Chapter 2
The Process of Municipal Incorporation in the USA

Abstract The USA operates under a federal system of governance that has implications for local governance and government. Within the federal system, local governments are creatures of the individual states and are not guaranteed any specific rights or privileges. Additionally, within the USA, states can be classified as either Dillon's Rule or Home Rule states. This differentiation largely determines which powers local governments can exercise within their jurisdiction. As a result of this federal system—requirements, procedures, and processes governing incorporation standards across the country can differ dramatically. With that said, some of the similarities in municipal incorporation standards across the country include minimum population size, minimum population density, minimum tax rate and minimum distance between proposed and existing municipalities. Meanwhile, differences in incorporating standards found across the USA include county approval, approval from a local government boundary commission, and/or a feasibility study that explores the financial viability of a new municipality, as well as its impact on existing jurisdictions. In the end, municipalities are granted a wide array of powers that have grown over the years and currently include general governance, public safety, economic development, and a variety of other charges.

Keywords Dillon's rule · Federal · Home Rule · Incorporation methods
Legislative standards · Metropolitan reformers · Public choice proponents
Unitary

Since Alexis de Tocqueville's classic study of democracy in America in the 1830s, the importance of local government in the USA has been recognized as instrumental to the success of the US governing organization as a whole. Jeffersonian style grassroots democracy is often touted as a defining characteristic of American democracy. How governance is carried out at the local level and the similarities and differences that exist among the fifty states are the focus of this chapter. The larger national system of governance that allows local government to operate in the USA will first be examined.

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2.1 Organization of State Governments: Unitary Versus Federal Systems

"All states are divided for political purposes into a hierarchy of administrative units" (Glassner and Fahrer 2004). The process by which states are organized and the relationship between the different levels of government can greatly vary. Generally speaking, two main types of state government exist in the world: unitary states and federal states. It should also be noted that a third less common form of state government exists—the regional state, a term coined by a Spanish scholar Juan Ferrando and potentially best realized in the organization of government in the UK as a cross between Unitarianism and Federalism.

States that function under a unitary system of government experience a high degree of control emanating from the central authority equally across all governed regions of the state. Unitary states have traditionally been found in countries with a high degree of homogeneity and connectedness across their territory. States with a unitary system of government are found in much of Western Europe, the Arab countries of the Middle East, and most African countries. Glassner and Fahrer (2004) identified four common characteristics to unitary states including: relatively small size, compact in shape, densely populated, and only containing one core area. By the end of the last century more than 160 unitary states existed across the globe.

This system of direct control over local governance from the central authority has several impacts for local governments including cities, towns, and villages. First, these lower order civil divisions are created by the central government and as such are beholden to the central government. Second, most if not all of the finances for the lower levels of local government in a unitary state come directly from the central authorities. Local governments have limited control over their ability to raise funds. Finally, and potentially most important, these lower levels of governance tend to function as administrative units doing the work of the central government and not necessarily deciding local policies. This does not imply that local governments within unitary states have no control or that they are merely "paper pushers," but rather they are utilized as effective mechanisms by which to implement national policies. This is a different relationship compared to the one that exists between local governments in a federal system.

The federal system of state governance relies on a more indirect relationship between the central government and local authorities. Federal states are far fewer in number than unitary states and can be found in larger countries including Australia, Canada, Nigeria, and the USA. Under a federal system, the central authorities relinquish many perceived governmental powers to other lower entities, while retaining control over the aspects of government that are deemed to be of "common interests" including: defense, foreign affairs, trade, and communications to name a few. This results in a system in which differences can and do exist across a country based on the perceived needs and local desires for differing levels of services, legislation, and representation. Practically speaking, a federal system creates

first-order civil divisions like states, provinces, or regions with their own capitals, political leaders (i.e., governors, premiers), and budgets (Glassner and Fahrer 2004).

The impact of a federal system on local government (i.e., lower-order civil division) is dynamic. Local governments under a federal system are creatures of the state, province, or region and are not guaranteed by any founding documents (e.g., US Constitution). A federal system is predicated on a tiered system of governance in which the central government is responsible for certain functions, the state/province/regional government is in charge of an additional basket of services and then local governments (i.e., counties, townships, cities, towns, and villages) can be established, but do not have to be created by the states/provinces/regions in order to carry out additional government responsibilities.

A second impact a federal system of government has on local government is that the process, functions, and responsibilities of these governments can and do vary greatly by state, province, or region. In effect, each first-order civil division can and does create its own system for approving lower-level governments. In addition to developing different rules and regulations by which these governments can be created, the first-order civil divisions in a federal system can also determine what power to give local governments within its borders. As a result, the power of individual municipalities can vary greatly across a federal system. These differences will be explored further in this chapter.

Finally, as creatures of the state, local governments must deal with changes in state politics much like local governments within a unitary state must respond to changes in national politics. As a result, the relationship between local governments and the state in which they reside can change drastically over a single election cycle. This has been experienced by municipalities in federal systems across the globe and can result in major changes to how governments are funded, the services they provide and in some instances whether they continue to exist.

