How state takeovers undermine the principle of municipal home rule.

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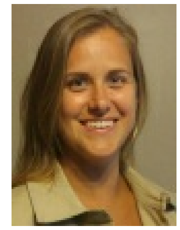
Recent years have seen high profile cases of municipal government failure and state takeover in American cities like Detroit and Flint, Michigan. **Ashley E. Nickels** *writes on why we should be concerned about threats to local autonomy such as these, which can supersede local home rule. She argues that such state actions – which can remove municipalities' fiscal management – are often interventions when only assistance is needed, and that they can alienate local residents and community organizations.*



Flint, Michigan, now synonymous with state government failure due to the Flint Water Crisis that unfolded during a municipal takeover, is a prime example of how strong state intervention can go wrong. Many US local governments have been unable to cope with the financial pressures of ongoing economic disinvestment, population shifts, and increased demand for services. Yet, Flint's experience is not unique. Other cities like Detroit, Michigan, East St. Louis, Illinois, Chelsea, Massachusetts, and Camden, New Jersey, have also experienced similar fiscal distress that led to reduced local autonomy with intervention by the state, known as a "municipal takeover."

Municipal takeovers occur when a state declares that a municipality is in fiscal crisis and places it in receivership, handing over most local processes to a state-appointed manager. My case studies in Michigan and New Jersey show that this policy of aggressive state intervention calls into question principles of local autonomy and home rule.

Municipal Takeover

About two-fifths of states (19) in the US have some form of intervention law on the books; of these, 16 have general legislation in place to monitor and address local fiscal conditions. Yet, some states are more aggressive than others in how they intervene. Some simply monitor fiscal conditions, while others allow for stronger forms of state intervention.

These intervention policies can be categorized based on "groups responsible" and "tools available" under the law. Table 1 highlights the three broad categories of "groups responsible" for state intervention and the seven categories of "intervention tools."

Table 1 – Approaches to State Intervention

Parties and Tools	Type	Definition
Responsible Parties	Receiver - Receiver, Financial Manager, Overseer, or Coordinator	A single individual, who may go by different titles, is given the authority to control some level of municipal fiscal affairs and/ or general management.
	Agency - State Agency or Department	Role of state agencies varies; may play significant role on a financial control board
	Board - Local or State Financial Control Board	A state appointed body, composed of any number of people with a mix of public managers and private citizens with expertise in finance and accounting, put in place to oversee local fiscal and managerial affairs
Intervention Tools	Debt Authorization	Approve bond sales or renegotiate terms of existing bonds
	Labor Cost Reduction	Shrink labor outlays by renegotiating existing labor contracts or shared service agreements
	Tax Level Authorization	Increase existing taxes and fees or implement new ones or grant credits
	Emergency Financing	Provide state loans (often no- or low-interest loans), grants, or credit guarantees. (This can include economic development financing)
	Budget Approval & Technical Controls	Auditing records, creating a financial plan or balanced budget, negotiating and approving labor and other contracts, and approving spending or reorganization
	Redevelopment (Land Use) Authorization	Economic and Redevelopment authority, including explicit ability to use eminent domain for redevelopment and recovery purposes
	Local Dissolution or Consolidation	Allow for the involuntary disincorporation or dissolution of a city and consolidate it with other nearby jurisdictions

Sources: Lake et al. 2007*;* Pew Charitable Trusts 2013*;* Weikart 2013*;* Scorsone 2014

The most aggressive form of state intervention gives State officials the power to supplant local authority. Some states allow for a single individual—whether they are called a receiver, a Chief Operating Officer (New Jersey), or an Emergency Manager (Michigan)—these individuals have sole authority to "take charge" of not only the local government's budget, but its operations.

State interventions, including municipal takeovers, also vary in terms of the tools available under the law. Though the tools available vary from state to state, the toolbox might include the removal of elected officials from office or the suspension of their decision making powers; the ability to restructure local government agencies, including eliminating citizen advisory boards; the ability to terminate employees and/or modify or nullify contracts; the authority to sell city assets and modify city services; and, the ability to levy taxes or fees.

It should be noted that municipal takeovers are a policy of last resort, used when both local government and the local economy are unstable and crisis-prone. As Wolman et al. (2007, 1) points out, "cities whose economies are stagnant, whose residents suffer from poverty and unemployment, whose budgets are in chronic fiscal stress, and who require state aid to sustain basic services are a drag on the entire state economy." If this is the case, then why do we care? Why are we concerned about the potential threat to 'local autonomy'?

Local Autonomy

Local autonomy should be understood in the context of power relations. It is a means of protection from outside, extra-urban threats, a particularly relevant issue when examining the practice of municipal takeover.

