Advantages And Disadvantage

Along these theoretical lines, Zimmerman outlined the advantages and disadvantages of home rule (Zimmerman 1992, 172). The four main advantages he lists are: (1) home rule eliminates or greatly reduces legislative interference in city affairs; (2) it permits citizens to determine the form and administrative organization of their local government; (3) the state legislature is relieved of the time-consuming burden of special legislation and can devote its exclusive attention to state problems, and; (4) home rule permits citizens to have a greater voice in the determination of local government policies and thus encourages many more citizens to become interested in and participate in local affairs.

Zimmerman similarly cites four major disadvantages of home rule (Zimmerman 1992, 173). The disadvantages are: (1) frequent changes in the charter may cause instability in a local government; (2) owing to proposals to amend the charter, the ballot may become excessive in length at each election and discourage citizens from casting a vote on each referred issue; (3) home rule allows local political machines increased freedom from state supervision and interference, and; (4) the system makes more difficult the solution of areawide problems since a strategically located municipality could refuse to cooperate with its neighbors and block potential solutions to these problems. Zimmerman further asserts "(i)n practice these concerns have proven to be minor because charters are not amended often, local political machines have become extinct or weak, and the state legislature possess plenary authority to solve areawide problems" (Zimmerman 1992, 173). However, home rule elections are low stimulus elections according to Agranoff (Agranoff 1977) which may be a further disadvantage.

Municipal "home rule promotes, according to its proponents, democracy, self-government, and citizen interest. Although home rule has served to strengthen local government and to increase local control, it has several important limitations" (Elliot and Ali 1988, 48). The limitation on the legislature is one advantage to home rule governments (Siffen 1948) but "in many cases, local officials must still secure legislative approval of governmental initiatives. Furthermore, home rule cities may not approbate ordinances that
conflict with either the state constitution or relevant state laws. They also may not pass ordinances that affect a 'state interest' (one that transcends local matters, e.g., consumer protection, traffic regulations, waste disposal)....While home rule does not supplant state supremacy, it does encourage increased discretion and flexibility at the local level. Still, as its critics argue, home rule is not without its drawbacks. For example, it may produce a lack of coordination, political infighting, parochialism, capriciousness, and unpredictability. Whatever its theoretical benefits, home rule must be evaluated in terms of the basic goals and objectives of government: efficiency, effectiveness, innovativeness, and equity" (Elliot and Ali 1988, 48-49).

Zimmerman, Elliot, Ali, and others elucidate and debate the definitions, descriptions, and advantages and disadvantages of home rule. What I intend to do herein is focus on the intergovernmental relations between the state and municipal governments to explain further the powers and authorities each level possesses. Intergovernmental relations are the "interactive activities between governments" (Christensen 1999, 13); W. Brooke Graves claims to have been the aboriginal user of the term (Graves 1960, 231). This will follow a brief review of the origins of municipal home rule.

Origins of Municipal Home Rule

The Early American Years

The principle of home rule, or the right of self-government as to local affairs, existed before the United States constitution (Alderfer 1956, 147; Weiner 1937, 557; ACIR 1993, Chapter 3); the principle of home rule, or the right of self-government as to local affairs, existed before the United States Constitution as stated by the court in People v. State Board of Tax Commissioners (1903). Local government has been a matter of vital importance since the earliest colonial times (Graves 1964, 696). The "independence and authority of local
government in New England were the objects of universal interest and admiration" (Syed 1966, 29). In fact, "(s)tate dominance of substate governments or local autonomy has been one of the most controversial issues of state politics since the end of the Revolutionary War" (Zimmerman 1995, 1).

The Constitution is silent about local government and their concomitant authority and duties. McQuillan contends a written constitution is never wholly expressive of the fundamental law of a State; it must be interpreted with reference to a people's settled convictions (McQuilllin 1928, 255). Municipalities (are) also endowed with a certain limited sovereign power in the sense that while subject to general laws passed by the state legislature...they have a constitutional right, expressed or implied, to manage their own affairs free from the interference or control of the legislature" (Eaton 1902, 294).

Alexis de Tocqueville with Democracy in America wrote one of the most remarkable analyses ever of American democracy and it remains one of the most insightful, detailed, and generalized studies of the United States (Stillman 1991, 5). The "principle of local autonomy received inestimable support from Alexis de Tocqueville. His classic work Democracy in America contains an of the theory and practice of local self-government in the United States" (Syed 1966, 27). De Tocqueville wrote in Democracy in America, "municipal institutions constitute the strength of free nations" (Tocqueville, Chapter 5)....A nation may establish a free government, but without municipal institutions it can not have the spirit of liberty," (Tocqueville, Chapter 5). In the American context, de Tocqueville noted:

At the time of the settlement of the North American colonies municipal liberty had already penetrated into the laws as well as the customs of the English, and the immigrants adopted it, not only as a necessary thing, but as a benefit which they knew how to appreciate....Thus the nature of the country, the manner in which the British colonies were founded, the habits of the first immigrants--in short, everything--united to promote in an extraordinary degree municipal and state liberties (Tocqueville, Chapter 18).