2.2 Overview of US System of Governance

The USA operates under a federal system of government that divides power among three branches of government (i.e., executive, legislative, and judicial) at the federal level. Under the US system, 50 states have been created since its inception to oversee certain aspects of governing as previously briefly discussed above. These 50 states are then subdivided into even smaller jurisdictions to bring public services to the people of the country. These services can include, but are not limited to: police and fire protection, transportation infrastructure, water and sewer, electricity, education and health-related service. According to the most recent US Census of Governments, the USA is comprised of more than 89,004 local governments that perform some of these functions. This includes 3031 counties, 19,522 municipalities, 16,364 townships, 37,203 special purpose districts, and 12,884 independent school districts (US Census Bureau Census of Governments 2012) (Fig. 2.1).

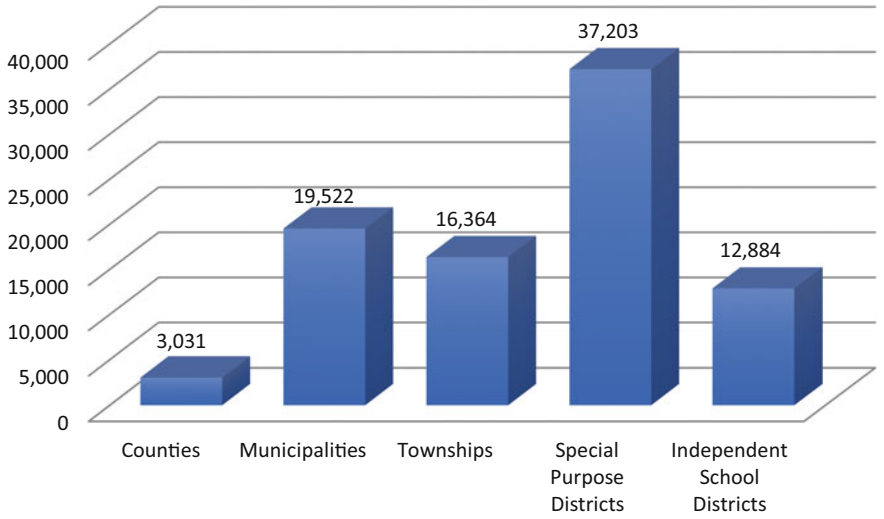

Fig. 2.1 Number of local governments in the USA by type, 2012

Except for Alaska, all of the states are subdivided into counties. Alaska utilizes a system of boroughs and Louisiana a system of parishes as a variation on the idea of a county (Krane et al. 2001). It should also be noted that in Connecticut and Rhode Island, counties are only utilized for statistical and judicial purposes (Glassner and Fahrer 2004). The more than 3000 counties in the USA range in number from 3 in Delaware to 254 in Texas and from less than 100 people to populations greater than 9 million. Generally, counties have been responsible for providing some of the following public services to their populations: law enforcement, tax assessing and collection, social services and elections.

The smallest general-purpose governmental unit in the USA is the municipality, of which more than 19,000 currently exist. Based on location, a municipality can take on the name/form of a city, town, village, hamlet, etc. In some instances, these nominal differences represent true variation in terms of size and function (e.g., New Jersey, Ohio), while in other states the nominal identifier of a municipality does not have any influence on its powers. For example, the largest city in the State of North Carolina (the City of Charlotte with close to 800,000 residents) could petition to have its name changed to the Village of Charlotte without any impact on the day-to-day functions of its municipal operations.

Municipal incorporation is the legal process established by state statutes through which a new city can be created. "Legally, incorporated cities in the USA are known as 'municipal corporations'" (Shelley et al. 1996, 137). Frequently, the process includes the conversion of unincorporated territory into a municipality, and this process varies greatly across the USA due to the federalist system of government in the USA. Dye (1984) noted that local governments are at the mercy of individual states in reference to the variety of rules, regulations, and permitted

actions allowed. As a result, municipalities can vary greatly in size, form, and function across the USA.

In the USA, the power that is afforded to a new municipality or to an existing municipal corporation is determined by individual state law. However, the interpretation of these powers can differ based on how individual state law is written and viewed. In the US governmental system, the legal interpretation of these regulations under which municipalities are controlled is known as Dillon's Rule and Home Rule.

Dillon's Rule is named after John Forest Dillon, Chief Justice of the Iowa Supreme Court, who was generally suspicious of municipal elected officials. As a result, he crafted a legislative opinion in a case between the *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, to be later called Dillon's Rule, in which he stated that in a contention between a municipality and a state "any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against a [municipal] corporation, and the power is denied" (Dillon 1911, 448). In effect, this ruling which was subsequently widely adopted by many other courts around the USA and implemented in many states, determined that if a municipality did not have a clearly expressed right to do something as evoked in their charter or by state law, the power did not exist. Dillon's Rule greatly limited the power of municipalities.

