Home Rule in Iowa

O. K. Patton

IOWA APPLIED HISTORY SERIES

EDITED BY BENJAMIN F. SHAMBAUGH

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Home Rule in Iowa

BY

O. K. PATTON

REPRINTED FROM VOLUME TWO OF THE IOWA APPLIED HISTORY SERIES PUBLISHED AT IOWA CITY IN 1914 BY THE STATE HISTORICAL SOCIETY OF IOWA

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EDITOR'S INTRODUCTION

To students of contemporary politics it is apparent that there are now two distinct reform movements in Commonwealth government: (1) Home Rule, and (2) the Reorganization of State Government. The one movement emphasizes local autonomy and self-government; while the other emphasizes economy and the centralization of authority and responsibility. Both aim at greater efficiency and more direct democracy.

In Home Rule the vital problem is the definition of State and local functions. While no very definite line can be drawn between central control and local authority, there is every reason to believe that under a system of Home Rule time and experience will bring about an adjustment that would prove as satisfactory as that which has come to be established between National control and State authority.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR
THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY IOWA

AUTHOR'S PREFACE

In these days there is much said and written concerning home rule in local government. And yet, home rule is not a new idea in America — a proposed experiment in government. On the contrary, home rule has long been a cherished political heritage. But how many people today have a clear notion of what home rule means! What is home rule in Iowa?

To answer this question is the purpose of the pages that follow. Neither the time nor the means have been available for an exhaustive study of all of the phases of home rule, either in this State or in the other Commonwealths of the Union. An attempt has been made, however, to trace briefly the development of home rule as a factor in local government, to indicate the present position of the local areas in Iowa and the resulting evils of special legislation, to point out the necessity and effects of classification, to show the impracticability of rigid uniformity in the government of local areas, to present the home rule charter system in the light of its successes and shortcomings, and to suggest a general division between State and local functions. The real scope and limitations of the paper can best be indicated by pointing out the actual studies made by the writer in its preparation.

In the first place, the writings of the leading authorities on local government in the United States were consulted and their discussions of home rule in local gov-

ernment carefully analyzed. Second, the statutes and court reports of Iowa were searched to ascertain our own experience in local government and to obtain illustrative materials. Third, the constitutions and statutes of the thirteen States which have adopted the home rule charter system were carefully analyzed and compared. Fourth, the actual working of this system was gathered from court decisions in the various States, from numerous articles in *The Proceedings of the Conference for Good City Government* in *The Annals of the American Academy of Political and Social Science*, in *The Political Science Quarterly*, in *The American Political Science Review*, in the *National Municipal Review*, in *The American City*, and in other current periodicals, and in the charters of over fifty of the leading home rule cities.

The writer wishes first of all to thank Professor Benj. F. Shambaugh, Superintendent of The State Historical Society of Iowa, under whose suggestion this study was attempted; whatever merit the paper may possess is due largely to his counsel, advice, and editing. Upon the writings of Professors Frank J. Goodnow, Delos F. Wilcox, and Ellis P. Oberholtzer the writer has relied especially in preparing the second chapter of the paper. Mr. Lewis H. Brown of the staff of The State Historical Society of Iowa gave valuable service in gathering material from the statutes and court reports of Iowa; and Miss Ruth Gallaher assisted in verifying the manuscript.

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I

INTRODUCTION: THE PROBLEM OF HOME RULE

In its broadest sense home rule means self-government — the right of the people within a given area to govern themselves. Thus, as a principle of local autonomy, home rule has a very wide application in politics and administration. But in the government of a Commonwealth like Iowa the scope of home rule is greatly narrowed. Home rule in Iowa means self-government in various political subdivisions of the State: it is a plan of local government in which the people of a particular community — a city or a county — are given complete control over purely local matters. This is sometimes called municipal home rule. Simply stated, home rule in Iowa is a problem of local self-government.[1]

For the two-fold purpose of carrying on local functions and of providing local administrative agents for the Commonwealth, there have been created in Iowa various subdivisions — local areas for governmental purposes. These local areas comprise the counties, the townships, the school districts, the towns, and the cities of the State. Thus local government in Iowa is simply the government of these various local areas or political subdivisions: it is not unlike local government in other parts of the United States.

The county, the town, and the city in Iowa are bodies corporate and politic for civil and political purposes; while the school districts are political corporations for

the purpose of school administration. On the other hand, the township in Iowa is not a body politic and corporate: the courts have held it to be a mere subdivision of the State for governmental purposes. From the viewpoint of Political Science it is more properly classified as a quasi-corporation. Indeed, from this viewpoint the county, the township, and the school district are all quasi-corporations. That is to say, these local areas are involuntary political or civil divisions of the State "created by general laws to aid in the administration of government."[2] In the scale of corporate existence they occupy a low place. On the other hand, cities and towns in Iowa are to be classed as municipal corporations because they rank high in the scale of corporate existence and because they are voluntary organizations, instead of involuntary like the other local areas of the State.[3]

A further discussion of the differences in public corporations would be unprofitable in this connection since the subject is one of the most complex and abstruse in American law. It is important to remember, however, that from the viewpoint of Political Science the counties, townships, and school districts, as well as the cities and towns of Iowa, are public corporations.

Home rule in local government has several aspects.[4] The privilege of the locality to select from its members the officers who are to administer the law in the local area, irrespective of whether the laws are State or local regulations, is one aspect of the problem. This element of home rule is now found in Iowa as well as in all other States: indeed, it is firmly established as a principle in the American political system. A second phase of home rule which is commonly recognized in Iowa at the present

time, and which has been universally adopted in America, is the right of the people of a local area to vote upon the operation within that local area of general laws passed by the legislature of the State. (For a discussion of the referendum in the local areas of Iowa, see Mr. Van der Zee's paper on *Direct Legislation in Iowa* which appears in this series.) Another aspect of the problem is the power of the local community to determine the form of its own governmental organization. This feature of home rule, which at present is found in only twelve of the American States, does not exist in Iowa. Finally, the authority of the local area to plan the scope of local activities within a given field which has been delimited by the State constitutes a fourth aspect of home rule in local government.

The field of home rule — determined by a line of demarcation between State and local functions — has not been definitely defined in our governmental system, although the courts have attempted to classify, to a certain extent, State and local functions. At the same time it must be admitted that the classification of State and local functions is not more difficult than the separation of State and Federal powers. The third and fourth aspects of home rule as above noted constitute the newer phases of the problem and lie at the heart of the modern movement for home rule in local government — a movement which is sometimes referred to as the "Missouri Idea".[5]

In America two forces are constantly at work in political developments — democracy and efficiency or self-government and centralization. How to obtain an efficient democracy is the real problem of the hour. Up to the present time efficiency has been sacrificed for self-

government. But to-day the tendency is toward centralization and away from self-government.[6] And yet, the best government may not be the most efficient, and the best government may not be the most democratic. It is true that a good government must be both democratic and efficient; but since all government must be administered by men, that government will be best which is so organized that allowance is made for the frailties of human nature. Moreover, experience, particularly in the workings of the Federal system, would seem to indicate that the best government for Americans is a compromise between the principles of self-government on the one hand and those of centralization on the other.

In every form or grade of government, whether it be a pure democracy or a highly centralized monarchy, there are two fundamental functions — the determination of public policy and the execution of the policy determined. The first is legislative and the second is administrative. From the preceding paragraphs it will be readily perceived that the government of local areas in the United States is at present primarily a matter of administration. Consequently, a study of home rule in Iowa is for the most part a study in local administration, although some attention must be paid to the location and limitations of the policy determining authority.[7]

Heretofore nearly all reforms in local government have been reforms in the organization of the local areas. This has been true especially of city government. The people have experimented with one plan after another, bringing forth a new scheme of city organization nearly every year. At present they are busily engaged in watching the development of the city-manager plan of organization. And while it is undoubtedly true that city

conditions have been improved by the reorganization of the government, it is likewise true that reorganization alone can not solve all municipal problems. Neither will it solve the problems of the county or of the township, although something has been accomplished along this line in one or two of the States. Reorganization of the local areas does not strike at the basic difficulty in the problem of local government. Hence, the improvement of conditions by this reform has been very limited.[8]

The basic defect in the present scheme of local government is the confusion of State and local functions: the organic law fails to map out a distinct field for local action and a distinct field for State action. Moreover, since there is a vital connection between local government and State government, a local administration entirely independent of the State administration can not be maintained. The sovereignty of the State must be preserved; and all concrete attempts at reform in local government must of necessity rest upon a definite and clear-cut separation of State and local functions. This is the problem of home rule in Iowa. It can be interrogated thus: What is the sphere in which local political corporations in Iowa should be allowed to move largely uncontrolled by the State government, and what is the sphere in which the activities of these local areas should be completely under the control of the State?[9]

II

HOME RULE IN THE DEVELOPMENT OF LOCAL GOVERNMENT

The order of social and political progress has always been from the simple to the complex, from the unorganized to the organized — a development from low function to high function, from few activities to many activities. And so, in the field of local government one is not surprised to find that institutional developments show the existence of this same order. Local government is much different to-day from what it was in colonial times. It is true that in one respect the conditions in Iowa are not unlike the conditions in the pre-revolutionary period: in those early times there were no large cities, and there are no large cities in Iowa to-day. This State is for the most part rural, and the original colonies were almost wholly rural. But other conditions in Iowa differ widely from those which prevailed in colonial days. The functions of local government have undergone a wonderful development, as have also the functions of both State and national government.

In colonial days the problem of lighting was not a public function. Each household had its own lighting system consisting of one or more tallow dips; and the highways, when lighted, were lighted by means of a lantern. Gas was unknown and so there were no one dollar gas fights. Moreover, the water supply was on a similar basis: every backyard had its well and every local com-

munity its corner pump. Since the population was not congested, sewage was not improperly disposed of; therefore, unhygienic water was not a daily menace. Furthermore, men walked from their work to their homes or provided their own means of transportation: they were not dependent upon public service corporations or public-owned concerns. Indeed, no one thought of government service, in any of these fields.

Conditions have changed, and even in rural Iowa the town pump, the tallow dip, and private means of transportation have all but disappeared. Moreover, public health and safety, poor relief, education, the improvement of highways, sewage disposal, the establishment of public parks, play-grounds, and baths, the erection of public waterworks and lighting systems, the providing of urban, suburban, and interurban transportation, the building of docks and wharfs, the keeping of markets and abattoirs, and the laying out of cemeteries have all come within the horizon of governmental activity. Indeed, many of these activities have developed to such an extent that they have outgrown the bounds of local government and are now without question looked upon as State functions.

HOME RULE IN THE EARLY LOCAL AREAS[10]

For the origin of local government in America one must turn to Europe; for like nearly all American political institutions, the areas of local government in the United States find their precursors in the English political system. The more important national states of Europe in early times were not divided into local areas for the purpose of local government: the subdivisions were created for the purpose of state administration.

With the growth of large aggregations of people within limited areas, it became necessary to provide for some kind of local action, since the crowding together of vast numbers of people brought changes in economic and social conditions. And so, the city was the first local area to be given powers of local action, through the creation of the municipal corporation.[11]

The origin of the municipal corporation is discovered in the granting of certain privileges to urban centers by the state. In the early Germanic nations no municipal corporations existed. What incorporated cities there were among the Teutons came as a result of the Roman invasion. After the overthrow of Rome the cities became merely a part of the larger local areas of the state in which they were located and which existed for the purpose of state administration only; they had no local functions. Later on, however, local areas on the continent did come to assume a corporate character. The idea of local self-government originated in the feudal system, and when combined with the Roman conception of the corporate capacity of governmental areas the modern municipal corporation came into being. The feudal system reached its highest development on the continent; consequently the municipal corporation developed in continental Europe before it did in insular England. As a matter of fact, the establishment of political corporations in England was the product of continental influence.[12]

The first municipal corporation established in England was Kingston-upon-Hull, which was incorporated in 1429. The establishment of other political corporations did not take place until a much later date: counties were not incorporated until 1888. The incorporation of municipalities did not become a general system in England

until the reign of the Tudors. During the period from 1640 to 1688 the municipal corporations of England were mere pawns in the game of national politics. They became incapable of efficient administrative work, and with the increase in governmental functions due to the Reformation the problem of state administration became more and more acute. Finally, the state provided for the administration of many functions by administrative officers of the state operating within the boundaries of the municipal corporations as administrative areas. This was the system provided for the administration of poor relief, of sanitation, and of education. And not only were state functions thus administered by special state officers, but municipal functions were cared for in the same way. When it became necessary to light and pave the streets of certain cities the function was entrusted to state agencies. Thus the field of local activity became very limited in England, due to the peculiar political conditions which then existed.[13]

It was from this early English type of municipal corporation that the American municipality developed. As has been pointed out, the sphere of its activity was so limited that the municipal corporation did not discharge all of the functions of local government, to say nothing of the administration of state functions which is so common to-day in the American Commonwealths. The reason for thus limiting the field of municipal activity in early England is to be found in the fact that the early municipal corporations of Europe everywhere fell into the hands of a few persons and became in the course of time oligarchial governments. As a matter of fact, the early municipal corporations were incorporated in England by granting a charter to a few of the citizens of the borough

to be incorporated: the grant was not made to all of the citizens of the borough. The result was the retarding of the development of a large sphere of municipal activity.[14]

But mere limitation upon local action was not satisfactory: reforms came in the eighteenth century, when drastic steps were taken and new incorporation acts were passed in France in 1800, in Prussia in 1808, and in England in 1835. Indeed, the legislation of the eighteenth century still forms the basis for municipal organization in Europe. It dealt the death blow to oligarchical government by taking away from municipalities the power to determine their own form of government — a power which they had theretofore enjoyed. Moreover, this right of determining the form of municipal organization is, as has been already pointed out, one of the phases of modern home rule in local government.[15]

For the purposes of this discussion it will not be necessary to trace further the long conflict between the state and the municipality for the control of certain governmental functions — a struggle which was carried on throughout the Middle Ages. Most of the activities for which the city contended during that period have long since become well established as state functions. Nevertheless, it is important to note that by the nineteenth century the city had taken on a well defined dual capacity: it had become an administrative agent of the state as well as an organization for the satisfaction of local needs.[16]

The English municipal act above referred to is known as the Local Government Act of 1835. It forms, with certain amendments and additions, the municipal law of England to-day. Such briefly is the historical background of the early American political corporation.[17]

The early American political corporation was not unlike its predecessor the English borough: it was primarily an organization for carrying on purely local functions, namely, the management and control of property. To be sure, it was to some extent an administrative agent of the State, for like the English borough it discharged certain police and judicial functions for the State.[18] But under the influence of the democratic ideas with which the new world abounded, the political corporation underwent several changes in America. For example, in the United States decentralization has been carried farther than in England — a condition that was brought about by the extension of the elective principle to the officers within the local areas. It is by this arrangement that local officers have become largely independent of State officers; and as a result the power of the legislature over local areas in the United States has been very much increased. Indeed, it is only through such a method that anything like uniformity in administration could be obtained.[19]

Again, the idea of the corporate character of local areas has been carried farther in this country than in England. Towns were incorporated in Massachusetts as early as 1785;[20] while in New York counties and towns were both fully incorporated by 1829.[21] Indeed, even before 1829 the courts of New York had held towns to be of a corporate character.[22] This decision was undoubtedly due to that European influence which was responsible for the corporate character of the old Dutch towns of New York — towns which, it may be said, influenced considerably the character of municipal organization in the Colonies. As a matter of fact there has been a nearer approach in the United States to the continental idea of the corporate character of local areas than to the English

conception. In England the purpose back of incorporation by charters was to make the municipalities artificial subjects of the private law, so that they could more readily own and control property;[23] for prior to their incorporation the old towns and counties of England suffered the inconvenience of not being able to become the grantees of estates.[24] The effect of incorporation upon these local areas in America, however, was somewhat other than the purpose for which they were incorporated: it brought out and gave prominence to the private side of local organization.[25] Incorporation had little to do with the political character of the boroughs in England. But this has not been true of local government in the United States; for here the political corporation has become the organ of local self-government.

EFFECT OF SPECIAL LEGISLATION UPON HOME RULE

In order to appreciate fully the part which special legislation has played in the development of local government in the United States, it is necessary to understand the two different methods of incorporation which have been used in this country. The first and oldest method of incorporating local areas was by means of special charters.[26] The first municipal charter of this character was granted to New York in 1665.[27] Moreover, the colonial municipal charters were granted by the Governors instead of by the legislatures — in accordance with the English practice of making royal grants to boroughs.[28] After the Revolution municipal charters were granted by the State legislatures[29] — that is to say, the charter of incorporation became a statute instead of an executive grant.

The granting of municipal charters by the State legis-

lature brought about a revolution in the relation between the city and the legislature: through this practice an opening was made for large legislative interference in local affairs. Under the system of royal grants municipal corporations were nearly free from legislative interference. Indeed, the royal charter was considered as partaking of the nature of a contract. After the Revolutionary War municipal corporations came completely under the control of the State legislatures through the development of the system of special incorporation. Under this system the growth of special legislation was rapid, for such legislation was absolutely necessary to the government of local areas. It will be remembered, furthermore, that the early American municipal corporation had very limited powers, and all acts beyond the scope of the powers granted were void. Hence, the municipalities found it necessary to apply to the legislature for an increase in power in order to exercise any function not conferred by the charter. These grants of powers were made from time to time by special acts because the powers which had been conferred upon no two municipal corporations were the same — a situation which was due to the fact that originally all municipal charters themselves were granted by special acts.[30]

Within recent years the legislatures of a large number of States have been compelled to abandon special incorporation and to pass general incorporation acts. In this respect America has followed the British example of 1835. Moreover, this change in the method of incorporating local areas in the various States has been accomplished for the most part by constitutional amendments — which were intended to do away with that great bulk of local and special legislation for the government of local

areas which had led to so much political manipulation in our legislatures and which had become such a great burden upon the time and energy of legislators. In some cases the amendment appeared as a prohibition against special incorporation, while in others the legislature was compelled to pass a general incorporation act. General incorporation acts resulting from constitutional amendments usually did away with all existing charters, or made certain exceptions and then enacted a general law for all municipalities. Iowa, itself, offers a good example of the transition from special incorporation to general incorporation.[31]

During the Territorial period and under the Constitution of 1846 cities in Iowa were governed by a special charter system,[32] under which legislative amendment of special charters was frequent.[33] The city of Dubuque may be taken as an illustration. In 1840 Dubuque was granted a special charter with a council of six members. But during the early history of this municipality the council was changed from six members to thirteen, from thirteen to six, from six to eleven, and finally in 1857 provision was made for a council consisting of two members from each ward.[34] In Iowa, as in other States, the granting of special charters did not prove to be a very satisfactory method of handling the problem of local government: a great amount of time was spent in log-rolling and lobbying for special privileges in connection with the granting of the charters.

As a result of experience under this system the Iowa constitutional convention of 1857 inserted a clause in the Constitution of 1857 prohibiting the legislature from granting special charters.[35] Cities and towns already acting under special charters were, however, allowed to

continue to operate under these instruments with certain modifications found in the general incorporating act of 1858.[36] Of course they have been subject to subsequent legislation by the General Assembly. Under this arrangement, moreover, special charter cities and towns were permitted to surrender their charters and come under the general incorporation act;[37] and as a matter of fact, nearly all the Iowa cities and towns have surrendered their special charters. Indeed, Dubuque, Davenport, Muscatine, Glenwood, and Wapello are the only municipalities which still continue to operate under special charters granted before 1857.[38]

In conformity with the provisions of the Constitution of 1857 the Seventh General Assembly passed a general incorporation law similar to the Ohio act of 1852, which classified cities and towns according to their population. It appears as Chapter 51 in the Iowa *Revision of 1860*. According to its provisions the municipalities of the State were grouped into (a) cities of the first class, (b) cities of the second class, and (c) towns. All cities having a population of at least 15,000 were made cities of the first class; municipalities with a population ranging from 2000 to 15,000 were classified as cities of the second class; while the smaller urban centers with populations under 2000 were graded as towns.[39] This general incorporation act, with certain amendments and additions, has remained in force until the present day — the most important modification of its provisions being made in 1907 when commission government was established for certain cities at their option.[40]

The original classification of municipalities into three grades — cities of the first class, cities of the second class, and towns — had for its purpose the grouping of urban

centers so that legislation relative to the number of officials, the method of selecting officials, and the powers granted might be had in accordance with the needs of the different communities under a system of general incorporation. Moreover, this was the policy which had been followed in other States where general incorporation had been adopted. But the system of classifying cities under acts of general incorporation has led to a great deal of abuse by legislative bodies and to much confusing construction by the courts.