For Tocqueville "it was clear that the American system of decentralized government was preferable to any other state" (Syed 1966, 31). He saw the "localist form of government
(giving) citizens the capacity to build, to act, to become government, rather than to merely resist central authority" (Christensen 1999, 18).

The value of individual freedom espoused in the young nation created an environment where local government came to enjoy a certain sanctity in the popular esteem (R. Martin 1965, 29). Roscoe Martin describes this doctrine as the "inherent right of local government" (R. Martin 1965, 29). The doctrine "evolved early as a local counterweight to the centralizing tendencies set in motion by the new state governments, enjoyed wide support during the first decades of the Republic. In coldly practical terms, its acceptance in law would have resulted in local government anarchy for the new nation" (R. Martin 1965, 29).

The early predecessors of the home rule charter "gave the local municipal corporations very wide local powers, with extensive authority over citizenship, military establishments, property, trade, transportation, and the right to engage in, or regulate private business" (Gulick 1966, 45). As charters evolved, and were granted by the states rather than royal decree, they became increasingly restrictive (Gulick 1966, 45).

The Rise Of The States

America was transformed in the 1800s by the closing of the frontier, impetuous urbanization, rapid technological revolution, rapid industrialization, international competition, and new concentrations of private power and new domestic crises (Stillman 1991, 45-50) thereby forcing Americans to do things differently (Stillman 1991, 68); "the governments of the original colonial states emphasized local rather than state responsibility for a comprehensive range of governmental services. Both the local emphasis and the comprehensiveness of public responsibilities reflected important colonial values that had less significance for people moving west to settle the new nation" (Anton 1989, 45).

As the country developed and matured the states took on an increasing role in local affairs and became "more of a handicap than a help to cities" (Griffith 1974a, 247); "(r)elatively tight state control of local governments was a characteristic of the substate governance system in the U.S. until the post-Civil War period" (ACIR 1981, 5). In fact as
late "as 1875 the federal government was mainly concerned with foreign affairs, the state
government with legislative matters, and the local units with administering the state's
legislative policies" (Keith 1951, 123).

Constitutional financial constraints against municipalities began to appear during the
Civil War period (ACIR 1962, 33). Such provisions "were designed...to protect the people
from local officials and local officials from the State" (ACIR 1962, 33) and were brought on
by financial abuses on the part of the local governments (Zimmerman 1992, 173-174;
Zimmerman 1995, 51) and, in particular, abuses of local discretionary authority (Schaller
1961, 413). Special legislation by state legislatures target municipal operations (Griffith
1974b, 212) leading to state administered municipal functions (Griffith 1974b, 222–223).
The custom of strong local government remained strong within the people of the United
States even as the laws increased state dominance over the local governments (R. Martin
1965, 32).

Dillon's Rule. In the 1850s judges began to announce the doctrine of state legislative
omnipotence in relation to local governments (The People ex. re. Fernando Wood v. Simeon
Draper 1857; Mayor v. State 1859; Syed 1966, 65-66). This doctrine expanded and took
hold with "Dillon's Rule" (McCarthy 1990, 18).

Dillon's Rule of state omnipotence originating in the post-Civil War period had the
impact of constraining local discretionary authority; growing dissatisfaction with this trend
in the 1800s led to a countermovement to expand state authority over local government
(ACIR 1981, 17; see Dillon (1911(b)), (Dillon 1911(a)) where Justice Dillon formulated a
definition of municipal powers that serve as the basis for "Dillon's Rule," and City of Clinton
v. Cedar Rapids and Missouri Railroad Co.(1868) for an expanded discussion of Dillon's
Rule).

John F. Dillon was an Iowa Supreme Court justice from 1862 to 1869. He wrote
about municipal law after leaving the bench in A Treatise on the Law of Municipal
Corporations (Dillon 1911(b)). Dillon himself described Dillon's Rule as "a general and
undisputed proposition of law that a municipal corporation possess and can exercise the
following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied” (Dillon 1911, 448). The Iowa Supreme Court case enumerating Dillon’s principle stated "(t)he true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all the municipal corporations in the State, and the corporation could not prevent it" (City of Clinton v. Cedar Rapids 1868, 475). Dillon’s Rule holds that a municipal corporation possesses and can only exercise those powers granted in express words, necessarily or fairly implied in the expressed powers, or those essential to accomplishing the purposes of the corporation and no others (Dillon 1911(a); Hyre v. Brown1926; Phillips 1954). Thus, "cities and counties have only as much authority and freedom to govern their own affairs as the state, through its constitution and statutory laws, chooses to give them" (Krane, Smith, Rigos undated, 4).

