Vanderbilt Law Review

Volume 8
Issue 4 *Issue 4 - A Symposium on Local Government Law--Foreword--Local Government in the Larger Scheme of Things*

Article 1

6-1955

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VANDERBILT LAW REVIEW

VOLUME 8 JUNE, 1955 NUMBER 4

A SYMPOSIUM ON LOCAL GOVERNMENT LAW

FOREWORD

LOCAL GOVERNMENT IN THE LARGER SCHEME OF THINGS

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The growing interest displayed by the law reviews in the legal problems of local government reflects a gratifying increase in research and scholarly activity in the field.[1] This interest on the part of law school scholarly media is especially noteworthy, since the world of legal education has a peculiar responsibility to identify and engage in thoughtful study of the great legal problems of contemporary society.

In this brief paper an effort is made to place the problem of making appropriate legal provision for local autonomy in more adequate perspective. That is a rather ambitious venture. One is moved by the just demands of proportion and interrelationship in human affairs to undertake it. Those who are sensitive to the importance of viewing the rôle of the national state in the broader international perspective are a growing company.[2] There is occasion for acceleration of a parallel development in outlook as to local units of government.

This is hardly the day for parochialism. But to say this is not to attack local self-government. It is by way of suggesting that an adequate conception of the rôle of local government can be gained only by regarding the political organization of society in proper perspective. There is nothing ultimate about any form of political organization or any conventional governmental unit. Men resort to political

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1. See, for example, in addition to the present symposium, *Municipal Home Rule in Ohio*, 8 OHIO ST. L. J. 1 (1948); *Florida Municipal Law, A Symposium*, 6 U. FLA. L. REV. 275 (1953); *Land Planning in a Democracy*, 20 LAW & CONTEMP. PROB. 197 (1955); *Urban Housing and Planning*, 20 LAW & CONTEMP. PROB. 351 (1955).

2. This is not to say that the vote is unanimous. One interesting straw in the wind is the current posture of Senator Bricker's treaty power limitation proposal. Upon adjournment of the first session of the Eighty-fourth Congress, S. J. Res. 1 still languished in committee in the Senate.

organization to achieve individual and group ends. This being the case, it appears appropriate to distribute governmental powers and jurisdiction on a basis responsive to human needs. Put a little differently, the community structure of society should be employed realistically as the framework for political organization so that power is proportioned to function and that jurisdiction and responsibility have the same reach as the service or problem area.

In the state orientation there is a very important choice between use of the state constitution as the direct instrument for allocating governmental powers and reliance upon the legislature as a continuing power-distribution organ in the state. As between the three branches of the state government the primary allocation is, of course, made by the constitution. More or less discretion may be left to the state legislature even at this level. The devolution of authority to local units has traditionally been a function of the state legislature under the strongly prevailing doctrine of legislative supremacy over local government.[3] It is here that the basic choice of political method presents great difficulty. What factors militate in favor of modifying legislative supremacy by constitutional amendment?

One of the outstanding features of the first state constitutions was the preeminent position of the state legislature.[4] In marked contrast is the relatively weak and ineffectual posture of the legislature under the modern state constitution. Distrust of the state legislature has long been a conspicuous characteristic of American political life. This lack of confidence has been variously expressed in constitutional limitations, both substantive and procedural. The traditional theory of plenary state legislative power has, thus, been narrowed, far beyond the effect of bills of rights, by specific constitutional provisions. Familiar examples, in the realm of substance, can readily be drawn from the area of finance. Certain tax revenues may be constitutionally dedicated to particular purposes.[5] A legislature may be without power to levy a graduated income tax.[6] There may be no power in the legislature to incur state debt, with the result that a constitutional amendment is necessary for each state bond issue.[7] It is in this way that a legislature, without the power of decision, may pass the buck to the

3. For a very recent judicial reiteration of this familiar proposition, see Opinion of the Justices, 114 A. 2d 879 (N. H. 1955).