There are two kinds of constitutional limitations placed upon legislative authority in its control of political corporations: (1) those restrictions imposed by the Federal Constitution upon all legislative action; and (2) those special limitations found in the various State Constitutions.[41] The second class of limitations is by far the more important; and it is to this class that the provisions of the Iowa Constitution forbidding special incorporation belong.

It appears that in the first State constitutions there were few limitations on legislative power, and especially was this true in regard to the authority to regulate municipal government. But by the middle of the nineteenth century such limitations had become quite popular; and nowadays the adoption of a new Constitution or the revision of an old one means the insertion of large limitations upon legislative interference in municipal affairs. The Ohio Constitution of 1851 affords an interesting illustration. This instrument provided that the legislature should not incorporate cities by special acts; and so in 1852 the legislature passed a general municipal code for Ohio cities in accordance with which the nine cities of the State were divided into two classes. Like the general in-

corporation act of Iowa in 1858 different regulations were applied to these two classes according to their needs. But very soon the legislature began to pass special legislation under the guise of a further classification of cities. All cities of the first class, having a population of a certain number, were empowered to discharge a certain function. In the course of time, Ohio cities came to be divided into eleven grades. Eight of these grades contained only one city each.[42]

In this way the legislature of Ohio practically avoided the constitutional provision of 1851 forbidding special incorporation; and special legislation was as much in evidence on the statute books as before the adoption of the Constitution of 1851. Moreover, this policy of the legislature was made possible by the position of the Supreme Court of Ohio which by a line of decisions covering a period of fifty years sustained such special legislation for municipalities. In 1902, however, the Supreme Court disregarded the well established precedents and reversed its earlier decisions, thereby forcing the legislature to enact a new municipal code.[43]

But Ohio has not been the only offender along this line. In fact classification of municipalities has become the rule in all States where special incorporation is forbidden, and special legislation is permitted to flourish in these States the same as under the old system of special incorporation. In California the courts sustained a classification of forty-eight counties of the State into forty-five grades.[44] Nor has Iowa been free from this kind of constitutional evasion: the session laws of this State are full of illustrations of special legislation. The legislature, however, has not gone to the absurd length of the Ohio enactments. At the same time it is true that the

General Assembly of Iowa has frequently passed acts which though couched in general terms really applied to only one or two cities.

In 1902 the Iowa legislature passed an act for the creation and establishment of a board of police and fire commissioners in cities of the first class, having a population of more than 60,000.[45] Des Moines was the only city in Iowa with a population of more than 60,000. In 1907 cities having a population of at least 50,000 were authorized to erect a city hall.[46] Again in this case Des Moines was the only city having a population of at least 50,000. Scores of other illustrations could be cited from the statutes of Iowa showing this kind of special legislation. Thus it is clear that general incorporation has not done away with special legislation. (For further consideration of this point, see below pp. 40, 41.)

The municipal law of Ohio prior to 1902 not only shows how constitutional provisions prohibiting special laws may be avoided but it also shows how futile is such an arrangement from the standpoint of municipal government. Moreover, a rigid classification of cities, such as existed in Ohio from 1902 to the constitutional revision in 1912, also shows how impossible it is to meet the needs of a particular locality by general legislation. By the municipal code of 1902 seventy-two cities ranging from five thousand to over a half million people were governed by the same regulations, although their needs must from the very nature of things have been vastly different. Even in the matter of organization such rigid uniformity presents grave difficulties. A small urban community does not need the governmental machinery of a great metropolitan center. Nor do localities having the same population always have the same problems. The texture

of the population and the city's geographic location may have much to do with the nature and character of local problems.[47]

Taking into consideration, then, these two unavoidable tendencies — special legislation on the one hand, and too general regulation on the other — something of the problem of governing local areas by legislative control becomes apparent. Some States have sought a solution by a constitutional classification of cities. Of this method New York presents the most interesting example.

The latest Constitution of New York provided for a three-fold classification of cities according to population, and the legislature was given power to pass acts applying to all the cities within one of the three classes. In this there was nothing uncommon. The novel feature is found in a provision under which the legislature was empowered to pass special acts applicable only to one city. But all such acts before becoming operative must be submitted to the mayor of the city affected. If approved by him they go to the Governor for his signature; if not approved by the mayor they must be repassed by the legislature before going to the executive. It is hardly necessary to observe that the New York plan has not proved very successful in prohibiting undesirable legislation.[48]

In Illinois a constitutional amendment has made it impossible for the legislature to pass a law relative to Chicago without a referendum to the voters of that city. Although this arrangement has not made it possible for Chicago to obtain everything which the city has wanted, it has kept the legislature from saddling on the city measures which the people do not want. Michigan has gone still further and provided for local referenda on all special legislation for cities.[49]

These innovations in the field of local regulations are not only interesting as the latest steps in the development of local government, but they are also indicative of the failure of general incorporation as a system of local control just as general incorporation acts have pointed clearly to the failure of special incorporation. And yet it can not be said that special and general incorporation have failed because of any inherently defective principle in those schemes of local government: on the contrary, the failure of the political corporation as an agency of local self-government in America is due primarily to the character and position which has been assigned to these corporations by the principles of American law.

III

LOCAL GOVERNMENT AREAS IN IOWA

Experience in the actual workings of government in the United States has shown that while certain functions belong to the Nation as a whole, others are best discharged by large divisions called States, and still others are more satisfactorily performed by subdivisions known as local areas. It is in recognition of this fact that there are maintained in the United States three distinct grades of government — Federal, State, and local. With the problems of the Federal government this discussion is not directly concerned; but to understand the present position of local government areas in Iowa it is necessary to have at least a general grasp of the Iowa system of State government — more especially the Iowa system of State administration.

THE IOWA ADMINISTRATIVE SYSTEM

There is not much in the administrative system of Iowa that marks it as essentially different from what may be found in the other forty-seven States of the Union. Prior to the adoption of the *Code of 1851* the institutions of this State were not unlike the institutions of the other pioneer States of the Middle West — nor, for that matter, did they differ widely from the early institutions of the original thirteen States. It is true that in the early days in Iowa the people did occasionally devise governmental machinery of their own — extra legal devices like the

claim associations, the mining associations, and anti-horse-stealing associations.[50] And during the period of statehood such unique features as the county judge system of 1851 and the Board of Education of 1857 have appeared.[51] But for the most part common political inheritances have afforded sufficient models for the people of this State.

The general outline of the present administrative system came into being during the Territorial period. In the original scheme of Territorial government, which was patterned after that of the Old Northwest,[52] the Governor was given an absolute veto on legislation and a very large appointive power which extended to some local officers such as sheriff and justice of the peace. In the second year of the Territory, however, his powers were greatly curtailed by amendments to the Organic Law. At the present time the powers of the Governor of Iowa are political rather than administrative. In his messages he proposes legislation, and upon all acts of the General Assembly he has a limited veto. These powers, together with the influence which he has upon legislation through his party leadership, sometimes combine to make him the dominant factor in the enactment of popular measures. Like the chief executive in other States, the Governor of Iowa has large military and pardoning powers. The Constitution of Iowa, however, unlike the constitutions of some States, gives the Governor practically no appointive power and absolutely no removing power. Hence, from the political point of view, the theoretical and actual powers of the Governor of this State are very important, but from the administrative point of view his powers are really nominal.[53]

The Governor's administrative power consists for the

most part of functions which he may perform in connection with his membership on the Executive Council and on various other State boards and commissions.[54] In these positions his theoretical power is not greater than that of other members of the same bodies, although he may on occasion exercise through these agencies a strong advisory influence upon the administration of the State. Furthermore, the General Assembly has conferred upon the Governor some administrative control by vesting in him the power to appoint a large number of minor State officers and members of various boards, commissions, and bureaus.[55] But this appointive power is more nominal than real so far as effective administrative control is concerned, since the officers appointed by him are usually not subject to his authority and supervision. Indeed, the appointment by the Governor of a large number of minor officers is a method of filling offices rather than a means of controlling administrative action. Finally, the Governor has been given the authority to suspend State officials for the improper handling of State funds.[56] This power, however, is little more than a paper provision which has rarely been used.[57]

It is only necessary to recall the fact that the chief branches of administration in Iowa are vested by the Constitution in officers who are absolutely independent of the Governor (these officers being elected by the people themselves)[58] to gain some conception of the decentralized character of the administrative system. Indeed, about the only responsibility which the various administrative departments and agencies have in relation to the chief executive is to make a biennial report to him in regard to the administration of their particular offices; and this is for the information of the State rather than for any kind of administrative control.

The chief constitutional officers in the State's administration, in addition to the Governor, are the Secretary of State, the Auditor of State, the Treasurer of State, and the Attorney General.[59] Nor should the Superintendent of Public Instruction be neglected in this connection, notwithstanding the fact that his office was created by the legislature. This officer, moreover, was formerly elective but has recently been made appointive by the Governor; so that one branch of the administration is now brought under the appointive power of the chief executive. No provision was made, however, for the removal of the Superintendent by the Governor.[60]

In addition to the principal executive officers already named there is another important administrative agency which should be mentioned, namely, the Executive Council, which is composed of the Governor, Secretary of State, Auditor, and Treasurer. The duties of this council, which are additional to the regular duties of the four officers who compose it, include a large amount of direct administrative power as well as a measure of supervising authority.[61] In fact the Executive Council has had many miscellaneous duties imposed upon it by the legislature — probably because of convenience and the absence of any other appropriate administrative agency. The best that can be said for such a policy is that it has avoided the creation of a large number of independent officers, bureaus, and boards, of which the State still has a sufficiently large number — approximately thirty minor administrative officers, and one hundred fifty members of various boards, bureaus, and commissions.[62]

The nature of the functions discharged by the Executive Council can best be illustrated by listing a number of its more important duties. It is entrusted with the as-

sessment of certain corporations, the general State equalization of taxes, the classification of municipalities according to law after each census, the approval of the banks in which the State funds are deposited, the canvassing of State election returns, the removal of certain State administrative officials for cause, the auditing and approval of the accounts of a large number of State officials and employees, the superintendency of the State census, and a great variety of other minor duties.[63]

The preceding paragraphs have enumerated the chief administrative agencies of the State government: besides these there is a large army of officers in the local areas who are in reality administrative officers of the State. Great as is decentralization in State administration, one observes still greater decentralization in the local administration of Iowa. In fact the influence of the Governor in local administration is practically negligible: local officers are, for the most part, not only independent of the Governor, but they are also independent of any other State officer — a situation that exists in the face of the fact that the State depends largely upon the local officers for the execution of State laws. And this is the boasted American system of local self-government — a system, indeed, of local self-administration. To be sure there is at the present time a tendency to break away from this condition, for in 1909 the Attorney General was given supervisory power over the county attorneys and in 1913 a uniform system of accounting for counties was established, to be prescribed by the Auditor of State and enforced by inspectors from his office.[64] These pieces of legislation merely show tendencies toward centralization: decentralization in administrative organization is still the rule not only in Iowa but throughout the United States.

The love of the American people for decentralization in government and administration is well expressed by Mr. Thomas M. Cooley in his work on *Constitutional Limitations* when he says:

> In contradistinction to those governments where powers are concentrated in one man, or in one or more bodies of men, whose supervision and active control extends to all objects of government within the territorial limits of the state, the American system is one of complete *decentralization,* the primary and vital idea of which is, that local affairs shall be managed by local authorities, and general affairs only by the central authority.[65]

The government of Iowa, however, is decentralized only in its administrative machinery: in its legislative organization it presents a system of complete centralization.[66] American law recognizes no inherent rights of government in any of the political subdivisions of the State, and the Constitution of this State has conferred few powers upon local corporations. Moreover, the legislature of Iowa has not been generous in granting powers of local government to the various local areas. Thus in legislation Iowa must be characterized as highly centralized both in theory and in practice. The actual position of the local areas of the State can best be approached by a discussion of the relation of the legislature to the local areas.

THE LEGISLATURE AND LOCAL GOVERNMENT AREAS

In order to understand the relation of the legislature to the various local government areas in Iowa it is necessary to define clearly the character of these areas as political corporations: indeed, an understanding of the political corporation as an agency of local self-government is essential to a discussion of the problems of home

rule in Iowa. As has already been pointed out there are four political corporations in this State, namely, the county, the township, the school district, and the city or town.

A corporation is defined as "*a legal institution,* devised to confer upon the individuals of which it is composed powers, privileges, and immunities which they would not otherwise possess, the most important of which are continuous legal identity or unity, and perpetual or indefinite succession under the corporate name, notwithstanding successive changes, by death or otherwise, in the corporators or members."[67] But a political corporation is something more than this since it includes the idea of territory, of jurisdictional limitations. And yet, like other corporations, political corporations are created by law and possess no authority not expressly or impliedly conferred upon them by the State. Moreover, the persons "residing in or inhabiting a place to be incorporated, as well as the place itself, are — both *the persons* and *the place* — indispensable to the constitution" of a political corporation.[68]

For the purposes of the present discussion a two-fold classification of political corporations into quasi-corporations and municipal corporations is most convenient. Moreover, these two kinds of political corporations can easily be distinguished. In the first place, municipal corporations are voluntary, the incorporation being asked for by the inhabitants of the territory to be incorporated, or at least assented to by them; whereas quasi-corporations are involuntary, being superimposed upon the inhabitants of the incorporated area. Again, municipal corporations are established more for the purpose of local government than as administrative agents of the

State; while quasi-corporations exist more for State administrative purposes than for carrying on local functions. Finally, municipal corporations possess all the powers of a corporation; but quasi-corporations enjoy only a limited number of such powers. In Iowa the county, the township, and the school district are quasi-corporations, while the city and the town are municipal corporations: and these are the agencies of local self-government in this Commonwealth.[69]

In this connection it should be borne in mind that a political corporation "is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may . . . . govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence."[70] Such is the position which has been assigned to local government areas by American law: thus the unity of Commonwealth government has not been placed upon a legal basis.

While this is the theoretical position of the local government areas in Iowa and in other States, they may in fact occupy a somewhat different place in the scheme of Commonwealth government. Indeed, the actual position of these local areas depends largely upon the method which the State has adopted in controlling them. If their control is placed largely in the hands of some State agency, they will of necessity become dependent upon that agency; but if the State seeks to control them by giving them a definite constitutional status, they will within their own sphere of activity be largely independent of the other governmental agencies.

Following the general American practice, Iowa has

placed the control of local areas almost wholly in the hands of the State legislature. It is true that in this State the local government areas do have a constitutional status, but it is difficult to determine what that status really is. The Constitution of 1857 does not "create", "establish", or "erect" any of the local areas of Iowa; and yet, it recognizes these areas as a part of the system of government — the county, the township, the school district, and the municipality being specifically mentioned in several places. But instead of conferring any specific powers upon these political corporations, the Constitution really limits their powers. For instance, political corporations are forbidden to become stockholders in any banking corporation; they are also prohibited from becoming "indebted in any manner, or for any purpose" to exceed five percent of the total value of their taxable property.[71] These and other provisions of the Constitution, although limiting the sphere of local competency, go to show that the fundamental law of this State was framed with the existence and anticipated continuance of political corporations in view.

Indeed, it may be said that "back of all constitutions are certain usages and maxims that have sprung from the habits of life, mode of thought, method of trying facts, and mutual responsibility in neighborhood interests".[72] In announcing this view in the case of *Iowa vs. Barker* the Supreme Court of Iowa said that all "we intend to announce is that written constitutions should be construed with reference to and in the light of well-recognized and fundamental principles lying back of all constitutions, and constituting the very warp and woof of these fabrics. A law may be within the inhibition of the constitution as well by implication as by expression."[73] Thus by impli-

cation political corporations do have a constitutional status in this State: but what that status is no one can tell, since the Supreme Court has gone no further than to suggest in certain decisions that cities and towns because of their constitutional status have by implication the right of local self-government, and that this right can not be taken away from them.[74]

It is apparent from these cases that the control of local areas in Iowa has not been attempted by assigning to them a definite constitutional status; and so the legislature in this State has enjoyed an almost unlimited power in defining the character and government of these areas. But the legislature itself is not wholly without limitations. It has already been noted that the Constitution prohibits special legislation and the creation of political corporations by special acts. Such are the expressed constitutional limitations — which do not limit the power of the legislature, but rather the manner of using that power. Here, again, the Supreme Court has said: "We are also of opinion that there are other well-defined limits on the power of the legislature in dealing with such bodies."[75] That the limitations referred to are implied limitations is shown by the following language of the court:

> But the legislative control of municipal corporations is not without limitations. This immunity from unlimited legislative control has been expressly recognized by the supreme court of the United States in *City of New Orleans v. New Orleans Waterworks Co.*, . . . where it is said "that the municipality, being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed, or revoked without the impairment of any constitutional obligation,

while with respect to its private or proprietary rights and interests it may be entitled to the constitutional protection.''[76]

In the case of the *State vs. City of Des Moines* the Supreme Court came to the conclusion that there was an implied limitation upon the power of the legislature to delegate the power of taxation.[77] And there are other cases which also recognize certain implied limitations upon the legislative control of political corporations in this State.[78] But these constitutional limitations (both the implied and the expressed) have never had any very telling effect upon the policy of the General Assembly in regard to the control of political corporations. Indeed, the legislature has usually considered the local areas as mere agents of the State, giving them a position of complete dependence. In short it appears that under ''our form of government the legislature creates municipal corporations, defines and limits their powers, enlarges or diminishes them at will, points out the agencies which are to execute them, and possesses such general supervision over them as it shall deem proper and needful for the public welfare.''[79]

Moreover, the General Assembly has for the most part failed to recognize the dual character of local political corporations — the fact that they exist both as administrative districts of the State and as areas for the satisfaction of local needs. Indeed, there has been a great deal of confusion on this point both within and without the legislature, due largely to the failure to draw a definite distinction between the State administrative functions of the local areas and their internal and local functions. The present situation is the result of a gradual growth, a product of political evolution: it is not the fruit of a definite plan of development, the completion of some prearranged program.

There has been much academic speculation in regard to the proper position of local areas — more especially that of the municipal corporations. Some have held that the city ought not to be used as an administrative agent of the State: they would have independent State officials administer State laws in the local areas. In other words, they would divorce State and local functions, even in their execution within municipal corporations. This of course is a view which is directly opposed to the policy usually pursued by the General Assembly. Moreover, between the two extremes one finds many theories of different shades. The view which seems to have gained the greatest foothold outside the legislature is the view that municipal corporations ought not to be considered as administrative agents of the State: they should be allowed to determine their own organization and policies. Since the determination of the proper position of the various local areas in this State lies at the very foundation of any discussion of home rule, the writer will reserve his conclusions on this point for a subsequent section.[80]

It is now apparent that the only real self-government within a political corporation in Iowa is the privilege which the people of that area have of choosing their own administrative officers.[81] Moreover, owing to our decentralized administrative system, this phase of home rule in local government is much broader in its scope than is at first apparent. Local officials are not responsible to higher State officials, even though they are engaged in the administration of State laws. Since they are largely independent in the administration of State laws they interpret and execute State laws so that their administration will meet the approval of a majority of the voters in the

local area. Thus, it transpires that local self-government in America is that phase of home rule in local government which is more aptly described as local self-administration.