The Home Rule movement began prior to the Civil War and has taken on many different forms over the proceeding decades. Home Rule is an attempt to largely counter Dillon's Rule by granting municipalities all powers that are not expressly forbidden by state law. However, Home Rule municipalities must still comply with state and federal regulations (Shelley et al. 1996). In 1916, Howard McBain stated that,

> Broadly construed the term 'municipal Home Rule' has reference to any power of self-government that may be conferred upon a city, whether the grant of such power be referable to statute or constitution. In American usage, however, the term has become associated with those powers that are vested in cities by constitutional provisions, and more especially provisions that extend to cities the authority to frame and adopt their own charters (v.).

The differentiation of states by Dillon's Rule or Home Rule can have dramatic consequences for the municipalities that occupy geographic territory within its borders. Being able to only do what the State legislature permits versus being able to do everything except what is prohibited has major impacts on local governments.

According to the National League of Cities, thirty-nine states employ Dillon's Rule for all municipalities under their jurisdiction including: Arizona, Michigan, New York, and Texas (see Fig. 2.2). Eight states utilize Dillon's Rule for only certain municipalities including California, Colorado, and Tennessee. Ten US states implement Home Rule for its municipalities including: Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, and Utah. The State of Florida is the only state that does not exclusively use either Dillon's Rule or Home Rule for the regulation of its municipalities (National

League of Cities 2016). As a result of the federal system of government employed in the USA, the different legislative standards set by individual states and the dichotomous interpretation of municipal regulations by the courts, understanding municipal incorporation can be quite difficult. The next section brings to attention the similarities between municipal incorporation standards across the USA.

2.3 General Incorporation Legislation Standards

The legislation that governs the incorporation of a previous unincorporated territory is not uniform across the USA. As discussed, the US Federalist system of government allows individual states to develop different standards and in some cases have no standards at all. These standards can take into account the nuisances of local geography, historical political struggles, population patterns, and desired methods of servicing citizenry. In the end, each state can and has taken different approaches to dealing with the establishment of a new municipality.

Krane et al. (2001) provides the most recent examination into the standards that govern municipal incorporation in all fifty states. Their book, Home Rule in America: A Fifty-State Handbook, provides an excellent state-by-state comparison of local government structure, history, and authority. As it relates to municipal incorporation, their work revealed that thirty-five states have incorporation laws and regulations that govern the establishment of a new municipality. Eight states did not have any laws for incorporating a municipality including: Connecticut, Hawaii, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont. The majority of these states are located in the Northeast, where a long history of urbanization and local government boundary change has limited the space for new municipalities (i.e., no unincorporated land remaining). Krane et al. (2001) did not include any municipal incorporation information on an additional eight states (CA, CO, DE, KA, ME, OK, TN, and TX), but during the research for this book legislative standards for several of these states was found. Figure 2.3 provides an overview of municipal incorporation rules by state.

Since Hill's (1978) early examination into laws that govern local government boundary change, to more recent efforts by the US Advisory Commission on Intergovernmental Relations (USACIR) in 1992 and Krane et al.'s (2001) handbook, several common requirements related to the process/procedure and population/geography of municipal incorporation legislation have been identified across the nation. The common population and geographic characteristics shared by legislation across the USA include:

1. Minimum population (e.g., 500 residents as is the case in Alabama and Georgia),
2. Minimum population density (e.g., 1.5 persons per acre in Florida or 70 persons per square mile in Wyoming),

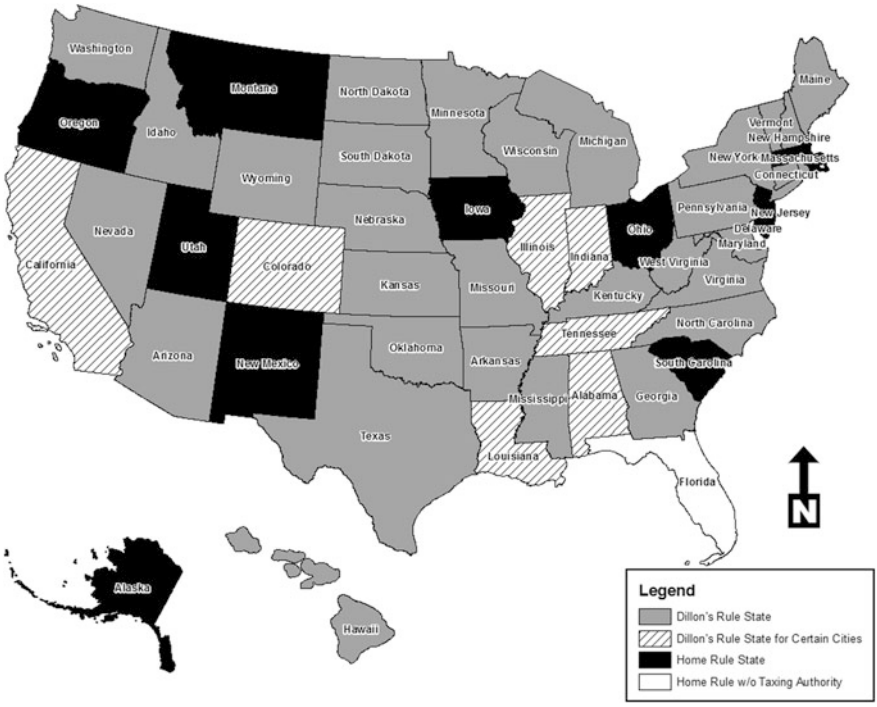

Fig. 2.2 Geographic distribution of Dillon's Rule versus Home Rule states

3. Minimum distance between existing and proposed municipalities (e.g., 5 miles in Arkansas and South Carolina), and
4. Minimum ad valorem tax rate (e.g., $0.05 per $100 valuation in North Carolina).

