

# LOCAL GOVERNMENTS AND HUMAN RIGHTS: SOME CRITICAL REFLECTIONS

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## INTRODUCTION

Pressure on local governments to adopt human rights has increased over time. The notion of “localisation”<sup>1</sup> or “local relevance”<sup>2</sup>

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1. Axel Marx et al., *Localizing Fundamental Rights in the European Union: What is the Role of Local and Regional Authorities, and How to Strengthen It?*, 7 J. HUM. RTS. PRAC. 246 (2015) (discussing and theorising about the localisation of human rights, based on a variety of empirical cases).

2. See generally THE LOCAL RELEVANCE OF HUMAN RIGHTS (Koen De Feyter et al. eds., 2011) (examining the local relevance of human rights from a

of human rights has been recently applied to cities. In this literature, which often tries and sometimes struggles to incorporate social science research on human rights into a scheme which remains overall normative and legal, the notion of the local ultimately conveys the importance of bringing local governments into human rights. Local governments, in particular, are identified as actors capable to fill the gap that central governments leave towards the realisation of human rights.<sup>3</sup> This perspective emphasises that cities add value to the cause of human rights. In this contribution, I approach the nexus between local governments and human rights from a different viewpoint, informed by a sociological understanding of human rights as practice in localities. From this standpoint, it becomes clear that, while local governments enhance the relevance of human rights, human rights also enhance the power of local governments. I will develop the argument, which I and others have introduced elsewhere, that local governments become involved with human rights not so much, or at least not exclusively, because they are legally obliged, but rather because they expect human rights to enhance their capacity to govern the city.<sup>4</sup> The added value of human rights to city governance, as a concept and framework that helps to govern certain urban issues and problems, comes into focus through this analysis.

By addressing the question of why and how local governments engage with human rights, the present contribution also offers an opportunity for a critical reflection on these engagements. In many respects, the involvement of local governments with human rights raises broader questions related to the institutionalisation of human rights and, as part of that process, the adaptation of human rights to

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range of perspectives that emphasise, for example: the actions of local authorities, the role of national laws, and the importance of community-based human rights campaigns).

3. Koen De Feyter, *Sites of Rights Resistance*, in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* 11, 24 (Koen De Feyter et al. eds., 2011) (introducing the notion of the local relevance of human rights and discussing the place of local authorities in it).

4. See generally Michele Grigolo, *Human Rights and Cities: the Barcelona Office for Non-Discrimination and Its Work For Migrants*, 14 *INT'L J. HUM. RTS.* 896 (2010) [hereinafter Grigolo 2010] (introducing the notion, based on the empirical case of Barcelona and migrant rights, that local governments will be more inclined to engage with human rights if these enhance their governing capacity); JoAnn Kamuf Ward, *From Principles To Practice: The Role Of U.S. Mayors In Advancing Human Rights*, in *GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES* 81, 83–99 (Barbara Oomen et al. eds., 2016) (re-examining the nexus between human rights and governing capacity in the context of U.S. mayors' actions against racism).

the specific goals and culture of any particular organisation.<sup>5</sup> This piece operates on the assumption that the transposition of human rights principles into policy is the implicit goal of many instances of political mobilisation based on human rights concepts. It would be wrong to assume, as many critics of human rights do, that any institutionalisation of human rights serves more than challenges existing structures of power.<sup>6</sup> At the same time, governments have used human rights language to achieve goals at odds with the “spirit” of human rights, e.g. justifying war or exporting democracy.<sup>7</sup> In this article, I wish to expose how human rights sustain urban agendas, often in ways that are hidden and unspoken. Eventually, this contribution elaborates upon the more general tension between justice and government in city practice of human rights and the ambiguous relation between that practice and neoliberalism.<sup>8</sup>

The article draws on the author’s own research as well as secondary literature. The latter includes studies of so-called “human rights cities,”<sup>9</sup> meaning cities in which human rights are introduced in the city and, in many cases, transposed into local policy as norms and principles for the organisation of the people and institutions of the city. The choice of focusing on European cities to examine local government engagement with human rights is due, on the one hand, to the author’s work on a human rights manual for the Congress of Local and Regional Authorities of the Council of Europe, focusing in particular on non-discrimination in the areas of migration, refuge, and asylum and LGBTQ issues.<sup>10</sup> At the same time, examining European cities helps expose the local government stake in human rights more deeply than other alternatives. For example, when compared to United States cities, European local governments have tended to demonstrate more proactivity about human rights and assume more political leadership in the process of implementing

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5. Carlo Ruzza, *Human rights, anti-racism and EU advocacy coalitions*, in RIGHTS: SOCIOLOGICAL PERSPECTIVES 111, 114 (Lydia Morris ed., 2006).

6. NEIL STAMMERS, HUMAN RIGHTS AND SOCIAL MOVEMENTS 106 (2009).

7. See Ruzza, *supra* note 5.

8. Michele Grigolo, *Towards a Sociology of The Human Rights City: Focusing On Practice*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 276, 280 (Barbara Oomen et al. eds., 2016) [hereinafter Grigolo 2016].

9. See generally GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES (Barbara Oomen et al. eds., 2016) (presenting essays by human rights scholars and practitioners about the role of cities in furthering human rights).

10. The views and opinions expressed in this article are of the author and do not necessarily reflect those of the Congress of Local and Regional Authorities of the Council of Europe.

human rights. In particular, the article will focus on Barcelona, a pioneer city whose government has a history of human rights, as well as on a set of institutions that speak on human rights and that have attracted academic attention.

First, I will elaborate upon on the sociological perspective of this article's argument and the reasons for which local governments engage with human rights. I will then go through what I believe are some core practices of government that human rights sustain: social inclusion, economic development, and security. I will conclude with a critical argument about problems and contradictions that arise out of local government engagements with human rights.

## I. UNDERSTANDING LOCAL GOVERNMENT ENGAGEMENT WITH HUMAN RIGHTS

As a general premise to my argument, we should understand the engagement of local governments with human rights as part of their participation in the field of human rights. "Field" of human rights is intended here in a Bourdieusian sense,<sup>11</sup> in accordance with the definition and elaboration provided by Rask Madsen in his proposal for a reflexive sociology of human rights.<sup>12</sup> In the field, agents collaborate and compete with each other to define human rights. Agents in the field are mainly stakeholders of human rights, sharing an interest in human rights and their development, while at the same time "playing" in the field to advance their own interests in and understandings of human rights.<sup>13</sup> As a field, human rights is relatively open to the engagement of different agents. Still, not all agents are equally positioned in the field. As Rask Madsen points out,

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11. See Loïc J.D. Wacquant, *Toward a Social Praxeology: The Structure and Logic of Bourdieu's Sociology*, in AN INVITATION TO REFLEXIVE SOCIOLOGY 1, 16–19 (1992) (providing a general overview of Bourdieu's notion of field, which encapsulates "a socially structured space in which agents struggle, depending on the position they occupy in that space, either to change or to preserve its boundaries and form"); see also Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS J.L. 209, 248 (1986).

12. See generally Mikael Rask Madsen, *Beyond Prescription: Towards a Reflexive Sociology of Human Rights*, in MAKING HUMAN RIGHTS INTELLIGIBLE: TOWARDS A SOCIOLOGY OF HUMAN RIGHTS 81, 86–91 (Mikael Rask Madsen & Gert Verschraegen eds., 2013) (building upon the Bourdieusian definition of field by considering actors' "national and international positions" as well as their "structurally constrained strategies").

13. See Wacquant, *supra* note 11, at 15–19 (on the interplay between a field of objectives and the various perceptions of those who practice within a certain field).

civil society, states, and the law (via the intervention of lawyers and judges) are central to the production of human rights.<sup>14</sup> Each of these camps is itself internally diverse and retains different forms of capital and authority, through which agents try to impose a certain notion of human rights. The social practice of human rights and ultimately our own knowledge of what constitutes human rights depends on the relations established between these agents and the outcome of negotiations, which often take place in court, as to the actual content and scope of human rights. This knowledge is relatively stable. But change in the practice does take place, in the long-term more than in the short-term, as part of the emergence of new discourses about human rights and in the context of evolving social and political conditions.<sup>15</sup>

Moving from these general premises, different explanations emerge as to why local governments engage with human rights. Local governments, especially mayors, may view their participation in human rights (including, for example, the constitution of a human rights city) as a formal obligation, based on legal reasoning that ties local governments to broader state responsibility to respect, fulfil, and protect human rights. Many documents delivered by international organisations, including the Council of Europe's Congress of Local and Regional Authorities<sup>16</sup> and the Fundamental Rights Agency of the European Union,<sup>17</sup> use this kind of legal discourse. These resources shape mayors' and other local politicians' views of their own engagement with human rights. These agents may also have internalised the more general notion that human rights are principles and norms of justice that have to be respected not just because of the law, but also for their moral value. As Ruzza argues in the context of his analysis of the process that led to the approval of the anti-racist

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14. Rask Madsen, *supra* note 12, at 86.