4. GREEN, CONSTITUTIONAL DEVELOPMENT IN THE SOUTH ATLANTIC STATES, 1776-1860, 88 (1930).

5. There is the familiar example of constitutional amendments dedicating motor vehicle license and fuel taxes to highway purposes. See, for example, OHIO CONST. art. XII, § 5a.

6. This is the effect of Pennsylvania's tax uniformity clause, as interpreted by the courts. PA. CONST. art. IX, § 1. Butcher v. City of Philadelphia, 333 Pa. 497, 6 A. 2d 298 (1938).

7. This is the practical effect of a ban on state debt except to supply casual deficiencies of revenue, repel invasion, defend the state in war, or to pay existing debt. PA. CONST. art. IX, § 4.

voters on hand-out proposals not tied to any plan of raising revenues to pay the piper.

The legislatures are not even given the continuity and organizational freedom of action to exercise well whatever substantive powers they may have. Only a few meet annually in regular session.[8] Most have biennial regular sessions.[9] The biennial session is, in many, confined to a relatively brief period.[10] Special sessions may be convened only on call of the governor and may consider nothing beyond the call.[11] The prevailing theory that a legislature is functus officio, after adjournment sine die until duly reconvened, hampers interim activity through regular standing committees.[12]

One finds in most state constitutions a number of rules of legislative procedure and requirements as to form and style of legislation.[13] Some, like the utterly obsolete requirement as to readings of bills, long since lost whatever *raison d'être* they may once have had.[14] Others, like the unitary subject provision, concededly have some genuine policy content.[15]

Since Lord Bryce penned his well-remembered dictum about the failure of American city government,[16] there has been very real progress in American municipal government and administration, progress not generally matched in county government[17] and in the legislative departments of the states. At this day the state legislature stands out as our most "conspicuous failure." This is not an indictment of legislators; it is a charge that we as state citizens have not developed strong

8. ZELLER and others, AMERICAN STATE LEGISLATURES 89 *et seq.* (1954).
9. *Ibid.*
10. In a number of states the limit is sixty days. In Alabama there is a ten-day organization session in January followed by a session of not over thirty-six legislative days beginning in May. ALA. CONST. Amend. LVII.
11. TENN. CONST. art. III, § 9.
12. See Herwitz and Mulligan, *The Legislative Investigating Committee, A Survey and Critique,* 33 COL. L. REV. 4, 11 (1933).
13. See the tabular material on *Legislative Procedure* in COUNCIL OF STATE GOVERNMENTS, BOOK OF THE STATES 1954-55, 103 *et seq.* (1953).
14. Present day legislators can read. There are other, simpler ways of alerting them as to the existence of bills, and reading to a legislative assembly has no kinship with thoughtful deliberate study. The requirement, so far as genuine reading in full goes, is a dead letter in any event.
15. See, for example, PA. CONST. art. III, § 3. It is designed to exact responsible action on one thing at a time, as distinguished from the compromise and bargaining involved in multi-subject logrolling. It is calculated, as well, to protect the executive from disparate riders, which deny him freedom to make a clear-cut exercise of his power to approve or veto. The trouble is that the requirement is coupled with a mandate that the subject of a bill be clearly expressed in the title and the two together afford a ready basis for constitutional attack in the courts and, thus, hardly helps to assure the security of transactions. See Purdon's copious annotations to the Pennsylvania provision. PA. STAT. ANN. (Purdon, 1930 and current pocket part), PA. CONST. art. III, § 3.
16. I AMERICAN COMMONWEALTH 608 (1888).
17. Tennessee is a prime example of backwardness in county government. Justices of the peace, constables and five other county officers are given constitutional status. TENN. CONST. art. VI, § 15 and art. VII, § 1. A Tennessee county governing body is the court of quarter sessions, made up of the justices of the peace of the county.

and responsible state legislative institutions. So long as we expect little of our state legislative bodies and relegate them, with curtailed powers, to a part-time role in the governmental scheme of things, the primary policy-making branch of state government will fail to play adequately its vital role.