It is not hard to see how municipal takeover, strong state intervention that suspends and restructures local government, raises concerns regarding local autonomy; however, these same cities are eager to secure state financial support or subsidy. Local governments, especially distressed cities, are in a precarious situation: these municipalities need support and subsidies from their states, but accepting this aid limits their decision making autonomy. Municipal takeovers represent the clash between the need for intervention and the value of local decision making. The question then becomes, when is local autonomy trumped by state power? What are the legal frameworks that determine the level of local control?

Home Rule

Home rule is the "legal device" used by local governments to assert at least their partial autonomy from the state. According to one expert, in the US, "only national and state governments… enjoy [Federal] 'constitutional legitimacy". Given their subordinate status and lack of federal "constitutional legitimacy," American municipalities' existence and authority springs from their state constitution or state legislature. In the absence of a state provision for home rule, local governments are subject to state legislative control.

While most states have adopted some form of home rule protection, according to Frug, "cities are free of state control under home rule only on matters purely local in nature". When it comes to economic matters, states have fiscal oversight for local and municipal governments. Therefore, municipal takeovers are a mechanism of state fiscal policy, allowing the State to supersede home rule protections; even in states with strong Constitutional home rule protections, such as Michigan.

The price of municipal takeovers

As local governments continue to dig themselves out of the hole left by the economic downturn, they have been threatened by and subject to the specter of state intervention more greatly than they have been for at least a hundred years. More recently, this intervention has taken the form of municipal takeover. Academics and pundits alike have called municipal takeovers unconstitutional, citing home rule as a limiting factor. This debate over municipal takeover highlights the tension among state intervention, local autonomy, and community control.

Not only have home rule powers eroded, at best they only alter the form of a state's intervention and do not serve as a bulwark against it. While home rule is still heralded as a means to limit strong state intervention, I offer a picture of how it has not done so in both constitutional and legislative home rule states. As these two cases point out, home rule provisions are often eroded by state legislatures, courts, and even the electorate (particularly in the case of Michigan). Four key lessons or takeaways can be gleaned:

- **Reduced Local Autonomy is a High Price for State Support** . Local governments want state support; indeed, they often need it both financially and technically. Nevertheless, localities, and often citizens too, do not see that increased state responsibility for local assistance should result in decreased local authority. Localities want assistance, but on their terms.
- **Home Rule does not Imply a Right to Fiscal Management.** Localities can recover from many changes or missteps in most policy areas, but once local fiscal conditions are tied to state action or subject to state

review, a reduction in local autonomy through state intervention or management is nearly a foregone conclusion. Even when home rule provisions are strong and the tradition of local autonomy robust, states can use the obligation to make sure the public's money has adequate stewardship as a foundation to intervene. This is true especially in cases where state revenue collection funds local operations.

- **Calls for Assistance are not Calls for Intervention.** Municipal takeovers are often not implemented at the behest of the local governing officials, but through the courts and the legislature. They are more like hostile takeovers than they are like self-elected bankruptcy proceedings.
- **With Great Power Comes Great Responsibility.** It is important to understand the power and political relations implicit in this sort of intervention. The tools used can more or less alienate local authorities and electorates by providing greater or lesser involvement in the decision-making process and preserving or overriding local governance. The tools allowable under municipal takeover can create distrust, and ultimately dissent, among local residents and community-based organizations, and between these parties and the state.

Not addressing the problems faced by fiscally distressed local governments would be "ethically, socially, and politically unacceptable". However, the policy as it is currently designed creates unacceptable political and social outcomes as well. For example, the Michigan Emergency Manager is given authority over most of a city's governance and the authority to terminate labor contracts, dissolve resident advisory boards, or dissolve local charters. With so much power concentrated in a single officer, it is no wonder that critics look to home rule doctrine for protection. In cases where imposed offices can dislocate residents for economic development purposes, like in New Jersey, it is easy to understand the desire for protection from intervention.

As post-industrial cities continue to face fiscal threats, states are increasingly getting involved in the direct governing of city institutions, affecting the community more broadly as recovery policies are applied, implemented, and institutionalized. Municipal takeovers are intended to be temporary and limited. When a locality recovers, power is intended to be restored to the city, yet many of the processes, procedures and organizational changes intended to address the structural deficits of the cities remain long after the takeover. The debate over municipal takeover should be broadened to examine its impact on not only the local economy, but also urban democracy and community control more broadly.

This article is based on the paper, 'Approaches to Municipal Takeover: Home Rule Erosion and State Intervention in Michigan and New Jersey', *in State and Local Government Review.*

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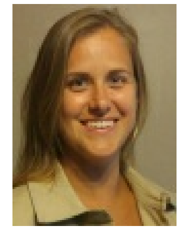

Ashley E. Nickels is an assistant professor of political science at Kent State University. She holds a PhD in public affairs, with a specialization in community development, from Rutgers University–Camden. Her primary field of study is public policy and administration, focusing on nonprofit and community-based organizations, urban politics, and local democracy and political participation. Her current research focuses on the impact of municipal takeover in Flint, Michigan.