ABSTRACT

Title of Document: ENDOGENOUS INSTITUTIONAL CHANGE: THE TRANSFORMATION OF THE STATE-LOCAL RELATIONSHIP IN THE UNITED STATES

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This thesis focuses on the changing relationship between state and local governments. I explore state-level constitutional changes in the 19th and early 20th century with respect to the governance and organization of municipalities. The rich heterogeneity across state constitutions gives us an opportunity to understand the underlying political and economic forces at work, using a fiscal federalism and political economy framework. There are parallels between state-level constitutional changes regarding private corporations and the less well understood changes instituted for public corporations such as municipalities. The adoption of municipal general legislation stemmed from similar problems of special interests and political maneuvering under special legislation. In some states, general legislation protected municipalities from unwanted abuse by state-level politics, and provided a uniform structure under which all local governments could operate and easily gain access to the corporate form. However, as in the case of private corporations, the one-size-fits-

all rubric of general legislation was often not amenable to all municipalities. Some states implemented a Pareto-improving solution, which is to have general legislation available for those well served by it, and to give municipalities the flexibility to self-select and independently charter themselves. The resolution to grant home rule to municipalities retained the political security afforded by general legislation and provided the freedom of organization to those who needed it most.

The thesis is organized as follows. Chapter 2 documents the history of the relationship between states and their municipalities. The chapter also discusses the various problems states had in maintaining the original setup of passing special laws for municipalities. Chapter 3 evaluates the changing economic and political conditions which may influence a state's choice of how to structure the state-municipal relationship. Chapter 4 looks at one institutional change, the adoption of home rule. By using a unique municipal-level dataset, I empirically investigate why certain states may have adopted this institution. Chapter 5 considers another form of local government, the school district. The patterns seen in the state-municipal relationship are mirrored in the state-school district relationship.

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By

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Dedication

To my parents, Peter and Brenda.

Thank you for your love and support.

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1 Introduction

The system of local governments in a state is often taken for granted. Many citizens pay taxes to their municipality, county, water district, and school district expecting that public goods and services will be provided. However, few of us understand the process which resulted in this intricate web of local governments. Our current system of government is the product of two hundred years of interaction between state and local governments, defined in the legal framework for local governance established by state constitutions. In the 19th and early 20th century, a wide variety of constitutional changes were adopted to address the organization and governance of municipalities, changes that varied across geography and time. The rich heterogeneity across state constitutions gives us an opportunity to understand the underlying political and economic forces at work, using a fiscal federalism and political economy framework.

This thesis analyzes constitutional changes across states and across time to help answer several questions. First, exactly what changes were actually made to constitutions? Second, what were the spatial patterns of constitutional changes, both in terms of which states adopted these constitutional changes and when they did so? Third, why did these changes happen? These institutional changes were not exogenously imposed on states, nor were they changes that all states adopted. Differences in the political, economic and social environments compelled constituents and politicians to change their constitutional constraints.

I examine these questions from a new perspective. By exploiting the variation seen across states and across time, the mechanisms for why these constitutional

changes happened can be better understood. I assume that the constitutional framework is driven both by what is economically efficient and by what is politically viable for state legislatures to adopt. This novel approach enhances both the historical record and the way we think about the institutions which frame the state-local relationship. The historic record often assumes institutional change is reflective of social movements like the reform movement of the Progressive Era. While political movements are significant, this thesis emphasizes that economic and political conditions are essential parts of the story. For example, I show that the heterogeneity within a state is an important factor in determining the probability of decentralizing control to local governments.

Another important distinction this thesis makes is in recognizing the different options states have in framing the state-municipal relationship. The potential relationship between a state and its local governments has often been reduced to either a centralized or decentralized form of governance. This thesis highlights that there is an important distinction to make within the broad category of "centralized" control. Under a centralized system where decisions about local governments are made by the state legislature, a legislature may utilize special legislation, general legislation, or both. It is important to first understand the different options available to the state legislature before trying to examine why a state might choose to move to an alternate system which allowed for decentralized control by the local governments.

A third contribution of this thesis is a new view of the institution of home rule. Home rule provided for decentralized control by municipalities instead of municipal organization being determined centrally by the state legislature. The current view of

home rule isolates the institution as a choice made by some states starting in the late nineteenth century. This perspective is problematic because it fails to take into account the full history of the state-municipal relationship. Instead of considering home rule as an isolated choice, this thesis shows home rule was one of the options states considered jointly when making choices about how to structure the state-municipal framework.

The thesis is organized as follows. Chapter 2 documents the history of the relationship between states and their municipalities. The chapter also discusses the various problems states had in maintaining the original setup of passing special laws for municipalities. Chapter 3 evaluates the changing economic and political conditions which may influence a state's choice of how to structure the state-municipal relationship. Chapter 4 looks at one institutional change, the adoption of home rule. By using a unique municipal-level dataset, I empirically investigate why certain states may have adopted this institution. Chapter 5 considers another form of local government, the school district. The patterns seen in the state-municipal relationship are mirrored in the state-school district relationship.

1.1 The Creation of Local Governments

From the beginning, colonial governments had independent control over their own local governments. The Tenth Amendment in the United States Constitution cements that responsibility for the newly formed state governments, stating that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Among the

powers each state may exercise is the freedom to determine how to structure its system of local governments. Over the past two hundred years, the structure of the state-local relationship has been defined by state constitutions and legislation, as well as through court rulings. Because each state possesses the authority to independently determine how to govern, there is a great deal of variation in how states handled this same task of organizing local governments.

Despite a long history of significant differences across state constitutions, the methods by which states have structured local governments share similarities. Historically, states initially possessed complete authority over local governments. In a certain sense they still do, as local governments are pure creatures of the state. States are free to incorporate local governments as they deem fit and to specify how each local government is to be organized and how it is to be run. Local governments do not possess inherent powers of self-determination or control.

States can choose to devolve powers to the local level. This decentralization of control is considered an "enabling" action.[1] A state can create institutions which grant citizens some discretion over how their local governments operate. The range of self-rule varies across states and time. At the most liberal extreme, local governments gain control over the process of "chartering." With access to chartering powers, local governments can make decisions that determine the specific functions and operation of the local government. There is wide variation in the degree to which a state delegates autonomous decision-making to local governments.

[1] ACIR (1987), p 39.

1.2 Local Governments in State Constitutions

State constitutions provide a means to contrast the different options states chose in organizing their system of local governments. State constitutions usually provide a general framework of what powers the state has over local governments and what powers local governments may exercise on their own. Constitutions include details such as the method of incorporation, the election or appointment of officials, the issuance of debt, the available methods of taxation, the process of amending a charter, the organization of police, and the mandate to provide education. General patterns of change in the states' relationship to local governments can be seen by looking at constitutions across time and across states.

By focusing on state constitutions and abstracting from state laws and statutes, some of the operational details of the state-local relationship are lost. However, the state constitution defines the fundamental legal structure for these creatures of the state. As Bromage (1961) writes, "Without state constitutional requirements and restrictions as to local government, a state legislature might proceed to create, consolidate, or abolish local civil divisions…[the] history of constitution-making has favored constitutional status for specific types of local units with limitations on legislature intervention in local affairs."[2] State constitutions are more difficult to change than statutes and, thus, are more persistent over time. Therefore, changes to state constitutions reflect defining moments in the history of the state-local relationship.

[2] Bromage (1961), p 1.

1.3 Categorizing Constitutions: Dillon's Rule versus the Cooley Doctrine

The content of state constitutions may seem straightforward to compare, but every detail of constitutional text is subject to interpretation. To simplify the analysis of the state-local relationship, legal scholars have categorized the states as either operating under Dillon's Rule or the Cooley doctrine. Under Dillon's Rule, local governments are creatures of the state who can only exercise those powers which are expressly granted by states. The Cooley doctrine reflects a much more liberal grant of power from the state to local governments by asserting that local governments have inherent rights of self-control. The two perspectives are often contrasted because of the different degree of autonomy given to local governments. However, the important similarity between the two views is that they both represented active definitions of the state-local relationship. A state which invoked Dillon's Rule tied the hands of local government officials. No longer could local government officials assume that they had free reign over local affairs. At the same time, state legislatures were now given the responsibility over the organization and governance of local governments. While Dillon's rule added accountability between the state and local governments, the Cooley doctrine recognized the separability of different levels of government. The two points of view were part of the process of determining the boundaries of the once undrawn state-local relationship, both of which were inspired by judgments in specific cases heard by Judge Dillon and Judge Cooley.

In 1868, Chief Justice John Dillon of the Iowa Supreme Court ruled on two cases which defined his perspective on the state-local relationship. In *City of Clinton v. Cedar Rapids and Missouri Railroad Company* Dillon wrote that "municipal

corporations owe their origin to, and derive their power and rights wholly from the Legislature…As it creates, so may it destroy."[3] In *Merriam v Moody's Executors*, Dillon said municipalities could only exercise the following powers: "First, those granted in express words; second those necessarily implied or necessarily incident to the powers expressly granted; third those absolutely essential to the declared objects and purposes of the corporation- not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation - against the existence of the power."[4] Both limited the powers of local governments to those expressly granted by the state. For his judgments in the courtroom and his resulting work *Commentaries on the Law of Municipal Corporations*, this interpretation of state-local relationship was coined Dillon's Rule. However, this particular notion of the state-local relationship was not new; several states defined this structure earlier in the nineteenth century.[5]

The Cooley doctrine originated from the judgment of Michigan Supreme Court Judge Thomas Cooley in *People v Hurlbut*. The statute at issue had created a board of public works for Detroit with members to be appointed by the state legislature. In his concurring opinion, Cooley wrote that "local government is a matter of absolute right; and the state cannot take it away. It would be boldest mockery to speak of a city as possessing municipal liberty where the state not only shaped its government, but at discretion sent its own agents to administer it; or to call

[3] Zimmerman (2008), p 165. Originally from *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, 24 Iowa 455 (1868).
[4] Merriam v Moody's Executor, 25 Iowa 164, 170 (1868).
[5] ACIR (1993), p31. The work of Joan Williams uncovers evidence that shows royally chartered municipalities were subject to the will of the legislature in Maryland, Pennsylvania and Virginia. There were also cases in Massachusetts in the early 19th century which ruled that towns were corporations of limited powers and subordinate to the state.

the system one of constitutional freedom under which it should be equally admissible to allow the people full control in their local affairs, or no control at all."[6]

In the late 19th century, most states accepted that Dillon's Rule was the prevailing view of the relationship between state and local governments.[7] The interpretation was that local governments, by definition creatures of the state, only possessed powers granted to them expressly by the state government. As will be shown, Dillon's Rule serves as a point of departure for some states. In the late nineteenth and early 20th centuries, some states chose to rearrange the relationship between the state and municipal governments. Instead of municipalities only having those powers which are expressly granted by states, municipalities in some states are given the opportunity to seek additional control over municipal affairs.

1.4 Fiscal Federalism and Political Economy

The constitutional changes were not universally implemented across all states and were not enacted at the same time. There is variation in how states organize local governments and also in when states choose to make changes. The heterogeneity seen across state constitutions is influenced by differences in political, economic, and cultural environments. As Besley and Case (2000) point out, "state policy making is a purposeful action, responsive to economic and political conditions within the

[6] ACIR (1993), p 34. Originally from 24 Michigan 108 (1871).
[7] The only states to practice the Cooley doctrine in some form were Indiana, Nebraska, Iowa, Kentucky and Texas. ACIR (1993), p 34.

state."[8] Theories of political economy may help identify forces that determine when and why we see constitutional change.

The concept of federalism describes a system of governments and how power is allocated across national and sub-national governments. The work of William Riker is representative of the classic view of federalism. His work attempted to identify the right balance between "centripetal and centrifugal forces, searching for institutional, cultural and political circumstances that allow for stable federalism."[9] Classical approaches to federalism take the view of a social planner and made recommendations for the most efficient distribution of power across governments. For example, the Oates Decentralization Theorem states that when there are differences in demands or costs for local public goods, a uniform, centrally determined level of local public goods will result in a lower level of social welfare.[10] Thus, traditional views of fiscal federalism predict that decentralization is beneficial when there are heterogeneous preferences across local governments within a state.

Traditional fiscal federalism models identify the circumstances under which centralization or decentralization is socially optimal. However, recommendations generated from a simple fiscal federalism framework fail to take into account issues of the politics and incentives that actors within the different levels of government may face. By supplementing the fundamentals of fiscal federalism with aspects of political economy, we can better address the probability that certain socially efficient outcomes will also be politically feasible outcomes.

[8] Besley and Case (2000), p 672.
[9] Rodden (2006), p 359.
[10] Oates, Fiscal Federalism (1972).

With respect to issues of political economy, it is important to note the inherent tradeoffs between a state government and its local governments. The state is governed by a governor, a legislature, and the court system. The legislature is formed by representatives elected by each individual local government. These legislatures are elected to represent the interests of their constituencies. As elected officials, they also have the role of deciding what policies the state should pursue. This dual duty of legislators creates an interplay between what is best for the part (the local government) and what is best for the whole (the state). The policies that are ultimately determined by the state will depend on the collective actions of legislators.

Any changes to the state-local relationship will be endogenously determined by the underlying dynamic in the state. Acemoglu and Robinson say that the distribution of political power is important in determining institutional change.[11] Political power is determined by both *de jure* and *de facto* power. *De* jure power depends on the given political institutions and constraints. *De* facto power depends on the ability to solve the collective action problem and on the distribution of economic resources. While *de jure* power generally persists over time because it is hard to change the formal legal framework, *de facto* power can change with a different distribution of economic resources or a change in political opinions. Changes in the distribution of *de facto* power can motivate the evolution of the institutional structure through constitutional change.

While internal shifts in political power can affect the process of institutional change, external factors may also influence the decisions of states. States may act independently, but they coexist and learn from each other. In 1932, Justice Brandeis

[11] Acemoglu and Robinson (2006), p 673-692.

referred to the states as laboratories who could independently experiment with innovative social and economic programs without interfering with the larger federal government.[12] Each state government can independently decide to try out different programs and methods of governance. When a state designs a successful program or implements an efficient governance structure, other states see that example and can utilize it in their own state. As a result, states learn not just from their own experiences, but from others' experiences as well.

Ideas of laboratory federalism apply to the adoption of constitutional content. By observing when states incorporated certain elements in their constitutions, patterns of adoption can be traced. For example, a state may be the first one to revise its constitution to include a prohibition of special incorporation of municipalities. After that prohibition is in effect, benefits may be seen by the state legislature. Because of the positive experience seen in the initial state to pass such a change, others states seeking similar benefits may want to incorporate the same ban in their constitutions.

[12] *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

2 The State-Municipal Relationship

Municipal governments are creatures of the state. The power of municipalities is determined by the restrictions and freedoms put in place by state governments, parameters state governments often delineated in their constitutions. The design of the state-municipal relationship in state constitutions has changed over the last two hundred years. The first state constitutions institutionalized the routines of the colonial governments with respect to localities, often drawn from the English experience with the establishment of boroughs which tended to treat municipalities individually. The routines usually involved passing special legislation for municipalities, which were unique laws passed individually for each municipality as needed. Later, some states moved away from special legislation to handle standard municipal needs and toward general legislation. General legislation provided a uniform set of laws for each set class of municipalities. Other states opted to give municipalities control over their own charters through home rule. While state constitutions rarely contain the details of the exact special or general legislation that was enacted, the constitutions present a picture of the changing pattern of the state-municipal relationship.

2.1 Tradition of Incorporation and Special Legislation

In England, boroughs and cities were granted charters directly from the Crown.[13] Charters were formal documents that recognized the borough or city as a corporation, "indistinguishable as a legal matter from any other commercial

[13] Griffith (1938). A few of the more ancient among them claimed rights and privileges by prescription but overwhelming majority of the cases were incorporated in a formal charter (p 17).

operation."[14] Like private corporations, public corporations were granted charters on an individual basis and were thus tailored to the specific interests at hand. Griffith (1938) notes that the charters for boroughs varied both in the jurisdictions covered and in the internal structure that was established. For example, some charters contained provisions for the form of land tenure or mercantile privileges exempting townsmen from tolls and fees, some recognized borough customs as a source of binding law, and some allowed for the formation of guilds within the borough.[15] Any changes to these charters were made by commissions appointed by the king.

Colonial governments in the United States adopted a system of local governments that was organized in a similar way. The king bestowed the power of incorporating municipal governments on the governors, proprietors and assemblies of his colonies. The royal commissions given to colonies included the authority to regulate localities, one of the many powers given to settlers, all of which were subject to the laws and statues of Britain. For example, in 1639, Sir Ferdinando Gorges was given a charter for Maine which specifically included the power to incorporate cities, borough and towns. A similar grant was made in 1681 by Charles II, who granted William Penn a charter.[16] By means of separate colonial grants, twenty cities were incorporated in the United States from 1641 to 1776.[17] Incorporated municipalities could be found in Maine, New York, New Jersey, Pennsylvania, Maryland and Virginia. Other states had large cities, but, as Kimball (1922) notes, these cities were

[14] Frug (1999), p 36.
[15] ACIR (1993), p27.
[16] Griffith (1938), p 36. In Maryland, Lord Baron of Baltimore was responsible for incorporating St. Mary's in 1667.
[17] First charter was Agamenticus in Maine in 1641. In the South, Charles Town was the only major city but it was not a corporation. Frug (1999), p 37.

not incorporated and instead governed based on the New England tradition of town meetings. Incorporated municipalities could have their charters amended by the governor or proprietor, the same way that originally granted them corporate status. Colonial governments often responded to local needs by delegating greater discretionary powers to local officials, but the needs of localities were all evaluated and addressed separately.[18]

After the Revolution, the power over localities that the crown-appointed governor or proprietor had assumed was often deliberately bestowed upon the state legislature. New York, Pennsylvania and Maryland incorporated this new designation in their initial constitutions. New York's constitution of 1777 said that "nothing in this constitution contained shall be construed…to annul any charters to bodies-politic by [the said King or his predecessors]…until otherwise directed by the legislature."[19] In Pennsylvania, the constitution gave the House of Representatives the power to constitute towns, boroughs, cities, and counties.[20] Maryland's constitution of 1776 noted that "the city of Annapolis ought to have all its rights, privileges and benefits, agreeable to its Charter, and the acts of Assembly confirming and regulating the same, subject nevertheless to such alteration as may be made by this Convention, or any future Legislature."[21] Other states moved the power by "tacit implication".[22]

The change in authority from an executive to a legislative body had implications for how charters could be granted. A municipal charter was no longer an

[18] ACIR (1993), p 29.
[19] 1777 Constitution of New York, Article 36.
[20] 1776 Constitution of Pennsylvania, Article II, Section 9.
[21] 1776 Constitution of Maryland, Declaration of Rights, Section 37.
[22] McBain (1916), p4..

executive order, it was a "unique instrument granted by the legislative body" through a special act.[23] Also, since charters were granted through a legislative process, they could only be changed through a legislative process. As will be shown later, switching the responsibility of municipal chartering to the legislative body presented issues of political economy not seen when the responsibility was under the domain of the executive.

2.2 Prohibition of Special Legislation

A new era of the state-municipal relationship began in the mid-nineteenth century, when constitutions began prohibiting state legislatures from enacting special legislation for municipalities. There were new provisions in state constitutions were "viewed as aiding local self government" so that "whatever rights of government or power of regulating its own affairs a community may have can be neither increased nor diminished without affecting in the same way the power or rights of all similar communities."[24] For example, some state constitutions stopped the legislature from granting special legislation for perpetual licenses for municipal franchises, while others stopped the legislature from extending municipal debt limits through special legislation. In some states, the constitution required citizen consent to any special legislation changing a municipal charter. Additionally, there were prohibitions against general interference with the organization of municipal governments. For example, the Illinois constitution of 1870 was the first constitution to prohibit local or

[23] Griffith (1976), p 34.
[24] ACIR (1993), p 35.

special laws for "incorporating cities, towns or villages, or changing or amending the charter of any town, city or village."[25]

It is important to note that state legislatures did not use special legislation solely for municipalities. Special legislation is a term used to describe any grant of privilege for an individual or an organization. Special legislation for municipalities and other forms of local government was termed "local" legislation to distinguish it from other forms of special legislation. These special grants encompassed chartering private corporations, changing the names of people, exempting individuals or corporations from taxation and granting non-judicial divorces.

Similar prohibitions of special legislation were implemented across states. In fact, some of these constitutional provisions to prohibit special legislation were exact copies from another state's constitution. For example, the first constitutions of Arizona (1912), New Mexico (1911), North Dakota (1889), Oklahoma (1907), South Dakota (1889), and Washington (1889) all included the previously mentioned prohibition of municipal incorporation from the 1870 Illinois constitution, along with a laundry list of other limits on special legislation.[26] McBain believes that provisions were copied with "more or less blindness" or "at least with no more specific design than to forestall in the particular state the rise of an evil which was well known to have encountered elsewhere."[27] While McBain may not have perceived a need for these constitutional prohibitions in certain states that adopted them, the process to include these measures in a state constitution is not without cost. At the very least,

[25] 1870 Constitution of Illinois, Article IV, Section 22.
[26] Arizona (1912) Article IV, Section 19. New Mexico (1911) Article IV, Section 24. North Dakota (1889) Article II, Section 69. Oklahoma (1907) Article V, Section 46. South Dakota (1889) Article III, Section 23. Washington (1889) Article II, Section 28.
[27] McBain (1916), p 96.

the cost includes time to pass the constitutional revision through the state legislature and then have it brought to a vote at a statewide election. In order for a state to adopt prohibitions against special legislation, the benefits must exceed the costs. States where the perceived benefit of prohibiting special laws is low might have passed them if the cost was also low. The cost of adopting constitutional measures decreases if they are incorporated at the time of a constitutional convention along with other extensive changes. After a convention draws up a revised constitution, all of the changes are presented and voted on by the residents of the state as a package. What may not have been worth the independent hassle of a constitutional amendment may be worth debating along with other measures at a constitutional convention.

Constitutional conventions were often called to address the issue of special legislation. Ireland (2004) says that the "evil of special legislation" was a specific reason for calling constitutional conventions in Indiana (1850-1851), Illinois (1869-1870), Pennsylvania (1872-1873), and Kentucky (1890-1891).[28] The Indiana constitution drafted and adopted in 1851 was the first state constitutional provision which contained a broad prohibition on local or special legislation.[29] Other states also took extensive action on special legislation at their constitutional conventions. After the constitutional conventions of Nebraska in 1871 and Missouri in 1875, delegates

[28] A delegate from Indiana said "the whole error- the whole incongruity- the whole oppression of our law, and almost the whole necessity of calling this convention, was to do away with this local legislation." An Illinois delegate stated "if there was one reason, above all others, for the calling of this convention, for the formation of a new constitution, it was this curse of special legislation." A delegate to the convention in Pennsylvania said "if this body was authorized and required for any one purpose more than every other, it was to put an end, at once and forever, to SL, which has worked more injury to the people of this Commonwealth than any other single legislative evil that has ever befallen them." Ireland (2004), p 295.

[29] ACIR (1993), p 34.

from both conventions were proud of their achievements towards prohibiting special legislation.

To measure the range of special laws addressed by constitutions, Binney (1932) constructed thirteen categories of special legislation by subject.[30] While each category of special legislation attracted different interest groups and required separate legislation, prohibition of categories of special legislation were often incorporated into constitutions at the same time. Figure 1 highlights two points: (1) limits on special legislation across different categories were often incorporated into constitutions at the same time and (2) these bans on special legislation were usually incorporated during constitutional conventions. However, a few states, such as Minnesota, adopted the prohibitions by constitutional amendment.

2.3 General Legislation

When special legislation for municipalities was prohibited by state constitutions, an alternative means of addressing municipal governance was usually made available through general legislation. When states incorporated prohibitions of special legislation in their constitutions, they often included a "general restriction" clause. Unlike a call for general incorporation laws, which is narrowly defined to just cover private corporations, a general restriction clause covers all categories where general laws are appropriate. In 1851, the constitution of Indiana was the first to prohibit certain types of special legislation, and was also the first to say "that in all

[30] The categories are: persons; corporations; rights, privileges, duties and property; interest, liens and trade; eminent domain, railroads, bridges, ferries; legal proceedings; municipal corporations and local government; public officers; highways and public grounds; schools; taxation, elections; and general restrictions. Binney (1894), p 131-132.

cases enumerated in the preceding section [which prohibited special legislation], and in all other cases where a general law can be made applicable, all laws should be general and of uniform operation throughout the state."[31] Of the thirty-seven states that included prohibitions against special laws in their constitutions by 1916, twenty-seven of them paired those prohibitions with a mandate for general legislation.

The constitutional appeal for laws to be general and of uniform operation within the state related to legislation with respect to people, corporations, and municipalities. Reinsch defines as general act as applying "equally to all persons subject to the authority if the state, or to a whole class of persons, defined by some essential characteristic such as profession or age."[32] Binney (1894) provides a similar definition of a class, saying that it is a "group of individuals ranked together as possessing common characteristics."[33] Thus, a state could define different classes of municipalities based on population, and have separate legislation for each class. Appropriate general legislation for a class based on population requires that the legislation relate to the defining characteristic of the class. For example, if there is legislation for a class of cities with fifty-thousand people or more, then the legislation must relate to the needs of a large city. If the legislation is unrelated to the size, then the legislation should not be unique to the class, but be in effect for municipalities of all sizes.

Once state legislatures were given the task of passing general laws, general legislation for municipalities was most commonly used to provide an open system for municipal incorporation and access to a standard charter. General incorporation

[31] 1851 Constitution of Indiana, Article IV, Section 23.
[32] Reinsch (1907), p 148.
[33] Binney (1894), p 47-48.

allowed any municipality to incorporate and govern under the established framework without appealing to the legislature. This was especially important in western states where there were a lot of new settlements in a relatively short period of time. As Teaford describes, there was high demand to incorporate speculative towns, as "every speculator and pioneer store clerk hoped that his town site would be the future hub of western commerce, government and culture."[34] The power to incorporate as a municipality brought with it formal recognition by the state government and allowed localities to encourage development. General incorporation was advantageous to localities in all states. It gave people control over the decision to incorporate, rather than relying on the state legislature. Most general incorporation measures included a minimum population requirement and the approval of either a majority or two thirds of the voters in the locality, either in an election or through a petition.[35]

Another use of general legislation was to provide a charter for municipalities which would be uniform for all municipalities in the class. In 1858, Iowa adopted a municipal code for the incorporation and governance of municipalities. Two classes were created for cities and one class was created for towns. Each class had a separate set of statutes pertaining to the municipalities in it.[36] There is no universal or required content that a state legislature must include in a general charter. A general charter might specify if the municipality was to have a mayor-council, council-manager or commission form of government. It may also outline elected and appointed offices of the municipalities, authorize the municipal government to perform certain functions, or mandate the provision of certain public services.

[34] Teaford (1979), p 6.
[35] Teaford (1979), p 7.
[36] Pollack (1917), p 29.

Despite the fact that a general charter must be the governing document for all members of a given class, the structure of the charter could be quite restrictive. As McBain points out, general laws could regulate municipal governance in minute detail and be just as restrictive as any special law could be.[37] Even if general legislation did not imply autonomy or self-governance, it did avoid legislation from being targeted at a specific city.

The relative restrictiveness of general legislation is also dependent on the system of municipal classes within a state. Some states may have a few broad classes of municipalities, while other states may have a lot of narrowly defined classed. If there are a lot of classes, general legislation may appear fairly restrictive because it pertains to a small number of municipalities, most likely with similar needs and interests. However, with only a few classes, the general legislation for each class may appear to have a wider scope in order to meet the needs of a more varied class. The choice of whether to have many or few municipal classes was determined by the state; as a result, there is a wide range of general legislation implemented by states to meet different needs.

2.4 A Mix of General and Special Legislation

The advent of general legislation did not imply the dissolution of special legislation. While general legislation gave all municipalities of a class access to the same organizational form, some state legislatures still passed legislation for individual municipalities. The simplicity and universal nature of general legislation

[37] McBain (1916), p 97.

often fell short in meeting the needs of individual municipalities. State legislatures found ways to continue the practice of special legislation in order to charter and organize municipalities in ways other than what the general legislation permitted.

In some states, general legislation and special legislation coexisted as tools of the state legislature. Prohibitions of special legislation might only pertain to incorporation or certain aspects of municipal organization. As an alternative to special legislation, McBain (1916) discusses states' use of "optional statutes."[38] The statues were passed to address the needs of a particular city in the same way special laws were. However, the optional statute did not name a particular municipality like a special law did. The optional statute was made available to all other cities. Other municipalities then determined for themselves whether they wanted to utilize the optional statute or if they wanted to remain under the general provisions.

When special legislation was expressly prohibited, some state legislatures used general legislation in order to pass items which functioned as special laws. State legislatures got rid of special legislation in name only; they still had means to legislate for the needs of a single municipality. Legislatures repackaged special purpose acts as general legislation by restricting a class to contain one municipality or a small number of municipalities. General legislation could then act as special legislation for the municipality or municipalities in that particular class. An alternate means of using general legislation for specific interests was to pass a law which would apply to all municipalities on a very specific subject matter. Thus, while the law was generally applicable, because of the exclusive nature of the issue under question, the general law was relevant only to the city which it was intended.

[38] McBain (1916), p 99.

2.5 Home Rule

The last stage in the state-municipal relationship was marked by the introduction of home rule provisions in state constitution. Home rule grants local governments the opportunity to frame, adopt and amend their own charter. This grant of local autonomy releases them from the constraints of general laws for local governments and acts of special legislation. Figure 2 shows the adoption of home rule across states and across time. There are obvious differences in which regions were more likely to adopt home rule. There are also differences in the institution of home rule over time. The first wave of constitutional home rule provided self-rule for large cities. Missouri and California adopted home rule provisions to address the needs of the most populous cities, St. Louis and San Francisco, respectively.[39] In 1875, Missouri allowed cities with more than one hundred thousand residents the option to "frame a charter for its own government, consistent with and subject to the Constitution and laws or this State."[40] If the citizens of St. Louis desired a home rule charter, a board of thirteen freeholders could convene to draft a charter. The proposed charter would be published in local newspapers for review prior to citizens voting on it. If four-sevenths of the qualified voters approved, the home rule charter would supersede any existing charter. Amendments could be made with the approval of three-fifths of the voters. In 1879, California included a similar provision in its new constitution.[41] The framework for adopting a home rule charter imitated that in Missouri, except California required 15 freeholders to draft a charter and a majority

[39] In both states, home rule was given to cities over one hundred thousand residents. Other cities became eligible for home rule chartering as their populations grew (such as Kansas City in 1889). California extended home rule privileges to cities of 3,500 or more in 1892.
[40] 1875 Constitution of Missouri, Article IX, Section 16.
[41] 1879 Constitution of California, Article XI, Section 8.

of voters to approve it.[42] In addition, the home rule charter could not be amended in intervals of less than two years. This initial attempt at including a home rule provision required refinement; California's home rule provision was amended 8 times by 1914, and a total of 12 times by 1936.

The second wave of constitutional home rule did not arise out of concern for large cities. Rather, states saw benefits of home rule reaped by cities like St. Louis and Los Angeles, and wanted to afford smaller municipalities those privileges. In 1889, Washington's first constitution included home rule chartering privileges for cities with more than twenty thousand residents. In 1896, Minnesota passed an amendment granting the home rule option to any city or village. In the following 16 years, another 8 states granted constitutional provisions for home rule authority.[43] Six out of the 10 states in the second wave of constitutional home rule had a similar framework for the creation and adoption of a home rule charter. These states followed the process laid out in the Missouri and California constitutions, calling for a board of freeholders to draft a charter, the publication of the proposed charter, and a vote by citizens. If approved by a majority of electors, the charter became the organic law of the city.[44] An important distinction from the California example was allowing amendments as frequently as proposed; states did not impose a minimum interval

[42] Oberholtzer (1893) notes that the Chairman of the City, Township and County Organization at California's 1875 charter convention admitted that the idea was copied almost exactly from the constitution of Missouri, p 85.
[43] Colorado (1902), Oregon (1906), Oklahoma (1907), Arizona (1910), Michigan (1912), Nebraska (1912), Ohio (1912), and Texas (1912). The largest population requirement for home rule in these states was five thousand residents, imposed by Nebraska and Texas.
[44] Minnesota was the only state in this group that didn't require a majority, instead four-sevenths was needed to pass.

between amendment proposals.[45] The other 4 out of the 10 states (Colorado, Oregon, Michigan and Texas) had less detailed constitutional home sections. In Michigan and Oregon, this was because constitutional home rule was non-self executing. The constitution merely said there should be general laws to allow for home rule; further legislature was required by the state legislature to actually implement home rule.