The deficiencies of the state legislatures cannot be fully overcome by revising methods of districting and apportionment to assure fair and balanced representation, important though such reform would be. From the standpoint of the urban centers, which are generally underrepresented, population-wise, reapportionment would be no guaranty of legislative respect for local autonomy. Members of the so-called legislative delegation from a particular city may try to be a super local governing body, especially when one major party is in power in the legislature and the other in the city government.[18] The more fundamental reform that is indicated is, we repeat, to make the legislatures truly responsible and, to that end, to assure them the substantive power and the organizational and procedural freedom proportioned to their responsibilities.

This, however, is not to say that nothing should be done about districting and apportionment. It can be urged with force that the problem of representation should be adequately met before or concurrently with the restoration of the legislature to a position of power and responsibility. Rural domination of a legislature in this metropolitan civilization is not representative government. It hardly satisfies the city folk to be told, as they were in Ohio in 1952 by persons opposing a constitutional convention, that the rural citizen's vote is worth more because he is more stable and self-reliant and less susceptible to radical influences![19] Nor will they get fair representation by decrying existing conditions. A sustained, organized effort is indicated.

Consideration of the problem of improving the state legislative institution and processes calls for reexamination of bicameralism. The major historical reasons for bicameralism in the Federal Government do not exist at the state level. The great compromise over House and Senate representation helped achieve a federal union.[20] A state is not a federation of local units. It is a single political entity. One finds, moreover, that a particular state constitution may make little distinc-

18. Desmond, *States Eclipse the Cities*, 44 NAT'L MUNIC. REV. 296, 298 (1955).

19. The writer was there; he heard the argument seriously urged.
It should be borne in mind that geographic representation is a different matter. Its rational basis, one suggests, is that geographic areas have interests which should have some legislative representation regardless of population. The same could be said, of course, of economic representation, which is achieved now principally through the unofficial medium of lobbying.

20. MCLAUGHLIN, CONSTITUTIONAL HISTORY OF THE UNITED STATES 163 *et seq.* (1935).

tion between the two legislative houses with respect to the qualifications and terms of office of members.[21]

Perhaps the best argument for the unicameral legislature is that it fixes responsibility in a single body and is calculated to focus party responsibility as well. This is in keeping with the view that we should give the legislatures genuine scope, that we should trust them. Along with discretion goes accountability for its exercise, but diffiusion of responsibility makes it difficult to determine accountability effectively.

The relationship of this discussion of the state legislature to local government is not difficult to make out. As the legislatures have been constituted, they have been looked upon with something considerably less than filial respect and confidence by local units, especially the larger cities. This is understandable. It underlies the home rule movement. The assumption is that we cannot depend upon the legislatures to provide local government the powers and machinery, the independence of decision and execution, requisite to the conduct of public administration at the sub-state level on a responsible basis. The prospect of adequate legislative recognition of local problems and needs is considered so slight by the proponents of constitutional home rule that they regard constitutional amendment as the only practical recourse. They say, in effect, that life is too short; local government cannot afford to wait on the vague prospect that the legislative institution will undergo the desired improvement. It is a familiar theme. Let's by-pass the legislature and provide for this or that problem by modifying the organic law.

One may be permitted to question the approach which has just been described. To recognize the deficiencies of the state legislative institution is not to commit us to perpetuate them. We are told that the situation looks incurable, so we must, by constitutional provision, protect municipal government from it. This, however, is to prefer the tendency toward rigidity and the creation and continuance of artificial governmental jurisdictions, which would characterize an unqualified constitutional devolution of power to local government, to meeting head on the problem of vitalizing our state legislatures. It is to give slight, if any, heed to the hard, practical truth that a favorable climate of judicial, legislative and public opinion is indispensable to home rule, in any event.[22] It is the way of expediency. It regards too lightly the need of fiexibility in governmental arrangements.