There are, to be sure, some differences in the status of the various political areas of this State — more especially in the status of the quasi and the municipal corporations — which are not here discussed. But the purpose of this section has been to show the exact status of the political corporation in Iowa with a view to pointing out that in this State political corporations as a whole have no inherent powers: they exist only in contemplation of the law, and are, therefore, absolutely under the control of the State legislature, except where the powers of the legislature have been limited by the Constitution, either expressly or impliedly.

IV

THE HOME RULE CHARTER SYSTEM

As special incorporation in time proved a failure and was followed by a system of general incorporation, so general incorporation in turn promises to be followed by the home rule charter system — the latest method of preventing legislative interference in local affairs. Although limited to but a few of the States, the home rule charter system is of the greatest importance in a discussion of the general principles of home rule.

ORIGIN OF THE HOME RULE CHARTER SYSTEM

The home rule charter system originated in Missouri with the adoption of the Constitution of 1875. By the provisions of this Constitution the city of St. Louis was given certain privileges of self-government never before possessed by any American municipality: the city was vested with the constitutional authority to elect, if it saw fit, a "Board of Freeholders", which was to act as a constitutional convention for the city. Such a board, if chosen, was to frame for the city a charter which, without interference from the legislature, was to be submitted to the people for their approval or rejection.[82]

The creation of this novel scheme of charter-making was the work of the constitutional convention which met in Jefferson City, Missouri, on May 5, 1875; but the credit of formulating the system belongs to the St. Louis delegates. The government of St. Louis, like that of most of

the great American cities, had been notoriously bad; and to make matters worse the legislature of Missouri had developed a well organized system of local interference. As a result of these conditions there was a general demand from the city delegates at the constitutional convention for a radical change in the plan of government for St. Louis. The first step toward a home rule charter system took place when a resolution was introduced by a St. Louis delegate providing for the government of all cities with a population of over 100,000 by a constitutional charter, that is, a charter which would be based directly on the authority of the Constitution of the State. The resolution also provided that amendments to the charter could be made only by a two-thirds vote of the council and mayor and ratification at a special election by a two-thirds vote of the people. It was promptly referred to the Committee on St. Louis Affairs which was made up of the delegates from St. Louis.[83]

Another proposition, concerning the separation of the county and city of St. Louis, was also referred to this same committee. It appears that prior to the convening of the convention of 1875 the city and county governments of St. Louis had been consolidated — an arrangement that led to a great deal of dissatisfaction among the taxpayers. Thus the relation of city and county naturally entered into the problem of reorganizing the government of St. Louis.[84]

In due time the Committee on St. Louis Affairs devised a scheme in accordance with which the city of St. Louis was to elect a board of freeholders — consisting of thirteen citizens — who were to propose a plan for separating the city and county and at the same time frame a new charter for the government of the city of St. Louis.[85]

The plan of separation and the new charter were both to be submitted to the people for adoption or rejection.

When presented to the convention the program of the Committee on St. Louis Affairs met with considerable opposition — chiefly from delegates representing rural sections who declared the scheme to be unwise and vicious. Indeed, throughout the debate there was evidence of a strong feeling that St. Louis might set up an independent government of its own. As a result of this feeling the following amendment was made to the committee's recommendations: "Notwithstanding the provision of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State."[86] With this addition the plan of the committee was adopted by a vote of fifty-three to four in the convention,[87] and later as a part of the proposed Constitution it was ratified by the people of the State.

Soon after the Constitution of 1875 went into effect, St. Louis took advantage of its provisions and elected a board of freeholders, who soon drafted a plan for dividing the county and city and a charter of government for the city. The election on the plan of separation and the new charter took place on August 22, 1876. At first the returns seemed to indicate that the charter had been ratified and the plan of separation rejected. But when the matter was taken into the courts and the returns were corrected by judicial proceedings both the plan of division and the charter were shown to have been ratified. Thus, St. Louis was the first city in the United States to be governed by a charter made and adopted by the city itself.[88]

Besides the special provisions applying exclusively to

St. Louis, the Constitution of 1875 also made provision for the drafting of home rule charters by all cities having a population of over 100,000.[89] But since there were no cities in the State at that time, except St. Louis, with a population of over 100,000,[90] the general provisions as well as the special provisions relative to home rule charters were applicable only to St. Louis. The minor differences in the provisions set out specifically for St. Louis and those which were applicable to all cities of over 100,000 persons will be pointed out later in the discussion.[91] In this connection it is only necessary to add that Kansas City, which was the next largest city in Missouri, did not adopt a home rule charter until 1889.[92] In the meantime a home rule charter system had been adopted in California.[93]

The constitutional convention which met in California in 1879 was attracted to the home rule charter system, the "Missouri Idea" having been reported as a great success in the case of St. Louis. It appears that the attention of the convention was first called to this novel scheme by the report of the Committee on City, County, and Township Organization, one of the articles of which was very similar to the Missouri general provision allowing cities of over 100,000 to frame their own charters. A freeholders board of fifteen instead of thirteen members was provided as the charter-drafting body. The chairman of the committee had originally been in favor of extending the privilege to all the cities of California, but the committee compromised on the 100,000 population limit. As in the Missouri convention so also in the California convention the proposed new method of governing cities at first met with considerable opposition. But the delegates from San Francisco, which was the only city in

the State with a population of over 100,000, were for the most part in favor of the new plan, for in its novel features they saw an opportunity to reform the corrupt government of the Golden Gate city by getting rid of legislative interference.[94]

In the debate on the floor of the convention the San Francisco delegates constantly referred to the St. Louis experiment and the success which had followed the adoption of the plan in Missouri. The opposition, moreover, raised practically the same point that had been made against the plan when it was proposed in Missouri: they maintained that it was an attempt to create an independent State out of the city of San Francisco. And so strongly did they press their arguments that the San Francisco delegates finally agreed to an amendment by which all charters after being ratified by the people were to be submitted to the State legislature for its approval. Herein the California scheme differed from the Missouri plan. By this provision it is clear that the State legislature still retained the same control over cities of 100,000 as it did over other cities of the State.[95]

Soon after the new Constitution of California went into operation in 1880, the friends of the home rule charter system started a movement for the election of a board of freeholders in San Francisco. But the first home-made charter was rejected by the people on September 8, 1880; a second charter was rejected on March 3, 1883; and a third charter was likewise rejected on April 12, 1887.[96] Indeed, two other attempts were necessary before San Francisco came under a charter emanating from the people. Finally, in 1898, just eighteen years after the power to draft a charter had been conferred, the city adopted a home rule charter[97]— which at that time was declared to

be the most radical charter of any great city in the United States.[98]

The next State to adopt a home rule charter system was Washington, where the convention drew largely from the provisions of the Constitution of California. At the same time the St. Louis experiment was also known to the Washington convention, and it is apparent that the provisions of the Constitution of Missouri had some influence upon the wording of the Washington plan. Although there was not as much opposition to the new program of city government in the Washington convention as appeared in the Missouri and California conventions, nevertheless there was considerable difference of opinion as to the size of the cities to which the privilege should be extended. The convention finally compromised on all cities of at least 20,000 population. At the time there were but two cities in the State with a population of over 20,000 — Seattle and Tacoma. Seattle ratified a home rule charter on October 1, 1890; and Tacoma followed by ratifying a charter on October 17, 1890.[99]

In the provisions of the Constitutions of the States of Missouri, California, and Washington are to be found the beginnings and the nucleus of the home rule charter system which has been slowly developing in the United States for the last forty years. After the adoption of the Washington Constitution in 1889 there followed a period of several years during which the movement did not seem to gain much headway; but since that date there has been a gradual and steady growth of the system.

EXTENSION OF THE HOME RULE CHARTER SYSTEM

Six years after its adoption in Washington and eleven years after its inauguration in Missouri the home rule

charter system was accepted by the people of Minnesota through an amendment to the Constitution in 1896. Here again the "Missouri Idea" was copied with certain changes, the most important of which concerns the method of selecting the board of freeholders. According to the Minnesota plan the members of the charter-making board are appointed by the judge of the district court instead of being elected by the people. The Minnesota plan is also much broader in its application, being within the option of any city or village in the State. Within three or four years after the introduction of the system in Minnesota it was put into operation by St. Paul and Duluth, as well as by a number of smaller places.[100]

The fifth State to adopt the home rule charter system was Colorado, where the scheme as set forth in the constitutional amendment of 1902 is of particular interest because of its similarity to the original home rule system, the "Missouri Idea". As the original plan for home rule charters in Missouri applied only to the county and city of St. Louis, so the original scheme in Colorado applied only to the county and city of Denver; and as in Missouri so also in Colorado there was a supplementary provision extending the privilege to other cities of the State. Another point of interest lies in the fact that the "Missouri Idea" separated the county and city of St. Louis, while the Colorado scheme consolidated the county and city of Denver.[101]

The constitutional amendment adopted in Colorado in 1902, really extended the privilege of home rule charter-making to all cities with a population of at least 2000. Instead of a board of freeholders, however, the charter-framing body was called a "charter convention", and it was to be composed of twenty-one taxpayers. Moreover,

the Colorado system was practically obligatory and was the most radical system that had been adopted up to that time. Denver, it may be added, adopted a home rule charter in 1904 after rejecting a similar instrument in 1903.[102]

In 1901 Oregon started an experiment with the home rule charter system when the legislature appointed for Portland a commission to draft a new charter to be first ratified by the people and then endorsed by the legislature. The commission accomplished its work with expedition and submitted a charter, which by popular approval and legislative endorsement became the organic law of the city. Later, in 1906, a constitutional amendment was adopted authorizing the legislature of Oregon to provide for a system of home rule charters for all of the cities of the State; and under its provisions the legislature took action in 1907.[103]

The home rule charter system had made its way. Oklahoma came into the Union in 1907 with a home rule charter provision in its Constitution, according to which every city with 2000 inhabitants or over was given the privilege of framing its own charter by means of a freeholders board.[104] Michigan by the revised Constitution of 1908 and by a statute in 1909 has conferred upon all of its cities the power to adopt home rule charters.[105] In 1911 by an act of the legislature Wisconsin became the eighth State in the Union to provide for a home rule charter system. But as there was some doubt as to the constitutionality of the act, the legislature also proposed an amendment to the Constitution which was repassed in 1913 and will be submitted to the people in November, 1914.[106] Texas in 1911 established by a constitutional amendment a home rule charter system for all cities with

a population of 5000 or over.[107] Arizona followed Texas in 1912 by extending the privilege to all cities with more than 3500 inhabitants.[108] Through the constitutional revision of 1912 all the cities of the State of Ohio were given the privilege of framing their own charters;[109] and in the same year a constitutional amendment ratified by the people of Nebraska gave the same power to all cities with a population of 5000 or more.[110]

V

GROWTH OF HOME RULE CHARTERS

From the viewpoint of local government in the United States the present is indeed an era of home rule charter-making; for as remarkable as its principles is the spread of the system which has really been phenomenal in the United States. At the present time thirteen of the thirty largest cities of the United States are governed by home rule charters. These include the fourth, the sixth, the ninth, and the eleventh largest cities of the country. Over fifty of the home rule charter cities have adopted the commission form of government, and over ten have established the city-manager plan. Furthermore, nearly all of the modern municipal reforms appear as features in the various municipal-made charters. To trace the growth and development of this system in the several States is the purpose of this chapter.

HOME RULE CHARTERS IN MISSOURI

Owing to the 100,000 population requirement St. Louis was for a long time the only city in the State of Missouri entitled under the Constitution to frame its own charter.[111] Kansas City did not acquire a population of 100,000 until 1887; while St. Joseph reached the 100,000 mark much later.[112] In 1889 Kansas City adopted a home rule charter which seems to have been patterned after the old legislative charter of St. Joseph. With several amendments the charter of 1889 remained in force until

1908 when a more modern instrument was accepted by the people. Moreover the struggle for this new charter with modern features presents an interesting phase of city politics which can not be discussed in this connection for want of space.[113] St. Joseph, the only other city in the State which has thus far reached the 100,000 mark, has had a great shrinkage in population since 1900,[114] and as a result it is no longer entitled to draft a home rule charter. Thus, all of the cities of Missouri which at the present time have the authority to make their own charters — namely, St. Louis and Kansas City — are now operating under home-made charters.

St. Louis continued to operate under its original home rule charter until August, 1914, although several amendments had been made to this instrument which, it will be recalled, was ratified in 1876. The last amendment to the original charter was adopted in 1912. In the meantime the people voted down a proposed charter in 1911. But on June 30, 1914, the voters of the city adopted a new home rule charter which is altogether modern in that it provides for the initiative, the referendum, the recall, the merit system, and the municipal ownership of public utilities. Although the aldermanic form of organization is retained, the central feature of the new charter is the short ballot.[115]

> On the whole . . . . [this new] charter seems to measure up in matters of form, to high standards of charter making. There is comparatively little of the unnecessary detail of administrative procedure which impairs the value of many such documents. At the same time the charter is very much more than a mere outline of the city government, for both the principal bureaus of the departments and their divisions are enumerated and their general duties defined.[116]

It is now evident to all that in Missouri municipal home rule has not resulted in creating independent States out of the cities of St. Louis and Kansas City. But legislative friction, which has continued to exist even under the home-made charters, has led to a great mass of judicial construction. It appears that the courts have finally concluded that the legislature is still supreme in State affairs and that the home rule cities are only supreme in purely local affairs; but this has not clarified the atmosphere very much, since the courts are still engaged with the difficult problem of determining what are State affairs and what are municipal affairs.[117]

Finally, it may be observed that there seems to be a growing demand in Missouri for the extension of the home rule charter system to the smaller cities of the State. Leading political parties have frequently declared in favor of extending the application of the system, and Governor Hadley went on record in 1911 by saying that "the capacity of the people to govern themselves demonstrates the correctness of the conclusion that the state will best subserve the ends of good government by conferring upon the people of the large cities the power to govern themselves, with such restrictions as are necessary to safeguard the interests of the state as a whole."[118] As yet, however, there are no fruits of this agitation for the smaller cities.

HOME RULE CHARTERS IN CALIFORNIA

The growth of real home rule has, perhaps, been greater in California than in any other State. Even before San Francisco had succeeded in adopting a home rule charter, several other places had secured this form of self-government. Los Angeles adopted a charter in

1889; and Oakland, Stockton, and San Diego followed in the same year. Since that time over twenty-five other cities have accepted the system.[119] Up to January 1, 1913, two counties — Los Angeles and San Bernardino — had likewise adopted the plan, thus becoming the first home rule counties in the United States. At present there is on foot a movement to adopt a charter in Alameda County.[120] As a matter of fact there are only four cities of California enabled to adopt the home rule system that have not already drafted charters. Moreover, some of these cities have already adopted two charters; while there has been much amending of charters in all of the home rule cities.[121]

The large growth of municipal-made charters in California is due in part to the gradual extension of the application of the system: in 1887 the population limit was reduced to 10,000, and in 1890, to 3500;[122] while in 1911 the system was made applicable to counties of the State — nearly the same authority being vested in these areas that had been conferred on certain cities since 1879.

In extending the home rule principle to areas other than cities, California has led every other State in the Union. Municipal home rule and local self-government in cities are not unfamiliar subjects; but local autonomy for quasi-corporations is almost an unheard of thing. But California, in its ultra-progressiveness, has dared to establish a home rule charter system for counties. At the same time, nothing appears to have been said suggesting home rule for the other quasi-corporations — the township and the school district — although the conditions in these local areas may not be unlike those in the counties of the State.

But the wide application of the home rule charter

system in California is not entirely responsible for the rapid growth of home-made charters in that State. The alertness of the people themselves has had much to do with securing home rule, even under the liberal provisions of the State Constitution. Indeed, in 1912 Mr. Binkerd, Secretary of the City Club of New York, credited the citizens of California with being the first people in the United States to really understand the meaning of municipal home rule.[123] Moreover, an examination of the work of a number of the freeholders boards and citizens clubs of California shows that the citizens of that State have taken an unusual interest in their local government. This interest of the people not only accounts, in a measure, for the rapid growth of home rule charters but it also explains, in part, the success with which they have inaugurated and operated the home rule charter system, as is shown in the following quotation from Professor Thomas H. Reed of the University of California:

It is thus obvious that the freeholder charter privilege has been largely employed by California cities. That it has been used on the whole wisely, no one can deny. Our cities are on the average well governed as compared with the country at large and where deficiencies exist they are due not so much to the frame of government as to political conditions which would pervert any charter no matter how excellent. At any rate the people are contented in the knowledge that full control of the machinery of government is in their hands. Our boards of freeholders have not been bold enough to "cast off their moorings from the habitable past." Until the last four years they followed pretty closely in the beaten track of municipal development. They have not revolutionized municipal government, being unable, perhaps happily, to divorce themselves from custom and tradition. On the whole, however, and especially of recent years, they have used their power progressively. The San Francisco charter of 1899

applied imperfectly the principle of the initiative and referendum. The Fresno charter of 1901 provided for the initiation of ordinances by a petition of 15 per cent of the voters. The Los Angeles charter amendments of 1903 introduced the "recall" to American municipal affairs and the language of that charter in providing for that trilogy of progressivism, the initiative, referendum and recall, has been copied verbatim into great numbers of recent charters. The commission form of government was taken up in 1909 by Berkeley and San Diego, the former the most advanced features, the non-partisan nomination and majority election, of the Des Moines plan were copied with progressive modifications. The Berkeley election plan permits a majority on the first ballot to elect without further contest. At the regular session of 1911 the legislature ratified eight charters of which six, including that of Oakland, the largest city in the country to adopt the commission plan so far, provided for that form of government. At the same time San Francisco secured amendments which give her practically the terms of the Berkeley charter as to the initiative, referendum and recall and non-partisan nominations and elections. A large part of the credit for the overthrow of the corrupt political forces of San Francisco in the fall of 1911 is ascribable to these improvements — self-made — in its charter. At the special session of 1911 two more charters, both of the commission variety, were presented to the legislature, from Stockton and Sacramento. The latter provides for the shortest of ballots, one only of the five commissioners being chosen each year. There, too, the majority non-partisan election system helped to down a few weeks ago, one of the worst and ablest rings in California. I think it is safe to conclude that while cities under the freeholder system do not adopt certain reforms like commission government so speedily as if the legislature presented them ready made for simple adoption, they are by no means backward in working such reforms out for themselves. A new pattern or cut in ready-made clothing will get on more backs in shorter space than the same style in custom garments. It is, however, the latter which fit the eccentricities of figure and pro-

vide the full and scant in their proper locations. We have enjoyed all the advantages of special legislation without its evils. We have charters which meet each peculiar need and they are in the main as progressive as we might hope for.[124]

And yet California can not be said to have complete home rule: the people do not enjoy a full measure of local self-government. Under the constitutional provision that "cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, shall be subject to and controlled by general laws",[125] the State legislature has prevented the city from being supreme within its own sphere of local government. Special legislation, of which there had been an abundance before the establishment of the home rule charter system, has not entirely disappeared. Moreover, the situation has been made worse by the support which the Supreme Court has given to the legislature in its policy of interfering in the affairs of home rule cities.[126] Finally, in 1896 the Constitution was amended so that charters framed and adopted under the Constitution are subject to the control of general laws "except in municipal affairs".[127] The adoption of this amendment made the home rule cities of California the most independent cities in the United States, so far as the legislature is concerned. And yet, they can not be said to have complete home rule so long as the courts determine without limitation what constitute municipal affairs.[128]

HOME RULE CHARTERS IN WASHINGTON

The narrow application of the home rule charter system in Washington has prevented any large growth of municipal-made charters in that State where in fact there are only five cities entitled to the privileges of the home

rule system — namely, Seattle, Tacoma, Spokane, Bellingham, and Everett.[129] Four of these cities have already taken advantage of the provisions of the law — Tacoma and Spokane adopting the commission form of government.[130]

The experience of the city of Spokane shows how difficult it is sometimes to put into operation the home rule charter machinery. In October, 1909, the mayor of Spokane appointed a committee of seventeen citizens to study the various forms of commission government then existing in the United States. After five months of study this committee drew up an advisory charter providing for commission government and presented it to the mayor. The mayor in turn transmitted the report to the city council with the recommendation that a special election be held for the selection of a board of freeholders as provided for in the Constitution of the State. But the city council refused to act. Then a committee of citizens petitioned the council to call a special election. Again the council declined to act. Finally, a petition was circulated and presented to the council with the signatures of 5075 of the qualified voters. After some delay the council fixed the first Tuesday in May of the following year as the election day. But the citizens committee, by court proceedings in which they obtained a writ of mandamus, compelled the council to fix September 27, 1910, as the day for choosing a board of freeholders. On the day named there was elected a board of fifteen freeholders which drafted a charter providing for commission government and presented it to the people. This instrument was adopted on December 28, 1910, thus ending the struggle of Spokane for a home rule charter.[131] The Spokane experience shows how a movement for a home rule char-

ter may be blocked where the State Constitution places the initiation of such a movement in the hands of the city council.

