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THE YALE LAW JOURNAL

MICHELLE WILDE ANDERSON

Dissolving Cities

ABSTRACT. During the twentieth century, thousands of new cities took shape across America. Stucco subdivisions sprawled and law followed, enabling suburbs to adopt independent governments. That story is familiar. But meanwhile, something else was also happening. A smaller but sizable number of cities were dying, closing down their municipal governments and returning to dependence on counties. Some were ghost towns, emptied of population. In those places, jobs were lost and families struggled; crops died off and industries moved on. Other dead cities were humming with civic life: places with people but no longer with separate governments. In these cities, citizens from the political left and right, often in coalition, rose up to eliminate their local governments.

As an end in itself, understanding these changes would be worthwhile. But this past has not passed. Unprecedented numbers of cities and citizens are currently considering disincorporation in response to economic crisis and population loss. The dissolution law to which they are turning, as it is written in state codes and as it is understood in theory, is immature and thin. Cities' experiences with dissolution are unknown, constraining our ability to judge the values it serves or undermines. If dissolution is to grow in importance as part of the legal machinery of urban decline, we must understand what it meant in the decades that came before.

Dissolving Cities tells the story of municipal dissolution. It is an article of law, theory, and urban history – a reminder that urban growth and local government fragmentation, which have long dominated academic discourse on cities, may not be the upward ratchet we have assumed them to be. Cities can die, and when they do, they raise critical questions about decline, governance, taxes, race, and community.

AUTHOR. Assistant Professor of Law, the University of California, Berkeley, School of Law. This Article benefited from valuable feedback at the University of Southern California Center for Law, History, and Culture 2011 Law & Memory Conference; the Progressive Property Scholars Workshop; and faculty workshops at the law schools of Duke, Notre Dame, the University at Buffalo; the University of Texas at Austin; the University of California, at Berkeley, Irvine, and Los Angeles. I am particularly grateful for written comments by K.T. Albiston, Ty Alper, Bobby Bartlett, Eric Biber, Richard Briffault, Juan Cancino, Dan Farber, Sheila Foster, James Gardner, Nicole Stelle Garnett, Ian Haney López, Angela Harris, Kinch Hoekstra, David Lieberman, Katerina Linos, Saira Mohamed, Cal Morrill, Melissa Murray, Andrea Peterson, Vicky Plaut, Jed Purdy, Kevin Quinn, Richard Schragger, Laurie Reynolds, Bertrall Ross, Fred Smith, Rick Su, Steve Sugarman, and Eric Talley. Monisha Santamaria and Laura Vichinsky poured hours of outstanding research into this project. Berkeley Law statistician Su Li, librarian Dean Rowan, and students Daniel Chen, Shuangjun Wang, Eric Dickerson, and Jerett Yan also contributed excellent research. Sade Borghei gave me guts and stamina across the long haul of this project. Our Meda gave me joy.

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* Accessible through *The Yale Law Journal*'s website or the author's SSRN page. *See Disolving Cities*, YALE L.J., http://www.yalelawjournal.org/images/documents/121.5.anderson_appendices.pdf; *Michelle Wilde Anderson*, SOC. SCI. RES. NETWORK, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2016680 (last visited Mar. 1, 2012).

INTRODUCTION

Our rural and urban past echoes with memories of cities that came and went. People left, tax revenue sank, and city halls closed their doors. The siren of industry and the winds of the Dust Bowl left only ghosts behind in hundreds of towns in the South and Midwest. When the segregated poverty in central cities fueled riots in the 1960s and 1990s, smaller cities across the country drank a quieter, more final poison. And today, sidewalks in the Northeast that once carried the morning rush of workers to industrial plants and mills have gone empty. Clanging steel has left behind the silence of rust.

If the incorporation of a legal city expresses an upward arc of development and growth, the legal disincorporation of a city marks decline. The shutting down of municipal government signals that a community can no longer sustain the cost and institutional responsibility of cityhood. Population, finances, or faith in civic institutions has simply lost too much ground. Perhaps that is why legal scholars have cared so little about municipal dissolution, a subject that has occupied fewer scholarly pages than the number of years in a century—and most of those pages were written a century ago.[1] Yet dissolutions happen, and if ever there has been a wave of them, we are in one now. More than half of the dissolutions ever recorded took place in the past fifteen years. At least 130 cities have dissolved since 2000—nearly as many as incorporated during that same period.[2] Beyond these dissolutions that happen, both past and pending, are

1. The sum total of scholarship, legal or otherwise, to have addressed municipal dissolution in more than a token few words consists of the following: Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425 (1993) (providing the most substantial contribution to this topic in decades, though dissolution is considered only as a method for reforming municipal bankruptcy law); Richard W. Flournoy, Jr., *The Rights of Creditors of a Municipal Corporation When the State Has Passed a Law To Abolish or Alter It*, 12 VA. L. REG. 175 (1906) (focusing on municipal debt following dissolution); Comment, *Legislative Power over the Contracts of a Municipal Corporation*, 15 YALE L.J. 363 (1906) (same). The failed dissolution effort in Miami received careful attention as a case study in thwarted regionalism. *See* Annette Steinacker, *Prospects for Regional Governance: Lessons from the Miami Abolition Vote*, 37 URB. AFF. REV. 100 (2001). One article in the popular press drew attention to municipal dissolution as a national phenomenon (in addition to the hundreds of newspaper articles on events in specific cities that provided a research base for this Article). *See* Bobby White, *Towns Rethink Self-Reliance as Finances Worsen*, WALL ST. J., May 27, 2009, http://online.wsj.com/article/SB124337975286456249.html. One valuable article focuses on the related but importantly distinct question of the dissolution of special districts. *See* Nicholas G. Bauroth, *The Strange Case of the Disappearing Special Districts: Toward a Theory of Dissolution*, 40 AM. REV. PUB. ADMIN. 568 (2010).

2. For a list of dissolved cities, see Appendix B. By comparison, 154 new municipalities formed during this decade. *See Geographic Boundary Change Notes*, U.S. CENSUS BUREAU,

scores of others that do not—cities that might have dissolved yesterday, or that perhaps should dissolve tomorrow.

This Article opens the graves of our departed cities and visits the deathbed towns following closely behind. It provides the first academic theorization of dissolution, locating dissolution in the literature on local government law, urban planning, and urban history. It introduces the law of dissolution across the country and the real-life phenomenon on the ground, generating a draft list of the occupants in our country's municipal cemetery. Reading across this landscape of places and memories, the Article evaluates the issues at stake in dissolution and theorizes dissolution's potential as a public policy option. It thus claims, for the first time, a place for dissolution in the cycle of institutional life and change in American local government law.

To get started, a definition: municipal dissolution, also known as disincorporation, is the termination of the political unit of an incorporated municipality, whether city, village, or incorporated town.[3] A municipality can dissolve in order to disincorporate permanently or to reorganize incorporated territory, such as by merging two cities into one. Dissolution into a county and dissolution into another city (merger) can have important similarities, such as origins in economic decline and the loss of a city population's separate legal identity and political autonomy. A project entitled "Dissolving Cities" could have been about all of these changes. This Article is not; instead, it focuses on the subset of dissolutions that indefinitely remove a layer of municipal government and return a population to unincorporated county or township jurisdiction.[4] This kind of dissolution is significantly distinct from mergers or

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http://www.census.gov/geo/www/bndrychanges/boundary_changes.html (data analysis on file with author).

3. Throughout this Article, I use the word "cities" to mean municipal corporations, including incorporated villages, towns, and boroughs. The word is not used to suggest any particular degree of scale or urbanization.

4. In most states, predominantly in the West and the South, nonmunicipal land is "unincorporated"—that is, it relies on the counties for a single layer of direct, general-purpose local government, including the exercise of police powers and policymaking. In a smaller set of states, primarily Midwestern ones, a township governs all nonmunicipal land and serves as its general-purpose local government, thus giving these residents two tiers of general-purpose local government (township and county). *See* 1 U.S. CENSUS BUREAU, 2002 CENSUS OF GOVERNMENTS, NO. 1, GOVERNMENT ORGANIZATION, GC02(1)-1, at vi (2002) [hereinafter 2002 CENSUS OF GOVERNMENTS], *available at* http://www.census.gov/prod/2003pubs/gc021x1.pdf. In some states, including New York, midlevel townships are called "towns," though they should not be confused with incorporated places referred to as "towns" in other states. Townships may have an extremely limited range of functions (e.g., management only of roads, as in Ohio) or a broader set of functions (e.g., a full array of services, including human and social services, as in Illinois). These townships are

other reorganizations, because it requires vertical restructuring and a shift in authority to counties and their subdivisions.

Throughout this Article, dissolution therefore refers only to the termination of an incorporated municipality where its territory reverts to dependence on county or township government. In the early twentieth century, these dissolutions were often by operation of law for local government inactivity – merely a state acknowledgment that a town had gone bust. But in the post-World War II era, dissolution is more often a voluntary, active choice by a living community: residents or city councils choose to eliminate their city government. Instead of municipal government and county government (or a county and a county subdivision[5]), the area reverts to unincorporated county rule alone.[6] Politicians and public employees lose their jobs; an entity's revenues, assets, contracts, and debts must be reorganized; public services must be pared down or passed off; and a body of local laws, including land-use plans, is nullified. A city's territory may retain population – it may even retain markers of placehood and identity like a name used orally or recognized by the Post Office – but its separate local government is gone. The city's records are taken to county storage; its people may or may not preserve a community history.

To interrogate and rethink the law of dissolution, the central mission of this Article and its larger arc of research, we need some understanding of our history of dissolving cities: Which cities have dissolved, in which states? When have cities dissolved, and do these dates suggest a relationship between dissolution and state or national events, such as recessions or internal migrations? Why do cities dissolve? In a society that keeps records on the deaths of real persons and corporate entities, one might expect that it would be

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conceptually distinct from "towns" or "townships" in New England, New Jersey, New York, and Pennsylvania, which function for all intents and purposes as municipal corporations, though their borders are rooted in historic state surveys rather than concentrations of population or voluntary creation by residents.

5. Because neither counties nor county subdivisions (like townships) have control over their territory (as discussed in Section I.B, *infra*), they are importantly similar for purposes of the present account. Hereinafter, the term "counties" will stand in for "counties and county subdivisions" where appropriate. This is an imperfect word choice, but it is necessitated by American states' varied systems and nomenclatures for local governments. My future work on county governments will explore the commonalities, differences, and relationships among these layers of government. The best general resource for differentiating this terrain is the 2002 Census of Governments. *See* 2002 CENSUS OF GOVERNMENTS, *supra* note 4.

6. For further descriptive ease in this Article, and to emphasize the municipal incorporation-versus-nonincorporation distinction, the term "unincorporated" is used to refer to any land that reverts to township or county status, even though some states do not use that term of art in reference to township land.

easy to find a single, comprehensive federal list or dozens of separate state lists of dearly departed cities. That is not the case.[7] While historians and sociologists have widely researched urbanization, population migration, rural crisis, urban abandonment, and related topics, they seem to have overlooked (or at least failed to record) the location and timing of territories' transformation from legal municipality to just a place. Even the cottage industry of historical, hobbyist, and travel literature on ghost towns does not help in any systematic way: such lists rely on indicators of human settlement and abandonment like the opening and closing of a federal post office rather than the rise and fall of administrative independence.[8] And ghost town records cannot tell us anything about the higher number of cities in the modern era that dissolved without physical abandonment. While dissolution of a legal city may be a relative of depopulation in general, it warrants separate study as a distinctive phenomenon, because it represents a set of governance choices and implications that play out at the communal and institutional level.[9]

The legal, historical, and academic records of actual municipal dissolutions are thus incomplete along the dimensions of both geography and time. By unearthing and consolidating a single layer of hundreds of information fragments from across the country and across time, this Article generates a first draft Graveyard of American Cities, which includes a municipal name, state, and year of dissolution. To provide a foundation for social science research that asks not only why dissolutions occur, but why they do not occur, the Article also assembles a list of cities where dissolution was legally proposed but rejected, as well as a list of cities currently in the throes of dissolution proceedings.

Part I defines and frames dissolution. Two examples, one from the Village of Seneca Falls in Western New York and the other from Miami, Florida,

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7. The U.S. Census Bureau has records of dissolutions dating back to the early twentieth century, but its records of changes are patchy, dramatically incomplete, and only partially consolidated in electronic form. *See infra* Part II and Appendix A (Methodology).

