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## Who should “rule at home”?

Posted on September 24, 2020 by Shelton Stromquist

Early in September, Polk County Iowa District Judge Jeffrey Farrell ruled that state officials had the right to overrule local school boards in decisions about when and how they might open for instruction during the current pandemic. He asserted, “Whether right or wrong, that is their decision to make.” That view reflects longstanding contention over what powers local governments have and whether state (or federal) governments can limit or dictate those powers.

We’ve seen this fight revisited again and again in recent years, as cities and counties have sought to address pressing issues like raising the minimum wage, regulating firearms, banning plastic bags, limiting cooperation of local police with ICE’s round ups of undocumented immigrants, and a host of other issues. Many local governments have met these challenges head on. But faced with conservative Republican control of legislatures, they have been swimming against what seems like an overwhelming tide of legal precedent favoring states.

Has it always been this way? Is there no remedy for protecting local governments’ “home rule”?

The US constitution was silent on the powers of local government, even as it carved out a domain for state authority vis-à-vis the federal government. In the colonies relatively isolated cities had “incubated” traditions of self-government that nurtured a strong tradition of “local control.” But in the era of constitution-making, James Madison worried about the insurgencies that might gain force in cities and towns. As he wrote in Federalist #10: “A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is more likely to taint a particular county or district than an entire state.” Alexis de Tocqueville gave voice to similar elite fears of local “mob rule” that might require “an armed force which, while remaining subject to the wishes of the national majority, is independent of the peoples of the towns and capable of suppressing their excesses.”

## SOCIALISTS ARE DEMANDING HOME RULE FOR MILWAUKEE

**Bills To Give Party Full Sway In Accomplishing Pet Schemes of Government To Go Before Legislature---Leaders Outline What They Hope To Accomplish By the Reforms Proposed.**

MILWAUKEE, WIS., Dec. 27.—The session of the Wisconsin legislature, which begins immediately after the first of the year, will see a flood of measures affecting Milwaukee, the largest number being intended to allow the Social-Democratic administration to conduct the socialistic enterprises which have so far been lacking in the work of the new party in Milwaukee, owing to constitutional restrictions.

The latest step in this direction was made when the city council, dominated and controlled by the Social-Democrats, voted to order the city attorney to draw up forty bills, each of which will allow the city to engage in some enterprise now forbidden.

Under the Wisconsin law, the city is limited to a narrow range of enterprises, and the first aim of the Socialists is to secure entire home rule, so that the legislature cannot interfere with any project started by the Socialists, and that the Socialists will not be forced to ask for legislative action before embarking on new projects.

The list of measures proposed for the consideration of the legislature is wide. Some Milwaukee people think that the scope of the bills is so wide that there will be little chance of any of the projects being carried out; that the multiplicity of propositions will cause a failure of actual accomplishment.

### WANT HOME-RULE LAW.

The bills to be introduced extend from big projects to the smallest propositions of the Socialists, the widest of the measures being one to give Milwaukee home rule. At present the Socialists' strength in the legislature is not sufficient to force the old parties to grant the demands, and the Socialists want a bill passed to make the city its own ruler absolutely in all cases where the rights of other parts of the State are not affected.

One of the measures to be introduced, at the request of Alderman-at-large Victor L. Berger, who becomes a Congressman on March 4 and who is the uncrowned ruler of the local Socialist regime, though only an alderman, is permission to erect and maintain four municipal hospitals, one to be a maternity hospital. At present the city has one emergency hospital and an isolation hospital for contagious cases, but they are not prepared to give long-time patients attention, and Berger's plan is to provide the poor with hospital facilities at a cost far below that of the hospitals now maintained by various associations.

Another Berger bill is for the giving of the city permission to start and maintain any new enterprise, upon the referendum approval of the legal voters, the decision to be by a majority vote. Still another Berger proposition is to enable the city to take over and operate all public utilities now in private hands that the voters by a majority referendum may decide, and to raise the city's bond limit to meet the purchase price. This is part of the hope of the Socialists to force the local trolley company, which operates practically all the lines in the city, to sell to the city and to establish municipal lines. Preliminary to this, ordinances are being introduced at nearly every session of the council tending to control the operation of the street railroad lines.

Such demands as double transfers, the sprinkling of the streets over which the cars pass and to keep the streets free of snow in winter are being pressed at every meeting of the city council, but so far the electric company has been able to keep such measures off the ordinance books.

### TO BUILD HOMES FOR WORKMEN

One of the most elaborate proposals of the administration is voiced in an ordinance by Alderman Arnold, who on January 1 becomes sheriff, in the asking of permission for the city to acquire land for the building of modern homes for working men. The plan is for the city to secure land in the outskirts, plot it on as modern lines as the most aristocratic section of the city, build parkways, erect houses and sell to working men at cost.

The establishment of city free dispensaries and to establish a free medi-

cal aid department for the poor is the bill of Alderman Welley, a carpenter member of the council. At present the dispensaries are only those maintained by charitable societies and the two local medical colleges.

Alderman Strehlow has a bill to allow the city to build municipal slaughter houses and cold-storage plants, and to thereby make war on the packing-house trust, which is held responsible for the high cost of meats and food in this part of the country.

Among the minor propositions is one to allow the city to have a city forestry department; another to provide for the imprisonment of automobile speeders, who under present laws cannot be punished except by a \$100 fine, unless there is death as a result of the speeding, when the manslaughter statute applies; to take away the fees from the health commissioner and make his office a salary position only; to create a city supply department; to charge the cost of sprinkling and oiling streets to the abutting property owners; to secure permission for the fixing of charges for granting of special privileges, such as allowing store owners to have bay windows for show purposes; to provide for the initiative and recall; to raise the charge against property holders for street improvements.