The proposed new charter of Seattle which was defeated at a special election held on June 30, 1914, contains one of the most interesting of recent features in municipal government. It provides for a city manager and is unique in its provisions for the separation of municipal functions — the business functions of the city being entirely divorced from the humanitarian, cultural, and general welfare activities. All business activities are placed in the hands of a city manager, while the social activities are under the control of the mayor who appoints a public welfare commission of three unsalaried members. The charter also provides for preferential voting and abolishes the primary election system. It is estimated that this new election feature would save the city between forty and fifty thousand dollars annually and accomplish the same results as a primary election. The defeated Seattle charter suggests the possibilities of municipal reform under the home rule charter system.[132]

Something of the success of the system in Washington would seem to be indicated by the fact that all of the cities of the State entitled to operate under home-made charters but Bellingham have adopted them. The plan in all of these cities seems to have given satisfaction as there has been no attempt to abandon the scheme. Moreover, the passage of the Allan Commission Government Act, in 1911, for the smaller cities of the State has greatly lessened the agitation for the extension of the system.[133]

HOME RULE CHARTERS IN MINNESOTA

More favorable even than in California have been the opportunities for the growth of home-made charters in

Minnesota; for here, any city or town may adopt a home rule charter. At least forty municipalities, ranging from mere villages up to the largest cities of the State, have framed their own governments since the adoption of the constitutional amendment of 1896. Among the larger cities having municipal-made charters are the cities of St. Paul and Duluth.[134] Moreover, an amendment to the Constitution, submitted in 1912, would have made it easier for a city to adopt a home rule charter, had the citizens not rejected the proposition at the polls.[135] The legislature, however, had enlarged the system prior to this time. In 1909 they made it possible for the boards of freeholders to draft charters providing the commission form of government;[136] and during the last few months several Minnesota cities have been engaged in framing new charters. Freeholders boards have been at work in St. Paul, Minneapolis, Anoka, St. Cloud, and Glenwood.[137]

It does not appear, however, that the home rule charter system has been as successful in Minnesota as in California — that is, if the use of the newer methods in municipal government is a test of success, for these methods are not found in the charters of the home rule cities of Minnesota. Indeed, the city-made charters of Minnesota do not appear to be any better than legislative-made charters. About all the home rule charter system has accomplished in Minnesota is a change in the process of charter-making: no great municipal reforms have been accomplished under it. The charter boards, for the most part, have failed to break away from the traditions of the past; they have failed to draft charters conferring upon the cities the powers and rights to which they are entitled under the Constitution and laws of the State. The thirty-six charters framed under the home rule system up to

1910 show great similarity to the old special charters of Minnesota: like the special charters they attempt to enumerate all of the powers of the city. They are home-made but not home rule charters. In the more recent commission charters of Mankato, St. Cloud, and Faribault there is, however, some hope of home rule; and there are some modern features in the new charters of St. Paul and Duluth. It is significant that in September, 1913, Minneapolis failed to adopt a charter providing for commission government.[138]

Again, in Minnesota the constitutional limitations upon special legislation have not worked well — not even in conjunction with the home rule charter system. The Constitution establishes a four-fold classification of the cities of the State, but the courts have allowed a sub-classification of a peculiar kind. For instance, there are home rule cities and special charter cities in each of the four constitutional classes, and in the fourth class there are also two general act cities. In addition to these classes there is a large group of small communities, ranging from 500 to 8000 inhabitants, that are unclassified. As a result of this situation the courts have upheld all legislation which applies to all the cities in a particular class — except of course home rule cities. On the other hand, they have allowed legislation which applies only to the home rule cities within a particular class. On the whole, then, although there are a large number of city-made charters in Minnesota, there has not been much progress in municipal reform.[139]

HOME RULE CHARTERS IN COLORADO

Since the adoption of the home rule amendment in 1901, there has not been much development of the system

of city-made charters in Colorado. The twentieth article of the State Constitution, which is better known as the Rush Amendment, was intended primarily to establish the "City and County of Denver" under a home rule charter; but section six of that article conferred upon all cities of the first and second class the power to adopt their own charters. For several years after the adoption of this amendment Denver was the only city to take advantage of the new system; but even Denver was not able to adopt a charter upon the first trial in 1903. The present charter was approved in 1904.[140]

In 1913 the charter of the "City and County of Denver" was amended so as to establish for this political area a commission form of government. The people of Colorado have also amended the sixth section of article twenty of the Constitution in order to extend to all cities of 2000 inhabitants the privilege of framing their own charters. Moreover, the few places in Colorado that have taken advantage of this form of self-government have adopted modern charters: Colorado Springs and Pueblo have commission government; and on January 10, 1914, Montrose adopted the city manager plan.[141]

HOME RULE CHARTERS IN OTHER STATES

In Oregon.— Portland was the first city in Oregon to adopt a home rule charter: in fact, special provision was made for Portland before a constitutional amendment was adopted. The first charter of Portland was patterned after the old type of legislative charters. But the second charter, which was adopted on May 3, 1913, provides for the commission form of government, preferential voting, and the enactment of an administrative code. The unique home rule system of Oregon, as a part of the

direct legislation machinery, anticipates the incorporation of all of the cities of the State under its provisions. Thus at present all cities of the State are really under the system.[142]

In Oklahoma.— A home rule clause was a part of the Constitution of the State under which Oklahoma was admitted into the Union; and many cities have already taken advantage of its provision. Among the more progressive cities of the State, El Reno, Guthrie, Holdenville, Lawton, Oklahoma City, and Stillwater have home-made charters providing for the commission form of government. At the present writing there is no city of Oklahoma with at least 4000 inhabitants but what is operating under the commission plan.[143]

In Michigan.— The growth of municipal-made charters in Michigan has not been rapid; and yet, the enabling act of 1909 anticipates the ultimate extension of the system to all the municipalities of the State. Nevertheless, there has been a gradual development of this form of self-government since the amendment of 1908. East Jordan, Fremont, Pontiac, and Wyandotte are cities which have established commission government by municipal-made charters; and charter commissions have recently been at work in Owosso, Saginaw, Battle Creek, and Kalamazoo. On February 10, 1914, the citizens of Detroit voted down a home rule charter which was progressive in parts, but in other parts followed old types of organization.[144]

In Wisconsin.— The Wisconsin home rule charter system of 1911 was short lived, for the Supreme Court held,

in a test case brought from Milwaukee, that the act of the legislature establishing it was unconstitutional. In this interesting decision the court held that under the Constitution of Wisconsin a municipal organization could be created only by the legislature, and that the legislature could not delegate this power to the cities. The fate of municipal-made charters in Wisconsin was committed to the people: the proposed constitutional amendment of 1911 was repassed by the legislature in 1913, was submitted to the voters in November, 1914, and defeated, according to reports.[145]

In Texas.— No State has been more active in the adoption of home rule charters than Texas since the passage of the enabling act in 1913. Amarillo, Denton, McKinney, Sweetwater, Waco, Wichita Falls, and Taylor have adopted new charters; and Beaumont, Corsicana, Dallas, El Paso, Ennis, Galveston, Houston, Houston Heights, Marshall, San Antonio, and Terrell have amended their old charters under the authority of the home rule charter system. Of the cities named, Taylor and Denton have adopted the city manager plan. It is worthy of note that under the system Houston has made some radical changes in its commission form of government.[146]

In Arizona.— Phoenix, the capital of Arizona, is the only city in that State which has adopted a home rule charter. This instrument, which provides for the commission form of government and a city manager, has been in operation since April, 1914.[147] Moreover, it appears that at the present time Douglas and Bisbee have on foot a movement for the adoption of commission government charters.[148]

In Ohio.— By far the most phenomenal growth in home rule charters has taken place in Ohio,[149] where the home rule charter system went into operation on January 1, 1913. Since that time twenty-five cities of the State have elected or rejected charter commissions: in Amherst, Gallipolis, Ironton, Jackson, Mansfield, Marietta, Norwood, and Washington C. H. no charter commissions were elected; in Akron, Canton, Elyria, Lorain, Salem, Cincinnati, and Youngstown the proposed charters were rejected; in Cleveland, Columbus, Dayton, Lakewood, Middletown, and Springfield the charters submitted by the charter commissions were ratified; and in Sandusky, Ashtabula, and Toledo the new charters have not yet been referred to the people. This is a wonderful record of municipal activity — all of which has taken place during a period of eighteen months. Moreover, the home-made charters voted upon in these cities are most interesting.[150]

In the home rule charters which have been adopted in Ohio, aspects of nearly all modern municipal reforms can be found. The Cleveland charter provides for the initiative, referendum, recall, short ballot, non-partisan elections, the preferential ballot, and the merit system. Lakewood copied largely from the Cleveland charter. Dayton and Springfield, in addition to many of the Cleveland features, provide for a city manager. Middletown has established the commission form of government. Of all the charters thus far submitted to the people of Ohio, four have contained the city manager type of government, three the commission form, two the federal plan, and two a combination form of the city manager and federal plans.[151] It is too early to make an estimate of the ultimate success of the home rule charter system in Ohio. But the following words of Mayo Fesler, secretary

of the Cleveland Civic League, summarize well the present situation:

> The fear that existed in the minds of many that cities would run wild in exercising these powers of local self-government has not been well founded, for out of the twenty-five cities which have undertaken to frame their own charters, only six have thus far succeeded. What will be the result in the other four cities which now have on the charters under way is yet to be seen. It is clear from the experience from these cities that a much greater interest has been aroused in municipal affairs.
>
> Public opinion has been developed, and the campaign in each of these cities, whether successful or unsuccessful, has resulted in the development of a more active public sentiment in favor of local self government. Municipal home rule in Ohio has come to stay.[152]

Whatever may be said of the prediction of Mr. Fesler that home rule in Ohio has come to stay, one thing is certain: for "the moment, at least, Ohio leads the nation in the municipal government movement. Those states which would aspire to similar achievement must look first of all to the home rule proposition. It is the first step toward freedom."[153]

In Nebraska.— No city of Nebraska has adopted a home rule charter, although three attempts have been made at charter-drafting. Lincoln elected a charter convention in May, 1913; but the charter which was submitted to the voters in December was rejected. In 1913 Omaha selected a charter commission, but the charter framed by this commission was defeated at the polls in March, 1914. Hastings also elected a charter convention in April, 1913, but the commission adjourned without submitting a charter to the electors. Lincoln and Omaha,

however, are both operating at the present time under the commission form of government as provided for by the general laws of the State.[154]

OTHER HOME RULE DEVELOPMENTS

The movement for local self-government is not confined to cities, and the home rule charter system has led to some important home rule developments other than municipal-made charters. Within recent years the tendency to establish some definite constitutional status for the different political subdivisions of the State has been greatly strengthened by the home rule agitation. Legislatures have seen fit in a number of instances to extend large privileges of self-government to the local areas when the courts have not intervened. Some of these developments are of particular interest in connection with this study.

In New York.— In a preceding section of this paper attention was called to New York's attempt to secure a measure of home rule by referring all special acts for a particular municipality to the officers of that city for approval. This provision, which is found in the Constitution of 1894, has not proved very successful.[155] As a result there is at present a movement on foot to adopt some other plan of home rule for the locality. The movement is being promoted by the Municipal Government Association of New York, which in 1912 held a home rule conference at Utica and adopted a program of reform. All three of the political parties — Progressive, Republican, and Democratic — incorporated home rule planks in their State platforms. As yet, however, no concrete results have been attained in New York.[156]

In Louisiana.— The State of Louisiana in 1898 conferred upon cities the power to amend their own charters — a feature of home rule which is found in the Town Charter Law of Louisiana. By the provisions of this act any municipality may propose amendments to its own charter through its mayor and board of aldermen. The proposed amendments are submitted to the Governor; and if they are not protested by one-tenth of the qualified voters of the city, the Governor, upon the advice of the Attorney General, approves them, provided they are not inconsistent with the laws of the State. When the amendments proposed by the mayor and aldermen are protested by the citizens of the municipality, the Governor must withhold his approval until the amendments have been accepted by a majority of the electors in the city. Under this system it would be possible for the people of a particular city to adopt a home rule charter subject to the Constitutions and laws of the State and the United States.[157]

In Michigan.— Although not extending the home rule charter system to counties, the legislature of Michigan has conferred large powers of local self-government upon these political areas of the State. Under the legislation of 1909 the board of supervisors has power to pass laws, regulations, and ordinances for purely county affairs, providing they are not in conflict with the general laws of the State and do not interfere with the local affairs of any of the other subdivisions of the State within the county. The supervisors are also given power to amend any local act of the legislature which is in force in their county and which has to do with county affairs. Moreover, the same board is given the authority to change the

boundaries of cities, villages, and school districts located within the county, and to incorporate primary school districts as provided by law. All such laws, ordinances, and regulations which are passed by the board must be referred to the Governor for his acceptance. Should the Governor not approve of the action taken by the supervisors, the regulation may by a two-thirds vote be repassed by the local board over the Governor's veto. All laws passed by the board become operative only after the expiration of sixty days. If the electors of the county within fifty days after the adjournment of the board file a petition for a referendum, signed by at least twenty percent of the voters, the ordinance does not go into effect until approved by a majority vote. It is apparent that with these powers the counties of Michigan may in the future come to enjoy as much real home rule as do the home rule charter counties of California.[158]

In New Jersey.— In 1911 the legislature of New Jersey enacted a model charter law which any city, town, township, borough, village, or municipality may adopt. This model charter provides for the commission form of government and extends a large amount of self-government to the local areas operating under it. But before becoming operative in any of the subdivisions of the State the charter must be assented to by a majority of the legal voters at an election held upon the request of twenty percent of the legal voters of the area. A large number of the cities of New Jersey have already adopted this form of government. Moreover, the original act was amended in 1912 and 1913 for the purpose of conferring more power upon the local areas operating under the plan.[159]

In Virginia.— On November 5, 1912, the people of Virginia adopted an amendment to the Constitution which is known as the home rule amendment, but it does not provide for the home rule charter system. The new provision simply authorizes the legislature to vary somewhat from the old plan in granting municipal charters. But the city treasurer, city commissioner of revenue, city sergeant, commonwealth's attorney, and clerks of the various city courts must not be omitted from the list of elective officers. The amendment aims to give the cities of the State home rule and the commission form of government; but the home rule possibilities of this system are not apparent from an examination of the amendment.[160]

In Ohio.— Ohio has not only established a home rule charter system, but by a constitutional amendment adopted in 1912 the cities of the State were also given the privilege of adopting by referendum vote certain model plans of government to be enacted by the legislature. In 1913 the legislature passed an act embodying three different forms of city government — the federal plan, the commission plan, and the city manager plan. No city has yet seen fit to adopt any one of these legislative plans.[161]

VI

ANALYSIS OF HOME RULE CHARTER SYSTEMS[162]

Having traced the growth and development of home rule charters in the United States it is now possible to make a critical analysis of the various phases of the system. From the table which accompanies this brief analysis it will be seen that while the systems as adopted in the various States are practically the same in purpose and in principle, there are many differences in the details.

LOCAL AREAS ENTITLED TO ADOPT CHARTERS

The first point to be considered in making an analysis of the home rule charter system is the scope and application of the charter-making power, for not all of the local areas in the thirteen home rule charter States are empowered to make their own charters. In Missouri only the very largest cities have this power — cities of more than 100,000 inhabitants. The same is true in Washington, where only cities with a population of more than 20,000 are authorized to make their own charters. In Nebraska and Texas the privilege is extended to cities with a census of more than 5000. California and Arizona fix 3500 as the size of the smallest city entitled to draft a home rule charter; but California also confers the right upon all the counties of the State. The home rule laws of Colorado and Oklahoma apply only to cities of two thousand inhabitants or more. From the accompanying

table it will be noted that the other five States with the home rule charter system have endowed all the cities with this right of local autonomy.

From the outset there has been a tendency to extend the scope of the charter-making power. And yet, with the exception of a very few limitations the legislature everywhere still maintains the power to define a municipality. That power, however, has never been exercised in such a way as to limit the scope of the home rule charter system.

INITIATING CHARTER PROCEEDINGS

In the original home rule charter systems the authority for initiating charter schemes rested with the local legislative body. But experience showed that this body was not always willing to inaugurate proceedings for the adoption of a charter even when the people were in favor of such action. As a result the newer systems have provided for initiation on the part of the people — a method that has also been added as a feature of most of the older systems. At the present time the local legislative authority in ten of the States has the power to initiate proceedings. In four of these States such proceedings require a two-thirds vote; an ordinary majority vote of the municipal legislature is all that is required to start the charter-making machinery in five States of this group; while in the cities of Michigan and the counties of California a three-fifths vote is necessary. In all but two of these States — Missouri and Washington — the people also are given power, through the initiative petition, to start proceedings for the adoption of a municipal-made charter. Minnesota stands alone in conferring the power of initiation upon the judge or judges of the district

TABLE — Home Rule Charter Systems

State and Date of Establishment of System	Local Areas Entitled to Adopt Charters	Initiating Charter Proceedings	
		Initiating Authority	Vote by People
Missouri 1875	Cities with more than 100,000 inhabitants	Legislative authority of the city[1]	Upon members of the charter board (majority vote)
California 1879	Cities with more than 3500 inhabitants, and any county of the State	Two-thirds vote of legislative body of city or petition of 15% of those voting for Governor[2]	Upon members of the charter board (majority vote)
Washington 1889	Cities with at least 20,000 inhabitants	Legislative authority of the city by ordering special census	Upon members of the charter board (majority vote)
Minnesota 1896	Any city or village	Judges of the district court or a petition of 10% of those voting at the last preceding election	
Colorado 1902	Cities with at least 2000 inhabitants	A petition of 5% of the qualified electors voting for Governor[3]	Upon question of a charter convention (majority vote)
Oregon 1906	Any city or town	The charter itself is proposed by an initiative petition of eight percent of the legal voters and filed with the city clerk, auditor, or recorder, as the case may be, who transmits it to the council	
Oklahoma 1907	Cities with more than 2000 inhabitants	Legislative authority or petition of 25% of those voting at the last general municipal election	Upon question of adopting a new charter (majority vote)
Michigan 1909	Any city or village	Three-fifths vote of legislative body of city or petition of 10% of those voting for the city executive officer[4]	Upon question of a charter revision[1] (majority vote)
Wisconsin 1911[1]	Any city	Two-thirds[5] vote of the legislative body of the city or petition of 5% of those voting at the last regular municipal election	Upon question of holding a convention (majority vote)
Texas 1912	Any city with more than 5000 inhabitants	Two-thirds vote of the legislative body of the city or petition of 10% of the qualified voters of the city	Upon question of the election of charter commission (majority vote)
Ohio 1912	Any city or village	Two-thirds vote of the legislative body of the city or petition of 10% of the qualified voters	Upon question of selecting a charter commission (majority vote)
Nebraska 1912	Cities with more than 5000 inhabitants	Legislative authority or petition of 5% of those voting at last gubernatorial election	Upon question of a charter convention (majority vote)
Arizona 1912	Any city with more than 3500 inhabitants	Legislative authority of the city or petition of 25% of those voting at the last preceding general municipal election	Upon question of proceeding with charter-making (majority vote)
[1] The law was declared unconstitutional by the Supreme Court.		[1] The constitution is not clear on this point. [2] Three-fifths vote of Board of Supervisors in counties. [3] Constitution provided for first charter convention in Denver. [4] Law provides for first charter commission in each new city. [5] Or majority with approval of the mayor.	[1] In new cities by voting for members of the charter commission.