Much has been written about Dillon’s Rule; "(i)ts influence has been pervasive. Writers on local government, lawyers, judges have quoted it times without number" (Syed 1966, 68-69) and municipal organizations have called it "the lowest point in the history of the nation’s municipalities" (Lang 1991, 2). From a strict statutory or legal view it had a significant impact as a guidepost in legal-constitutional relations between the state and its local governments (Wright 1982, 21 and 229). Dillon states a basic description of his authority in the case of City of Clinton v. Cedar Rapids and Missouri River R. R. Co. (1868). "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. They are, so to phrase it, the mere tenants at will of the legislature" (475). The court case establishing Dillon's Rule exemplifies the theory and justifies reiteration here.
The City of Clinton, Iowa resisted a particular proposed alignment of a railroad through their city. The state legislature authorized a railroad company to build a line that would pass directly through Clinton. The legislature permitted the railroad company to take over, without paying compensation, as many city streets as needed for completion of the project. The city sought judicial intervention eventually losing the case mainly on the ground the city did not possess a property right in its streets.

The Dillon-based "doctrine that local government had no rights under the state constitution was fully received into federal law" (Libonati 1987, 649). With Dillon's Rule in mind, the Supreme Court recognized in several leading decisions state supremacy over local government. The Court held a municipal corporation "has no privileges or immunities under the Federal Constitution it may invoke in opposition to the will of its creator" (Williams v. Mayor and City Council of Baltimore 1933, 36), a municipality is merely a department of the state, a political subdivision created for the exercise of such governmental powers as may be entrusted to it (Trenton v. New Jersey 1923, 182), and absent of constitutional restrictions, the legislature may at its pleasure modify or withdraw any powers so entrusted to a city, hold such powers itself, or vest them in other agencies (Hunter v. City of Pittsburgh 1907, 161).

Dillon's Rule led to the "creature theory." "The creature theory states that the home rule power may be revoked in the same manner that it was granted, and Dillon's Rule defines the limits of the power given" (Littlefield 1962, 7). The courts repeated Dillon's thesis in many states and some years later the United States Supreme Court expressed the same reasoning, in Worcester v. Worcester Consolidated Street Ry. Co. (1905). In this case the court stated that "(a) municipal corporation is simply a political subdivision of the State, and exists by virtue of the exercise of the power of the State through the legislative department" (548). In the case of Worcester v. Worcester Consolidated Street (1905) the court described the creature theory as: "A municipal corporation is simply a political subdivision of the State, and exists by virtue of the exercise of the power of the State through its legislative department. The legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the State" (548-549).
Cooley Doctrine. Contemporarily Justice Thomas Cooley (Michigan Supreme Court) established a competing theory. In the late 1800s Justice Cooley argued a flexible interpretation of local government freedoms by reaching back into English common law and pleading that American cities and towns were the rightful heirs to the liberties exercised by English local governments and that these freedoms were transplanted across the sea to the early settlements in America (Eaton 1900a, 441). Juris scholars termed his doctrine the "Cooley Doctrine."

Cooley observes a fundamental principle of government in the United States is that sovereignty resides in the people (Syed 1966, 63). Syed noted with interest that Justice Cooley "relies heavily on Tocqueville's Democracy in America" (Syed 1966, 60). Cooley concluded "the state may mold local institutions according to its views of policy or expediency: but local government is a matter of absolute right, and the state cannot take it away" (People ex. rel. LeRoy v. Hurlbut 1871, 108). The controlling principle of the Cooley Doctrine was "local authorities should manage local affairs and the central government should concern itself with 'general affairs' only" (Syed 1966, 61). The doctrine had the greatest support during the 1870s and 1880s (Alderfer 1956; Pate 1954; Gere, Jr. 1982; People ex. rel. LeRoy v. Hurlbut 1871).

Cooley considered the context during which legislation was drafted, writings of Tocqueville, Lieber, and Jefferson, and "the colonial struggle for the right of self-government against centralization" (ACIR 1993, 34). He concluded "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 in its own agent to administer it; or to call 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" (People ex. rel. LeRoy v. Hurlbut 1871, 108).

The Cooley school assertion, that "localities in the Anglo-Saxon world have enjoyed the right to self-government" (Syed 1966, 54), did not gain the support Dillon's Rule found. In fact, Griffith called it a "futile attempt to assert an inherent right of local self-government"
(Griffith 1974b, 211). Only Indiana, Nebraska, Iowa, Kentucky, and Texas unequivocally adopted Cooley's Doctrine (McBain 1916, 198-208). As a result "(t)he prevailing legal theory has been that in the absence of constitutional protection municipal governments are totally dependent upon, and subservient to, the will of the legislature" (Keith 1951, 9) but Cooley Doctrine "articulated a resurgence of values that would soon be embodied in institutional reforms designed to widen the scope of local choice" (ACIR 1993, 34).

Dillon's Rule is the basis for the "creature of the state" mantra and the Cooley Doctrine is the foundation for home rule (ACIR 1993). This study will now review how Cooley's theory was placed into practice.