The third phase of home rule is defined by uncomplicated provisions and the scarcity of states that adopted the institution.[46] The trend began when Pennsylvania approved home rule in 1922 for cities with more than ten thousand residents. The simple provision in Pennsylvania's constitution grants the "right and power to frame and adopt own charters and to exercise the powers and authority of local self government…restrictions…as may be imposed by the Legislature."[47] Other states with similar uncomplicated grants of home rule were West Virginia (1936) to municipalities of more than two thousand; Maryland (1954) to any municipal corporation; Alaska (1959) to all cities of the first class; and Hawaii (1959) to any political subdivision.[48]

In 1960, Kansas ushered in a new, substantially different period of home rule. The state offered clarity on the extent of home rule control, stating that "powers and authority granted cities pursuant to this section shall be liberally construed for the

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[45] The exception was Texas which, like California, stated that amendments couldn't be imposed more frequently than every two years.

[46] Rhode Island was an exception. In 1951, the state granted home rule to any municipality. The constitutional amendment retained the cumbersome structure of a board of freeholders, charter conventions, specific election procedures, etc. 1951 Constitution of Rhode Island, Article 9099, Section 9.

[47] 1874 Constitution of Pennsylvania, 1922 Amendment, Article XV, Section 1. While constitution was changed in 1922, legislature did not take action on home rule until 1949. See CELDF website.

[48] Some scholars list New York as adopting home rule legislation in 1924. It was home rule only in name. While it did grant local control over several specific powers, it did not allow municipalities to adopt, enact and amend their own charter. Municipalities were still severely restricted in their operation.

purpose of giving to the cities the largest measure of self-government."[49] An illustrative change was the amendment in Iowa (1968), stating "the rule or proposition of law that a municipal corporation possessed and can only exercise those powers granted in express words is not a part of the law of this state." [50] This was an explicit challenge to Judge Dillon's ruling 100 years earlier.[51] Illinois established constitutional home rule in 1970, generously decentralizing control so municipalities "may exercise any power and perform any function pertaining to its government and affairs….powers and functions of home rule units shall be construed liberally."[52] Four other states did not grant such broad freedom, but were explicit in defining what authority home rule municipalities did possess.[53] In general, home rule municipalities were granted domain over everything that state legislatures could manage for non-home rule municipalities, and had all legislative powers not expressly denied by general law.

2.6 Difficulty in Maintaining Special Legislation

As state governments matured, the practice of special legislation began to show cracks. The system had worked well for the young colonial governments and continued to work well for other countries, such as Britain. However, the method of special legislation was not a sustainable practice for state legislatures in the long term for a variety of reasons. Special legislation was no longer the most functional or

[49] 1859 Constitution of Kansas, 1960 Amendment, Article XII, Section 5.
[50] 1857 Constitution of Iowa, 1968 Amendment, Article III.2, Section 39a.
[51] Dillon's Rule (1868) stated that municipalities only have those powers expressly granted by the state government.
[52] 1970 Constitution of Illinois, Article VII, Section 6.
[53] South Dakota (1963), North Dakota (1966), New Mexico (1970), Louisiana (1974).

efficient way of granting municipal incorporation and managing municipal charters, and political problems magnified the use and abuse of special legislation. The following sections each identify a specific problem raised by special legislation.

2.6.1 Numbers Problem

The passage of a special law requires time and effort on the part of state legislators. The proposed law must be individually drafted by legislators, debated by the legislature in committee or on the floor, and then brought before the legislature for a vote independent of any other legislation. When there are not many localities, the state legislature can accommodate the individual legislative needs of municipalities. And, if localities do not require a great deal of new legislation passed each year, requests for special legislation can be sustained. However, an important pattern developed in the nineteenth century. As people chose to settle in incorporated places, the number of incorporated places increased. These municipalities demanded the ability to provide public services such as water, gas and transportation. When the growing needs of municipalities were combined with the increased number of municipalities, the amount of special legislation grew rapidly.

State legislators were overburdened with special legislation, and local laws for municipalities constituted a large portion of that work. Before any prohibition of special legislation, the ratio of special to general legislation in some states ranged from 3:1 to more than 10:1.[54] As mentioned before, the overwhelming amount of special legislation was often one of the primary reasons for calling for constitutional

[54] Ireland (2004), p271-272.

conventions. Indiana was one of the first states to adopt comprehensive prohibitions on special legislation in a new constitution in 1851. Delegates to that constitutional convention decried that more than two-thirds of the laws enacted since statehood were special, not general, laws.[55] In Iowa, from 1846-1857, a period before the state adopted prohibitions on special legislation, 1023 laws were passed of which 62% were local or special. A quarter of the laws were from granting or amending city charters and for laying out and establishing State roads.[56] A delegate to the Illinois constitutional convention of 1870 noted that his state enacted 3 volumes of special legislation and one slim volume of general legislation during the previous session. Similar to the case of Illinois, a delegate to the Pennsylvania constitutional convention of 1872-1873 noted that in the previous six years, the state legislature has passed 8,755 special laws and 475 general laws. In 1873, New Jersey's governor criticized the previous session for enacting more than 1,250 pages of special legislation and only 100 pages of general legislation. In 1873, the New York Times reported that in the previous four years, almost ninety percent of the New York laws were special statutes.[57] The state appointed a special commission in 1877 to study the problem of special legislation. The report of the Evarts Commission found that of the 808 acts passed in the 1870 session, 212 were special acts relating to municipalities.[58] After learning about the large amount of special legislation, another committee was commissioned a decade later to again evaluate the use of special legislation. The Fasset committee found that between 1884 and 1889, New York passed 1284 total

[55] Ireland (2004), p 271.
[56] Pollack (1917), p 14.
[57] Ireland (2003), p 272.
[58] McBain (1916), p 8.

acts, 390 of which were special acts for New York City.[59] Even after recognizing the magnitude of special legislation, nothing had changed in New York. The problem continued in Kentucky as well; in the 1883-1884 legislative session, ninety-four percent of the statutes concerned local or private matters.[60]

During Maryland's constitutional convention of 1904, delegate Oscar Leser noted the progress other states had made with respect to controlling special legislation during the last half of the nineteenth century. For the legislative period from October 1902 to October 1903, Colorado, West Virginia, Missouri, Illinois, New Jersey, Oregon, and South Carolina all had less than 300 total acts passed.[61] While the numbers do not reveal the breakdown between special and general legislation, the low total number of laws is most likely due to prohibitions and restrictions on special legislation that were in place in all of these states.

Maryland continued to have a large amount of special legislation. Over half of the legislation passed by the 1904 Maryland legislature was local, with another thirty percent devoted to other forms of special legislation. The amount of legislation was due to multiple acts needing to be passed for each locality and multiple acts passed to cover a universal issue. One locality had over twenty-five local laws passed to individually deal with roads, taxes, dogs, primary elections, and fish and game. While there was one act of legislation with respect to fish and game for this locality, thirty-three local laws were passed for other localities in Maryland during the same

[59] McBain (1916), p 10.
[60] Tarr (1998), p 120.
[61] Colorado passed 181 laws in 90 days; West Virginia had 80 laws in 45 days; Missouri had 207 laws in 76 days; Illinois had 210 laws in 121 days; New Jersey had 273 laws in 80 days; Oregon had 173 laws in 40 days; South Carolina had 172 acts in 40 days. Leser (1904), p 164.

session. So, even for issues where general laws may be appropriate, the legislature continued the tradition of special legislation.

The increase in special legislation is probably due to population growth and increased demand for governance because of new public goods, but the increase may also have been due to the fact that these new public goods and their associated contracts presented opportunities to take advantage of these spoils. Not all legislators were immune to the temptation. As Tarr (1998) notes, "local laws, especially those awarding trolley, water, gas or other franchises, were widely recognized as a perennial fountain of corruption."[62]

2.6.2 Judicial Decision-Making in a Legislative Body

Another issue with special legislation was whether certain acts of special legislation were within the domain of the state legislature. The state legislature is supposed to determine what the law should be. The legislature was not granted the right to interpret laws by making judicial decisions through legislative acts. Orth commented in 1906 that the "unfortunate habit of carrying all out local and private ailments to the state capitol, to have the virtuous adhesive of a special law applied, has transformed our law-making bodies into quack commissions with mongrel duties."[63]

The most striking example is the use of special legislation for divorce. Divorces were available through the court system, but the judicial process only granted divorce for certain causes. However, the state legislature could grant a

[62] Tarr (1998), p. 120.
[63] Orth (1906), p. 69.

divorce for marital problems that were not recognized by the courts through special legislation. For example, in 1842 in Indiana, Mary Ann Bruner was allowed to file a petition to the state legislature because of "her disability by reason of her husband not having absented himself from her for two years."[64] Legislative divorces were often seen as unjust. As the governor of Iowa pointed out, they gave the accused party no opportunity to be heard; a hearing could be obtained only in a judicial proceeding. Thus, by granting divorces, the state legislature was interfering with the duties of the judicial branch.[65]

The practice of legislative divorce was prominent in the western territories. For example, the record of session laws for Washington shows three cases in 1858 and one in 1859, followed by fifteen in 1860, seventeen in 1861, fifteen in 1862, and sixteen in 1863. Kansas had a similar trend, with one divorce petition was granted by the assembly in 1857, three in 1858, eight in 1859. In 1860 the number jumped to forty-three; one scholar notes this may have been because it was the last chance before the constitutional prohibition of 1859 went into effect.[66] New state governments kept up the practice of granting divorces through the legislature. The practice continued until it was expressly prohibited by state constitutions in the mid-nineteenth century.[67]

While the primary example used here is divorces, the judicial nature of special legislation was also a concern for municipal acts. If there was a general statute on the books, the state legislature could pass special legislation which would grant privileges

[64] Howard (1904), p 97.
[65] Pollack (1917), p 10.
[66] Howard (1904), p 98.
[67] Ireland (2004), p 289, 295-296. Pollack notes that in some cases state legislatures stopped granting legislative divorces, for example in Michigan in 1837 and in Minnesota in 1856 (p. 96-97).

to a given municipality that may not be allowed or accessible under the general legislation.

2.6.3 The Principal-Agent Problem

The practice of special legislation introduces a potential problem of misaligned interests. The citizens of the municipality have certain preferences for the type of government they want and the goods and services they want provided. However, in order to structure their government and obtain authority for the provision of goods and services, the citizens must appeal for special legislation before the state legislature. The citizens are dependent on the actions of their representative to the legislature and, ultimately, the actions of the entire state to carry out their preferred plans. If the legislator or the state decision is based on things other than the welfare of the municipality, then the special legislation that the municipality wants may not be obtained. The agency problem occurs because the self-interested choices of the legislator or state do not coincide with the municipality's preferences.

2.6.3.1 The Municipal Legislator as the Agent

Legislative courtesy called for the state legislature to go along with requests for special legislation made by delegates from the particular city. As Kimball (1922) notes, it was the tradition of state legislatures to take the advice of the members of the majority party who happen to come from the particular city affected. This deference to the city delegates was not often an issue for the city, as the city delegate's actions usually coincided with the city's preferences. However, sometimes the city delegate's objective was to maximize something other than the welfare of the city.

While his utility may have been based in part on the city's interests, his utility also took into account his own political and private welfare.

State legislators had to worry about reelection and were sometimes involved in corrupt enterprises. Special legislation allowed them to grant privileges to further their alternate goals. Special interests understood the potential of special legislation, and recognized that their local delegate was an "alternative channel for action, a means for circumventing the city officials."[68] Ireland emphasized that this "czar" had "absolute and undisputed power to control all legislation affecting his locality."[69] If the municipal government could not pass a certain measure or adopt a certain project, the state legislator could make it happen. Any group with a specific project related to city issues had only to persuade the city legislator to introduce the measure; with that, the measure would become law, no matter how many people in the city may be against it.[70] The power was not always abused; in fact, recent scholars have documented that city legislators usually proposed special legislation that was in the city's best interests.[71] However, there are still plenty of cases where the legislators abused the system for their own benefit.

A common form of abuse was using special legislation to award franchises. Sometimes the legislator would receive bribes or kickbacks as a payment for granting these privileges.[72] In Providence, Rhode Island, for example, special legislation was passed to award franchises to the utilities, even though the city itself was against it.[73]

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[68] Teaford, Special Legislation, (1979), p 212.
[69] Ireland (2004), p. 274.
[70] Wilcox (1906), p 317.
[71] See Teaford (1984), Burns (1994), and Monkonnen (1988).
[72] People complained that as a result of favored franchises, their taxes were higher than they had to be. Griffith (1976), p. 36.
[73] Griffith, 1870-1900 (1974), p 217.

Special legislation was also used for amendments to the city charter, salary increases, and taxing privileges.[74] The delegates from New York City often betrayed the constituents they were elected to represent. Reinsch (1907) describes one package of special legislation in 1892, when the delegates helped pass the election inspector's bill, the Foley excise bill, and the Central Park speeding bill, which favored the sporting interests at the expense of the greater constituency.

Projects requiring special legislation were sometimes not sought out by the legislator, but were brought to the table by powerful local interests.[75] Reinsch points out that the political boss and his machine operated through state legislators in order to gain privileges. The state legislator complied in order to have that political machine on his side come time for re-election. Even without a party boss pulling the strings, it made political sense for legislators to introduce special legislation. It was a way to signal to their constituents that they were getting business done at the state capital.[76]

2.6.3.2 The State as the Agent

Special legislation was also passed when the state's preferences, represented either by the governor or the legislature considered as a whole, were not aligned with the preferences of the municipality. For example, in 1861, the state legislature of

[74] The legislators who represented Chicago passed this assortment of special legislation without getting input from or giving warning to the city residents. Ireland (2004), p 283.
[75] A committee of the NY Constitutional Convention of 1872-1873 that studied the problem of special legislation concluded that "the local pressure brought to bear upon members by selfish and interested parties [to enact such legislation] is enormous and often irresistible." Ireland (2004), p 275.
[76] A reporter for The Louisville Commercial (1886), after interviewing members of the Kentucky legislature, concluded that "most of the members from the back countries depended largely on the passage of these local and private bills for their influence at home." Cited in Ireland (2004), p 275.

Missouri took control of the police away from St. Louis. The legislature formed a Board of Police under control of the state; however, financing the budget was still the responsibility of St. Louis.[77] In 1891, the city of Minneapolis tried to get a charter proposal passed by special legislation. The Democratic house and senate passed the city's proposed charter. However, the Republican governor vetoed the charter, saying it was "wiser to submit this proposed charter to the people of the city for their approval or disapproval."[78] Griffith (1974) lists other instances of state interference. For example, the date of municipal election in St. Paul was changed three times in four years by the state. In New Jersey, the state legislature gerrymandered the ward boundaries in cities in order to control their political composition. The New York state legislature yielded to Vanderbilt when he proposed a contract where he would be paid four million dollars by the city to improve the NY Central tracks on Park Avenue. These acts went against the legislative practice at the time, which was to defer to the local delegation to decide local matters.

2.6.4 The Practice of Logrolling

In order for a local delegate to get special legislation passed, he had to assemble a coalition who would vote for his project. The members of the coalition would not benefit directly from the proposed special legislation, as it pertained only to the locality of the legislator proposing it. However, the members of the coalition would receive a commitment from the legislator to vote on their individual special

[77] Griffith (1976), p 36.
[78] Teaford, Special Legislation (1979), p 210.

legislation in the future.[79] Ireland (2004) points out that legislators supported others' special legislation even without a guarantee for future support because they did not want to risk ostracism. The practice of legislative courtesy, or logrolling, was what allowed for the system of special legislation to carry on.

Political theory is interested in understanding under what conditions logrolling can work. Initial research determined that there was a certain size coalition, a "minimum winning coalition" (MWC), that would be able to sustain a logroll.[80] Weingast (1979) pointed out that most empirical examples of logrolling did not match the theoretical prediction of a MWC, and actual logrolls had large, often universal, coalitions. He showed that politicians had an incentive to form a universalistic coalition because they all needed to show legislative results to their constituency and they were all worried about being left out of the coalition. Carrubba and Volden (2000) develop a baseline logrolling model that considers how different factors affect the probability of sustaining a cooperative logroll. They show that cooperation becomes more difficult as the voting rules require a higher approval rate, the size of the legislature increases, the more frequent the elections are, the probability of reelection decreases and the cost/benefit ratio of the legislation increases.

Historians have put forward a few explanations for why special legislation was harder to maintain as the 19th century progressed. Teaford argues that the inability of city officials to control the legislative process was the basic cause of the

[79] Members of the legislature realized that some day they might like to have a local bills passed, and so there was normally no opposition to what might well be a corrupt transaction. Griffith, 1870-1900 (1974), p 215.

[80] Majority will form a MWC of the smallest possible size ((N+1)/2) in order to have the biggest benefits for the members of the coalition. From Weingast (1987), p 131-133. Originally from Buchanan and Tullock (1962) and Riker (1962).

municipal reform movement. Wilcox (1896) mentions that municipal reform became more important when the political complexion of the legislature differed from a particular locality. While these problems may have caused unrest within the municipalities, this would not necessarily cause a change in the practice of special legislation. As long as the state legislators had working coalitions to pass special laws, legislators had no incentive to relinquish that power. An alternative explanation for why special legislation was no longer sustainable is that legislators could no longer keep up a cooperative logroll in order to get special laws passed. Without a mechanism for getting special legislation adopted, there would be reason for legislators to pursue alternative methods of getting what they wanted and needed.

2.6.5 Apportionment Issues

Two factors that affect the ability to sustain a cooperative logroll are changes in the size of the legislature and changes in the voting rule. As there are more legislators, it becomes harder to guarantee that everyone will refrain from defecting. As the voting rule requires more people to approve the legislation, it becomes harder to establish a larger coalition where everyone gets their particular special legislation passed. In the nineteenth century, there were dramatic changes in the size and composition of state legislatures. Constitutional provisions relating to apportionment directly affected both the number of legislators and the distribution of legislators across the state. Because of these changes to the makeup of the legislature, it made it harder to assemble a minimum necessary coalition.

Since the late eighteenth century, citizens of the United States have experimented with the best method of representation in their state governments. There are two basic types of representation: geographic and proportional. A geographic system of representation allocates legislators based on territorial units, such as counties, town, townships, or villages. A proportional system allocates legislators by districts. Districts are designed to contain roughly the same number of people. In contrast, under the geographic system, one legislator might represent a county of one thousand residents while another legislator might represent a county of ten thousand residents. Before the American Revolution, all colonies had geographically based systems of representation.[81] By the early 19th century, some states began to amend their form of representation. Small states with relatively evenly distributed population continued with the traditional form of geographic representation. For example, in Maine, New Hampshire, Rhode Island, Vermont and Connecticut, the lower house determined representation by units of political government.[82] States with larger land expanses and more widely dispersed population found that the geographic representation was inadequate to properly represent the mix of interests in the state. These larger states moved early on toward proportional representation in the state legislature.

In the mid to late nineteenth century, the population grew in both the rural areas and in the large urban centers. The form of representation was fixed in the short run, as constitutions determined how delegates were allocated. Assume that a state

[81] Zagarri (1987), p 47.
[82] Specifically, in Vermont each town and city ward gets one member. In other states the Senate is represented by geographic units (New Jersey, Rhode Island, South Carolina, and Maryland). Each county in New Jersey and South Carolina gets one senator. Reinsch (1907), p 197-198.

legislature was fixed in size and allowed for one representative from each town with the remainder assigned based on population. As population moved into the rural, formerly unpopulated areas, newly settled towns sent representatives to the state legislature. The bulk of the state legislature would be comprised of the required representatives from each town; few seats would be allocated based on population. As people moved into the rural areas of states, the rural areas were automatically allocated representatives. As a result, large urban areas became relatively under-represented in the legislature. The resulting under-representation affected the political dynamic within the legislature. The state legislature changed from having the majority of representation coming from cities to one where rural counties and townships dominated.

While there was resistance to this shift in power by the urban interests, they were not able to do much about it. State constitutions had established a system of apportionment, based on a system of geographic representation. Through this set allocation mechanism, the rural interests gained control of the legislature when additional seats were given to rural areas experiencing population growth. Once rural legislators controlled the legislature, they did not want to relinquish any power. In order to guarantee that rural interests would not lose power to population-driven apportionment, some states revised their constitutions to institutionalize the practice of apportionment based on political subdivisions.[83] For example, in 1851, the constitution of Ohio guaranteed a legislative seat to each county with at least a half

[83] The policy of "local unit" representation in at least one house continued, or developed, in other states even without constitutional revision. Dixon (1968), p 82. Henretta (1991), p 66, says that this was often driven by Republican politicians (often rural-based) working with Progressive reformers to rewrite constitutions to enhance the power of rural counties at the expense of rapidly growing urban areas.

ratio.[84] In 1903, Ohio went a step further, and with the Hanna amendment guaranteed each county, regardless of population, a seat. Pennsylvania had adopted a similar constitution amendment in 1873, guaranteeing each county a seat in the lower house. An additional amendment in 1901 placed a population cap on apportionment, stipulating that no more than one-sixth of the senators could come from any city or county. Table 1 shows that changes were made within the thirteen original states during the nineteenth century. Dixon (1968) documents that constitutional amendments to limit the role of population in apportionment became more common across the United States in the decades following 1890.[85]

[84] A half ratio requires half of state average population per seat. Dixon (1968), p 83.
[85] Dixon (1968), p 83, believes this increase may have been spurred on because rural areas were losing population. In 1910, the urban population overtook the rural population for the first time.

3 Endogenous Institutional Change: The State-Municipal Relationship

The previous chapter introduced special legislation, general legislation and home rule as different constitutional arrangements states use to structure their state-municipal relationship. The first state constitutions of the original colonies formally implemented the tradition of enacting special laws for municipalities as needs arose. The previous chapter addressed four potential problems with maintaining special legislation. The amount of special legislation for municipalities could become a large enough burden to induce the state legislature to decrease their caseload by changing the legislative process. Certain special legislation should have been addressed by the court system rather than handled by the state legislature. The principal-agent problem was another threat to maintaining special legislation as state legislators or the state itself might have a different optimal set of policies than what the individual municipal government might think is best. Finally, municipal legislators had to maintain a logroll of votes needed to pass each member of the coalition's special legislation. The stability of the logroll could be threatened by changes in the size or makeup of the legislature. In states where special legislation did not pose these problems, then the legislature could continue with special legislation as a stable outcome.

Most states, however, experienced problems with special legislation. As a result, states adopted new constitutional provisions which altered the state-municipal relationship. This chapter addresses why states might have chosen these different constitutional arrangements. Changes to constitutions reflect new conditions which prompt governments to reframe the state-municipal relationship. But these changes

must also be politically viable in order to be adopted. Power is unlikely to be freely ceded from states to municipalities. State legislators will hesitate to give up the privilege of special legislation unless it benefits them somehow, or unless they have lost the ability to continue passing special legislation for their locality.

Table 2 outlines the options states pursued in structuring the state-municipal framework and the reasons which contributed to states pursuing certain options. States varied in the options chosen because of the differences in the political environment and ability to continue passing special legislation. Despite these potential differences, if states pursued different institutional structures, they did so in the sequential order presented in Table 2. While home rule is seen as the final choice made by many states, it should not be seen as the undeniably best choice for states to make. States had different optimal solutions depending on the municipal preferences and political environment within each state.

3.1 Prohibition of Special Legislation for Specific Purposes

Most states became aware that legislatures were regularly making judgments on questions that were already addressed in state laws and statutes. These judicial decisions should have been made by the state courts instead. The prime example of questionable special legislation was legislative divorces for individuals. State legislatures also granted special legislation for corporations and local governments which ran counter to the content of established laws. The appeal for special legislation ranged from corporations seeking amendments to charters for the right to lay railroad tracks to municipalities creating certain elected or appointed offices.

A solution to this problem was to include constitutional prohibitions of special legislation to target inappropriate legislative interference. In solving the issue of judicial decision-making, states were also reducing the legislative caseload. Individuals, businesses, and municipalities could no longer seek out a preferred law through the legislature. All parties were held to the same state statutes. A request for a deviation from these statues was redirected from the legislature to the court system.

The prohibition of certain types of special legislation was a politically feasible outcome in many states. State legislators were often willing to pass these determinations back to the courts, who really should have been deciding the merits of each individual case in the court system. From the mid 19th century until the early 20th century, the most common prohibitions on special legislation were for changing the names of persons; granting divorces; changing the law of descent; providing for the sale of real estate belonging to minors; remitting fines, penalties or forfeitures; regulating the rate of interest; regulating the jurisdiction and duties of justices of the peace an constables; providing for changing the venue in civil and criminal cases; summoning and empanelling grand and petit juries and providing for their compensation; locating or changing county seats; for laying out, opening and working on highways; vacating roads, town plats, streets, alleys and public squares; providing for supporting common schools, and for the preservation of school funds; and providing for the opening and conducting elections of State, county or township officers and designating the places of voting.[86] State legislators lost (or gave up) the ability to grant these individual privileges which deviated from the laws on record.

[86] The exact date range is from 1851-1916. North Carolina was the last state to dramatically change its constitution with respect to the prohibition of special legislation. Each of the categories included had 20 or more states include it their constitutional prohibitions.

The transfer of responsibility back to the court system also reduced the legislative burden on the state legislature and helped solve the numbers problem.

As mentioned in Chapter 2, by 1916 thirty-seven states had passed some form of prohibition of special legislation. Forty-three out of fifty states now have some form of constitutional clause that prohibits special legislation.[87] While most states have transferred many powers back to the courts, states often retained the power of special legislation on important matters, such as municipal business. To date, only 18 states specifically prohibit special legislation on matters regulating county and township business. In 1911, New Mexico was the last state to include this prohibition on special legislation for counties and towns in its constitution. Special legislation for municipalities was not as likely to be prohibited because municipalities are very different from other organizations, such as private corporations or churches. While businesses and churches may be relatively similar, municipalities vary widely. In addition, special legislation for municipalities is a valuable right which state legislators are hesitant to give up. However, when municipal business continues to be handled via special legislation, then the legislature is still making judicial, not legislative, decisions in certain cases and the numbers problem still exists.

[87] Of the seven states that don't have any constitutional provision prohibiting special legislation, two are the most recent (Alaska and Hawaii) and the other five are original colonies (Connecticut, Massachusetts, New Hampshire, Rhode Island, and Virginia). There are differences between the older and newer states on many dimensions. The important one in discussing the state-local relationship is the difference in the history of municipalities within the state. The New England states had town meetings to govern their localities, not formal organized municipal corporations with recognized charters. In Alaska and Hawaii, there wasn't a need to include prohibitions of special legislation. The initial constitutions of these states were very liberal in devolving control to other levels of government, so special legislation was not the avenue for seeking local changes. Additionally, states may have clauses that prohibit special laws written in their general laws and statues instead of in their constitution.

3.2 General Legislation with Special Legislation

As discussed in Chapter 2, out of the thirty-seven states that passed any prohibition on special legislation by 1916, twenty-seven of them simultaneously mandated general legislation. The inclusion of general legislation and the prohibition of certain types of special legislation did not preclude the existence of special legislation, however. The coexistence of both special and general legislation was the solution in many states.[88] For example, with respect to municipalities, allowing both general and special incorporation gave municipalities two choices for obtaining or altering a charter.

The inclusion of general legislation solved the numbers problem by providing municipalities open access to specified institutional structures. General legislation provided a uniform law for some of the tasks that could be generalized to meet the needs of an entire class, such as incorporation and organization of municipalities. Municipalities who wanted the ability to incorporate without having to go through the state legislature, or municipalities who wanted a basic organizational structure, could govern using the established general laws. Meanwhile, the continuation of special legislation allowed the state legislature to tailor laws for certain municipalities. Municipalities with unorthodox needs might not be well served by general laws, and would be better served by a unique special law. For example, a municipality may require an atypical organizational structure because of its size, local industries, geographic location, or the preferences of its citizens. Even with the continuation of

[88] By the mid 20th century, of the 30 states that prohibited special laws for municipalities, 21 of them also called for the organization of municipalities by general laws. However, this number could understate the actual number of states that had both general and special legislation. State legislatures may have implemented general laws under their own accord.

special legislation, when states provide general legislation, the number of municipalities requiring special legislation is reduced, thus alleviating the numbers problem to some extent.

The existence of both general and special legislation must be suitable to the state legislators. Otherwise, legislators would have created a different institutional setup, and the combination of general and special legislation would not have been a stable outcome. The outcome was often politically realistic, as legislators recognized that the benefits from having general legislation with the option of special legislation often exceeded the costs. State legislators preferred to retain the option of passing special legislation, as it gave additional freedom for them to meet any specific demands of their constituency when needed. The ability to pass special laws for your own locality was a valued privilege of each legislator. As long as the logroll of votes needed to pass special legislation was maintained, special legislation was the preferred policy. At the same time, legislators were open to allowing general legislation. The loss of control over the incorporation and organization of general municipalities was offset by the time gained by not having to manage those mundane legislative tasks.

General Legislation with Extensive Classification

One way to combine general and special legislation merits closer attention. Some states prohibited special legislation altogether, but allowed narrowly defined classes of municipalities. If classes are restricted so as to include only one

municipality, then general legislation for would the class would act as special legislation for the one municipality in the class.

For example, in 1851, Ohio included a clause in their new state constitution which mandated that the "General Assembly shall provide for the organization of cities, and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such power."[89] The Ohio state legislature passed a general law the next year which divided cities of the state into two classes. Cities with more than 20,000 people represented the first class, and cities from 5,000 to 20,000 constituted the second class. Other municipalities were considered incorporated villages.[90] Over time, additional classes of cities were created. By the beginning of the twentieth century, there were eleven classes, eight of which had only one municipality in the class.[91] General legislation for one of these eight classes would effectively be special legislation for the individual city. This use of general legislation as special legislation in Ohio started in 1856. The state legislature changed the organization of Cleveland by passing a general law for cities of the first class with less than 80,000 in population as of the last federal census.[92] In the same year, there was a general act concerning the tax limit for cities of more than 100,000 people, which targeted Cincinnati.

[89] 1851 Constitution of Ohio, Article XIII, Section 6. In this same constitutions, Article XIII, Section 1 says that the General Assembly shall pass no special act conferring special corporate powers. This was interpreted to mean that the General Assembly was forbidden to pass any special laws for individual cities (Kimball (1922), p 381 and Wilcox (1896), p 63).
[90] Wilcox (1896), p 64.
[91] Table 3 shows the classification of cities in Ohio as of 1894.
[92] Wilcox (1896), p 67.

In 1902, the Ohio supreme court ruled that the intent of the constitutional provision mandating general legislation was not being upheld with the legislature creating narrowly defined classes. The supreme court declared that "the present classification cannot be regarded as based upon differences in population, or upon any other real or supposed differences in local requirements. Its real basis is found in the differing views or interests of those who promote legislation for the different municipalities of the state."[93] In its decision, the supreme court of Ohio ordered the legislature to enact a new municipal code which would be uniformly applied to all cities with more than 5,000 people, which at the time numbered around seventy.[94] Because of this state supreme court ruling, Ohio became a pure general legislation state, not a state with both general and special legislation. The next section describes why states might choose to adopt a framework of pure general legislation and under what conditions this is a stable outcome. As will be shown, the strict general legislation imposed by the courts in Ohio was not suitable, and Ohio was forced to make further changes to its constitution.

3.3 Strict General Legislation

Consider a state with an extreme form of general legislation which mandates all municipalities to be in a single class. In this case of general legislation, there would be a uniform system of governance for all municipalities in the state. Without the ability to tailor legislation for individual municipalities, all members of the class are treated equally and are held to the same structure. In practice, the degree of

[93] *State vs Jones*, 66 Ohio St 453, cited by Kimball (1922) p 381.
[94] Pollack (1917), p 28.

"strictness" of the general legislation varied with the number and fineness of the classes. As was the case when general and special legislation coexisted, the exclusive use of general legislation solved the problems of judicial decision-making and the numbers game. In addition, the strict form of general legislation was an answer to the problem of legislators not being able to maintain a logroll to pass special legislation.

The ability to maintain a coalition of legislators was essential to passing special legislation. To reach a majority, a proposed special law for a municipality required the support of legislators outside of the municipality. Since all localities were in the same predicament, legislators could form coalitions to trade votes for each others' special legislation. As states changed the way the state legislature was apportioned, the stability of coalitions was threatened. Two features of legislative apportionment interact. First, as the size of the legislature increases, cooperation becomes more difficult because the size of any majority coalition increases. Second, as the fraction of the legislature from rural areas increases, the number of potential partners who can be bundled into a logroll to pass special legislation for municipalities decreases, making it harder to maintain a minimum necessary coalition. As legislatures increased in size and tilted toward more rural constituencies, the ability of municipal legislators to pass special legislation for their constituencies was eroded. General legislation provided them the opportunity to preserve some control over how municipalities would be governed.