These requirements, with the possible exception of the ad valorem tax rate, all influence the geography of the resulting municipality. Requiring a minimum population will insure that the area under consideration has a large enough citizenry to support the new city. Although, it should be noted that in some states the minimum population requirement is extremely small. For example, the State of Missouri mandates a minimum population threshold of 10 residents for new municipal incorporations. Minimum population density standards are often required by state legislation to ensure that the new municipality is truly "urban." While many states employ this threshold, the standard of what is considered "urban" can differ greatly depending on the size of the state, population patterns, and urban history. Finally, the minimum distance required between proposed and existing municipalities is often necessary to allow for municipalities to grow as a result of municipal annexation. This locational standard provides a potential mechanism against existing municipalities being landlocked by surrounding suburban communities as is the case in many larger Northeastern and Midwestern cities (e.g., Boston, MA; Cleveland, OH; Detroit, MI).

Fig. 2.3 Incorporation rules by state

In addition to the population and geographic standards shared among many states, several process, and procedural requirements are common. A 1992 report by the US Advisory Commission on Intergovernmental Relations focused on exploring Local Government Boundary Commissions, determined that in addition to the population and geographic requirements discussed above,

> it is usually necessary to have (1) a petition from the community describing the boundaries and population of the proposed municipality, (2) an election to ascertain popular support, and (3) certification by the secretary of state that the election is favorable and that all the conditions have been met (USACIR 1992, 2).

The requirements outlined above are more focused on the process of incorporating a municipality along democratic principles than the previously discussed standards that will influence the spatial characteristics of the resulting municipality.

A final discussion of municipal incorporation is focused upon the degree of difficulty afforded to the establishment of a new city. Krane et al. (2001) developed a ranking system for states based on the ease or difficulty in creating a new municipality (see Table 2.1). According to their analysis, it is most difficult to incorporate a new city in the State of Alaska, which requires the approval of a constitutionally mandated commission. It is also difficult to develop a new municipality in states that require county approval for incorporation (e.g., IN, MD,

MT, NE, NV, ND, VA, WA, WV and WY). Contrary to this reality, there are a large group of states that only require the submission of a petition by residents of the affected area in order to incorporate.

In the end, while similarities exist, no two states have exactly the same standards governing the incorporation of a municipality. With this in mind, we turn our attention to those differences and the potential ramifications of differing standards on the municipal incorporation process.

2.4 State Differences in Municipal Incorporation Policies and Procedures

In review, several common procedural and population requirements are found across the nation as it relates to municipal incorporation legislation. However, municipal incorporation standards are not uniform. The US Federalist system of government allows individual states to develop different standards. For example, some states require a high minimum population threshold be met before incorporation is an option (e.g., Florida and Washington) and other states have a low or no population requirement (e.g., Missouri and Oklahoma).

In addition to the unique standards placed on population, location, and density by states, other differences between municipal incorporation legislation include the use of local government boundary commissions, requiring county approval, and the development fiscal impact plans. These differentiating standards are often the result of the unique state experiences related to local government boundary change events.

Local government boundary change commissions are more often found in states located in the Western USA. These commissions often comprised of locally elected officials and dedicated staff provide an opportunity for a local examination into the merits of a new municipality. The boundary change commission can act as a "gatekeeper," but cannot ban the consideration or approval of a new city. According to a 1992 USACIR report on boundary review commissions (BRCs), review commissions operate in twelve states including: Alaska, California, Iowa, Michigan, Minnesota, Nevada, New Mexico, Oregon, Utah, Virginia, Washington and St. Louis County, MO (USACIR 1992). A more recent study has indicated that thirteen states operate boundary review commissions, and five of these have the authority to approve or reject the incorporation request (LCIR 2001)

The purposes for establishing boundary review commissions include: "(1) encourage orderly metropolitan development and discourage sprawl, (2) promote comprehensive land use planning, (3) enhance the quality and quantity of public services, (4) limit destructive competition between local governments, and (5) help ensure the fiscal viability of local governments" (USACIR 1992, iii). In the end, if a proposed municipality meets all the legislative requirements, then the application is approved.