15. *Id.* at 87.

16. For example, the Council of Europe's Congress of Local and Regional Authorities has consistently promoted human rights among local and regional authorities via a series of resolutions and efforts to collect best practices. *See, e.g.*, CONG. OF THE LOCAL & REG'L AUTHS. OF THE COUNCIL OF EUR., PROMOTING HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL: THE HUMAN RIGHTS DIMENSION OF THE ACTIVITIES OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES, COMPENDIUM OF TEXTS 53 (2016), <https://rm.coe.int/168071b33b> (“[L]ocal and regional authorities must comply with the human rights duties which stem from the international commitments of the member states, albeit only within their local/regional competences.”).

17. *See Joined Up Governance: Connecting Fundamental Rights*, EUR. UNION AGENCY FOR FUNDAMENTAL RIGHTS, <http://fra.europa.eu/en/project/2011/joined-governance-connecting-fundamental-rights> (last visited Aug. 7, 2017).

directive of the European Union, many “professional political actors, religious people and business leaders” adhere to human rights.<sup>18</sup> We can assume that mayors and local politicians, especially those situated at the progressive end of the political spectrum, have also begun to internalise the notion that they should engage with human rights because it is good and just. This is indeed the kind of socialisation that we would expect the discourse of human rights to produce<sup>19</sup> and that constructivists explore in international relations studies of human rights (including at the local level).<sup>20</sup>

However, and in many cases probably at the same time, local governments and their mayors also care about human rights because they provide an opportunity for enhancing city governments’ capacity to govern the city. While agents within the local governments, from political leaders to civil servants, employees, and bureaucrats working in specific departments, may well come to share with other agents the notion that human rights are good and should be complied with, they will nevertheless “play” in the field of human rights to produce certain desired results. This instrumental approach to human rights emphasizes the ways in which human rights discourse sustains certain functions of local government and offers a framework to intervene on a given set of issues via urban policy. From this perspective, what comes into focus is not only a deductive sequence that starts from human rights and leads to their application in specific situations, but also an inductive process that starts with issues and problems of governments that stimulate a strategic response based on human rights.<sup>21</sup>

These functions and issues come to us from city literature rather than human rights works. That literature talks of cities which have been increasingly exposed to forces over which they have little

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18. Ruzza, *supra* note 5, at 114.

19. See generally Darren O’Byrne, *On the Sociology of Human Rights: Theorising the Language-Structure of Rights*, 46 SOC. 829, 832 (2012) (discussing a sociological understanding of human rights institution as language-structure); Ivan Manokha, *Foucault’s Concept of Power and the Global Discourse of Human Rights*, 23 GLOB. SOC’Y 429, 431 (2009) (examining the diffusion of human rights discourse and its relation to capitalism).

20. See Noha Shawki, *Global Norms, Local Implementation—How Are Global Norms Translated Into Local Practices?*, 26 GLOBALITY STUD. J. 1, 2 (2011) (applying a constructivist approach to the analysis of the San Francisco ordinance implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)).

21. See JIM IFE, *HUMAN RIGHTS AND SOCIAL WORK: TOWARDS RIGHTS-BASED PRACTICE* 206–14 (3rd ed. 2012).

control, as part of globalisation and a process of re-articulation of state functions from the centre towards, on the one hand, the international level, e.g. the E.U.; and, on the other, the local and regional levels.<sup>22</sup> This process has induced the transfer of a number of traditionally state-centered functions of government to local governments. As a consequence, local governments have begun to implement and manage polices which were previously more centralised.<sup>23</sup> The language of government has changed accordingly to emphasise governance and, as part of that, a problem-solving, collaborative approach across and among different levels of government, while seeking policy inputs and contributions from the civil society and business sectors.<sup>24</sup> From this perspective, it is even possible to see the emergence of human rights cities as part of a larger transformation of the state, in which human rights discourse also becomes a matter of local importance—something that now local governments have to do. It is not surprising, therefore, to find central governments eager to hand over human rights work to cities.<sup>25</sup> At the same time, it is important to notice how human rights become an opportunity for local governments to situate themselves in this new state configuration and claim visibility and autonomy from the state.

At a more general level, then, we need to remain aware of the influence of neoliberalism on this process and, eventually, the relation between human rights and the neoliberal city.<sup>26</sup> The cities we discuss must develop a way of governing that fits the purpose of a

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22. See SASKIA SASSEN, *A SOCIOLOGY OF GLOBALIZATION* 45–96 (Jeffrey Alexander ed., 2007) (for a sociological discussion of globalisation and the transformation of the state).

23. PATRICK LE GALÈS, *EUROPEAN CITIES: SOCIAL CONFLICTS AND GOVERNANCE* 227 (Colin Crouch ed., 2002) (suggesting that European “city councils and elected politicians are under pressure to deal with a set of problems that used to come within state control: economic development, law and order, social exclusion, representation of the city in Europe”).

24. See generally William Walters, *Some Critical Notes on “Governance”*, 73 *STUD. POL. ECON.* 27, 27–43 (2004); Erik Swyngedouw, *Governance Innovation and the Citizen: The Janus Face of Governance-beyond-the-State*, 42 *URB. STUD.* 1991, 1991–2003 (2005) (both examining the concept of governance and its implications compared to government, in the context of the transformation of the state and the re-articulations of state functions).

25. Mathias Möschel et al., *Conclusion, in FIGHTING DISCRIMINATION IN EUROPE: THE CASE FOR A RACE-CONSCIOUS APPROACH* 144 (Mathias Möschel et al. eds., 2013) (discussing a race-conscious approach to discrimination and ways in which cities could be incorporated into anti-discrimination policy in Europe).

26. By “neoliberal city,” I mean a practice of a city and its government oriented towards the production of profit and growth.

neoliberal economy: a more regulatory rather than interventionist style of government, which operates according to the principle of *laissez-faire*.<sup>27</sup> In the neoliberal practice, the local government is encouraged to assume an entrepreneurial style of government by, for example: presenting the city as an opportunity for business, ensuring its incorporation into global markets, and promoting local alliances and consensus around de-politicised development strategies.<sup>28</sup> It is also, I argue, invited to sustain people's individualisation, autonomy, and ultimately their participation in the market economy.<sup>29</sup> All of this means that, while the functions of local governments may have multiplied and varied, sustaining local development tends to retain priority over other functions. Eventually, the neoliberal discourse suggests that the achievement of other policy goals, including some kind of redistribution associated to social policy and inclusion, becomes dependent on the availability of resources generated by the local economy through development strategies.

For the purpose of this study, what has to be considered is not only the relation of tension, but also the continuity that exists between the norms and principles that inform the urban practice of human rights and those that inform a neoliberal city.<sup>30</sup> To begin, it may be useful to consider the way in which civil rights—which are the core rights of any liberal regime—support neoliberalism and, in a Foucauldian sense, the neoliberal governmentality.<sup>31</sup> These rights create and safeguard the conditions of agency, in the form of

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27. See generally MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLÈGE DE FRANCE 1977–78* (Michael Senellart ed., Graham Burchell trans., 2009) [hereinafter FOUCAULT 2009] (examining in general the nexus between liberalism, freedom, and governmentality in modern forms of government and self-government); MICHEL FOUCAULT, *THE BIRTH OF BIOPOLITICS: LECTURES AT THE COLLÈGE DE FRANCE 1978–79* (Michael Senellart ed., Graham Burchell trans., 2008) [hereinafter FOUCAULT 2008] (tracking and comparing varieties of neoliberalism in the United States and Europe in the context of Foucault's analysis of biopolitical power); Walters, *supra* note 24, at 39 (critiquing the language of governance and the interventionist form of welfare states).

28. See LE GALES, *supra* note 23, at 270 (discussing the implications of governance for local governments).

29. See Swyngedouw, *supra* note 24, at 1997 (suggesting that neoliberalism encourages individuals into entrepreneurialism and participation in the market economy).

30. Grigolo 2016, *supra* note 8, at 287–88 (suggesting the relation and tension between human rights and neoliberalism in the practice of the human rights city).