8. *See, e.g.*, JOHN W. MORRIS, GHOST TOWNS OF OKLAHOMA (1977) (using the opening and closing of post offices as the basis of records); Mary Emma Milner Montgomery, *Little Known or "Extinct Towns," Ca. 1940*, KAN. HISTORICAL SOC'Y, http://www.kshs.org/p/little-known-or-extinct-towns-ca-1940/11305 (last visited Sept. 5, 2011) (same). The literature on ghost towns, mining camps, and the like is too extensive to recite in full here—it would seem that there is at least one book per state, often several. I conducted targeted research within this literature in order to locate records of legal dissolutions as well as to confirm or explain previously identified dissolutions. As appropriate, these sources are cited herein.

9. *See* Emily Mackil, *Wandering Cities: Alternatives to Catastrophe in the Greek Polis*, 108 AM. J. ARCHAEOLOGY 493, 494 (2004) (analyzing the abandonment of Greek city-states during the Classical and Hellenistic periods, and arguing that abandonment of Greek polis should be treated separately from abandonments on other scales and in other contexts).

provide an orientation to the phenomenon in two notable places. In Miami, Florida, the crush of multimillion-dollar debts and deficits, explosive foreclosure rates, and spiraling unemployment led the city to hold an election (ultimately unsuccessful) on dissolution into Dade County. Dissolution also shows up in communities like Seneca Falls, where a present quaintness belies its place in the history of America's great industrial upstarts. These smaller cities remind us that industrialism, and its freefall, were not limited to big cities like Detroit and Buffalo. To establish our legal bearings, this Part also introduces and classifies states' dissolution laws, and it distinguishes dissolution from municipal bankruptcy, a distinct response to fiscal distress.

Part II, along with Appendices A-E, gives a broader picture of dissolution across geography and time by presenting my national investigation of past and current dissolution activity. Dissolution activity (including approved, rejected, pending, and inchoate dissolutions) shows up in thirty-nine states, and more cities approved or considered dissolution between 2000 and 2010 than did in the thirty years prior, between 1970 and 2000. Among these states, New York is of particular interest, and Part II offers a picture of its dissolution activity. There, dissolution has become a public-policy objective aimed at curbing local government fragmentation and reducing taxes, especially in economically depressed regions.

Based on these lists, as well as an assembled archive of several hundred media and historical sources regarding dissolving cities, Part III synthesizes core issues at stake in dissolution law. It uses the histories of particular cities to consider why people propose, and ultimately approve or reject, dissolution in struggling cities. Rather than an empirical question of political causation, the "why" explored here is broader, more theoretical, and more historical. Part III investigates the problems that triggered drives for dissolution and the public claims that proponents made about disincorporation as a solution. From these observations, I offer five themes of municipal dissolution: decline, taxes, reform, race, and community. These categories sketch dissolution's shape and potential, while building a foundation for later empirical research. Along the way, Part III introduces an impassioned, if motley, band of dissolution crusaders, from "elderly ladies in tennis shoes"[10] fighting local mismanagement to politicians bent on slashing local taxes.

Parts I to III thus begin to write the story of dissolution in law and history. Part IV stands on this foundation to establish dissolution's place in local government and urban theory and to map dissolution's normative implications. I provide an account of local institutional design and boundary

10. *See infra* text accompanying note 200.

change that acknowledges not just how cities grow but how they decline, not just how places choose governance by cities, but how they choose governance by counties. The Article expands the conversation about coping with America's "shrinking cities," a discourse heretofore located in land-use planning, into the realm of governance changes. I offer the language and concept of "shrinking governance" to capture dissolution and other ways that people are currently seeking to ameliorate economic decline, minimize fragmentation among local governments, and decrease state and local taxes by reducing the number, powers, and costs of local governments.

For these many struggling localities and their states, Part IV provides normative guideposts in our longer-term discussion of dissolution as a matter of public policy, lays parameters for state-level legal reform, and defines key considerations for decisionmakers on dissolution. Among other conclusions, I argue that incorporation law and dissolution law should be planned and developed as an integrated body of law, with careful decisions about the symmetries or asymmetries between city formation and the reversion to unincorporated status. To help encourage and support our understanding of dissolution and its potential, Part IV also maps directions for future research. As closure, Part V offers a reflection about what it means for cities to die as a formal, legal matter, even when a community of people continues to live there; indeed, even when a community of people is so alive as to mobilize in pursuit of democratic restructuring as dramatic as the death of government itself.

In the end, I will not offer a prognosis of dissolution as good or bad, just or unjust. Such a judgment would be oversimplified and premature. Indeed, after decades of exhaustive research on the proliferation of new legal cities, few scholars, if any, would offer a blanket assessment of whether incorporation is desirable as a general matter. Instead, careful research on the phenomenon has yielded an understanding of the circumstances in which incorporation favors or disfavors particular values. This Article exposes a range of circumstances, purposes, and implications of dissolution, thus providing a window into its promise and perils, and a road map for a new law of dissolution to favor the former and minimize the latter.

An exercise of history, an exercise of explanation, *Dissolving Cities* explores one of the most intriguing options facing many of our struggling towns and cities. When the arc of urban growth flatlines, should communities leave cityhood behind?

I. WHAT IS DISSOLUTION?

The *Wall Street Journal* reported in 2009 that "[a]s the recession batters city budgets around the U.S., some municipalities are considering the once-

unthinkable option of dissolving themselves through 'disincorporation.'"[11] The *Journal*'s article reported only the tip of this particular iceberg, though it was on to something. What is dissolution? This Part offers a picture of dissolution in fact and frames dissolution in law, on its own terms and as compared to municipal bankruptcy.

A. Two Stories: Seneca Falls and Miami

Two cities help to frame and understand dissolution. The fabled and floundering Village of Seneca Falls in New York State provides an unrepresentative but richly textured vehicle for exploring dissolution as an answer to industrial decline. Seneca Falls incorporated in 1837.[12] Today it is a sleepy community of 6635 residents.[13] The stately brick main street is just a few shops long, most of which cater to historical tourists. The Seneca River that runs through the downtown is bordered by a scenic walking path. Visitors today might marvel that Seneca Falls figured so prominently in American social and political history. It was a center of the abolitionist movement and the temperance movement and the home of the first Convention on Women's Rights in 1848, organized by Jane Hunt, Elizabeth Cady Stanton, and others. How could monumental social movements have anchored themselves in such a minor place?[14] In part, the answer must be that the Seneca Falls of today bears little resemblance to its nineteenth- and early twentieth-century youth. In the flush of industrialization, Seneca Falls was a chaotic, growing river port. The banks of the Seneca River, which was connected to the Erie Canal in 1828, once defined a booming industrial corridor of mills, tanneries, distilleries, and factories. A railroad line in 1841 "opened the door to the world market for goods manufactured in Seneca Falls."[15]

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11. White, *supra* note 1.

12. DISSOLUTION STUDY COMM. & CTR. FOR GOV'T RESEARCH, INC., VILLAGE OF SENECA FALLS DISSOLUTION PLAN: FINAL REPORT ON DISSOLUTION AND ALTERNATIVES TO DISSOLUTION FOR THE VILLAGE OF SENECA FALLS 1 (Nov. 2009) [hereinafter DISSOLUTION STUDY COMM.], *available at* http://www.cgr.org/senecafalls/documents.aspx.

13. *2009 Population Estimates*, U.S. CENSUS BUREAU, http://factfinder.census.gov/servlet/SAFFPopulation?_submenuId=population_0&_sse=on (select "New York" from drop-down menu; search for "Seneca Falls Village") (last visited Nov. 29, 2011).

14. For histories of the women's movement and its origins in Seneca Falls, see, for example, ELISABETH GRIFFITH, IN HER OWN RIGHT: THE LIFE OF ELIZABETH CADY STANTON (1984); and MIRIAM GURKO, THE LADIES OF SENECA FALLS: THE BIRTH OF THE WOMEN'S RIGHTS MOVEMENT (1974).

15. *Historic Summary of Seneca Falls, NY*, SENECA FALLS, N.Y., http://www.senecafalls.com/history-summary.php (last visited Nov. 29, 2011).

What today is a quaint community was once a thriving industrial upstart—the kind of place that reminds us that American industrialization was not limited to the likes of Buffalo, Pittsburgh, and Chicago. In the mid-nineteenth century, Seneca Falls began to decline, eclipsed by the new major manufacturing centers of the region, Syracuse and Rochester.[16] Much of its waterfront industry was torn down to make room for an enlarged canal and its population fell. In 2010, the Village of Seneca Falls voted 1198 to 1112 to dissolve.[17] A dissolution plan informed voters and officials about the effect of the change claimed a wide range of benefits from dissolution, such as reduced costs for Village residents, "eliminat[ion of] an invisible boundary that divides the community" between the Town[18] and Village, and increased participation by Village residents in Town affairs.[19] Approval of dissolution by the Village responded not just to deindustrialization and population loss, but to preferences about local governance.

Seneca Falls is a small community, like many cities with dissolution activity. Far from Seneca Falls, in climate as in scale, the City of Miami offers a contrasting vehicle for introducing key themes and dynamics in dissolution. While Miami is less typical of cities captured in this Article's Appendices in terms of population, it is not alone among big-city members, and it frames important causal and normative dimensions of dissolution.

The City of Miami held an election to consider dissolution into Dade County in 1996. Miami's city government was awash in crisis: a corruption scandal, a crushing deficit and plummeting bond rating, a state declaration of fiscal emergency, and property tax rates nearly double the rates of neighboring incorporated suburbs and more than four times those of the unincorporated areas of Dade County.[20] A grassroots organization called the Citizens for Lower Taxes launched a successful petition drive to qualify a dissolution referendum for the ballot.[21] The group's public rhetoric framed its objectives in terms of gains for everyone in Miami: Reduce taxes! Fight corruption! Improve services! Dade County, it reasoned, could better serve the people of Miami.

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16. SPURGEON KING, NAT'L PARK SERV., OMB NO. 1024-0018, NATIONAL REGISTER OF HISTORIC PLACES: REGISTRATION FORM FOR SENECA FALLS VILLAGE HISTORIC DISTRICT (1990).

17. *Investigating Options for the Future*, SENECA FALLS, http://www.cgr.org/senecafalls (last visited Feb. 7, 2011).

18. New York counties are subdivided into towns. *See supra* note 5 (explaining the equivalence of counties and their subdivisions for present purposes); *infra* Section II.C (describing the particulars of local government in New York).

19. DISSOLUTION STUDY COMM., *supra* note 12, at 4.

20. Steinacker, *supra* note 1, at 108-09.

21. *Id.* at 109.

The proposal in Miami looked like a preference for county government, and to some extent, it was. But the dissolution campaign was also a breakaway attempt by wealthier neighborhoods within Miami that wanted their own legal cities. Miami's Citizens for Lower Taxes was led by an attorney who had successfully championed the incorporation of several wealthy unincorporated enclaves and a "neighborhood incorporation movement" in Dade County.[22] He and his supporters saw dissolution as a stepping-stone to city formation.[23] Postdissolution, once back in the undifferentiated county, wealthy enclaves could form their own cities without obtaining approval from Miami's electorate. For legal reasons explored in this Article, the two-step sequence of successful dissolution followed by city formation (unlike a one-step secession or deannexation) put the boundaries and terms of incorporation solely in the wealthy enclaves' hands.[24] As it happened, the Miami electorate gave the same answer to the two-step breakaway that it would undoubtedly have given to a one-step approach: no. Recognition of the breakaway intentions of dissolution leaders undermined the group's claims that dissolution would improve the tax and service profile for all Miami.[25]

Miami is the largest city identified in the present Article to have formally considered dissolution. Yet, as discussed further in Section C below and in Part III, other large cities have raised the possibility of dissolution as a solution to economic woe, often as an alternative or supplement to bankruptcy. And as discussed in Part II, the Miami experience provides particularly important

22. *Id.*

23. *Id.* at 104-05.