Table 2.1 Methods of Incorporation by degree of difficulty (reproduced from Krane et al. 2001)

5 (hardest)	Constitutionally mandated commission must approve incorporation	Alaska
4	County must agree to having the disputed area turned into a city	Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Virginia, Washington, West Virginia, Wyoming
3	State legislators must vote to approve incorporation	Florida, Georgia, Nevada, New York, North Carolina, Washington
	State agency (usually one dealing with state-local relations) must approve incorporation	California, Michigan, North Dakota, Utah, Wisconsin
	Administrative judge must approve incorporation	Arkansas, Kentucky, Louisiana, Wisconsin
	Special commissions (members mandated by state law) must approve incorporation	New Mexico, Vermont
2	Incorporation must be approved by simple majority vote (50% + 1)	Florida, Illinois, Louisiana, Maryland, Missouri, Nevada, North Dakota, Oregon, South Carolina, Virginia, Washington, West Virginia, Wyoming
1 (easiest)	Residents (registered voters and land owners) must petition state	Alabama, Illinois, Indiana, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Virginia, West Virginia, Wisconsin, Wyoming

Please note that states can appear on the list multiple times if they have multiple methods for incorporating a new municipality

Since the 1960s California has employed fifty-eight local government boundary review commissions termed Local Agency Formation Commissions (LAFCOs) (Eells 1977; LeGates 1970; Martin and Wagner 1978). It should be noted that only 57 LAFCOs existed until the San Francisco LAFCO was established in 2000. These state mandated agencies are responsible for reviewing "proposals for the formation of new local government agencies and for changes in the organization of existing agencies" (e.g., annexation) (LAFCO 2016). In sum, the 58 LAFCOs interact with more than 400 cities and 3000 special districts across California. A prime focus of these agencies is to provide for the orderly development of local government entities. A handbook produce with input for several LAFCO agencies provides useful information on first steps toward creating a new city, how to initiate the incorporation process, preparing an application for incorporation and details on the role of LAFCO in reviewing the application (LAFCO Guide October 2003). This unique requirement of municipal incorporation legislation showcases another method that municipalities in some states must navigate.

County approval is another difference that can be identified across the USA related to municipal incorporation legislation. Ten (10) states require this provision including: Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Virginia, Washington, West Virginia, and Wyoming (Krane et al. 2001). This standard can be a large hurdle for communities seeking to incorporate, especially in states where revenue streams will be affected by the incorporation of another municipality. Additionally, the creation of a new local government entity can impact existing service area providers including voluntary fire departments and public utilities. New municipalities can take redistributed federal and state funds and potential/existing customers away from counties and as a result seek to prevent them from incorporating.

Finally, the requirement to complete a fiscal impact analysis/feasibility study for the new municipality is another standard that differs across state borders. According to a 2001 Florida report on municipal incorporation, twenty states require a feasibility study as part of the procedure for incorporating a new community (LCIR 2001). Fiscal impact analyses can include the proposed budget of a new municipality, the expected revenues, and public services that will be offered to residents of the new city, town, or village. Some states also include a requirement that the fiscal impact analysis take into consideration the effect of the municipal incorporation on surrounding municipalities, counties, and public service providers. Since 1992, California's new municipalities must show that their incorporation will not be financially harmful to existing local government under a policy known "revenue neutrality" (LAFCO 2003). If proposed municipalities do not meet this requirement, LAFCO cannot approve the incorporation request.

2.4.1 *Municipal Incorporation Legislation: The State of North Carolina*

The procedure and population standards for incorporating a new municipality in North Carolina includes some of the common elements previously discussed as well as some additional requirements unique to the state. In North Carolina, a municipal incorporation or a "city" is defined as follows:

> "City" means a municipal corporation organized under the laws of this state for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term "city" does not include counties or municipal corporations organized for a special purpose. "City" is interchangeable with the terms "town" and "village," is used throughout this chapter in preference to those terms, and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage. The terms "city" or "incorporated municipality" do not include a municipal corporation that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136–41.2(a), except that the end of status as a city under this sentence shall not affect the levy or collection of any tax or assessment, or any criminal or civil liability, and shall not serve to escheat any property until five years after the end of such status as a city, or until September 1, 1991, whichever comes later (NCGS 2016).

As has been previously mentioned, other states make a differentiation between the terms city, town, and village often based on population size variation and differing levels of service provisions. This is not applicable for North Carolina municipalities. This results in a largely equal playing field for all municipalities in which the powers and duties of cities in the state are uniform and do not change as a result of a growth or decline in population.

In North Carolina, no area may incorporate without the approval of the North Carolina General Assembly. In recent years and partially due to the high number of requests for the establishment of new municipalities in North Carolina, the North Carolina General Assembly has relied upon the Joint Legislative Commission on Municipal Incorporations to make rulings for or against municipal incorporation for proposed areas. Prior to this change in the legislation, new municipalities in North Carolina were not required to go before the Joint Commission on Municipal Incorporations, provide any public services, or change a minimum tax rate. This relatively simple legislative process resulted in a flood of requests during the 1990s.