31. See FOUCAULT 2008, *supra* note 27, at 41–45 (discussing neoliberal governmentality and its relationship with human rights).

entrepreneurship and participation in the market, that the economy requires. In fact, many states, especially in the so-called West, mean (or at least emphasise) “civil rights” when they speak about human rights.<sup>32</sup> Economic and social rights are, and in fact have long been considered, a different type of rights because they are “programmatically” and are only limitedly justiciable. When they are enacted by courts, it is usually in association with the exercise and protection of civil rights and non-discrimination, e.g. in the case-law of the European Convention on Human Rights (ECHR).<sup>33</sup> In the meantime, in the context of the same ECHR, non-discrimination has developed as a right on its own merit—a process which we can assume has been influenced by the more generalised diffusion and popularisation of the notion of equality. Even equality, as the debate on civil rights and affirmative action in the United States shows, has been interpreted increasingly as formal equality—as part of a right not to be treated differently—rather than as substantive equality—oriented towards the achievement of equality of outcomes for structurally disadvantaged communities.<sup>34</sup> Eventually, more proactive approaches to equality, like affirmative action or positive discrimination, have been limited and redefined in the more business-friendly terms of diversity.<sup>35</sup> A critical approach to the local government engagement with human rights should then remain vigilant as to what local governments mean by human rights in the context of the government of the city and the neoliberal rationale that informs it.

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32. See Manokha, *supra* note 19, at 436–45 (tracking the overall primacy of civil rights within the development and expansion of human rights discourse).

33. Ida Elisabeth Koch, *Economic, Social and Cultural Rights as Components in Civil and Political Rights: A Hermeneutic Perspective*, 10 INT’L J. HUM. RTS. 405, 406–08 (2006) (exploring the implications for economic, social, and cultural rights in the recognition of civil and political rights by the European Court of Human Rights).

34. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1341–42 (1988) (examining different understandings of equality in United States civil rights legislation in light of the country’s changing political circumstances and the rise of conservatism).

35. See Erin Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961-1996*, in COLOR LINES: AFFIRMATIVE ACTION, IMMIGRATION, AND CIVIL RIGHTS OPTIONS FOR AMERICA 87 (John David Skrentny ed., 2001) (providing an account of the shift from affirmative action to diversity management).

## II. HUMAN RIGHTS IN EUROPEAN CITIES: THE CASE OF BARCELONA

A review of the city practice of human rights shows the influence not only of human rights on the city, but also of the city on human rights. Two main types of human rights policies can be found in cities: one deals with civil rights and non-discrimination and the other with broader notions of human rights. The latter often implies adopting what we could term as a human rights approach to local government. At the end of the twentieth century, many cities saw a shift in their rights-discourse from civil to human rights, which has expanded the practice from a more legalised and individualised policy, centered on the treatment of complaints towards the individual citizen, to one that takes into account broader human rights questions and community issues.<sup>36</sup> However, this trajectory is neither linear nor universal, and cities sometimes demonstrate the co-existence of policies inspired by both concepts of rights. This development has been stimulated in part by the increasing popularity of human rights as a language of justice in the 1990s.<sup>37</sup> At the same time, human rights practice in cities has also been influenced by new ideas about governance that developed during the same decade, which encouraged seeking the direct involvement and participation of civil society and local communities in policymaking.<sup>38</sup>

As mentioned in the introduction, European cities are useful cases to explore the engagement of local governments in human rights. The history of human rights in the United States and its cities has been largely driven by social movements, grassroots activists, and professional NGOs.<sup>39</sup> For almost twenty years now, cities have

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36. See, e.g., GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES (Barbara Oomen et al. eds., 2016) (providing an overview of human rights cities across different world regions, the United States and Europe included).

37. See SAMUEL MOYN, THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY (2010) (tracking the history of human rights and how, in the process, it came to displace alternative notions of justice, such as socialism); GLOBALIZATION AND HUMAN RIGHTS (Allison Brysk ed., 2002) (examining the relation between human rights and globalisation).

38. See Stacy Laira Lozner, *Diffusion of Local Regulatory Innovations: The San Francisco CEDAW Ordinance and the New York City Human Rights Initiative*, 104 COLUM. L. REV. 768, 768–70 (2004) (examining the San Francisco CEDAW ordinance in the light of the nexus between human rights and “participatory problem solving” governance).

39. See Hope Lewis, “New” Human Rights? U.S. Ambivalence Toward the International Economic and Social Rights Framework, in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 131–32 (Cynthia Soohoo et al. eds., abr. ed. 2009) (discussing the role of NGOs, social

become strategic sites for sustaining a shift in the national rights talk from civil rights to a broader notion of human rights that encompasses economic and social rights. Compared to the United States, in European cities, human rights have figured more prominently within institutional politics—at the centre of which there are always local governments—and their collaboration with a variety of experts, national human rights institutions, international agencies and organisations, and NGOs “attracted” into the process.<sup>40</sup>

The best example of this kind of engagement, which is fairly absent in the United States, is the promotion of urban charters of human rights. In fact, many of these efforts to promote human rights in cities are not exclusive to the agents described above that have traditionally been central in the production of human rights. They have also received the input of the municipal movement, as shown by the increasing involvement of the umbrella organisation United Cities and Local Governments (UCLG) in human rights.<sup>41</sup>

The case of Barcelona, which will be evoked several times in this contribution, is particularly useful to expose the many implications for local governments of engaging with human rights. The progressive and liberal culture of Barcelona represents well the

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movements, and grassroots activists in cultivating human rights governance in the United States); Kathryn Libal & Shareen Hertel, *Paradoxes and Possibilities: Domestic Human Rights Policy in Context*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 12–14 (Shareen Hertel & Kathryn Libal eds., 2011) (discussing how NGOs and grassroots organizations have generated a human rights “culture” in the United States in response to hostility to formal domestication of human rights norms).

40. See Grigolo 2016, *supra* note 8, at 281–84 (describing the process of human rights institutionalization in “human rights cities”). An exception to this pattern, which may signal a shift in the dynamics that guide the establishment of human rights cities in Europe, is the city of York in the United Kingdom. See Emily Graham et al., *Human Rights Practice and the City: a Case Study of York (UK)*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 179–80 (Barbara Oomen et al. eds., 2016) (describing York as a “human rights cit[y]” representative of “new forms of human rights practice, which are moving away from singular, top down, state-focused strategies in favour of multi-dimensional, multi-actor, contextual and bottom-up, grassroots approaches”).

41. See Janne Nijman, *The Future of the City and the International Law of the Future*, in THE LAW OF THE FUTURE AND THE FUTURE OF THE LAW 219–21 (2011) (offering an account of local government transnational networks and the latter’s impact on international law in the areas of human rights and environmental protection); Eva Maria Garcia Chueca, *Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanization*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 103, 105–09 (Barbara Oomen et al. eds., 2016).

political environment that has stimulated the diffusion of human rights responsibilities to cities and at the same time has provided a fertile terrain for the development of human rights inside the local government. Early initiatives in the field of human rights were largely sponsored by Mayor Pasqual Maragall. In the early 1990s, Maragall appointed a Civil Rights Commissioner to explore questions of migration.<sup>42</sup> Mayor Joan Clos, another Socialist, established a specialised Civil Rights Department (*Regidoria de Drets Civils*, RDC) in 1995.

Beginning in the 1990s, under the political leadership of smaller left-wing and/or Catalanist parties allied to the Socialists, the municipality put in place both civil and human rights institutions and began establishing itself as a “city of rights.”<sup>43</sup> Two agencies were established within the RDC: The Office for Non-Discrimination (*Oficina per la No Discriminació*, OND) and the Office of Religious Affairs (*Oficina d’Afers Religiosos*, OAR). Two municipal plans, for LGBT and for Roma people respectively, have also been promoted under the overarching framework of human rights. These two plans, which aim to mainstream local government policy related to these two groups across a variety of sectors, were linked to the presence and activity under the human rights policy of the city of two advisory bodies: the Municipal Council of Gays, Lesbians, Bisexuals and Transsexuals (*Consell Municipal de Gais, Lesbianes i Dones i Homes Transsexuals*) and the Municipal Council of Barcelona’s Roma People (*Consell Municipal del Poble Gitano de Barcelona*).<sup>44</sup> In 2000, the RDC, in collaboration with other cities and the Catalan Institute of Human Rights, gave crucial political support to the drafting and

42. Ricard Morén-Alegret, *Tuning the Channels: Local Government Policies and Immigrants’ Participation in Barcelona*, in *MULTICULTURAL POLICIES AND MODES OF CITIZENSHIP IN EUROPEAN CITIES* 66 (Alisdair Rogers & Jean Tillie eds., 2001) (analysing institutionalization of human rights in Barcelona).

43. Michele Grigolo, *Building the “City of Rights”: The Human Rights Policy of Barcelona*, UNITED CITIES AND LOCAL GOV’T (2010) [hereinafter UCLG], [http://www.uclg-cisd.org/sites/default/files/Barcelona\\_2010\\_en\\_final\\_0.pdf](http://www.uclg-cisd.org/sites/default/files/Barcelona_2010_en_final_0.pdf).