One alderman has a bill to make the city a rival of the alleged local plumbers' trust by establishing a city plumbing department, which can be called upon to do work for private homes at actual cost. Another bill to allow the city to do its own paving and other work, which at present must be given to contractors, who, it is charged, have been in the habit of overcharging the city for work done and of doing inferior work.

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One proposition to arouse considerable interest proposes to wipe out the present 5 and 10 cent lodging houses by the establishment of city municipal boarding houses, where the price charged will be graded from 5 cents to any price that a wayfarer wishes to pay.

A municipal ice plant is another project proposed in this set of bills. The ice is to be dispensed to citizens at cost, and in cases where the poor cannot afford to buy ice they are to be given ice free, in the discretion of the city authorities.

One plan is to secure permission for the establishment of public comfort stations. The objection has been raised to these stations that America is not like Europe, where these comfort stations are so common that no attention is paid to them by people passing on the streets, and this objection is met by the argument that Milwaukeeans would soon become so accustomed to the stations that only modesty amounting to prudery would prevent even a woman taking advantage of the comfort offered. Artistic little structures are proposed for this purpose, to be erected in small squares in the downtown districts now used for parks and breathing spots, as well as in the outlying districts.

These propositions for which legislative approval is asked are only a few of the forty ambitions of the Social-Democratic party. The city has tried many other experiments since the Socialists came into power, which were not considered to require legislative approval, and some of these propositions have been brought into the courts. The establishment of a city purchasing agent's office is one of these, and the city attorney's office is already to dispense free legal advice to the poor.

### FREE WATER TO WASHERWOMEN.

One case in which the Socialistic aspirations threaten to be checked is the plan to give washerwomen free city water. Alderman Berger, the leader of the Socialists, said he was not noted for over-devotion to the constitution, but when the plan had been pronounced illegal by three successive city attorneys, Republican, Democrat, and, last of all, Socialistic, it was time for the Socialists to abandon the project.

The Socialistic majority, however, overruled their leader, on the plea of one of the aldermen that "A body of this kind has a legal right to do an illegal act," and passed the ordinance. Now one of the city charity hospitals has appealed to have its water given free under the claim that it is in the same position as the poor washerwoman who needs the money paid for water. The City Attorney, who has declared the ordinance invalid, will have to defend the city's side of this case.

Home Rule was supported by many US socialists in the early twentieth century. Source: Trenton Evening Times, Dec 28, 1910

The shifting political currents of the nineteenth century and the presence of an increasingly propertyless, immigrant working class in cities gave rise to a legal reconfiguration of city and state relations. A leading legal scholar on local government, Gerald Frug, has described this shift as, “the subordination of cities to the state [which] turned the political world as it then existed upside down.” The most influential ruling on the limits of municipal “home rule” came to be known as “Dillon’s rule,” an opinion authored by Iowa Supreme Court Justice John F. Dillon in 1868. “The true view is this” he wrote, “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. . . [Cities] are so to phrase it, mere tenants at will of the legislature.” Dillon’s “rule” enjoyed considerable influence, though not without challenge. Judge Thomas Cooley (Michigan) in 1871 asserted that “local government is a matter of absolute right; the state cannot take it away.” In a treatise on principles of constitutional law, he wrote, “It is axiomatic that the management of purely local affairs belongs to the people concerned, not only because of being their own affairs, but because they will best understand, and be most competent to manage them.” Others argued that the right of local self-government antedated state incorporation and could not be limited by it. Dillon’s rule did not categorically limit the powers that states might grant to cities. It simply stipulated that the specific rights of cities to home rule required state authorization. In that respect Dillon’s rule left open the door for considerable state-to-state variation in the actual powers that cities might acquire and exercise.

This is the critical issue. The power of cities to govern their own affairs is variable and subject to political determination, with the exception of fundamental, constitutionally protected civil and political rights. Progressive Era struggles over “home rule” were the byproduct of political demands by cities for a more expanded definition of municipal rights. Urban reformers and socialists in some states moved to claim broader governing authority over municipal life and wellbeing. In so doing they reanimated elite fears over the security of their property at the hands of labor and socialist movements that sought to expand the public sector and municipalize essential services.

Under Iowa law counties and cities enjoy broad authority over local affairs providing their actions are “not inconsistent with state laws.” State constitutional home rule amendments for cities (1968) and counties (1978) authorized local government to “exercise any power and perform any function it deems appropriate to protect and preserve the rights,

privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents” (Iowa Code 331.301, for counties.) Nevertheless, the state can limit home rule when the state legislature or the governor specifically prohibit cities or counties from acting in what local authorities may believe to be the general welfare. And in recent cases—county minimum wage increases, policing of undocumented immigrants, and decisions about school opening—state legislation or the governor’s executive orders have indeed pre-empted local authority.

The remedies seem pretty obvious. Local governments and their citizens must mobilize politically to pressure or ultimately elect state legislators and a governor with a mandate to allow cities and counties a broader right of self-government. In the interim a measure of collective resistance (*civic disobedience!*) may be in order. We must simply do the right thing to protect students, defend undocumented immigrants, and as a community uphold a higher minimum wage no matter what the state may say.

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Shelton Stromquist is Professor Emeritus at the University of Iowa. He is the author or editor of ten books, the most recent of which is the David Montgomery Reader. *Another recent book is Claiming the City: A Global History of Workers' Fight for Municipal Socialism (Verso, 2023).*