



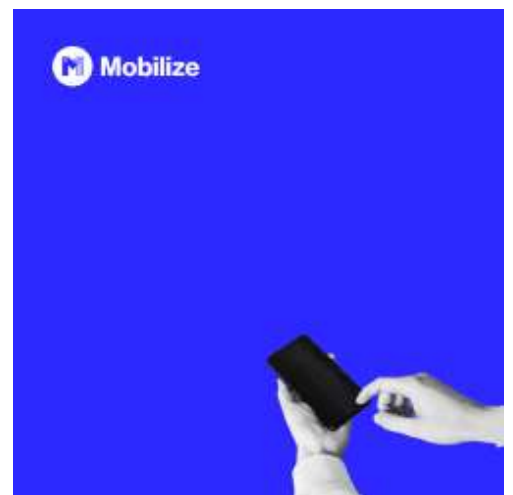
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A Time for Reform: Philanthropy and the Push for Better State Policymaking

Philip Rojc



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THE ALABAMA STATE CAPITOL BUILDING IN MONTGOMERY. PHOTO: SUSANNE POMMER/SHUTTERSTOCK

In early 2016, Birmingham became the first city in the South to approve a local minimum wage, raising its floor from \$7.25 to \$10.10. The decision was a major victory for local economic and racial justice advocates. But it wasn't to last. In a matter of days, Alabama state legislators passed the Uniform Minimum Wage and Right-to-Work Act. Timed and targeted to preempt Birmingham's wage hike, the bill required all Alabama cities to abide by the federal minimum. Since then, the city's lowest-wage workers have been stuck earning \$7.25 an hour.

For many anti-poverty funders, Birmingham's ill-fated attempt at a wage hike hammered home a hard truth. "That's when the punitive nature of state preemption on cities came to a head for us," said Laleh Ispahani, managing director of the Open Society Foundations' U.S. programs. "We realized our investments in progressive change in cities [were] moot if states were interfering in city policymaking."

Aggressive state preemption of local laws **has grown more common over the past several years**, most often involving conservative state legislators overriding policies passed by liberal cities. Minimum wage hikes, plastic bag bans, fracking bans, firearms regulations and nondiscrimination ordinances are just a few frequent subjects of preemption. Concerned funders have ramped up a response, but that work has taken place well outside the limelight. Matters of state policy, let alone the legal relations between levels of government, just haven't been on the public's radar, and they've been given short shrift by most funders.

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Until now, that is. “The COVID-19 pandemic has blown the cobwebs out as states receive outsized media attention and governors make full use of their powers,” writes Neil Kleiman [in a new report](#) outlining how stakeholders—including philanthropy—can foster more effective relationships between state and local governments. Kleiman, who heads the NYU Wagner Innovation Labs, assembled the report with support from the Kresge Foundation. Along with OSF, Robert Wood Johnson, Kellogg and others, Kresge is one of several national funders that were already paying closer attention to state policy in the years and months before COVID-19.

Now, the pandemic has brought a level of public scrutiny to state and local affairs that’s pretty much unprecedented in recent history. The question is what, exactly, advocates and institutions will do with this moment, and how philanthropy should best deploy its resources for impact at a time when historic state policy shifts are not only possible, but probable.

Federalism: A Work in Progress

This isn’t the first time relations between federal, state and local government have been poised for a rethink. The United States has spent centuries celebrating and agonizing over its decentralized approach to democracy. In “Democracy in America,” Alexis de Tocqueville paid homage to American traditions of local self-government, tying “municipal liberty” to the wider principle of the sovereignty of the people. But the framers did not go so far as to enshrine local government in the U.S. Constitution, giving states what amounts on paper to total control over what goes on in local jurisdictions.

That's not how it works in practice, though. Over the years, the give-and-take between cities and states has led to the development of a complex body of law and procedure. The majority of states (though not all of them) have codified systems of home rule in their own constitutions, laying out the basic rights and responsibilities of local governments. In every state, an array of legal precedent has accumulated around local democracy. The result is a diverse set of laws and norms that can be immensely difficult for advocates to navigate.

COVID-19 has shone a bright light on just how much power the U.S. system reserves to the states. Governors, not the White House, made the key decisions about when and how to lock down states and enforce social distancing rules. The feds can offer guidance and resources, but the policies that have most impacted people's lives during COVID-19 originated in state capitals. And while local governments are for the most part free to take additional steps for their citizens' welfare, they cannot override state public health policy.

Spats over pandemic policy between New York Governor Andrew Cuomo and New York City Mayor Bill de Blasio are one illustration of the ongoing tug-of-war between states and localities—and that's between two Democrats. Nevertheless, while city-state tension will never disappear, COVID-19 “has created a once-in-a-lifetime opportunity to rethink and refashion government relations; to get the balance right,” as Kleiman's report puts it.