24. To further explain this point, the residents of Miami's wealthy neighborhoods had three choices available to them when they decided that they wanted to form their own cities. First, these areas could have sought secession, a single-step reorganization in which the wealthy enclaves could withdraw from Miami to form new cities. Second, they could have sought deannexation, a process that would return selected parts of Miami to unincorporated status within Dade County. And third, they could (and did) choose a two-step scenario: dissolution of Miami, followed by incorporation of select neighborhoods as new cities. All three scenarios would require at least one round of consent by all voters within Miami. Yet the first two options look foolhardy as a matter of political strategy, because they seem only to have the enclaves' self-interest at heart. To see why, consider the secession movements in the Borough of Staten Island in New York City and in the San Fernando Valley in the City of Los Angeles. The larger city electorates defeated both secession efforts, primarily because of tax revenue that New York City and Los Angeles were sure to lose. *See* Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775 (1992); Gerald E. Frug, *Is Secession from the City of Los Angeles a Good Idea?*, 49 UCLA L. REV. 1783 (2002).

25. Steinacker, *supra* note 1, at 112.

insights about dissolution's potential implications for race, redistribution, and reform.

B. Dissolution in Law

The purposes and mechanics of annexation and incorporation law have occupied thousands of pages of literature in political science, urban planning, and law. State code provisions reflect careful consideration of these two forms of boundary change, offering rules and exceptions to govern circumstances ranging from topography to fiscal impacts. Nearly every state has such laws, and there are few characteristics (like size) that disqualify a city from forming or growing. Dissolution law, by contrast, anticipates few takers and fewer controversies. It often occupies no more than a few code sections in each state, if any. Given the range of cities that have considered, if not completed, dissolution, the basics become both more important and more contestable. This Section offers an overview of the existing law of dissolution across the country.

"Dissolution law" is unconstrained by federal law except insofar as it infringes on fundamental rights or creates a suspect classification.[26] The power to dissolve a local government (like the power to create one or change its borders) comes from a state constitution and state laws.[27] This level of choice has been usefully referred to as the "enabling level"—the state-level laws that establish the structural options available to local governments and the rules by which local actors may order and reorder their local governments.[28] The application of these rules to specific cities and the decision to dissolve a city (with some exceptions) are local actions, referred to as the "chartering level."[29]

This Section focuses on the enabling level, where state law determines who may initiate dissolution and who may approve it, along with the conditions

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26. *See* Gomillion v. Lightfoot, 364 U.S. 339, 344-45 (1960) (holding that "[l]egislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution"); Hunter v. Pittsburgh, 207 U.S. 161, 178 (1907) (holding that the law of municipal boundary change lies within the discretion of the state).

27. 1 SANDRA M. STEVENSON, ANTIEAU ON LOCAL GOVERNMENT LAW, DISSOLUTION OF LOCAL GOVERNMENT ENTITIES § 2.01-.05 (2d ed. 2010) (quoting City of Milwaukee v. Sewerage Comm'n, 67 N.W.2d 264 (Wis. 1954), and other cases).

28. Bauroth, *supra* note 1, at 571; Ronald J. Oakerson & Roger B. Parks, *Local Government Constitutions: A Different View of Metropolitan Governance*, 19 AM. REV. PUB. ADMIN. 279, 282 (1989).

29. Oakerson & Parks, *supra* note 28, at 279.

under which dissolution may or may not occur. Forty states have dissolution codes of some kind—a number representing all but two states where dissolution would be theoretically possible under the structure of local government in the state.[30] Structurally, dissolution is not possible in states that have no unincorporated territory to which a city can revert, including Pennsylvania, New Jersey, Hawaii, and the states of New England (excluding Maine and New Hampshire).[31] In those states, reorganizing a local government tier (e.g., through merger) may be possible, but eliminating one is not.

Within the enabling level, dissolutions and dissolution law should be classified into three categories: passive, involuntary, and voluntary. The first two lie solely in the power of the state; the third requires formal local initiation or consent. Passive dissolutions occur by operation of law for inactivity (a classic ghost town scenario), usually defined as the failure to elect or appoint municipal officers, levy and collect taxes, provide services, or undertake other basic activities.[32] Some passive dissolution laws also provide for automatic dissolution when a municipality's population falls below a stated threshold, a legal feature that I will take up at greater length in Section III.A. Fifteen states have passive dissolution laws.[33]

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30. The exceptions are North Carolina and Delaware. *See* Michelle Wilde Anderson, State Municipal Dissolution Law (table on file with author analyzing dissolution laws, or noting the absence thereof, in every state). Local government structure in each state, and thus the theoretical possibility of dissolution, was assessed using the following source: 1 U.S. CENSUS BUREAU, 2002 CENSUS OF GOVERNMENTS, NO. 2, INDIVIDUAL STATE DESCRIPTIONS, GC02(1)-2 (2002), *available at* http://www.census.gov/prod/2005pubs/gc021x2.pdf.

31. There are three reasons a state can lack unincorporated land: the state (1) lacks general-purpose, elected county governments or county subdivisions for most or all of its territory (as in the states of New England), (2) has already vertically consolidated its cities and counties (as in Hawaii), or (3) does have functioning county governments, but has an incorporated, lower-tier, general-purpose government (city, town, etc.) over all territory within the state (as in New Jersey and Pennsylvania). Maine and New Hampshire have land that falls directly under state control (referred to as "disorganized territory" in Maine or "unincorporated territory" in New Hampshire). *See id.*

32. Some states have laws that deem inactive municipalities to be dissolved as a matter of law, with inactivity defined in terms such as the failure to provide services, to hold elections, and/or to levy and collect taxes. *See, e.g.*, ALA. CODE § 11-41-24 (LexisNexis 2008); GA. CODE ANN. § 36-30-7.1 (2006); IOWA CODE ANN. § 368.3 (West Supp. 2011). In the absence of such a law, a dormant municipality will continue to exist legally until state or local actors complete dissolution procedures. *See, e.g.*, Treadwell v. Town of Oak Hill, 175 So. 2d 777, 777-78 (Fla. 1965); Riddle v. Howard, 357 S.W.2d 705, 708 (Ky. 1962).

33. States with passive dissolution laws include: Alabama, Arkansas, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia. *See* ALA. CODE § 11-41-24; ARK. CODE ANN. § 14-39-102 (2011); GA. CODE ANN. § 36-30-7.1; IND. CODE § 36-5-1-20 (2011); IOWA CODE ANN.

Involuntary dissolutions are also state-initiated, but they are applied to populated municipalities and may override a local preference against dissolution. Such dissolutions are not codified in state law at all. Instead, they can be thought of in terms of reserved powers of the state to terminate its subdivisions—powers that will vary according to state constitutional and statutory law, particularly the delegation of home-rule authority. Involuntary dissolutions are quite rare and confrontational, and research for this Article indicates that they arise only in cases of corruption or chronic mismanagement. In such cases, legislators enact a dissolution through a state special act to dissolve a city or class of cities, an action that may be initiated by a civil grand jury, district attorney, or other local actor. Such dissolutions present challenging legal conflicts between state power and constitutional home-rule authority.[34] The few involuntary dissolutions identified in the present Article involved a state/local clash, including opposing partisan affiliations at the state and the city levels.

Voluntary dissolutions originate from the city itself—either its residents or its leaders. Dissolution is overwhelmingly conceived of in this way, i.e., as a locally initiated, locally approved process. Thirty-seven states have voluntary dissolution laws on their books.[35] Indeed, only three states that have dissolution codes do not permit locally initiated proceedings.[36] At the level of individual resident empowerment to effectuate dissolution, most state laws permit residents to trigger the start of dissolution proceedings (such as an election on the question, or a study on the impacts of dissolution).[37] Once initiated, who approves dissolution? In a few states, a dissolution petition itself

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§ 368.3; KY. REV. STAT. ANN. § 81.094 (LexisNexis 2011); LA. REV. STAT. ANN. § 33:231 (2011); MISS. CODE ANN. §§ 21-1-49, 21-1-51 (2011); MO. REV. STAT. § 79.490 (2010); MONT. CODE ANN. § 7-2-4901 (2010); OKLA. STAT. tit. 11, §§ 7-105 to 7-107 (2009); S.C. CODE ANN. § 5-1-100 (2009); TENN. CODE ANN. §§ 6-52-301 to 6-52-302 (2010); UTAH CODE ANN. § 10-2-710 (LexisNexis 2010); W. VA. CODE § 8-35-1 (2010).

34. In the face of a state legislative proposal to dissolve the City of Vernon, California, attorneys for the City threatened a lawsuit challenging the City's proposed involuntary dissolution by the State under the City's charter powers. Sam Allen, *Vernon Mounts Campaign To Squelch Legislation That Would Remove Its Cityhood*, L.A. TIMES, Dec. 30, 2010, http://articles.latimes.com/2010/dec/30/local/la-me-vernon-20101230.

35. This list includes all states *except* the following: Connecticut, Delaware, Hawaii, Massachusetts, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, and Vermont. *See* Anderson, *supra* note 30.

36. These include Arkansas, Georgia, and South Carolina, which provide for passive dissolutions but not voluntary ones. *See* ARK. CODE ANN. § 14-39-102; GA. CODE ANN. § 36-30-7.1; S.C. CODE ANN. § 5-1-100. Georgia expressly reserves power to the state to enact a dissolution. GA. CODE ANN. § 36-35-2.

37. *See generally* STEVENSON, *supra* note 27, § 2.03 (summarizing dissolution law).

is the mechanism of approval. If a state permits dissolution of a city via petition without a confirming election or legislative decision, it usually requires higher signature thresholds – such as petition signatures by three-fourths (Alabama)[38] or two-thirds (Arizona, Missouri)[39] of qualified electors. More commonly, voters must approve dissolution via a general or special election, regardless of whether it has been initiated by a petition or a vote of the governing body.[40] In a handful of states, dissolution must be approved by a state board or local-regional boundary commission before heading to an election, and records from California suggest that several dissolutions in that state have been derailed at this stage.[41] Alternately, dissolution may remain the province only of the state legislature, a rule likely based on the assumption that dissolutions are too rare to require delegation to local governments.[42] Courts may also have a limited

38. ALA. CODE § 11-31-21 (LexisNexis 2006).

39. ARIZ. REV. STAT. ANN. § 9-102 (2008); MO. ANN. STAT. § 79.495 (West 1998).

40. ALASKA STAT. §§ 29.06.470, 29.06.510 (2010) (requiring approval of the majority of registered voters via special election); FLA. STAT. ANN. § 165.051(1)(b) (West 2000) (requiring approval of qualified voters via either general or special election); IDAHO CODE ANN. §§ 50-2201, 50-2204 (2009) (requiring supermajority approval via special election); 65 ILL. COMP. STAT. ANN. 5/7-6-1, 5/7-6-3 (2005) (requiring majority approval by electors in the municipality); IND. CODE ANN. § 36-5-1-18 (LexisNexis 2000) (requiring a supermajority of votes cast and four-fifths of voters counted in a municipal census); KY. REV. STAT. ANN. § 81.094(2) (LexisNexis 2009) (requiring majority approval at a general election); LA. REV. STAT. ANN. § 33:253 (2002) (requiring majority approval at a special election in which only property owners can vote); ME. REV. STAT. ANN. tit. 30-A, § 7209 (2009) (requiring approval by a supermajority of voters voting in a general election); MONT. CODE ANN. § 7-2-4905 (2009) (requiring sixty percent approval in a general election); NEB. REV. STAT. § 13-2812 (2007) (requiring majority approval in a general or special election); N.Y. GEN. MUN. LAW §§ 780-781 (McKinney 2009) (requiring majority approval in a special election); N.D. CENT. CODE §§ 40-53.1-03, 40-53.1-04 (2010) (requiring majority approval in a special election); TENN. CODE ANN. §§ 6-52-201, 6-52-205 (2010) (requiring majority approval in a special election); UTAH CODE ANN. §§ 10-2-701, 10-2-705 (LexisNexis 2007) (requiring majority approval in a special election); WASH. REV. CODE ANN. §§ 35.07.040, 35.07.080 (West 2010) (requiring majority approval in a special election); W. VA. CODE § 8-35-2 (LexisNexis 2007) (requiring majority approval of qualified voters via either general or special election); WISC. STAT. ANN. § 60.03(2), (5)(b) (West 2010) (requiring majority approval of electors at the annual town meeting).

41. *See, e.g.*, IOWA CODE ANN. § 368.11 (West 1999) (permitting a city council, board of supervisors, or five percent of the affected city electorate to submit a petition for discontinuance to the state's City Development Board, which rules on the petition); *see also* Peter M. Detwiler, Daniel A. Obermeyer & George Spiliotis, Disincorporations in California (informal report provided via correspondence on July 26, 2010 with Bill Chiat, Exec. Dir. of Cal. Ass'n of Local Agency Formation Comm'ns) (on file with author).