In this framework, in order for a state to choose to transition to an environment with only general legislation, it must meet two requirements. First, there must be a breakdown in the ability of legislators to pass special legislation for their

municipalities. All else equal, legislators always prefer the option of tailored special legislation over the uniform structure of general legislation. Second, general legislation must be suitable for all members of the class. In other words, general legislation will only work if the municipalities within a given class are similar enough to each other. If municipalities are sufficiently different, then a uniform governance structure is likely to be restrictive and ill-suited to handle a diverse set of problems. When municipalities are sufficiently heterogeneous, states may choose to decentralize control through home rule. This option will be explored in the next section. Home rule also has its costs, however. By implementing home rule, legislators give the court system discretion to interpret the grant of autonomy. If the benefits of retaining control over municipal legislation exceeded the costs of having suboptimal legislation by class, then legislators might keep general legislation instead of introducing home rule.

Strict general legislation was rarely a good fit for states. General legislation restricted the legislators from being able to meet unusual needs of municipalities. Legislators could no longer tailor legislation for unexpected circumstances or grant the largest metropolitan area power to provide modern public goods requiring new governance tools. For example, there were problems after the state supreme court of Ohio imposed strict general legislation for municipalities. Legislators, as well as municipalities, lost the ability to obtain individualized legislation through general legislation by class. When this practice was stopped by the court, the same laws that applied to Ashtabula also applied to Cleveland. With such wide differences in the municipalities in the mandated class (all cities greater than 5,000 population), a strict

general law was not a stable outcome. Neither small cities nor large cities were satisfied with the singular set of laws.

3.4 General Legislation with Home Rule

The problem with strict general legislation is that the set of laws by class may not be the best fit for all municipalities in the class. A grant of home rule gave municipalities which were not well served by general legislation the option of adopting their own charter. Municipalities who were content with the general law would remain subject to the general law.

The same problems which were solved using general legislation could be solved by general legislation plus the option of home rule. This combination solved the numbers problem, the issue of judicial decision-making, and the problem of not being able to maintain the logroll. The adoption of home rule as an alternative to general legislation solved the problem of heterogeneity across municipalities. If municipalities were not similar within a class, then general legislation by class was not ideal. Home rule gave municipalities the ability to once again have individualized legislation. However, instead of this individualized legislation being determined by the legislature, it would now be determined by the municipality itself.

Compared to the case of strict general legislation, municipalities are better off having the option of home rule if needed. However, in order for home rule to be a stable outcome, it must be politically viable as well. Municipal legislators are willing to cede their chartering power to municipalities if they have already effectively lost the ability to pass municipal legislation at the state level. Legislators want to be

reelected. If they cannot pass legislation for their municipality at the state level, it's best to give control to their constituents instead. The movement from special to strict general legislation was driven by the declining ability of municipal legislators to maintain a coalition to pass special legislation. The movement to general incorporation with home rule resulted from the loss of a coalition combined with heterogeneous municipalities, which provided an environment where home rule is a viable solution.

3.5 Are Outcomes Socially Optimal?

The options of special legislation, general legislation, and home rule are possible ways for states to organize the state-municipal relationship. Under certain conditions, these options are also politically viable. However, while one of these solutions may represent an equilibrium for a state, it is not necessarily socially optimal.

One of the potential problems associated with special legislation is the principal-agent issue. Consider the case where the municipality is the principal and its legislator is the agent. The municipality may have difficulty in making sure its legislator carries out an agenda that is best for the municipality. The legislator's optimization problem may differ from the municipality, as the agent might also be concerned with reelection or keeping other influential groups appeased. The same concern arises if we consider the state acting in aggregate as the agent. The state may have different opinion about what is best for the municipality, and may pursue policies that run counter to the municipality's actual preferences.

If the principal-agent problem exists, it is unlikely to be solved by any state-level legislative changes. By definition, the principal-agent problem exists because the agent is pursuing policies that run counter to the principal's optimal agenda. In this example, the legislator is unlikely to relinquish this power, because there is obvious gain to him from adopting policies counter to what the municipal prefers. Thus, if there does exist a principal-agent problem, any legislative framework is unlikely to be socially optimal.

3.6 Regional Differentiation

States have chosen to pursue different combinations of special legislation, general legislation and home rule over time. Factors influencing their decision range from demographic changes to shifts in political power to the historical patterns of local governance in the state. Some factors, such as the settlement pattern and resulting governance structure, are shared by all states within a region.[95] For example, the initial form of local government in New England was different from the South and also the West. In New England, towns were the predominant form of local government. As Snider points out, towns were created as a function of how the land was settled. Settlement was formed in compact communities, usually centered around a church.[96] In contrast, states like Virginia and Maryland were settled based on the economic unit of the plantation. In these states and others in the south, local

[95] Richardson (1984) examines the relationship between the settlement patterns and school systems. He finds regional diversity in school governance, based on whether the state and local school officials are elected or appointed. Richardson relates methods of school governance to established practices in municipal governance, and explains how municipal governance is related to how the region was settled.

[96] Snider (1957), p 51 and Richardson (1984), p 189.

matters were often handled by the plantation owners, with formal government provision of public goods being provided by counties. The different forms of local government had implications for how the states constructed a constitutional framework for local governance. If we compare states without regard to regions, we may overlook important differences.

To illustrate the potential problem by looking simultaneously at states in different regions, consider Ohio and Arizona, states that both passed home rule legislation in 1912. The motivation for home rule was different in these states, some of it due not just to differences in the states, but differences in the regions they are located in. Ohio, established in 1803, was a Land Ordinance state. The Midwest region was settled by farmers moving from the original colonies. Early settlers in these relatively densely populated states often brought with them ideas about how local government should be organized. From the beginning, there was interest in how the new states of the Midwest should organize their system of local governments, and the prescriptions were often based on settlers' previous experiences with local government in New England or in the Mid-Atlantic. The Southwest as an entire region was settled very differently than then Midwest. As Bridges points out in *Morning Glories*, the cities of the Southwest were reform cities from early on. The reformers were "new elites" who had moved recently out West and were not burdened by formal political machines or the third party system.[97] Because of the regional differences in settlement, the mechanism by which home rule was adopted in

[97] Bridges (1997) points out that the southwest was a latecomer to national politics. The new states of the southwest did not have well established political parties, and nothing resembling a political machine. As a result, the reform movement was less about targeting the entrenched politicians (as it was in the Northeast) and more about targeting the institutional structure, p 54-55.

Arizona in 1912 was very different than the process of adoption in Ohio. Arizona included home rule in its first constitution, a function of the reformists who had recently settled there. Ohio adopted home rule over one hundred years after it became a state. Home rule in Ohio was function of citizens who were interested in establishing a formal state-municipal relationship, but required experimentation to find a common system that worked for everyone. Because of regional differences in factors such as the pattern of settlement, Ohio and Arizona are not the best comparison state for each other. The best comparison group is likely a state's closest neighbors.

By looking at each region individually, we control for shared characteristics and mitigate the inherent differences we see across regions in the United States. Some regions as a whole have been more active in pursuing certain constitutional changes than others. However, differences remain in what states do within a region. The following discussion gives a sense of the similarities and differences of the state-municipal relationship within each region. Assignment to region was based on the pattern of settlement, timing of statehood, and geographic location.

3.6.1 Original Colonies and Cessions

Delaware (1787), Pennsylvania (1787), New Jersey (1787), Georgia (1788), Connecticut (1788), Massachusetts (1788), Maryland (1788), South Carolina (1788), New Hampshire (1788), Virginia (1788), New York (1788), North Carolina (1789), Rhode Island (1790), Vermont (1791) [from NY and NH], Kentucky (1792) [from VA], Tennessee (1796) [from NC], Maine (1820) [from MA], West Virginia (1863) [from VA]

This group includes the thirteen original colonies and states formed directly from them. These states are different from others in the Union by virtue of their

colonial history. Local government legislation in the colonies was established piecemeal as the demand arose. Municipal charters were granted by the colonial governor and were often commercially oriented.[98] In the mid 1700s, the municipal corporation evolved from a commercial operation to a formal recognition of a residential community. At the time when the United States was founded, there were many municipal charters given by special decree as well as local government customs and procedures that were generally accepted practices.[99] Thus, original constitutions in these states often remained silent on local governments and allowed for the continuation of established governance structures and corporations. Citizens assumed that in the small towns of New England and the villages of New York, business could proceed as usual. This tacit relationship between the state and local government was not a problem in the late 18th and early 19th centuries. As Weiner writes, "until the Civil War, the municipalities had not become the rich source of spoils that they have been since."[100]

The implicit decentralization of local power resulted in problems with constitutionally formalizing the state-local relationship. Of the eighteen states in this group, only five have adopted constitutional home rule provisions for municipalities by 2009. Maryland granted Baltimore city and county home rule authority in 1914, later granting home rule to all municipalities in 1954. In 1949, the legislature of Pennsylvania gave all cities with more than ten thousand residents the option for a home rule charter. West Virginia allowed home rule for cities with more than two

[98] Viteritti (1990), p 224.
[99] Some were specific statutes, others were just recognized by the governor and general assemblies of individual states.
[100] Weiner (1937), p 559.

thousand residents in 1936, and Rhode Island opened up the option for every city and town in 1951. In 1953, Tennessee granted home rule to any municipality. The lack of home rule adoption should not be taken as an indication of lack of interest or need. Rather, in some cases there were too many entrenched interests, and states could not pass home rule even after decades of trying.

We can explore the varied solutions for creating a constitutional relationship between state and local governments by considering separate clusters of states (New England, South, and Mid-Atlantic) within the same region. While some regions pursued a wider variety of options, in all regions states made institutional choices over time in the order presented in Table 2. First consider the New England states. Constitutions in these states were silent on all matters of local governments until the late 19th century, and only in the 1960s did they adopt constitutional mandates of general legislation for cities. Some states did adopt general legislation for private corporations in the late 19th and early 20th century, but these measures explicitly excluded municipalities from the call for general laws. In 1877, Connecticut prohibited municipal aid to private corporations. This was the only measure referring to local governments until 1965, when the state called for the organization of cities by general law. Similarly, New Hampshire had no measures until 1877 when the state prohibited municipal aid to private corporations, and then in 1966 mandated general laws for the organization of cities. Maine did not address the issues of local governments until they passed general incorporation legislation, which excluded municipalities, in 1875 and imposed municipal debt limits three years later. Rhode Island was also slow in changing its constitution, adopting general incorporation

measures in 1892, then changing nothing until 1951. And, while not in the New England region, Delaware, like other New England states, has only adopted general incorporation, excluding municipal corporations, which was passed in 1897.

The second group within this region is the Southern states who were part of the Confederacy and wrote new Reconstruction constitutions following the Civil War. The Civil War and reconstruction were an exogenous shock to the constitutional process that allowed these states to reconsider the state-local relationship. Before the Civil War, neither North Carolina nor South Carolina had a constitutional provision with respect to local governments. In their 1868 constitutions, both states called for general incorporation laws and the restriction of debt and taxation of municipal corporations. South Carolina began prohibiting types of special legislation in 1896, including no special act for municipal corporations. In 1916, North Carolina extended general incorporation to municipalities and incorporated additional areas of prohibitions on special legislation. The 1868 constitution of Georgia only mentioned that the General Assembly may grant the power of taxation to county authorities and municipal corporations. The state of Georgia has remained silent since then on any matters concerning the incorporation and organization of local governments. In 1870, Tennessee passed a new constitution which states that only general laws were to be passed, specifically mentioning that corporations should be provided under general law. The Tennessee constitution does not specify whether municipal corporations are included or excluded from this general provision. Tennessee did not include any further constitutional changes regarding local government until home rule was passed in 1953.

The third group in this region is comprised of the states in the Mid-Atlantic. Within this group of states we find the most struggles in the process of adopting the most suitable state-municipal framework. In 1846, New York was one of the first states to prohibit special legislation for private corporations. Over the next fifty years, New York passed a municipal debt limit and prohibited other special laws in 1874 and included general laws for the organization of cities in 1894. Maryland prohibited an assortment of special legislation starting with its 1864 constitution[101], which also provided for the organization of cities by general laws. The Pennsylvania constitution of 1874 addressed the state-local relationship at length, including prohibition of special legislation for the incorporation and regulation of the affairs of municipalities, municipal debt limits, and the provision of general laws for the organization of local governments. In 1875, New Jersey adopted numerous prohibitions on special legislation, including the regulation of the affairs of towns and counties, in addition to passing its legendary liberal general incorporation legislation.[102] In its initial constitution of 1863, West Virginia had nothing with respect to local governments. But by 1872, the state incorporated a variety of prohibitions on special legislation, including regulating the affairs of local governments, as well as imposing limits on municipal debt and general laws for the organization and incorporation of municipalities. While lacking any constitutional rules for local governments until 1891, Kentucky then started defining the state-local

[101] Maryland included prohibitions of special legislation for individuals, corporations, elections, schools, highways, and the rate of interest.

[102] In New Jersey, corporations were now allowed to be formed no matter the residency of the incorporators or the primary place of business, and they had diverse options for their internal governance structure. Starting in 1875, and through a series of acts from 1888 to 1896, New Jersey gave private corporations additional economic flexibility.

relationship. Included in the 1891 constitution was the organization of municipalities by general laws and municipal debt and taxation limits.

An interesting element of this Mid-Atlantic region is that home rule was pursued early on in New York and Pennsylvania, but failed to gain footing. In the 1870s, both states appointed commissions to consider plans for reforming the municipal system, as they had large and mid-size cities that saw the opportunities home rule would provide.[103] However, the recommended measures to decentralize control to local governments failed to pass the state legislatures. The institution was not universally appealing to the varied political interests. Even after New York declared it had home rule in 1924, it was only in name. Cities could still not charter themselves, and were forced to go through the state legislature to change principal elements of their charters such as their form of organization. McBain explains the implications of these attempts, noting that they give "a large measure of freedom from positive interference but almost no measure of opportunity for constructive local action."[104] States in the Mid-Atlantic region toed the line between centralized and decentralized control of municipalities. While states in this region saw the potential efficiency gains from granting municipalities greater choices through home rule, the power was not readily transferred from the state to the municipalities.

3.6.2 The Old Northwest

Ohio (1803), Indiana (1816), Illinois (1818), Michigan (1837), Iowa (1846), Wisconsin (1848), Minnesota (1858)

[103] Oberholtzer (1893), p 94.
[104] McBain (1915), p 10.

The Land Ordinance of 1785 and the Northwest Ordinance of 1787 allowed for the creation of new states in the area north of the Ohio River and east of Mississippi River. Within these boundaries, Ohio, Indiana, Illinois, Michigan and Wisconsin were created. The ordinance provided a path to statehood for territories not part of the original colonies. The territory had a common form of settlement. Land was surveyed into 6 mile square townships and then divided into 36 sections to be sold at public auction. Minnesota and Iowa were part of the Wisconsin Territory. While not part of the initial Northwest Territory, the states were formed by a similar land grant and in a consecutive time period. All were created as public land states, which meant that the states were created out of the federal government's public domain. The federal government also passed enabling acts, which authorized the inhabitants of the former territories to form a constitution and a state government. After drafting a state constitution, Congress passed an act stating that the territory had formally become a state.[105] The new constitutions of these public land states often drew on other states' constitutions, especially those where the citizens had previously lived. In the case of the Old Northwest, settlers were often from New England and the Mid-Atlantic. Starting with Ohio, these new constitutions incorporated elements from their previous experiences and also reflected the new identity of the territory.

Three of the seven states in this group adopted home rule legislation in their state constitutions by the early 20th century. Minnesota granted home rule to any city or village in 1896, followed by Michigan in 1908 and Ohio in 1912. These three

[105] For example, Jefferson signed the Ohio Enabling act on April 20, 1802. The Ohio constitutional convention met in November 1802. Ohio presented their newly written constitution to Congress in December. Congress formally passed an act on February 19, 1803 "stating that the citizens of Ohio had adopted a constitution in accordance with the 1802 Enabling Act and the said state had become one of the United States of America." <http://www.ohiohistorycentral.org/entry.php?rec=523>

states passed some of the most generous home rule in the country as there were no population restrictions. In all three states the municipal home rule charter had to be consistent with and subject to the laws of each state. One noticeable difference among the states was that constitutional home rule in Michigan was not self-executing. The constitution enabled home rule to exist, but general laws had to be passed by the state legislature to determine how municipalities could enact a home rule charter. This initial act was passed by the Michigan state legislature in 1909. The Minnesota and Ohio provisions were self-executing, and, thus, the home rule provisions in these constitutions were more extensive, laying out the role of the board of freeholders in drafting the charter and defining how a charter could be approved and amended.[106] Wisconsin passed constitutional home rule legislation in 1933[107], Iowa in 1968, Illinois in 1970 while Indiana passed a law in 1980 granting limited home rule privileges.

The late adoption of home rule legislation does not mean that Wisconsin, Iowa, Illinois and Indiana were overlooking local governments. These states made substantive constitutional changes between 1848 and 1871 to more clearly define the state-local relationship. In 1851, Indiana was the first Midwest state to have comprehensive constitutional changes with respect to municipalities, and the first to prohibit special laws across a wide range of issues. The state provided for general

[106] Minnesota required four-sevenths to pass, Ohio required a majority.

[107] There was a type of constitutional home rule amendment passed in 1924, however it only gives power to determine "local affairs and government, subject to…enactments of the legislature…as shall with uniformity affect every city or every village" (Article XI, Section 3). This amendment only applied to cities and villages, not towns. However, the League of Wisconsin Municipalities has pointed out that "the courts have recognized that because almost every municipal activity has some statewide effect, matters that are local affairs may also be matters of statewide concern," and thus true home rule powers are limited. See the League of Wisconsin Municipalities' Handbook for Wisconsin Municipal Officials.

incorporation, instead of special legislation, for both public and private corporations. Iowa began reforming state-local relations in 1857, prohibiting special legislation for the incorporation of cities and towns while mandating general laws for the organization of corporations.[108] Illinois, in its new constitution of 1870, followed the lead of Indiana and Iowa and prohibited special legislation for all corporations and, as a replacement, provided general laws under which both public and private corporations could be organized. Illinois specifically prohibited special legislation for regulating county and township affairs and changing or amending the charter of any municipality. In 1848, Wisconsin adopted general legislation for corporations without banking privileges in addition to calling for one system of town government, as "uniform as practicable."[109] In 1871, Wisconsin amended its constitution to also prohibit special legislation for the incorporation of municipalities and the amendment of their charters. The striking observation is that within these four states, no additional constitutional changes were made with respect to municipalities until Wisconsin in 1924, Iowa in 1968, Illinois in 1970, and Indiana in 1984. While these four states did not adopt home rule early on, they still followed the progression of first prohibiting special legislation and then incorporating general legislation for municipalities.

During the same period from 1850-1881, Minnesota, Michigan and Ohio were relatively quiet with respect to constitutional changes for local governments. Michigan adopted a new constitution in 1850, including a general incorporation provision, but specifically excluding municipal corporations. The following year,

[108] 1857 Constitution of Iowa, Article VIII, Section 1 doesn't identify whether the general law only applies to private corporations, or if it also extends to municipal corporations.
[109] 1848 Constitution of Wisconsin.

Ohio also wrote a new constitution which required general incorporation and additionally provided for general laws for cities and villages. Minnesota wrote a new constitution in 1857, but excluded municipalities from its prohibition of special acts of incorporation.

While almost all of the Midwestern states provided general incorporation laws for private corporations,[110] they differed with respect to when they began prohibiting special legislation for municipalities. Initial legislation prohibited special acts of incorporation, with the exception of municipalities -- Iowa (1846), Illinois (1848), Wisconsin (1848), and Minnesota (1857). The prohibition on special legislation was extended to municipalities by Michigan (1850), Indiana (1851), Iowa (1857), Illinois (1870), and Minnesota (1881). The first states to extend this prohibition to municipalities, Michigan and Indiana, were the two states that simultaneously prohibited special laws for private corporations.

The constitutional histories of Indiana, Iowa, Illinois, and Wisconsin, suggest that these states that did not pass home rule early in the 20th century on were able to establish a state-local relationship that found balance in uniform constitutional regulation for local governments. Home rule was not the early solution in these four states. By 1881, these states had imposed municipal tax and debt limits and prohibited special legislation for municipal incorporation. In contrast, the states that were earlier home rule adopters did not find a solution with general constitutional provisions for municipalities. For some reason, general laws for the organization of cities were not sufficient in Minnesota, Michigan and Ohio. These states seemed to

[110] Minnesota never had an explicit grant. The other states all passed constitutional provisions between 1846 and 1851: Iowa (1846), Illinois (1848), Wisconsin (1848), Michigan (1850), Indiana (1851), Ohio (1851).

have used home rule as a supplementary institution to meet the heterogeneous needs of their municipalities.

3.6.3 The Old Southwest

Louisiana (1812), Mississippi (1817), Alabama (1819), Missouri (1821), Arkansas (1836), Florida (1845), Texas (1845)

Like the Old Northwest, the Old Southwest was also comprised of public land states.[111] Similar to their northern counterparts, these states also had the opportunity to draft their initial state constitutions. The citizens of the Old Southwest also drew on their experiences from their original home states, usually the southern group of the original colonies. As noted before, the constitutions of the original southern states had very little to say with respect to municipalities, most likely due to the fact that municipal governments were not as important as county governments in the south. This type of institutional arrangement (or lack thereof) persisted in the new constitutions of the Old Southwest.

The example of home rule illustrates the difference between the Old Southwest and the Old Northwest. Missouri was first state in the country to pass home rule, when in 1875 it granted cities with populations of more than one hundred thousand that power. However, the only other state in the region to ever grant home rule was Louisiana in 1974. Lack of home rule was just one aspect of the differences in the state-municipal framework; the Old Southwest also differed in when they prohibited special laws and implemented general legislation. Despite the fact that

[111] The exception is Texas, which was an independent Republic that was annexed by the United States in 1845.

these states were less likely to pass home rule, the prohibition of special legislation still always came before or with the mandate of general legislation for municipalities.

Prior to the Civil War, only a handful of southern states addressed local government issues in their constitutions. Louisiana, in 1812, called for public election of municipal officers. In 1839, Florida authorized counties and towns to impose taxes for county and corporation purposes. Additionally, these two states were the only ones in this group to specify how corporations were to be organized. Corporations were not to be passed by special act in Florida, starting in 1839, unless two thirds of each house agreed. The state began mandating general laws for incorporation in 1839. First, these laws only protected churches, but in 1861 the mandates were extended to towns, literary, scientific, benevolent, and military institutions. In 1845, Louisiana called for general incorporation laws for all corporations, except banking, and prohibited special acts of incorporation, except for political or municipal entities. It is not surprising that Florida and Louisiana had a very different constitutional structure, as the states had very different colonial histories.[112] In 1865, the constitution of Missouri prohibited special legislation for individuals, special incorporation for private corporations, special incorporation for everything but large cities, as well as special legislation relating to taxation and public officers.

Reconstruction constitutions were drastically different. Alabama (1867) and Arkansas (1868) set municipal property tax limits of 2% in addition to calling for the organization of cities by general law. Six years later, Arkansas added a municipal

[112] Both states under Spanish rule prior to being admitted as states. Spain had created a system of large parishes for ecclesiastical administration; Louisiana kept the termination of parishes as their designation of a county. James (1921), p 104.

debt limit of 3 mills on the value of taxable property, while Alabama added municipal debt limits according to population in 1901. The only other state to place constitutional restrictions on municipal finances was the tax limit imposed by Louisiana in Louisiana 1878. The 1868 constitution of Mississippi lacked any measures to define the state-local relationship. But, its 1890 constitution introduced provisions that made it comparable to other states in the country, containing a call for general incorporation, the organization of cities by general laws, and many prohibitions of special legislation.

3.6.4 West

California (1850), Oregon (1859), Nevada (1864)

These Western states were settled early and were admitted before the end of the Civil War. All three states had home rule by 1924. In 1879, California granted home rule to cities with more than one hundred thousand residents; in 1892 the state extended the privilege to municipalities with more than thirty-five hundred residents. In 1906, Oregon allowed home rule in any municipality, and Nevada gave the same decentralized control in 1924. The home rule clause in the Californian constitution, described in detail earlier, incorporated specific provisions on charter commission, adoption, and amendment process. Oregon and Nevada had different clauses, with each constitution entrusting the state legislature with providing the exact path to home rule. Oregon simply said that every municipality has the "power to enact and amend their municipal charter…but such municipality shall…be subject to the provisions of

the local option law of the state of Oregon."[113] Nevada had non-self executing home rule, with the constitutional grant providing the state legislature with the authority to pass a home rule act.

In their first state constitutions, both Oregon and Nevada included prohibitions of special legislation for individuals; corporations; rights, privileges and duties; legal proceedings; highways and public grounds; taxation; and elections. In 1879, the new constitution of California included prohibitions in these same categories. The California and Nevada constitutions both prohibited special legislation for municipalities and called for general laws for the organization of municipalities. Oregon's constitution did neither, providing such provision only for private corporations, not public ones such as municipalities.

3.6.5 West Central

Kansas (1861), Nebraska (1867), Colorado (1876)

This group of states in the middle of the country all entered the Union in the 1860s and 1870s.[114] Colorado was the last state admitted to the United States until a large group of states entered in 1889. These decades were defined by the Civil War. Despite earlier tension and controversy in the Kansas and Nebraska Territories[115], all three states were admitted as free states. Even though slavery was not permitted in Kansas, the difference in attitudes and controversy over the topic of slavery may have influenced the structure of their initial constitution.

[113] 1859 Constitution of Oregon, 1906 Amendment, Article XI, Section 2.
[114] Other states to be admitted in this time frame were Nevada and West Virginia.
[115] The Kansas-Nebraska Act of 1854 repealed the Missouri Compromise and allowed the people of the territories to decide for themselves whether slavery would be allowed.

Colorado and Nebraska adopted home rule provisions in 1912, with Colorado extending the privilege to any municipality with more than two thousand residents and Nebraska allowing all municipalities with more than five thousand residents the opportunity. Both were self-executing and contained the traditional list of requirements, including specifications of how a charter was to be drafted, voted on and amended. Kansas did not pass a home rule amendment until 1960, finally granting all municipalities the right to adopt and amend a home rule charter.

All three states have always included a call for general incorporation laws and for organization of cities by general laws. However, there is a marked difference among the states with respect to the constitutional prohibition of special legislation. Nebraska and Colorado include many explicit areas where special legislation cannot be enacted including judicial, municipal, corporate, and individual law. Kansas, on the other hand, simply says all cases where a general law can be made applicable, no special law shall be enacted.[116] While other states include a similar clause, it is usually supported by specific areas where special laws are prohibited, preempting any subjective decision about whether a general law could be made applicable or not. The hesitation by Kansas with respect to home rule and special legislation reinforced centralized control, and may have resulted from concerns of the varied political interests within the state.

3.6.6 Northern Territory

North Dakota (1889), South Dakota (1889), Montana (1889), Washington (1889), Idaho (1890), Wyoming (1890), Utah (1896)

[116] 1859 Constitution of Kansas, Article II, Section 17.

This group of states was admitted to the Union within an eight year period, and all were located in the North-Northwestern part of the country. While there are social and economic differences across these states, including important issues such as religion and agriculture, they all entered the Union in the same era. All of these states drafted new constitutions in a period when local governments in neighboring states and out east were taking a more prominent role in providing public goods. While they all drew on the constitutions of existing states, they ended up structuring their new constitutions in different ways.

Washington was the only state to incorporate home rule in their initial state constitution. Its constitutional convention, held in 1889, drew on the constitution of California.[117] Convention members saw the success of home rule in certain cities in California and wanted to preserve it when drafting their new constitution. Washington's provision allowed any city containing more than twenty thousand residents the opportunity to enact a home rule charter. Small changes were made from the California text; most notably, amendments could be made as often as proposed and only a majority was required to pass them. No other state in this group adopted home rule legislation until South Dakota (1963) and North Dakota (1966).[118] The two states had quite different home rule clauses. South Dakota looks very conventional, specifying how a home rule charter would be drafted, voted on and amended. North Dakota, on the other hand, had a non-self enforcing home rule provision, and, thus, the constitutional text is limited. The one thing the Dakotas had

[117] Oberholtzer (1893), p 92.
[118] Washington expanded its home rule provisions to cover cities with more than ten thousand residents in 1964.

in common was that they both state that home rule municipalities have "any power or function which the legislative assembly has power to devolve upon a non-home rule city or village."[119]

A common element across all states in this group is the extensiveness of the prohibitions on special legislation, which rival any other state in the Union. These constitutions were written at a time when concern with corruption and special interests within sub-national governments was rising in importance. This group of states took bold measures to prevent special interests from overtaking their newly created polities. Special legislation was prohibited in areas such as the judicial system, local governments, government officials, grants of incorporation, public schooling, and chartering or licensing ferries or tolls. Even the boundaries they set with respect to municipalities are specific. For example, all states but Idaho have municipal debt limits, and all states call for the organization of cities by general law.

3.6.7 Southwestern latecomers

Oklahoma (1907), Arizona (1912), New Mexico (1912)

Arizona and Oklahoma included home rule in their initial constitutions. Arizona granted it to municipalities with more than thirty-five hundred residents and Oklahoma to municipalities with more than two thousand. New Mexico did not have home rule until 1970 when they allowed any municipality the option of adopting and amending their own charter. In all other respects, the three initial constitutions of these states appear similar. All have explicit prohibitions on certain types of

[119] 1889 Constitution of North Dakota, 1966 Amendment, Article VI, Section 130. Similar phrasing found in 1889 Constitution of South Dakota, 1963 Amendment, Article X, Section 5.

legislation and establish municipal debt limits. The difference is that Oklahoma does not establish general incorporation legislation. New Mexico does not explicitly provide general laws for the organization of municipalities[120]; however it does prohibit special legislation for the incorporation of municipalities and the amendment of their existing charters.

3.6.8 Last States in the Union

Alaska (1959), Hawaii (1959)

The last two states to enter the Union are Alaska and Hawaii. The constitutional framework in these states should not be seen as the optimal solution just because they are the most recent and could learn from other states' mistakes. The constitutions of Alaska and Hawaii represent solutions for how states structure the state-local relationship in the new federally-dominated governance structure.

The initial constitutions of Alaska and Hawaii included only two features in relation to special legislation, general legislation, and local governments. Both granted home rule for municipalities and called for the organization of cities by general law. These states apparently did not think it essential to constitutionally protect individuals, private and public corporations from uncontrollable special legislation.

[120] New Mexico just provides for the organization of corporations by general law. 1911 Constitution, of New Mexico, Article XI Section 13.

3.6.9 Observed Regional Trends

As the eight individual regional narratives show, there is great variation in the constitutional histories both within regions and across regions. Table 4 tracks when each state passed special legislation for corporations, general legislation for corporations, special legislation for other purposes[121], broad calls for general legislation[122], special legislation for municipalities, general legislation for municipalities, and constitutional home rule.

One important pattern appears in the regions where states entered the Union later, specifically the West, Central, Northern Territory, Southwest and the Last regions. In this group of states, most states address all three categories (corporations, general, and municipalities) at the same time. Also, most states in this group prohibit special legislation and call for general legislation in their states concurrently. Because there is no variation across categories, and all categories were addressed in the first constitution, it is hard to tell why these states incorporated these measures into their constitutions. The most likely reason is that states could see what others had been doing over the previous one hundred years. Learning through this laboratory of federalism, states chose the best set of institutions given their preferences. One important state that differs from this pattern of universally addressing all categories at the same time is California. California is also the oldest state in this group, with its first constitution written in 1849. The original California

[121] I include all of Binney's (1894) categories, except for corporations or municipalities, in this category. Examples include individuals, highways, elections, officials, the interest rate, and legal proceedings.

[122] I use Binney's definition of a broad general restriction, which include provisions such as "No special law shall be enacted….in cases which are provided for by a general law," "No local or special act," or "In all other cases where a general law can be made applicable, all laws shall be general and of uniform operation." See Binney (1894), p 174.

constitution prohibited special legislation and called for general laws for corporations. In the next constitution, written in 1879, California extended the prohibition of special laws to cover many other categories, including municipalities. The pattern of addressing private corporations first and municipalities and other issues later is not just seen in California. This pattern links California to other states particularly in the Old Northwest.

States in the Old Northwest did not solve everything at once. In this region, measures for corporations were often included in constitutions before anything was done for municipalities and other special issues. At a later point in time, anywhere from eleven to fifty-nine years later, states prohibited special laws or mandated general laws for municipalities and other categories. The exceptions are Ohio and Indiana which adopted provisions for corporations and municipalities at the same time. The story of states in the Old Northwest and California indicates that corporations and municipalities posed separate problems for the state legislature and were thus addressed at separate times. The timing of the constitutional legislation for corporations and municipalities indicates a similar trend from special to general legislation. The temporal pattern is consistent with the framework presented in Table 2. But the measurable gap in when the constitutional changes were made suggests these were probably two very different organizational structures which were undergoing changes at different points in history.