44. MUNY OF BARCELONA, PLA MUNICIPAL PER AL COL·LECTIU LESBIÀ, GAI, TRANSSEXUAL I BISEXUAL 2010–2015 7 (2010) [hereinafter LGBT Plan], <http://ajuntament.barcelona.cat/dretssocials/sites/default/files/arxiu-documents/%5BPDF%5D%20Pla%20Municipal%20per%20al%20Col%2%B7lectiu%20LGTB%202010-2015%20Lectura%20F%3%A0cil.pdf>; MUN. COUNCIL FOR THE ROMA PEOPLE IN BARCELONA, MUNICIPAL COUNCIL FOR THE ROMA PEOPLE IN BARCELONA REPORT 2012–2015, <http://ajuntament.barcelona.cat/consell-municipal-poble-gitano/sites/default/files/Poble%20Gitano%202012-2015%2011MAR15%20angles.pdf>.

approval of the European Charter for the Safeguarding of Human Rights in the City (ECHRC).<sup>45</sup> Eventually, the ECHRC provided the overarching human rights framework for the city, which could comprehend and justify the different directions in which human rights have been institutionalised and implemented.

This more proactive phase of institutionalisation of human rights declined during the 2000s in the context of a shift in local politics towards the right. Between 2011 and 2015, in the aftermath of the economic crisis of 2008, a conservative majority came to government for the first time in the history of Barcelona, led by Mayor Xavier Trias. Under this mayor, the city produced a new, purely local Charter of Citizenship listing the rights as well as the duties of the city.<sup>46</sup> In this document, the influence of human rights is evident. Still, through the notions of citizenship and obligation, the Charter is straightforward in identifying what people should do and should not do as citizens. This Charter should be seen as one measure that came about in the context of this more conservative twist in local politics. Before Trias became mayor, the same city government had already approved the Ordinance of Measures to Promote and Guarantee Citizens' Coexistence in the Public Space.<sup>47</sup> The ordinance, often referred to more briefly as the Ordinance of Good Citizenship,<sup>48</sup> was already the target of criticism from human rights activists,<sup>49</sup> despite the fact that Article 2.1 includes the ECHRC among its "orientating criteria."<sup>50</sup>

45. UCLG Comm. on Social Inclusion, Participatory Democracy, and Human Rights, *European Charter for the Safeguarding of Human Rights in the City (ECHRC)* (May 18, 2000), [https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera\\_baixa\\_3.pdf](https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf).

46. BARCELONA, SPAIN, CARTA DE CIUTADANIA: CARTA DE DRETS I DEURES DE BARCELONA (Feb. 14, 2011) [hereinafter CARTA DE CIUTADANIA].

47. A literal translation from the Catalan *Ordenança de mesures per fomentar i garantir la convivència ciutadana a l'espai públic*. BARCELONA, SPAIN, ORDENANÇA DE MESURES PER FOMENTAR I GARANTIR LA CONVIVÈNCIA CIUTADANA A L'ESPAI PÚBLIC, ADMINISTRACIÓ LOCAL, Núm. 20, Annex § 1 (2006) [hereinafter ORDENANÇA], <http://w110.bcn.cat/fitxers/ajuntament/consolidadescat/convivencia.436.pdf>.

48. A plausible English translation from the Catalan *Ordenança de civisme*.

49. Michele Grigolo, *Human Rights and the City: Anti-Discrimination Laws and Policies in New York and Barcelona* 318, at 245 (Feb. 5, 2009) [hereinafter Grigolo 2009] (unpublished Ph.D dissertation, European University Institute, Florence) (on file with the author).

50. ORDENANÇA, *supra* note 47, art. 2.1.

However, with the recent election of Mayor Ada Colau, new emphasis has been placed on human rights. Colau has a background in local activism and, in particular, the anti-eviction movement *Plataforma de Afectados por la Hipoteca* (PAH). Colau's own election expressed a deep ongoing redefinition of parties and politics on the progressive side of the Spanish and Catalan political spectrum; now she leads a government in which many councillors have a human rights background. At the same time, human rights have been associated with city action on diversity and interculturalism, and have been accordingly incorporated into a broader Citizens Rights and Diversity Department (*Direcció de Drets de Ciutadania i Diversitat*, DDCD)<sup>51</sup> under the direct responsibility of a deputy mayor. Beyond purely human rights issues, the economic crisis and refugee crisis generated by the Syrian war have both been among this administration's priorities. Human rights discourse has helped the new administration to frame, justify, and develop interventions on both types of crises.

Colau has also placed new emphasis on implementing the ECHRC, as part of a new broader human rights plan for the city. In this respect, new emphasis is being placed on the right to the city as part of the implementation of human rights in the city. This reference to the right to the city, which alludes to Article 1 of the ECHRC, re-emphasises a notion of human rights which, in line with the right to the city practice, is centered on city residents 'irrespective of their administrative status and passport.'<sup>52</sup> The practice of the right to the city<sup>53</sup> also suggests a notion of city-related decision-making driven by resident initiatives, as opposed to venues of governance in which the agenda is more controlled by local governments and other powerful stakeholders.

In the following sections, I examine more closely how human rights sustain three axes or priorities of local government interventions: social inclusion, economic development, and security. The analysis of each will be mainly in relation to two policy areas:

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51. See *Citizen Rights and Diversity*, MUNY OF BARCELONA, <http://ajuntament.barcelona.cat/dretsidiversitat/en/about-us> (last visited Oct. 4, 2017).

52. See *We are implementing the right to the city as well as the human rights in the city*, MUNY OF BARCELONA, <http://ajuntament.barcelona.cat/dretsidiversitat/en/barcelona-city-of-rights/we-are-implementing-right-city-well-human-rights-citizenship> (last visited Oct. 22, 2017).

53. See generally Mark Purcell, *Excavating Lefebvre: The Right To The City and Its Urban Politics of The Inhabitant*, 58 GEOJOURNAL 99, 100 (2002) (for a general discussion on the right to the city and what it means).

LGBTQ issues and migrants, asylum seekers, and refugees. While dealing separately with each function for analytical purposes, it should be clear from the start that each axis of intervention interacts with, sustains, and is sustained by the other in the context of the government of the city and the broader constraints in which local governments operate nowadays.

### A. Promoting Social Inclusion

I am going to start with one important function of local government which human rights sustain: social inclusion. Local governments have historically played a role in state welfare systems and the delivery of their services. Inclusion, however, has come with new challenges for local governments in the context of the increasing urbanisation of the world population. As part of that process, cities have seen new and complicated dynamics of differentiation induced by migration from inside and outside the European Union and by corresponding identity politics. These are phenomena that local governments cannot effectively control or reject in ways that central states might. The diversification of the people who live in the city is a problem as far as difference produces fragmentation, isolation, and exclusion of vulnerable groups, which therefore undermines social cohesion and challenges the local government. Eventually, for progressive cities and politicians, inclusion is also a value in itself. Social inclusion comes down to the question of how to incorporate certain communities in the city. To promote inclusion, local governments, especially those governing big cities, have put in place local welfare systems that have in some cases compensated for the lack of assistance provided by official state welfare to newcomers and non-citizens, including migrants.<sup>54</sup>

Human rights help local governments as far as, like all rights, they operate as an integrative device.<sup>55</sup> Compared to a discourse of citizenship, however, human rights offer local governments a language of rights that emphasises their universality and equality, as opposed to the more selective and ultimately exclusive notion of rights implied in the concept of modern, state-centered citizenship.<sup>56</sup>

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54. See generally Alberta Andreotti et al., *Local Welfare Systems: A Challenge for Social Cohesion*, 49 URB. STUD. 1925 (2012) (discussing local welfare systems and how they promote social cohesion in general).

55. Robert A. Beauregard & Anna Bounds, *Urban Citizenship, in DEMOCRACY, CITIZENSHIP AND THE GLOBAL CITY* 243, 243 (Engin F. Isin ed., 2000).

56. Grigolo 2010, *supra* note 4, at 896.

At the same time, this is a language of inclusion that, through the individual construction of rights, is somewhat compatible with individualisation emerging in society and sustaining neoliberalism.<sup>57</sup> By proclaiming the universality and equality of rights while operating at both the symbolic and material levels, human rights offer themselves as a language to articulate justice for the people of the city and for specific communities beyond the moral and legal constraints of citizenship. For local governments, human rights offer a standpoint for framing diversity and promoting inclusion in cities in which many residents do not possess the citizenship of the state.