Conservatives Pull Ahead

But what threw that balance off, and why might it be a good idea for funders to pay closer attention? The story starts with demographics. Back in 1953, when the American Municipal Association (now the National League of Cities, or NLC) published guidelines that set off the last big era of home rule reform, only around 64 percent of Americans lived in urban areas. As of the 2010 census, that figure has jumped to 81 percent and will likely continue to climb. In a proposed set of “[Principles of Home Rule for the 21st Century](#),” published just before the pandemic hit, NLC argues that cities’ expanding populations and economic clout may justify added protections for municipalities to govern as they see fit.

Just as important, the nation’s political divide now mirrors its urban-rural divide. The consequence, as in Birmingham, is a situation where conservative state governments feel impelled to wield state power as a cudgel against the progressive policies of liberal metros.

Organic factors like demographics and cultural conflict are only one part of the picture. As Kleiman documents—and as authors like Nancy MacLean and Alexander Hertel-Fernandez have discussed at greater length—the conservative policy emanating from many statehouses is the result of careful cultivation. What has been called a “troika” of conservative nonprofit organizations has spent years developing a powerful and coordinated infrastructure to influence state policy, with backing [from foundations](#), corporations and individual donors.

The three primary organizations involved each have their own role. The American Legislative Exchange

Council (ALEC) drafts model legislation and distributes advocacy materials to all 50 state legislatures. The State Policy Network (SPN), a [philanthropy-backed group of conservative think tanks](#) operating at the state level, offers research support and tunes bills to fit local conditions. And Americans for Prosperity (AFP) comes in with the grassroots heft to spread the message and get state lawmakers onboard. ALEC and SPN are both 501(c)(3) nonprofits, while AFP is a 501(c)(4).

Liberal advocates have long envied the right's state policy infrastructure, both for its funding, which exceeds that of would-be analogues on the left, and for its high degree of coordination. Despite deep-seated differences of opinion on the right, especially between conservatives and libertarians, policy advocates have time and again successfully bridged those gaps and scored statehouse victories.

The conservatives' frank relationship to their funding is one reason why. "ALEC leaders discovered a brilliant way to settle internal struggles early on," Kleiman writes. "All policy is decided in smaller issue-based task forces, with whomever makes the largest commitment and dedication of revenue winning the day." Meanwhile, on the left, isolated issue silos and an unwillingness to appear too political [have long stalled progress on advocacy](#).

Even for the unabashedly progressive givers who make up the Democracy Alliance donor network, matching conservatives' level of coordinated funding has been a challenge. "We have tried to do this, but it is like herding cats," the group's president, Gara LaMarche, remarked for Kleiman's report. "Whenever we poll our members, everyone

says we need to have fewer options and get more strategic, but it is hard (for them) to make the cut.”

Another factor has been liberal funders’ tendency to pivot from the federal to the local level depending on who’s in power in D.C. It’s a pattern that occurs on the right, too, but is offset by patient funding at the middle ground—states.

Preemption and Its Discontents

The kind of aggressive preemption Birmingham experienced in 2016 is a byproduct of what Kleiman calls a “one-sided” state policy environment. But that’s not to say liberal philanthropy has been silent on the matter. In fact, funding in this area has been on the rise over the past five years or so. New platforms have arisen with a number of goals in mind—countering aggressive preemption, building progressive state policy infrastructure to match the right’s, or simply finding new ways to strategize around budgetary decisions.

One of those platforms, the Local Solutions Support Center (LSSC), is a key nexus for funders interested in countering abusive preemption. It’s headed by Kim Haddow, a communications strategist who worked for years supporting the Rockefeller Family Fund’s efforts to secure paid sick day laws. During the early 2010s, Haddow and her colleagues found themselves coming up against state preemption again and again in a pattern she describes as a form of “stalling.”

States, Haddow told me, once used preemption in collaboration with local jurisdictions, i.e., to establish policy floors for cities to add to if they wished. “What’s happening now is states are saying

to cities: You can't do it, but we won't do it either," she said. "Cities are on the front line of innovation, but now, there's a lack of innovation because people are worried about preemption." Local disenfranchisement can also have dire equity consequences. "In a democracy where local officials have been elected to act on the values they represent, the undermining of local authority deliberately undermines the voices of different groups, including women and people of color," Haddow said.

LSSC got its start at the Rockefeller Family Fund and has grown into a hub for research and advocacy around preemption. Its offerings are numerous: direct legal assistance to cities facing state preemption laws, messaging and polling, research, education and support for grassroots organizing. One of LSSC's aims is to pull together cross-issue coalitions. "Preemption can unite groups like no others. This is a threat that people see transcend their issue agenda," Haddow said.