The idea that private corporations and municipalities are two distinct organization structures that were addressed in constitutions at separate points in time is especially evident in the oldest states, those in the Old Southwest and the Original

Colonies. The sequential pattern of corporations first and municipalities second is still evident in these regions. Most states address the issue of corporate law sometime in the nineteenth century. However, wide variation is seen with when and how states in these two regions address municipalities and other special issues. As discussed before, there are reasons which can help explain differences in states with respect to how they handle local governments. It is still interesting, however, that these oldest states in the Union differ so much in how they handled (or ignored) issues of municipal special legislation as well as broader issues of special laws.

3.7 Constitutional Changes within Region: A Case Study of the Midwest

While there are general trends across regions, the detail for why specific states adopted particular changes is uncovered by looking within region. By controlling for the shared characteristics, it is easier to recognize demographic or political changes that may result in constitutional changes.

In the Midwest, three states adopted home rule early (Minnesota, Michigan, and Ohio) while the other four (Illinois, Indiana, Iowa, and Wisconsin) chose not to adopt home rule until later in the 20th century. This chapter has considered conditions under which special legislation, general legislation or home rule is a more likely outcome. In taking a closer look at the states which did not adopt home rule early on, there are two striking similarities: (1) all prohibited special legislation for municipalities by 1871, and (2) none included a constitutional provision calling for

general legislation.[123] There may have been general laws which were established by the state legislature, but general laws for the organization of municipalities was never mandated by the constitution. These four states solved their issues with special legislation by constitutionally prohibiting special laws for municipalities. The lack of early home rule indicates that either it was not an economically optimal solution or it was not politically possible to adopt such a measure.

The variation in states' choices within the Midwest can provide an opportunity to see if the history if consistent with the theory. The theoretical argument of why a state is more likely to adopt home rule is dependent on the appearance of problems with implementing special and general legislation. By identifying when these potential problems actually arose in states, we can check to see if these states changed their constitutions in the way theory would suggest.

One component of maintaining special legislation was the logroll. Without the ability to sustain a coalition of votes, legislators cannot be assured that their special incorporation proposals will pass. The ability to maintain a logroll can be affected both by increased in the size of the legislature and also changes in the composition of the legislature. In the last half of the nineteenth century, changes in apportionment affected both of these dimensions. Constitutional changes were made by states to increase the number of legislators. Changes were also made to the way legislative seats were allocated, with states moving to a system where geographic units, such as counties, were all guaranteed a representative. This change from a

[123] In 1848, Wisconsin included a measure calling for a "nearly uniform" system of town government. In Wisconsin, towns are distinctly different from cities and villages. 1848 Constitution of Wisconsin, Article IV, Section 23. In Wisconsin, cities and villages are incorporated areas, whereas towns are the remaining areas of the county that are unincorporated. See http://www.wisctowns.com/what_is_a_town.html.

population based system of representation to one which also incorporated a geographic component increased the representation of rural voters in state legislatures and reduced the representation of urban voters and municipalities.

The changes in number of seats and methods of apportionment for the seven states in the Midwest are summarized in Table 5. The number of representatives and senators is often not a specific number, as seats were signed based on population or the number of geographic units, both of which varied in number over time. The method of apportionment is categorized in Table 5 as either "By Pop", "Pop by Unit", or "By Unit". If there is nothing recorded under apportionment, the constitution was not clear on how the state apportioned seats. The category of "By Pop" represents apportionment based solely on population. After a census was taken or an alternative enumeration was completed, senate and representative districts would be drawn based on population. Seats would then be allocated to those senate and representative districts. The category of "Pop by Unit" is similar in that it allocates seats based on population, but instead of drawing new districts, seats are apportioned based on counties. In this case, the role of the geographic units partially factors into apportionment because seats can not be split across counties. The last category of "By Unit" indicates that geographic units, in this case counties, are guaranteed at least one seat.

As can be seen in Table 5, the number of states legislators increased over time. The number of legislators was often based on population; as population increased, the total number of legislators increased. Constitutional changes which increased the number may have been a proportional response to ongoing population

increases rather than a response for political reasons. The constitutional changes which switched apportionment from a population basis to one where each county was guaranteed a seat was more likely a political response. Representation based on geographic units was a way for rural areas to preserve power in the legislature if they were losing seats to the growing urban population. Three states made this switch to guaranteeing representation for each county: Ohio in 1903, Iowa in 1904 and Michigan in 1909. Figures 3-5 show the timing of these institutional changes in relation to the change in the rural population. All three of these provisions which preserved representation from rural areas were implemented just as the rural population stopped growing.

The three states which significantly overhauled the method of apportionment did so as the growth in rural population stagnated, and rural legislators faced the prospect of losing power within the legislature. By preserving power through apportionment by counties, rural legislators took away seats that urban legislators would have otherwise had. The loss of potential seats for urban legislators meant that it would be harder to maintain a coalition of like-minded urban legislators to help pass through each others' proposed special legislation. As discussed earlier, with the loss of a coalition to pass special legislation, legislatures had two options. If municipalities were relatively similar, general legislation might be able to fit the homogeneous needs. However, if municipalities varied widely, it made sense to decentralize control and allow municipal governments the ability to self-govern. The three states here make up a very small sample of states with a potential logrolling problem. However, simple statistics suggest that there are noticeable differences

between the states. Table 6 shows the variances of municipal-level variables taken from the 1902 census, the census immediately preceding the changes in apportionment. The variables included are those that are important in defining a municipality and its needs.[124] For all but one variable, Iowa has the lowest variance across its municipalities. The observation that Michigan and Ohio have more varied municipalities would suggest that these two states would have been more likely to adopt home rule for municipalities. This was in fact the case, with Michigan adopting home rule in 1909 and Ohio passing it in 1912. Iowa, with its more similar municipalities, maintained general legislation for municipalities until the late 20th century. In this simple example, the history seems to be consistent with the theory.

3.8 Conclusion

Tracking changes in constitutions allow us to observe when specific institutions were adopted by several states in a similar way, or if institutions were adopted in response to certain prior legislation. Detecting patterns is informative, but alone can not tell the story of why institutional change occurred when it did. Additional historical details can add depth to the constitutional history. The observed pattern between decreases in rural population, changes in apportionment laws, and the advent of constitutional home rule is striking. However, this analysis is just for a handful of states, and cannot necessarily be representative of other regions. There still needs to be a well understood universal rationale for why constitutional changes happened across the states.

[124] These variables will be explained in more detail in the next chapter on the empirical analysis of home rule adoption.

In the next section I look exclusively at one type of constitutional change: the adoption of home rule. The sample of municipalities covers 27 states, including all states west of the Mississippi River and the Midwestern states.[125] This sample includes all twelve states that adopted home rule during the initial stage of the home rule movement.[126] By not using the other twenty-three states, I am not including any states from the East or the South. The 27 states in the sample still introduce a wide range of regional differences. I try to control for these inherent regionally-based differences by normalizing municipal-level data by state averages.

[125] I did not collect data on the original colonies and the southern states, as there was no home rule activity in these regions during this time period. In 1922, Pennsylvania adopted a home rule amendment, but the state legislature never enacted the necessary enabling legislation. In 1936, West Virginia adopted home rule, followed by New York in 1938. No other state in the east or south adopted home rule until Rhode Island in 1951. States in the east and south have very distinct local government histories which make them inappropriate as comparison groups.

[126] Missouri (1875), California (1879), Washington (1889), Minnesota (1896), Oregon (1906), Oklahoma (1907), Michigan (1909), Arizona (1912), Colorado (1912), Nebraska (1912), Ohio (1912), Texas (1912).

4 Home Rule

4.1 Introduction

Between 1875 and 1912, twelve states adopted constitutional home rule for municipalities. The adoption of home rule legislation allowed municipalities the option of writing their own charters and the ability to independently determine their desired structure and functions. The state-level choice to adopt home rule was not an exogenous decision; it was determined by underlying social, economic and political changes in each individual state. While the state decision to adopt home rule is influenced by many factors, this paper explores one possible mechanism. I use a fiscal federalism framework to test whether municipal preferences for home rule have an effect on the state adoption of home rule.

During this period, home rule was a right granted to municipalities in the state constitution and implemented by the state legislature.[127] In a home rule state, each municipality decides whether or not to draft its own unique home rule charter. Municipalities have the default option of adopting a standard organizational form provided under general state legislation. If we assume the state legislature reflects local preferences, states with more heterogeneity across municipalities may have a greater desire or need for home rule by municipal governments and should be more likely to adopt home rule. States that have more homogeneity across local governments are less likely to adopt home rule because localities are satisfied with a

[127] Later in the 20th century, some states adopted statutory home rule instead of incorporating home rule into their state constitutions. Statutory home rule provisions, like general legislation for municipalities, are statutes of the state legislature and subject to amendment or revocation. From here on, the use of the term "home rule" implies constitutional home rule, not the later version of statutory home rule.

uniform general law for municipalities.[128] I test the hypothesis by using a unique municipal-level dataset to estimate a latent preference for home rule for each municipality and then compare the dispersion of these preferences across states. The results consistently show that states with more heterogeneous municipal-level preferences for home rule adopted constitutional home rule at the state level.

The institution of home rule first appeared during a quite lively period for local governments. Local governments in the late 19th and early 20th centuries took on increased roles and responsibilities. According to Holcombe and Lacombe (2004), in 1820 local government expenditures were just 13.5% of total government expenditures. By 1902, that number was 58.8%, and reached its peak in 1913 at 64%. Wallis (2000) highlights the growing importance of local government relative to state and local governments; in 1840 per capita local government revenues were about 40% higher than state revenues, but by 1900 they were 260% higher. Both Holcombe and Lacombe and Wallis present these statistics to motivate further exploration into why and how local governments were growing relative to the other levels of government. Historians have long noted the significant demographic, economic and social changes in the late 19th century. Part of the growth in local level governments can be attributed to changes like the rapid urbanization of cities. But, that change alone does not characterize the expansion of local governments. Over the 20th century, the population became increasingly urban, yet local governments were surpassed by the federal government. An alternative explanation can be found in the

[128] I want to emphasize the distinction between heterogeneity across governments and heterogeneity within a government. This paper identifies heterogeneity across municipalities within a state. I will later consider how the degree of heterogeneity within municipalities may be related to the use of home rule charters.

fundamental changes in the state provisions for local governments. The adoption of home rule was one such change. The grant of home rule impacts the way municipal governments choose an efficient structure and the optimal set of public goods. While the use of home rule will cause change, its arrival also reflects change. The advent of home rule points to changes in demand for additional autonomy during this dynamic period of municipal history.

Writing ten years after the adoption of the home rule amendment, Charles P. Hall described the difference home rule had made for municipalities in Minnesota. He recognized its limitations, specifically that municipalities were still creatures of the state and could not supersede the general state laws. However, he boldly claimed that:

> Already the small municipalities are finding themselves better governed than before; the spirit of freedom, long confined, becomes a light in the community life: while other cities, less progressive, go lumbering on, under out-grown legislative grants. No municipality, though it be small in numbers, is deprived of the home rule privilege: thinking men and understanding voters there must be; but, with these present, the benefit may be secured.[129]

Similar observations were made in other states. While scholars recognize the drastic changes municipal governments were able to make through home rule, few have tried to place home rule within the context of legislative change.[130] With only twelve of forty-eight states adopting home rule in this era, it is evident home rule was only one of many viable solutions for how states structured a system of local government.

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[129] Hall (1906), p 7.

[130] Griffith, 1900-1920 (1974), p 126-128, used a previous study which had ranked 36 cities on various measures of functional achievements. Ranking the cities by quarter, Griffith found that of the cities in the top quarter, 7 out of 9 cities were home rule charter cities; of the nine cities in the bottom quarter, only one had a home rule charter. This terse comparison leads us to believe home rule had some effect on the performance of governments. More recently, Turnbull and Geon (2006) directly evaluate the impact of the institution of home rule on county government.

This paper helps answer the question of why home rule was a sensible institution for certain state governments to adopt.

4.2 Background

4.2.1 Evolution of Municipal Legislation

State governments opened up access to both political and economic organizations in the 19th century. There are clear parallels between state level constitutional changes regarding private corporations and the less well understood changes instituted for public corporations.[131] As mentioned in Chapter 2, initially, all corporations (public or private) were chartered through special legislation. In tandem with directly solving state-level debt problems, general incorporation laws for private firms enacted by many states in the 1840s were an economic solution to the political problem of corruption and special interests.[132] State governments were taking steps to remove special interests and the predisposition for corruption by establishing "general incorporation acts" that created a one-size-fits-all corporation available to everyone through an administrative process. While the political issues of special interests and corruption were resolved through general legislation, these general laws constrained the internal structure of private corporations. In the 1880s and later, states began to loosen the restrictions on private corporate structure through the

[131] Public corporations include municipal governments, county governments, school districts, and special districts.
[132] See Wallis (2005).

passage of liberal general incorporation.[133] The liberal acts allowed corporations a great deal more freedom.

The initial need for municipal general legislation stemmed from similar problems of special interests and political manipulation. Large cities were targeted with undue special legislation passed by state legislatures. Sometimes the state, burdened by state level debt restrictions imposed in the 1840s, turned to municipalities to shoulder the burden of internal improvements and investments, passing unfunded (or simply unfair) and intrusive mandates. General legislation protected municipalities from unwanted abuse by state-level politics, and also provided a uniform structure under which all local governments could operate and easily gain access to the corporate form. In 1848, the constitution of Wisconsin called for "one system of town and county government."[134] As described in Chapter 2, numerous states followed, including constitutional articles calling for municipalities to be incorporated and organized under general laws.

However, as in the case of private corporations, the one-size-fits-all rubric of general legislation was not suitable for all public corporations. In some states, a Pareto-improving solution was to have general legislation available for those well served by it, and to give municipalities the option of independently chartering themselves. The resolution retained the political security afforded by general legislation and provided the freedom of organization to those who needed it most. This powerful grant of autonomy is the result of the home rule movement of the

[133] Corporations were now allowed to be formed no matter the residency of the incorporators or the primary place of business, and they had diverse options for their internal governance structure. The first mover was New Jersey; starting in 1875, and through a series of acts from 1888 to 1896, New Jersey gave private corporations additional economic flexibility. See Butler (1985) and Wallis (2006).
[134] 1848 Constitution of Wisconsin, Article IV, Section 23.

Progressive Era. The initial wave of constitutional home rule in the United States stretches from 1875 to 1912, a period in which twelve states adopted home rule. Weiner (1937) uses World War I to mark a turning point in the history of home rule.[135] Home rule was not an end in itself, but a means to good government. The fervent reform mentality and pursuit of more efficient government waned in the years following the War. Wisconsin (1933) and West Virginia (1936) were the next two states to adopt home rule.[136] These later states started a trend of less complex and more liberal grants of home rule to municipalities which intensified in the 1960s and 1970s.

4.2.2 Institution of Home Rule

While the term home rule does not have a uniform and exact legal definition, the idea implies the transfer of specified government powers from state to local governments. The concept is parallel to devolution, often used to describe decentralization of power in other countries and historical periods. While devolution encompasses a wide range of transferred powers and responsibilities across different types of government structures, the home rule movement in the United States can be described narrowly. Home rule in the United States appeared in state constitutions, granting municipalities the authority to frame and adopt their own charters.

Historical accounts suggest that the home rule movement was motivated by the desire of local governments to become more autonomous from the state

[135] Weiner (1937), p 561.
[136] Krane, Rigos, and Hill (2001) report that Nevada adopted home rule in 1924 and Arkansas in 1926. However, in Nevada the apparent constitutional grant of home rule was overruled when legislation was passed allowing the state legislature to create and change municipal charters. The cited home rule amendment in the 1926 Arkansas constitution is instead a limitation on municipal legislative and taxing power.

legislature. Progressive historians document how cities yearned for economic individualism and separation from state interference. Howe (1905) argues that municipalities needed freedom from "the jockeying measures of party bosses, the attempted passage of franchise grabs by the legislature, the interference by the state with the police and fire departments, [and] the burden of securing relief from excise and financial problems" and should "be as free from the state as the state is as free from the nation at large."[137]

However, the appeal of home rule was not limited to the concept of freedom from the burden of state control. The advantage of home rule is that it allows a local government to become more efficient and better suited to meet the demands of its constituents. Rapid urbanization required cities to provide new public services, but they were often constrained by the governance structure under general legislation and needed to have a flexible charter through which they could promote internal reorganization. Fox (1977) notes that the "best that a city of the 1880s could hope for in the way of efficient service provision was economical handling of its purchases and supplies of labor," as the city was not able to supervise labor and projects like private firms.[138] Freedom from the state legislature was important, especially for large metropolitan cities which were being handed extreme and unfunded mandates by the state legislature. However, home rule was sought by municipalities of all sizes as way to gain control over local affairs.

Home rule granted each municipality the ability to independently draft its own charter. A home rule charter is a constitution for the municipality, a formal

[137] Howe (1905), p 161-162.
[138] Fox (1977), p 90-91.

recognition of local self-determination and a framework for government that persists over time. A charter generally grants power in five areas: (1) the powers incident to all corporations; (2) power to levy taxes; (3) power to appropriate and spend money; (4) power to perform certain services; and (5) power to enact and enforce local police ordinances.[139] A municipal government, by means of its own electorate, could now determine how the government would be run and who would run it.

Adoption of a home rule charter allows for substantial structural changes. In Michigan, municipalities under general law were restricted to operate as a weak mayor-council government. By adopting a home rule charter, municipalities could decide to change the structure to a commission or even a city-manger form of government. Home rule charters enabled municipalities to impose limitations on the government that were more stringent than state laws. Some home rule municipalities chose to place tax or debt limitations upon themselves above and beyond those imposed by the state. Municipalities also used home rule charters to expand the range of local powers and functions, often as a means to facilitate ownership and operation of utilities. Home rule charters provided citizens with the use of the initiative, referendum and recall. Access to the initiative played an important role in home rule municipalities in Minnesota, for example, with respect to the adoption of liquor laws.

Municipalities also pursued home rule as a means to increase accountability in local government. Municipalities in the late 19th century lacked executive power, and the blame for failed public works projects was often shifted up to the state

[139] Kimball (1922), p 376, which refers to the classification by Goodnow and Bates in Municipal Government and to work by Dillon.

government instead of being dealt with at a local level.[140] Home rule redirected the responsibility for governance: blame could not be passed back up to the state legislature. Responsibility rested squarely on the shoulders of the local officials. Municipal governments were held accountable to their citizens both through the power of recall and through possible rulings made by state courts.

While home rule may not be as avant-garde now as it was in the early 20th century, it is an institution worthy of a deeper understanding by those interested in how local governments operate. In 2001, Krane, Rigos and Hill reported on the status of home rule in America. While the authors note that home rule is an "antique" idea, they contend that home rule has a bearing on policy decisions and can directly influence six areas of state-local relations: service provision, policy tools, interstate variation, trends shaping local governments, federalism, and democracy.[141]

Briffault (2004) documents cases where home rule remains part of the current policy debate. Home rule has played an important role in policies ranging from local tobacco and firearm regulation, gay and lesbian rights, campaign finance reform and living wage laws.[142] The living wage movement contends that by increasing wages paid by firms that do business with local governments or receive benefits from local governments, a community can combat poverty and promote urban economic development. Such a policy could not necessarily be passed at the state level, given the likely contentious debate about the potential consequences of the policy on the community, employers and employees. Thus, living wage policies will only be

[140] Patton (1969).
[141] Krane, et al. (2001), p 3.
[142] Home rule provides a mechanism by which choice of government organization and operation can affect policy. In general, the link between governmental structure and policy choice has been established in papers such as Lineberry and Fowler (1967).

pursued by individual communities that are homogeneous enough to share an interest in a living wage ordinance. Harvey (2003) found that 83 cities had adopted a living wage ordinance by means of their home rule charter and associated authority over their own policies. While the living wage movement is just one example of policy differentiation available under home rule, a general analysis of home rule will help define the relationship between state and local governments. Home rule can have an impact on the future role of local governments in America's federalist system, as local governments continue to be responsible for providing communities with basic service provision and satisfying local needs.

4.3 Endogenous Policy Determination

The analysis of home rule presents a unique opportunity to investigate the endogenous determination of government structure. Often, empirical research either takes government structure as given or assumes that institutional change and policy determination are exogenous. Hero (1986) notes the abundance of research that focuses on the policy and electoral consequences of different urban governmental structures, but which fails to investigate what leads to the adoption of those particular structures. By overlooking how institutions and governance are endogenously determined, past research has sometimes ignored valuable information that can help explain why and how outcomes evolve. As Nice (1983) noted, municipal government is shaped by state governments as well as overarching legal, political, cultural and historical influences.

Strumpf and Oberholzer-Gee (2002) tackle the issue of identifying what contributes to state-level decisions. They construct a positive theory of endogenous policy determination to empirically test a central hypothesis of fiscal federalism: that heterogeneous preferences lead to decentralized decision making. The authors look at the state level decision to decentralize liquor control to the county level or to maintain a centralized, state-level liquor policy. Their hypothesis is that where there is wide variation in liquor preference (wet versus dry) across counties, states are more likely to decentralize control. The empirical analysis consists of two stages. In the first stage, county preferences for liquor control are estimated based on those states where decentralized decision of the policy variable was allowed. Then using the estimation results, they simulate what counties currently under a centralized policy would have done had they instead been under a decentralized decision-making structure.

The innovation of Strumpf and Oberholzer-Gee's approach is the recognition that state-level decisions rely on the distribution of preferences across the local governments. As described by Besley and Coate (2003), choices with respect to decentralized decision-making are not only based on differences in spillovers and other externalities of centralization, but also on the differences in tastes for public goods. The second stage of the Strumpf and Oberholzer-Gee analysis compares the predictions across decentralized and centralized states. If a majority of the counties in a state are similar, then the state legislature is likely to find common ground through general legislation. However, even if the majority is similar, if the minority is sufficiently different from the majority, then they may be able to "buy" the votes of the majority in order to decentralize control through the state legislature. Strumpf and

Oberholzer-Gee compare preferences within a state by measuring the variance of preferences and the strength of preferences to capture the heterogeneity and minority interests within each state.

4.4 Approach

The adoption of home rule at the state level must be influenced by the demand for home rule at the municipal level. All else equal, states where municipalities want home rule will be more likely to adopt home rule than those states where municipalities do not have an interest in the institution. Demand for home rule is greater when the optimal governance structure for a municipality diverges farther from the structure provided under general legislation. A statewide demand for home rule happens when heterogeneity in the optimal governance structure for each municipality can not be accommodated by a uniform policy under general legislation. This need is described as "strong" local preference for home rule, measured both by the magnitude and variation of municipal home rule preference.

In order to compare the municipal preferences in home rule states with those in non-home rule states, a measure of municipal taste for home rule must be developed. I use data from states that granted home rule to estimate the determinants of the choice by municipalities of whether or not to adopt a home rule charter. In most states, less than half of the municipalities adopted a home rule charter when given the opportunity, [143] so there is considerable variation to exploit. The estimates are used to generate a latent taste for home rule for each municipality in the sample.

[143] McBain (1916), p 114-117.

We can use the coefficients to predict a latent preference for municipalities in non-home rule states that were never granted the option of home rule. The key hypothesis to test is whether municipalities in home rule states have greater heterogeneity in the estimated latent preference for home rule.

While the initial purpose of the municipal-level estimation is to create a measure for local home rule preference, the estimation also analyzes the forces driving the pursuit of self-governance through home rule chartering. As discussed earlier, municipalities in the late 19th and early 20th centuries increased their provision of goods and services to citizens. Management of increased spending policies and expanded revenue collection could be aided by writing and adopting a tailored a home rule charter. Thriving municipalities that had reasons to utilize home rule chartering are identified by three main characteristics: size, growth and investment in infrastructure. Municipality size indicates economies of scale in the provision of public goods, which can be expanded under a home rule charter.[144] Municipalities experiencing rapid growth may look to a home rule charter for flexibility to accommodate changing needs. Finally, because home rule charters allow for additional control over the establishment and operation of public utilities, we expect home rule charters to be utilized by municipalities which heavily invest in infrastructure. Size, growth and infrastructure investment are the three core characteristics of probable home rule municipalities. Other factors possibly contributing to home rule adoption include the degree of homogeneity within a

[144] Oates (1988) notes that larger localities are likely to have a wider range of public goods and services.

municipality, the professionalization of management, the demand for modernization, and the pursuit of more efficient local governments.

Municipalities with more internal homogeneity are characterized by populations having similar race or nativity or being of the same political party. Theoretically, the degree of homogeneity within a municipality has an ambiguous effect. Models of political participation predict that homogeneous governments might be more likely to adopt a home rule charter. Alternatively, collective choice problems may lead heterogeneous communities to adopt home rule charters in order to place more stringent controls on the municipal governments so as to constrain the "tyranny of the majority".

Alesina and La Ferrara (2000) predict greater political participation in areas that are more homogeneous with respect to either race or income. Greater political participation in a homogeneous community often results in policy choices which reinforce and provide stability for the preferences of the homogeneous group.

Alternatively, heterogeneous communities may be more likely to seek home rule. Buchanan and Tullock (1962) argue that heterogeneous communities seek to impose restrictive collective decision-making rules. For example, home rule charters allowed municipalities to impose more stringent tax and debt limitations than the state required. Thus, heterogeneous communities might seek out home rule as a means to guarantee protection from negative collective decisions concerning the provision of public goods.

Additionally, municipalities faced with a heterogeneous population might be less likely to adopt home rule charters in order to remain protected by the state rather

than left to their own autonomous control. The point is particularly relevant in the case of home rule during the late 19th and early 20th centuries. As Patton (1969) points out, parts of the old South were hesitant to use home rule charters because home rule would sever the protection local governments received from state government with respect to race relations.

There are alternative views which explain why size, growth, and infrastructure may affect the likelihood of adopting a home rule charter. For one, the growth of the modern business enterprise and the corresponding professionalization of private firm management sparked a parallel movement in the reform of municipal government. As firms reorganized internally for efficiency, leading professionals saw the same opportunity to reform government. The commission and council-manager forms of government were an application of successful structural business reforms, and were often accessible only by the use of a home rule charter. In addition, changing economic outcomes affected the demand for modern goods and services. People not only demanded different consumer goods, but also demanded improved public goods such as water, roads, public transportation, electricity and parks. A municipality that wants to modernize its public services may choose to pursue a home rule charter in order to expand its governmental functions.

Lastly, a municipality is more likely to pursue home rule if operation under general legislation is not optimal. General legislation is a uniform institution, created by the state legislature as the optimal structure for a representative municipality. If a given municipality is different from its peers within the state, it is unlikely that general legislation is the optimal choice. In order to capture within-state

heterogeneity we can compare local-level demographic and municipal government data to the state averages.

4.5 The Data

As mentioned in Section 3.8, the sample of municipalities covers 27 states, including all states west of the Mississippi River and the Midwestern states. The sample includes all twelve states that adopted home rule during the initial stage of the home rule movement. For each municipality in these home rule states, I found the year of its first home rule charter, if it ever chose to adopt one. Complete information on the adoption of home rule charters is not available for Oregon, so municipalities in the state are dropped from the analysis.

The year a municipality adopts a home rule charter is used as an indication of the local preference for the state-level grant of home rule. The analysis only considers data on municipal home rule chartering up to 1935, for two reasons. First, it is important to have a restricted period of time when considering how local preferences induce a state-level decision. By imposing a cutoff, the analysis assumes a municipality in Minnesota that adopted its first home rule charter in the last half of the 20th century did not have a strong preference for home rule in 1896; otherwise, the municipality would have adopted home rule soon after the state grant of home rule. Second, conditions changed dramatically after the New Deal reforms began. The federal government enacted Social Security and other public welfare programs and changed the relationships among the federal, state and local governments. Also, in

1934 the federal government passed the Municipal Debt Adjustment Act. These changes affected the motivation for adoption of local home rule.[145]

I have collected municipal-level data from the Decennial Census of the United States to construct five cross-sectional datasets from the 1890, 1902, 1913, 1922 and 1932 censuses. The Wealth, Debt and Taxation (WDT) series provides municipal-level data on population, debt, assessed valuation and ad valorem taxation.[146] Population data from the WDT tables was supplemented by municipal-level data from the general Census population tables. Since municipal level demographic characteristics are not published for this time period, county-level data was used to measure the native born population (ICPSR 2896) and congressional election results (ICPSR 8611). A measure for political competition was constructed by calculating a county-level Herfindahl-Hirschman Index (HHI) based on the voting shares for three parties (Democratic, Republic, or Other). The HHI accounts for the level of political concentration; an HHI of .33 indicates that the three parties received equal votes in the election, while an HHI of 1 indicates that one party received all of the votes. Thus, counties with a higher HHI are assumed to be more politically homogeneous.

The 1890 and 1902 WDT series endeavored to get information from all municipalities. While the data include information from municipalities of all sizes, extra effort was made by surveyors to obtain data from municipalities with 1,000 people or more. Starting in 1913, the WDT only provides information on

[145] After the 1930s there were significant changes in the form of constitutional provisions for home rule. See section 2.5.

[146] Starting in 1870 and continuing until 1942, governmental data were published as Wealth, Debt, and Taxation. From 1942-1957, instead of a decennial census, annual data was collected on state and local governments. Starting in 1957, the current form of the Census of Governments was taken every five years.

municipalities of 2,500 people or more. In order to maintain a consistent sample across time, only municipalities present in all datasets or that enter in some year after 1890 and remain through 1932 are included in the panel data analysis.

4.6 Descriptive Statistics

The full sample of municipalities in 1890 differs from the balanced panel sample of municipalities (see Table 7). The balanced panel is, by construction, composed of larger municipalities. On average, the balanced panel cities have higher population growth, more municipal debt and sinking fund assets, and a higher share of native-born citizens. The panel data sample provides additional information through the time series nature of the data, but is not representative of the entire population of municipalities in these states. To adjust for this bias, results for both the cross-sectional data from 1890 and the panel data are presented.[147] In addition, I present statistics for samples for each econometric method employed below: one for probit and linear probability estimation and one for duration estimation. Two states used in the duration analysis cannot be used in the probit and linear probability analysis on the 1890 data because there is no within-state variation in home rule chartering. When using the panel data, some municipalities are excluded from the duration estimation. For instance, if a municipality that adopted a home rule charter in 1914 only has WDT data beginning in 1922, it will not be included in the duration data but can be included in the probit and linear probability analysis. Thus, there are

[147] The analysis was also run on all cross-sectional data from 1902, 1913, 1922 and 1932. The 1902 results are similar to the 1890 cross-sectional results, while the 1913, 1922 and 1932 cross-sections are similar to the results using the panel data.

four different samples: 1890 data for probit estimation, 1890 data for duration estimation, panel data for probit estimation, and panel data for duration estimation.

Tables 6 and 7 report summary statistics of municipal and county-level characteristics for each of the four samples described above. Table 7 compares municipalities in states that adopted home rule to municipalities in states that did not. Across the eight variables presented, significant differences in the average characteristics of municipalities across samples occur about half the time. Consider the 1890 sample used in the probit model. The average municipality in home rule states is located in a county that votes more Democratic than the average municipality in states that did not adopt home rule. There is, however, no statistically significant difference in the population growth of municipalities by home rule status. Interestingly, the variance of city characteristics is almost always significantly different between municipalities in home rule states and those in non-home rule states. The higher variance of the municipal characteristics is not always found in home rule states as theoretically predicted. One should keep in mind that looking at characteristics of a single variable abstracts from within-state heterogeneity and fails to account for general differences across the states. Nevertheless, the significant differences in variation of municipal characteristics suggest that heterogeneity issues can be explored more fully in an econometric analysis.

Table 8 includes data only on municipalities in states that adopted home rule. Each dataset is separated into municipalities that adopted home rule and municipalities that chose to remain under general legislation. The differences between the 1890 sample and panel data samples are evident in variables such as the

average population and municipal debt per capita. Across all cuts of the data, general legislation municipalities are different from municipalities that adopt home rule charters, as seen in the statistically significant difference in means for most variables. These differences between municipalities that adopted home rule and those that chose to remain under general legislation will identify the municipal-level preference for home rule in the following analysis.[148]

4.7 Econometric Method

The empirical strategy models the choice by municipalities to adopt or not adopt a home rule charter. The first stage is estimated using municipalities in states with home rule. We observe municipalities in the estimation sample beginning in the year in which the state adopts home rule, when all municipalities were under general legislation, until the year a municipality adopts a home rule charter.[149] In the second stage, the estimated coefficients from the home rule states are applied to municipalities from all states to predict a latent preference for home rule. Then predictions for municipalities in home rule states are compared with those in non-home rule states to understand how heterogeneity in preferences affects the state-level decision of whether or not to pass home rule legislation. Let me stress at the beginning: all the results are robust to the choice of empirical specification and the

[148] The use of local level variables is essential to predicting to use of home rule, as there doesn't seem to be a strong geographic component. For example, Figures 6 and 7 shows which municipalities adopted home rule in Michigan and Texas. In these examples, there does not seem to be a concentration of home rule in specific areas of the state. Similar patterns of municipal take-up of home rule are seen in the other states.