Urban charters show the nexus between human rights and social inclusion that drives local government engagements with human rights. In this respect, compared to the ECHRC mentioned above, the Global Charter-Agenda for Human Rights in the City (GCHRC) is especially interesting.<sup>58</sup> It not only defines a set of rights for the city drawing on the law and legal discourse that dominates the field of human rights; it also suggests plans in the short and long term for realising those rights, which orient human rights more towards the goal of social inclusion. Besides, both the ECHRC and WCHRC include the right to the city among the human rights they discuss. This aspect lends a specifically-urban quality to the human rights articulated in the documents, emphasizing, as mentioned above, residents' participation in and control over human rights, as well as their deployment and spatial application in the city.

This strong orientation towards inclusion and communities is also evident in the operations of institutions cities put in place to support human rights. One example is Barcelona's *Oficina per la No Discriminació* (OND), which was modelled on the San Francisco Human Rights Commission. United States city commissions on human rights are still primarily civil rights agencies that operate through legal mechanisms. They treat individual complaints of discrimination and operate under local laws that legally define and dictate the commissions' scope, powers, and competences. These are often anti-discrimination statutes that define, categorise, and prohibit discrimination using the language and methods of the law. While the OND has assimilated this approach to rights, its own

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57. See generally ZYGMUNT BAUMAN, *THE INDIVIDUALIZED SOCIETY* (2001) (exploring the link between individualisation and society).

58. UCLG Comm. on Social Inclusion, Participatory Democracy, and Human Rights, *Global Charter-Agenda for Human Rights in the City* (GCHR) (Sept. 2016), [https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta-Agenda\\_ENG\\_0.pdf](https://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta-Agenda_ENG_0.pdf).

understanding and use of non-discrimination departs from a strictly legal approach.<sup>59</sup> Overall, the OND functions much more as a service to residents than as an enforcement agency. This is partly because the OND does not have any substantive powers to enforce a specific local law. At the same time, consider that the OND was created with the idea of doing something useful that could serve as a model for other cities.<sup>60</sup> For this purpose, the OND often uses mediation towards the concrete solution of a specific conflict and problem as an alternative to providing legal advice to complainants.<sup>61</sup> While the OND does not litigate cases on behalf of complainants, its “alternative dispute resolution” methods offer the opportunity for a quick, less costly, resolution of conflicts and complaints. Eventually, at the moment of framing and intervening on its cases, the OND draws on a multi-layered legal framework that goes beyond the city law and encompasses international, European, Spanish, and Catalan legislation.

The case of migrants exemplifies how, moving from these operational premises, the OND uses human rights to cope with contemporary urban challenges to social inclusion. First, it is significant that, in its reports, the OND refers to “migrants” as a “group” affected by discrimination more than referring to more abstract legal grounds raised in complaints, which could apply to this or any other group involved.<sup>62</sup> Therefore, the OND shows that its aim is not purely or primarily the enforcement of the law, but rather serving individuals in need of its support. To intervene on migrant complaints, then, the OND draws flexibly on a variety of legal sources that affect migrants in the city. These problems touch upon a variety of issues of non-discrimination, as well as questions like family reunification, which in the European context are more often understood as human rights as opposed to anti-discrimination issues.<sup>63</sup> The OND also uses categories such as “dignity” to identify a

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59. Grigolo 2010, *supra* note 4, at 901–07.

60. Grigolo 2009, *supra* note 49, at 315.

61. Grigolo 2010, *supra* note 4, at 904–05.

62. Michele Grigolo, *Incorporating Cities into the EU Anti-Discrimination Policy: Between Race Discrimination and Migrant Rights*, 34 *ETHNIC & RACIAL STUD.* 1751, 1756 (2011) (providing a broad overview of the institutions established under the human rights framework of Barcelona); Grigolo UCLG, *supra* note 43, at 1759–62.

63. See, e.g., Daniel Thym, *Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Rights to Regularize Illegal Stay?*, 57 *INT'L & COMP. L.Q.* 87 (2008) (discussing family reunification in the

variety of incidents that are understood as discriminatory and that affect migrants—as well as other groups—but do not raise straightforward issues of criminal law.<sup>64</sup>

Throughout each case, the process of framing and using rights is driven by the narrative of the complainant and her or his own understanding of why she or he has been affected by discrimination or a human rights violation. This approach further orientates the OND towards serving people, based on citizens' own understanding of human rights and of the exclusion involved in human rights violations. What we are seeing, in short, is an example of that inductive way of constructing human rights described by Ife.<sup>65</sup> The starting point is not specific human rights norms or laws and their content but the concrete issues that the staff of the OND confronts—to which the language of human rights is then applied as a framework.

The municipal plans introduced in the previous section are examples of inclusion initiatives, which are inspired more broadly by human rights. What these plans ultimately aim to realise is the mainstreaming of Roma and LGBT people's rights. That approach would enable the city to intervene on a variety of exclusion issues that affect these communities. The Barcelona LGBT plan has been received as a best practice in the field of LGBT policy,<sup>66</sup> and a variety of European municipalities have begun drafting and adopting similar documents.<sup>67</sup> The methodology for developing the plan was thorough. It began with a diagnostic phase, which mapped out the experience of LGBT people in the city and identified areas of vulnerability that the plan was to tackle. Prior to being formally approved by the City Council, the city LGBT Council approved the plan. The plan is, in many respects, similar to the gender analysis and mainstreaming that took place in San Francisco in the context of the implementation of the city's CEDAW ordinance.<sup>68</sup>

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context of the case-law on the right to private and family life of the European Convention of Human Rights).

64. Grigolo 2010, *supra* note 4, at 903.

65. IFE, *supra* note 21, at 138–39.

66. AGAINST HOMOPHOBIA, EUROPEAN LOCAL ADMINISTRATION DEVICES, COMBATING HOMOPHOBIA: LOCAL POLICIES FOR EQUALITY ON THE GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY 55–84 (Beatrice Gusmano et al. eds., 2011).

67. COUNCIL OF EUROPE, DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN EUROPE 49 (2d ed. 2011).

68. See Lozner, *supra* note 38, at 781–83 (on gender analysis in San Francisco); see also Michele Grigolo, The CEDAW Ordinance of San Francisco:

Barcelona has recently strengthened its interventions in the field of asylum. This has certainly been one area in which Colau has aimed to distinguish her mayoralty. Even though action on refugees is not formally a responsibility of existing specialised human rights institutions, the mayor has emphasised the nexus between providing refuge and human rights.<sup>69</sup> The city, in particular, has declared itself a “refuge city” (*ciutat refugi*).<sup>70</sup> Barcelona has joined a number of cities that, like United Kingdom Sanctuary Cities,<sup>71</sup> have been welcoming refugees and eventually put in place initiatives for the reception of refugees in the city. Providing refuge has implied the organisation of services and facilities that deal with the more pressing needs of refugees and asylum seekers, such as the availability of places to host refugees. At the same time, this sort of action provides for the long-term inclusion of migrants and refugees in the city, through the Service Centre for Immigrants, Emigrants and Refugees (*Servei d’Atenció a Immigrants, Emigrants i Refugiats*, SAIER) that was established in the early 1990s.

## B. Sustaining Urban Growth

Urban growth has become a key objective of local governments, not only in the United States but also, and increasingly, in Europe. In the neoliberal logic that dominates contemporary

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Mainstreaming, Translating and Implementing Women’s Human Rights at the City Level (Nov. 2008) (unpublished paper), [en.fondazionefeltrinelli.it/dm/0/FF/FeltrinelliCmsPortale/0389.pdf](http://en.fondazionefeltrinelli.it/dm/0/FF/FeltrinelliCmsPortale/0389.pdf) (discussing development, implementation, and end of San Francisco ordinance).

69. Ada Colau, *Compromís amb els drets humans* [Commitment to Human Rights], AJUNTAMENT DE BARCELONA: L’ALCADESSA DE BARCELONA BLOG [CITY HALL OF BARCELONA: THE MAYOR OF BARCELONA BLOG] (Sept. 1, 2015), <http://ajuntament.barcelona.cat/alcaldessa/ca/blog/compromis-amb-els-drets-humans> (describing her mandate: “to turn Barcelona into a city which is more just, democratic and a reference in the defence of human rights. We must keep in mind that asylum is a human right, recognised in Article 14 of the Universal Declaration of Human Rights.”).

70. See BARCELONA CIUTAT REFUGI, <http://ciutatrefugi.barcelona/en/> (last visited Sept. 29, 2017) (collecting resources for refugees in Barcelona and providing information about the city’s refugee programs).