Home Rule Charter Systems — *Continued*

THE CHARTER BOARDS							
State and Date of Establishment of System	Title	Number of Members	Election	Qualifications	Compensation	Time of Service	Required Vote on Proposed Charter
Missouri 1875	Board of Freeholders	13	By people for sole purpose of drafting a charter	A freeholder and five years a qualified voter		Not over 90 days[1]	Majority vote
California 1879	Board of Freeholders	15	By people for sole purpose of drafting a charter	A freeholder and five years a qualified voter		Not over 120 days	Majority vote
Washington 1889	Board of Freeholders	15	By people for sole purpose of drafting a charter	A freeholder and qualified elector, having two years previous residence		Not over 30 days	Majority vote
Minnesota 1896	Board of Freeholders	15	Appointed by the judges or judge of the judicial district in which city is located and form a permanent body	A freeholder and five years a qualified voter	Receive no compensation but may employ an attorney and a stenographer, expending not to exceed $500	Serve for a term of four years but must submit charter within six months after first appointment	Majority vote
Colorado 1902	Charter Convention	21	By people for sole purpose of drafting a charter	A taxpayer and five years a qualified voter	City legislative authority shall fix the compensation	Not over 60 days	
Oregon 1906							
Oklahoma 1907	Board of Freeholders	Two from each ward of the city	By people for sole purpose of drafting a charter	A freeholder and a qualified voter		Not over 90 days	Majority vote
Michigan 1909	Charter Commission	One from each ward and three at-large. 9 in new cities 5 in villages[1]	By people for sole purpose of drafting a charter	A qualified elector, having three years previous residence. No city officer or employe is eligible[1]	City legislative authority shall fix the compensation, but in new cities the commissioners shall receive no pay	In new cities serve until a charter is adopted or until a new commission is elected, but must submit first charter within ninety days	

HOME RULE CHARTER SYSTEMS — *Continued*

THE CHARTER BOARDS							
STATE AND DATE OF ESTABLISHMENT	TITLE	NUMBER OF MEMBERS	ELECTION	QUALIFICATIONS	COMPENSATION	TIME OF SERVICE	REQUIRED VOTE ON PROPOSED CHARTER
Wisconsin 1911[1]	Charter Convention	15	By people for sole purpose of drafting a charter	A qualified elector, having five years previous residence	City legislative authority may fix the compensation		Majority vote
Texas 1912	Charter Commission	Not less than 15 nor more than one for every 3000 inhabitants	By people for sole purpose of drafting a charter[1]				
Ohio 1912	Charter Commission	15	By people for sole purpose of drafting a charter	A qualified elector			
Nebraska 1912	Convention of Freeholders	15	By people for sole purpose of drafting a charter	A freeholder and five years a qualified voter		Not over four months	Majority vote
Arizona 1912	Board of Freeholders	14	By people for sole purpose of drafting a charter	A freeholder and a qualified elector	Chief executive and legislative authority under the new charter has power to provide for expenses of the board after the charter is adopted	Not over 90 days	Majority vote

[1] The law was declared unconstitutional by the Supreme Court.

[1] The system is a little different for villages.

[1] For the first charter, if a mass meeting, the legislative body, or mayor has selected a charter committee which has proceeded with the formation of a charter, election by the voters is not necessary.

[1] In new cities no previous residence requirement is made.

[1] No time limit is set for St. Louis.

Home Rule Charter Systems — *Continued*

State and Date of Establishment of System	Submission of Charter		Vote Necessary for Adoption	Vetoes Upon Charters
	Publication of Charter	When Submitted		
Missouri 1875		Must be submitted within 30 days	Four-sevenths of those voting thereat (in St. Louis a majority vote is sufficient)	
California 1879	Published at least ten times in daily paper before submission to the people[1]	Must be submitted in not less than 20 nor more than 40 days after completion[1]	Majority of those voting thereon	All charters must be approved or rejected as a whole by the legislature
Washington 1889	Published for at least 30 days in two daily papers	Must be submitted within fifty days after completion	Majority of those voting thereon	
Minnesota 1896		Must be submitted at the next election after completion. Legislative authority may call a special election	Four-sevenths of those voting thereat	
Colorado 1902	Published three times a week apart in official newspaper of the city	Must be submitted in not less than 30 nor more than 60 days after completion	Majority of those voting thereon	
Oregon 1906	Published in an information pamphlet with arguments for and against and distributed to every voter by city clerk not less than 8 days before the election	Council must act within 30 days. If it rejects or fails to act, city clerk submits charter to voters at next ensuing election. If council adopts charter, may proclaim it in force or submit to people. If declared in force, people by 10% petition may demand referendum	Majority of those voting thereon	
Oklahoma 1907	Published in a daily newspaper for 21 days or for three consecutive times in a weekly paper	Must be submitted in not less than 20 nor more than 30 days after publication	Majority of those voting thereon	All charters must be submitted to the Governor who must approve them if not in conflict with the law of the State
Michigan 1909	Publication left to the discretion of the charter commission, except in new cities where publication is required not less than two nor more than four weeks before the election	Charter commission fixes time of submitting charter to the people	Majority of those voting thereon	All charters must be submitted to the Governor before being voted upon by the people. If he disapproves, he returns charter to the commission for further consideration
Wisconsin 1911[1]	Published by city clerk according to provisions made by the convention	Submitted at next municipal, judicial, or school election held after publication	Majority of those voting thereon	
Texas 1912	City clerk must mail a copy of proposed charter to every voter within 30 days of the election	Must be submitted in not less than 40 days nor more than 90 days after completion	Majority of those voting thereat	

HOME RULE CHARTER SYSTEMS — *Continued*

STATE AND DATE OF ESTABLISHMENT OF SYSTEM	SUBMISSION OF CHARTER		VOTE NECESSARY FOR ADOPTION	VETOES UPON CHARTERS
	PUBLICATION OF CHARTER	WHEN SUBMITTED		
Ohio 1912	City clerk must mail each voter a copy of charter not less than 30 days before the election	Charter commission fixes time of submitting charter to the people, but it must be within one year after election of commission	Majority of those voting thereon	
Nebraska 1912	Published by city clerk at least three different times a week apart in a daily newspaper	Must be submitted within 30 days after publication	Majority of those voting thereon	
Arizona 1912	Published in a daily newspaper for 21 days or for three consecutive times in a weekly paper. Publication to take place within 20 days after completion	Must be submitted in not less than 20 nor more than 30 days after publication	Majority of those voting thereon	All charters must be submitted to the Governor who must approve them if not in conflict with the law of the State
[1] The law was declared unconstitutional by the Supreme Court.	[1] When there is no daily paper publication is made 3 times in a weekly. When no weekly, charter is posted in three different places in the county.	[1] 30 to 60 days for counties.		

Home Rule Charter Systems — *Continued*

State and Date of Establishment of System	Charter Amendments		Adoption of New Charters
	Proposal	Ratification	
Missouri 1875	By legislative authority of the city	Three-fifth of those voting thereat	The legislative authority of St. Louis may order at any time an election of Board of Freeholders to revise charter[1]
California 1879	By legislative authority of the local area or by an initiative petition of 15% of those voting for Governor[1]	Majority of those voting thereon and approval by the legislature as a whole	
Washington 1889	By legislative authority of the city	Majority of those voting thereon	
Minnesota 1896	By Board of Freeholders or initiative petition of five percent of the voters	Three-fifths of those voting thereat	Board of Freeholders may submit new charter at any time, being a permanent body
Colorado 1902	By an initiative petition of 5% of the qualified electors voting for Governor	Majority of those voting thereon	A new charter convention must be elected within 30 days after rejection of first home rule charter
Oregon 1906	By legislative authority of the city or initiative petition of 8% of qualified voters	Majority of those voting thereon	
Oklahoma 1907	By legislative authority of the city or by an initiative petition of 25% of those voting at the next preceding general municipal election	Majority of those voting thereon and approval by the Governor	
Michigan 1909	Bv three-fifths vote of legislative authority of the city or by an initiative petition of 10% of those voting for the city executive officer	Majority of those voting thereon and previous approval by the Governor or passage over his veto by the legislative authority of the city[1]	In new cities the first charter commission or successively elected new commissions continue to submit charters until one is adopted
Wisconsin 1911[1]	By two-thirds[2] vote of legislative authority of the city or by an initiative petition of 10% of those voting at the last regular municipal election	Majority of those voting thereon	
Texas 1912	By legislative authority or initiative petition of 10% of the qualified electors	Majority of those voting thereat	
Ohio 1912	By two-thirds vote of legislative authority of the city or by an initiative petition of 10% of the qualified electors	Majority of those voting thereon	
Nebraska 1912	By legislative authority of the city or initiative petition of 5% of those voting at the last gubernatorial election	Majority of those voting thereon	New charter convention may be called by mayor and city council or by petition of 5% of those voting at last gubernatorial election
Arizona 1912	By legislative authority or initiative petition of 25% of those voting at last preceding general municipal election	Majority of those voting thereon and approval by the Governor	

[1] The law was declared unconstitutional by the Supreme Court.

[1] 10% for counties.
[2] Or majority with approval of the mayor.

[1] Approval by Governor unnecessary for amendments submitted by the initiative.

[1] Special for St. Louis.

court; but even in Minnesota the people may start the movement by a petition. The provisions of the Constitution of Colorado make it difficult to tell whether the local legislative authority has any power to institute proceedings: it appears that the people are the only authority that can take the initiative. In Oregon the matter is left entirely in the hands of the people.

Thus, in all of the home rule charter States, except Minnesota, Oregon, and Colorado, the initiation of charter-making is vested in the local law-making authorities, and in all but two of these thirteen States the people also may start the charter-making machinery by use of the initiative petition, signed by from five to twenty-five per-cent of the voters. But in all cases, with the exception of Oregon and Minnesota, a further majority vote of the people is necessary in order to actually set the machinery into operation — in three of the States this vote is taken upon the election of members of the charter board, while in the other eight States it is taken upon the question of proceeding with charter-making.

In practice, however, it may be said that the people everywhere determine the advisability of home-made charters. "Back of judges, councils, and mayors, stand the people, and if a considerable number of citizens demand a new charter, the proper authorities will, out of respect for this popular demand, set the legal machinery in motion."[163] To be sure, this has not always been true; and yet the people have usually in the long run been able to compel the local officials to act. Voluntary organizations have also had much to do with the successful working of these systems: studies in local government have been made, charters have been drafted, and reform programs have been mapped out long before the legal ma-

chinery has been set into operation.[164] These activities have often simplified matters and have undoubtedly been largely responsible for whatever reform has been accomplished under the home rule charter systems.

THE CHARTER BOARDS

After the people have once decided upon a home rule charter and the legal machinery for its making has been set into operation, the next step in the process is the selection of a charter board. All of the States except Oregon provide for the actual framing of the charter by a committee of citizens — generally referred to as a charter board. Oregon, however, provides for the proposal of home-made charters under the system of direct legislation in force in that State — that is, through the initiative and referendum. In six of the States the charter board is called a "board of freeholders"— which was the earlier name employed. Three of the States — Michigan, Texas, and Ohio — term the board a "charter commission". Wisconsin and Colorado give the citizen committee the name of "charter convention", while the Constitution of Nebraska has combined the old and new ideas and created a "convention of freeholders".

The number of members on the charter boards varies: six States provide fifteen as the proper number; Missouri specifies thirteen; Arizona fourteen; and Colorado twenty-one. Oklahoma provides for an election of two members from each ward of the city, and Michigan for one from each ward and three at large. The most unique provision in regard to the number of members is found in Texas, where the board is to be composed of not less than fifteen members and not more than one for every 3000 inhabitants. Thus, in Texas, the exact number is left to each individual city.

In all of the States, except Minnesota, the charter boards are elected by the people for the sole purpose of framing a charter: they are in fact small constituent assemblies in which a constitution for the city is drafted. The charter board is appointed in Minnesota by the judges of the district court in which the city is located, and the members serve for a term of four years:[165] that is to say, it is a permanent body preserved for future suggestions and amendments, as well as for the purpose of drafting new charters in case the first are rejected by the people.

Some qualifications of membership on the charter board are specified in all but one of the States having such an institution. In seven of the States one must be a freeholder in order to be elected to the board; in four of these States he must also have been for five years a qualified elector; and in the other three he need only be a legal voter at the time of election. In Washington he must also have had a two years previous residence. Colorado requires candidates for the charter convention to be taxpayers and qualified voters five years. Michigan, Wisconsin, and Ohio demand that members of the board be qualified voters. Michigan also requires three years previous residence, and Wisconsin five years previous residence.

The original home rule charter States provided no compensation for members of the charter board, but several of the newer systems have conferred upon the city's legislative body the power to grant compensation. This is true in Colorado, Michigan, and Wisconsin. Minnesota and Arizona provide for paying certain expenses of the board.

It has already been observed that all of the charter

boards, except those of Minnesota, are temporary bodies. Further than this the law in most of the States places a limit upon time of service, that is, a time limit is set within which a charter must be drafted. Four States — Missouri, Oklahoma, Michigan, and Arizona — fix ninety days as the maximum time necessary for a charter board to complete its work. Thirty days is the limit in Washington; sixty days in Colorado; one hundred and twenty days in California; four months in Nebraska; and six months in Minnesota. Wisconsin, Texas, and Ohio place no limitation upon the time within which the board must act. Eight States also specify the vote of the charter board which is necessary to adopt a charter: it appears that in all of these States only a majority of the board need agree upon the proposed charter in order to secure its submission to the people.

SUBMISSION TO THE PEOPLE

After a charter has been drafted by the charter board and authenticated to the proper authority the next step is its publication and submission to the people. All but two of the thirteen States provide some method of familiarizing the voters with the proposed charter before it is submitted to them for their decision. The details of these methods vary considerably, and for the facts in each case the reader is referred to the chart on pages 75–80. The most common method of publishing the proposed charter is through the columns of a newspaper — six States definitely prescribing this method. Two States — Michigan and Wisconsin — leave the method of the publication to the discretion of the charter board. Perhaps the best method of distribution is found in Oregon, Texas, and Ohio where a copy of the proposed charter is sent to

every voter in the city. In Texas and Ohio the city clerk mails to every voter a copy of the charter, and in Oregon the city clerk has the charter published in an information pamphlet, together with arguments for and against the charter, which is then distributed to all the voters.

After the charter has been properly published there follows its reference to the people. In this there is also a great variety of provisions in regard to the time at which the proposed charter is to be submitted, nearly every State having a special plan of its own. Some States fix but one limit in regard to submission, while some set two limits: that is to say, some States fix a time limit within which the charter can not be submitted as well as a limit within which it must be submitted, while some fix only the time limit within which the charter must be voted upon by the people. Outside of these two groups are those States which leave the time of submission to the charter board, or actually fix some subsequent election as the time for the popular referendum. In the thirteen different systems the time of submission is based in some instances upon the time of publication and in other cases upon the time of completion.

ADOPTION BY THE PEOPLE

The adoption of the proposed charter by the people is of course the most important step in the process of charter-making. The law prescribes a majority vote as sufficient for adoption in all but two of the States. In some of these States, however, the vote must be a majority of those voting "thereat", but in most cases a majority of those voting "thereon" is all that is necessary. The distinction between "thereat" and "thereon" is an important one, since the courts have held "thereon"

to mean the vote on the charter only, while "thereat" means the vote cast at the election. Ten of the States have established the easier method of ratification, namely, a simple majority of those voting on the charter. Texas requires a simple majority of those voting thereat; while Missouri and Minnesota require four-sevenths of those voting thereat.

THE VETO OF CHARTERS

In most of the States ratification by the people is sufficient to put the charter into operation; but in four of the States there are certain vetoes or quasi-vetoes which will bear examination. In California all charters after ratification by the people must be submitted to the legislature for approval. The legislature can not alter the charter but is required to reject or adopt it as a whole. It is significant that out of the large number of charters submitted to the legislature since 1879 not one has been rejected. Oklahoma and Arizona require all charters to be submitted to the Governor, instead of to the legislature. If they are not in conflict with the Constitution and laws of the State, the Governor must approve them. Thus, the Governor has only a quasi-veto on home-made charters in these two States. Michigan has a still more unique provision: there all charters must be submitted to the Governor before being submitted to the people, and if he disapproves he returns the instrument to the charter commission for further consideration.

THE AMENDMENT OF CHARTERS

The methods of amending home rule charters vary as greatly as the methods of initiating charter proceedings; and yet in any particular State the two processes are very

similar. The legislative authority of the city may propose charter amendments in eleven of the States. In eight of these States a simple majority vote of the legislative body is all that is required; but Michigan requires a three-fifths vote, and Wisconsin and Ohio a two-thirds vote. In eleven of the States the people may also propose amendments through an initiative petition signed by from five to twenty-five percent of the voters. It is noteworthy that Missouri and Washington have not seen fit to confer this right upon the people. In Minnesota amendments are proposed by the board of freeholders as well as by the people.

After amendments have been proposed the process is about the same as in the case of proposed charters: first there is the publication, and then the reference to the people. Six of the States require only a majority vote of those voting "thereon" for ratification. The approval of the legislature is also necessary in California; and in Oklahoma and Arizona the confirmation of the Governor is required; while in Michigan the assent of the Governor must precede submission to the people, or in case of disapproval passage over his veto by the legislative authority of the city is necessary. The other States—excepting Texas — require more than a mere majority vote for ratification. Texas requires a majority of those voting "thereat"; while Missouri and Minnesota are not content with a mere majority but demand a three-fifths vote of those voting "thereat" for the adoption of all charter amendments.

In addition to the regular process of charter-making and charter-revision, five States have special provisions in regard to the adoption of new home rule charters. In Missouri the legislative body of St. Louis is given power

to order an election of a board of freeholders at any time to revise its charter. The board of freeholders in Minnesota — being a permanent body — may submit a new charter at its discretion. In Colorado, after the rejection of a charter — when the machinery has once been put in motion — a new convention must be held within thirty days, and this process repeated until a charter is adopted; while in new cities of Michigan the first charter commission or the successively elected new commissions continue to submit charters until one is adopted. Nebraska confers upon the mayor and council the power to call a new charter convention at any time. The people also have this authority through the initiative petition. In all the other States changes are made in the home rule charters by the regular processes of amendment.

VII

STATUS OF THE HOME RULE CHARTER AREAS

Reference has been made in different parts of this paper to the fact that even in the home rule charter States the local areas with home-made charters do not have real home rule. The local selection of administrative officials and the privilege of local referenda have been largely realized even outside the home rule charter States; but the authority to be the sole judge of the form of the local government and the power to carry on local affairs absolutely without State interference have not been obtained in the local areas even under the home rule charter system. What then is the real status of the home rule charter areas?

Thus far every State which has provided a home rule charter system has placed certain limitations upon the powers of the local areas not only in the framing of charters but also in the exercise of the functions of local government under these home-made charters. The Constitutions and laws of Missouri, California, Washington, Minnesota, Oklahoma, Michigan, Wisconsin, Nebraska, and Arizona all contain large limitations upon the power of the local areas in drafting their own charters. The governments of the various areas which are entitled to draft their own organic laws must be consistent with and are subject to the laws and Constitution of the State of which they form a part. California guards these limitations by requiring the submission of all charters to the

legislature for ratification; while Oklahoma and Arizona accomplish the same thing by making the approval of the Governor necessary to the validity of such a charter. And Michigan provides for a system of review by the Governor before the proposed charter is submitted to the people. Moreover, in the other home rule States these limitations are likewise of special interest.