Municipalities Swing The Pendulum

Although Dillon's Rule authoritatively laid to rest the United States' earliest doctrine of inherent local rights (R. Martin 1965, 29), communities wanted to meet their needs independent of state direction -- the agitation for home rule began (ACIR 1962, 7). This agitation resulted from the general dissatisfaction with the common law status of local governments as wholly creatures of and subservient to the state legislature as established by Dillon (Sato and Van Alstyn 1970, 216); thus, "cities and counties have only as much authority and freedom to govern their own affairs as the state, through its constitution and statutory laws, chooses to give them" (Krane, Smith and Rigos undated, 4).

Dillon's Rule, as a principle for interpreting narrowly the powers of local governments, was not only an assertion of state supremacy but also a consequence of the search for the exact limits of local power (Wright 1974, 131-132). From an intergovernmental view, the states' action toward their cities has been marked by neglect or hostility more often than responsible action (Judd and Swanstrom 1994, 300). The municipal home rule movement "began and gained strength in the political sphere (but) judges continued to uphold complete state sovereignty over local governments" (Syed 1966, 73). Although Dillon's Rule drew a lucid legal line, politically and administratively "state
meddling was resisted by urban people, by urban interests, and by urban reformers" (Gulick 1966, 46).

Local governments feared "the state government would control their right to adopt their own form of government" (Buechner 1967, 138). Gulick stated that home rule is the right to participate as an equal partner in arriving at decisions that affect community life (ACIR 1961, 21). The municipalities viewed home rule as a viable countermove (Bebout 1966) with some municipal officials seeing it as an opportunity to gain a level of parity with the state (Adrian and Press 1977, 141).

Home rule for cities developed when local government officials recognized the inferior status of cities under state laws and the difficulty of obtaining needed legislation. The "agitation for municipal home rule arose before the end of the (nineteenth) century, the feeling being that certain powers should be within the sphere of local competence" (Bromage 1957, 114). The situation rendered them incapable of fulfilling their primary purpose of providing adequate services to their citizens (Bolan 1960). Many states adopted home rule to relieve municipalities from their dependence on legislative action and from the resultant interference in municipal affairs such dependence enabled (Klemme 1964, 325). The reforms were driven by a "considerable and growing sentiment for municipal home rule" and a way to counter special legislation and the desire for a city to find "greater freedom in adopting new functions" (Griffith 1974b, 270). "This delegation of state authority to local self-governing units was and is necessary because of the size of most of the states and the terrific difficulty of knowing and deciding everything sensibly and efficiently from a distant state capital.

It is also mandated by the American commitment to liberty and self-government and our belief that democracy is more easily realized, and freedom better preserved, when governmental activities and official responsibility are 'kept close to the people.'" (Gulick 1966, 33). The intention of home rule is to reverse the Dillon model (D. Martin 1977, 2-4; Dye 1997, 273); whereas Dillon's Rule prohibits any municipal power or authority not specifically enumerated in state law, home rule allows municipal power or authority where state law is silent (see: Fordham 1953). "The history of state-local relations in the U.S.
since the Civil War has been marked by constant pressure for expanding local discretionary authority. The plea for more 'home rule' -- for power 'to take care of our own affairs' -- is virtually a conditioned reflex among local officials and their supporters" (ACIR 1981, 60).

Cities become home rule for a variety of reasons (National Civic League, 3; Schaffner 1908). Cities used home rule to restrict state legislative action in one or more of five areas (Gulick 1966, 46). Gulick outlines these areas as: (1) a guarantee that local governmental boundaries of incorporated places would not be changed without the approval of municipal voters; (2) a prohibition against "special state legislation" affecting the property, affairs, or government of any single municipality; (3) the establishment of a tax system under which the local government could fix its own local tax rates and thus determine the general level of services to suit its own people; (4) measures designed to prevent state appointment of local officials or state abolition of traditional local positions; and (5) authorization to the municipalities to draw up their own form of government and determine its powers, subject to general restrictions set for all cities by the state, or to choose among a number of optional forms of local government defined in a general state law (1966, 46).

**Home Rule In Practice.** Iowa was the first state to experiment with home rule for local governments (Baker, B. 1961; Baker, B. 1955). In 1858 Iowa took the first legislative action to grant municipalities the right to formulate and adopt their own home rule charter (ACIR 1962, 7). The legislative home rule movement had begun; however, a different method of home rule -- constitutional home rule -- would be superior. It is superior because home rule authorized through state constitution rather than legislative action grants localities greater protection since the state constitution is more difficult to amend than a statute (Zimmerman 1992, 172). Constitutional provisions tend to limit the legislature's control over a municipal corporation (Kneier and Fox 1953).