42. *See, e.g.*, FLA. STAT. § 165.051(1)(a); GA. CODE ANN. § 36-35-2 (2011); LA. REV. STAT. ANN. § 33:231 (2010) (permitting the Board of Aldermen to petition the Governor for dissolution).

role to play. Though dissolution is a legislative function that cannot be delegated entirely to the courts, state legislatures may delegate authority to courts to determine satisfaction of statutory dissolution procedures and requirements.[43]

Dissolution has important consequences for the county or county subdivision into which a city is dissolving. It expands the unincorporated territory of the county, thus affecting counties' budgets (both revenue and costs); bringing new territory and residents into the administrative and land-use planning responsibility of county staff; potentially expanding the territory of county service providers like law enforcement and street maintenance; bringing new properties, assets, and records under county management; and more. If the dissolving city is considerably more populous than the county's other unincorporated territory, the significance is even greater, as captured in Part III.

Yet reading the law governing how to dissolve a city, one might not guess that these impacts on counties were of any significance. Very few states give counties a right to notice regarding a pending dissolution; even fewer states give counties any rights to influence the outcome of a proposed dissolution. Michigan, Florida, and California have the strongest laws to protect counties. Michigan's dissolution laws protect the receiving county subdivision (in that case, townships) with approval rights over the dissolution as well as half the seats on a disincorporation commission established prior to a dissolution election.[44] Florida and California protect counties and the dissolving city's residents by imposing substantive limitations on dissolution. In Florida, dissolutions (1) may not create islands of unincorporated land surrounded by other municipalities, (2) must account for a county's ability to provide services to the dissolving city's territory, and (3) require an "equitable arrangement" for any bonded indebtedness or any vested rights of public employees.[45]

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43. ALA. CODE § 11-41-23 (LexisNexis 2010) (empowering courts to decree a dissolution following a valid petition and public hearing); ALASKA STAT. § 29.06.500 (2010) (permitting appeal of the decision of the Local Boundary Commission concerning the acceptance of a dissolution petition); ARIZ. REV. STAT. ANN. § 9-102 (2010) (providing for postapproval court proceedings); IND. CODE ANN. § 36-5-1-19 (LexisNexis 2010) (permitting appeal to the circuit court by the town legislative body); KY. REV. STAT. ANN. § 81.096(2) (LexisNexis 2010) (contemplating nondiscretionary court review); LA. REV. STAT. ANN. § 33:263 (2011) (providing for judicial review of approved dissolutions); 56 AM. JUR. 2D *Municipal Corporations, Counties, and Other Political Subdivisions* § 82 (2011) (collecting authorities that recognize a court's ability to review whether the requirements of a dissolution are met); STEVENSON, *supra* note 27, § 2.02.

44. MICH. COMP. LAWS ANN. §§ 74.18a, 74.23a (West 2010).

45. FLA. STAT. ANN. § 165.061 (3) (West 2010).

California's law defines substantive factors to consider during approval proceedings by the regional boundary-change agency; these factors relate to the need for and availability of postdissolution services, effects on the county's "local governmental structure," and comments by the public and local agencies, along with a miscellany of factors relating to water, transit, housing, and environmental justice.[46]

In many states, population is a significant determinant of eligibility for dissolution. Several states permit only municipalities under a certain population threshold to dissolve voluntarily, and these caps tend to be quite low (for instance, 1000 residents),[47] or they permit only smaller municipalities to dissolve.[48] In other states, a population that falls beneath a statutory threshold triggers involuntary dissolution (in this context, dissolution by operation of law). These population limits are again surprisingly low, ranging from 50 to 1100.[49] In either case, the thresholds are so low that these states have effectively limited dissolution to ghost towns or rural enclaves. Perhaps states impose these population limits on dissolution as a proxy for burdens on county government; i.e., states limit dissolution of larger cities as a form of protection for counties. If so, states have made the curious and rather blunt assessment that it is population (rather than financial conditions, service needs, county administrative capacity, spatial characteristics, or other factors) that best predicts the impact of a city's dissolution on county government. Furthermore, such limits convey that dissolution would never be in the public interest for cities above a certain size.

Other than the substantive limits imposed in California and Florida, and the population rules imposed in other states, dissolution law is utterly silent on the characteristics of cities appropriate for dissolution, whether in terms of finances, service needs, or available service providers. No state has a statutory mandate of dissolution in the face of financial peril. No state appears to have conditioned a city charter on fiscal solvency, forewarning the entity that insolvency will destroy its corporate existence. Subject to the specifics of a

46. CAL. GOV'T. CODE § 56668 (West 2011).

47. *See* ALA. CODE § 11-41-20 (LexisNexis 2008) (1100 residents or fewer); MISS. CODE ANN. §21-1-53 (2011) (fewer than 1000 residents); S.D. CODIFIED LAWS § 9-6-1 (2009) (fewer than 250 residents).

48. *See* ARK. CODE ANN. § 14-39-101 (1998) (second-class cities and incorporated towns); MO. ANN. STAT. § 79.490 (West 2011) (only fourth-class cities); W. VA. CODE ANN. § 8-35-2 (2007) (Class III cities and Class IV towns and villages).

49. *See* ALA. CODE § 11-41-24 (fewer than 1100); MISS. CODE ANN. § 21-1-49 (2007) (fewer than 50); S.C. CODE ANN. § 5-1-100 (2004) (fewer than 50); TENN. CODE ANN. § 6-52-301 (2005) (fewer than 100); *see also* A. 46, 2011-12 Reg. Sess. (Cal. 2011) (fewer than 150).

state's law, particularly its home-rule provisions, there is no reason such rules would be impermissible; indeed, they would be analogous to those that condition municipal existence upon a functioning local government.[50]

Even without formal input or veto authority for counties, mandatory dissolution-planning requirements can be considered a means of improving notice and transparency for counties, as well as a means of smoothing and planning for an administrative transition from city to county status. Only a few states have such requirements, however.[51] New York has the most specific provisions of this kind; they require a governing body to propose and publish a plan for dissolution that covers topics such as: a fiscal estimate of the cost of dissolution, any plan for transferring or eliminating public employees, the city's assets and their fair value, the city's liabilities and debt and a plan for disposing of them, an analysis of services and current service contracts, and a plan for the legal transition into town jurisdiction.[52] This plan must be submitted to public hearings.[53]

Having said that counties enjoy few substantive or procedural advantages, receiving counties and townships do have one very powerful protection during dissolution: a dissolving city cannot pass its debt onto the entire county or unincorporated area. Since the late nineteenth century, the Supreme Court has interpreted the Contracts Clause of the U.S. Constitution to protect the rights of a dissolved municipal corporation's creditors[54] (defined not to include taxpayers[55]). A state may not dissolve a municipality if the entity's creditors would be left without "some effective means to collect the debts owed to them."[56] To address this rule, any state with voluntary dissolution laws must

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50. *See supra* text accompanying notes 32-33 (describing passive dissolutions by operation of law for inactivity and population loss).

51. *See* MICH. COMP. LAWS ANN. § 74.23e (West 2010); NEB. REV. STAT. ANN. §§ 13-2812(4), 17-219.03 (3)-(4) (West 2010); N.Y. GEN. MUN. LAW § 774 (McKinney 2010).

52. N.Y. GEN. MUN. LAW § 774.

53. *See id.* §§ 775-776.

54. U.S. CONST. art I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ."); Mobile v. Watson, 116 U.S. 289 (1886); Town of Mt. Pleasant v. Beckwith, 100 U.S. 514 (1879); Green v. City of Asheville, 154 S.E. 852 (N.C. 1930); *accord* Gomillion v. Lightfoot, 364 U.S. 339, 344 (1960) ("[T]his Court [has] refused to allow a State to abolish a municipality . . . without preserving to the creditors of the old city some effective recourse for the collection of debts owed them."); Broughton v. Pensacola, 93 U.S. 266 (1876).

55. Hunter v. City of Pittsburgh, 207 U.S. 161, 177 (1907) (defining the parties in contract with a municipality not to include municipal taxpayers).

56. City of Charleston v. Pub. Serv. Comm'n, 57 F.3d 385, 390 (4th Cir. 1995); *see also* Flournoy, *supra* note 1 (explaining that debts are not erased via the abolition of a municipal

statutorily provide that a municipality may dissolve only if plans are made for its obligations.[57] Most often, states statutorily grant the lowest level of government (the county or county subdivision) the power to levy taxes to pay off debts.[58] Postdissolution tax mechanisms (including special taxing districts and new special-purpose service districts) can be used to ensure that contractual obligations are met.[59]

Most states with provisions to levy taxes to pay for a dissolved municipality's indebtedness specify that only territory within the geographical limits of the extinct entity may be taxed to provide funds to pay off the disincorporated city's liabilities.[60] This raises key research questions for economists about the impact of such districts on property values and locational choices by businesses and residents. In addition, postdissolution protection for creditors and counties (e.g., a tax levy mandated to fund a dissolved city's debt service) would raise procedurally complex and surely controversial legal issues in states with property tax caps and/or tax-consent laws. In such cases, a boundary agency, approving court, or state agency would likely condition approval of the dissolution on voters' approval of the necessary taxes alongside their approval of the dissolution.[61]

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corporation, because the Federal Constitution does not allow state governments to infringe on personal property); Comment, *supra* note 1.

57. *See, e.g.*, KY. REV. STAT. ANN. § 81.096 (LexisNexis 2010) (providing that a city cannot be dissolved "until . . . provision for equitable . . . discharge of all obligations of the city" is made); ME. REV. STAT. ANN. tit. 30-A, § 7205 (2010) (requiring that a municipality's dissolution plan provide for the liabilities of the municipality); N.D. CENT. CODE § 40-53.1-04 (2009) (requiring that provisions be made for the payment of a municipality's current indebtedness, contracts, and obligations before dissolution).

58. *See, e.g.*, LA. REV. STAT. ANN. § 33:264 (2011); MICH. COMP. LAWS ANN. §§ 74.20, 113.19 (West 2006); MISS. CODE ANN. § 21-1-57 (2007); MONT. CODE ANN. § 7-2-4918 (2009); NEV. REV. STAT. ANN. § 265.050 (LexisNexis 2011); N.M. STAT. ANN. § 3-4-9 (LexisNexis 2010); TENN. CODE ANN. § 6-52-101 (2011); WASH. REV. CODE ANN. § 35.07.260 (West 2011).

59. *See, e.g.*, DISSOLUTION STUDY COMM., *supra* note 12, at 14; Charles Zettek Jr., *Village of Speculator—Dissolution Plan and Options for Shared Services*, CTR. FOR GOVERNMENTAL RESEARCH 8-9 (2008), *available at* http://www.cgr.org/reports/08_R-1534_VillageofSpeculatorDissolution.pdf.

60. *See, e.g.*, ARIZ. REV. STAT. ANN. § 9-102(D) (2010); ME. REV. STAT. ANN. tit. 30-A, § 7205; MICH. COMP. LAWS ANN. §§ 74.20, 113.19; MISS. CODE ANN. § 21-1-57; MONT. CODE ANN. § 7-2-4918; NEV. REV. STAT. ANN. § 265.050(1)(e).

61. For a careful, albeit preliminary analysis of this legal question under California law, see John H. Knox & Chris Hutchison, *Municipal Disincorporation in California*, 32 PUB. L.J., Summer 2009, at 1.

Mention creditors these days in the context of struggling cities, and the question of public employees and the status of collective bargaining agreements is sure to follow. Would public employee contractual rights attach to the county, or is dissolution a means to liquidate such agreements? Here too, legal analysis remains preliminary, hypothetical, and sure to be contested in the event of dissolution by cities with unfunded pension liabilities. Some state supreme courts have held that employment contracts are distinguishable from other forms of public contracting, while others hold that collective bargaining agreements are binding contracts.[62] Alongside these rules is the consideration that the constitutional interdiction against the impairment of contracts is not absolute and may be limited by the police power,[63] as well as recent case law (which, at most, would constitute persuasive authority) finding that collective bargaining rights terminate during a municipal bankruptcy.[64] One analysis of the question under California law found that a disincorporation would leave public employees with valid claims of default against the city's assets.[65] As to any claim to ongoing employment, the analysis projected that California statutory law would not include any right to remain employed.[66]

Why is dissolution law so poorly developed and understood? Perhaps dissolution is not an answer to excess government spending. Perhaps counties and townships cannot bring costs down. Maybe population size is the only relevant criterion for gauging the desirability of dissolution. But how would we know? Longitudinal analysis of the fiscal and administrative impacts of city dissolutions over time is simply not available. Perhaps the content and content gaps in dissolution law are better explained by thoughtlessness than by reason. Or perhaps we have the rules we do because strong associations of cities seek to protect their constituent governments (and politicians) from citizen mutiny. In

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62. *Compare* Stone v. Old Bridge Twp., 543 A.2d 431, 436 (N.J. 1988) (distinguishing employment contracts from other public contracts), *with* Voters for Responsible Ret. v. Bd. of Supervisors, 884 P.2d 645, 655 (Cal. 1994) (applying the longstanding rule that collective bargaining agreements become binding once approved by the city).