71. See generally Jonathan Darling, *Defying the Demand to “Go Home”*: From Human Rights Cities to the Urbanisation of Human Rights, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 121, 128–33 (Barbara Oomen et al. eds., 2016) (describing a movement among numerous U.K. municipal authorities—including Bradford, Bristol, Coventry, Glasgow, Kirklees, Leicester, Leeds, Liverpool, Oxford, Sheffield and Swansea—to adopt measures supporting the human rights of asylum seekers).

government and governance, the question of how to create conditions in the city for generating profit and doing business—in order to become competitive in the context of increasingly integrated markets and volatile capitals—has become of paramount importance. That human rights sustain local growth is something that is hardly mentioned explicitly in studies of human rights in cities, for reasons that may well have to do with the notion that human rights are an intrinsic good that should not be cheapened by economic justifications. Another explanation, however, points to a lack of proper engagement with the city literature in many studies on human rights and cities. In this section, I wish to elaborate more on the way in which human rights can sustain local strategies to promote development.

To begin with, one should consider the extent to which promoting social inclusion through human rights as discussed in the previous section can be part of an economic strategy. This nexus is especially evident in the case of migrants. Migrants continue to provide an important component of labour in Western countries of advanced capitalism.<sup>72</sup> Ensuring the inclusion of migrants in the local workforce is also and often mainly about ensuring that they contribute to the local economy. Protecting the rights of migrants and fighting discrimination based on ethnicity or nationality also means securing migrants' freedom to work in the city. It is interesting to notice, for example, that employment discrimination constitutes one of the major areas of intervention of the OND (in the field of migration specifically<sup>73</sup> and in general as well).<sup>74</sup> In Barcelona, local government plans to integrate migrants, refugees, and asylum seekers have implied not simply providing assistance at the point of reception and through the SAIER, but also channelling these groups towards employment opportunities. In the case of refugees, for example, the *Barcelona Ciutat Refugi* website of the local government specifies that, “[t]he city continues to assist them, when they have to join the labour market and fend for themselves.”<sup>75</sup> It should be noted that, for this purpose, the city has a specialised employment agency

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72. See Sassen, *supra* note 22, at 129–63 (providing an account of the major forces giving rise to international migration, which include highly developed countries' demand for immigrant workers among other historical and sociological factors).

73. Grigolo 2010, *supra* note 4, at 901.

74. Grigolo 2009, *supra* note 49, at 361–63.

75. BARCELONA CIUTAT REFUGI, <http://ciutatrefugi.barcelona/en/reception-accommodation-and-care> (last visited Sept. 9, 2017).

called Active Barcelona (*Barcelona Activa*), to which the OND also refers people in need of jobs.<sup>76</sup>

Human rights also sustain the local economy by functioning as a brand for the city. Accardo, Grimheden, and Starl have already suggested a “business case for human rights,” which emphasises that human rights help cities acquire international visibility and reputation.<sup>77</sup> More specifically, the human rights brand signals that the city is progressive, liberal, and tolerant, and is, therefore, a good place to go, live, do tourism, and/or work. Human rights “pay off” through their association with values acknowledged by international communities of not only activists and politicians but also employers and capitalists. Part and parcel of the neoliberal recipe for an economically successful city is the notion that diversity is good for cities. This includes the idea that a diverse local population provides employers with a wide range of skills that are useful for generating profit, making migrants one of the many differences that, so the discourse says, make cities flourish. Also, the logic assumes that diversity is attractive to those “creative classes”—who, as the theory suggests, go and live in cities that are tolerant, open to differences, and are cosmopolitan in nature.<sup>78</sup> Human rights discourse helps local governments to build—and in some cases, redefine—an identity for the city which, via the association between human rights and equality, signals that the city is diverse and promotes the city as a desirable destination for creative classes. As Hoekstra reminds us, even if the theory of creative classes has been widely criticised, it has penetrated contemporary discourse of city governance, influencing local governments’ development strategies.<sup>79</sup>

It is important to notice that to use human rights as a brand, local governments only need to talk about human rights as opposed to doing something “practical” with them like the OND. Contrasting practices of rights in the city and emphasising the importance of the right to the city against the limits of human rights in the city, Chueca

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76. Grigolo 2010, *supra* note 4, at 903.

77. Andreas Accardo et al., *The Case for Human Rights at the Local Level: More than an Obligation?*, in EUROPEAN YEARBOOK ON HUMAN RIGHTS 33, 39–43 (Matthias Kettmann ed., 2012).

78. See RICHARD L. FLORIDA, *THE RISE OF THE CREATIVE CLASS: AND HOW IT'S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE* 79 (2002).

79. Myrte Hoekstra, *Diverse Cities and Good Citizenship: How Local Governments in the Netherlands Recast National Integration Discourse*, 38 ETHNIC & RACIAL STUD. 1798, 1800–12 (2015) (exposing the increasing centrality of the notion of the good citizen in integration discourses promoted by Dutch local governments).

rightly points out, with disillusionment, that many local governments have not gone beyond a purely formal embracement of the ECHRC.<sup>80</sup> From a human rights viewpoint, this constitutes a failure of political commitment to, if not compliance with, human rights. However, a local government that simply signs a human rights charter is actually doing something with them: it is trying to promote a positive image of the city.<sup>81</sup> Talking about human rights is an engagement with the discourse of human rights that aims to produce certain consequences. In this case, the goal is positioning the city in international arenas and markets.

Following this line of reasoning, it becomes clear why many European cities have enthusiastically embraced LGBT rights. On the one hand, if many cities have become “gay friendly,” this certainly has to do with pressure coming from the LGBT movement.<sup>82</sup> The nexus between sexuality and urban life, including the opportunities cities offer to LGBT people in terms of anonymity, leisure, and political organisation, has been under the attention of scholars.<sup>83</sup> However, understanding the support that a number of cities have given to LGBT rights points to the perceived economic advantage that the discourse of gay rights can bring to the economy of the city. Richard Florida mentions a “gay index” in his account and explanation of where creative classes choose to live.<sup>84</sup> Besides, the notion that LGBT

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80. Garcia Chueca, *supra* note 41, at 105–09.

81. See Morgane Bentata et al., *Nantes: When the Glamour of City Marketing Clouds the Human Rights Goals*, in HUMAN RIGHTS CITIES: MOTIVATIONS, MECHANISMS, IMPLICATIONS 85 (Charlotte Berends et al. eds., 2000) (examining human rights cities in Europe).

82. See DAVINA COOPER, *SEXING THE CITY: LESBIAN AND GAY POLITICS WITHIN THE ACTIVIST STATE* 3 (1994) (“London councils predominated [in LGBT work] for reasons linked to the size, nature and politics of the capital’s lesbian and gay communities, and of its Labour Party branches, particularly in gentrified, inner city areas.”); see also Surya Monro, *Sexuality, Space and Intersectionality: The Case of Lesbian, Gay and Bisexual Equalities Initiatives in UK Local Government*, 44(5) SOC. 996, 1003–04 (2010) (noting differences between rural and urban communities and how they “shape[] the policies and practices of the local authorities”).

83. See, e.g., *QUEER CITIES, QUEER CULTURES: EUROPE SINCE 1945* (Matt Cook & Jennifer V. Evans eds., 2014) (examining the history and development of queer identities and subcultures in European cities).

84. RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS: AND HOW IT’S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE* 255–58 (2002) (explaining the “gay index” as the concentration of gay people in a city, which Florida finds to be positively correlated to high-tech industry in the area, observing that “openness to the gay community is a good indicator of the low entry

people have spending power and enjoy cities where they can freely live their sexuality has by now become an established part of local development strategies.<sup>85</sup>

The case of Barcelona is also significant in this respect. The LGBT municipal plan, which covered the years 2010–2015, provides for the inclusion of LGBT issues within the tourism strategy of the city. It highlights the notion that:

[T]he inclusion of the city in the networks of promotion of tourism addressed to the LGBT population performs a double function: on the one hand, it improves the economy of the city through a focus on this touristic offer; on the other, it enhances the recognition of gay, lesbian and transsexual people in the city.<sup>86</sup>

The same plan also reveals that much action had already been taken in this area, certainly more compared to other policy areas the city was addressing in the same period. The city offers a number of events to LGBT people, including the Pride parade and other international parties (e.g., Circuits).<sup>87</sup> Eventually, the literature suggests that Barcelona has succeeded in forging and consolidating its reputation as an LGBT tourist destination.<sup>88</sup>

### C. Securing the City

Securing the city is another issue which has become part of the local government agenda and which human rights have potential to sustain. In fact, security has always been part of what local governments do, but this is yet another function that has recently acquired new significance. Promoting security has consequences in

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barriers to human capital that are so important to spurring creativity and generating high-tech growth”).

85. See, e.g., H.L. Hughes, *Marketing Gay Tourism in Manchester: New Market for Urban Tourism or Destruction of “Gay Space?”*, 9 J. VACATION MKTG. 152, 153 (2003) (“[T]he gay men’s tourist market has been identified as being particularly interested in urban tourism and as being ‘desirable.’”).