The Joint Commission on Municipal Incorporations must receive the following information in order to make a ruling:

> A petition to incorporate must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly, and shall contain the following:
>
> 1. A petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area. The signature petition must be verified by the county board of elections.
> 2. A proposed name for the city; a map of the city; a list of proposed services to be provided (at least 4 of 8 authorized by law); the names of three persons to serve as the interim governing board; a proposed charter; a statement of the estimated population; assessed valuation; degree of development; population density; and recommendations as to the form of government and manner of election.
> 3. A statement that the proposed city will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred-dollar ($100.00) valuation upon all taxable property within city limits.
> 4. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed city must propose either to provide police service or to have services provided by contract with a county or another city that proposes that the other government be compensated for providing supplemental protection (NCSOG 2010).

Additional requirements that must be included in a petition to establish a new municipality and receive a favorable recommendation from the Joint Municipal Commission include:

1. Notification to surrounding municipalities and the county in which the proposed municipality will reside of the impending/proposed incorporation effort,

2. A resolution of support from nearby existing municipalities,
3. A minimum population of 100 residents and a population density of at least 250 people per square mile,
4. A fiscal analysis of the impact of the new municipality on other local governments and any contracts for the provision of service, and
5. A plan for providing at least four urban services within the new municipality at a "reasonable" tax rate (NCSOG 2010).

Lawrence and Millonzi (2007) offer an excellent overview of the incorporation process in North Carolina in their book Incorporation of a North Carolina Town. The authors provide a how to guide to incorporating a community in North Carolina that includes: why an area would incorporate, alternatives to incorporation, how an area would incorporate, the opportunities and responsibilities of municipalities, budget and financing advice and suggestions for getting started. Their work is a comprehensive effort on the essentials of municipal incorporation in North Carolina.

2.4.2 *Municipal Incorporation Legislation: The State of Florida*

Municipal incorporation procedures in Florida have been guided by the 1974 Formation of Municipalities Act with limited amendments over the years. This act sought to standardize the incorporation process and to provide for "(1) orderly growth and land use (2) adequate public services (3) financial integrity in government (4) equity in fiscal capacity, and (5) fair cost distribution for municipal purposes" (LCIR Report 2001, ii). Additionally, the act clarified that only through a special act of the legislature, can a new municipality be established.

As is true in many states, new municipalities in Florida must comply with a list of requirements that includes compactness, a minimum population standard, a minimum population density, and a minimum distance from existing cities. Additionally, since 1996, new municipalities must also complete a feasibility study, although standards for what constitutes a feasibility study were not agreed upon until 1999 and have not been rigorously enforced (LCIR Report 2001, iii).

The specific standards on the formation of a new municipality within the State of Florida include:

> (1) The incorporation of a new municipality, other than through merger of existing municipalities, must meet the following conditions in the area proposed for incorporation:
>
> (a) It must be compact and contiguous and amenable to separate municipal government.

(b) It must have a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1500 persons in counties with a population of 75,000 or less, and of at least 5000 population in counties with a population of more than 75,000.
(c) It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.
(d) It must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary, which requires separate municipal government.
(e) It must have a proposed municipal charter which:

1. Prescribes the form of government and clearly defines the responsibility for legislative and executive functions.
2. Does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law (State of Florida 2016).

One of the interesting aspects of this legislation that plays to the local geography found in Florida (i.e., water bodies) is the requirement that a minimum distance of 2 miles must exist between an existing municipality and a proposed municipality unless "an extraordinary natural boundary" is present. This takes into account the problem of providing public services to communities that can be divided by a variety of water bodies (e.g., rivers, lakes, swamps) in Florida.

While specific standards exist for the majority of Florida, two counties have developed slightly modified systems for handling municipal incorporations through special legislation approved by the State Legislature. First, the Board of Commissioners in Miami-Dade County has been granted the power to review and approve/reject municipal incorporation requests. This power has resulted in the county adopting a process that seeks revenue neutrality, like in California, related municipal incorporations. The local system seeks to encourage coordination, cooperation, and the cost sharing for public services (LCIR 2001). Meanwhile, Broward County has taken a different approach and has sought the incorporation and/or annexation of all unincorporated property within the county as a mechanism for the county to limit its provision of "municipal services" (Broward County 2016). This process has resulted in winners and losers related to the annexation and incorporation of certain areas, while other usually poorer unincorporated communities are left behind.

Florida's system for processing municipal incorporation requests is similar to much of the country. However, it does provide for some nuanced differences related to specific counties, natural geography, and feasibility studies. One of the confounding issues facing municipal incorporation in Florida has been the State Legislature's willingness to waive certain requirements of state law and consequently leaves the process clouded in political uncertainty for future communities that wish to incorporate (LCIR 2001).

2.4.3 Consequences of Differing Standards

In the end, several consequences can be identified as it relates to differences in municipal incorporation laws across the USA. First, State Legislatures have the ability to set municipal incorporation standards "high" or "low" depending upon the desired geopolitical/urban outcome. As discussed in this section, the State of North Carolina had a relatively "low" standard for the establishment of a new municipality for several decades prior to 2001. This culminated in a rash of municipal incorporation activity during the 1990s and resulted in North Carolina experiencing the highest level of municipal incorporation activity in the USA during that decade. Numerous "paper towns" were created often in an effort to block impending municipal annexation advances by existing municipalities. "Paper towns" can be defined as municipalities that provided little in the way of public services, with no or low tax rates. In essence, these are cities in name only and do not carry out the traditional functions associated with a municipal corporation.