63. *See* City of El Paso v. Simmons, 379 U.S. 497, 508 (1965); *see also* U.S. Trust Co. v. New Jersey, 431 U.S. 1, 25 (1977) (finding that an impairment may be constitutional if "reasonable and necessary to serve an important public purpose").

64. *See* NLRB v. Bildisco, 465 U.S. 513, 516 (1984) (holding that a collective-bargaining agreement is an "executory contract" subject to rejection by a debtor-in-possession, and that a debtor-in-possession may unilaterally modify or terminate one or more provisions of the agreement after filing for Chapter 11 bankruptcy); *In re* City of Vallejo, 432 B.R. 262, 270-75 (E.D. Cal. 2010) (applying *Bildisco* analysis to a Chapter 9 municipal bankruptcy).

65. *See* Knox & Hutchison, *supra* note 61, at 4-5.

66. *Id.*

any event, we do not know. In an era of local fiscal crisis and citizen disengagement, the failure to inquire is a mistake.[67]

C. Distinguishing Bankruptcy

Mend it, don't end it. In the crudest terms, that is the municipal bankruptcy versus dissolution difference. Federal municipal bankruptcy (Chapter 9 of the Bankruptcy Code) purports to offer a fresh start for the municipal corporation, not its termination (or even its mandatory restructuring).[68] Municipal bankruptcy is built on the premise that "the city will emerge from bankruptcy in the same form—with the same boundaries, resources, functions, and governing structure—with which it entered bankruptcy."[69] Under current law, bankruptcy and dissolution are thus independent, alternative, or sequential routes available to a struggling municipality, both of which are voluntary. This Section provides an introduction to municipal bankruptcy in order to better understand what dissolution law is and is not able to do for a struggling city.

Chapter 9 is built on the theory that mounting debt can create a downward economic spiral: if the share of a city's revenues devoted to debt service climbs too high, the city will lose taxpayers and economic activity because tax rates are high and services are poor.[70] As revenues slip further, the share of revenues compelled into debt service will continue to mount. Consider the City of Harrisburg, Pennsylvania, which unsuccessfully sought bankruptcy protection.[71] The City Controller had described a bind in which accumulating additional debt would be impossible and unwise, a "fire sale" on city property would drain future revenue from the city, and increased taxes would make it cheaper for the city's population to head out to the suburbs.[72] Other than a

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67. To support research and legal development on these issues will be crucial. Section IV.D, *infra*, outlines key research questions.

68. In that way, municipal bankruptcies are more like individual bankruptcies than corporate bankruptcies—in the latter case, the primary concern is the most efficient use and configuration of the firm's assets, and that goal typically requires a fundamental restructuring of the firm itself. McConnell & Picker, *supra* note 1, at 469-70.

69. *Id.* at 427.

70. *Id.* at 470.

71. Katy Stech & Kelly Nolan, *Harrisburg Bankruptcy Filing Voided*, WALL ST. J., Nov. 25, 2011, http://online.wsj.com/article/SB10001424052970203764804577058741020977490.html.

72. Ianthe Jeanne Dugan & Kris Maher, *Muni Threat: Cities Weigh Chapter 9*, WALL ST. J., Feb. 18, 2010, *available at* http://finance.yahoo.com/taxes/article/108866/muni-threat-cities-weigh-chapter-9.

state bailout (which the city received in September 2010, to stabilize borrowing costs for other municipalities in Pennsylvania), bankruptcy protection seemed like the city's only option. As widely reported in the national media, unprecedented numbers of cities are publicly and formally exploring bankruptcy, and Jefferson County, Alabama, recently filed the largest Chapter 9 case in history.[73]

Bankruptcy and dissolution are independent measures in part because Congress may not involve the federal judiciary in dissolution of a municipality.[74] Chapter 9 of the Bankruptcy Code, which governs municipal bankruptcy, does not require dissolution if a municipality files for bankruptcy (indeed, bankruptcy itself is wholly voluntary).[75] Furthermore, if and when a municipality chooses to file for bankruptcy, the rights of the municipal debtor to manage its internal affairs without a trustee or supervisor are preserved.[76] Section 904 provides that the bankruptcy court may not interfere with "the political or governmental powers of the [municipal] debtor," nor with the city's assets[77]—provisions held to mean that a bankruptcy court "may not order reductions in expenditure, sale of property, renegotiation of contracts, or increase in taxes."[78] These rules are notably distinct from private bankruptcy, where a creditor may force a private corporation to declare bankruptcy,[79] a court may force a private entity filing bankruptcy to dissolve or reorganize in a

73. *See, e.g., id.*; Roger Lowenstein, *Broke Town, U.S.A.*, N.Y. TIMES MAG., Mar. 3, 2011, http://www.nytimes.com/2011/03/06/magazine/06muni-t.html; Kelly Nolan, *Largest Municipal Bankruptcy Filed*, WALL ST. J., Nov. 10, 2011, http://online.wsj.com/article/SB10000142405297020422460457702849152665409o.html.

74. McConnell & Picker, *supra* note 1, at 428 ("[T]he fundamental premises of current law were shaped by pre-1938 constitutional considerations: the Contracts Clause explains why we have a federal bankruptcy statute for municipalities (instead of leaving the matter to state law), while the principle of state autonomy explains its narrow scope (in contrast to private bankruptcy law).").

75. *See* 11 U.S.C. §§ 109(c), 303(a) (2006); McConnell & Picker, *supra* note 1, at 455.

76. McConnell & Picker, *supra* note 1, at 462.

77. 11 U.S.C. § 904. The relevant provision provides:

> Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—(1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor's use or enjoyment of any income-producing property.

78. McConnell & Picker, *supra* note 1, at 474.

79. *Id.* at 463.

prescribed manner,[80] and a court generally appoints a trustee to control the affairs of a private debtor.[81]

The independence of bankruptcy and dissolution as remedial measures is reciprocally reinforced on the dissolution side as well. Choosing dissolution offers no fresh start in most states: a dissolving city will take its debt with it in the form of a special taxing district.[82] For that reason, we would expect that bankruptcy is presumptively better suited to cities staggering under the weight of debt. Dissolution makes more sense for cities outside of a debt crisis, either before one or after one, or facing other forms of fiscal distress. While dissolution might offer cost savings (fewer political staff and employees, service consolidation, the sale of real property assets, etc.) to any city, whether deep in debt or not, these rules mean that a dissolving city's residents will keep their debt service obligations yet lose the fiscal and land-use planning autonomy that might allow them to attract new taxpayers to their territory.

The need for both debt relief and cost savings likely explains the growing number of cities that are talking about a two-step sequence—bankruptcy's tough-love/fresh-start followed by dissolution for slashing costs. The case of Vallejo, California, offers a view into such a scenario. Spatially concentrated subprime loans and plummeting housing values in 2007-2009 brought whole neighborhoods of the city into a downward spiral of abandonment, decay, and devaluation. Property tax revenues plunged and out-of-budget pension liabilities grew with stock market contractions, sending the city into fiscal

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80. *Id.*

81. *Id.* at 462. While current law does not permit mandatory dissolution under Chapter 9, a bankruptcy court's powers may be greater than they seem: Michael McConnell and Randal Picker have argued that an "aggressive [bankruptcy] court" may be able to force the redesign of the city's plan for adjustment of its debt in such a way that the city would be required to change its taxing, spending, and asset management practices. *Id.* at 474. They also argue that municipal bankruptcy law should be rewritten to respond to cities in "grave need of reorganization" due to population losses, local poverty, decline in tax revenue, and increasing service demands. *Id.* at 471. Bankruptcy law, they argue, could "force politically unpopular, but sensible, decisions such as elimination of municipal functions, privatization, and changes in tax law," where such changes have proven otherwise unworkable through ordinary democratic politics. *Id.* at 472-73. Among other changes, they believe that dissolution should be on the table. While their suggestion is appealing, it relies on the assumption that a bankruptcy court can develop the expertise and information to determine what those missing "sensible decisions" would be, and that such decisions do in fact exist. In a corporate bankruptcy, a court has a much wider range of options for restructuring within realistic constraints; when it comes to a city like Vallejo, there is only so much a court could do to affect the local market for housing and other revenue generators. Nonetheless, their proposal to make dissolution and reorganization part of the municipal bankruptcy process warrants further study.

82. *See supra* notes 54-61 and accompanying text.

shock. The city predicted that its deficit for the 2008-2009 fiscal year was at least $10,701,380.[83] The city declared bankruptcy, and that move required such dramatic cost-cutting that less than a year later the city was also discussing dissolution. News articles reported on the dissolution option, describing bluntly: "Vallejo could cease to exist as a municipal entity. Or it could close half its existing fire stations."[84] It was not the only city to have considered both disincorporation and bankruptcy. The cities of East Palo Alto and San Juan Bautista in California, Macks Creek in Missouri, Westminster in Texas, and other cities have done the same.[85] The relationship of bankruptcy and dissolution thus warrants careful consideration by scholars of public economics and law.

* * *

Dissolution has been missing from our understanding of American urban change and the legal rules that shape it, perhaps because we have assumed urbanization to be a progression rather than, for some cities, a life cycle. State codes on the matter reflect this misunderstanding. They are immature and out-of-date, often treating dissolution law as if it need only apply to ghost towns. Just as dissolution has been largely invisible in law and theory, so too is it burdened by gaps in our records and collective memory. Parts II and III restore dissolution's place in urban history, teaching us the character and scale of dissolved and dissolving cities.

II. WHERE, WHEN? OUR MUNICIPAL GRAVEYARD

In living rooms and legislatures across the country, dissolution campaigns are murmuring. The records gathered for this Article indicate that more

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83. *In re* City of Vallejo, No. 2008-26813, 2008 WL 4146015, at *3 (Bankr. E.D. Cal. Aug. 29, 2008).

84. Jessica A. York, *Vallejo Budget Shortfall Leaves No Good Options*, TIMES-HERALD (Vallejo, Cal.), Mar. 26, 2009.

85. *See, e.g.*, Tiara M. Ellis, *Westminster Residents To Decide the City's Future*, DALL. MORNING NEWS, July 28, 2004, at 8B; *Former "Speed Trap" Town To Circulate Petitions To Disincorporate*, KAN. CITY STAR, Nov. 5, 2004; Ken Hoover, *Tax Struck Down—East Palo Alto Plots Next Step*, S.F. CHRON., Feb. 8, 1996, http://articles.sfgate.com/1996-02-08/news/17767364_1_tax-structure-appeals-court-city-services; *Residents Take Over After City Dismisses Its Staff*, N.Y. TIMES, Dec. 22, 1992, http://www.nytimes.com/1992/12/27/us/residents-take-over-after-city-dismisses-its-staff.html; Detwiler et al., *supra* note 41 (describing the consideration of dissolution in East Palo Alto and San Juan Bautista).

municipalities dissolved in the past fifteen years than at any time before that. Many more have scheduled elections that could pull their plug. This Part develops a working research definition of dissolution activity and introduces this Article's rough-draft list of dead, dying, and survivor American cities, which are enumerated in the Appendices. These lists range across geography, from metropolitan cities to rural ghost towns, and across time, from the Great Depression to our current Great Recession.

Where and when are our first steps in understanding these dissolutions. "Where" gives us critical information about the geographic distribution of the phenomenon, which, in turn, provides a basis for exploring law and institutional design in states where dissolutions are occurring and not occurring. It facilitates future research regarding which kinds of local institutions (e.g., villages, cities, towns?) have been targeted for elimination, the characteristics of dissolving cities (small, large, rich, poor?) and what kinds of state laws are enabling dissolution (e.g., the procedural requirements for triggering a public vote on dissolution). "When" (the year of each dissolution) may suggest hypotheses regarding broader national patterns and causal dynamics. For instance: Can we identify temporal clusters of dissolutions, and do these align with state or national changes like the foreclosure crisis or a sharp drop in federal grants to local governments? This Part, along with Part III and the Appendices, provide national findings along the dimensions of geography and time, and they frame an analytical foundation for understanding dissolution activity.

