

Measuring Local Government Land Use Autonomy

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The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; ... and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.

(Madison 1787)

Overview

- Introduction
- Local Government Autonomy
- Land Use Autonomy
- Classifying and Ranking Land Use Autonomy
- Conclusions

Sprawl and Local Government Autonomy

- Communities struggling with rapid growth
- Who should manage growth and how?
- Is more local government autonomy good or bad for Smart Growth?

Background

- Zimmerman (1981) Index
 - structure
 - function
 - finances
- No index focuses on land use autonomy
- Zimmerman Index is dated

This study

- State statutes and constitutions
- Case law
- Literature
- Secondary sources
- Outgrowth of “Is Home Rule The Answer? Clarifying The Influence Of Dillon's Rule On Growth Management”, Richardson, Gough and Puentes (The Brookings Institution 2003)

Local Government Autonomy

- The Tenth Amendment of the *United States Constitution* provides that, “[t]he powers not delegated to the [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- “[Local governments] are the creatures- mere political subdivisions- of the state, for purpose of exercising a part of its power.” (*Atkins v. Kansas* (1903))

Existing Literature

- Some authors bemoan lack of local government autonomy (Frug 2001, Barron 2003)
- Others state that local governments have too much autonomy (Cashin 2000, Garnett 2005)

“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.”

Judge John Dillon, Iowa Supreme Court

Dillon's Rule

It is a general and undisputed proposition of law that a municipal corporation possesses 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 declared objects and purposes of the [local government], not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the [local government], and the power is denied.

Clark v. City of Des Moines (1865)

Dillon's Rule and Local Government Autonomy

- 39 States use Dillon's Rule, at least from some local governments
- Only 10 states have explicitly rejected Dillon's Rule (Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina and Utah)
- Dillon's Rule and local government autonomy are not related

Richardson, Gough, Puentes (2003)

Components of Local Government Autonomy

- Initiative- the power of localities to regulate the behavior of residents and in their own interest/preference
- Immunity- the power of localities to operate without oversight from the state

Clark (1984)

Clark Typology for Local Government Autonomy

Type 1: initiative and immunity
(total/absolute autonomy)

Type 2: initiative and no immunity

Type 3: no initiative and immunity

Type 4: no initiative and no immunity
(no local autonomy)

Clark Typology Applied to Local Government Land Use

- Type 1- 10 states
- Type 2- 29 states
- Type 3- 0 states
- Type 4- 13 states*

* Adds to more than 50 because of dichotomies between cities and counties in 2 states

Clark Typology and Growth Management

- Type 2 seems to be advocated in the growth management literature (Oregon is a prime example. Also includes Florida, Georgia and Maryland)
- Type 1- I maintain that Virginia falls into this category, but is moving to Type 2
- Type 4 includes Hawaii and Vermont

Measuring Local Government Land Use Initiative

- 18 different land use tools
- If a state holds a particular power- 1 point
- If the state delegates that authority to local governments, but places substantial limitations on that power- $\frac{1}{2}$ point
- If only certain types of local governments may exercise the authority – $\frac{1}{2}$ point
- If the state fails to specifically give authority to local governments to employ a particular tool- 0 points

Comprehensive Planning Tools

- Comprehensive plan
- Capital improvement program

Zoning Tools

- Zoning
- Conditional zoning

Subdivision Tools

- Subdivision ordinance
- Adequate public facilities (several different tools merged into this)

Paying for Development

- Impact fees
- Revenue sharing
- Tax increment financing

Targeted Development

- Targeted development areas
- Urban growth boundaries
- Moratoria
- Planned unit development

Land Conservation

- Conservation easements
- Transferable development rights
- Use value or differential assessment
- Agricultural/conservation districts

And the Winners Are

Virginia- 15.5

Florida- 15

Maryland- 14

California- 13.5

Washington- 13

New Jersey- 12.5

New York- 12.5

Connecticut- 12

Massachusetts- 12

Minnesota- 12

Tennessee- 12

The Losers Are:

Texas- 7

Missouri- 6.5

Hawaii- 6

New Mexico- 6

Wyoming- 6

North Dakota- 4

Conclusions on Local Government Land Use Initiative Table

- Most states cluster between 7 and 10 tools
- Limitations mean that most states have the basically the same initiative

Conclusions

- Present debate focuses on the wrong issue- land use authority must be shared
- Initiative v. immunity
- The key is **HOW** local and state governments implement land use tools, not **HOW MANY**
- Lack of capacity is not addressed
- More research is need to gauge to assess reality v. myth