[149] The empirical analyses are limited to modeling the single transition to a home rule charter. I do not observe any municipalities that transition back to being a general legislation municipality, although there are cases of this happening in later time periods.

use of either the cross-sectional or panel data. The consistent results underscore the strong conclusion that home rule states have more heterogeneous municipalities.

As mentioned in Section 4.4, three variables are the crux of the specification: size, growth, and infrastructure. These three factors are important in determining which public goods are provided at the municipal level, and, by extension, how those public goods are provided. These decisions play directly into the adoption of a home rule charter, which allows the municipality more control over its own governance. The effects of size are proxied by population, growth by population growth, and infrastructure by municipal gross debt less sinking fund.[150] Other covariates include the percent of native born citizens in the county, the county political HHI based on congressional elections, the percent of Democratic votes cast in congressional elections, the percent of votes cast for the non-Republican or non-Democratic candidate in congressional elections, and the level of the municipal sinking fund assets.

It is also necessary to control for differences in the within-state variation across municipalities in a state. We can assume that general legislation is set by the state legislature to accommodate the needs of the average municipality within the state. It could be the case that for any municipality, the greater the difference from an average municipality within the state, the less likely general legislation will be the efficient solution for that particular municipality and the more likely it would be to adopt a home rule charter. This comparison is useful for variables with variation across states and within states. For example, we expect that a municipality with rapid

[150] Gross debt is the sum of bonded and floating debt. From this total, the level of sinking fund assets is subtracted. A sinking fund is money set aside by a municipality to repay existing loans when they come due.

population growth is more likely to pursue a home rule charter to meet its changing needs. This level effect will be captured by including population growth as an independent variable. However, if we consider California which has higher population growth than Michigan, a common measure of population growth across all states will not account for the inherent differences within states. Michigan may have heterogeneity of population growth across municipalities within the state, where in California all municipalities might have a relatively high population growth. We want to be able to identify those municipalities in Michigan which have a rate of growth different from the average. The specification issue is addressed by creating new variables based on already included covariates, calculated as $(v - \bar{v})^2$, where $\bar{v}$ is the state mean. This set of measures is included to help control for within state heterogeneity.

State fixed effects control for any shared, omitted, and unobserved variables within a state, specifically variables that induce the adoption of home rule such as innovativeness or propensity for political involvement and legislative change. Strumpf and Oberholzer-Gee (2002) show that state effects are necessary to obtain consistent coefficient estimates. When calculating predictions on the out-of-sample municipalities in non-home rule states, I take the average of the state fixed effects in the estimated model.[151] I assume that states which adopted home rule are not implicitly different from states that did not adopt home rule. In my case, the driving force behind the adoption of home rule is the variation across municipalities within the state, not differences across states. However, there could be differences across

[151] This follows the method used by Strumpf and Oberholzer-Gee (2002), p 17.

states that make certain states more likely to adopt any new institution. If this were the case, unobserved state effects will be higher for home rule states (innovators) than they would be for non-home rule states. Thus, by using an average of the higher, home rule state fixed effects, predictions for the latent taste for home rule for municipalities in non home rule states will be biased upwards.

In the panel data specifications, I include a set of time fixed effects. The probability of adopting of adopting home rule may vary for exogenous reasons over time, and time-specific effects allow for that possibility. Additional complexities arise when using time effects in the duration model. These are discussed later.

We can represent a local government's decision to adopt a home rule charter by using the following basic specification:

$$t^*_{ics} = X_{ics}\beta + Z_{cs}\gamma + (V_{is,cs} - \overline{V}_s)^2\phi + S_s\delta + u_{ics} \qquad [1]$$

where t_{ics}^* is a latent variable for degree of home rule preference in municipality *i*, located in county *c* in state *s;* X_{ics} is a vector of characteristics of the municipality (population, population growth, debt, sinking fund), Z_{cs} are the characteristics measured at the county level (political variables, native born population), and S_s are state fixed effects. The variables in *V* compare each city to the average of all cities in its state and are measured either at the municipal or county level; these variables are chosen because they have a high variance both within and across states.[152] The *V* terms capture the effect of heterogeneous characteristics within states, while the level effects of the characteristics are controlled for in X_{ics} and Z_{cs}. We do not directly observe the magnitude of the home rule preference, only the choice of whether the

[152] The three variables that I choose to include for this within-state measure of variance are population growth, percent native born, and gross debt less sinking fund per capita.

local government did in fact take up the home rule charter opportunity when offered. The variable t_{ics} takes on one of two values, indicating whether or not the specific local government enacted a home rule charter by 1935. It is assumed that the decision by each municipality is independent, and is not a reactionary or defensive response to the choices of its peer group.

While there are limitations to this simplified model of home rule adoption, the goal is to get unbiased predictions of the underlying municipal preference for home rule. If some of the assumptions are not valid, then the model will be imprecisely estimated, and this will affect our ability to interpret these results as motivating factors of the home rule movement. However, the point of the analysis is not to be precise about explaining the adoption of home rule, but to estimate municipal taste for home rule. If the estimates are unbiased, it will still be possible to capture the relative heterogeneity of preferences within and across states.

4.8 Probit and Linear Probability Estimates

Table 9 presents estimates of Equation [1] using probit and linear probability models on both the cross section of 1890 data and the balanced panel dataset, without state or region fixed effects, with state fixed effects, and with region effects. Results without state fixed effects and with region effects, while potentially biased, are included to support the overall results we see in the regressions with state fixed effects.

The preferred probit model, shown in columns (2) and (8), confirms that three important factors in predicting the adoption of a home rule charter are population,

population growth, and gross debt less sinking fund per capita. The *a priori* predictions of these variables are supported; all positively affect the probability of adopting a home rule charter.

The magnitude of the coefficients suggests economically important effects. The coefficients for the probit model are the marginal effects evaluated at the mean. The results in column (2) indicate that a one standard deviation increase in the per capita gross debt less sinking fund for a municipality with a current level of $7.04 per capita increases the probability of adopting a home rule charter by 6.22%.

The linear probability model suffers from a heteroscedastic error term that depends on the estimated coefficients; in addition, the model does not necessarily yield predictions that are probabilities, i.e., are in the range [0,1]. Nonetheless, the linear probability results are still unbiased and can be compared to the probit model results. The results of the linear probability model are shown in columns (4)-(6) and (10)-(12), and confirm the patterns shown in the probit analysis. Like the probit results, the coefficients are economically meaningful and statistically significant. For example, when running the model on the 1890 data, a one standard deviation increase in the per capita gross debt less sinking fund per capita increases the probability of adopting a home rule charter by 4.7%.

Individually, variables other than population, population growth and gross debt less sinking fund per capita are not robustly significant across the specifications. They are, however, jointly significant. Tests of joint significance are conducted for the group of political variables and, separately, for the group of variables that measure the difference between the municipality and the average municipality in its

state. The null hypothesis that these groups of variables have coefficients equal to zero is almost always rejected at the 95% level. The one exception is the group of political variables in the linear probability model run on the 1890 data, for which the significance level of rejecting the null hypothesis is 93%.

4.9 Duration Estimates

Instead of representing the local level choice for home rule using a binary indicator of whether or not the municipality adopted a home rule charter anytime before 1935, we can use information on when the municipality passed such a charter. Utilizing the duration aspect of the data, t_i (time until passing a home rule charter), is advantageous for two reasons. First, it incorporates the speed of adoption into the intensity of preference for home rule. Second, it allows us to deal with censored observations, those municipalities that did not pass a home rule before 1935 but may do so sometime in the future.

We can write the likelihood function as

$$L = \prod_{i=1}^{n} f(t_i, \theta) \qquad [2]$$

which describes the joint probability of the distribution of the sample as a function of the individual duration lengths, t_i, and a set of parameters θ. The basic likelihood function can be rewritten as

$$\ln L = \sum_{i=1}^{n} d_i \ln f(t_i, \theta) + \sum_{i=1}^{n} (1 - d_i) \ln S(t_i, \theta) \qquad [3]$$

to account for censored observations, where $d_i = 1$ indicates that the spell is uncensored. Here, $f(t,\theta)$ is the density function which is the product of the hazard function, $\lambda(t,\theta)$, and the survivor function, $S(t,\theta)$.

Parametric models vary based on the implied shape of the hazard function. The most commonly used distributions for adoption times are the Weibull and the exponential distributions.[153] The exponential distribution results in a constant hazard over time, where the Weibull allows for either a monotonically increasing or decreasing hazard.[154] We might expect that the probability that a municipality adopts home rule, given that it has not yet done so, decreases as time goes on. The Weibull allows for a decreasing hazard rate. The use of the exponential or Weibull distribution results in a proportional hazard model when explanatory variables are introduced. The proportional hazard model is defined by a hazard function which can be separated into a baseline hazard, λ_0, that is shared by all municipalities and a factor ϕ that proportionally incorporates explanatory variables that do not depend on duration, but which can vary over time.

$$\lambda(t, x, \beta, \lambda_0) = \phi(x, \beta)\lambda_0(t) \qquad [4]$$

The vector of *x's* in the duration model are the same as those used in the probit and linear probability estimations.

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[153] Temple (1996), p 1009 and Greene (2003), p 794.

[154] The log-normal distribution allows for a bell shaped hazard function; the log-logistic, in addition to the bell-shape, also allows for a strictly decreasing hazard function. The Gompertz distribution allows for a monotonically decreasing hazard function. I have inspected the baseline hazard function (without covariates) for each distributional form. All appear to estimate a decreasing baseline hazard, reinforcing my initial choice of the Weibull distribution (see Figure 8). The estimated coefficients using the Weibull distribution are robust to the alternative specifications of distributional form. As an additional check, the shape parameter in the log-logistic and log-normal models is not significantly different from 1, indicating the absence of an underlying bell-shaped hazard function.

A limitation of the parametric duration model is that it implies a particular shape of the hazard function and imposes a specific relationship between the covariates and the hazard function. An incorrect distribution of the hazard function would result in biased results. Figure 9 presents graphs of the non-parametric smoothed hazard functions based on the Nelson-Aalen cumulative hazard function. The graph presents the raw hazard in the absence of covariates. A log-rank test of the equality of survivor functions across states strongly rejects the null hypothesis that they are the same. While the non-monotonic raw hazard calls into question the choice of the Weibull distribution, it appears the introduction of covariates controls for aspects inducing the non-monotonicity and alleviates concerns about the use of the Weibull distribution.

Table 10 reports estimates, assuming the Weibull distribution[155], of the time conditional probability of adopting a home rule charter once it is made available to a municipality. The reported estimates are hazard ratios. If the hazard ratio is greater than one, then the covariate has a positive effect on the probability of the municipality adopting a home rule charter, and if it is less than one then increases in the variable have a negative effect on the adoption of a home rule charter.

The results offer support for the hypothesis that municipal-level characteristics are related to the propensity to adopt a home rule charter. Consistent patterns across samples and regressions include the positive and significant effect of the crucial variables -- population, population growth, and gross debt less sinking

[155] Estimates of *p*, the duration dependence parameter, are always significantly different than 1. This rejects the use of the exponential distribution in favor of the Weibull distribution. Using the 1890 data, there is a significant negative duration dependence, while the panel data yields a positive duration dependence after controlling for the covariates. This is likely due to the non-random sample resulting in only large municipalities in the panel dataset.

fund per capita-- on the probability of adopting home rule. Similar to the probit and linear probability results, the duration results suggest it is important to include variables which compare a municipality to the average municipality in its state, as well as the set of political variables. The variables in these groups are often not individually significant, but are jointly significant at the 1% level and, thus, are important controls.

Columns (1) and (4) omit state and region fixed effects, columns (2) and (5) include state fixed effects, and columns (3) and (6) include region effects. The argument for focusing on the specification with state fixed effects remains valid for the duration model, but the results are qualitatively the same across specifications.

The use of time dummy variables in the duration model allows for the flexibility of a piecewise hazard rate, where the baseline hazard rate can change over time. *A priori*, it is more appropriate to model the decision of to adopt a home rule charter as being independent of historical time. A version of the duration model that includes these time dummy variables is presented in column (7). The estimates, while less significant, reflect the same patterns shown previously.

I have also run a semi-parametric Cox proportional hazard model to check the robustness of my parametric model results. In the semi-parametric model, the restrictions are only on the functional form of the covariates, not the distribution of failure times.[156] The concern is the presence of a large number of censored data observations. The parametric form imposes a form on the distribution of failure times

[156] Some researchers hesitate to use the semi-parametric model when there are tied ending times, an issue I have in my data as many municipalities adopt a home rule charter in the same year. Stata utilizes the exact partial method in handling ties. However, the method can produce incorrect calculations when risk pools are large and there are many ties (Cleves (2003), p 150).

after the last observed time period, in this case 1935. Non-parametric models (including the Cox model) do not make assumptions about the form of the hazard for the censored observations. This is a concern when the hazard is estimated on a small number of known "failures" and results in a poorly representative hazard. What we are most interested in is the best prediction of the hazard, not necessarily the best estimates of the covariates. However, the covariate coefficients in the Cox model are very similar to those from the parametric models. The absence of changes to the fundamental results eases concerns about the appropriateness of the parametric model assumptions.

4.10 Comparing Municipalities in Home Rule and Non-Home Rule States

The central hypothesis is that states with a higher variance in municipal-level taste for home rule and states where municipalities have a strong taste for home rule are more likely to adopt home rule. Table 11 summarizes the evidence on the predictions drawn from the econometric estimates. The taste for home rule is estimated using the coefficient estimates from the specification that includes state fixed effects. The evidence suggests: (1) home rule states show greater variance in the predicted municipal preferences and (2) home rule states have stronger preferences for home rule. The variance of municipal preferences in home rule states is always greater than the variance in non-home rule states. The strength of home rule preference is always higher for the municipalities in home rule states. The choice of econometric model or the use of cross-sectional or panel data makes no difference.

Across all specifications, municipalities in home rule states have more heterogeneous tastes for home rule when compared to municipalities in states that did not adopt home rule.

At a more detailed level, Figures 7-9 present pairs of graphs for each econometric estimator. The graphs plot the kernel density distributions of the municipal-level predicted values for home rule states and non-home rule states for various specifications. Figure 10 shows the distributions of predicted probabilities of adopting a home rule charter implied by the probit estimates. The comparison reveals two things. First, the distribution of municipalities in home rule states has greater weight on the right hand side of the probability distribution, showing that there are more municipalities in home rule states with a strong preference for home rule. Municipalities in non-home rule states are more concentrated near a value of .1, indicating that many municipalities in these states do not have a strong preference for home rule. Second, municipalities in home rule states have greater variance in their predicted probabilities.

The graphs in Figure 11 present the distribution of predicted probabilities implied by linear probability models. While the range of predicted probabilities is no longer restricted to the interval [0,1], the distributions reinforce the probit model results in Figure 10. Figure 12 uses the hazard model estimates to predict the conditional survival function for each municipality. The value of one minus the predicted survival function yields the probability that a municipality adopts a home rule charter before 1935. The conclusion remains unchanged; again, we see a greater

strength of preference and higher variance of preference in home rule states relative to non-home rule states.

4.11 Application to Laboratory Federalism

In 1932, Justice Brandeis referred to the states as laboratories, who could independently experiment with social and economic programs without interfering with the larger federal government. Political scientists have explored the issue of laboratory federalism, testing the diffusion of institutional innovation and the determinants of the adoption of institutions across states and time.[157] Diffusion models often posit an S-shaped cumulative distribution function.[158] The shape is based on two opposing effects. First, there could be social pressure which induces take-up of the innovation, resulting in positive duration dependence. Second, there can be normal negative duration dependence, seen in many economic applications such as unemployment status. The anecdotal laboratory federalism story can be empirically tested by utilizing a hazard model and looking for an underlying bell-shaped hazard function.

In the present analysis of home rule, we can consider institutional diffusion at both the local and the state level. At the local-level, we have estimated the probability of a municipality adopting a home rule charter based on a host of municipal-level characteristics. These previous empirical results assume that municipalities act independently, and the adoption of home rule is based only on a municipality's own attributes. However, municipalities that are more inclined to

[157] Oates (1999), p 1133.
[158] See for example Gray (1973) and Diekmann (1989).

adopt a home rule charter at some point may adopt a charter earlier if they want to emulate the initial adopters. Thus, the timing of home rule charter may be driven by imitation rather than necessity. Municipalities that are never likely to adopt because of their underlying characteristics remain a part of the decreasing hazard rate. Thus, within a state we might expect to see a bell shaped curve representing the adoption of home rule, the increasing part of the curve accounting for the diffusion and early duplication of home rule and the decreasing section allowing for the negative duration dependence.

A semi-parametric Cox model controls for covariates and estimate the underlying baseline hazard rate. In the previous analysis, we avoided using semi-parametric modeling because it was not the best for obtaining unbiased predictions for out-of-sample municipalities. However, we are interested in the true hazard based on observed data, so semi-parametric modeling is appropriate. Figure 13 presents the smoothed estimated hazard function from the Cox model run on the 1890 data evaluated at the mean of all the covariates. Once controlling for the set of covariates, the raw hazard retains a bell-shape. The graph of the hazard indicates there is something left unexplained that is causing an initial increase in the adoption of home rule charters. The residual could be attributable to the laboratory federalism idea of early imitation. At the same time, the initial increase in the hazard could be evidence of a learning effect. It may take a few years for municipalities to understand and make full use of home rule chartering, resulting in an initial increase of home rule activity as additional municipalities figure out how to make use of the new institution.

There may also be diffusion of the institution of home rule across states. For example, legislators in the state of Washington copied the text of the California constitution word for word because they saw the success of home rule in the large cities of California.[159] Thus, perhaps home rule was not driven by local need in Washington; rather, it was emulation of a successful early adopter by an inherently innovative state. Data were assembled on when each state adopted home rule, and a graph of the raw smoothed hazard function is shown in Figure 14. Significant increasing duration dependence is not shown in the late 19th and early 20th century, but rather begins in the 1950s and continues through the 1970s. The later home rule movement sought a very liberal grant of home rule authority to municipalities, often including additional fiscal powers. The simple raw hazard presented here abstracts from the host of variables that contribute to the state adoption of home rule. Most notably, the local-level preference for home rule that was shown to have affected the adoption of home rule in the early period is not incorporated. Without accounting for other factors, a naïve interpretation would conclude that much of the adoption of home rule could be driven by imitation of early adopters, apparently resulting in increasing duration dependence. However, our prior analysis shows that while the adoption of home rule may be affected by national trends, these state-level decisions are also endogenously determined by municipal-level preferences.

4.12 Conclusion

[159] McBain (1915), p 396.

Home rule was an integral institution in the municipal reform movement of the late nineteenth and early twentieth centuries. States granted home rule so that municipalities had the option of self-chartering and the ability to independently determine their desired structure and functions. This paper examines home rule from a new perspective. Fiscal federalism theory predicts that a state grants home rule when heterogeneity across municipalities cannot be accommodated under uniform, general legislation.

The results in this paper confirm the hypothesis that states with more heterogeneous municipal-level preference for home rule were more likely to incorporate home rule in their constitutions. A unique municipal-level dataset is used to generate a latent preference for home rule using probit, linear probability and duration estimation. Predicted municipal-level preferences are compared across states; they show that states that adopted constitutional home rule had stronger and more heterogeneous preferences. While there are many factors in a state's decision of whether or not to adopt a home rule charter, the evidence presented in this paper consistently suggests that municipal preferences within a state played an important role in the decision. This paper provides an empirical explanation of policy decentralization and highlights the importance of considering both within state and across state heterogeneity in the endogenous determination of institutions.

5 School Districts

5.1 The School District as a Corporate Body

School districts numbered 130,000 in the 1920s. By 1952 the number shrank to 67,355 and in 2002 there were only 13,522 school districts. Researchers have analyzed the drastic reduction in number of governments in order to study the mechanisms of consolidation and integrations of political units.[160] Few, however, have looked at the mechanisms involved in the creation of these 130,000 districts. The aggregate growth in the number of school districts is inherently a function of population growth and the Western movement. However, the variation in the growth of school districts across states can not be simply explained by increased demand. School districts were a means to respond to the demand side shift, but states responded to increased demand in different ways. The response differed based on the formal established relationship between states and its school districts.

The rise of school districts in the United States is not without hypotheses. Goldin and Katz, while focused on educational outcomes, point to democracy and decentralization as factors in the success of American education. However, these general reasons for the growth in educational activity overall fail to account for specific mechanisms which fueled the differential growth across states. Recently, Lindert and Go (2007) used county level data to empirically investigate the reasons why the United States became a leader in education instead of other developed

[160]Gordon and Knight (2006) use an econometric framework to model the merger decisions involved in this political consolidation. Kenny and Schmidt (1994) look at the period between 1950 and 1980 and determine the reduction was due to changes in population density, state aid and the political influence of teachers' unions. Alesina, Baqir and Hoxby (2004) use heterogeneity and economies of scale to predict the number of political jurisdictions in an area.

countries in Europe. They highlight three reasons: affordability of schooling, local autonomy and political voice. While these reasons seem to fit the profile of supply-side influences which would vary by state, they instead relate them to how these influenced the differential demand, measured by enrollments, for education in the United States.

While the demand side has been used to explain the drive for providing education, researchers have not investigated how the changing institutional environment affects the supply side. The variation in how education is provided in states, and as a result the variation in education outcomes, could be attributable to both different preferences for education as well a different abilities to provide that education. Laws for school districts range from the ability to tax and spend, the opportunity to change boundaries, and the recognition as a corporate body. Lindert and Go caution that laws relating to schools and school districts should not be used to indicate change, as the laws often occur after a practice has already been started (such as levying taxes for schools). While there are a few maverick communities that chose to independently pursue things before legally recognized, it is still the case that the adoption of laws will have a marked affect on the organizational abilities of all communities and districts. Any investigation of such institutional changes needs to recognize the endogenous nature of school laws, partially reflected by some districts acting on laws before they are formally implemented.

Accounting for the increase in the number of school districts to 130,000 is not the interesting story to explain. While the aggregate number is impressive, the story of growth cannot be told in aggregate. Due to different political and economics

conditions, school district creation varied across states. Underlying the process of district creation is an evolving set of institutions within the state and local environment. An implication of the historical institutional changes is that it can impact the future likelihood of certain institutional changes. Thus, consolidation in the 20th century could be endogenous to the process by which those districts were created in the 19th century. Furthermore, this endogeneity could impact the way we think about the role of school districts on educational outcomes in a contemporary framework. Understanding the origin of school districts can also help us shape the bigger picture of the state relationship to all local governments. School districts were often the government responsible for the provision of the initial public good in newly settled areas, and this role likely influenced the way future local governments grew from these communities.

5.2 Schools Districts as Local Governments

This thesis considers the changing state-local relationship, specifically looking at constitutional changes beginning in the nineteenth century which affected the grant of power and autonomy to local governments. School districts are a piece of the local government puzzle. Understanding how school districts are created and when they were created can shed light on how different states initially handled decentralization of power to local governments.

Kaestle argued that decentralization of power given to local school districts depended on the trust of citizens of their state government. If citizens trusted their state-level government, then education was centralized; if citizens distrusted the state,

then education was decentralized.[161] A citizen's trust in their state government is hard to quantify. However, a citizen would be more likely to trust the state government if it was composed of legislators who had similar beliefs, preferences and goals. Thus, the degree of homogeneity within a state could serve as a proxy to trust. One could think about homogeneity being measured by income distribution, race, or the percent of people living in rural areas. The more homogeneous a state, the less the citizens would be worried about the state government imposing unequal tax burdens or providing different levels of education to different localities. If there was a great heterogeneity in preferences, possibly driven by the rural-urban divide, then there may be increased resistance to consolidation. Anecdotal evidence in some states in many cases the farmers did not want to be controlled by city interests, so they resisted consolidation and laws which would make consolidation easier.

The same type of struggle over differential preferences can be seen for local governments in general. The home rule movement was spearheaded in the late 19th century by municipalities who did not want to be controlled by dominating rural interests in the state legislature. In that case, greater heterogeneity across urban-rural interests led to grants by the state legislature of autonomy to local government. The same could be seen decades earlier with respect to school districts; greater heterogeneity resulted in more decentralized control by local, independent school districts. For example, Indiana was one of the first states to successfully convert to a more centralized township system of school districts in 1852. At the same time, unlike many of its neighboring states, Indiana did not seek out home rule powers for

[161] Kaestle (1983), p 197.

its local governments.[162] While only one example, the struggle for power across rural-urban interests specifically, or heterogeneous preferences generally, influenced both the grant of available power to local governments and the action taken by local government to be a more autonomous entity. Within state heterogeneity across local areas motivated decentralization of power to municipalities through home rule; the same within state heterogeneity motivated local areas to resist consolidation of school districts.

5.3 The Creation of School Districts: Historical Factors

5.3.1 Importance of Schooling

Schooling in the United States finds its origins as a Republican ideal. As Tyack describes, the United States did not have perpetual institutions in general in place at the time of independence. There was no structure of hereditary power, nor was there an established church, a large standing army, or a strong executive bureaucracy to be the foundation of the new government.[163] But during the foundation of the United States, there was a call for creation of a specific type of public institution- the school. Thomas Jefferson believed in the power of schools to help teach children how to be loyal citizens and how to grow up to be leaders. While there were different political interests in terms of how the new country should provide in general for the common good, the appeal of common schools was that it was a universal goal. As western lands were settled, schooling continued to be of great importance, both in terms of attracting settlers out west but also in terms of educating

[162] Home rule legislation was passed in Indiana in 1980.
[163] Tyack (1991), p 14.

those settlers out west about the benefits of a civil society. While the goal may have been universal, the method of implementation was not.

5.3.2 Federal Role: Land Ordinance and School Funds

The federal government has never assumed a large role with respect to education, but its support for education was evident since the Land Ordinance of 1785. The act reserved one section of each township for the purpose of providing funds for the maintenance of public schools in the township. Each township as surveyed by the United States government was six miles square. The township was divided into thirty-six sections, with section sixteen allotted to the state to generate revenues (through sale or rent) for the spending on education. Tyack identifies this grant as the origin of the federal government's active involvement in promoting public schools as a form of internal improvement.[164] One question has been whether the land grant for education was rooted in the federal government's desire to have a hand in educational policy, or if it was just a way to draw settlers out West. Ultimately, it does not matter if it was the federal government wanting to support educational attainment in the West or if it was potential settlers demanding guaranteed financial help in providing schooling. Either way land grants were a way for education to be an accessible and affordable institution in the newly settled lands.

The money coming in from the land grants was funneled into a common school fund in every state. These state funds were created through provisions in the state constitution which allocated revenues from federal land sales. The school funds

[164] Tyack (1991), p 31.

were often supplemented from other sources of income, for example, lottery proceeds and marriage licenses.[165] Twelve states directed the proceeds they received from the sale of federal lands in new states, which ranged from 3-10% of the purchase price, into the common school fund.[166] The original 13 states also established school funds. Virginia's common school fund was financed initially by the federal government repaying the state for expenditures made for the War of 1812. Ultimately, the revenue from the land grants and the common school fund did not contribute much to education spending. Tyack calculates that in the late 19th century they combined for about 6% of total school expenditures.[167] And, unfortunately, in many cases there were no institutional constraints on the school funds to prevent the money from being squandered by corrupt officials.

5.3.3 Patterns of Settlement

Before thinking about how education was provided, it is necessary to think about the de facto structure of local government that would underlie new efforts to provide schooling. Richardson's research focuses on how school governance differs across states, and exploits demographic patterns and differences in the initial structure of state and local government. In exploring the variation in the creation of school districts, it will be important to keep in mind the basic story of how population dispersion and local governance differed across regions.

In the south, plantation agriculture generated compact settlements that were widely dispersed. Collective public action was most likely at the county level, where

[165] Cubberley (1927), p 407.
[166] Tyack (1991), p 34.
[167] Tyack (1991), p 35.

there was enough concentration of people with political power to get things coordinated.[168] The basic structure of "local" government in the south drastically differed from the north and west where county-level areas were subdivided in smaller electoral or educational districts. A second distinction can be made across states in the north. The original New England colonies differed from the newer states to the west by the simple fact that the original colonies were settled organically as settlers congregated in new towns. The Midwestern settlement was a function of the surveyed townships and the section boundaries drawn as a result of the process. Section number 16, reserved for the provision of schools, quickly gave each township its own identity. Richardson simply defines the difference in local government origination: "As New England township life grew up around the church, so western localism finds its nucleus in the school system."[169]

5.4 Laws for Creation of Independent School Districts

The US Constitution made no provision for education either in terms of a role for the federal government or responsibility to the states. State governments subsequently took on the task of providing education to their populations. Public land grant states were often required to have a pledge to provide education in their newly written constitutions. However, there was no oversight or established body of school law. State legislatures individually determined how their school systems would be structured. States gave authority and autonomy to newly created and recognized school districts. These independent school districts were, and still are, the most

[168] Richardson, "Settlement Patterns" (1984), p 191.
[169] Richardson, "Settlement Patterns" (1984), p 194.

fundamental component of a school system, "a body politic and corporate…assigned a name or number, and possesses certain legal powers…right to make contracts, to sue and be sued, and to purchase and hold property for school purposes."[170] The importance of the corporate status of a school district cannot be understated. With a corporate status, the courts recognized the districts as a separate entity from any township, town, city or district formed for other purposes, even if the boundaries were coterminous. The progress creating these corporate entities and method by which school districts could operate differed across states and across time.

The early colonial states differ from states that were admitted later, as the laws enacted in these original states were often a function of the practices already on the ground at the time. For example, the colonies of Connecticut and Massachusetts both ordered towns to maintain a school. The development of districts over time is similar in these two states. In 1766 Connecticut authorized parishes to subdivide into school districts. In 1794, the state recognized the separate existence of school districts and granted them authority to locate schoolhouses and levy taxes. However, it was not until 1839 that these districts became bodies corporate and granted the power to independently manage their schools. Massachusetts moved a bit earlier by legalizing the district system in 1789 and granting full corporate powers to the districts in 1817. In other colonies, schools were formed before laws were in place. Thus, laws which empowered townspeople to form districts, such as Vermont in 1782 and New Hampshire in 1807, should be seen as legislation which gave public acknowledgement to what was already instituted through private motivation. The common thread among these colonial governments and states is that education was

[170] Cubberley (1914), p 182.

provided at a local level, and often provided before it was legally recognized at the state level. As Cubberley notes, the laws of these early states were "closely in harmony of the spirit of the time, which demanded local self-government and local rights wherever possible."[171]

A different education landscape appears in states that were formed as bundles of surveyed townships. In these types of states where population was growing rapidly and new areas were continuously being settled, it was most important to have permissive laws for the establishment of a school district. Indiana, in 1824, allowed for the incorporation of the surveyed townships, vested the proceeds from the sale of the public school lands, and gave them authority to subdivide into districts. In Illinois creation of school districts within the greater township was a fairly straightforward process: "The law provides for the election, in each school district, of three persons as school directors. When elected and qualified, they become a corporation, and have perpetual succession. Their duties are plainly defined by the law, and may be performed by a majority of its members."[172] The idea was that each little pocket of settlers could determine for themselves whether or not to have school, and if so, quickly have a means to decide where and how to build the schoolhouse, how long the school year should be and how much tax should be levied on the residents of the districts.

Ease of creation was key in allowing these new communities to have control over education, an important public good that they desired. Cubberley hypothesizes that one of the reasons it made sense to have the original ease of district creation was

[171] Cubberley (1927), p 148.
[172] Glidden vs. Hopkings, 47 Illinois, 525.

that it was not cost prohibitive to do so. Small communities could tax themselves at a fairly low rate to build a modest schoolhouse, hire a relatively cheap teacher and provide the basic level of education for their children. Over time, the costs of the inputs to education rose, as did the expectations for the quantity and quality of education provided. The simple creation of new school districts was an important legal structure, which would have implications for the future ability of citizens to consolidate school districts.

The Utilization of Permissive Laws

The growth in the number of school districts in the 19th century can be partially attributed to the thousands of communities that formed independent, one room schoolhouses under permissive school district laws.[173] These new school districts were important not only for expansion of education, but also as a mechanism for communities to be established. Fuller and Cubberley both note how historians have not tackled the story of rural school districts because they were often thought to be a function of an established community rather than means to for a new local government to take root. However, the school district often provided a concrete, persistent body politic where none had existed before. The roots of the initial rural district grew into the bigger idea of a local government. As Fuller describes, the rural school districts were "invaluable laboratories of democracy in which rural Americans learned the importance of their vote, how to make laws, and how to govern themselves."[174] Provision of a common public education required addressing issues

[173] From the beginning of the simple district system, there was an extreme idea of local pride and self-government, and out of this came a multiplicity of small schools. Chamberlain (1913), p 309.
[174] Fuller (1982), p 45.

such as taxation, contingency funds, length of a school term, and the construction and location of buildings. Even the physical centrality of the schoolhouse played into the growth of a local government by providing an accessible meeting place for other community business to be discussed.