The 1875 Missouri Constitution marked a key turning point in state-local relations (Alderfer 1956, 75; Barclay; Bebout 1976, 5; National Municipal League 1974, 4). The Missouri Constitution "involved constitutional or statutory grants of authority for certain types of local units to draft, adopt, and amend a charter, and to supersede special laws and certain general laws" (ACIR 1981, 5). The goals of Missouri's constitutional home rule
were: "(1) to prevent or minimize legislative interference in matters that are primarily of local concern; (2) to permit the local communities to adopt the type and form of government they desire; (3) to provide the cities with sufficient powers to meet the increasing needs for local services without the necessity of repeatedly seeking new authority form the legislature" (Schmandt 1953, 386). This was the start of the constitutional home rule movement in the United States (Bebout 1976, 4; Patton 1914) and demonstrated the shift from placing restraints on legislatures to "empowering local citizens with the ability to articulate their preferences over institutional forms and functional powers within their local communities (ACIR 1993, 41). Rusco says constitutional home rule is the attempt to change the constitutionally subordinate position of cities within the state, to some degree, by a constitutional grant of charter-making and substantive powers (Rusco 1960).

Without a state constitutional grant or legislative guarantee of home rule, local governments have no authority independent from that granted by state law (Florestano and Marando 1981, 4). Home rule grants authority to municipalities to make certain decisions and constrains the activities of the state and other governmental units relative to the home rule municipality (Hawkins 1976, 88); "(i)f municipalities are free to manage their own affairs, they can respond more promptly to the needs and conveniences of their citizens, and deal quickly with new problems as they arise" (Lieberman and Morrison 1994, 1463).

The Study Of Home Rule. The late 1800s also marked the beginning of the academicians' focus on municipal governance. Frank Goodnow's 1895 publication entitled Municipal Home Rule is one of the earliest texts in municipal political science. Goodnow considered Dillon's "administrative arm of the state" argument and concluded when a municipality was acting as an organization for the satisfaction of local needs it should suffer interference from neither the courts nor the state legislature (Goodnow 1895, 45-55, 225). Frank Goodnow explains that home rule should offer citizens the conviction that they have the power to work a sensible improvement in their condition in his early writing on home rule (Goodnow 1895, 9). The National Municipal League (now the National Civic League) began publishing its model city charter in 1899 (National Civic League 1989). Goodnow
continued, in 1906, addressing many of the early questions about the concept of home rule (Goodnow 1906, 77). In 1928, Schuyler Wallace argued the pros and cons of home rule contrasting a centralized versus decentralized approach to government in the areas of public health, finance, education, utilities and other functions.

**The Growth Of Home Rule.** "By 1920, constitutional home rule was available to some municipalities (usually the most populated ones) in 13 states, and home rule by legislative grant was available in 6 other states" (Richards 1967, 76 (parenthesis in original)). "The resulting protection of the cities against the state, which in law had the right to make and unmake cities...was written into (law) or became a part of unwritten law under the pressure of widespread public opinion" (Gulick 1966, 46).

Since 1955, home rule gradually extended to counties besides municipalities (Graves 1964, 700). Although "over the years, the view that local governments should have home rule or greater discretionary authority has gained ground over the creature-of-the-state position" (Berman 1996, 35) in the 1960s forty-eight states (excluding Texas and Alaska) remained Dillon states where no local power exists unless it is expressly delegated or clearly implied (ACIR 1962, 43). "Dillon's Rule and the creature theory operated together to give doctrinal expression to the state-local relations prevailing in this country" (Littlefield 1962, 7).

Dillon's Rule has been chipped away in the fifty states as lawmakers and citizens strive for aggrandized local control (Rhyme 1980). Zimmerman notes "in the late twentieth century, many municipalities possess relatively broad discretionary powers while other (local units of government) are subject to tight control by the state government...This trend has been toward the granting of additional discretionary powers to (municipalities), but state legislatures with a few exceptions continue to possess authority to dominate local governments completely" (Zimmerman 1992, 165). Contemporarily, to "circumvent Dillon's Rule, many states have constitutional provisions or statutes that confer 'home rule' or broad discretionary authority on local governments, giving them the right to make decisions without specific grants of authority" (Berman 1996, 34). The theory of home rule grants
sweeping powers to cities; however, in practice, home rule has not brought self-government to cities (Dye 1997, 274). This is due primarily to the difficulty in specifying specific areas of authority, the changing municipal landscape (resulting from urbanization) and fiscal issues. These issues will be examined further in the following sections.

The Line Between Municipal And Statewide Concerns

This Nation's "federal structure, a unique product of the U.S. Constitution, parcels out authority among the various levels of government, federal, state, and local" (Stillman 1980, 127). Waldo pragmatically noted in the Constitution "the separation of powers is there--prominently and, for our purposes, permanently" (Brown and Stillman 1986, 153 (emphasis in original)). However, the role of local government in this constitutional system is not as clear -- local government is not "there" with permanence in the Constitution.

Home rule allows the state to focus on statewide issues and the local governments to focus on local issues (Committee for Economic Development 1966). Home rule developed "partly to prevent (a state from having) continuous political confrontations with local officials and partly to ease its agenda for dealing with statewide issues"; it is a "means for granting local units a measure of discretionary authority in a variety of fields" (Wright 1982, 356).