Preoccupation with assured provision for local autonomy can foster

21. See, for example, OHIO CONST. art. II, § 2 and art. XV, § 4 (no difference in qualifications or terms of office).

22. A change in the judicial climate has wrought wonders in Ohio. See the discussion in AMERICAN MUNICIPAL ASS'N, MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE 11 (1953). Cf. Morris v. Roseman, 162 Ohio St. 447 (1954), criticized in 4 MUNICIPAL LAW SERVICE LETTER (Dec. 1954) and defended in 5 MUNICIPAL LAW SERVICE LETTER (Jan. 1955).

imbalance and hampering rigidity both in the distribution of governmental powers and in the governmental configuration. One need not labor the obvious complexity of the modern community, characterized, as it is, by marked interdependence of individuals and groups. In terms of the reach of governmental problems local unit jurisdictional lines are highly artificial. The legislature is the active, continuing power distribution organ in the state political structure. The problems of a dynamic, interdependent society suggest greater rather than less legislative freedom and responsibility in this respect. There is, doubtless, no better illustration of this than a major metropolitan area.

Contemporary America is a metropolitan civilization. Over half our people live in metropolitan areas.[23] Roughly one-fourth live in such areas, which now or may soon overrun state lines.[24] Yet we are hardly on the fringe of the problem of achieving genuine metropolitan government with balanced recognition of metropolitan interests and those of smaller community units within the metropolitan complex. We have had the ingenuity to establish multi-state *ad hoc* units for limited purposes, but have only just begun to consider seriously the legal and practical difficulties involved in setting up multi-state general function metropolitan units.

In some of the larger metropolitan areas there are scores of local units all operating almost exclusively in their own relatively limited domains. It is not unlikely that in a given state the statutes governing incorporation of municipalities are so lacking in policy content that additional incorporations may be easily achieved and further complicate the problem of metropolitan integration. At the same time, annexation laws hostile to municipal expansion may block extension of the corporate limits of a primary city.[25] If the powers and very independent existence of a peripheral municipality, for example, are placed beyond legislative control by the state constitution, that small community may have a veto, so far as it is concerned, on all efforts at metropolitan integration.[26]

It is true that there has been some rather ingenious improvisation in dealing with problems which overreach local limits. This has included resort to extraterritoriality, liberal annexation laws, functional consolidation, intergovernmental service contracts, *ad hoc* units of government, expansion of county powers, city-county consolidation and

23. As of 1950 there were 84,500,680 people in standard metropolitan areas and 66,196,681 outside of them. INTERNATIONAL CITY MANAGERS' ASS'N, MUNICIPAL YEAR BOOK 1955, 28.

24. COMMISSION ON INTERGOVERNMENTAL RELATIONS, A REPORT TO THE PRESIDENT FOR TRANSMITTAL TO THE CONGRESS 51 (June, 1955).

25. Here again, we look to Ohio for an example. Existing Ohio legislation on original incorporation and territorial change is "hopelessly outmoded" and "never had much policy content." Fordham and Dwyer, *Municipal Incorporation and Territorial Changes in Ohio*, 13 OHIO ST. L. J. 503, 532 (1952).

26. Note the Texas doctrine as to the indestructibility of a home rule city. City of Houston v. City of Magnolia Park, 115 Tex. 101, 276 S. W. 685 (1925).

municipal consolidation.[27] A notable development was the recent creation of the federated Municipality of Metropolitan Toronto with constituent units continued in existence for various functions not conceded to be clearly metropolitan.[28] Even in Toronto there is a long way to go beyond the interesting start which has been made. There are vexing questions as to further functional extensions of metropolitan jurisdiction and of intergovernmental relationships within the metropolitan framework. For example, Metro controls a network of major streets but police administration and law enforcement are responsibilities of the constituent units.

The thrust of this discussion is that metropolitanism presents problems, which in importance, immediacy and difficulty appear to overshadow the struggle for greater municipal home rule. At the very minimum, the realities of contemporary life tell us that local autonomy should be viewed in the metropolitan setting.

It cannot be said that, thus far, such an outlook has been achieved. Home rule thought has not, for the most part, been regeared in a way to adapt to metropolitan developments. It has, however, been very much alive.