The funders supporting LSSC arrived by a similar path as Haddow did—finding their local advocacy work stymied repeatedly by new state laws. Some of the main names involved include Kresge, OSF, Robert Wood Johnson, Surdna and Kellogg.

Kresge, for instance, funds LSSC through its Opportunity Fund, a wide-ranging grantmaking and social investment portfolio meant to address issues that affect multiple foundation program areas. For such a city-focused funder, preemption definitely fit that bill. Besides its support for LSSC, Kresge's preemption-related funding tends to center on the education component. Its work with Neil Kleiman is one example, as is its support for the National

League of Cities' Local Democracy Initiative. That's the project responsible for the updated vision of home rule referenced earlier, and its other funders include OSF, Robert Wood Johnson, the Ewing Marion Kauffman Foundation and the deBeaumont Foundation.

Some funders' support for LSSC marks the first time they've committed money to address preemption directly. Caroline Brunton, a program officer at the Kellogg Foundation, called LSSC's work a "natural fit." She said, "Our founder, Will Keith Kellogg, sincerely believed that communities are best positioned to identify and solve their problems. Local governments are closest to the people they serve, and they tend to be more reflective of the communities they serve." Brunton also tied the preemption fight to Kellogg's racial justice priorities, specifically mentioning Birmingham's minimum wage law.

For the Surdna Foundation, preemption's tendency to suppress workers' rights laws was one deciding factor. "We had been supporting workers' rights organizing campaigns around issues like minimum wage and paid sick leave. While our grantee partners were making significant wins on the local level, we also saw a wave of states pass policies to preempt these local wins," said Patrice Green, a program officer for Surdna's Inclusive Economies program.

Robert Wood Johnson came to preemption by way of its fight against big tobacco. "The tobacco industry developed core strategies around preemption, and we kept losing at the local level around clean air laws," said Giridhar Mallya, senior policy officer at RWJF. "We saw that as we worked

on issues like childhood obesity, we were running up against the same challenges.” RWJF’s initial issue-level focus has since broadened as it structures its funding around the wider social determinants of health.

COVID-19 may be prompting state and local officials to work together in new ways, but it hasn’t ended the threat of aggressive preemption. “Even in this crisis, when all levels of government should be operating in concert, we see states still preempting local authority and autonomy,” Haddow said. “In several states, governors have blocked the efforts of mayors to protect their populace through local, targeted shelter-at-home and closure-of-nonessential-business policies.”

LSSC argues that the misuse of preemption has left cities more vulnerable than they would have been to COVID-19, hampering relief and long-term recovery. Haddow and her colleagues have been providing local governments with immediate assistance, including legal guidance around local efforts to make paid sick leave available to workers, enact moratoria on evictions, and expand broadband access. LSSC is also engaged in longer-term research and data analysis to make COVID-19 into a “teachable moment” for state and local policy reform, including reforms to home rule itself.

Budgetary Battles to Come

Aggressive preemption is a dramatic example of dysfunction in state-local relations, but it’s hardly the only problem federalism faces right now. Though COVID-19 has raised the public profile of state and local governments, that new attention comes with a major downside: huge budgetary

shortfalls as shutdowns and social distancing measures send tax revenues plummeting. It's still unclear exactly how large a toll the pandemic will exact on city and state budgets, but some policy folks [are calling for federal fiscal relief](#) on the order of hundreds of billions of dollars. To the chagrin of cities and states alike, that aid has yet to make it into Congress' gargantuan COVID-19 relief packages.

Though many states stockpiled significant rainy-day funds in the years since the 2008 recession, the COVID-19 crisis may quickly bleed those dry. [In a recent letter to Congress](#), the National Governors' Association called for \$500 billion to make up for lost revenue, which states rely on to fund essential infrastructure and services. The National League of Cities, the National Association of Counties and the United States Conference of Mayors have issued [a similar request for \\$250 billion](#).

“Of all the ways the pandemic is hitting families and communities, the impact on state budgets may be among the most under-appreciated. The biggest hit—almost \$300 billion—will come in the upcoming fiscal year, which starts July 1 in most states,” said Nick Johnson, a senior vice president at the Center for Budget and Policy Priorities (CBPP). Johnson advises and helps coordinate the State Priorities Partnership (SPP), a network of 42 state-level policy shops dedicated to addressing poverty and inequality.