By changing the existing legislation (i.e., raising the standards for incorporation), it is possible to reduce the amount of municipal incorporation activity. This has generally been the case experienced in North Carolina, as new standards implemented in 2001 resulted in a decrease in municipal incorporation activity. These new standards, discussed above, included a minimum tax rate and the mandatory provision of at least four public services. Individual state legislators can decide how they would like to see their state developed by encouraging municipal incorporation by utilizing a low threshold or deter municipal incorporation efforts through tougher standards.

Additionally, other related local government boundary change legislation also influences municipal incorporation. A state's regulations on municipal annexation can either spur municipal incorporation efforts or protect unincorporated territory from the threat of annexation by an existing municipality. As Rigos and Spindler (1991) state "the fear of impending annexation is one of the most powerful stimuli for the creation of new cities" (80). As a result, their study determined that a state's annexation laws have an indirect effect on the frequency of incorporation and that those areas with strong state and county governments that provide services were also shown to aid incorporation activity (Rigos and Spindler 1991).

Another consequence of differences in state legislation is the development of a fragmented and confusing geopolitical landscape within the USA. Different names, powers and privileges, and ways of incorporating across the country leave citizens bewildered and confused about local government. Is snow removal the purview of the township or town? Do my children attend a county or city school? Am I voting for an alderman or councilor? Who collects my taxes? Who do I complain to about my neighbor's junk cars? These are just a few of the questions confronting residents' around the USA as they attempt to navigate the perplexing world of local governance. As a city planner, I had the pleasure to answer many of these questions on a regular basis as the average citizen was unaware as to their local government representation.

Municipal incorporation is a contributing factor to metropolitan fragmentation. The proliferation of new government units increasingly divides the metropolitan landscape by adding new layers, players, and services to an already complicated system of urban governance. As a result, the theory behind why urban regions are increasingly being divided into smaller pieces is of importance in any discussion of municipal incorporation. Rigos and Spindler (1991) argue that "the issue of metropolitan governance has fascinated urban scholars since the great suburban explosion of the post war years" (76). This fascination resulted in the creation of two competing theories on metropolitan fragmentation, pitting public choice advocates against metropolitan reformers. Each of these theories offers an explanation of both metropolitan fragmentation and potentially the proliferation of municipalities.

For decades' urban scholars depended on the theory of collective consumption to explain metropolitan fragmentation. The theory of collective consumption is a "bottom-up" or "grassroots" explanation for metropolitan fragmentation that views residents as consumers of public services in a complex metropolitan arena (Tiebout 1956; Ostrom et al. 1961). The division within collective consumption theory places public choice proponents at odds with the metropolitan reformers. Public choice proponents argue that residents should be afforded a multitude of residential options within a metropolitan region in order to rationally decide which level of services and taxes are the most desirable. Meanwhile, metropolitan reformers believe that the proliferation of service providers within a metropolitan area can lead to an inefficient bureaucracy, the duplication of services, and the segregation of the population. Finally, the proliferation of service providers does not allow for some redistribution of resources.

2.4.3.1 Public Choice Proponents

The public choice proponents favor the establishment of numerous smaller units of government (i.e., incorporation and secession) that offer a "choice" of services from which citizens can choose (Lyons et al. 1992). The role of "choice" or "voting with your feet" in deciding the outcome of the metropolitan structure can be traced back to Tiebout's (1956) seminal work. Public choice proponents "argue that a more politically fragmented metropolis promotes efficiency because residents, functioning as municipal consumers, choose from among different bundles of services and tax rates that the various municipalities offer" (Purcell 2001, 616). Public choice proponents focused their attention on studying the efficiency of service and the provision of services (Buchanan 1971; Peterson 1981; Schneider 1986; Stein 1987; Lowery and Lyons 1989). The fragmentation caused by incorporation also allows for local control by residents and facilitates the formation of governments based on the most efficient size. The research on public choice highlights the role that providing needed public service, as well as efficiency may have on understanding why places incorporate.

2.4.3.2 Metropolitan Reform Advocates

Metropolitan reformers support the consolidation of government (i.e., annexation and consolidation/unification) entities to help cities grow and become more efficient providers of services (Rusk 2003). However, "the institutional reform logic stresses the concept of administrative efficiency rather than competitive efficiency" (Foster 1993, 527). Metropolitan reform "suggests that reorganization [metropolitan fragmentation added for clarity] is a strategy used by the 'haves' to avoid their obligations to the 'have-nots'" (Purcell 2001, 616). Metropolitan reform advocates have spent considerable time researching segregation and inequality, both of which have been associated with metropolitan fragmentation and are very pertinent to this discussion (Hill 1974; Weiher 1991; Morgan and Mareschal 1999; Rusk 2003). Additionally, regionalism allows for improved delivery of service and better coordination of planning in a metropolitan government.