The purpose of this expedition into our cities and their history warrants an explanation. I have two intentions here. The first is to provide a definitional baseline, early findings, and dimensions of interest that may serve as a foundation for future empirical research on dissolution. From this base, scholars of history, political science, urban theory, sociology, and economics can build our understanding of this important mode of managing urban distress. My second purpose is to read the landscape of dissolutions past, present, and planned as a basis for responsive and well-grounded normative analysis of dissolution law in this Article and in future work by myself and others.

A. The Range of Dissolution Activity

As a first step, we need a universe of "dissolution activity" to investigate. To limit this pool to finalized dissolutions would be overly narrow, as we learn something about the prospects and conditions of local government elimination whether or not a dissolution effort is ultimately successful. And to influence current public policy questions about dissolution requires knowledge of the

scope of all meaningful engagements with dissolution, including cities where dissolution efforts are inchoate or in process. Dissolution activity thus should include four categories: approved, rejected, legally proposed, and inchoate. The methodology in Appendix A provides formal definitions for each of these categories.

Dissolution activity is captured in surprisingly few centralized lists. For approved dissolutions, fragmented official records are stored here and there, and the present Article has compiled dozens of these federal and state sources to assemble a research base. Rejected and pending dissolution activity is harder to trace; however news media, state-based think tanks, and local-regional historians provided a partial view of cities where dissolution is or was an option. A multi-step inquiry of census data, state-based lists, and news archives gives a landscape of dissolution activity, including city names, state, and date information. Appendix B, which lists dissolved cities, is not date-limited, though the likelihood of omissions increases before 1957 for three reasons: the absence of U.S. census records, the decreasing availability of state records, and problems of access to what historical records have been maintained. In addition, the further back in history one moves, the greater the difficulty of distinguishing legal cities from settled places, due to shifting legal definitions of cityhood itself.[86] Appendices C, D, and E, which capture other forms of dissolution activity, are all limited to the period of time reliably covered in the news archive. The methodology in Appendix A explains the process I used to build these lists, available sources for data, and known gaps in that information base.

While dissolution's invisibility in official records hampered the process of identifying dissolution activity, its invisibility paradoxically may have helped when it came to media research. Because most journalists have believed (or have been told) that dissolutions happen rarely, if ever,[87] dissolution activity generates media coverage when it occurs. Specific dissolution campaigns in

86. Particularly in Western states, home to many a storied ghost town, distinguishing legal cities from settlements without legal identity would require state-specific legal histories of the institution of cityhood itself—a project that I commend to legal historians. Such work would raise intriguing questions about how legal cities develop, and it will reveal the ways that people build the structure of civil governance from the ground up. From pinning a badge on a man to name him sheriff or mayor to registering a town with state or territorial offices, actions to build law and government in these places will invite an interesting assessment of where cityhood begins.

87. Many of the hundreds of media articles reviewed in research for the present Article referred to a dissolution campaign in a particular city as if it were the first in a generation or more, despite the fact that many such changes were being considered across the country at the same time.

cities too small to make the news for just about any other reason surfaced in the national media (often with attention from several major outlets at once) because the reporters viewed dissolution as a fascinating, surprising oddity.[88] As a result, the reliability of media-based research may be higher than for other types of local government changes, apart from the caveat that some areas are not well-served by any kind of news outlet, or at least not one included within the extensive LexisNexis and Newsbank (Access World News) archives.[89]

B. Observations

Appendix B identifies 690 dissolutions in thirty-eight states, with specific dissolutions dating back to the early nineteenth century. It is a wide-ranging list in terms of both time and geography. Every region of the country is represented, with the highest numbers of recorded dissolutions in Georgia, New York, Kentucky, Missouri, South Dakota, North Dakota, and Florida. The number of dissolved cities is much higher than one would expect given dissolution's shadowy presence in local government law. Yet even this list is undoubtedly an understatement of the phenomenon. I attempted to exclude all mergers or horizontal reorganizations from Appendix B, as well as any ghost towns memorialized by historians where legal incorporation and legal disincorporation under the terms of that state's law could not be verified. There is also a high likelihood that this data is missing many cities (if not entire states) where dissolutions occurred but were not listed in reasonably available records, as described in Appendix A.

Records of other forms of dissolution activity are date-limited to reflect the years covered in the news archive or the character of that category itself. Rejected dissolutions in Appendix C (defined here as those dissolutions that

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88. Dissolution campaigns in Maine and Missouri towns of fewer than 1000 people illustrate this point. On Sherman and Benedicta, Maine (with populations of about 1000 and 225, respectively), see, for example, Jerry Harkavy, *Small Maine Towns Looking to Dissolution for Tax Relief*, BOS. GLOBE, Dec. 13, 1987, at 97; *The Maine Town That Wants To Die*, N.Y. TIMES, Dec. 20, 1987, http://www.nytimes.com/1987/12/20/us/the-maine-town-that-wants-to-die.html; and *Maine Town, Toppled by Tax Load, Hands Over Burden but Not Identi[t]y*, N.Y. TIMES, May 31, 1987, http://www.nytimes.com/1987/05/31/us/maine-town-toppled-by-tax-load-hands-over-burden-but-not-identify.html [hereinafter *Toppled by Tax Load*]. On Macks Creek, Missouri (with a population of about 270 people), see Kelly Wiese, *Mo. Town To Vote on Dissolving; Macks Creek Tries To Outrun Its Reputation as a Speed Trap*, WASH. POST, Jan. 2, 2005, at A07; Kelly Wiese, *Once a Speed Trap, Town Is Counting Down*, L.A. TIMES, Jan. 16, 2005, http://articles.latimes.com/2005/jan/16/news/adna-macks16 [hereinafter Wiese, *Once a Speed Trap*]; and *All Things Considered: Decision of Macks Creek, Missouri To Disincorporate* (NPR radio broadcast Nov. 16, 2004).

89. The characteristics of this archive are described in Appendix A.

were formally, legally proposed and then failed to achieve the requisite consent or approval) are limited to the recent period of 1970-2011. The City of Miami, discussed in Parts I and III, is the most notable city on this list, which includes unsuccessful dissolution elections in cities in Colorado, Florida, Illinois, Kentucky, Maine, Missouri, New York, Ohio, and Wisconsin.

Legally proposed, pending dissolutions (2008-2010) are captured in Appendix D, a list that indicates dissolution's most current frontier. We can think of this list as a research audience in addition to a research subject, as these are some of the places that have the most to gain from a rich and serious analysis of dissolution law. Pending dissolution activity surfaces primarily in New York, where a number of villages have commenced official dissolution proceedings, either by commissioning a dissolution plan or by scheduling an election on the question. California, Florida, Tennessee, and Utah also have pending dissolutions.

Appendix E, inchoate dissolutions, further validates this finding that dissolution is becoming more prominent as a policy option. Beyond those cities that formally undertook dissolution measures (as captured in Appendices B to D), Appendix E lists thirty-seven additional cities where citizens have launched petition drives that ultimately failed or officials have publicly considered dissolution between 1970 and the present. This list reveals dissolution's salience as an option in local government boundary change in addition to its rhetorical or strategic uses in local government management. Big cities appear on this list, like Oakland and East Palo Alto in California. Along with other forms of boundary change or local policy, advocacy for dissolution can be used to make a larger point, such as to emphasize the degree of financial peril facing a city. Or talk of dissolution can serve as a guise for a different policy objective; for example, a councilmember might call for dissolution in order to raise public tolerance of a more modest cut to services or spending. Talk of dissolution in Vallejo, California had this character. A City Manager reported to the City Council and the public that if voters refused to approve a utility tax renewal on an upcoming ballot, "the city should consider dissolution, 'because the city of Vallejo would be too dangerous to live in.'"[90] Finally, those cities where the idea never gets off the ground can teach us something about the reasons not to dissolve, even when a city has faced the degree of adversity capable of triggering consideration of dissolution in the first place.[91]

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90. Jessica A. York, *Vallejo Budget Shortfall Leaves No Good Options*, TIMES-HERALD (Vallejo, Cal.), Mar. 26, 2009 (quoting the City Manager).

91. In New York, the municipalities that belong in this category are: Albion, Angola, Baldwinsville, Bergen, Blasdell, Brewster Village, Buffalo, Cleveland, Corinth, Cortland, Depew, Endicott, Farnham, Greater Binghamton, Kemore, Lancaster, Le Roy, Lyndonville,

There is little question that dissolution is a phenomenon whose time has not yet run. Combining Appendices B, C, and D in the modern window covered in all of them (1970-2010), a striking spike in dissolution activity occurs in the 1990s and 2000s. These records show meaningful but modest numbers of cities that dissolved or rejected dissolution prior to that point: the 1970s had nineteen incidents of dissolution activity, and the 1980s had sixty such incidents. In the 1990s, the number of cities with dissolution activity jumped to 326 (reflective in part of a legislative change in Georgia that accounted for 188 dissolutions). Since 2000, a total of 201 cities have seen dissolution activity.

C. The New York Experiment

Five hundred sixty-six municipalities in New Jersey?[92] Forty-five police chiefs in a single New York county?[93] In the face of fiscal crisis, Michigan, New Jersey, Iowa, and many other states have seen advocacy and policy measures to systematically reduce the number of local governments through consolidation and elimination of particular local agency forms.[94] Such policies are arguably furthest along in New York, where reforms have emphasized thinning the

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Mobius, Naples, New Hyde Park, Orchard Park, Salem, Sloan, Tioga, Wellsville, and Williamsville. *See* Appendix E.

92. David Kocieniewski, *A Wealth of Municipalities, and an Era of Hard Times*, N.Y. TIMES, May 29, 2009, http://www.nytimes.com/2009/05/31/nyregion/31merge.html.

93. *Plan for Cutting Town Taxes: Eliminate the Town Itself*, N.Y. TIMES, Feb. 17, 1992, http://www.nytimes.com/1992/02/17/nyregion/plan-for-cutting-town-taxes-eliminate-the-town-itself.html (referring to towns in Westchester County, New York).

94. Targets of criticism and reform have ranged from tiny suburbs in New Jersey to depopulated rural cities in Iowa, but the common cause is excessive local fragmentation into tiny governments. Reform efforts have included calls for dissolution of all municipalities within small counties in Iowa (referred to there as countywide consolidation), state-led commissions in New Jersey and Illinois charged with identifying local governments appropriate for consolidation, and the dissolution of all or some township governments (through vertical consolidation with constituent municipalities) in Michigan. *See* Mike Alberti, *If It's Broke, Why Not Fix It?*, REMAPPING DEBATE (Mar. 30, 2011), http://www.remappingdebate.org/article/if-its-broke-why-not-fix-it?; Editorial, *Census Results Boost Consolidation Efforts in Iowa*, GLOBE GAZETTE (Mason City, Iowa), Feb. 17, 2011, http://globegazette.com/news/opinion/editorial/article_e1546680-3a5d-11e0-8641-001cc4c03286.html; *Illinois' Local Governments To Get Review*, STATE J.-REG. (Springfield, Ill.), Aug. 13, 2011, http://www.sj-r.com/breaking/illinois-local-governments-to-get-review; *Michigan 10.0: Should Cities and Townships Merge To Save Money?*, GRAND RAPIDS PRESS (Mich.), May 21, 2010, http://www.mlive.com/news/index.ssf/2010/05/msu_governmental_expert_townsh.html; Alex Schuman, *Population Shifts, Budget Woes May Bring Consolidation of Local Governments*, IOWAWATCH.ORG (Jan. 30, 2011), http://www.iowawatch.org/?p=2768.

number of municipalities through dissolution. The state has seen nearly two decades of top-down and bottom-up efforts to dissolve village governments, most recently culminating in major statewide legislative reform initiated by Governor Andrew Cuomo during his tenure as Attorney General and pavement-pounding by an entrepreneurial crusader named Kevin Gaughan in Western New York. Dissolution activity in the state, which draws on antigovernment, anti-tax animus as well as technical efficiency arguments, showcases dissolution as a public-policy objective.