The formation of these new school districts varied by state, but there was a general pattern that was a function of the way the land grant states were surveyed. As Cubberley describes the simple process, farmers would settle on their acreage within the new township. A group of three to five families who lived within walking distance of each other would jointly decide that they wanted to operate a school for their children. The parents would then take it upon themselves to build the schoolhouse and furniture, hire a teacher and decided the boarding-around arrangements for the teacher. The institution of the district allowed for the community effort to be legally recognized and maintain corporate status. These highly localized districts grew exponentially on the frontier, as a district borders were defined by the "length of a child's legs,"[175] in other words the size of the district was constrained by how far the children could feasibly walk to school. The importance of the rural, often one room school district carried through to the 20th century, as in 1914, half of the children in the United States were still attending rural schools.[176]

5.5 The State Organization of School Districts

Another aspect of the school district creation is the level at which these districts were organized. The degree of centralization or decentralization in school

[175] Cubberley (1914), p 181.
[176] Cubberley (1914). P 166.

district organization has implications for how the district is financed as well as the type of education which is provided. In the early 19th century, the common practice was either for states to have a district system or a township system. The district system represents an extremely decentralized creation of school districts, whereas the township system allowed for more centralized governance over a larger geographic area. Additional differences among states can be seen in the late 19th and early 20th century when some states allowed for additional forms of consolidation. Some states changed their system of school district organization to allow for consolidation at a more centralized level, such as the county or metropolitan area.

5.5.1 The District System

As discussed before, permanent school funds were present in most states from the early 19th century. Unfortunately, these school funds were often mismanaged, and quickly became depleted. If local schools could not count on the state school fund to help finance the local provision of education, then the funds had to be collected by the local community to be spent on the local community. If a school district had to finance itself, it also needed to have the power to levy taxes. In the original colonies, where the notion of school districts first originated, districts derived all their powers from the central town body.[177] An important evolution with respect to school district laws was not only the recognition of being an independent corporate body, but also that the public corporation could initiate fiscal policy. As Cubberley noted, by 1830 to 1835, the district form of organization was everywhere in control

[177] Cubberley (127), p 147.

and at the height of its powers.[178] Under these permissive school district laws enacted by various states, general taxation of property was permitted by vote.

As compulsory attendance laws started to become enacted across states during the mid 19th century,[179] there had to be a compensating action with respect to taxation in order to guarantee that the promise of education would be financed.[180] Thus, the permissive nature of taxation turned into compulsory taxation of property.[181] The fascinating innovation of the district system is that it was a viable solution to the requirement by the states of mandatory education, subsequent mandatory property taxation, and the grant of power by the state to citizens to organize their own independent school districts. As Fuller notes, free public education was not feasible had the farmers not been confident that they could still control school matters through the district school system.[182]

As time passed, the simplicity of the district system started to show its shortcomings; it was not the best solutions for all people and all places. For one, because district taxation was originally based on property taxation, there was a burden placed on those households that did not have children, as they would be paying for others' use of the school system. Other problems, as identified by

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[178] Cubberley (1934), p 235.

[179] The first compulsory attendance law was enacted in Massachusetts in 1852, followed closely by New York (1853). In the 1860s both DC and Vermont enacted laws. The 1870s saw many states pass such laws: Michigan, New Hampshire, Washington, Connecticut, New Mexico, Nevada, California, Kansas, Maine, New Jersey, Wyoming, Ohio, and Wisconsin. The last group of states to pass such laws was a group of Southern states from1915-1918: Alabama, Florida, South Carolina, Texas, Georgia, Louisiana, and Mississippi.

[180] Fuller documents the move to free public education by the Middle Border states: Iowa was first in 1846, followed by Wisconsin (1848), Minnesota (1858), Kansas (1861), and Nebraska (1867). In most of the older states, the transition to free public education happened in the 1850s: Indiana (1852), Ohio (1854) and Illinois (1855).

[181] For example, in Indiana a permissive taxation law was passed in 1824, amended in 1836, and repealed in 1837. In the 1850s, Indiana residents slowly became required to pay school taxes.

[182] Fuller (1982), p 41.

Cubberley, were that rural education was expensive, shortsighted, inconsistent, and unprogressive, the taxing unit was too small, and there were an excessive number of school officers. By moving structural and functional control to a higher level of government, a school system could not only equalize the burden of providing education, but could also provide more equal levels of education across rich and poor areas. It could also operate more efficiently by taking advantage of economies of scale in teaching and administration.

5.5.2 The Township System

The township system was an attempt to revolutionize the piecemeal district system by allowing districts to take advantage of economies of scale. It also gave districts the ability to equalize the tax rate over a larger area. Fuller notes the historical reasons for why citizens wanted to move towards a more centralized district system: to broaden the tax base, equalize the provision of education across smaller districts, eliminate old within district disputes, diminish the proliferation of small schools, have improved supervision of schools and also because rural school board members were often inefficient.[183] As Goldin and Katz have noted in their work, the township system also provided the necessary conditions for high schools to be built.

The township system saw individual, independent school districts relinquishing their corporate power to the township. The transfer of power from an independent school district to a township district could have different structural outcomes. One option was that the independent school district could close their

[183] Fuller (1981), p 113-114.

community school and begin transporting their children to a more central township school. An alternate outcome did not involve the loss of the local school; there would just be an over-arching school district which would control the structure and function of all schools within the new township district.

Experimentation with the township system was centered in Indiana, Ohio and Iowa in the 1850s. In Ohio, not much changed functionally. Corporate powers were indeed transferred to the township, but the subdistrict level still maintained direct management over the individual schools. However, the township system in Indiana and Iowa dramatically changed the educational system, most visibly taking away control and decision-making from the local level and centralizing management at the township level.[184] Farmers in these two states initially resisted loss of control over their children's education, and appealed for a restoration of the local district system.

Iowa ended up allowing communities to return to the prior independent district system. In 1872, the Iowa state legislature changed the law and allowed any township to return to the old independent district if a majority of the voters approved. Within the first 18 months, 119 of the 1700 Iowa townships had returned to the old system.[185] Indiana, on the other hand, resisted a full reversal of the township system. At the time, Indiana was heralded as having the most efficient rural school system in the Midwest. In retrospect, the move to the township system may have had negative impacts on the quality of education provided. The average length of school, teachers' wages, and the percentage of the population in school were all below average. Fuller notes that there was a lack of interest in raising local taxes to finance an improved

[184] In Iowa, in little more than a year's time, more than 3000 independent school districts were replaced with 933 township districts. Fuller (1982), p 115.
[185] Fuller (1982), p 118.

educational system, and as a result, the state school system had to rely heavily on state-level taxes for support.[186] A possible reason was because the township system reduced the tax-benefit link in the provision of education. Citizens were more resistant to increased taxes because that money would be distributed across all township schools, not specifically directed towards their local school.

5.5.3 Consolidation

Researchers have been interested in accounting for the drastic reduction in the number of school districts over the 20th century. The tale of consolidation throughout the 20th century has been explained through urbanization and the advantages of economies of scale in providing high school education. What has been left relatively undefined is the institutional change necessary in order to allow for consolidation. The consolidation of school districts within a state often started as a single case being brought to the state requesting special legislation for consolidation.[187] The state then made the process of consolidation accessible to all interested districts through the passage of general laws.

The story of legal consolidation is historically tied to the petition to transport kids to school. Initially, consolidation was not based on increasing educational attainment or improving the quality of schooling, but was motivated by cost savings. In the late 19th century, it became less costly (and more feasible) to transport kids to a more centralized school than to pay for education at a one-room schoolhouse.[188] In the original grants by state legislatures, school districts had the power to raise money

[186] Fuller (1982), p 124.
[187] Abel (1923), p 20-21.
[188] Cubberley (1927), p 248.

for the operation of a one-room schoolhouse. However, the school district did not originally have the power to pay for the transportation to centrally-located school outside of the local district. The laws to allow for consolidation of schools began in Massachusetts in 1869. The general law in Massachusetts allowed the following: "Any town in this Commonwealth may raise by taxation or otherwise, and appropriate money to be expended by the School Committee in their discretion, in providing for the conveyance of pupils to and from the public schools."[189] As Cubberley notes, noticeable changes in Massachusetts began in 1875 as rural communities began to close up rural schools and transport pupils to a central school. However, consolidation was not a widespread practice until 1890. Following in the steps of Massachusetts, laws were enacted in 25 states from 1894 to 1910 which provided for the use of public funds in order to transport students to a consolidated school.

In 1892, Ohio, like Massachusetts, also saw the advantages of transporting children to a central school. The township of Kingsville was trying to determine whether or not to build a new schoolhouse for subdistrict 4. The problem was that there were not many children in subdistrict 4, and it did not make sense to build a new schoolhouse if it was not going to serve many students. A suggestion was made to close subdistrict 4 and, alternatively, send the children to the main school in central Kingsville. Both the residents of the subdistrict and those of the central district thought it was a good idea. However, the subdistrict did not have the authority to use public education money to transport the children to the central school.[190] After two

[189] Cubberley (1927), p 245.
[190] Fuller (1982), p 228.

years, the Ohio state legislature passed a law which allowed for public education money to be used for transportation. At first, the general law was couched in very specific terms: it was restricted to a township with a population between 1710 and 1715 and the county population must be between 43,650 and 46,660. In 1896 this "general" law was extended to apply to three counties. By 1898 it was made accessible to the entire state.[191] By the first decade of the twentieth century, states across the Middle West were experimenting with consolidation. In Iowa, twenty-eight counties pursued consolidation, and in Nebraska twenty-one counties decided to try consolidation. No state utilized the new institutional arrangement with more intensity than Indiana. By 1902, two-thirds of the counties had consolidated schools. Indiana allowed for the proliferation of consolidation because the township system was already in operation.

After 15 or 20 years, consolidation had noticeably taken hold in some states more than others. Cubberley groups states where "remarkable results" have been achieved and those where little has been accomplished. Those making use of their newfound ability to consolidate (Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, North Dakota, Ohio and Texas) are those where education was predominantly county or township based. States where district consolidation was harder were those where the independent district system had firm roots (California, Illinois, Kansas, Nebraska, Missouri, Oregon and Wisconsin). As Cubberley simply concludes, the stronger the district system, the smaller has been the success in establishing consolidated schools.[192] Thus, when we

[191] Cubberley (1927), p 246.
[192] Cubberley (1914), p 232.

seek to explain the propensity for school districts to consolidate in the 20th century, we need to consider what drove the relative strength of the district system in the first place.

5.6 Future Empirical Approach

School district growth has been researched by compiling independent regional, state or local accounts, but these stories have not been comprehensively and jointly analyzed to uncover an overarching pattern. In looking to expand the statistical research with respect to school districts, it is natural to begin with the econometric studies of school district consolidation. The comprehensive study by Kenny and Schmidt looks specifically at consolidation in school districts from 1950 to 1980. They use county level census and school district data to explain the variation in the number of school districts across states and time. They specifically target two sets of explanatory variables: those that represent possible economies of scale in schooling and those that proxy for population homogeneity. The authors use several measures to account for potential cost savings with respect to economies of scale: the number of rural highway miles per square mile, population density, the ratio of the school age population to the local population, and the fraction of the labor force involved in farming. To measure heterogeneity within the state, and thus the degree to which there are varied preferences with respect to schooling, the authors use an income ratio measure, which is the difference between the third and first quartiles of the family income distribution, divided by the second quartile. Taking advantage of economies of scale would result in consolidation and a fewer number of school

districts. Heterogeneity, on the other hand, would indicate a push towards more school districts in order to have a better match of preferences. The authors find support for both hypotheses.

A key element that has been missing from the empirical work thus far has been controls on the supply side of the market for school districts. The rich historical literature on the exponential growth in the number of school districts, enriched mainly by the work of Goldin, has described a fairly intuitive story of increased demand and education systems taking advantage of economies of scale. More recently, Lindert and Go tackled these demand side influences by empirically exploring county level variation in enrollments. Researchers have abstracted from supply side of the equation, namely, the state laws which could encourage or restrict the growth and number of school districts. This seems like a notable omission; the growth of school districts is only possible if the legal environment allows the creation of these bodies politic.

The next step is to look at the change by states in their school district incorporation laws which would directly affect the ability of citizens to form new districts. In undertaking the analysis, it will be important to recognize that these school district laws are not exogenous events that were enacted by state legislatures. It will be important to incorporate the idea that these legislative actions are endogenously determined by underlying political, demographic, and social factors in each one of the states. An investigation of these school districts laws, recognizing the endogenous nature of such institutional change, could subsequently add more information to the study of school district consolidation. It seems likely that state

laws regarding the ease of consolidating school districts would be influenced by the historical relationship between the state and its grants to citizens with respect to school district incorporation. If people were given the opportunity to create their own school districts with relative ease, then it seems likely that the state would also allow such citizens to consolidate under their own accord.

One may question why school district laws are important. As seen from the perspective taken by previous researchers, districts are simply created when they are needed. While a true statement, it misses the point that they can only be created if they are allowed to be created. Why did Indiana not see much school district creation in the 1850s? Was it because citizens of Indiana did not have the demand for education? Rather than the demand explanation, it may have been because the state of Indiana had changed its laws to have a township system instead of a multitude of independent school districts. These institutional details can be identified to help explain the differential growth of school districts across states and across time. Potentially, they can also help explain states' differential rate of school district consolidation in the 20th century.

6 Conclusion

This thesis explores the changing relationship between state and local governments in the United States. By viewing this topic through a fiscal federalism and political economy lens, we are able to learn more about why states chose different institutional structures for managing local governments. In addition, this thesis adds to the historical account by identifying the variety of options states pursued and the myriad reasons that motivated change. Both the narrative and econometric analysis show that outcomes vary depending on economic and political conditions within the state.

In Chapter 2, I document the different institutional structures states put in place for municipal governments. The options included special legislation, general legislation with special legislation, strict general legislation, and the additional option of home rule. The chapter also presented problems with maintaining a system of special legislation. A state would be likely to seek an alternate option when the costs of special legislation exceeded the benefits.

Chapter 3 provides explanation for why states may have chosen different institutional arrangements. The collected narratives convey that these institutional changes were not exogenously imposed on states, nor were they changes that all states adopted. I consider the pattern of these changes, both across time and across regions. Differences in the political and economic conditions triggered action by politicians and citizens to change the institutional arrangement. Overall trends can be seen when looking across regions. Looking within a region, we can see that

differences in specific political institutions, such as the rules of apportionment, correspond with changes to the state-municipal relationship.

In Chapter 4, I take a closer look at one example of institutional change, the adoption of home rule. An empirical analysis shows that states with heterogeneity in local preferences were more likely to decentralize control through a constitutional home rule provision. States with more homogeneous local preferences were more likely to find general legislation a suitable institutional framework. The analysis of home rule adoption is an empirical test of policy decentralization. It provides evidence that fiscal federalism ideals are at work in actual policy implementation.

This thesis does more than just provide a check of theoretical predictions. This work contributes to the understanding of why states have different institutional constructs with respect to the state-local relationship. There is not a universal answer for whether a state should use special legislation, general legislation, or home rule to serve its municipalities. In Chapter 5, we see that there is also not a universal solution to how states dealt with the creation and consolidation of school districts. We see that the choice of how to structure a constitution to handle local governments depends on the historical structure of local governments, the political atmosphere within the state legislature, and the variety of localities within a state. A wide variety of localities adds complexity to the state's problem of solving how to structure the state-local relationship. It has also made for a fascinating story to tell.

Table 1
Apportionment Provisions in State Constitutions

State	Apportionment 1812	Apportionment 1865-1870	
		Upper House	Lower House
Georgia	Population	Geographic	Geographic
Massachusetts	Population	Geographic	Population
New Hampshire	Population	Population	Geographic
New York	Population	Geographic	Geographic
Pennsylvania	Population	Geographic	Geographic
South Carolina	Population	Geographic	Geographic
Connecticut	Geographic	Geographic	Geographic
Delaware	Geographic	Geographic	Geographic
Maryland	Geographic	Geographic	Geographic
New Jersey	Geographic	Geographic	Geographic
North Carolina	Geographic	Population	Geographic
Rhode Island	Geographic	Geographic	Geographic
Virginia	Geographic	Geographic	Geographic

Notes:

Geographic apportionment indicates apportionment by county, parish, town, or city.

Population apportionment indicates apportionment based on number of people, freeholders, or taxable inhabitants.

Apportionment in 1812 is taken from Zagarri (1987), Appendix 4, p158-159.

Apportionment in 1865-1870 is taken from Dixon (1968), Chart 2, p68-69.

Table 2: Options for State-Municipal Relationship

Organizational Framework		Reasons for Choice of Framework				
		Numbers Problem	Judicial Decisionmaking	Logrolling	Heterogeneity Across Municipalities	Principal-Agent Problem
Centralized	Special Legislation					
	Prohibition of Special Legislation	X	X			
	Special and General Legislation	X	X			
	Strict General Legislation	X	X	X		
Decentralized	Home Rule	X	X	X	X	

Table 3
Classification of Ohio Cities, 1894.

Class	Grade	Population basis	By which census	Names of Cities in Class	Population in 1890	Number of acts for class in 1894
First	1	>200,000	1870	Cincinnati	296,908	43
First	2	90,000-200,000	1870	Cleveland	261,353	22
First	3	31,500-90,000	1870	Toledo	81,434	14
First	4	20,000-31,500	Any			
Second	1	30,000-31,500	1870	Columbus	88,150	10
Second	2	20,000-30,500	1870	Dayton	61,220	12
Second	3	10,000-20,000	1870	(many cities in class)		25
Second	3a	28,000-33,000	1890	Springfield	31,897	6
Second	3b	16,000-18,000	1890	Hamilton	17,565	8
Second	4	5,000-20,000	1870	(many cities in class)		33
Second	4a	8,330-9,050	1890	Ashtabula	8,538	3

Notes: Data from table in Wilcox p 84.

Table 4
Adoption of Constitutional Changes by Region

Region	State	Statehood	Corporations		General		Municipalities		
			SL	GL	SL	GL	SL	GL	HR
Original Colonies and Cessions	Delaware	1787	1897	1897					
	New Jersey	1787	1875	1875	1875	1875	1875		
	Pennsylvania	1787	1874		1874	1969	1874	1874	1922
	Connecticut	1788						1965	
	Georgia	1788	1865	1945	1865	1865			
	Maryland	1788	1851	1851	1864	1864		1864	1954
	New Hampshire	1788						1966	
	New York	1788	1846	1846	1874	1874	1874	1894	
	South Carolina	1788	1896	1868	1896	1896	1896	1896	1973
	North Carolina	1789	1868	1868	1916	1971	1916	1916	
	Rhode Island	1790		1892				1951	1951
	Kentucky	1792	1891		1891	1891	1891	1891	
	Tennessee	1796	1870	1870	1870				1953
	Maine	1820	1875	1875		1875			
	West Virginia	1863	1872	1863	1872	1872	1872	1936	1936
Old Southwest	Louisiana	1812	1845	1845	1879			1974	1974
	Mississippi	1817		1890	1890	1890		1890	
	Alabama	1819	1867	1867	1875	1861	1901		
	Missouri	1821	1865		1865	1865	1865		1875
	Arkansas	1836	1868	1868		1874		1868	
	Florida	1845	1968		1868	1868	1861	1861	
	Texas	1845		1876	1869		1869	1876	1912
Old Northwest	Ohio	1803	1851	1851				1851	1912
	Indiana	1816	1851	1851	1851	1851	1851		
	Illinois	1818	1848	1848	1870	1870	1870		1970
	Michigan	1837	1850	1850	1850	1909		1909	1909
	Iowa	1846	1846	1846	1857	1857	1857		1968
	Wisconsin	1848	1848	1848	1871	1871	1871		1924
	Minnesota	1858	1857		1881	1892	1881	1896	1896
West	California	1850	1849	1849	1879	1879	1879	1879	1879
	Oregon	1859	1857	1857	1857				1906
	Nevada	1864	1864	1864	1864	1864	1864	1864	1924
Central	Kansas	1861	1859	1859		1859		1859	1960
	Nebraska	1867	1866	1866	1875	1875	1875	1866	1912
	Colorado	1876	1876	1876	1876	1876	1876	1876	1912
Northern Territory	Montana	1889	1889	1889	1889	1889	1889	1922	1973
	North Dakota	1889	1889	1889	1889	1889	1889	1889	1966
	South Dakota	1889	1889	1889	1889	1889	1889	1889	1963
	Washington	1889	1889	1889	1889		1889	1889	1889
	Idaho	1890	1889	1889	1889		1889	1889	
	Wyoming	1890		1889	1889	1889	1889	1889	
	Utah	1896	1896	1896	1896	1896	1896	1896	
South-west	Oklahoma	1907			1907	1907	1907	1907	1907
	Arizona	1912	1912	1912	1912		1912	1912	1912
	New Mexico	1912		1911	1911	1911	1911		1970
Last	Alaska	1959				1959			1959
	Hawaii	1959						1959	1959

Notes:

No constitutions for Massachusetts, Vermont, and Virginia.

Each category (Corporations, General, Municipalities) is divided into prohibitions of special legislation and calls for general laws.

The municipality category also tracks when states adopted constitutional home rule for municipalities.

and municipalities. The other categories include such things as individuals, highways, rate of interest, officials, and elections.

General legislation in the general category refers to Binney's category on general restrictions such as the state shall pass general laws in all cases where it can be made applicable.

Table 5
Major Changes in Apportionment in Midwest State Constitutions

State	Year	Representatives		Senators	
		Number	Apportionment	Number	Apportionment
Illinois	1818	27-36		1/3 to 1/2 of number of Reps	
	1848	75-100		25	
	1870		Pop by Unit	51	Pop by Unit
	1958	177		58	
Indiana	1816	25-39[1]		1/3 to 1/2 of number of Reps	
	1851	<=100		<=50	
Iowa	1846	26-39[2]		1/3 to 1/2 of number of Reps	
	1857		Pop by Unit	1/3 to 1/2 of number of Reps	Pop by Unit
	1868	<=100	Pop by Unit	<50	Pop by Unit
	1904	<=108	By Unit	50	By Pop
	1928				Pop by Unit
	1968			<=50	
Michigan	1835	48-100	By Unit (new Units by Pop)	1/3 of number of Reps	
	1850	64-100	Pop by Unit	32	
	1909		By Unit		
	1952	<=110	Pop by Unit	34	
Minnesota	1857	No more than 1 for every 2000 people	By Pop	No more than 1 for every 5000 people	By Pop
Ohio	1802	24-36[3]	Pop by Unit	1/3 to 1/2 of number of Reps	Pop by Unit
	1851	Based on ratio[4]	Pop by Unit		Pop by Unit
	1903		By Unit		Pop by Unit
Wisconsin	1848	54-100	By Pop	1/4 to 1/3 of number of Reps	
	1951		By Pop		Pop by Unit
	1959		By Pop		By Pop

Source: Text of state constitutions, obtained from NBER/Maryland State Constitutions Project

Notes:
By Pop means seats are allocated based only on population
Pop by Unit means seats are allocated based both on geographic unit (city and/or county) and population
By Unit means seats are allocated by geographic unit (city or county)

[1] Once population of white males over 21 is more than 22,000, then the limit increases up to 100

[2] Once population of white inhabitants is more than 750,000, then the range changes to 39-72

[3] Once population of white males over 21 is more than 22,000, then the range changes to 36-72.

[4] The ratio is equal to population/100. Every county having half ratio gets 1 Rep, 1 3/4 gets 2 reps, 3 ratio 3 reps, 4 ratio 4 rep, etc.

Table 6
Variance in 1902 Municipal Data

	Iowa	Michigan	Ohio
Population (in thousands)	133.5	1,385.2	2,616.2
Population Growth	0.1	1.4	0.4
% Other Votes	6.3	5.4	30.1
% Democrat Votes	90.9	93.3	116.8
% Native Born	23.0	188.2	41.5
% Urban	358.3	588.3	450.4
Gross Debt Less Sinking Fund (per capita)	71.7	1,560.2	746.2
Sinking Fund (per capita)	0.1	1.7	5.3
Number of Municipalities	64	72	119

Source: 1902 Census: Wealth, Debt and Taxation.

Table 7: Summary Statistics for Municipalities in All States

1890 Data

Variable	Probit			Duration		
	Home Rule States	Non-Home Rule States	Significant Difference in Means/Variance	Home Rule States	Non-Home Rule States	Significant Difference in Means/Variance
Political HHI	0.49 (0.115)	0.50 (0.105)	** (***)	0.49 (0.111)	0.50 (0.105)	** (*)
% Democrat Votes	45.42 (20.21)	43.71 (21.93)	* (***)	46.90 (19.48)	43.71 (21.93)	*** (***)
% Other Votes	9.93 (14.51)	11.00 (19.71)	(***)	8.34 (13.78)	11.00 (19.71)	*** (***)
Population (in thousands)	5.09 (20.49)	3.98 (30.17)	(***)	5.30 (23.56)	3.98 (30.17)	(***)
Population Growth	0.26 (0.47)	0.29 (1.22)	(***)	0.25 (0.46)	0.29 (1.22)	(***)
Gross Debt Less Sinking Fund (per capita)	7.04 (15.55)	6.71 (14.77)	(*)	6.39 (14.53)	6.71 (14.77)	
Sinking Fund (per capita)	0.26 (1.96)	0.12 (0.48)	** (***)	0.24 (1.81)	0.12 (0.48)	** (***)
% Native born	82.27 (12.79)	84.41 (11.44)	*** (***)	83.95 (12.74)	84.41 (11.44)	(***)
Number of Municipalities	925	1264		1102	1264	

Panel Data

Variable	Probit			Duration		
	Home Rule States	Non-Home Rule States	Significant Difference in Means/Variance	Home Rule States	Non-Home Rule States	Significant Difference in Means/Variance
Political HHI	0.53 (0.151)	0.51 (0.129)	** (***)	0.53 (0.152)	0.51 (0.129)	** (***)
% Democrat Votes	44.03 (22.7)	44.26 (17.25)	(***)	43.96 (22.7)	44.26 (17.25)	(***)
% Other Votes	15.37 (19.64)	8.94 (6.95)	*** (***)	15.16 (20.34)	8.94 (6.95)	*** (***)
Population (in thousands)	14.06 (41.18)	15.02 (93.05)	(***)	12.39 (36.62)	15.02 (93.05)	(***)
Population Growth	0.53 (1.12)	0.37 (0.61)	*** (***)	0.59 (1.39)	0.37 (0.61)	*** (***)
Gross Debt Less Sinking Fund (per capita)	21.59 (22.46)	12.46 (11.79)	*** (***)	21.96 (29.41)	12.46 (11.79)	*** (***)
Sinking Fund (per capita)	0.93 (2.19)	0.27 (0.55)	*** (***)	1.00 (3.28)	0.27 (0.55)	*** (***)
% Native born	90.50 (10.06)	89.96 (7.92)	(***)	89.33 (11.26)	89.96 (7.92)	(***)
Number of Municipalities	618	494		589	494	

Notes:
Standard deviations are in parentheses
***, **, * denotes significance at the 1 percent, 5 percent, and 10 percent level, respectively.
Panel data statistics are averaged across municipalities
Home rule states in 1890 analysis are California, Colorado, Michigan, Minnesota, Nebraska, Ohio and Texas.
Home rule states in panel data analysis are Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Texas and Washington.
Non-Home rule states are Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wisconsin, and Wyoming.

Table 8: Summary Statistics for Municipalities in Home Rule States

1890 Data

	Probit			Duration		
Variable	**Home Rule Municipality**	**General Legislation Municipality**	**Significant Difference**	**Home Rule Municipality**	**General Legislation Municipality**	**Significant Difference**
Political HHI	0.52 (0.15)	0.48 (0.1)	*** (***)	0.52 (0.15)	0.48 (0.1)	*** (***)
% Democrat Votes	51.62 (22.03)	43.32 (19.12)	*** (***)	51.67 (21.85)	45.58 (18.56)	*** (***)
% Other Votes	9.35 (13.99)	10.12 (14.68)		9.12 (13.89)	8.12 (13.75)	
Population (in thousands)	14.24 (39.14)	1.99 (2.63)	*** (***)	16.73 (48.51)	2.11 (3.13)	*** (***)
Population Growth	0.39 (0.44)	0.21 (0.48)	***	0.40 (0.44)	0.21 (0.46)	***
Gross Debt Less Sinking Fund (per capita)	8.34 (12.28)	6.59 (16.5)	* (***)	8.49 (12.39)	5.81 (15.03)	*** (***)
Sinking Fund (per capita)	0.64 (3.73)	0.13 (0.64)	*** (***)	0.64 (3.68)	0.12 (0.6)	*** (***)
% Native born	78.19 (14.12)	83.65 (12)	*** (***)	78.21 (14.04)	85.55 (11.87)	*** (***)
Number of Municipalities	234	691		240	862	

Panel Data

	Probit			Duration		
Variable	**Home Rule Municipality**	**General Legislation Municipality**	**Significant Difference**	**Home Rule Municipality**	**General Legislation Municipality**	**Significant Difference**
Political HHI	0.53 (0.15)	0.49 (0.14)	***	0.53 (0.15)	0.49 (0.14)	*** (*)
% Democrat Votes	49.08 (23.77)	37.25 (17.18)	*** (***)	49.49 (23.86)	37.26 (17.19)	*** (***)
% Other Votes	12.48 (10.33)	18.73 (24.84)	** (***)	11.65 (11.64)	18.73 (24.85)	*** (***)
Population (in thousands)	23.76 (59.8)	7.28 (9.01)	*** (***)	20.90 (54.93)	7.29 (9.01)	*** (***)
Population Growth	0.68 (1.14)	0.41 (1.26)	**	0.83 (1.7)	0.41 (1.27)	*** (***)
Gross Debt Less Sinking Fund (per capita)	27.92 (28.14)	19.08 (15.12)	*** (***)	29.46 (40.82)	19.18 (15.28)	*** (***)
Sinking Fund (per capita)	1.46 (3.04)	0.48 (0.89)	*** (***)	1.69 (4.87)	0.48 (0.89)	*** (***)
% Native born	86.69 (12.03)	93.13 (7.16)	*** (***)	83.43 (13.42)	93.16 (7.15)	*** (***)
Number of Municipalities	276	231		247	231	

Notes:
Standard deviations are in parentheses
***, **, * denotes significance at the 1 percent, 5 percent, and 10 percent level, respectively.
Panel data statistics are averaged across municipalities
Home rule states in 1890 analysis are California, Colorado, Michigan, Minnesota, Nebraska, Ohio and Texas.
Home rule states in panel data analysis are Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Texas and Washington.
Home rule municipalities adopted a home rule charter by 1935.