In recent years interest in so-called municipal home rule has reached a peak. Since 1950 five states have adopted constitutional amendments bearing on the subject.[29] This brings the total of states with some sort of constitutional recognition of home rule to twenty-three.[30] In each of at least a half dozen additional states there are home rule stirrings.[31] The dominant idea in these recent developments has been that home rule, even though it be legislative and not constitutional in character,[32] is calculated to afford greater local autonomy, to bring some measure of freedom from legislative domination.[33]

There is no occasion to undertake here a thorough review of home rule in theory and practice. An excellent general survey of the subject

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27. Jones, *Local Government Organization in Metropolitan Areas: Its Relation to Urban Redevelopment* 477, 527 *et seq.* (Part IV of WOODBURY AND OTHERS, THE FUTURE OF CITIES AND URBAN REDEVELOPMENT, 1953).

28. Stats. of Ontario (2 ELIZ. II) c. 73 (1953).

29. GA. CONST. art. XV, § 1; LA. CONST. art. XIV, § 40; MD. CONST. art. XI-E (see art. XI-A as to Baltimore); R. I. CONST. Amend. XXVIII; TENN. CONST. art. XI, § 9 (Amendments 6 and 7, 1953).

30. The others are: ARIZ. CONST. art. XIII, §§ 2 and 3; CALIF. CONST. art XI, § 6 *et seq.*; COLO. CONST. art. XX, § 1-6; MICH. CONST. art. VIII, § 20 *et seq.* MINN. CONST. art. IV, § 36; MO. CONST. art. VI, §§ 19 and 20; NEB. CONST. art. XI, §§ 2-5; NEV. CONST. art. VIII, § 8; N. Y. CONST. art. IX, §§ 9, 11-13; OHIO CONST. art. XVIII; OKLA. CONST. art. XVIII, §§ 2-7; ORE. CONST. art. XI, §§ 2 and 2a; PA. CONST. art. XV, § 1; TEX. CONST. art. XI, § 5; UTAH CONST. art. XI, § 5; WASH. CONST. art. XI, §§ 10 and 11; W. VA. CONST. art. VI, § 39 (a); WIS. CONST. art. XI, § 3.

31. These include Connecticut, Delaware, Florida, Illinois, Indiana, Massachusetts and North Carolina.

32. In no case was genuine constitutional home rule granted.

33. In Rhode Island home rule theory was so novel that it did not take hold of the minds of the judges in the first test case. State of Rhode Island *ex rel.* Flynn v. McCaughey, 99 A. 2d 482 (1953).

is to be found in the recent report of the Chicago Home Rule Commission.[34] By way of more specific description of what we are talking about, the following statement bears quoting:

> "Existing constitutional provisions on municipal home rule can be classified in terms of a variety of factors. The most conspicuous classification factor is self-execution. Home rule provisions may be self-executing as to both the devolution of substantive powers and charter-making, as to one or the other of these or as to neither. To the extent that legislation is necessary to render any part of home rule available the home rule pattern can be said to be legislative. Full-fledged constitutional home rule is self-executing in both respects and puts some matters considered local in character beyond legislative control.
>
> "Another classification is based on the relationship of the grant of substantive powers to the process of charter-making. Under what may be termed the classic theory of home rule, the adjective process of charter-making must be set in motion to render substantive powers available. In contrast with this is a plan under which substantive powers are granted directly by the constitution without regard to charter-making."[35]

It is apparent that legislative home rule leaves the legislature in the saddle unless the constitutional provision on home rule is to be interpreted, as urged on behalf of Philadelphia, to mean that the legislature is a one-way conduit of municipal powers.[36] That, as yet unestablished, theory does not comport with the traditional order of things under which a state legislature may take away what it may grant, and has not been accepted at every hand even by Pennsylvania proponents of home rule.[37]