86. LGBT Plan, *supra* note 44, at 7 (detailing the policy areas within which LGBT issues are to be mainstreamed).

87. See PRIDE BARCELONA, <http://www.pridebarcelona.org/en/> (last visited Oct. 4, 2017).

88. See Stephen Hodes et al., *Amsterdam as a Gay Tourism Destination in the Twenty-First Century*, in TOURISM, CREATIVITY & DEV. 178, 185 (Greg Richards & Julie Wilson eds. 2007) (discussing the nexus between creative classes, diversity, and tourism, and noting Barcelona as surpassing Amsterdam as a gay tourist destination).

terms of inclusion: vulnerable groups may be particularly exposed to physical and verbal violence, and that exposure, therefore, has special implications for those groups' emancipation and eventually participation in the city. However, securing the city is also about promoting development. As Helms, Atkinson, and MacLeod mention, "the economic profitability of urban space—whether in the form of business districts, shopping centres, hotel complexes, or tourist sites—is patently dependent on it being maintained as clean, secure and attractive."<sup>89</sup> Anything that is commonly defined as crime may also well be understood as posing a potential threat to the city, the free circulation and movement of people in the city, and the freedom to do business in the city.<sup>90</sup>

Unpacking the relation between urban security and human rights leads to a range of potential explanations. The most straightforward narrative focuses on the city's responsibility to protect vulnerable communities from threats posed by racism, sexism, homophobia, etc. In the work of the OND, for example, the right to dignity is routinely used to frame and intervene in cases of verbal and physical abuse that have an obvious relation to the question of protecting certain communities and groups in the city, but where no distinct legal issue exists.<sup>91</sup> A large part of these cases can also be categorised as hate crimes under Spanish law. Interestingly, the OND collaborates routinely with the Catalan prosecutor for hate crimes, passing on cases that raise issues of criminal law and whose solution is understood as exceeding the mediation offered by the OND.<sup>92</sup>

Security also becomes an issue in broader human rights initiatives. What comes into focus in these policies is how the local government can take action which is not simply remedial, like in the case of the OND, but also preventive and reaches across a variety of policy sectors. The San Francisco CEDAW ordinance, for example, involved a Department of Public Works project installing public

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89. Gesa Helms et al., *Securing the City: Urban Renaissance, Policing and Social Regulation*, 14 J. EUR. URB. & REG'L STUD. 267, 271 (2007).

90. *Id.* at 268 (noting "the degree to which policies for crime control, criminal justice, and indeed the regulation of moral order and 'civility' have become closely intertwined with, and so fundamental to, strategies for urban development and city management . . .").

91. See Grigolo 2010, *supra* note 4, at 903 ("[D]ignity' is a box which the OND fills with cases that do not raise a clear-cut legal issue or that may belong to more specific areas of human rights and discrimination.").

92. See Grigolo UCLG, *supra* note 43, at 1764.

lamps in parking areas to promote women's safety.<sup>93</sup> The LGBT plan in Barcelona also touches upon issues of security. The plan connects the question of security to broader issues involving the eradication of homophobia and transphobia. But it also links to promoting respect and coexistence in the public space, in part through local police training on LGBT issues.<sup>94</sup> In this respect, the plan also mentions the application of the city Ordinance of Good Citizenship, whose Article 16.1 prohibits any conduct which is discriminatory and also, more specifically, homophobic.<sup>95</sup>

### III. ON REMAINING CRITICAL AND REFLECTIVE

After reviewing how human rights sustain the three chosen functions of government, this section emphasises challenges that these appropriations of human rights in city policy pose. In general, one should remain vigilant as to the limits, in terms of justice, that arise, given the pragmatics of government and the instrumental approach that local governments take regarding human rights on the one hand, as opposed to notions of principled justice often defended by activists and grassroots organisations. We can best understand local government engagement with human rights as opening a discursive space about the possibility and opportunity to do some human rights work. It is vital to remember, though, that local governments' definitions of human rights are open to different outcomes, based on co-production by local activists, politicians, administrators, and bureaucrats who participate in the conversation.<sup>96</sup>

Most importantly, then, one should be aware of the stakes that local governments, especially their leading politicians and managers, have in human rights. Human rights, from the viewpoint of the local government, may well serve different functions at the same time. They may well be just a brand. But even such motives can still allow for an institutional venue for developing meaningful human rights. All this adds ambiguity to human rights in the city and raises the question, especially for activists, of how far they should compromise in the context of the co-production of human rights.

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93. Grigolo 2009, *supra* note 49, at 151 (highlighting how CEDAW's efforts to educate public-sector workers on their policies' potentially disparate impacts on men and women led to practical and preventative solutions).

94. See LGBT Plan, *supra* note 44 (detailing the policy areas within which LGBT issues are to be mainstreamed).

95. ORDENANÇA, *supra* note 47.

96. See Grigolo 2016, *supra* note 8, at 281–84.

It should be clear that there is no implication here that compromise is not possible or that local human rights policies can never deliver in practice. The content of this article and the studies it references show concrete measures put in place by local governments that do suggest some positive impact of human rights on communities that may need them. In my own work on Barcelona, I have emphasised the positive impact of the city's policies, in particular of the OND, on the protection of rights in the field of migration.<sup>97</sup> The city charters we have introduced here, both the ECHRC and the WCHRC, may well be neglected in practice but still generate a venue for cities and their local governments to develop human rights from an urban perspective, based on an understanding and use of human rights generated by facts and issues emerging from urban life. In this respect, in line with Darling,<sup>98</sup> it seems useful to understand the development of human rights in cities as part of a process of urbanisation of human rights. From the sociological perspective adopted here, the human rights city may constitute a new development in human rights—a subfield defined by knowledge that comes from the discursive association between human rights and the city, created by different stakeholders, including local governments.<sup>99</sup>

In this respect, the human rights city is also a subfield of the local government field, generated by the field's interest in associating human rights to the government of the city. The agency of local governments and their networks at the supranational level and within the United Nations examined by Nijman<sup>100</sup> suggests the increasing protagonism of cities in promoting a city understanding of human rights. What is emerging in the context of that engagement is a focus on the right to the city as a human right itself. This urban perspective on human rights has the potential to start influencing the knowledge of human rights produced within its field.

At the same time, the neoliberal context in which local governments engage with human rights is unavoidable and can help us explain the why and how of these engagements. It should be clear

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97. See Grigolo 2010, *supra* note 4.

98. Darling 2016, *supra* note 71 (making a general argument about the urbanization of human rights in the context of his analysis of U.K. Sanctuary Cities).

99. See also Grigolo 2016, *supra* note 8, at 278 (“Human rights as we know them from the international regime and state practice are the set of notions and institutions within which the human rights city to the extent that the actors involved in it take this knowledge of human rights as a given reality.”).

100. See Nijman, *supra* note 41, at 218–29.

by now that human rights may be a valuable resource for local governments in more than one respect. In this context, the way in which local governments use rights may raise concerns as to the manipulation of human rights and its more or less obvious—or unintended—consequences. The case of government use of LGBT rights to promote the local economy and tourism, for example, has been criticized by Hughes. Hughes emphasises that the promotion of the city as a gay destination leads “to the appropriation” of spaces which have often been developed by and for the local LGBT community “by others for their own ends.”<sup>101</sup> He suggests that many gay men may actually dislike this. Eventually, it is also important to be reminded of different positions within the LGBT movement regarding working with mainstream institutions, including local governments. Early studies on local LGBT equality policies in the U.K. stress the process by which socialisation of agents in the local government—such as LGBT activists co-opted in local committees—silenced some “possibilities”<sup>102</sup> for equality programs even before any discussion over policymaking started. Cooper’s forceful description of the result is that some potential plans were effectively “unthought” because of the culture and politics of local government.<sup>103</sup>

While Cooper’s study tracks the development of these policies mainly in the 1980s, at a time of high controversy in the United Kingdom around LGBT rights, her work highlights a continually relevant pattern: how institutions filter and select the meaning of rights and equality.<sup>104</sup> As Golder<sup>105</sup> points out in his Foucauldian analysis of human rights, human rights open a space for political agency and emancipatory politics while at the same time working towards the neutralisation of the political challenge posed by any particular identity. Activists who resist co-optation and normalisation in the context of institutional politics have to develop strategies to maintain some distance and independence from institutions. In Barcelona, the Gay Collective (*Col·lectiu Gai de Barcelona*) is part of the LGBT Council and therefore participates in local government initiatives related to human rights. But it has nevertheless continued to adopt more confrontational strategies of mobilisation outside of

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101. See Hughes, *supra* note 85, at 160.