Drawing a clear line between local and statewide issues is difficult (Stedman 1975, 46) and by nature controversial (Bromage 1957, 117). As transportation, health, environmental, development pressures, and financial problems become multijurisdictional in nature the boundary of home rule authority -- the line between municipal and statewide issues -- becomes blurred.

Throughout history, "responsibilities were more divided than shared. The states and, through them, local governments were preeminent in domestic policy" (GAO 1990, 10). Tocqueville again provides a strong basis for the separation of governmental functions. Tocqueville "found that in its relation to the state, the township, as a corporation, was
sovereign like any individual" (Syed 1966, 28). To understand the consequences of the separation of government:

it is necessary to make a short distinction between the functions of government. There are some objects which are national by their very nature; that is to say, which affect the nation as a whole, and can be entrusted only to the man or the assembly of men who most completely represent the entire nation. Among these may be reckoned war and diplomacy. There are other objects which are provincial by their very nature; that is to say, which affect only certain localities and which can be properly treated only in that locality. Such, for instance, is the budget of a municipality. Lastly, there are objects of a mixed nature, which are national inasmuch as they affect all the citizens who compose the nation, and which are provincial inasmuch as it is not necessary that the nation itself should provide for them all. Such are the rights that regulate the civil and political condition of the citizens. No society can exist without civil and political rights. These rights, therefore, interest all the citizens alike; but it is not always necessary to the existence and the prosperity of the nation that these rights should be uniform, nor, consequently, that they should be regulated by the central authority" (Tocqueville, Chapter 18).

Tocqueville "noted that even though the townships were no longer wholly independent, they were subordinate to the state only in matters that were state-wide in scope. In their local concerns they were still free" (Syed 1966, 28-29).

This division holds true with the relationship between the state and local governments. Gulick says the essence of the division of these functions rests on geography, the ability of the government to support costs, the population served, the "age" of the activity, uniformity of control, and if the failure to perform the function can be damaging to people in other jurisdictions (Gulick 1966, 42-44). Referring to geography, Gulick contends if the service is required across the state it should be a state function; by ability to pay, Gulick suggests the government able to afford the service should undertake the activity; population served considers beneficiaries -- if the local population benefits it should be a local function, if the population is highly mobile a broader government should oversee the activity; with age of activity Gulick suggests the government undertaking an activity for many years should continue undertaking the activity even though the activity contemporaneously may be undertaken by a different level of government; with uniformity
of control, Gulick suggests if an activity requires broad uniformity (for example, a regulation) the broader government should head the activity; finally, if the activity, or lack of undertaking an activity can be damaging to people in other jurisdictions Gulick suggests "the function is unsuited to local control and, if required, becomes a state function" (Gulick 1966, 42-43).

There are statewide concerns, local concerns, and shared concerns (ACIR 1981, 12) and for the most part the courts have had to define the realm. Home rule cities have authority over local and municipal matters superseding state law (Mutz 1994, 2771). Regardless "of the source of municipal power, the principle of home rule has been limited in application to matters of purely local concern. Thus, municipalities are not empowered to act in matters of state interest" (Nolan 1993, 505). These individual powers are important for "(i)f home rule is to mean anything...it must be home rule in particular matters" (McGoldrick 1933, 303).

Lorch explains that "disputes about what is statewide and what is local usually center on powers claimed by home rule cities" and defining "just where (lies) the line between statewide and local is often fought out in court battles between home rule cities and the state when their separate claims to power collide" (Lorch 1983, 288). For example, the manner in which municipalities annex territory often is a statewide concern since annexation involves people beyond the municipality's boundaries. Elazar believes home rule does not change much in the state-local balance because most issues are of state concern (Elazar 1994, 287). Further, if someone challenges the issue in court, the court may apply Dillon's precedent thus leading the court to side with the state and decide the challenged issue to be of state concern (Saffell and Basehart 1997, 234).

Anderson, Newland, and Stillman suggest the issues at the "heart of the matter for local governments (are) how free they are to undertake the provision of services their citizens need or want, what taxes the community is permitted to utilize, what debt it can incur, and the limitations on the state legislature in imposing costly mandates or exempting certain types of property from the local tax base" (Anderson, Newland, and Stillman 1983, 194).
Defining Statewide Versus Local Concerns. Each state defines differently the line between state, local and mixed concerns (ACIR 1981, 13). Within Colorado for example, to distinguish local versus statewide concerns, the Colorado courts use a test (Denver v. Bossie 1928; People ex. rel. Hershey v. McNichols 1932) where "the state may enact overriding provisions where there is a question of public policy" (Littlefield 1962, 19). Since "home rule powers are intended primarily to allow the local government to address local problems, the state courts will decide whether a particular issue is only a local concern -- and thus ruled by the home rule charter -- or is a matter of statewide interest governed by general state legislation" (Bingham, R. 1991, 62).

