minorities especially, that contributed to their subordination.<sup>292</sup> We should not believe that

285. See, e.g., CORNELIA BUTLER FLORA, JAN L. FLORA & STEPHEN P. GASTEYER, *RURAL COMMUNITIES: LEGACY + CHANGE* 438–39 (5th ed. 2015) (describing community efforts in Sioux City, Iowa, to limit local participation in federal immigration enforcement); Robert Samuels, *The GOP’s Condemnation of ‘Sanctuary Cities’ Is Surprisingly Awkward in Iowa*, WASH. POST (Jan. 31, 2016), [https://www.washingtonpost.com/politics/the-struggle-with-sanctuary-cities-in-iowa/2016/01/31/575150f4-bb9c-11e5-b682-4bb4dd403c7d\\_story.html](https://www.washingtonpost.com/politics/the-struggle-with-sanctuary-cities-in-iowa/2016/01/31/575150f4-bb9c-11e5-b682-4bb4dd403c7d_story.html) [<https://perma.cc/D9EL-23HR> (dark archive)].

286. See, e.g., Megan Julia, *Where American Communities Agree and Disagree on Climate Change*, AM. COMMUNITIES PROJECT (Dec. 5, 2018), <https://www.americancommunities.org/where-american-communities-agree-and-disagree-on-climate-change/> [<https://perma.cc/EJ5E-VW9W>] (showing that about half of rural residents believe that climate change is happening and man-made).

287. See, e.g., Jeanne Simonelli, *Home Rule and Natural Gas Development in New York: Civil Fracking Rights*, 21 J. POL. ECOLOGY 258, 266–68 (2014); Eliza Griswold, *A Pipeline, a Protest, and the Battle for Pennsylvania’s Political Soul*, NEW YORKER (Oct. 26, 2018), <https://www.newyorker.com/news/dispatch/a-pipeline-a-protest-and-the-battle-for-pennsylvanias-political-soul> [<https://perma.cc/A3ZE-YAZZ>]; Josh Hicks, *In Rural Western Maryland, Fracking Divisions Run Deep*, WASH. POST (Feb. 26, 2017), [https://www.washingtonpost.com/local/md-politics/in-rural-western-maryland-fracking-divisions-run-deep/2017/02/26/3dc0c0d4-f791-11e6-bf01-d47f8cf9b643\\_story.html](https://www.washingtonpost.com/local/md-politics/in-rural-western-maryland-fracking-divisions-run-deep/2017/02/26/3dc0c0d4-f791-11e6-bf01-d47f8cf9b643_story.html) [<https://perma.cc/43G5-T73F> (dark archive)]; see also ELIZA GRISWOLD, AMITY AND PROSPERITY: ONE FAMILY AND THE FRACTURING OF AMERICA 6 (2018).

288. See ZOLTÁN GROSSMAN, UNLIKELY ALLIANCES: NATIVE NATIONS AND WHITE COMMUNITIES JOIN TO DEFEND RURAL LANDS 8 (2017).

289. See FRUG, *supra* note 167, at 44.

290. See WILLIAMS, *supra* note 32, at 4; WUTHNOW, *THE LEFT BEHIND*, *supra* note 31, at 141–58.

291. See generally Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83 (explaining the use of “local control” by city governments in the South to justify segregation and Jim Crow).

292. See, e.g., MARK SCHULTZ, *THE RURAL FACE OF WHITE SUPREMACY: BEYOND JIM CROW* 7–8 (2005). Indeed, Schultz argues that the weakness of state and local governments in the South was in part an effort to preserve the private power of whites from being overtaken by the public power that might be wielded by black residents. See *id.* at 175–76.

empowering rural local governments as they are currently structured or organized is the goal. Rather, the question is how all rural residents can be given greater opportunity to participate in deciding the fate of their communities and who belongs. Constitutional limits and substantive laws should still constrain local policymaking, especially when it comes to the rights and interests of minority residents. But none of this should be seen as incompatible with expanding the democratic capacity of rural communities and making participation at the local level more meaningful and responsive. And on the policy choices themselves, perhaps some missteps should be tolerated along the way. After all, as Bryan argues, “[r]eal democracies must be free to make mistakes.”<sup>293</sup>

None of this is to say that local divisions do not exist. But when controversial issues are brought down to the local level, the local context offers a frame through which the terms of the debate are better understood. Moreover, local political participation may itself be a transformative experience, especially when it comes to learning how to deal with strangers as neighbors.<sup>294</sup> It may allow rural residents to cultivate what Frank Bryan calls, “the critical human virtue of forbearance”—or, in other words, “how to suffer damn fools and to appreciate the fact that from time to time you too may look like a damn fool in the eyes of people as good as yourself.”<sup>295</sup> In other words, rather than resorting to higher levels of government, rural residents also need a way to negotiate and resolve local tensions on their own. If rural residents are frustrated with governmental solutions, it is probably because of the bureaucratic manner in which many rural conflicts are addressed and the need to turn to state and national policymakers who are detached from the local context in which these conflicts arise. What is missing is a robust political process that is both local and effective and rooted in the communities themselves. This is what an invigoration of rural local governments might promise.

#### CONCLUSION

It is difficult to imagine an effective response to the plight of rural America without the involvement of the rural residents themselves. But it is also unlikely for rural residents to be engaged if there is no outlet for political action at the local level. The contemporary crisis in rural America involves more than just rural decline. It is also a crisis of rural democracy, reflected in the disaffection of rural voters and rooted in the legal structure of rural local governments. Addressing the problems now facing rural America then requires

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293. BRYAN, *supra* note 26, at 292.

294. See FRUG, *supra* note 167, at 10–11, 115–19; RICHARD SENNETT, *THE USES OF DISORDER: PERSONAL IDENTITY & CITY LIFE* 144–45 (1970).

295. BRYAN, *supra* note 26, at 288.

more than just resources or efficient administration. It is also necessary, in my view, to expand the role of rural local governments as effective forums for democratic participation and meaningful vehicles for collective action.

What is required then is a willingness to reimagine the role of rural local governments, their relationship with their residents, and their role in American democracy. The goal should be how rural residents might once again be given a greater sense of agency and control over their own lives and communities. Though I offer several proposals, I do not conclude with a definitive set of reforms. It is enough, in my eyes, to suggest that alternatives are possible. In any event, I believe that any meaningful restructuring will need to be decided upon by the residents themselves. The process through which rural local governments is reformed is just as important as the outcome.