102. COOPER, *supra* note 82, at 73.

103. *Id.*

104. This observation aligns with Ruzza’s findings. See *supra* note 5.

105. BEN GOLDBER, FOUCAULT AND THE POLITICS OF RIGHTS 27 (1st ed., 2015).

institutions.<sup>106</sup> The group has remained critical of the marketisation of the gay pride parade and the presentation of the city as a gay destination more generally.<sup>107</sup>

The case of migrants, refugees, and asylum seekers suggests more reasons for remaining vigilant about the ambiguities of human rights discourse in the context of its deployment by local governments. We can assume that, being newcomers who do not have the right to vote in national and—apart from specific cases and states—local elections, migrants, refugees and asylum seekers are also deprived of the political agency and influence that the more autochthonous LGBTQ population (excluding LGBTQ migrants) has acquired over time within their own national communities. While not denying that these groups of newcomers have some measure of agency as political actors, research on Barcelona shows that migration is a topic on which the local government—in collaboration with Catalan organisations and NGOs—has acted *upon* the affected community rather than in response to political organization. Migrants tend to have limited control over this policymaking, in favour of a variety of local stakeholders, from the local government to Catalan associations specialised in migration, who eventually contribute to the SAIER.<sup>108</sup> Finally, while the movement of sanctuary cities and cities of refuge like Barcelona has the obvious merit of making a statement of principle in the context of the current “humanitarian crisis” generated by conflicts in the Middle East and Africa, the deployment of hospitality by local governments often comes with a set of conditions that define which newcomers are or are not deserving of hospitality.<sup>109</sup>

In line with this, I would like to emphasise the way in which human rights, via their association with security, duties, and the notion of the “good citizen,” have been used to discipline people—migrants in particular. The focus here is on the Barcelona Charter of Citizenship. Article 11 of the Barcelona Charter of Rights and Duties on “Security in the public space,” provides that the municipality promotes measures against acts of “*incivisme*”—a notion

106. Gerard Coll-Planas, *Homosexuals, bolleres i rars: posicions polítiques en el moviment lèsbic i gai*, 14 *ATHENEA DIGITAL* 41, 41 (2008).

107. See Col•lectiu Gai de Barcelona, FACEBOOK (July 6, 2017), <https://www.facebook.com/Col.lectiuGaiDeBarcelona/>.

108. Davide Però, *Migrants and the Politics of Governance. The Case of Barcelona*, 15 *SOC. ANTHROPOLOGY* 271, 275–78 (2007).

109. Jonathan Darling, *Moral Urbanism, Asylum, and the Politics of Critique*, 45 *ENV'T & PLAN. A* 1785, 1787 (2013).

that can be understood as referring to “bad citizenship,” “lack of civic-minded behaviour.”<sup>110</sup> It further provides that the municipal police will monitor the accomplishment of the duties of citizens. As was already mentioned, a measure in this direction had already been taken in Barcelona—the Ordinance on Good Citizenship. This is the same Ordinance expected to promote the security of the LGBT population according to the LGBT municipal plan. The problem is that the Charter fails to limit and circumscribe definitions for the terms “*civisme*” and “good citizen.” In fact, the Charter seems to articulate a notion of public space and its use which reflects prevailing social norms defining what “proper” behavior is, which are then discursively enforced upon marginal subjects.

There are class issues to consider here as well. Research on diversity policy in cities has already shown that it, like much of the rest of urban policy, is often targeted at middle-class people, and it allows for ethnic diversity in particular as far as members of ethnic communities are also middle class and therefore partake in the same middle-class sensibility and vision of the city.<sup>111</sup>

Not surprisingly, migrants are often the target of these discourses and the legal measures that convey them.<sup>112</sup> Article 24 of the Barcelona Charter, on “Foreign people,” includes the obligation for this group to acquire a residence in Barcelona and, in many cases, a work permit. They will also have to conform to the values and cultures of the societies of Barcelona and Catalonia, seeking integration and to develop themselves “*cívicament*” (again, as a good citizen), “*laboralment*” (through their employment), and “*políticament*” (politically).<sup>113</sup> It may, therefore, be the case that, via their association with duties, human rights come to single out certain communities in ways that still evoke inclusion but are more conducive to assimilation and normalization than emancipation and autonomy. Human rights will sanction more than empower newcomers as far as their practice of the city and its space is “distinguished” in the political or legal conversation from that of a “good citizen.” Documents like the Barcelona Charter and the

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110. CARTA DE CIUTADANIA, *supra* note 46.

111. See Maria Schiller, *Paradigmatic Pragmatism and the Politics of Diversity*, 38 ETHNIC & RACIAL STUD. 1120, 1131 (2015) (examining how local governments in The Netherlands engage with diversity and the politics of it).

112. See Stefano Moroni & Francesco Chiodelli, *Municipal Regulations and the Use of Public Space: Local Ordinances in Italy*, 1 CITY, TERRITORY & ARCHITECTURE 11 (2014) (describing similar activities in Italian cities).

113. CARTA DE CIUTADANIA, *supra* note 46.

Ordinance of Good Citizenship are not only at odd with inclusion in the sense we have examined in the previous section, but also the right to the city.

### CONCLUSION

The purpose of this contribution has been to clarify why and how local governments engage with human rights. While not excluding—and in some cases emphasising—local politicians' genuine adherence to human rights and principles of justice, the focus has been on how human rights help municipalities and their mayors govern cities. Drawing on the sociology of human rights and cities, this article has reversed the usual perspective for investigating the deployment of human rights in the city, by addressing the added value of human rights to contemporary practices of city government. To illustrate this point, we have considered three important functions of local government: social inclusion, economic development, and security. Whether in the more individualized form of anti-discrimination policy or the more group-oriented style embedded in the human rights approach, human rights offer a discursive platform, sustained by the law and its discourse, to frame local government intervention. I have appreciated how questions of difference and the communities that embody them are especially central in local government engagements with human rights. I have examined issues of migration and refuge as well as LGBT issues, both of which have been central to much local government engagement with human rights.

In doing so, this article has defended a critical approach to the study of human rights in cities. Human rights certainly offer a space of recognition, agency, and eventually inclusion for marginal communities and the difference around which they are organised and identified. More generally, I have emphasised the emergence of an urban practice of human rights driven by individual and community experience, which can redefine human rights for the city. In this practice, the nexus established between human rights and the right to the city can help re-orientate human rights towards issues of spatial and urban justice, placing an emphasis on residents' control over urban space and policy. This notion of resident can open up participation in human rights to a different set of agents whose relation to the city is defined by their use of urban space and everyday experience of urban life, resisting a purely neoliberal approach to the city and the latter's influence on the local government approach to the government of the city. The same focus on residence

and the use of the city should hopefully also push human rights beyond a legal and moral notion of rights tied only to the visions and preferences of the middle class. It is in this direction that, at least in the author's view, a new, urban practice of human rights should be oriented towards.

In contrast to the notion of human rights in the city I have just advocated, I have also pointed out how this same space of human rights may well function more ambiguously towards the assimilation, normalisation and criminalisation of the same communities and groups that one would expect should benefit from human rights. I am concerned here about uses of human rights over marginal communities more than with them. These dynamics, in turn, should be read in the context of the broader neoliberal practice of the city which remains a strong and obvious option for local governments. LGBT rights help to sell the city, as much as the inclusion of newcomers sustains local economies via their incorporation into the local labour markets and employability schemes. In both cases, and most patently that of migrants, communities are disciplined and their difference minimised as part of broader efforts to promote civil engagement and behaviour in a sanitized city space.

Interestingly, however, even activists that remain skeptical of institutional politics may well continue to be part of them, via venues of participation offered by institutions connected to human rights. In order for these activists to stimulate the production of human rights within the local government and have an influence on its outcome, it may be necessary to combine participation with direct action that exposes any manipulation of human rights from within the institution. Eventually, this is also a matter of remaining faithful to the human rights ethos and saving the same human rights from discredit. Co-production of human rights does not imply acting collaboratively with institutions in all instances, but rather the adoption of tactics towards the achievement of certain desired outcomes.

That said, what human rights in the city are and how they function can only and should always be appreciated in the context of a given city and local government. In the case of Barcelona, we have seen how the city has gone through different phases and uses of human rights, "playing" with the concept in different ways. The new mayor Ada Colau has clearly given new impetus to human rights, as opposed to the previous administration and the more general conservative politics that dominated the city previously. Colau's commitment to reduce the exploitation of the city for touristic

purposes while insisting on the need for Barcelona to remain an open and welcoming city, even in the light of the recent terrorist attack in The Ramblas, suggests the realignment to justice of human rights and their use in the city and the attempt to emancipate them from a neoliberal logic of government. This urban re-appropriation of human rights from the left may well save human rights and their urban practice from a possible crisis: one which is induced by the economic downturn of the late 2000s, as well as the current reassertion of state centrality and national identities. Overall, what this suggests is an evolving, open-ended process of the urbanization of human rights, and the multifaceted, contested character of urban human rights practice.