The basic design of constitutional home rule is to place some areas of local autonomy beyond legislative control. What might be called the conventional home rule approach has been the employment of the state concerns-local affairs dichotomy with a view to assuring home rule as to local affairs.[38] This distinction is so fundamentally deficient in logical core that the courts had great difficulty with it right from the start. It is rather ironical that, with sharp awareness of this problem, the members of the Ohio Constitutional Convention of 1912 seized upon another set of general terms, "all powers of local self-government,"[39] which is affected by the same difficulty. More recently, we have been told that all will be well if we simply insert the word "purely" before

34. CHICAGO HOME RULE COMMISSION, REPORT 193 *et seq.* (1954).

35. AMERICAN MUNICIPAL ASS'N, MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE 5, 6 (1953).

36. This is the position taken by Abraham L. Freedman, the able City Solicitor of Philadelphia.

37. See White, *Constitutional Changes in Matters of Home Rule and Municipal Government,* 25 TEMP. L. Q. 428 (1952).

38. This does not, of course, characterize legislative home rule.

39. OHIO CONST. art. XVIII, §§ 3 and 7.

"local affairs" or "local self-government."[40] One supposes that this is a way of construing "local affairs" strictly, but that is not to come to grips with the real question as to what is the nature of a local concern.

This is an appropriate juncture at which to question pointedly the assumption that governmental powers and functions are inherently either general or local in character. Perhaps a lone example will suffice. Urban traffic presents acute governmental problems some of which, at this stage in the life of a dynamic, mobile civilization, appear appropriate for local policy determination and administration and others not. We have state rules of the road and, in fact, a strong movement for uniformity of state law on the subject. At the same time, control of the urban traffic flow is left largely to local hands. One would not expect it to be seriously urged that traffic control is inherently anything in particular, from a governmental standpoint, even though he might be tempted to declare it inherently difficult in character!

This general-local affairs distinction ranks with the governmental-proprietary test in tort and other matters as a major contributor to fuzziness of local government law doctrine and relatively high unpredictability in application.[41] The former is an assumption constantly undercut by changes in society and the resulting responsibilities of government. The latter is an arbitrary classification of the business of government, which somehow denies some public activities the quality of "governmentalness" although conducted by government. It has lost some ground in the judicial forum due, in considerable part, no doubt, to relentless critical commentary of legal scholars.[42] Both deserve repose in limbo.

The National Municipal League has, in its draft of a Model State Constitution, undertaken to meet the core problem of formulating a home rule grant by, first, expressing a broad devolution of power and, second, spelling out a partial enumeration of home rule powers with a view to putting them definitely in the local orbit.[43] This enumeration, however, is made subject to the power of the legislature to enact laws of statewide concern uniformly applicable to every city.[44] Thus, we find the League riding the highly vulnerable state-local concerns distinction into a climate of intellectual confusion more congenial to litigation than deliberate policy adjustments.

Nor is specificity a happy resolution of the basic difficulty. It is only fair to say that the NML draft is not necessarily inflexible. With

40. COMMITTEE ON STATE-LOCAL RELATIONS OF THE COUNCIL OF STATE GOVERNMENTS, STATE-LOCAL RELATIONS 172 (1946).
41. CHICAGO HOME RULE COMMISSION, REPORT 219 *et seq.* (1954).
42. For references in the torts field see Repko, *American Legal Commentary on the Doctrines of Municipal Tort Lability*, 9 LAW & CONTEMP. PROB. 214 (1942).
43. See Bromage, *Home Rule-NML Model*, 44 NAT'L MUNIC. REV. 132 (1955).
44. *Ibid.*

changes in conditions a court might consider that to be a state concern which was formerly otherwise regarded. But this depends on the unavoidably unpredictable course of judicial interpretation. As to enumerated affairs judicially categorized as local, moreover, the desideratum of local autonomy is simply assumed to outweigh the value of freedom of legislative action to make provision for the effective meeting of problems on an adequate geographical and social base.