Generally, state matters include: the administration of justice, the maintenance of a police force, fire protection, public health, sanitary regulations, conservation of resources, education, neglected or delinquent children, elections, public records, control of streets and traffic, public utility rates, conditions of work for municipal employees, boundaries, indebtedness, and taxation (McQuillin 1940, 561-565). Local matters generally include: street construction, special assessments for improvements, maintenance of sewer and drains, parks and playgrounds, eminent domain, providing water, light, and other utilities, municipal officers, municipal taxes, forms of local government, and salaries of employees (McQuillin 1940, 566-570). However, "(i)t is generally recognized that the broad police power of the state can be delegated to local and municipal government; when so delegated, the police power of a county or city is as broad as the police power exercisable through the legislature itself" (Farrar 1996, 54).

Urbanization has increased the challenges of separating realms; "many problems of the metropolitan area--the problems of the 'urban fringe,' the problems of the downtown area and of the slums of the core city, the problems of area transportation, of water and sewer supply, of regional planning and zoning, and the problems of the economic growth and development of an urban complex--present at the same time local and more-than-local problems. It is not enough to say that because a metropolitan area transcends an incorporated city's boundaries that the problems thereof become a statewide concern" (Littlefield 1962, 4).
The state and local debate is active in the government finance arena. For example, the courts have held that taxing by a municipality for revenue purposes is strictly a municipal affair (*West Coast Advertising Company v. City and County of San Francisco* 1939). Lorch explains that a typical home rule city may think levying a sales tax is purely a matter of local concern whereas many states courts consider the kind of taxes levied within the state a matter of statewide interest (Lorch 1983, 287-288).

**Judiciary Involvement.** Some have argued this judiciary involvement has weakened legislative authority for both municipalities and the states by whittling "...down the grant of home rule authority to the point where the municipalities are powerless to act" (Schaller 1961, 413). Researchers say this judicial involvement is symptomatic of the increased role of the judiciary in government (ACIR 1993, 33). Dye asserts home rule results in strengthening courts, attorneys, and defenders of the status quo (Dye 1997, 274) and Berman believes "(i)n practice, the actual scope of authority in every state is heavily influenced by judicial decisions. How state courts define the extent of local powers varies greatly from state to state, even when essentially the same home rule law is involved" (Berman 1996, 34).

The conflicts over local versus statewide functions "that materialized were placed before the courts, and it was the judiciary's unhappy lot to decide how much home rule was offered by the constitutional authorization to frame city charters. Unquestionably it was somewhat easier in those early days to delineate local powers from state powers, and the courts set about to do so at will. However, they soon became hopelessly enmeshed trying to separate powers in the so called 'twilight zone' which exists between matters of state and local concern" (Keith 1951, 125-126). The courts have been a problem for the home rule municipalities (Griffith 1974b, 211). Since "there are so few subjects which are of exclusively state or local concern, most courts have been forced to declare that more and more powers are within the jurisdiction of the state. The ultimate outcome of the process will be the complete destruction of home rule" (Keith 1951, 129).

What has actually happened is that home rule has taken much of the decision-making power from the state legislature but instead of being put in the hands of the local officials
that authority either has been assumed by the judiciary or lost in the jurisdictionally gray area between state and local governments (Schaller 1961, 413). Judicial "rulings rested largely on the particular way in which a state established its home rule policy" (Bromage 1957, 115). McGoldrick predicted the difficulty in drawing lines between statewide and local concerns will ultimately all but destroy home rule because the number of matters assignable completely and exclusively to local discretion will be few (McGoldrick 1933, 317). Court decisions "rendered many a city impotent in important particulars" (Griffith 1974b, 212).

**Legislative Involvement.** Since McGoldrick, municipalities have sought to strengthen their positions by better defining state and local issues. Demonstrably, "the courts realized the value of home rule as a broad political concept; but, when confronted with the reality of gouging out of the state's jurisdiction numerous powers which the state might be called upon to exercise at some future date, they reneged. Consequently, the frequent legal victories of the state over the municipality prompted other constitution writers to do their best to make more definite the grant of power" (Keith 1951, 126). For example, Colorado cities have power over all municipal and local matters (see also, New York, California and Ohio). California and Colorado both have constitutional amendments conferring "specific powers on localities after such powers had been declared by the courts outside the scope of the original general grant of power....The constitutions of Oklahoma, Michigan, Ohio, Utah, and New York also contain some degree of specification. Furthermore, the enabling acts of such states as Minnesota and Texas establish what amounts to a legislative definition of 'municipal affairs'" (The Council of State Governments 1946, 164).

Saffell and Basehart (1997) note "even when home-rule powers are extensive and self-enforcing, cities are by no means free from state supervision" (234). If the state law enables municipalities freedom with municipal issues "as a practical matter the administration of a city government does not become protected from state interference" (Littlefield 1962, 19). In fact, one should not exaggerate the independence from the state legislature home rule provides (Banovetz and Kelty 1987, 11). ACIR notes "(l)ocal
immunity may be easily overridden by a state statute treating the policy problem as one of 'statewide' rather than exclusively 'municipal' concern" (ACIR 1993, 16). Home rule charters "do not constitute an absolute grant of local self-government to the municipality. The powers granted are only those that pertain to matters of exclusively local concern. To the extent that general law charters already grant such powers to municipalities -- and many do -- the achievement of municipal home rule may prove to be a hollow victory" (Baker, J. 1971, 46).