To understand New York's dissolution reforms requires a brief interlude to introduce the state's cast of four general-purpose local governments: counties, towns, cities, and villages. Land in New York falls within one of the following arrangements, ranging as a general matter from the more rural to the more urban: (1) a town and a county; (2) a village, town, and county; or (3) a city and a county.[95] New York's dissolution efforts seek to reduce the number of New Yorkers who live in the second category; in other words, eliminate a large number of villages and convert that territory into town/county jurisdiction alone. Villages are incorporated municipal subdivisions like cities, but unlike cities, they lie within town borders.[96]

All that adds up to more than 10,500 governments in the state.[97] As New York's Attorney General, Andrew Cuomo called the state's local government system a "ramshackle mess," stating bluntly: "[O]ur system of local government is broken."[98] Sounding a theme that featured prominently in his

95. A few further details are warranted. State law in New York mandates county government, and all land in the state falls within a county. Each borough of New York City is a county, though boroughs are subordinate to New York City government and have functioning borough rather than county governments. *See* N.Y. STATE, DEP'T OF STATE, LOCAL GOVERNMENT HANDBOOK 39 (6th ed. 2009) [hereinafter N.Y. HANDBOOK], *available at* http://www.dos.state.ny.us/LG/publications/Local_Government_Handbook.pdf. Counties are subdivided into towns, which are also mandatory under state law. With only one exception, these town boundaries exclude cities and Indian reservations, i.e., cities are not subordinate to towns and land lies in either a city or a town. *Id.* at 51.

96. *Id.* at 67. Cities are incorporated places governed by charters; they enjoy the highest degree of autonomy and home-rule authority in the system. Formally there is no minimum population size and no means for a village to "progress" into a city through growth, though as a practical matter cities are the more populous municipal corporations. *Id.* at 51. Thus it is cities and villages that are voluntary under state law—they may be created or dissolved by the will of their residents.

97. *A New N.Y.: A Blueprint To Reform Government*, OFFICE OF THE ATTORNEY GEN., http://www.reformnygov.com/about.html (last visited Sept. 13, 2011).

98. *Id.*

successful 2010 gubernatorial race,[99] Cuomo decried the inefficiencies created by the state's "overlapping governments," and their "layer upon layer of taxing structures" that burdened state residents with "the highest local property tax burden in the nation."[100] To reduce what he saw as a dysfunctional degree of fragmentation in the state and intolerable tax levels, he led and signed major statewide legislation to enable local government dissolution: the New N.Y. Government Reorganization and Citizen Empowerment Act, effective March 21, 2010.[101] Press releases after the law's passage claimed that the new law would simplify a formerly "Byzantine and cumbersome process of consolidating local governmental entities."[102]

The law tried to loosen procedures for the dissolution of villages and special districts. The new rules permit either a governing body or the electorate to commence dissolution proceedings,[103] and they reduce the number of signatures required on a dissolution petition from 33% to 10% of the electorate.[104] A referendum then follows in either case, with a majority standard for approval.[105] The law also requires a formal dissolution plan that covers the fate of village employees, the quantity and disposition of assets and liabilities, future municipal services, a period of legal transition in the village's regulations, and a cost estimate.[106] The town absorbing the dissolved village assumes its debts, liabilities, and obligations, along with the right to charge debt service to taxable property within the former boundaries of the dissolved

99. *See Record of Success: Consolidating Local Governments*, ANDREWCUOMO.COM, http://www.andrewcuomo.com/record_of_success (last visited Sept. 13, 2011) (describing leadership on local consolidation).

100. *A New N.Y.*, *supra* note 97.

101. N.Y. GEN. MUN. LAW §§ 750-793 (McKinney 2010).

102. Press Release, Office of the Attorney Gen., Attorney General Cuomo Applauds New York State Senate Passage of Historic Government Consolidation Measure To Reduce Waste and Save Taxpayer Money (June 3, 2009), http://www.ag.ny.gov/media_center/2009/june/june3c_09.html.

103. N.Y. GEN. MUN. LAW § 773.

104. Under the new law, electors initiating dissolution must submit a petition with the signatures of the lesser of 10% of the number of the village's electors or five thousand electors (or, in the case of villages with 500 or fewer electors, the petition must include signatures of at least 20% of the electors). *Id.* § 779(2).

105. *Id.* § 781(2). The new rules empower electors to seek court-ordered dissolution if a governing body fails to proceed with dissolution following an affirmative referendum. *Id.* § 786.

106. *Id.* §§ 774, 782. If dissolution is initiated by the governing body, the dissolution plan must be prepared before the referendum takes place; if it is initiated by electors, the governing body prepares the plan following majority approval of dissolution. *Id.*

entity.[107] Not content with legislative facilitation, the New York Department of State established a Local Government Efficiency Grant Program to fund dissolution plans across the state—thus bearing the procedural costs of dissolution at the state level—as well as a proactive public help station with which to motivate and support grassroots dissolution campaigns.[108]

The politics of the Act, and the gubernatorial race that followed it, expressed a bipartisan swell of anger over New Yorkers' property tax burdens. The appropriate state response to those burdens, however, was highly contested. In the governor's race, the Republican candidates sought tax relief through tax caps and constitutional controls, while Cuomo focused on structural reform through defragmentation and dissolution.[109] The Association of Towns for the State of New York "vehemently opposed" Cuomo's Act, warning that the promise of tax reductions through local government consolidation was a mirage, or at least unproven.[110] Any tax savings from consolidation, it said, were due to a loss of jobs and services, and the state property tax burden was not due to local government fragmentation.[111] The Association thus proposed a variety of procedural barriers to slow dissolutions down, from increased petition and consent requirements to increased time to study dissolution.[112] What was really at issue in this opposition? What did towns have to lose from legislation promoting dissolution? On paper the Association simply answered that taxpayers "should not have to pay for a service that [they] do not receive."[113] In other words, pay for what you get (and only what you get). In the politics of towns and villages, this anti-redistributive sentiment probably had more of a suburban/rural valence than a rich/poor one, with towns concerned about the higher costs of providing services to more populous villages that might move on to town ledgers.

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107. *Id.* § 790.

108. Press Release, Office of the Attorney Gen., *supra* note 102.

109. Cuomo's Republican opponent in the general election was Carl Paladino; Rick Lazio was a second major candidate in the Republican primary. *See Carl on the Budget, Spending and Taxes*, PALADINO FOR THE PEOPLE, http://www.paladinoforthepeople.com/issuedetail.php?id=4 (last visited Aug. 19, 2011); *see also Building a Better New York: A Policy Agenda*, SCRIBD, http://www.scribd.com/doc/30641667/Building-a-Better-New-York (last visited Dec. 07, 2011) (calling for changes like property tax caps, pension reforms, and higher tax approval thresholds to address the issue of local tax burdens).

110. G. JEFFREY HABER, ASS'N OF TOWNS OF THE STATE OF N.Y., MEMORANDUM IN OPPOSITION 1, 3 (2009), *available at* http://www.nytowns.org/core/contentmanager/uploads/opposition%20to%20local%20consolidation.pdf.

111. *Id.* at 1.

112. *Id.* at 1-2.

113. *Id.* at 1.

During Cuomo's tenure as Governor of New York, the path to dissolution may get easier yet. His campaign bemoaned that local governments in the state amount to an "oversized and inefficient bureaucracy" that constitutes "a luxury taxpayers cannot afford."[114] He blamed "historical accumulation" rather than rational institutional design and planning for the current structure.[115] His plans to further enable dissolution and other forms of consolidation include automatic state-planning grants to study the effects of dissolution and legal reform to permit New York towns to provide a broader range of municipal services in house, i.e., without contracting for those services from districts, villages, or counties.[116] Cutting most quickly to the heart of his property-tax-reduction goals, he campaigned on a requirement that 50% of the state aid currently offered following dissolution and other restructuring be dedicated to property-tax relief.[117]

While Cuomo is at work in the State House, something in between a reformist crusade and a "suburban riot" is underway at the local level.[118] An entrepreneurial crusader named Kevin Gaughan[119] is leading an effort to strip village government out of Erie County, New York, the home of the City of Buffalo. Gaughan, an attorney and two-time unsuccessful candidate for a congressional seat, is leading a passionate movement for village dissolution in Western New York, a region struggling with postindustrial decline. The "Super Bowl," he tells supporters, "is the elimination of all 16 villages in Erie County."[120] He focuses his argument for dissolution on costs and inefficiencies, contrasting the percent of the county population within villages (9%) to the

114. ANDREW CUOMO, THE NEW NY AGENDA: A PLAN FOR ACTION 61 (2010), *available at* http://www.andrewcuomo.com/system/storage/6/34/9/378/acbookfinal.pdf.

115. *Id.* at 82.

116. *Id.* at 87, 90-91.

117. *Id.* at 88-89.

118. James A. Gardner, *Rioting! In the Suburbs*, ARTVOICE, Feb. 25, 2010, http://artvoice.com/issues/v9n8/rioting_in_the_suburbs.

119. I interviewed Kevin Gaughan in Buffalo, New York on November 12 and 13, 2010. I am grateful to him for his time.

120. Barbara O'Brien & Mary B. Pasciak, *Hamburg Voters Cut Town Board from 5 to 3; Eliminating Villages Could Be Next Fight*, BUFFALO NEWS, Nov. 18, 2009, http://www.buffalonews.com/incoming/article22072.ece; *see also* Kevin Gaughan, *Ending the Age of Large Local Government*, THECOST.ORG (July 9, 2008), http://thecost.wordpress.com/ending-the-age-of-large-local-government. Gaughan's blog provides a history of his efforts, including various conferences and forums on regionalism and directed campaigns for downsizing and dissolution. *See About Kevin Gaughan*, THECOST.ORG, http://www.thecost.org/about.htm (last visited Sept. 5, 2011); *see also* Niki Cervantes, *Gaughan Sets His Sights on Dissolving Villages*, BUFFALO NEWS, Feb. 21, 2010, http://www.buffalonews.com/city/article35412.ece.

villages' share of county politicians (24%) and highlighting the county-wide and village-specific costs of paying village politicians.[121] Village elimination as he describes it would improve services, "place [the county] among those successful communities unburdened by overlapping governments, reduce taxes, free more public funds for service delivery, and most importantly, re-connect citizens with their communities" by spurring volunteerism and private leadership.[122]

On the surface, his dissolution movement looks like an antigovernment agenda—he calls it "ending the age of large local government," and he promises to lower taxes and costs by reducing the number of politicians and local governments. Yet the reductions he seeks come from shrinking and eliminating lower tiers of government, thus placing more responsibility and taxation control in higher divisions of government (i.e., towns). This looks like a regionalist vision, and it may well be. Gaughan, in fact, was once a vocal proponent of a consolidated single-tier government over the City of Buffalo and its surrounding Erie County.[123]

In reflecting on why regionalism failed in Erie County, Gaughan blamed the "inordinately large number of politicians" in the region.[124] He took aim directly at this "political class,"[125] first proposing that every local government in Erie County should eliminate two seats on its governing body.[126] He conducted a study of local governments in Erie County that documents the ratio of citizens to legislators in each village or town, the salaries and benefit costs of all elected officials in that village or town, and the other uses to which such funds could have been put, like teachers and public beaches.[127] He found that the problem is most acute in the county's suburbs, and he offered the comparison

121. Gaughan, *supra* note 120.

122. *Id.*

123. *See* Kevin Gaughan, *The Gaughan Plan*, KEVINGAUGHAN.COM, http://web.archive.org/web/20050208163311/kevingaughan.com/plan.asp (last visited Sept. 5, 2011). The plan was presented before the Erie County Legislature Government Affairs Committee in 2005.

124. Kevin Gaughan, *Introduction*, THECOST.ORG, http://www.thecost.org/intro.htm (last visited Sept. 5, 2011).

125. *Id.*

126. Kevin Gaughan, *Kevin's Proposed Solution*, THECOST.ORG, http://www.thecost.org/solution.htm (last visited Sept. 5, 2011).

127. Kevin Gaughan, *The Study*, THECOST.ORG, http://www.thecost.org/report.htm (last visited Sept. 5, 2011). Gaughan articulates an interesting rationale for his downsizing agenda, summed up in the notion that "No Drop of Rain Believes It Is Responsible for the Flood"—the idea that politicians across the county agreed that there was too much government in the area, but then "went on to explain why their town or village was the exception, and had just the right number." Gaughan, *supra* note 120.

that "if Buffalo had the same ratio of citizens to legislators as the suburbs, there would be 100 [Buffalo] common council members."[128] The math on the costs of local government in Erie has been called into question, as has the general level of thoughtfulness of the downsizing movement's approach.[129] Nonetheless, it is clear that Gaughan is a man on a mission to eliminate what he sees as unaffordable, undesirable underbrush in American government.