Table 9: Probit and Linear Probability Estimates

	1890 Data						Panel Data					
	Probit Model (Marginal Effects)			Linear Probability Model			Probit Model (Marginal Effects)			Linear Probability Model		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Population (in thousands)	0.044	0.044	0.046	0.018	0.019	0.019	0.002	0.002	0.002	0.003	0.003	0.003
	(0.007)***	(0.008)***	(0.007)***	(0.002)***	(0.002)***	(0.002)***	(0.000)***	(0.000)***	(0.000)***	(0.001)***	(0.001)***	(0.001)***
Population (in thousands) [squared]	-0.0001	-0.0001	-0.0001	-0.00006	-0.00006	-0.00006	-0.000002	-0.000002	-0.000002	-0.000004	-0.000004	-0.000004
	(0.00002)***	(0.00002)***	(0.00002)***	(0.000008)***	(0.000008)***	(0.000008)***	(0.0000008)**	(0.0000008)**	(0.0000009)**	(0.000002)**	(0.000002)**	(0.000002)**
Population growth	0.271	0.170	0.247	0.212	0.156	0.199	0.058	0.033	0.044	0.013	-0.006	0.002
	(0.048)***	(0.043)***	(0.048)***	(0.039)***	(0.039)***	(0.039)***	(0.013)***	(0.011)***	(0.014)***	(0.012)	(0.011)	(0.011)
Different Political Party from State	-0.114	-0.035	-0.052	-0.105	-0.056	-0.053	-0.015	-0.010	-0.002	-0.032	-0.022	-0.008
	(0.036)***	(0.032)	(0.041)	(0.029)***	(0.029)*	(0.030)*	(0.019)	(0.018)	(0.021)	(0.027)	(0.027)	(0.027)
Political HHI	0.019	-0.228	-0.346	0.175	-0.004	-0.223	0.313	0.052	0.245	0.507	0.143	0.369
	(0.177)	(0.185)	(0.201)*	(0.147)	(0.199)	(0.195)	(0.072)***	(0.061)	(0.068)***	(0.101)***	(0.124)	(0.110)***
% Democrat Votes	0.007	0.004	0.004	0.005	0.002	0.003	0.000	0.000	-0.001	-0.000	-0.001	-0.002
	(0.001)***	(0.002)**	(0.001)***	(0.001)***	(0.001)	(0.001)***	(0.000)	(0.001)	(0.001)**	(0.001)	(0.001)	(0.001)**
% Other Votes	0.006	0.005	0.004	0.004	0.002	0.002	-0.002	-0.002	-0.003	-0.003	-0.003	-0.004
	(0.001)***	(0.002)***	(0.002)***	(0.001)***	(0.001)**	(0.001)**	(0.001)***	(0.001)***	(0.001)***	(0.001)***	(0.001)***	(0.001)***
% Native born	-0.886	0.003	-0.953	-0.644	0.011	-0.689	-0.803	-0.423	-0.806	-0.859	-0.396	-0.858
	(0.153)***	(0.166)	(0.163)***	(0.121)***	(0.181)	(0.127)***	(0.157)***	(0.118)***	(0.155)***	(0.144)***	(0.154)**	(0.141)***
Gross Debt Less Sinking Fund (per capita)	0.002	0.004	0.001	0.003	0.003	0.001	0.001	0.001	0.001	0.001	0.001	0.001
	(0.002)	(0.002)**	(0.002)	(0.001)**	(0.001)**	(0.001)	(0.001)**	(0.000)**	(0.001)	(0.001)*	(0.001)*	(0.001)
Sinking Fund (per capita)	0.016	0.004	0.006	0.006	0.001	0.004	-0.007	-0.004	-0.006	-0.011	-0.010	-0.011
	(0.017)	(0.014)	(0.017)	(0.003)*	(0.003)	(0.003)	(0.004)*	(0.003)	(0.004)	(0.004)***	(0.004)**	(0.004)***
Population growth compared to state average [squared]	-0.140	-0.070	-0.126	-0.086	-0.058	-0.086	-0.014	-0.011	-0.012	-0.000	0.000	-0.000
	(0.035)***	(0.028)**	(0.034)***	(0.017)***	(0.016)***	(0.017)***	(0.004)***	(0.003)***	(0.004)***	(0.000)	(0.000)	(0.000)
% Native compared to state average [squared]	-0.689	0.194	-0.831	0.354	1.001	0.146	-4.776	-2.499	-4.247	-4.148	-2.827	-4.162
	(1.155)	(1.036)	(1.223)	(0.899)	(1.038)	(0.918)	(1.218)***	(0.928)***	(1.140)***	(1.016)***	(0.795)***	(0.808)***
Gross Debt Less Sinking Fund (per capita) compared to state average [squared]	-0.00002	-0.00006	-0.00003	-0.00001	-0.00001	-0.000006	-0.00002	-0.00002	-0.00002	-0.000005	-0.000003	-0.000003
	(0.00006)	(0.00004)	(0.00005)	(0.000004)***	(0.000004)***	(0.000004)	(0.00001)*	(0.00001)*	(0.00001)	(0.000002)**	(0.000002)*	(0.000002)
State Fixed Effects		Y			Y			Y			Y	
Region Effects			Y			Y			Y			Y
Time Effects							Y	Y	Y	Y	Y	Y
Observations	925	925	925	925	925	925	1216	1216	1216	1216	1216	1216

Notes:
Robust standard errors in parentheses; panel data standard errors are clustered by municipality
***, **, * denotes significance at the 1 percent, 5 percent, and 10 percent level, respectively.
Marginal effects of the probit estimation are evaluated at the mean of the independent variables.
Sample is all municipalities in home rule states.
Home rule states in 1890 analysis are California, Colorado, Michigan, Minnesota, Nebraska, Ohio and Texas.
Home rule states in panel data analysis are Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Texas and Washington.

Table 10: Duration Estimates

	1890 Data			Panel Data			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Population (in thousands)	1.024	1.027	1.025	1.009	1.011	1.009	1.010
	(0.010)**	(0.015)*	(0.013)**	(0.005)*	(0.007)	(0.005)*	(0.008)
Population (in thousands) [squared]	0.99994	0.99993	0.99994	0.99998	0.99998	0.99998	.99998
	(0.00005)	(0.00007)	(0.00006)	(0.00002)	(0.00002)	(0.00002)	(0.00003)
Population growth	3.811	2.620	4.035	1.474	1.524	1.528	1.432
	(0.938)***	(0.625)***	(0.995)***	(0.118)***	(0.127)***	(0.128)***	(0.136)***
Different Political Party from State	0.701	0.830	0.616	0.765	0.848	0.924	0.729
	(0.129)*	(0.151)	(0.122)**	(0.138)	(0.167)	(0.174)	(0.156)
Political HHI	2.276	0.178	3.642	14.364	1.422	11.270	0.575
	(1.802)	(0.176)*	(2.978)	(6.849)***	(0.822)	(5.480)***	(0.416)
% Democrat Votes	1.029	1.022	1.038	1.025	1.003	1.011	1.003
	(0.007)***	(0.009)**	(0.008)***	(0.004)***	(0.006)	(0.005)**	(0.007)
% Other Votes	1.026	1.024	1.033	1.008	1.001	1.002	1.016
	(0.007)***	(0.010)**	(0.008)***	(0.004)*	(0.005)	(0.004)	(0.006)**
% Native born	0.029	0.648	0.097	0.027	0.041	0.016	0.362
	(0.019)***	(0.567)	(0.069)***	(0.017)***	(0.034)***	(0.010)***	(0.368)
Gross Debt Less Sinking Fund (per capita)	1.027	1.038	1.025	1.010	1.006	1.008	1.008
	(0.007)***	(0.011)***	(0.008)***	(0.003)***	(0.003)**	(0.002)***	(0.004)**
Sinking Fund (per capita)	1.056	1.046	1.058	1.026	1.029	1.030	1.027
	(0.007)***	(0.008)***	(0.008)***	(0.008)***	(0.009)***	(0.008)***	(0.010)***
Population growth compared to state average [squared]	0.446	0.579	0.435	0.978	0.971	0.975	0.978
	(0.116)***	(0.146)**	(0.112)***	(0.006)***	(0.007)***	(0.007)***	(0.008)***
% Native compared to state average [squared]	10.821	324.683	288.878	0.020	0.000	0.000	0.007
	(32.924)	(1,066.132)*	(923.551)*	(0.089)	(0.000)***	(0.002)**	(0.033)
Gross Debt Less Sinking Fund (per capita) compared to state average [squared]	0.9999	0.9997	0.9999	0.99997	0.99998	0.99997	0.99998
	(0.00003)***	(0.0002)	(0.00003)***	(0.000008)***	(0.00001)	(0.000008)***	(0.00001)*
State Fixed Effects		Y			Y		Y
Region Effects			Y			Y	
Time Effects							Y
Observations	1102	1102	1102	987	987	987	987

Notes:
Robust standard errors in parentheses; panel data standard errors are clustered by municipality
***, **, * denotes significance at the 1 percent, 5 percent, and 10 percent level, respectively.
All specifications assume the Weibull distribution.
Sample is all municipalities in home rule states.
Home rule states in 1890 analysis are California, Colorado, Michigan, Minnesota, Nebraska, Ohio and Texas.
Home rule states in panel data analysis are Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Texas and Washington.

Table 11: Comparison of Home Rule and Non-Home Rule Municipalities

		Strength of Home Rule Preference			Variance of Home Rule Preference		
		Home Rule States	Non-Home Rule States		Home Rule States	Non-Home Rule States	
Probit	1890	0.12	0.06	*	0.08	0.04	*
	Panel	0.04	0.01	*	0.03	0.01	*
Linear Probability	1890	0.18	0.12	*	0.06	0.02	*
	Panel	0.18	0.09	*	0.02	0.01	*
Duration	1890	0.12	0.09	*	0.03	0.01	*
	Panel	0.06	0.04	*	0.03	0.01	*

Note:

* Denotes significant difference at 1% level

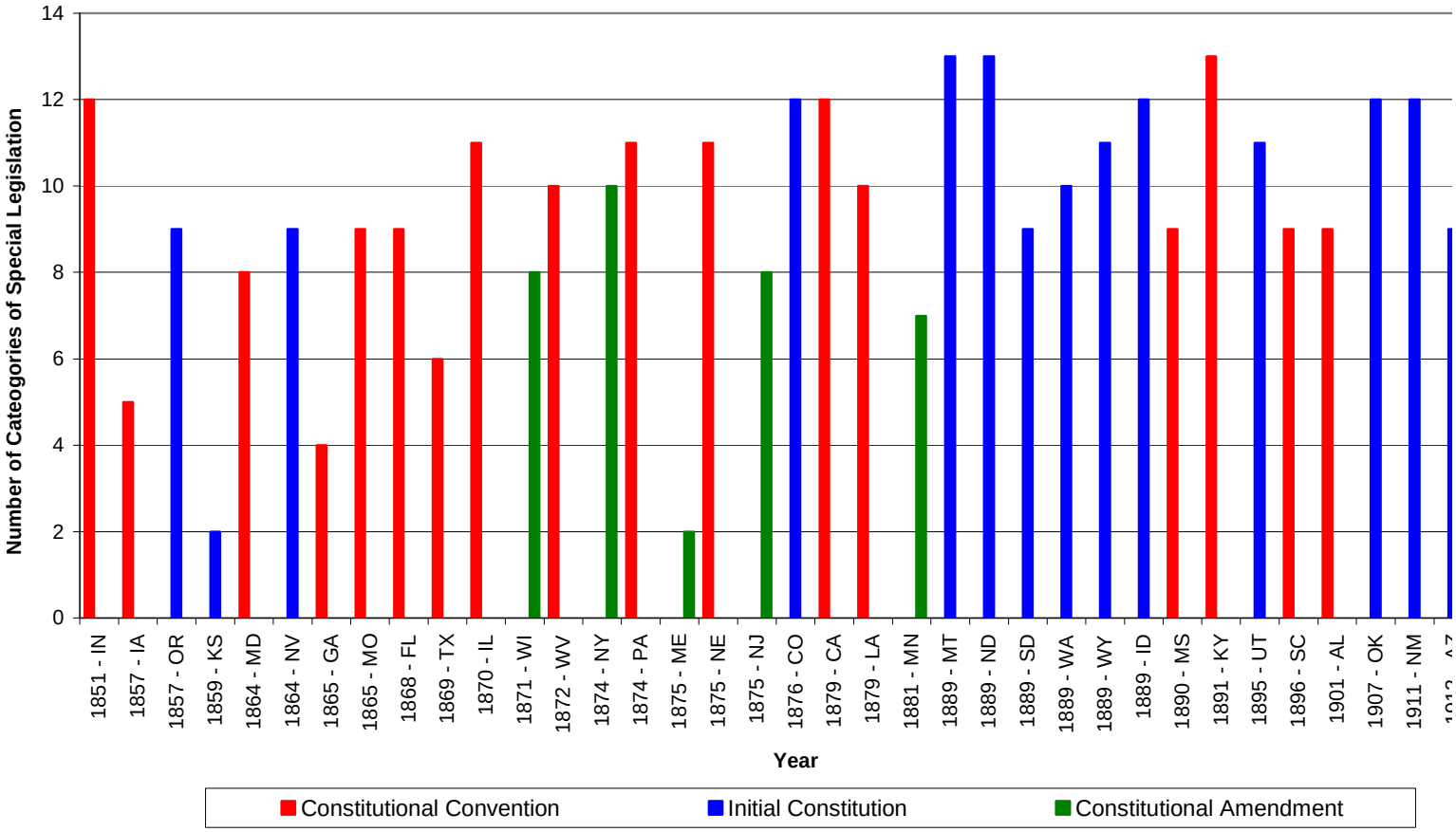
Panel data predictions are constructed as the average for each municipality.

The strength of home rule preference in the probit model is measured as the sum of all predictions greater than 0.5 divided by the total number of municipalities.

The strength of home rule preference in the linear probability model is measured as the sum of all predictions above the 55th percentile divided by the total number of municipalities. The cutoff of is based on the actual number of municipalities adopting home rule by 1935 in the sample.

The preferences in the duration model are calculated as 1 minus the predicted survival probability. The value represents the probability that the municipality adopts a home rule charter by 1935. The strength of home rule preference in the duration model is measured as the sum of all predictions where the probability of adopting a home rule charter is greater than 43 percent. The cutoff is based on the actual number of municipalities adopting home rule by 1935 in the sample.

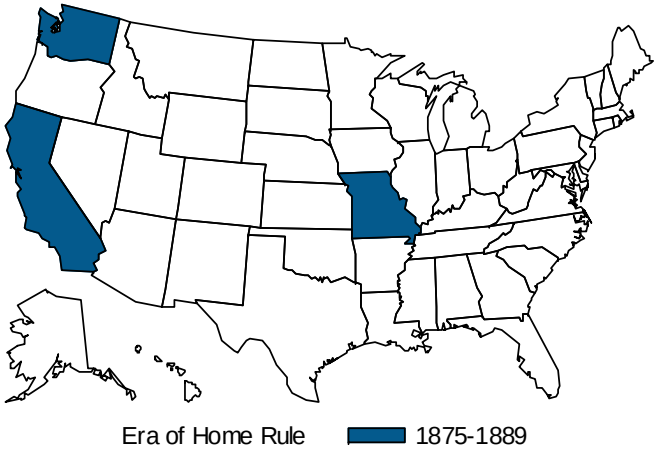
Figure 1
Adoption of Special Legislation Prohibitions in State Constitutions



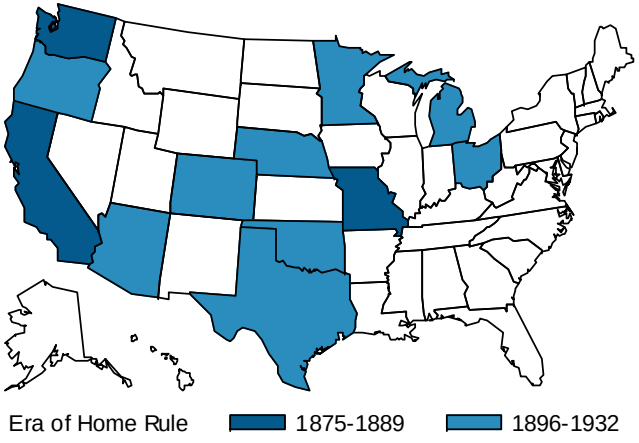
Note: There are thirteen categories of special legislation defined in Binney (1894). Each observation is a given state in a given year. The number of categories includes all prohibitions of special legislation that were a part of the same constitution or amendment package.

Figure 2
Adoption of Constitutional Home Rule

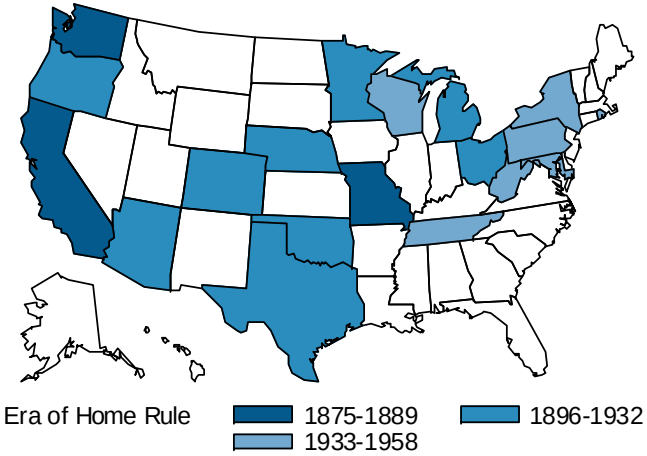
1875-1889



1875-1932



1875-1958



1875-1974

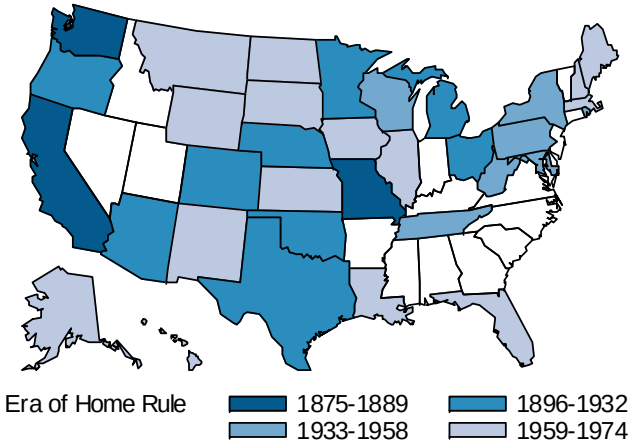


Figure 3
Ohio
Change in Rural Population

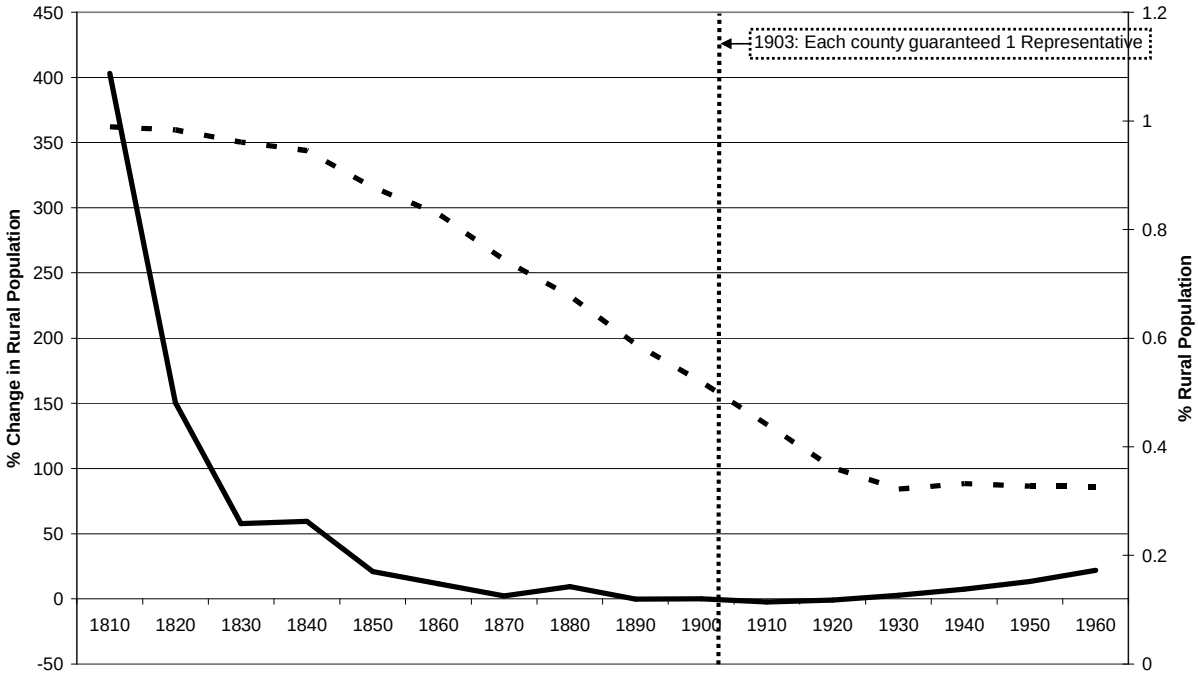


Figure 4
Iowa
Change in Rural Population

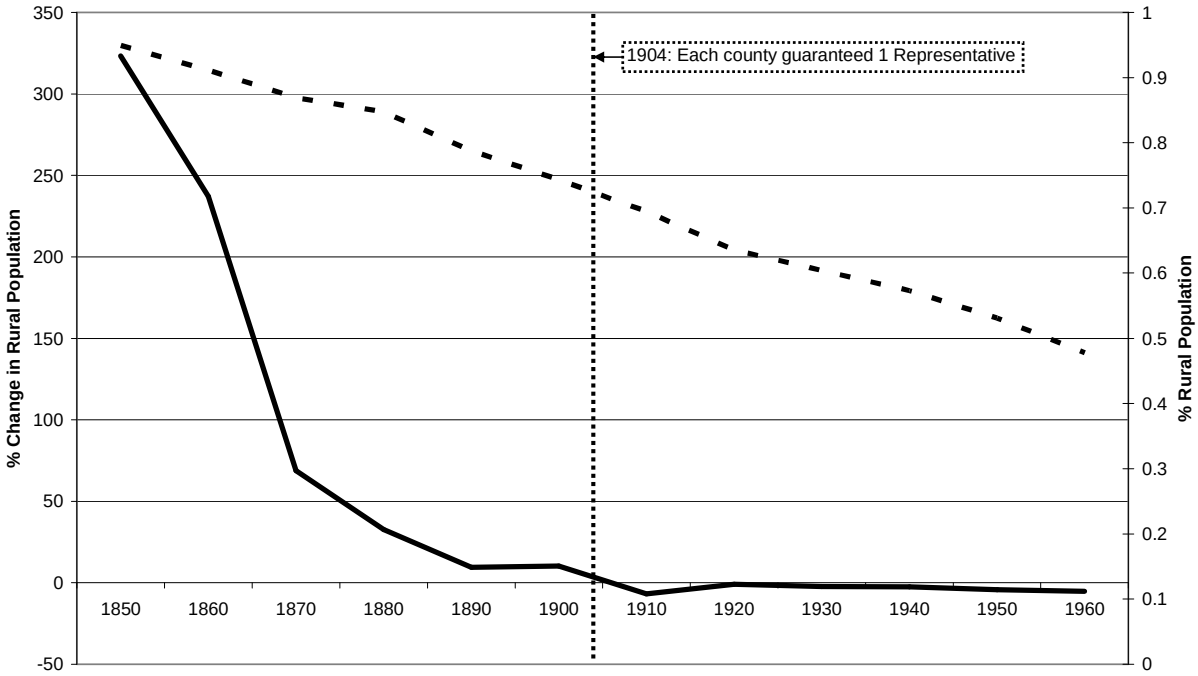


Figure 5
Michigan
Change in Rural Population

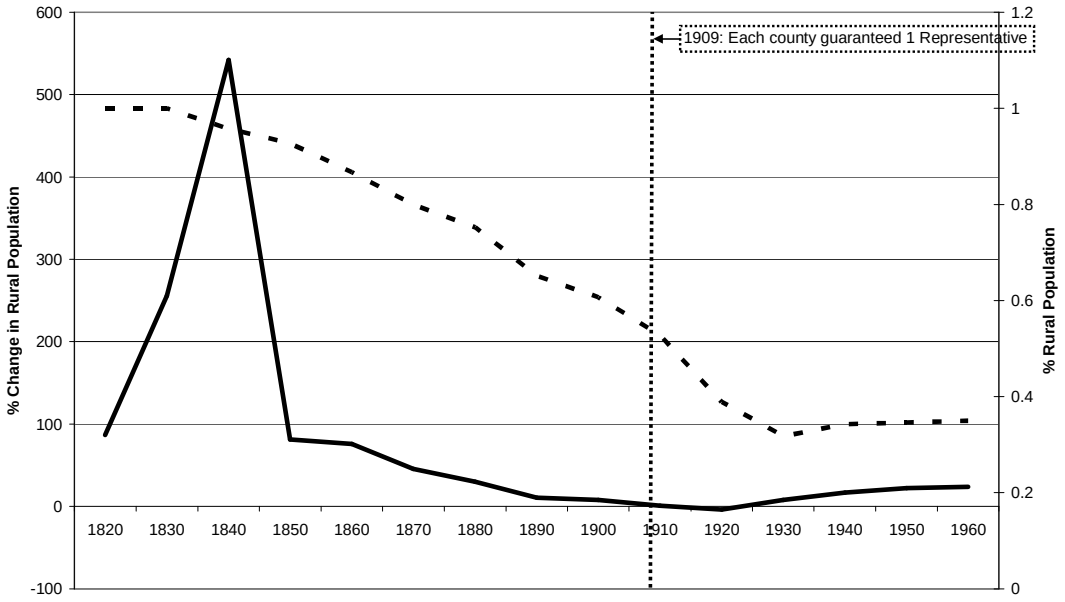
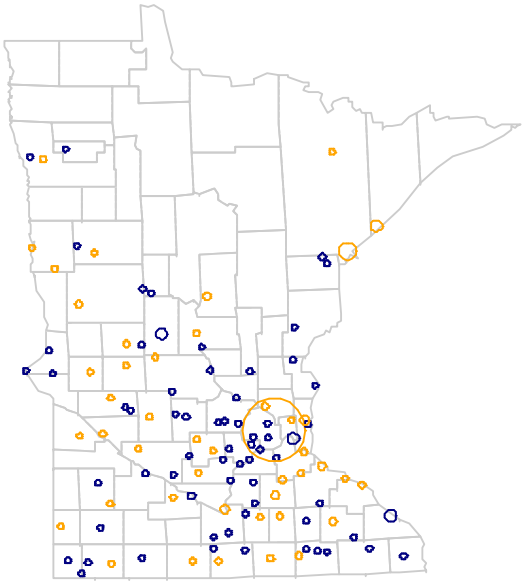
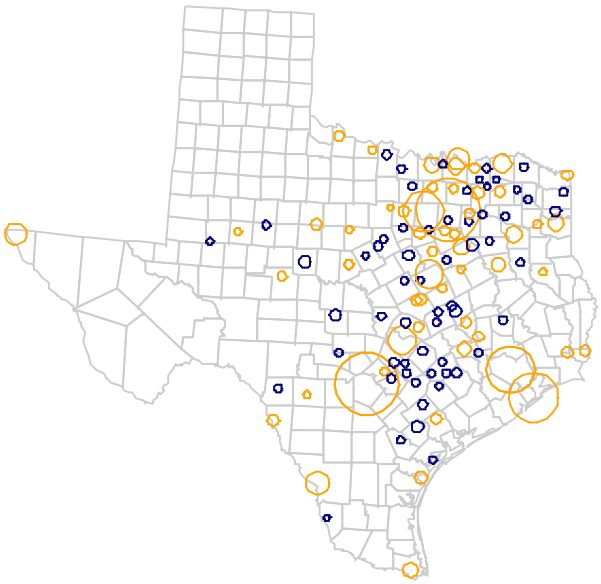