Two years ago the American Municipal Association published "Model Constitutional Provisions for Municipal Home Rule," in the drafting of which this writer had a hand and which he likes to think brings a fresh approach to the key problem of home rule theory.[45] Certainly it can be said that this draft has provoked reflection and discussion, and that, without more, is encouraging.

The central idea of the AMA draft is that, while no substantive municipal powers are to be put beyond legislative control, a home rule municipality, as such, receives by direct constitutional devolution, all substantive powers, which the legislature could under the constitutional system of the state, devolve upon it, except those expressly denied by statute or the home rule charter.[46] Under such a dispensation a charter city would have all that the legislature could give except to the extent expressly denied, which is substantially the reverse of the traditional pattern.

It is readily granted that the AMA theory is not so clear and sharp as to be practically self-interpreting. It leaves room for constitutional questions as to what powers a legislature may devolve upon a local unit. It wipes out, however, the major trouble zone created by the general-local concerns distinction. This significant feature of the draft seems to have eluded the Chicago Home Rule Commission. In the splendid report of that body there is a review of the AMA and other proposals to meet the central problem of home rule theory, which concludes as follows:

"None of the proposals appears to come to grips with the basic difficulty, namely, the evaluation and determination, by generally acceptable criteria, of the powers which should rest within the orbit of municipal autonomy and the nature and scope of reserved legislative supremacy."[47]

In defense of his own handiwork, the writer "allows" that the AMA draft does come to grips with the basic difficulty. The Chicago comment presupposes fixed criteria. The AMA draft, on the other hand, both recognizes that local autonomy does not depend upon a constitutional formulation making a local unit an *imperium in imperio* and meets the so-called basic difficulty by giving charter cities all powers

45. See Fordham, *Home Rule-AMA Model*, 44 NAT'L MUNIC. REV. 137 (1955).
46. See Section 6 of the draft and supporting comment.
47. CHICAGO HOME RULE COMMISSION, REPORT 222 (1954).

which the legislature could grant them, subject to the continuing authority of the legislature to deal with any governmental problem as the occasion might require. This may not be the best constitutional attack on the problem, but it does provide a rational approach unclouded by traditional home rule theory.

The fact that a favorable climate of opinion is very important to the maintenance of genuine local autonomy, grounds the suggestion that it is quite possible to make effective legal provision for local self-government without constitutional change. One of the most effective devices directed to this end is a general law giving the electors of a municipality the option of a number of forms of government supported by a liberal grant of substantive powers.

When New Jersey revised the state constitution in 1947, home rule was considered and deliberately rejected.[48] The legislature was left with authority to provide an optional charter system and the courts were expressly exhorted to interpret constitutional and statutory provisions relating to municipalities liberally in their favor.[49] A liberal optional charter law has since been enacted. One of its most interesting features is provision for election of a charter commission to study the governmental needs of the community and come forward with a recommendation as to choice of plan of governmental organization. The range of choice embraces retention of existing charter unchanged, legislative amendment of the existing charter, legislative enactment of a new charter by special law and adoption of any one of the optional forms under the general optional charter law. Adoption of an optional plan is accomplished by referendum.

With respect to substantive powers, it is to be noted that the optional charter law makes a generous devolution of authority capped with the declaration that the object is to grant the maximum local self-government possible under the New Jersey Constitution.[50]

Perhaps it has been made to appear that "local" is a pretty relative term, that the problems of local government should be approached in a perspective as broad as the actual reach of the problems. It is good that responsibility for policy decision and execution be rested upon the organized community. There is, however, always the question as to what is the appropriate community for the particular governmental function. The needs of a dynamic metropolitan civilization will not be met by resort to a static concept of state-local relations to answer that question. Given a fairly favorable climate of opinion, local autonomy can be preserved at the same time that the requisite adaptability in governmental arrangements is assured.

48. Faulkner, *New Road to Home Rule*, 44 NAT'L MUNIC. REV. 189 (1955).
49. N. J. CONST. art. 4, § 7, par. 11.
50. N. J. STAT. ANN. 40:69 A-30 (Supp. 1954).