The fundamental law of Oregon is conspicuously free from specific limitations upon the local areas, but in the following provision ample grounds for legislative interference is evident: "Acts of the legislative assembly incorporating towns and cities shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit."[166] A similar provision is found in the Constitution of Ohio, which makes difficult the construction of the following section: "Municipalities shall have authority to exercise all powers of local self-government".[167] Colorado and Texas stand in a class by themselves in the measure of home rule which they have conferred upon their local areas by the home rule charter system. The Colorado grant is the more comprehensive of the two, as will be seen from the following sections:

> From and after the certifying to and filing with the Secretary of State of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers . . . . necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:
>
> (a) The creation and terms of municipal offices, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms of tenure of all municipal officers, agents and employes;

(b) The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

(c) The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

(d) All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;

(e) The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

(f) The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

(g) The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessment, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

(h) The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters,

and the enumeration herein of certain powers shall not be construed to deny to such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the State of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.[168]

The Texas grant of power, however, is not far behind the Colorado law; and yet the broad grant of power to the home rule cities of Texas is a grant by statutory enactment and not by constitutional authority. Hence the Texas plan rests upon legislative tolerance, while the Colorado system rests upon the will of the people. To be sure the Texas home rule charter system was established by a constitutional amendment adopted in 1912. But an enabling act was necessary to make the system workable; and it is this enabling act which contains the grant of power to the home rule areas of the State. Indeed, the original home rule charter system of Colorado did not contain the broad grant of authority found in the present Constitution: the portion of the present Constitution above quoted was proposed by the initiative and adopted by the referendum in November, 1912. It stands as by far the most unique constitutional provision in the United States in that it establishes the most independent status for municipalities to be found anywhere in this country.[169]

With the exception of Colorado it can not be said that legislative interference has been wholly eliminated by placing the home rule charter system upon a constitutional basis. Through certain limitations above mentioned the legislatures in all of the States under review still re-

tain large control of the home rule areas. This is apparent from the illustrations already given. And yet these limitations are not the only limitations upon the home rule areas: the courts have played a conspicuous part in circumscribing the authority of these areas — acting at all times in accordance with the principle of American law that municipal corporations are authorities of enumerated powers. Indeed, they "have been inclined to restrain the powers of local self-government to their narrowest limits. In Washington and Michigan the very life of the amendments were sapped by court interpretations".[170] Moreover, the courts in construing the provisions of the home rule charter systems have as a rule followed the policy of strict construction which has prevailed in this country from the very early days, namely, that all questions as to grants of power to municipal corporations over which a doubt has arisen are decided against the municipality. And so, it is not surprising to find the Supreme Court of Missouri using such language as the following in its construction of the powers of the home rule areas:

> The legislative power of the state is vested in a senate and a house of representatives, and when it is declared that any city of the required population may frame and adopt a charter for its own government, the right thus granted, and the charter adopted, is subject to legislative control. The proposition . . . . that, when any such city has adopted a charter, it is out of, and beyond, all legislative influence, cannot be sustained.[171]

Again, one finds this language employed by the Supreme Court of California:

> In all matters . . . . which may affect the State at large, or whenever any legislation is, in its [the legislature's] judgment, appropriate for all parts of the state, it possesses all

the legislative power of the state that has not been specifically denied to it, and upon whatever subjects its power to pass a general law exists, such general law must be the controlling rule of action in all parts of the state, and over all its citizens.[172]

In Ohio, however, the Supreme Court has taken a much broader view of the power conferred by the home rule amendment as is shown by the following language from a recent decision:

> The very idea of local self-government, the generating spirit which caused the adoption of what was called the home rule amendment to the Constitution, was the desire of the people to confer upon the cities of the state the authority to exercise . . . . powers without any outside interference. . . . The convention which framed it was conscious of the wide scope of the powers which they were conferring upon the cities of the state with reference to their local self-government . . . . Not alone this, but in connection with the comprehensive grant they disclose the intention to confer on the municipality all other powers of local self-government which are not included in the limitations specified . . . . general law passed under this constitutional provision must yield to a charter provision adopted by a municipality under a special constitutional provision, which special provision was adopted for the purpose of enabling the municipality to relieve itself of the operation of general statutes and adopt a method of its own to assist in its own self-government, and which charter when adopted has the force and effect of law . . . . The provisions of a charter which is passed within the limits of the constitutional grant of authority to the city is as much the law as a statute passed by the General Assembly.[173]

As far as the principles of American law are concerned it can be said, then, that a home rule charter can not deal with other than local affairs, that the authority to frame a charter is limited by the restrictions found

elsewhere in the Constitution, and that the general laws of the State passed in accordance with the Constitution are supreme. Thus, all of the provisions of the Constitutions in home rule States limiting taxation, indebtedness, and the borrowing power apply to the home rule cities, unless the Constitution expressly exempts them.

Even these are not all of the limitations on the local areas: some State constitutions definitely prescribe the main features of the local government. For example, in Missouri every city must have a mayor and a bicameral legislature; while the Minnesota Constitution requires a mayor and either a bicameral or a unicameral legislature. The enabling act of Michigan enumerates eighteen items that must go into every charter — among which is the provision for a mayor. This same act then specifies twenty-one permissive features and nine general prohibitions. The following sections from the county home rule provisions of the Constitution of California are a good illustration of the limitations under consideration:

It shall be competent, in all charters, framed under the authority given by this section to provide, in addition to any other provisions allowable by this Constitution, and the same shall provide, for the following matters:

1. For Boards of Supervisors and for the constitution, regulation and government thereof, for the times at which and the terms for which the members of said board shall be elected, for the number of members, not less than three, that shall constitute such boards, for their compensation and for their election, either by the electors of the counties at large or by districts; *provided,* that in any event said board shall consist of one member for each district, who must be a qualified elector thereof; and

2. For Sheriffs, County Clerks, Treasurers, Recorders, License Collectors, Tax Collectors, Public Administrators, Coroners, Surveyors, District Attorneys, Auditors, Assessors and

Superintendents of Schools, for the election or appointment of said officers, or any of them, for the times at which and the terms for which, said officers shall be elected or appointed, and for their compensation, or for the fixing of such compensation by Boards of Supervisors, and, if appointed, for the manner of their appointment; and

3. For the number of Justices of the Peace and Constables for each township, or for the number of such Judges and other officers of such inferior courts as may be provided by the Constitution or general law, for the election or appointment of said officers, for the times at which and the terms for which said officers shall be elected or appointed, and for their compensation, or for the fixing of such compensation by Boards of Supervisors, and if appointed, for the manner of their appointment; and

4. For the powers and duties of Boards of Supervisors and all other county officers, for their removal and for the consolidation and segregation of county offices, and for the manner of filling all vacancies occurring therein; *provided,* that the provisions of such charters relating to the powers and duties of Boards of Supervisors and all other county officers shall be subject to and controlled by general laws; and

5. For the fixing and regulation by Boards of Supervisors, by ordinance, of the appointment and number of assistants, deputies, clerks, attachès, and other persons to be employed, from time to time, in the several offices of the county, and for the prescribing and regulating by such boards of the powers, duties, qualifications and compensation of such persons, the times at which and the terms for which they shall be appointed, and the manner of their appointment and removal; and

6. For the compensation of such fish and game wardens, probation and other officers as may be provided by general law, or for the fixing of such compensation by Boards of Supervisors.

All elective officers of counties, and of townships, of road districts and of highway construction divisions therein shall be nominated and elected in the manner provided by general laws for the nomination and election of such officers.[174]

The various limitations upon the powers of the local areas operating under home-made charters and the restrictions upon the authority of the people within these local areas to frame their own charters show to what extent the home rule charter system has not accomplished real home rule. To be sure certain limitations and restrictions are necessary in order to preserve the sovereignty of the State, but the home rule charter system, itself, has failed to draw a definite line between State and local functions. To this fact may be attributed most of its failures and disappointments.

VIII

STATE AND LOCAL FUNCTIONS[175]

In the preceding pages an attempt has been made to trace briefly the development of home rule as a factor in local government, to indicate the present position of the local areas in Iowa and the resulting evils of special legislation, to point out the necessity and effects of classification, to show the impracticability of rigid uniformity in the government of local areas, and to present the home rule charter system in the light of its successes and shortcomings. The problem of classifying State and local functions may now be discussed to some purpose.

THE REAL PROBLEM OF HOME RULE

Indeed, the division of State and local functions is the real problem of home rule in its modern aspect. What are the State functions? What are the local functions? To answer these questions is no simple problem: the solution of the difficulty can not be had for the asking. In fact this problem lies at the basis of State administration; and its solution involves the whole problem of the reorganization of State government. At the same time some general propositions can be presented which will aid in at least a preliminary classification of State and local functions. In the first place there must be a constitutional delimitation of the sphere of State and local activity. But how should this be done? To what extent should the city, the county, the township, and the school

district be allowed to rule themselves? And how can the line be drawn so that State interference can be detected and avoided? On the other hand, what method should be used in mapping out a domain of activity for the State? In what way can this be accomplished so that it will be apparent when the local area is acting as an agent of the State and when it is acting as an area for the satisfaction of local needs, thereby making impossible any objection to State supervision?

Answering these questions in a practical way, rather than according to any theory, the constitutional delimitation of spheres of activities may be accomplished by allowing the State to exercise those functions which as near as can be determined pertain to it as a State, and at the same time permitting the local areas to carry on those functions which it is apparent belong to the locality. The result at first will be unsatisfactory, but in time definite and more or less well-marked fields will be established for the activities of the State and the local political corporations.

That such a method is practicable is abundantly shown by the adjustment of functions that has taken place between the States and the Federal government. Here the division was at first very roughly outlined, but time has established a fairly definite field of activity for both the State and the Nation. Moreover, in a government like ours, there must always be a shifting of function between the States and Federal government: under changing conditions of life, State functions must inevitably become Federal functions. And so, in local government economic and social developments will bring about changes in the division of State and local function — a fact which must be taken into account in making any

classification of State and local activities. In this connection the following statement made by Justice Wanamaker of the Supreme Court of Ohio, in the case of *Fitzgerald vs. City of Cleveland,* is directly in point and carries conviction:

> In every municipality there are three kinds of governmental power now being exercised: Federal, State, and municipal. The federal power of the nation is and of right ought to be supreme in its own proper jurisdiction. The state power of the state is and of right ought to be supreme in its own proper jurisdiction. Why should not the municipal power of the municipality be substantially supreme in its own proper jurisdiction? . . . . These powers are usually clearly distinguishable. At times, of course, between the state and the nation, as it is between the city and the state, there may be a twilight zone where it is difficult to distinguish into which class the governmental power falls. Nevertheless there is abundant reason and authority for such inherent distinction. The federal power with its limitations was put in the federal charter, to wit, the national Constitution. The state power with its limitations in the federal charter and state charter was put into the state Constitution. The municipal power is now to be put into a municipal charter, which is to be the Constitution of the city, limited only by its own provisions and by the state and federal charters or Constitutions.[176]

With these three fundamental propositions to guide the way — first, that there must be a definite demarcation between State and local activity; second, that the State in a general way should discharge those functions which naturally pertain to it and the local areas should do likewise; and third, that no division of functions can be permanent because of changing social and economic conditions — it is possible to make a rough classification of the functions which may properly be performed by the State and by the local areas.

THE STATE FUNCTIONS

In the first place there are certain well established functions which to-day are clearly within the field of State government — activities in respect to which not even the most ardent supporter of home rule would advocate the limiting of State power. For example, the general police power of the State must be exercised by the State government. This is not disputed. It is true that the local areas may be given authority to exercise this power in regard to health and safety; but local regulation in police matters must always be subordinate to State laws.

Again, the power of taxation for State purposes is of course a State function, but certain local areas are naturally best fitted for the collection of these taxes and should be used by the State for that purpose. Moreover, even when the Constitution provides for the segregation of the sources of income for State and local purposes, as it does in some of the States, the State can not surrender its power of general supervision over local taxation. For if the contrary principles were admitted the various political corporations of the State would be able to tax themselves so heavily that the State could not collect taxes for State purposes.

Likewise the indebtedness of political subdivisions of the State must be under central regulation: unless such was the case a local area might become so indebted as to render it useless as a field of revenue for the general purposes of the State. And if one of the local areas could create a situation of this kind, all of them might do the same and thus make the existence of the State impossible. This principle has long been recognized in American law, and constitutional limitations upon the power of political

corporations to incur indebtedness are common throughout the United States. For these same reasons the State should retain for itself the power to require a uniform system of accounts for the local areas — as has recently been done in Iowa — with the right at all times to inspect the workings of the system.

Another State function, which will not be questioned, is the control of education. If space permitted it could easily be shown that education in Iowa in early times was not even a governmental function: on the contrary it was a purely private matter. Later it became a function of the local areas; and to-day, without doubt, it has come to be regarded as a function which concerns the State as a whole. Thus the State should establish a public school system and assure itself of the efficiency of that system by State inspection. Even under such an arrangement large control in school affairs can be left in the hands of the school district.

In addition, the State must retain for itself the regulation and management of general elections, that is, the elections at which State officials are chosen — although it may well give to the local area the right to regulate and control the selection of local officers, as has been done in Colorado.

These are some of the well established and little questioned State functions. It is as unnecessary as it is impracticable to enumerate all of the activities of government in the American Commonwealth. To the police power, State taxation, education, and the control of general elections, however, the following may be added as purely State functions: the establishment of charities and corrections; the administration of justice; the protection of the rights of property; the definition of crimes and

their punishment; the care of criminals; the creation of a system of domestic relations (marriage and divorce); the maintenance of highways; the regulation of public utilities; and the control of trade and commerce.

THE LOCAL FUNCTIONS

Of local functions there are many; but since they vary according to the conditions of the local community they are even more difficult to classify than the State functions. By writers on American government local functions have commonly been thrown into one group — public improvements. Within the sphere of public improvements are classed the following: street paving and surfacing; the building of bridges, viaducts, and underground roads; the construction of sewers and sewage disposal plants; scavenging; the maintenance of public baths, parks, and playgrounds; the providing of water, light, heat, and the means of transportation; the establishment of ferries, docks, piers, and harbors; the creation of public markets and abattoirs; and the erection of libraries and museums. Such are some of the well recognized local functions. Now the geographical conditions of the local area; its industrial and commercial development; its status, whether it is a city, a town, a county, a school district or a township — that is to say, the kind of a political corporation that it is, whether it is a quasi-corporation or a municipal corporation — will largely determine the local functions within that particular area. Thus there arises a new problem — the problem of dividing the local functions among the local areas.

At the outset it is evident that municipal corporations, that is, the voluntary political corporations, will have more local functions to perform than the quasi or invol-

untary political corporations. This is due to the fact that the county and the township exist primarily as administrative agents of the State, and secondarily for the purposes of local government; while the city and the town exist in the first instance for the purposes of local government, and in the second instance as administrative agents of the State. Consequently, in discussing the apportionment of the local functions among the different local areas one must have definitely in mind the conditions in a particular State and the administrative system of that State.

This much, however, can be said in regard to the cities and towns in all of the States, that in addition to the functions already indicated they should have, under the proper conditions, the power to provide for municipal police, protection against fire, the inspection of foods and offensive trades, the control and management of infectious diseases — discovery, isolation, and disinfection, the requirement of vaccination and quarantine — and the maintaining of employment bureaus and allotments. In the larger cities of the country the following functions should also be considered as proper for the governments of such congested centers: the establishment of public loan offices and savings banks; the maintenance of technical schools, academies, and colleges; the creation of a poor relief system and the control of private charities; the erection of hospitals and other similar public improvements.

Many of these local functions would simply supplement the State's activity or be viewed as concurrent powers. The suggestion of these functions and conditions will bring to the reader's mind the important fact that the local activities of a particular area will depend

not only upon the status of that area but also upon its character and nature — its peoples and their habits of life, together with its industrial and commercial activities.

THE PROBLEM SUMMARIZED

The whole problem of State and local functions may now be summarized. The general legislative authority of the State, that is, the policy-determining authority must be left in the hands of the State: the State legislature must have the complete authority to determine the general State policies and to enact laws providing for the execution of the same. Moreover, in the administration of these policies, the State executive and administrative departments must have complete control; and for the purposes of efficient government there should be centralization in the administration of State functions. In fact centralization in administration would become a simple matter if there was a proper separation of State and local functions. No one could object to the centralization of the State's administration — which in itself would make possible the elimination of diversity in administration and bring about a higher degree of efficiency. On the other hand, the determining of local policies should be conferred upon the local areas. And likewise the execution of these policies should be left in the hands of the political subdivisions of the State. In this way State administration and local administration would become distinct.

The grant of power, moreover, must be in general terms, for the State Constitution can not enumerate all the subjects of State legislation: it ought not to attempt to enumerate all the powers of the local areas. There

should be a general grant of power to the State, and similarly there should be a general grant to the subdivisions of the State. Such a division of power would roughly create a field of activity for both the State and the local areas. The exact line of demarcation would be worked out by a process of gradual adaptation, in which the courts would have an important rôle.

THE HOME RULE CHARTER SYSTEM AND THE DIVISION OF FUNCTIONS

The home rule charter system is not a reform which will correct the many defects of State and local government: home-made charters are but one factor in a larger movement for the reorganization of government in the American Commonwealth. (For a discussion of the problem of reorganization, see Dr. Horack's paper on *The Reorganization of State Government in Iowa* which appears in this series.) Moreover, the home rule charter system can not accomplish any great reform until a definite field for local activities is defined by the State Constitution. Such constitutional delimitation has in a way been accomplished in Missouri, California, Ohio, and Colorado; but in the newer systems much of the possible development remains with the courts. Nor have the home rule charter systems been established in the past with the idea of accomplishing a comprehensive reform in local government: they have usually been adopted with a view to relieving the larger cities from the interference of the State legislature. And it has transpired that in some of the States the larger cities have found it advantageous, in their fight for municipal freedom, to stand for the grant of the charter-making power to the smaller cities as well.

Thus the home rule charter system of local government has been grafted on the old political tree. The movement did not start at the bottom by giving the local areas a definite constitutional status: it has not been concerned with the scientific division of State and local functions. Moreover, the grant of power under the new system has been more or less haphazard — except in one or two of the States where experience has led to a somewhat definite distinction between State and local functions. To be sure, the laws in nearly all of these States say something about municipal or local affairs; but few have been successful in keeping the courts from deciding against the power of the municipality. As a result the possibilities of the home rule charter system under the present conditions are limited.

THE DIVISION OF GOVERNMENTAL FUNCTIONS IN IOWA

The general principles already laid down apply as well to Iowa as to any other State, but there are certain local conditions in this State which are of special interest in connection with a discussion of State and local functions. Iowa has no large cities: it is primarily a rural Commonwealth. According to the census of 1910 there are in the State 2,224,771 persons — 1,118,769 of whom live in municipal corporations, that is, in the cities and towns. These local areas are classified for the purpose of legislation into (1) cities of the first class, (2) cities of the second class, (3) towns, (4) special charter cities, and (5) commission governed cities. At the present time there are three cities of the first class, one hundred and five cities of the second class, seven hundred and twenty-eight towns, five special charter cities, and eight commission governed cities. Furthermore, there are ninety-nine

counties, one thousand six hundred and sixty-five townships, and five thousand and fourteen school corporations in the State. Now then, the problem of home rule in Iowa is the problem of determining the functions which each of these local areas should discharge.[177]

The functions of the township and the school district can be easily disposed of at the outset. Since education has become unquestionably a State function, the school corporation must exist almost, if not entirely, for the State administration of the educational system. There may be some few local functions discharged by this political corporation, but whatever they may be, they ought undoubtedly to be discharged under State supervision. A charter system for the school corporations in this State would seem to be untenable. Moreover, a constitutional status for these areas seems even more questionable. Indeed, the status of these areas should depend largely, if not completely, upon legislative action.

Nor is the home rule charter system adapted to the government of the township. Indeed, the abolition of the township in this State might be advisable, since it may without violence be viewed as a subdivision of the county rather than as a subdivision of the State. Under the California home rule county system the problem of township government (with the exception of the justice of the peace court) is placed entirely in the hands of the county. It is perhaps true that some system of minor courts for the administration of justice should be maintained in Iowa; but it is doubtful whether township organization should be preserved merely for that purpose, as has been done in California. As far as local government is concerned it is evident that the township has outgrown its usefulness as an agency for the discharge of local func-

tions. It is, also, reasonable to presume that for the administration of justice the State could establish a better system than is afforded by the present justice of the peace courts. In short, the problem of functions in township and school district affairs does not seriously concern the study of home rule in Iowa. The county and municipality are the only important and vital areas in this connection.