Figure 6: Cities in Minnesota by 1890 Population



Orange: Home Rule Municipalities
Blue: General Law Municipalities

Figure 7: Cities in Texas by 1890 Population



Orange: Home Rule Municipalities
Blue: General Law Municipalities

Figure 8

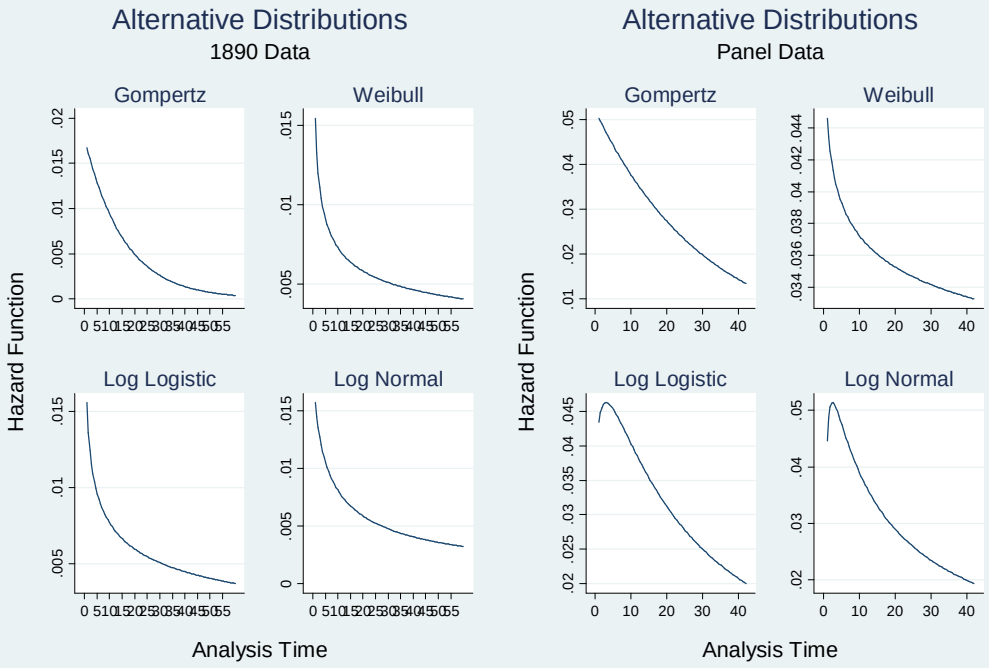


Figure 9

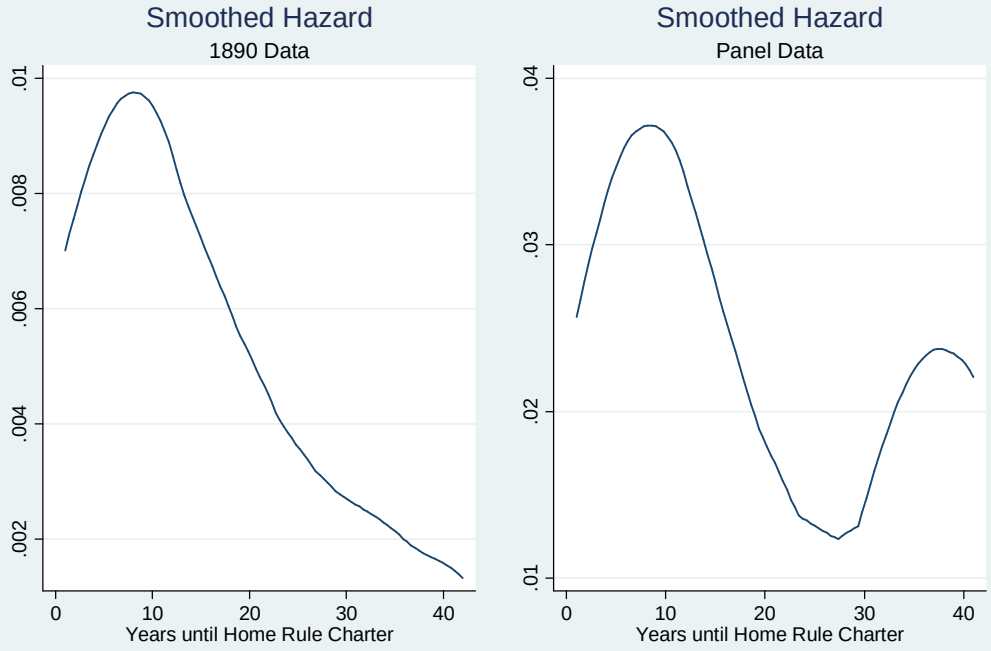


Figure 10: Distribution of Probit Predictions

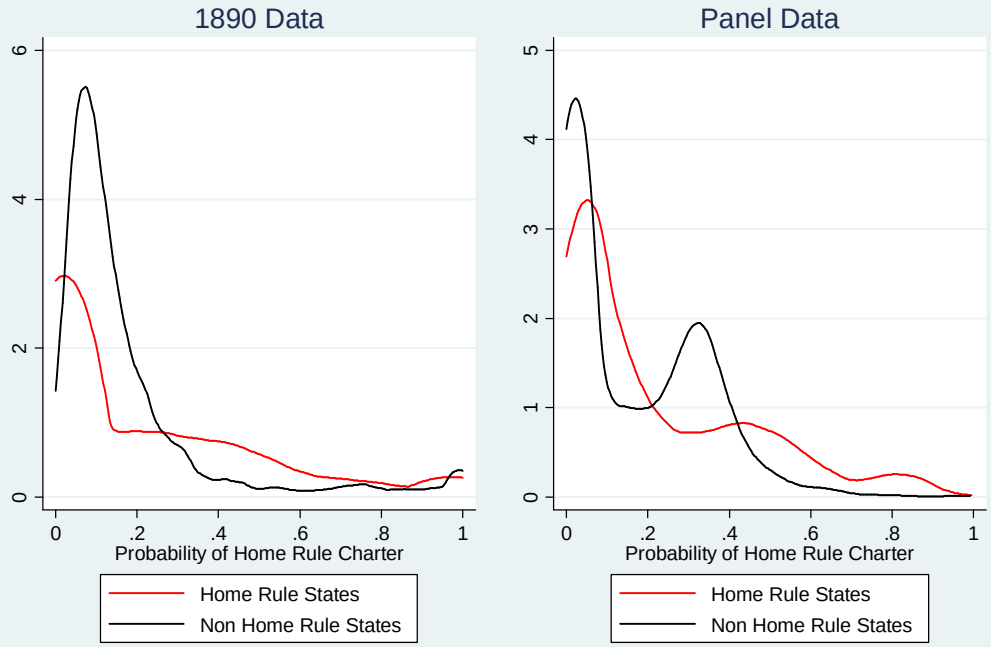


Figure 11: Distribution of Linear Probability Predictions

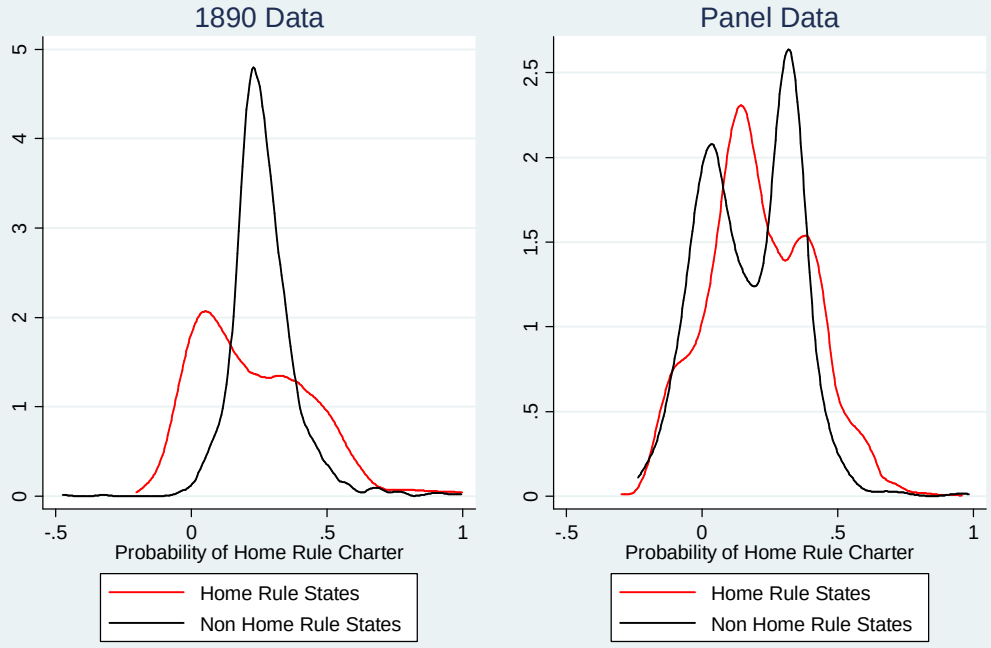


Figure 12: Distribution of Duration Predictions

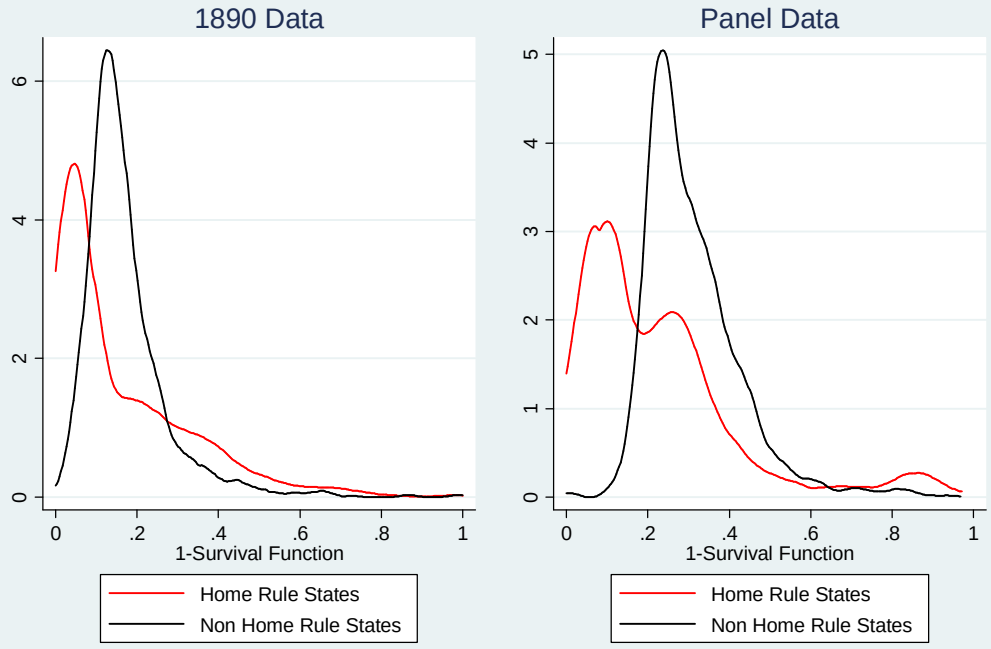


Figure 13: Semi-Parametric Cox Smoothed Hazard

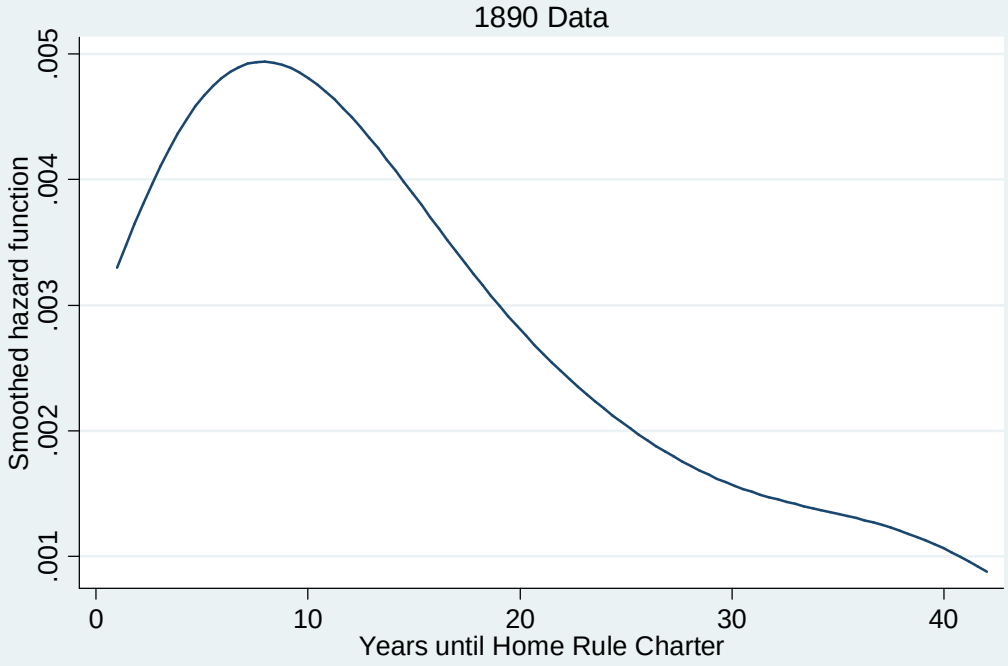
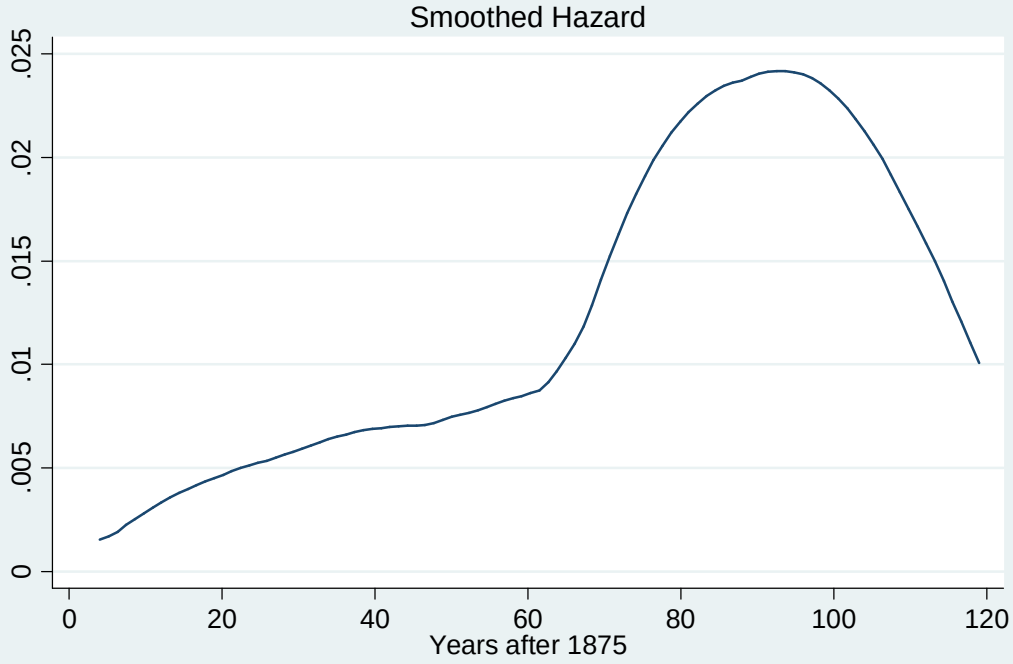


Figure 14: Adoption of Constitutional Home Rule



References

Abel, James F. Consolidation of Schools and Transportation of Pupils. Washington, D.C.: Government Printing Office, 1923.

Acemoglu, Daron and James Robinson. "Paths of Economic and Political Development," in Oxford Handbook of Political Economy, edited by Barry R. Weingast and Donald A. Wittman. New York: Oxford University Press, 2006.

Advisory Committee on Intergovernmental Relations (ACIR). Local Government Autonomy. Washington, D.C.: ACIR, 1993.

Advisory Committee on Intergovernmental Relations (ACIR). The Organization of Local Public Economies. Washington, D.C.: ACIR, 1987.

Alesina, Alberto and Eliana La Ferrara. "Participation in Heterogeneous Communities." *The Quarterly Journal of Economics* 115 (2000): 847-904.

Alesina, Alberto , Reza Baqir and Caroline Hoxby. "Political Jurisdictions in Heterogeneous Communities." *Journal of Political Economy* 112 (2004): 348-396.

Alesina, Alberto, Reza Baqir, and William Easterly. "Public Goods and Ethnic Division." The *Quarterly Journal of Economics* 114 (1999): 1243-1284.

Allard, Scott, Nancy Burns, and Gerald Gamm. "Representing Urban Interests: The Local Politics of State Legislatures," *Studies in American Political Development* 12(1998): 267-302.

Anderson, John E. Fiscal Equalization for State and Local Government Finance. Westport: Praeger, 1994.

Baker, Gordon E. State Constitutions: Reapportionment. New York: National Municipal League, 1960.

Banfield, Edward C. Urban Government: A Reader in Administration and Politics. New York: The Free Press, 1969.

Barron, David J. "Reclaiming Home Rule." *Harvard Law Review* 116 (2003): 2255-2386.

Besley, Timothy and Anne Case. "Unnatural experiments? Estimating the Incidence of Endogenous Policies." *The Economic Journal* 110 (2000): 672-694.

Besley, Timothy and Stephen Coate. "Centralized versus decentralized provision of local public goods." *Journal of Public Economics*. 87 (2003): 2611-2637.

Binney, Charles Chauncey. Restrictions Upon Local and Special Legislation in State Constitutions. Philadelphia: Kay & Brother Publishers, 1894.

Bish, Robert L. The Public Economy of Metropolitan Areas. Chicago: Rand McNally College Publishing, 1971.

Bish, Robert L. and Vincent Ostrom. Understanding Urban Government. Washington: American Enterprise Institute, 1973.

Boyne, George A. "Competition and Local Government: A Public Choice Perspective." *Urban Studies* 33 (1996), 703-721.

Boyne, George A. "Local Government Structure and Performance: Lessons from America." *Public Administration* 70 (1992), 333-357.

Brennan, Geoffrey and James McGill Buchanan. The power to tax: analytical foundations of a fiscal constitution. Cambridge: Cambridge University Press (1980).

Bridges, Amy. Morning Glories: Municipal Reform in the Southwest. Princeton: Princeton University Press, 1997.

Briffault, Richard. Balancing Acts. New York: Twentieth Century Fund Press, 1996.

Briffault, Richard. "Home Rule for the Twenty-first Century." *The Urban Lawyer* 36 (2004): 253-272.

Briscoe, Alonzo Otis. The Size of the Local Unit for Administration and Supervision of Public Schools. New York: Teachers College Columbia University, 1935.
Bromage, Arthur W. "Municipal and County Home Rule for Michigan," *Citizens Research Council of Michigan* October, 1961.
Buchanan, James and Gordon Tullock. The Calculus of Consent: Logical Foundations of Constitutional Democracy. Ann Arbor: University of Michigan Press, 1962.
Burns, Nancy. The Formation of American Local Governments. New York: Oxford University Press, 1994.
Butler, Henry N. "Nineteenth Century Jurisdictional Competition in the Granting of Corporate Privileges." *The Journal of Legal Studies* 14(1985): 129-166
Carrubba, Clifford J. and Craig Volden. "Coalitional Politics and Logrolling in Legislative Institutions," *American Journal of Political Science* 44(2000): 261-277.
CELDF.org. Home Rule for Pennsylvania Local Governments 09 June 2009. <http://www.celdf.org/HomeRule/PennsylvaniaandHomeRule/tabid/116/Default.aspx.>
Chamberlain, Arthur Henry. "The Growth of Responsibility and Enlargement of Power of the City School Superintendent," *Education* 3 (1913): 283-441.
Childs, Richard S. "A Half Century of Municipal Reform." *The American Journal of Economics and Sociology* 15 (1956): 321-326.
Church, Robert L. Education in the United States. New York: The Free Press, 1976.
Cleves, Mario, William W. Gould, and Roberto G. Gutierrez. An Introduction to Survival Analysis Using STATA. College Station: Stata Press, 2003.
Clingermayer, James C. and Richard C. Feiock. Institutional Constraints and Policy Choice: An Exploration of Local Governance. Albany: State University of New York, 2001.
Clubb, Jerome M., William H. Flanigan, and Nancy H. Zingale. Electoral Data for Counties in the United States: Presidential and Congressional Races, 1840-1972 [Computer file]. Compiled by Jerome M. Clubb, University of Michigan, William H. Flanigan, University of Minnesota, and Nancy H. Zingale, College of St. Thomas. ICPSR08611-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 2006-11-13.
Cortner, Richard C. The Apportionment Cases. Knoxville: The University of Tennessee Press, 1970.
Cremin, Lawrence A. American Education: The National Experience, 1783-1876. New York: Harper and Row, 1980.
Cubberley, Ellwood P. Public Education in the United States. Boston: Houghton Mifflin, 1934.
Cubberley, Ellwood P. Rural Life and Education. Boston: Houghton Mifflin, 1914.
Cubberley, Ellwood P. School Funds and Their Apportionment. New York: Teachers College, 1906.
Cubberley, Ellwood P. State and County Educational Reorganization. New York: The MacMillan Company, 1914.
Cubberley, Ellwood P. State School Administration; A Textbook of Principles. Houghton Mifflin Company, 1927.
Cubberley, Ellwood P. and Edward C. Elliott. State and County School Administration. New York: The MacMillan Company, 1915.
Cyr, Frank W., Arvid J. Burke, and Paul R. Mort. Paying for Our Public Schools. Scranton: International Textbook Company, 1938.
Daniels, Bruce C. Town and County: Essays on the Structure of Local Government in the American Colonies. Middletown: Wesleyan University Press, 1978.

Dewatripont, Mathias and Eric Maskin. "Credit and Efficiency in Centralized and Decentralized Economies." *Review of Economic Studies* 62 (1995): 541-55.
DeWitt, Benjamin Parke. The Progressive Movement. Seattle: University of Washington Press, 1915.
Diekmann, Andreas. "Diffusion and Survival Models for the Process of Entry into Marriage," *Journal of Mathematical Sociology* 14 (1989): 31-44.
Dixon, Robert G. Democratic Representation: Reapportionment in Law and Politics. New York: Oxford University Press, 1968.
Dodd, Walter Farleigh. The Revision and Amendment of State Constitutions. Baltimore: The Johns Hopkins Press, 1910.
Dowding, Keith and Peter John. "Tiebout: A survey of the empirical literature. " *Urban Studies* 31(1994): 767-798.
Driggs, Don W. and Leonard E. Goodall. Nevada Politics and Government. Lincoln, NE: University of Nebraska Press, 1996.
Dye, Thomas R. Understanding Public Policy. Englewood Cliffs: Prentice-Hall, 1978.
Elazar, Daniel J. "State-Local Relations: Union and Home Rule," in Governing Partners: State-Local Relations in the United States, edited by Russell L. Hanson. Boulder: Westview Press, 1998.
Fairlie, John A. Local Government in Counties, Towns and Villages. New York: The Century Co., 1906.
Fairlie, John A. and Charles Mayard Kneier. County Government and Administration. New York: The Century Co., 1930.
Florestano, Patricia S. and Vincent L. Marando. The States and the Metropolis. New York: Marcel Dekker, 1981.
Foster, Kathryn A. The Political Economy of Special Purpose Government. Washington: Georgetown University Press, 1997.
Fox, Kenneth. Better City Government: Innovation in American Urban Politics, 1850-1937. Philadelphia: Temple University Press, 1977.
Frug, Gerald. City Making. Princeton: Princeton University Press, 1999.
Fuller, Wayne E. The Old Country School. Chicago: The University of Chicago, 1982.
Fuller, Wayne E. "School District 37: Prairie Community" *The Western Historical Quarterly* 12(1981): 419-432.
Gates, Paul W. The Jeffersonian Dream: Studies in the History of American Land Policy and Development. Albuquerque: University of New Mexico Press, 1996.
Go, Sun and Peter H. Lindert. "The Curious Dawn of American Public Schools." *NBER Working Paper* 13335, August 2007.
Gold, Steven D. Reforming State-Local Relations: A Practical Guide. Denver: National Conference of State Legislatures, 1989.
Goldin, Claudia and Lawrence F. Katz. "Education and Income in the Early Twentieth Century: Evidence from the Prairies" *The Journal of Economic History* 60(2000): 782-818.
Goldin, Claudia. "The Human-Capital Century and American Leadership: Virtues of the Past," *The Journal of Economic History* 61(2001): 263-292.
Gordon, Nora and Brian Knight. "The Causes of Political Integration: An Application to School Districts" Working Paper, July 2006.
Gotherman, John E. "Municipal Home Rule and Charters." http://www.vanwert.org/gov/charter-article.htm
Gray, Virginia. "Innovation in the States: A Diffusion Study," *American Political Science Review*, 67 (1973): 1174-1193.
Green, Fletcher M. Constitutional Development in the South Atlantic States, 1776-1860. New York: De Capo Press, 1971.

Greene, William H. Econometric Analysis. New Jersey: Prentice Hall, 2003.
Griffith, Ernest S. A History of American City Government: The Colonial Period. New York: Oxford University Press, 1938.
Griffith, Ernest S. A History of American City Government: The Conspicuous Failure, 1870-1900. New York: Praeger Publishers, 1974.
Griffith, Ernest S. A History of American City Government: The Formation of Traditions, 1775-1870. New York: Praeger Publishers, 1976.
Griffith, Ernest S. A History of American City Government: The Progressive Years and Their Aftermath, 1900-1920. New York: Praeger Publishers, 1974.
Haines, Michael R., and the Inter-university Consortium for Political and Social Research. Historical, Demographic, Economic, and Social Data: The United States, 1790-2000 [Computer file]. ICPSR02896-v2. Hamilton, NY: Colgate University/Ann Arbor: MI: Inter-university Consortium for Political and Social Research [producers], 2004. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2005-04-29.
Hall, Charles P. "Constitutional and Legislative Limitations of the Home Rule Charter in Minnesota." *Michigan Law Review* 5 (1906): 6-11.
Hanson, Russell L. Governing Partners: State-Local Relations in the United States. Boulder: Westveiw Press, 1998.
Harvey, Rachel. "Labor law: Challenges to the living wage movement: Obstacles in a path to economic justice." *University of Florida Journal of Law and Public Policy*, 14(2003): 230.
Henretta, James A. "The Rise and Decline of Democratic-Republicanism: Political Rights in New York and the Several States, 1800-1915," in Toward a Usable Past: Liberty Under State Constitutions, edited by Paul Finkelman and Stephen E. Gottlieb. Athens: The University of Georgia Press, 1991.
Hero, Rodney E. "Understanding Urban Governmental Structures: An Analysis Controlling for the Influence of State Law." *Publius* 16 (1986): 133-140.
Hofstadter, Richard. The Age of Reform. New York: Vintage Books, 1955.
Holcombe, Randall G. and Donald J. Lacombe. "Factors underlying the growth of local government in the 19th century United States." *Public Choice* 120 (2004): 359-377.
Holt, Michael F. The Rise and Fall of the American Whig Party. New York: Oxford University Press, 1999.
Hoxby, Caroline M. "Are Efficiency and Equity in School Finance Substitutes or Complements?" *Journal of Economic Perspectives* 10 (1996): 51-72.
Hoxby, Caroline M. "Does Competition Among Public Schools Benefit Students and Taxpayers?" *The American Economic Review* 90 (2000): 1209-1238.
Howard, George Elliott. A History of Matrimonial Institutions Chiefly in England and the United States. Chicago: University of Chicago Press, 1904.
Howe, Frederick C. The City the Hope of Democracy. Seattle: University of Washington Press, 1905.
Inman, Robert P, and Daniel L. Rubinfeld. "Rethinking Federalism." *The Journal of Economic Perspectives* 11 (1997), 43-64.
Ireland, Robert M. "The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States," *The American Journal of Legal History* 46(2004): 271-299.
James, Herman G. Local Government in the United States. New York: D. Appleton and Company, 1921.
Johnson, Bertram. "Associated Municipalities: Collective action and the Formation of State Leagues of Cities," *Social Science History* 29(2005): 549-574.
Kaestle, Carl F. Pillars of the Republic. New York: Hill and Wang, 1983.
Katznelson, Ira and Margaret Weir. Schooling for All. New York: Basic Books, Inc, 1985.

Kemp, Roger L. Forms of Local Government: A Handbook on City, County and Regional Options. Jefferson: McFarland and Company, 1999.
Kenny, Lawrence W. and Amy B. Schmidt. "The decline in the number of school districts in the U.S: 1950-1980." *Public Choice* 79 (1994): 1-18.
Kiefer, Nicholas M. “Economic Duration Data and Hazard Functions.” *Journal of Economic Literature* 26 (1988) 646-679.
Kimball, Everett. State and Municipal Government in the United States. Boston: Ginn and Company, 1922.
Krane, Dale, Platon N. Rigos, and Melvin B Hill Jr. Home Rule in America: A Fifty State Handbook. DC: Congressional Quarterly Press, 2001.
Legler, John B, Richard Sylla, and John J. Wallis. "US City Finances and the Growth of Government, 1850-1902." *The Journal of Economic History* 48 (1988), 347-356.
Leser, Oscar. “Report on the Evils of Special and Local Legislation,” *Transactions of the Maryland State Bar Association* (1904): 160-185.
Lineberry, Robert L, and Edmund P. Fowler. "Reformism and Public Policies in American Cities." *American Political Science Review* 61 (1967), 701-716.
Loveless, Tom. "Uneasy Allies: The Evolving Relationship of School and State" Educational *Evaluation and Policy Analysis* 20(1998): 1-8.
Lyons, William E. "Reform and response in American cities: Structure and policy reconsidered." *Social Science Quarterly* 59 (1978): 118--32.
Manny, Theodore Bergen. Rural Municipalities: A Sociological Study of Local Government in the United States. New York: The Century Co., 1930.
Margo, Robert A. Race and Schooling in the South, 1880-1950: An Economic History. Chicago: The University of Chicago Press, 1990.
Matthews, Nathan. Municipal Charters: A Discussion of the Essentials of a City Charter with Forms or Models for Adoption. College Park: McGrath, 1969.
Mayhew, David R. Placing Parties in American Politics: Organization, Electoral Settings, and Government Activity in the Twentieth Century. Princeton: Princeton University Press, 1986.
McBain, Howard Lee. “Home Rule for Cities,” *Proceedings of the Academy of Political Science in the City of New York* 5(1915): 1-38.
McBain, Howard Lee. The Law and Practice of Municipal Home Rule. New York: Columbia University Press, 1916.
McCormick, Richard P. The Second American Party System: Party Formation in the Jacksonian Era. Chapel Hill: The University of North Carolina Press, 1966.
McGoldrick, Joseph D. Law and Practice of Municipal Home Rule, 1916-1930. New York: Columbia University Press, 1933.
Mehay, Stephen L. "The effect of governmental structure on special district expenditures." *Public Choice* 44 (1984), 339-348.
Menes, Rebecca. "Corruption in Cities: Graft and Politics in American Cities at the Turn of the Century." *NBER Working Paper* 9900, September 2003.
Meyer, John W., David Tyack, Joane Nagel and Audri Gordon. "Public Education as Nation-Building in America: Enrollments and Bureaucratization in the American States, 1870-1930." *The American Journal of Sociology* 85(1979): 591-613.
Monkkonen, Eric H. America Becomes Urban: The Development of US Cities and Towns 1780-1980. Berkeley: University of California Press, 1988.
Monkkonen, Eric H. The Local State. Stanford: Stanford University Press, 1995.
Monroe, Paul. Founding of the American Public School System: A History of Education in the United States, Vol 1. New York: The MacMillan Company, 1940.
Morgan, David R. and John P. Pelissero. "Urban Policy: Does Political Structure Matter?" *American Political Science Review* 74 (1980): 999-1006.

Mott, Rodney L. Home Rule for America's Cities. Chicago: American Municipal Association, 1949.
Nasaw, David. Schooled to Order: A Social History of Public Schooling in the United States. New York: Oxford University Press, 1979.
Nice, David C. "An Intergovernmental Perspective on Urban Fragmentation." Social *Science Quarterly* 64 (1983): 111-118.
North, Douglass C, and John J Wallis. "American Government Expenditures: A Historical Perspective." *The American Economic Review* 72 (1982), 336-340.
Oates, Wallace E. "An Essay on Fiscal Federalism." *Journal of Economic Literature* 37 (1999), 1120-1149.
Oates, Wallace E. "Fiscal Competition or Harmonization? Some Reflections." *National Tax Journal* 54 (2001), 507-512.
Oates, Wallace E. Fiscal Federalism. New York: Harcourt Brace Jovanovich, Inc., 1972.
Oates, Wallace E. "On the Measurement of Congestion in the Provision of Local Public Goods." *Journal of Urban Economics* 24 (1988), 85-94.
Oates, Wallace E. "On the Welfare Gains from Fiscal Decentralization." *Economia delle scelte pubbliche*, 2-3 (1997): 83-92.
Oates, Wallace E. "Toward a Second-Generation Theory of Fiscal Federalism." *International Tax and Public Finance* 12 (2005): 349-373.
Oberholtzer, Ellis Paxson. "Home Rule for Our American Cities," *Annals of the American Academy of Political and Social Science* 3(1893): 68-95.
Olson, Mancur. The Logic of Collective Action. Cambridge: Harvard University Press, 1965.
Orth, Samuel P. "Special Legislation," *The Atlantic Monthly* 97(1906): 69-76.
Patton, Clifford W. The Battle for Municipal Reform: Mobilization and Attack, 1875-1900. College Park: McGrath, 1969.
Peters, James W.S. "Home Rule Charter Movements in Missouri with Special Reference to Kansas City," *Annals of the American Academy of Political and Social Science* 27(1906): 155-157.
Peterson, Paul E. The Politics of School Reform: 1870-1940. Chicago: The University of Chicago Press, 1985.
Pollock, Ivan L. "Special Legislation In Iowa," *Iowa Journal of History and Politics* 15(1917): 8-41.
Reese, William J. Power and the Promise of School Reform: Grassroots Movements During the Progressive Era. New York: Teachers College Press, 2002.
Reinsch, Paul S. American Legislatures and Legislative Methods. New York: The Century Co, 1907.
Rhode, P.W. and Koleman S. Strumpf. "Assessing the importance of Tiebout sorting: Local heterogeneity from 1850 to 1990." *American Economic Review* 93 (2003): 1648-1677.
Richardson, John G. "The American States and the Age of School Systems" *American Journal of Education* 92(1984): 473-502.
Richardson, John G. "Settlement Patterns and the Governing Structures of Nineteenth-Century School Systems" *American Journal of Education* 92(1984): 178-206.
Rodden, Jonathan A. "Federalism," in Oxford Handbook of Political Economy, edited by Barry R. Weingast and Donald A. Wittman. New York: Oxford University Press, 2006.
Rothman, David J. The Discovery of the Asylum: Social Order and Disorder in the New Republic. Boston: Little, Brown and Company, 1971.
Rubinchik-Pessach, Anna. "Can decentralization by beneficial?" *Journal of Public Economics* 89 (2005), 1231-1249.

Sass, Tim R. "The choice of municipal government structure and public expenditures." *Public Choice* 71 (1991): 71-87.
Sbragia, Alberta M. The Municipal Money Chase: The Politics of Local Government Finance. Boulder: Westview Press, 1983.
Seabright, P. "Accountability and Decentralization in Government: An Incomplete Contracts Model." *European Economic Review* 40 (1996): 61-89.
Snider, Clyde F. Local Government in Rural America. New York: Appleton-Century-Crofts, 1957.
Souder, Jon A. and Sally K. Fairfax. State Trust Lands: History, Management, and Sustainable Use. Lawrence: University of Kansas Press, 1996.
Stegner, Wallace. Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West. Boston: Houghton Mifflin Company, 1953.
Stein, Robert M. "Tiebout's sorting hypothesis." *Urban Affairs Quarterly* 23 (1987): 140-166.
Stephenson, George M. The Political History of the Public Lands: From 1840 to 1862. New York: Russell and Russell, 1917.
Strumpf, Koleman S. and Felix Oberholzer-Gee. "Endogenous Policy Decentralization: Testing the Central Tenet of Economic Federalism." *Journal of Political Economy* 110 (2002): 1-36.
Sturm, Albert L. Methods of State Constitutional Reform. Ann Arbor: University of Michigan Press, 1954.
Swift, Fletcher Harper. Studies in Public School Finance: The West, California and Colorado. Minneapolis, The University of Minnesota, 1922.
Tarr, G. Alan. Understanding State Constitutions. Princeton: Princeton University Press, 1998.
Teaford, Jon C. City and Suburb. Baltimore: Johns Hopkins University Press, 1979.
Teaford, Jon C. “Special Legislation and the Cities, 1865-1900.” *The American Journal of Legal History* 23 (1979): 189-212.
Teaford, Jon C. The Unheralded Triumph. Baltimore: Johns Hopkins University Press, 1984.
Temple, Judy A. “Community Composition and Voter Support for the Tax Limitations: Evidence from Home-Rule Elections.” *Southern Economic Journal* 62 (1996), 1002-1016.
Theobald, Paul. Call School: Rural Education in the Midwest to 1918. Carbondale: Southern Illinois University Press, 1995.
Tiebout, Charles M. "A Pure Theory of Local Expenditure." *Journal of Political Economy* 64 (1956): 416-424.
Timofeev, Anthony. "Determinants of Decentralization within Russian Regions." *Discussion Papers: Local Government and Public Service Initiative* (2003).
Toll, Seymour I. Zones American. New York: Grossman Publishers, 1969.
Tommasi, M. "Centralization vs. Decentralization: A Principal Agent Analysis." (2003).
Turnbull, Geoffrey K. and Gyusuck Geon. "Local government internal structure, external constraints and the median voter." *Public Choice* 129 (2006): 487-506.
Tyack, David, Thomas James, and Aaron Benavot. Law and the Shaping of Public Education, 1785-1954. Madison: University of Wisconsin Press, 1991.
Urquiola, Miguel. "Does School Choice Lead to Sorting? Evidence from Tiebout Variation" *The American Economic Review* 95 (2005): 1310-1326.
Viteritti, Joesph P. “The City and the Constitution: A Historical Analysis of Institutional Evolution and Adaptation,” *Journal of Urban Affairs* 12(1990): 221-236.
Wallis, John J. "American Government Finance in the Long Run: 1790 to 1990." *The Journal of Economic Perspectives* 14 (2000), 61-82.

Wallis, John J. “Constitutions, Corporations and Corruption: American States and Constitutional Change, 1842-1852.” *The Journal of Economic History* 65(2005): 211-256.
Wallis, John J. “The Concept of Systematic Corruption in American History,” in Corruption and Reform, edited by Edward Glaesar and Claudia Goldin.
Weiner, Joseph L. “Municipal Home Rule in New York,” *Columbia Law Review* 37(1937): 557-581.
Weingast, Barry R. “A Rational Choice Perspective on Congressional Norms,” in Congress: Structure and Policy, edited by Matthew D. McCubbins and Terry Sullivan. Cambridge University Press, 1987.
Wilcox, Delos F. The American City: a Problem in Democracy. New York: The MacMillan Company, 1906.
Wilcox, Delos F. “Municipal Government in Michigan and Ohio,” in Studies in History, Economics, and Public Law, edited by The University Faculty of Political Science of Columbia College. New York: Columbia University, 1896.
Wildasin, David E. "The Institutions of Federalism: Toward an Analytical Framework." *National Tax Journal* 57 (2004), 247-272.
Wilson, James Q. City Politics and Public Policy. New York: John Wiley and Sons, Inc., 1968.
Zagarri, Rosemarie. The Politics of Size: Representation in the United States, 1776-1850. Ithaca: Cornell University Press, 1987.
Zimmerman, Joseph Francis. Contemporary American Federalism. Albany: SUNY Press, 2008