In dividing functions, "once a locality decides to establish its own local governmental organization to meet its many special local needs, there is much common sense in letting that organization undertake also various localized 'state functions' so as to avoid another layer of local administration" (Gulick 1966, 45). "Although home rule was the result of a local desire to move away from complete legislative control by the state, it was never intended to create municipal autarky from the state. Rather, the concept was intended merely to allow governments to operate more effectively" (Nolan 1993, 505). But through court interpretations of functions research finds smaller and medium cities "have some freedom in determining the general structure of their city governments, but home rule often only slightly increases their substantive powers. For when all is said and done, the state legislature and governor usually control most of the assets and much of the political clout" (Burns, Peltason, Cronin, and Magleby 1984, 201).

There are, however, advantages for the state in having municipalities with strong home rule authorities. The separation of state and local government "is justified on grounds that local self-control is a positive good and must be maximized by allowing every locality the right to exclusive authority over those functions natural or suitable to local control" (Burns, Peltason, Cronin, and Magleby 1984, 201; Grodzins 1966, 320).

The Report of the Committee on State-Local Relations of the Council of State Government outlines the many disadvantages of increasing the prominence of state legislation dealing with local issues (Council of State Governments 1946, 146-148). The disadvantages of legislation focusing on local matters include: the burden of local legislation makes undue demands on the time and energy of members of the state legislature; it
accentuates the feeling of localism in state legislatures; it encourages log-rolling among members; legislators cannot take the time to understand each measure introduced; it causes instability and confusion in local government; local affairs are brought into the arena of statewide politics; and it removes control of local government from the hands of local citizens where it belongs (Council of State Governments as cited in Alderfer 1956, 149).

Legislators and jurists have continued their attempt to define the line separating municipal and statewide concerns resulting in the original relationship between the national, state, and local governments being altered considerably (Buechner and Koprowski 1976, 140). For example, home rule authority has prevented state interference in city-county contracting, pooling of local revenues, and combining governmental functions (Colman 1975, 22-23). As described below, urbanization and the growth of and within the municipalities further blurred the demarcating line for home rule -- the distinction between municipal and statewide concerns.

Two Paths For Municipal Home Rule

Missouri's constitutional grant created a "state within a state" system where the local government controlled local affairs and the state government had authority over statewide issues and concerns (Elazar 1972, 88). This state within a state approach envisioned a dual state and local sovereignty along the national model of federal and state governments (ACIR 1981, 19). In fact, state-local relations "reproduces in miniature...a great many of the same problems encountered in the field of Federal-State relations; the psychology of the two situations is closely parallel" (Graves 1964, 705). This model gives broad general authority to local governments to pass laws and ordinances relating to local affairs, property, and government with specific enumeration of certain powers (Buechner 1967, 139). Neither the principle of independent concurrent sovereignty nor the attempts to develop clear divisions of state and local authority have prevailed (Valente 1987, 103). This approach is inflexible since a municipality needs a constitutional amendment to change the distribution of authority and narrow judicial interpretation has limited the scope of local affairs (ACIR 1981, 19).
A second approach to home rule referred to as "devolution of powers" evolved in 1953 as outlined by Jefferson B. Fordham (Fordham 1949, 74-79). The state within a state approach left to the judiciary to define the line between statewide and local affairs (Coe 1982, 113). Fordham's approach rejects the state within a state approach and removes the judiciary from the task of determining the dividing line between state and local powers; this responsibility instead shifts to the state legislature (Coe 1982, 113). It requires positive enactment to deny power to home rule municipalities (Buechner 1967, 139). The effect is "local governments can exercise any power the legislature has power to devolve on a non-home rule city, and which is not denied by general law or by their home rule charter" (Coe 1982, 113-114). Buechner considers such a home rule charter an instrument of limitation--the local government has all the powers potentially available under a state constitution by legislative delegation except as limited by the charter or statute (Buechner 1967, 140).

Some public administrators continue to examine a preferred basis for home rule. Vaubel provides a general evaluation of home rule where he examines state control, its application and its scope (Vaubel 1991, 845). His proposal is that a state should adopt a constitutional provision that reads: "A municipal corporation may exercise any legislative power or perform any function within its boundaries that is not in conflict with state police power regulations applied to individuals, private groups or private corporations statewide." The National Municipal League argued the need for a good, strong charter (National Municipal League 1952) and Gulick suggested a municipality should have broad discretion to design the form and structure of its own local government directly through a home rule charter (Gulick 1964).

Both the state within a state and devolution of powers approaches are in use today (Littlefield 1962, 68). The Advisory Commission on Intergovernmental Relations recommended in 1962 (ACIR 1962, 72) and reaffirmed in 1981 (ACIR 1981, 8) their devolution of powers approach as the preferred basis for municipal home rule.