That county government in Iowa has been unsatisfactory calls for no special proof: the fact is evident even to the most casual student of local conditions in this State. Moreover, it is altogether plausible that this situation is largely due to the confusion resulting from the dual character of the county. Very little attention has been given to the distinction between State functions discharged by the county and local functions performed by that same area. As a result there has often been insistence upon the local control of the State activities — which has been largely responsible for the development of a decentralized administrative system. To get away from this situation the home rule charter system, with a constitutional delimitation of the fields of State and local action, seems advisable both for the counties and for the municipalities.

The carrying out of such a program would result in several fundamental changes in the present system of local government. In the first place, the authority of the government of the local areas — the county and the city — would come direct from the people: the grant would be made through the charter under the provisions of the State Constitution instead of by the legislature; and, by constitutional amendment, powers could be added to or taken away from the local government. At the present time the local areas of this State have no real constitu-

tional status — the city and the county are mere creatures of the legislature. In the second place, the constitutional grant of power to these areas would be like the grant of power in European countries, where cities are given all the powers not specifically denied them. In Iowa the city and the county can exercise only those powers which have been expressly conferred. According to the European practice the presumption in regard to power is in favor of the city; while in Iowa the presumption is against the local area. By the home rule charter program supported by constitutional delimitation of fields of action some effective reform in both State and local government could be hoped for.

The proposition of a home rule system for Iowa comes to this: if the people living in the counties and municipalities of this State are competent to participate in the general government of the State as well as in the affairs of the National government; if this is a government of the people, for the people, and by the people; then the people of these local areas are and by right ought to be able to carry on local government without State interference, without special legislation, without classification, without the disadvantages of uniformity and the other wornout practices of the present system. If self-government has any place in modern government its existence ought to be justified in the counties and municipalities of this State.

IX

SUGGESTIONS FOR HOME RULE REFORM IN IOWA

The foregoing analysis and survey of the home rule charter system suggests certain conclusions as to what should be included in a home rule program for a particular State. Thus, if Iowa is to follow the more progressive States in local government reform and establish a home rule system the following fundamental features should be included:

First. The Constitution of the State should set out two distinct fields of action — one for the State and the other for the locality. Moreover, the grant of authority should be in general terms: for the organic law of the State ought not to attempt to enumerate all the functions of government. Indeed, the actual line of demarcation between State and local functions must be left to the growing experience of the Commonwealth; and the line will necessarily be a fluctuating line. Furthermore, the constitutional law of the State ought not to prescribe the details of the home rule system. These should be left to legislative action; but the terms of the Constitution should be mandatory upon the General Assembly in regard to such legislation. To provide for a complete system of home rule in a Constitution would make that instrument too cumbersome. Moreover, since many of the details must be left to statutory enactment, the organic law should place certain limitations upon the power of

the court in construing the home rule legislation enacted in pursuance of the Constitution.

Second. All the counties and incorporated municipalities of the State should be given the authority to frame their own charters. In fact the law should anticipate the adoption of this form of local government by all of these local areas. Because of local conditions, the adoption of charters generally would take a long time; but there is no reason why self-government should not be as interesting to the citizens of the numerous small towns and counties of the State as to the inhabitants of the more congested centers. By leaving the school corporation under the control of the State legislature, since education is now a State function, and by placing the township under the care of the county, as has been done in California, no confusion need arise in the discharge of State and local functions in these areas — an evil which every home rule program should attempt to correct.

Third. The legislative authority of the city or county should be given power to submit the question of a charter convention to the people at its discretion; and it should be compelled to submit such a question upon the filing of an initiative petition with the clerk of the local area. In either case a majority vote of the people should determine the feasibility of holding a convention for the purpose of framing a charter for the local area. The charter convention seems preferable to the Oregon plan of proposing charters by use of the initiative petition.

Fourth. The charter convention should consist of delegates elected by the people for the sole purpose of drafting a charter. If the charter is rejected a new convention should be held by the selection of new delegates. The number of members on the charter board — that is,

the number of members elected to the charter convention — might well depend upon the population in the particular area. Large boards, however, should under all circumstances be avoided. Moreover, there should be few qualifications for membership in the convention: that delegates should be qualified electors seems sufficient. Furthermore, any convention scheme should place a limit upon the time consumed in the drafting of a charter. Past experience has shown that there has been a tendency to place too short a limit upon the time of the charter board; and yet, great care must be exercised in not placing too long a limit upon the time of the convention. Three or four months would seem to be a reasonable length of time. In addition to these requirements the organization of the convention should be largely provided for by statutory enactment, as has been done in Michigan. These laws should provide for the expenses of the convention, the rules of procedure, and other routine matters.

Fifth. Publication of the charter should take place as soon as practicable after its completion. In fixing the time of publication, the date of submission should be taken into consideration — publication should not take place too far from nor too near to the actual referendum by the people. Not more than four or less than two weeks before the election would seem to be about the proper interval in which publication should be required. The best method of publishing a proposed charter is by mailing a copy thereof to each individual voter. The Oregon plan of publishing the drafted charter in an information pamphlet, together with arguments for and against its adoption, seems desirable.

Sixth. The charter should be submitted within a

reasonable time after its completion. Regular elections should be taken advantage of whenever practicable; but the vote of the people on the charter should not be delayed too long merely to avoid the expense of a special election. It is suggested that the law should provide for submission to the people in not less than thirty or more than forty days after the charter convention finishes its work.

Seventh. For ratification a simple majority of those voting upon the charter seems sufficient: there is no special reason for providing for unusual majorities for ratification as has been done in Missouri and Minnesota. The pros and cons of the proposition that those who do not vote at an election are deemed to concur in the opinion of the majority as expressed by the ballots ought not to enter into the question of the machinery necessary for the operation of a home rule charter system. That proposition involves the whole problem of election reform: it is beside the point in this connection. The legislation should be clear concerning this matter; and an effort should be made to avoid the confusion which has grown up over the judicial distinction between "thereat" and "thereon".

Eighth. No vetoes or quasi-vetoes upon charters need be provided. If a charter is unconstitutional or illegal, that should be left to the determination of the courts. The interpretation of State and Federal powers has been left to the judiciary, and there is no reason why they would not be as competent in construing local powers.

Ninth. Provision should be made for charter amendments, so that the organic law of the local area can be adjusted from time to time to changing conditions. The legislative body should have the power to propose amendments; and the people should also have this authority by

use of the initiative petition. Publication, submission, and ratification of amendments should be the same as in the case of the original charter.

Tenth. Arrangement should be made for total revision as distinct from amendment. The system of revision should not be unlike the method of adopting an original charter. The local legislative authority should have the power to submit the question of revision; and the people should have the authority to propose the same question by the initiative petition. The charter convention, together with the features already considered, should be used in charter revision.

NOTES AND REFERENCES

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[1] Compare Wilcox's *The American City,* pp. 313, 314; Howe's *The City, the Hope of Democracy,* pp. 160, 164, 170; Rowe's *Problems of City Government,* pp. 121, 122; Eaton's *The Government of Municipalities,* pp. 13–15, 27; Parson's *The City for the People,* pp. 405–409; Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), pp. 168, 169; Goodnow's *Municipal Government,* pp. 94, 95; Deming's *Government of American Cities,* pp. 91, 92; Goodnow's *Municipal Home Rule,* pp. 8, 9; Wilcox's *The Municipal Program* in the *Chicago Conference for Good City Government* (1904), p. 183; Binkerd's *Home Rule For Cities,* an address before the Annual Conference of Mayors at Utica, New York, in 1912, pp. 5, 6.

[2] Beach's *Public Corporations,* Vol. I, Sec. 6.

[3] See Hanson *vs.* City of Cresco, 132 Iowa 533, at 537–540; Wells *vs.* Stomback, 59 Iowa 376; Township of West Bend *vs.* Munch, 52 Iowa 132; and Dillon's *Municipal Corporations* (fifth edition), Vol. I, pp. 58, 59, 60, 62, 63, 67, 68.

[4] Wilcox's *The American City,* pp. 313, 314.

[5] Deming's *Government of American Cities,* p. 96; Munro's *The Government of American Cities,* pp. 61, 62.

[6] The writer is using self-government here in the sense in which he has defined it in the text, that is, in the sense of local autonomy. This distinction should be carefully noted or the paragraph may be confusing.

[7] See the discussion in Goodnow's *The Place of the Council and of the Mayor in the Organization of Municipal Government* in the *Indianapolis Conference for Good City Government* (1898), pp. 71–73.

[8] Munro's *The Government of American Cities,* pp. 377–380; Goodnow's *Municipal Home Rule,* pp. 5, 6.

[9] Oberholtzer's *Home Rule for our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 736; Bowman's *The Administration of Iowa* in the *Columbia University Studies in History, Economics and Public Law,* Vol. XVIII, pp. 16, 17.

[10] For a thorough and detailed discussion of the historic development of

the local areas see Dillon's *Municipal Corporations* (fifth edition), Vol. I, pp. 1–56.

For a statement of the importance of the historical development of the local areas, see State *vs.* Barker, 116 Iowa 96, at 100, 101.

11 Goodnow's *Municipal Home Rule,* pp. 2, 11, 12, 99, 100; State *vs.* Barker, 116 Iowa 96, at 101.

12 Goodnow's *Municipal Home Rule,* pp. 11, 12, 109, 110.

13 Goodnow's *Municipal Government,* p. 68; also, Goodnow's *Municipal Home Rule,* pp. 13, 14, 15, 99, 100.

14 Goodnow's *Municipal Home Rule,* pp. 13, 15; Goodnow's *Municipal Government,* pp. 65, 67.

15 Goodnow's *City Government in the United States,* pp. 31–33; Goodnow's *Municipal Government,* pp. 78, 79.

16 Goodnow's *City Government in the United States,* p. 35.

17 Dillon's *Municipal Corporations* (fifth edition), Vol. I, pp. 85–88.

18 Goodnow's *Municipal Home Rule,* pp. 15, 16.

19 Goodnow's *Municipal Home Rule,* pp. 100, 101.

20 Commonwealth *vs.* City of Roxbury, 9 Gray (Massachusetts) 451, footnote on p. 511.

21 Goodnow's *Municipal Home Rule,* footnote, p. 100.

22 Town of North-Hempstead *vs.* Town of Hempstead, 2 Wendell (New York) 109, at 135.

23 Goodnow's *Municipal Home Rule,* p. 13.

24 Jackson *vs.* Schoonmaker, 2 Johnson (New York) 230, at 232, 233.

25 Goodnow's *Municipal Home Rule,* pp. 13, 101.

26 Oberholtzer's *Home Rule for our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 736.

27 Goodnow's *City Government in the United States,* p. 46.

28 Dillon's *Municipal Corporations* (fifth edition), Vol. I, pp. 79, 80; Goodnow's *City Government in the United States,* p. 46.

29 Goodnow's *City Government in the United States,* p. 47.

30 Goodnow's *City Government in the United States,* pp. 47, 48, 52–55.

31 See Rowe's *Problems of City Government,* pp. 122–125; Deming's *The Government of American Cities,* pp. 87–91; Wilcox's *The Study of City Government,* pp. 87–89.

[32] Scattered throughout the statutes of Iowa during this period are to be found about forty-five special acts incorporating towns and cities.— *Laws of Iowa,* 1838–1839, pp. 248, 265; *Laws of Iowa,* 1839–1840, pp. 72, 124; *Laws of Iowa,* 1840–1841, pp. 33, 88, 97; *Laws of Iowa,* 1841–1842, pp. 14, 41, 74, 107; *Laws of Iowa,* 1843–1844, p. 156; *Laws of Iowa,* 1845–1846, p. 114; *Laws of Iowa,* 1846–1847, pp. 49, 95, 104, 154; *Laws of Iowa,* 1848–1849, p. 18; *Laws of Iowa,* 1850–1851, pp. 84, 110, 142, 195; *Laws of Iowa,* 1852–1853, pp. 49, 99, 108; *Laws of Iowa,* 1854–1855, pp. 9, 20, 97, 123, 142; *Laws of Iowa* (extra session), 1856, p. 52; *Laws of Iowa,* 1856–1857, pp. 33, 41, 51, 107, 143, 159, 176, 208, 245, 281, 325, 359, 416. See also *Constitution of Iowa,* 1846, Art. IX, Sec. 2.

[33] The session laws of 1842–1843 alone contain amendments to the charters of Farmington, Dubuque, Mount Pleasant, Fort Madison, Salem, and Keosauqua.— *Laws of Iowa,* 1842–1843, pp. 23, 27, 32, 38, 40, 44.

[34] *Laws of Iowa,* 1839–1840, p. 124; *Laws of Iowa,* 1845–1846, p. 115; *Laws of Iowa,* 1846–1847, p. 105; *Laws of Iowa,* 1852–1853, p. 89; *Laws of Iowa,* 1856–1857, p. 346.

[35] *Constitution of Iowa,* 1857, Art. III, Sec. 30.

[36] *Laws of Iowa,* 1858, p. 343.

[37] *Laws of Iowa* (extra session), 1862, p. 23.

[38] *Iowa Official Register,* 1913–1914, p. 707.

[39] *Laws of Iowa,* 1858, p. 363.

[40] *Laws of Iowa,* 1907, Ch. 48, p. 38.

[41] Munro's *The Government of American Cities,* p. 53.

[42] *Constitutional Home Rule for Ohio Cities,* issued by The Municipal Association of Cleveland, 1912, pp. 6–11.

[43] *Constitutional Home Rule for Ohio Cities,* issued by The Municipal Association of Cleveland, 1912, pp. 11–14; Wilcox's *The American City,* p. 318.

[44] Rowe's *Problems of City Government,* p. 129. There are only fifty-seven counties in the entire State of California; they have been divided into fifty-three classes. The method of classifying according to population is very interesting. For instance, the forty-sixth class contains all counties with a population between 4,930 and 4,980; the thirty-third class consists of all counties having between 10,030 and 10,070 inhabitants.— Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), p. 172.

[45] *Laws of Iowa,* 1902, p. 16.

[46] *Laws of Iowa,* 1907, p. 27.

[47] *Constitutional Home Rule for Ohio Cities,* issued by The Municipal Association of Cleveland, 1912, pp. 14–16; Wilcox's *The American City,* pp. 319, 320; Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), p. 172. Munro's *The Government of American Cities,* pp. 56–58.

[48] Rowe's *Problems of City Government,* pp. 132, 133; Wilcox's *The American City,* pp. 322, 323; Munro's *The Government of American Cities,* pp. 58, 59.

[49] Munro's *The Government of American Cities,* pp. 59, 60.

[50] Macy's *Institutional Beginnings in a Western State* in the *Johns Hopkins University Studies* (1884), Vol. II, Second Series, No. VII, pp. 5–38.

[51] *Code of 1851,* Ch. 15, p. 21; *Constitution of Iowa,* 1857, Art. IX, Secs. 1–10.

[52] See Shambaugh's *Documentary Material Relating to the History of Iowa,* Vol. I, pp. 47–55.

[53] See *Constitution of Iowa,* 1857, Art. IV.

[54] *Code of 1897,* p. 146; Horack's *Government of Iowa,* pp. 96–101.

[55] Horack's *Government of Iowa,* pp. 93–101.

[56] *Code of 1897,* pp. 444, 445.

[57] Brown *vs.* Duffus, 66 Iowa 193, at 195–197.

[58] *Constitution of Iowa,* 1857, Art. IV, Sec. 22.

[59] *Constitution of Iowa,* 1857, Art. IV, Sec. 22, Art. V, Sec. 12.

[60] *Code of 1897,* Sec. 1064; *Laws of Iowa,* 1913, pp. 88–90.

[61] *Code of 1897,* pp. 146–149.

[62] Horack's *Government of Iowa,* pp. 93–101.

[63] *Code of 1897,* pp. 146–149; see also *Iowa Official Register,* 1913–1914, pp. 770–790.

[64] *Laws of Iowa,* 1909, p. 11; *Laws of Iowa,* 1913, pp. 9–11.

[65] Cooley's *Constitutional Limitations* (seventh edition), p. 261.

[66] *Constitution of Iowa,* 1857, Art. III, Sec. 1.

[67] Dillon's *Municipal Corporations* (fifth edition), Vol. I, p. 57.

[68] Dillon's *Municipal Corporations* (fifth edition), Vol. I, p. 61.

[69] Compare with Dillon's *Municipal Corporations* (fifth edition), Vol. I, pp. 62–67.

[70] United States *vs.* Baltimore and Ohio Railroad Co., 17 Wallace 322, at 329.

[71] *Constitution of Iowa,* 1857, Art. VIII, Sec. 4, Art. XI, Sec. 3.

[72] Quoted in State *vs.* Barker, 116 Iowa 96, at 104.

[73] State *vs.* Barker, 116 Iowa 96, at 105.

[74] See State *vs.* Forkner, 94 Iowa 1; State *vs.* City of Des Moines, 103 Iowa 76; State *vs.* Barker, 116 Iowa 96.

[75] State *vs.* Barker, 116 Iowa 96, at 106.

[76] State *vs.* Barker, 116 Iowa 96, at 103.

[77] State *vs.* City of Des Moines, 103 Iowa 76.

[78] Hanson *vs.* Vernon, 27 Iowa 28, at 73; State *vs.* Forkner, 94 Iowa 1, at 14.

[79] State *vs.* Barker, 116 Iowa 96, at 102.

[80] Compare with Goodnow's *Municipal Problems,* pp. 23, 24.

[81] Of course the people do participate in local referenda from time to time, but this is for the most part at the discretion of the legislature.

The Constitution of Iowa gives the people of a local area the right of referendum in but one matter, namely, the change of the boundaries of an established county.— *Constitution of Iowa,* 1857, Art. III, Sec. 30.

[82] For an account of the creation of the home rule charter system see Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 748–752; Wilcox's *The American City,* pp. 323–326; Deming's *The Government of American Cities,* pp. 92, 93. See also Rowe's *Problems of City Government,* p. 134; Parson's *The City for the People,* pp. 415, 416; Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), pp. 172, 173.

[83] Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 748, 749; Wilcox's *The American City,* pp. 323–326.

[84] See Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 749.

[85] *Constitution of Missouri,* 1875, Art. IX, Sec. 20.

[86] *Constitution of Missouri,* 1875, Art. IX, Sec. 25.

87 Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 750.

88 Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 750, 751; Deming's *The Government of American Cities,* pp. 93, 94.

The following data taken from Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 751, shows the election returns on the freeholders' charter:

ORIGINAL RETURNS

New Charter	Yes — 11,858	No — 11,300
Separation Scheme	Yes — 11,725	No — 14,142

CORRECTED RETURNS

New Charter	Yes — 11,309	No — 8,088
Separation Scheme	Yes — 12,181	No — 10,928

Commenting upon the home rule charter of St. Louis in 1893, Professor Ellis P. Oberholtzer said:

"This charter has been recognized generally by authorities on city government as the best American model for charter-makers. The city, however, as will appear after a consideration of the wording of the constitution, is still bound in some measure by the State Legislature. It is not very definitely settled just what powers the Legislature would have in the case."—*Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 751.

89 *Constitution of Missouri,* 1875, Art. IX, Sec. 16.

90 Wilcox's *The American City,* p. 325.

91 Compare *Constitution of Missouri,* 1875, Art. IX, Sec. 20, with Sec. 16.

92 Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), pp. 172, 173.

93 For an account of the adoption of the home rule charter system in California see Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 752–756; Wilcox's *The American City,* pp. 326–328; Parson's *The City for the People,* pp. 418, 419.

94 Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 752, 753; Denman's *Home Rule Charters in California* in *The Annals of the American Academy of Political and Social Science,* Vol. XXIV, p. 400.