SPP has been around for a while. It got its start in the early 1990s, drawing on funding from Ford, Annie E. Casey and Mott. As the network steadily grew, it came to fulfill a role in the states similar to that of left-leaning national think tanks like the

Economic Policy Institute and CBPP itself. SPP now operates across 40 states, as well as Washington, D.C., and Puerto Rico. It has attracted funding from places like OSF, RWJF, Kellogg, [the Sandler Foundation](#), the Mary Reynolds Babcock Foundation, the Stoneman Family Foundation and the Spitzer Charitable Trust. Of its original funders, Ford and Annie E. Casey still support SPP.

Nevertheless, the resources SPP commands are quite limited. According to Johnson, the 42 groups' combined revenue is just \$36 million, with the median budget for a single group sitting at around \$500,000 to \$600,000. Two-thirds of SPP groups' funding comes from local sources. In effect, this means SPP is often outgunned by the better-funded ALEC and SPN in the same way the Heritage Foundation's budget outmatches that of CBPP.

Despite all that, Johnson spoke of an uptick over the past several years as funders and activist groups have pivoted away from D.C. "Foundations are seeing how important that state-level infrastructure is in building up to national change," he said. Weighing in on SPP, Open Society's Ispahani pointed to its "success advancing progressive fiscal and budgetary policy ideas in some of the most conservative states in the country." Mallya of RWJF spoke of new work to examine the health impacts of state budgetary decisions, a lens that can "bring in a set of stakeholders that otherwise wouldn't care about an issue." And Brunton at Kellogg said that networks like SPP help community voices "trickle back up" to policymakers after policy decisions "trickle down" to the public.

It's in that last sense that Johnson sought to differentiate SPP from conservative groups, the

State Policy Network in particular. “There are cases where the two groups are cast as counterparts,” he said. “But the difference is that this network is very much about policy over partisanship. Generally, SPN doesn’t have much of a grassroots, community-based footing, while SPP connects with organizations working in [impacted] communities and brings that lens to the policy analysis.”

While conservatives might contest Johnson’s positioning, there is a definite distinction to be made between SPP and newer players like the State Innovation Exchange (SiX). Founded in 2014, SiX is a self-identified progressive strategy organization with a mission to “equip state legislators to build and wield progressive governing power.” SiX is actually the result of a merger between three smaller left-wing state policy groups: the Center for State Innovation, the Progressive States Network, and the American Legislative and Issue Campaign Exchange. Like ALEC, SiX is a 501(c)(3) nonprofit, but with a list of funders that looks quite different from those supporting LSSC and SPP. They include members of the Democracy Alliance, the Public Welfare Foundation, and funding streams from SVCF and Rockefeller Philanthropy Advisors.

Beyond Partisanship?

Groups like SPP and SiX will be on the front lines of hugely important debates over the coming months and years. “Because states have to balance their budgets, [they] could have to cut funding deeply for services like schools, healthcare, transportation, and human services, raise taxes, or a combination of the two,” Johnson said. “The upcoming state budget debates, and more broadly, the debates about what we want our state economies to look like after the

pandemic, could be the most consequential of our lifetimes.”

If Congress does approve some form of fiscal aid for state and local governments, that will prompt even more local maneuvering to figure out how to spend those dollars. A meaningful recovery, Johnson said, would involve states spending relief money “in ways that get at some of the underlying structural inequities that are costing people their lives.”

Greater funder attention to state fiscal policy would help correct [one of the ways philanthropy has failed to make headway](#) in the broader fight against inequality.

It’s easy to see the path forward in terms of partisan battle lines, a struggle between right-wing and left-wing policy advocates. But that’s only one way to look at it. By shining a spotlight on American federalism, COVID-19 has already begun shaking up a status quo in which state policy was an inside game dominated by ideologically driven actors, to paraphrase Kleiman. As more people pay attention, the hope is not necessarily that a left-wing infrastructure will emerge to check the right, but that state and local policy decisions better reflect the practical needs of the populace.

Philanthropy could play a pivotal role in that world as a convener, bringing together public officials, professional organizations, universities and other stakeholders around state-specific agendas for response and reform. Take, for instance, the Hewlett Foundation’s support for pre-COVID meetings between state budget directors to talk strategy, including around recession planning. Or [RWJF’s funding for State Health and Values Strategies](#) at Princeton University, which connects

states with technical assistance on healthcare coverage. Another avenue funders could pursue is leadership development—helping law schools and other institutions provide students with specialized training in state policymaking.

Whether they find ways to plug into existing state policy infrastructure or back new collaborations, this seems like a good time for more funders to start paying attention. COVID-19 and its aftermath comprise an unprecedented cross-cutting systemic shock that can undermine years of isolated local grantmaking. Helping states—and cities—govern more effectively will protect grantees’ impact, both now and when future crises hit.

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