These studies all examined the impact of fragmentation on segregation and inequality within the metropolitan area. Hill (1974) determined that "the political incorporation and municipal segregation of classes and status groups in the metropolis tend to divorce fiscal resources from public needs and serve to create and perpetuate inequality among urban residents in the USA" (1567). Rusk (2003) further exposed the financial problems of "inelastic" and "elastic" cities and how metropolitan fragmentation hems in existing cities from future expansions and growth. This in turn traps central existing cities from capturing fleeing tax revenue and increases the financial inequality between center cities and suburbs. Finally, Morgan and Mareschal (1999) determined that metropolitan fragmentation posed racial consequences, which include spatial mismatch and issues of political representation. Each of these studies highlights the importance of inequality and segregation on the metropolitan landscape and municipal incorporation efforts.

Finally, the federal structure of local government in the USA limits the ability of scholars to conduct national research on municipal incorporation. Since each state has its own legislation, process, and procedures for establishing a new municipality, comparative studies across state borders become increasingly difficult. Likewise, the development of overarching theories and conclusions that can be applied universally are also difficult. The search for "truths" related to municipal incorporation activity in the USA still must proceed. Any analysis of the USA, whether it is for economic, political, or social, must also contend with the federal problem.

2.5 Powers Granted to Municipalities

Municipalities across the nation have a variety of powers that they may employ within their jurisdictional boundaries. As discussed, these powers can be granted to cities, implied from state authority (i.e., Dillon's Rule states) or as is the case in Home Rule states, be prohibited by state legislation. Beyond these differences, the

functions of municipalities across the fifty states can vary considerably. This section discusses some of the more common powers exercised by cities throughout the USA, as well as explores some differences that exists between states.

In general, municipalities in the USA have experienced an increase in the types of powers, function, and the services that they provide their citizens since the founding of the country. Towns that once were only responsible for "keeping the peace" (i.e., law enforcement) have seen a multiplication in public service offerings. Much of the growth in municipal services has been the result of technological advancements (e.g., electricity, transportation) and the need to protect the public from health-related diseases (e.g., public water, public sewer, sanitation) (Teaford 1984). "The threat of contagion prompted cities to invest in waterworks, drain swamps and regulate the keeping of animals and the dumping of refuse" (Judd and Swanstrom 2002, 37).

More recently, municipalities have been asked to lead economic development programs, provide shelter for the poor, and participate in the construction/financing of sports venues. Krane et al. (2001) divide the powers granted to municipalities across the country into nine different city functions. These include:

- General Government
  - Elections, administrative, legislative and judicial tasks, maintain city buildings, records and statistics
- Public Safety
  - Law enforcement, fire protection, animal control
- Public Health
  - Board of health, hospitals, mental health facilities
- Public Works

  Road maintenance and construction, airports, harbors, public transport
- Social Services
  - Public housing, welfare, aging services, cemeteries
- Economic Development
  - Community development corporations, industrial parks, economic incentives
- Physical Environment
  - Land use control, planning, zoning, environmental conservation
- Culture and Recreation
  - Libraries, parks, sporting events
- Public Schools
  - Kindergarten through 12th grade.

An additional power that Krane et al. (2001) fail to include in their categorization of municipal powers is public utilities. Public utilities can include municipal participation in water and sewer system and even the generation/distribution of electricity for municipal customers. In North Carolina, electric cities as they are known can provide a municipality with substantial revenues.

Based on the findings published in their book (Krane et al. 2001), forty-nine states[1] permitted municipalities to actively engage in the following municipal powers: general government, economic development, physical environment, and culture & recreation. These four areas provide the basis for the generally agreed upon municipal services across the country. Municipalities can run the day-to-day functions of general government, carry out planning related functions, participate in economic development and build parks and libraries throughout the nation. Additional municipal powers that are present in the majority of states include: public safety (48 states), public works (45 states), and public health (27 states). Public safety, law enforcement, and fire protection are the purview of municipalities in all states except South Dakota, and forty-five states allow municipalities to build and maintain roads, ports, harbors, etc. The municipal powers that are least uniformly utilized across the country are social services (19 states) and public schools (11 states). The least likely municipal powers, social services, and public schools, often fall under the direction of counties, townships, or special purposed governments (i.e., school districts). These two powers are often mandated by federal and state governments to provide services to all populations and as such are more efficiently delivered by a government agency with jurisdiction over a larger population and geography.

2.6 Conclusions

Understanding the organization of government, procedures for incorporation, influence of state law, and the powers granted to municipalities in the USA can be very perplexing. While some overarching tendencies have been identified in this chapter, it is important to remember that geography matters. What is permissible or expected of a city in one state might be forbidden or uncommon in another. The study of municipal incorporation and the generation of a theory for understanding the establishment of cities, towns, and villages in the USA is still a worthy endeavor. The next chapter begins to explore the geographic patterns of municipal incorporation activity and attempt to understand the rationale for these locational attributes.

[1]City government does not exist in Hawaii.

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