"The charter of San Francisco at this time was a volume of 319 pages of fine print. Originally it had covered only thirty-one pages, but there

were over a hundred supplemental acts which led to many evils and much confusion. . . . . The laws which were responsible for this condition of things it was further charged had been framed by about a half a dozen men who took them up to Sacramento and had them adopted by the Legislature without the wish, knowledge or consent of the people.''— Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 752, 753.

[95] Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 753; *Constitution of California,* Art. XI, Sec. 8.

[96] The votes on the different charters, as given in Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, p. 755, were as follows:

	September 8, 1880	March 3, 1883	April 12, 1887
Against	19,143	9,368	14,905
For	4,144	9,336	10,896
Majority against	14,999	32	4,009

It was claimed that the freeholders provided too radical changes in their proposed charters for ratification by popular vote.

[97] Oberholtzer's *The Progress of Home Rule for Cities* in the *Chicago Conference for Good City Government* (1904), p. 173. Compare Wilcox's *The American City,* p. 328.

[98] Wilcox's *The American City,* p. 328.

[99] Oberholtzer's *Home Rule for Our American Cities* in the *Annals of the American Academy of Political and Social Science,* Vol. III, pp. 760, 761; Wilcox's *The American City,* p. 328.

[100] *Constitution of Minnesota,* Art. IV, Sec. 36; *Revised Statutes of Minnesota,* 1905, Secs. 748, 749, 755; Wilcox's *The American City,* p. 329; Howe's *The City the Hope of Democracy,* pp. 161, 162.

[101] Compare the *Constitution of Colorado,* Art. XX, with the *Constitution of Missouri,* Art. IX, Secs. 16, 17, 20–25.

[102] *Constitution of Colorado,* Art. XX, Sec. 6; Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), pp. 174, 175; Wilcox's *The American City,* pp. 329–331.

[103] *Constitution of Oregon,* Art. XI, Sec. 2; Wilcox's *The American City,* p. 331; Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), p. 175; Haines *vs.* City of Forest Grove, 54 Oregon 443, at 446.

104 *Constitution of Oklahoma,* Art. XVIII, Secs. 3 (a), 3 (b); Deming's *The Government of American Cities,* p. 95.

105 *Constitution of Michigan,* Art. VIII, Sec. 21; *Laws of Michigan,* 1909, Art. No. 279 (Public Acts).

106 *Laws of Wisconsin,* 1911, Ch. 476; *Laws of Wisconsin,* 1911, Joint Resolution, pp. 31–35; *Laws of Wisconsin,* 1913, Ch. 770.

107 *Laws of Texas,* 1913, pp. 307–317.

The first paragraph of this act is a verbatim repetition of the home rule amendment of 1912.

108 *Constitution of Arizona,* Art. XIII, Secs. 2, 3; *Revised Statutes of Arizona,* 1913, Ch. 16, Title VII, pp. 706–708.

109 *Constitution of Ohio,* Art. XVIII, Secs. 8, 9.

110 *Constitution of Nebraska,* Art. Xa.

111 Wilcox's *The American City,* p. 325.

112 Peters's *Home Rule Charter Movements in Missouri with Special Reference to Kansas City* in *The Annals of the American Academy of Political and Social Science,* Vol. XXVII, p. 158; *Abstract of the Thirteenth Census, 1910, Supplement for Iowa,* p. 64.

113 *Charter and Revised Ordinances of Kansas City,* 1909, pp. 15, 16. For a complete discussion of the home rule charter fight in Kansas City see Peters's *Home Rule Charter Movements in Missouri with Special Reference to Kansas City* in *The Annals of the American Academy of Political and Social Science,* Vol. XXVII, pp. 155–167.

114 *Abstract of the Thirteenth Census, 1910, Supplement for Iowa,* p. 64.

115 "Popular government is really becoming an actuality in St. Louis. It has within six months adopted an initiative and referendum amendment to the charter, authorized the drafting of a new charter, secured a fairly effective primary act and elected as strong a municipal ticket as could be secured from the candidates presented."— Baldwin's *The St. Louis Election* in the *National Municipal Review,* Vol. II, pp. 492, 493.

For a brief statement relative to the adoption of the new charter of St. Louis see *The American Political Science Review,* Vol. VIII, p. 454.

116 *National Municipal Review,* Vol. III, p. 591.

117 *Charter and Revised Ordinances of Kansas City,* 1909, pp. 19–23.

118 Quoted in *Constitutional Home Rule for Ohio Cities,* issued by The Municipal Association of Cleveland, 1912, p. 25.

119 Reed's *Municipal Home Rule in California* in the *National Municipal Review,* Vol. I, pp. 570, 571.

[120] *The First Short Ballot County* (publication of National Short Ballot Organization); *The American Political Science Review*, Vol. VII, p. 413.

[121] Santa Barbara, Santa Rosa, Napa, San Diego, and Alameda are at present working on revisions.—Letter of June 1, 1914, from City Clerk of Santa Barbara to Benj. F. Shambaugh; letter of June 16, 1914, from City Clerk of Santa Rosa to Benj. F. Shambaugh; letter of June 1, 1914, from City Clerk of Napa to Benj. F. Shambaugh; letter of June 10, 1914, from City Clerk of San Diego to Benj. F. Shambaugh; letter of June 6, 1914, from City Clerk of Alameda to Benj. F. Shambaugh.

[122] Reed's *Municipal Home Rule in California* in the *National Municipal Review*, Vol. I, p. 570.

[123] *National Municipal Review*, Vol. II, No. 1, *Supplement*, p. 7.

[124] Reed's *Municipal Home Rule in California* in the *National Municipal Review*, Vol. I, pp. 571, 572.

The following quotations from letters from city clerks show something of the individual success of the municipal-made charters:

"As it is only three years since Monterey adopted its commission form of government, I am not prepared to speak authoritatively upon its merits, but it is undoubtedly a considerable improvement upon the general state law under which the city government formerly operated."

"As to the success of Home Rule in this city [Alameda], I think I can safely say that there is no question but that the system has been a successful one. No city now enjoying home rule, I am sure, would desire to go back under the supervision of the State. Greater freedom is enjoyed, and greater opportunity to work out individual needs and problems."

[125] *Constitution of California*, Art. XI, Sec. 6, original section.

[126] Kennedy *vs.* Miller, 97 California 429; Davies *vs.* City of Los Angeles, 86 California 37.

[127] *Constitution of California*, Art. XI, Sec. 6, as amended in 1896.

[128] For a general discussion of this development in California, see Reed's *Municipal Home Rule in California* in the *National Municipal Review*, Vol. I, pp. 573–575.

[129] *Abstract of the Thirteenth Census of the United States, 1910, Supplement for Iowa*, p. 75.

[130] *National Municipal Review*, Vol. I, p. 120; *University of Washington Extension Journal*, Vol. I, No. 3, July, 1914, pp. 166–168.

[131] *Charter of the City of Spokane*, 1910, pp. 3, 4; State ex rel. Lambert *vs.* Superior Court, 59 Washington 670. In regard to the success of the new

system the following quotation from a letter from the city clerk gives some insight:

"I . . . . believe that I am voicing the sentiments of the majority when I state that it is a vast improvement over the aldermanic form of government."—Letter of June 9, 1914, from City Clerk of Spokane to Benj. F. Shambaugh.

[132] *University of Washington Extension Journal,* Vol. I, No. 3, July, 1914, pp. 166–168; *National Municipal Review,* Vol. III, p. 592; *The American Political Science Review,* Vol. VIII, pp. 453, 454.

[133] *Constitutional Home Rule for Ohio Cities,* issued by The Municipal Association of Cleveland, 1912, pp. 26, 27; *National Municipal Review,* Vol. I, p. 120.

[134] *National Municipal Review,* Vol. I, pp. 109, 110; Joerns's *Home Rule Charters in Minnesota* in *The Annals of the American Academy of Political and Social Science,* Vol. XXIV, pp. 398–400.

[135] *National Municipal Review,* Vol. I, p. 109, Vol. II, p. 117.

[136] *Laws of Minnesota,* 1909, Ch. 170, pp. 181–183.

[137] *National Municipal Review,* Vol. I, p. 476.

[138] *National Municipal Review,* Vol. I, pp. 110, 287, 480, 708, Vol. II, p. 675, Vol. III, p. 110.

[139] *National Municipal Review,* Vol. I, p. 110.

[140] Roberts's *Home Rule for Cities* in *The Annals of the American Academy of Political and Social Science,* Vol. XXIV, pp. 395, 396; *Constitution of Colorado,* Art. XX.

[141] *Charter of the City and County of Denver* (revised and brought down to February 17, 1914); *National Municipal Review,* Vol. I, p. 481, Vol. III, pp. 119, 377.

Grand Junction, also, has a home rule charter.

[142] Oberholtzer's *The Progress of Home Rule in Cities* in the *Chicago Conference for Good City Government* (1904), p. 175; *National Municipal Review,* Vol. II, pp. 471, 472.

[143] *Report of the Commission Government Committee of the National Municipal League* in the *National Municipal Review,* Vol. I, p. 47; *The American Political Science Review,* Vol. VIII, p. 466.

[144] *National Municipal Review,* Vol. I, p. 46, Vol. II, p. 286, Vol. III, p. 374.

For a discussion of the situation in Michigan prior to the adoption of the

home rule charter system, see Wilcox's *Municipal Home Rule* in the *Publications of the Michigan Political Science Association,* Vol. V, pp. 445–456.

[145] State ex rel. *vs.* Thompson, 149 Wisconsin 488; letter of July 2, 1914, from Ford H. MacGregor to Benj. F. Shambaugh; letter of June 3, 1914, from Department of State, Wisconsin, to Benj. F. Shambaugh.

[146] *Texas Municipalities,* No. 2, June, 1914, p. 18; *National Municipal Review,* Vol. III, pp. 114, 592, 595; letter of June 16, 1914, from Herman G. James to Benj. F. Shambaugh.

[147] *Arizona Republican,* September 12, 1913; letter of June 25, 1914, from City Clerk of Phoenix to Benj. F. Shambaugh.

[148] *National Municipal Review,* Vol. II, p. 286.

[149] For a scattered account of the actual growth of municipal-made charters in Ohio, see *National Municipal Review,* Vol. I, pp. 267, 284, 475, 714, Vol. II, pp. 117, 118, 286, 472, 678, 680, Vol. III, pp. 116, 118. See also Gilbertson's *Progressive Charters for Ohio Cities* in *The American City,* Vol. IX, pp. 121–123.

[150] Fesler's *Progress of Municipal Home Rule in Ohio* in the *National Municipal Review,* Vol. III, pp. 594, 595; *The American Political Science Review,* Vol. VIII, p. 452.

[151] Fesler's *Progress of Municipal Home Rule in Ohio* in the *National Municipal Review,* Vol. III, pp. 594, 595.

[152] Fesler's *Progress of Municipal Home Rule in Ohio* in the *National Municipal Review,* Vol. III, p. 595.

[153] Gilbertson's *Progressive Charters for Ohio Cities* in *The American City,* Vol. IX, p. 123.

[154] Letter of June 10, 1914, from the City Clerk of Omaha to Benj. F. Shambaugh; letter of June 10, 1914, from the City Clerk of Lincoln to Benj. F. Shambaugh; *National Municipal Review,* Vol. II, p. 682; Sheldon and Hannan's *Nebraska Municipalities* in *Nebraska Legislative Reference Bureau Bulletin,* No. 5, p. 10.

[155] Wilcox's *The American City,* pp. 322, 323.

[156] Lewisohn's *Home Rule in New York* in the *National Municipal Review,* Vol. II, pp. 119, 120.

The following planks appear in the platforms of the leading parties of New York State:

PROGRESSIVE PARTY

"Municipalities should be given power to adopt and amend their charters in matters pertaining to the powers and duties, the terms of office and

compensation of officials, incurring of obligations, methods and subjects of local taxation, and the acquisition and management of municipal properties, including public utilities. We are opposed to special legislation dealing with such subjects.''

REPUBLICAN PARTY

''We favor granting to all cities and villages adequate powers of self-government and control over their local affairs and property and the transaction of municipal business, subject to proper constitutional safeguards and the general laws of the state, but free from legislative interference in purely local matters.''

DEMOCRATIC PARTY

''Home rule, so often violated by the Republican party, has long been a leading Democratic principle. We favor general legislation conferring on all cities full powers of local self-government, to enable them to control their local affairs and property.''

— Quoted in the *National Municipal Review,* Vol. II, p. 119.

The following is the program of the Municipal Government Association of New York State:

''(1) Home rule for the cities, counties and villages of New York State by the grant of adequate powers of self-government; (2) the passage of legislation which shall allow the free choice of municipal and local candidates in municipal and local elections unconfused by the presence of party names or emblems upon the ballot; (3) the enactment of a general municipal corporations act enabling the voters of a city to adopt a commission form of government or any other simplified form not inconsistent with the constitution or general laws of the state; and (4) constitutional amendments, if necessary, to guarantee home rule in the municipal subdivisions of the state.''— Lewisohn's *Home Rule in New York* in the *National Municipal Review,* Vol. II, p. 119.

157 *Town Charter Law of Louisiana,* 1898, with amendments down to 1904, Sec. 43, p. 25.

158 Fairlie's *Home Rule in Michigan* in *The American Political Science Review,* Vol. IV, pp. 122, 123.

159 *New Jersey Act Relative to the Government of Cities,* 1911, with amendments down to 1913, Sec. 18, pp. 22, 23, 24.

160 *Constitution of Virginia,* Art. VIII, Secs. 117, 119, 120, as amended 1912; Shaw's *Home Rule in Virginia* in the *National Municipal Review,* Vol. I, pp. 709, 710.

161 *Constitution of Ohio,* with amendments down to 1914, Art. XVIII, Sec. 2; *An Act to Provide Optional Plans of Government for Municipalities,* Ohio, 1913; Lowrie's *Ohio Model Charter Law* in *The American Political Science Review,* Vol. VII, pp. 422–424.

[162] The material for this chapter and the chart was taken from the following sources: *Constitution of Missouri,* with amendments down to 1909, Art. IX, Secs. 16–25; *Charter and Revised Ordinances of Kansas City,* 1909, pp. 76–89; *Constitution of California,* with amendments down to 1914, Art. XI, Secs. 7½, 8, 8½; *Constitution of Washington,* with amendments down to 1914, Art. XI, Sec. 10; *Enabling Act of the State of Washington and Charter of the City of Tacoma,* 1909, pp. 5–12; *Acts of the Legislature,* 1890, p. 218; *Remington and Ballinger's Code,* Vol. II, Ch. VII; *Constitution of Minnesota,* Art. IV, Sec. 36; *General Statutes of Minnesota,* Secs. 1342–1353; *General Laws of Minnesota,* 1909, Ch. 170; *Constitution of Colorado,* Art. XX; *Amendment to Section 6 of Article XX of the Constitution Granting Home Rule to Cities and Towns; Constitution of Oregon,* Art. XI, Sec. 2, as amended in 1906; Lord's *Oregon Laws,* Secs. 3481, 3482; Acme Dairy Co. *vs.* Astoria, 49 Oregon 524; Haines *vs.* City of Forest Grove, 54 Oregon 443; *Constitution of Oklahoma,* 1907, Art. 18, Secs. 3 (a) and 3 (b); *Constitution of Michigan,* Art. VIII, Sec. 21; *Laws of Michigan,* 1909, pp. 486, 497–511; *Laws Relating to the Incorporation and General Powers of Cities in Michigan* (Revision of 1913), Part III, pp. 146–167; *Laws of Wisconsin,* 1907, p. 206; *Laws of Wisconsin,* 1911, Ch. 476, pp. 558–562; *Laws of Texas,* 1913, Ch. 147, pp. 307–317; *Constitution of Arizona,* Art. XIII, Sec. 2; *Revised Statutes of Arizona,* 1913, Ch. XVI, pp. 706–708; *Constitution of Ohio,* with amendments down to 1914, Art. XVIII, Secs. 8, 9; *Constitution of Nebraska,* Art. XIa.

[163] Maltbie's *City Made Charters* in *Yale Review,* Vol. XII, pp. 386, 387.

[164] See p. 57.

[165] Formerly the members of the charter boards in Minnesota were appointed for six years.

[166] *Constitution of Oregon,* Art. XI, Sec. 5.

[167] *Constitution of Ohio,* with amendments down to 1914, Art. XVIII, Sec. 3. The Supreme Court has decided in a recent decision that this section is not self-executory.— State ex rel. City of Toledo *vs.* Lynch, 88 Ohio St. 74.

[168] *Constitution of Colorado,* Art. XX, Sec. 6.

[169] *Amendment to Sec. 6 of Art. XX of the Constitution of Colorado.*

[170] Fesler's *Progress of Municipal Home Rule in Ohio* in *The American City,* Vol. X, p. 151.

[171] State ex rel. *vs.* Field, 99 Missouri 352. See also Ewing *vs.* Hoblitzelle, 85 Missouri 64; Kansas City ex rel. *vs.* Scarrit, 127 Missouri 642; State ex rel. *vs.* Railroad Co., 117 Missouri 1; State *vs.* Bennett, 102 Mis-

souri 356; Westport *vs.* Kansas City, 103 Missouri 141; St. Louis *vs.* Bell Tel. Co., 96 Missouri 623; State ex rel. *vs.* St. Louis, 145 Missouri 551; Kansas City *vs.* Stegmiller, 151 Missouri 189; Young *vs.* Kansas City, 152 Missouri 661; State ex rel. *vs.* Telephone Co., 189 Missouri 83.

172 Kennedy *vs.* Miller, 97 California 429. See also Davies *vs.* City of Los Angeles, 86 California 37; Fragley *vs.* Phelan, 126 California 383; People ex rel. *vs.* Oakland, 123 California 598; Morton *vs.* Broderick, 118 California 474; Popper *vs.* Broderick, 123 California 456; Elder *vs.* McDougald, 145 California 740; Byrne *vs.* Drain, 127 California 663; People ex rel. *vs.* Williamson, 135 California 415; Fritz *vs.* San Francisco, 132 California 373.

For the opinion of the Washington court on this matter see: State ex rel. *vs.* Warner, 4 Washington 773; Tacoma *vs.* The State, 4 Washington 64; State ex rel. Seattle *vs.* Carson, 6 Washington 250; Denver et al. *vs.* City of Spokane Falls, 7 Washington 226; Scurry *vs.* City of Seattle, 8 Washington 278; Reeves *vs.* Anderson, 13 Washington 17; Tacoma Light Co. *vs.* City of Tacoma, 14 Washington 288; State ex rel. *vs.* Doherty, 16 Washington 382; City of Seattle *vs.* Chin Let, 19 Washington 38; State ex rel. *vs.* Weir, 26 Washington 501; City of Seattle *vs.* Clark, 28 Washington 717; State *vs.* Ide, 35 Washington 576; Hindman *vs.* Boyd, 42 Washington 17.

173 Fitzgerald *vs.* City of Cleveland (decided by Supreme Court of Ohio, Aug. 26, 1913), 103 Northeastern Reporter 512, at 515, 516.

174 *Constitution of California* with amendments down to 1914, Art. XI, Sec. 7½.

175 For a general discussion of State and local functions, see Goodnow's *City Government*, Ch. II; Wilcox's *The Study of City Government*, Ch. II; Dillon's *Municipal Corporations* (fifth edition), Vol. I, Chs. XV–XVIII; Fairlie's *Municipal Administration*, pp. 125–313; Maltbie's *City-Made Charters* in the *Yale Review*, Vol. XIII, pp. 397–400; McLaughlin and Hart's *Cyclopedia of American Government*, Vol. II, pp. 475–477; Munro's *Government of American Cities*, pp. 64–67.

176 Fitzgerald *vs.* City of Cleveland (decided by Supreme Court of Ohio, Aug. 26, 1913), 103 Northeastern Reporter 512, at 519.

177 *Abstract of the Thirteenth Census of the United States, 1910, Supplement for Iowa*, pp. 568–570; *Iowa Official Register*, 1913–1914, p. 707; *Iowa Educational Directory*, 1913–1914, p. 106.