Cuomo's bill and Gaughan's mission remain at early stages, though both efforts have already seen successes and failures. Eight villages in New York have approved dissolutions since 2003, compared with a total of fifty in the twentieth century.[130] Among the ranks of the dissolved include the young (such as the Village of Amchir, incorporated in 1964 and dissolved in 1968) and the old (the Village of Pike, established in 1848 and dissolved in 2008).[131] Following the passage of the Empowerment Act in March 2010, citizens in seven more villages immediately called elections, but voters rejected all of them.[132] Everyone seems to agree that a major factor in these rejections is a defect in the law: dissolution plans are not prepared until after an election called by citizen petition, and thus voters had great uncertainty about the costs and benefits.[133] Both Cuomo and Gaughan have expressed ambition to plow ahead, so legal amendments may follow soon. While it is too early to assess the success of New York's experiment, it is nonetheless clear that citizens and leaders in the state are looking to dissolution as a tool to modernize government, control taxes, and manage decline.

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128. Kevin Gaughan, *Findings and Conclusions*, THECOST.ORG, http://www.thecost.org/find.htm (last visited Sept. 5, 2011).

129. *See* Gardner, *supra* note 118; James Garner & Kate Foster, *Sizing Up Local Legislatures*, U. BUFF. REGIONAL INST. (Sept. 2009), *available at* http://www.regional-institute.buffalo.edu/Includes/UserDownloads/PolicyBrief_LegisDownsizing_Sep09.pdf.

130. *See* Appendix B.

131. *See* N.Y. HANDBOOK, *supra* note 95, at 73; *Town and Village of Pike Dissolution Study*, GENESEE/FINGER LAKES REG'L PLANNING COUNCIL (Apr. 29, 2008), http://www.gflrpc.org/Publications/Pike/PikeDissolutionStudy.htm; Appendix B.

132. *See* Appendix C.

133. *See, e.g.*, Joseph Spector, *Cuomo's Consolidation Plan a Work in Progress*, PRESS & SUN BULL. (Binghamton, N.Y.), Oct. 25, 2010, http://www.pressconnects.com/article/20101025/NEWS01/10250329/Cuomo-s-consolidation-plan-work--progress.

Dissolution is a small but rising trend. It should no longer be overlooked as part of our past, and it should figure prominently in our vision of a new and leaner era of local government.

III. WHY, WHY NOT? THE FACES OF MUNICIPAL DISSOLUTION

In 1848, just eleven years after the incorporation of the Village of Seneca Falls, the suffragists of the Seneca Falls Convention signed the Declaration of Sentiments, which contained the following passage excerpted from the Declaration of Independence:

> Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.[134]

In the context of the Seneca Falls Convention, the words referred, of course, to "the patient sufferance of the women under this government" and the demand for equality.[135] But they offer a powerful reminder that governments, including local ones, are rarely cast off for trifling causes. These words echo in Seneca Falls itself, where the citizens of the Village voted in 2010 to dissolve their local government—174 years after its founding.[136]

If citizens are unlikely to remove their governments for "light and transient causes," why do dissolutions happen? And equally importantly: why do dissolutions fail? This Part offers a foundational sorting of themes animating dissolution activity. Drawing from the hundreds of newspaper articles reviewed for this Article from the 1970-2010 period, as well as local and regional histories of selected places in the Appendices prior to this period, this Part distills five themes from the public claims made by proponents or opponents of municipal dissolution. Within each theme, this Part checks in with modern dissolution law to determine the way that law enables or constrains dissolution in that context. This intersection of dissolution's history and law builds a foundation for Section IV.C's effort to interrogate and rethink the law of dissolution. In addition, the hypotheses and organizing principles offered here will facilitate research design for at least two types of future

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134. *Declaration of Sentiments*, *in* REPORT OF THE WOMEN'S RIGHTS CONVENTION, HELD AT SENECA FALLS, N.Y., JULY 19TH AND 20TH, 1848, at 7 (1848).

135. *Id.*

136. *See supra* note 17 and accompanying text.

projects: first, a legal history of dissolution law, and second, comparative, qualitative sociology or political economy analysis of how and why dissolution becomes an option and why it is approved or rejected.

I have no doubt that behind this initial layer of research lie other important issues and histories. The themes identified here are not exclusive. I have no doubt that historical case studies of the cities in these Appendices will reveal additional causal factors, including, for instance, environmental changes such as natural disaster or drastic shifts in weather.[137] Nor are they independent – the remarkable diversity among cities means that some cities will dissolve (or reject dissolution) in ways that cut across these categories. The factors identified here are also not determinative, as dissolution lies in a range of possible responses to severe local stress. For every case here, there exist null cases – cities facing similar pressures that did not consider dissolution. In the words of one historian writing in an analogous context, we should see the pressures here not as "determinism" but as "possibilism," with the choice between one response and another a result of human agency.[138]

The Graveyard of American Cities leads us to remember places of great hardship and disappointment, where citizens deliberated carefully, perhaps even heatedly, to bring their governments to an end, or states marked the *fait accompli* of urban abandonment or political failure. When we look behind the names of dissolved and dissolving cities, we find river port cities that once throbbed with industry and growth; black colonies for recently emancipated slaves yearning to own land and live beyond southern racial violence; casino and resort boomtowns that busted; and corrupt, family-run fiefdoms. All thrived in their day; most dwindled in population and grew in despair. Five themes repeatedly arise in these histories: (1) decline (i.e., budgetary crisis and depopulation due to industrial or rural abandonment), (2) taxes, or more specifically, the rebellion against them, (3) reform to address corruption and

137. Ecological factors have become increasingly important in historical analysis, and they have featured centrally in the literature on rural change in general and the Dust Bowl in particular, as well as in the growth of American industrial capitals and other significant events. *See* Mackil, *supra* note 9, at 494 (noting the increasing importance to historians of the impact of the environment on human events). Notable titles for thinking about the role of ecology in urban development and rural decline include WILLIAM CRONON, NATURE'S METROPOLIS: CHICAGO AND THE GREAT WEST (1991); and DONALD WORSTER, DUST BOWL: THE SOUTHERN PLAINS IN THE 1930S (1979).

138. *See* Mackil, *supra* note 9, at 505 (referring to the fact that under similar ecological circumstances, one ancient Greek polis might be abandoned while another was not); *see also id.* (noting, again in the context of Greek polis, "that resilience could be achieved in various ways, and that the abandonment and disintegration of a polis should be placed on a spectrum of responses to pressure").

mismanagement, (4) race, in settings ranging from banishment to autonomy to desegregation, and (5) community, or the desire to preserve neighborly bonds and history.

A. Decline

If there is one theme at the heart of the dissolutions studied here, it is economic decline and budgetary collapse. Within that broad category, however, we notice important distinctions between the long-term accumulation of systemic bad news and acute fiscal shock. The first type of distress, the long economic slide, makes dissolution an alternative raised again and again over the course of many years, or an option considered as layers of bad news accumulate and ossify. Such conversations might be instigated by some kind of economic change in which the financial fallout builds slowly – housing values (and thus property tax revenues) fall, industries leave town, demand for a major residential development fails to materialize, and the like. Optimism can survive very long winters, decades in some places, until dramatic restructuring like dissolution becomes an option. Yet as we would expect from the literature on agenda-setting in the public-policy context, economic triggers for dissolution activity also come from "focusing events," or abrupt shocks that draw sudden and concentrated media attention.[139] In these places, dissolution is precipitated by acute fiscal crisis caused by impacts from a steep fall in housing values; a downward spike in the municipal bond rating; voter rejection of a tax needed for solvency; closure of an industrial cornerstone of local employment or tax revenue; and/or a sizable legal judgment against a municipality. The dissolution activity described herein reflects and sometimes overlaps these nodes of fiscal distress.[140]

The recent peak of dissolution activity in Western New York represents slow-moving economic decline and associated population loss. Op-Eds by Kevin Gaughan in the *Buffalo News* have decried the region's "flat-lining

139. This literature describes a three-stage process toward creating an opening for policy change: a focusing event or other news generates media attention, policy analysts or issue entrepreneurs offer their preferred solution to the problem identified in the news, and politicians or others support the solution. *See* FRANK R. BAUMGARTNER & BRYAN D. JONES, AGENDAS AND INSTABILITY IN AMERICAN POLITICS (1993); JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES (1984); Steinacker, *supra* note 1, at 107. This literature is poorly suited to dissolution in some contexts, where it is citizens acting in opposition to politicians who bring the solution to the forefront.

140. One might expect an untenable municipal debt burden to be on this list as well, but as noted in Section I.C, debt cannot be relieved through dissolution.

pulse,"[141] loss of young population,[142] and "failed local economy,"[143] and they have observed that "[w]hen America gets the flu" of economic malaise, "Western New York gets cancer."[144] They have described a kind of psychic "weariness" born of economic weakness: "Ours is a wounded community. We bear the scars of decades of losses that have sapped our strength and our soul."[145]

Economic decline and the resulting inability to sustain municipal taxes have also animated a wave of seven small towns in Maine (some of which are more than 150 years old) to revert to "unorganized territory" that is dependent on county services but operated as state territory with no local government.[146] However, not all dissolution elections held in the face of long-term fiscal distress succeed. Such votes ultimately failed in Allen, Kentucky, Village of North Bend, Ohio, and Mountain View, Colorado, where a resident described the town's persistent state of fiscal distress in this way: "It sort of feels like a broken leg and they keep putting Band-Aids on it, and it never heals."[147] City officials have argued against dissolution where they perceive the administrative costs to be too high for an extremely depressed city to carry. For instance, in Isleton, California, where a civil grand jury has pushed for dissolution,[148] the city manager told a reporter in 2009 that dissolution would cost $250,000, leading the reporter to observe: "[Isleton] may be too poor to live, but it's also too poor to die."[149]

In addition to these slower economic slides, singular budgetary shocks can serve as focusing events that bring a small city to a brink of distress where dissolution becomes an option. Such shocks might include the closure of a mine or factory in a "company town" (as in Bibb City, Georgia), or a sizable legal judgment (as in the City of Mesa, Washington, and Half Moon Bay,

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141. Kevin Gaughan, Op-Ed., *Struggling To Survive: Bloated Local Government Is Corroding Our Sense of Self*, BUFFALO NEWS, Apr. 26, 2009, at G1.

142. Kevin Gaughan, Op-Ed., *How 439 Politicians Cost Us Effective Government: And Why Paying Them 32 Million a Year Costs Us Our Future*, BUFFALO NEWS, Dec. 3, 2006, at I1 (describing Erie County's loss of 30% of its twenty-five- to thirty-four-year-olds over the past decade).

143. *Id.* (describing falling income levels and housing values in Erie County).

144. Gaughan, *supra* note 141.

145. *Id.*

146. *See, e.g.*, Harkavy, *supra* note 88; *Toppled by Tax Load*, *supra* note 88.

147. Allison Sherry, *A Colorado Town in Trouble*, DENVER POST, Apr. 15, 2009, http://www.denverpost.com/ci_12143468; *see also* Appendix B.

148. *See infra* text accompanying notes 194-197 (discussing Isleton in greater depth).

149. Maria L. La Ganga, *Historic Little Sacramento County Town Has King-Size Problems*, L.A. TIMES, Feb. 4, 2009, http://articles.latimes.com/2009/feb/04/local/me-isleton4.

California).[150] Local financing rule changes can create a similar impact. For instance, a Missouri state legal change in 1995 that limited speeding ticket fines crippled the budget of Macks Creek, a city located on an interstate.[151] In the face of the lost revenue, the city disbanded its police department and filed for bankruptcy in 1998, which reduced the city's debt but did not solve the long-term fiscal malaise.[152] In 2004, Macks Creek residents approved an election for disincorporation, though they ultimately rejected it at the ballot box.[153]

Where economic stress reaches crisis levels, whatever the cause, some states have stepped in to impose dissolution as a penalty. The city of North Las Vegas, Nevada, for instance, is currently facing a takeover of the city's financial operations in the face of economic collapse, and the state legislature may impose disincorporation as "a last resort."[154] The states of Michigan and Rhode Island have recently passed legislation that will permit those states to impose receiverships on struggling municipalities in which the local democracy is entirely suspended for an undefined period of time—a policy that I have characterized as the dissolution of local democracy—even if the city's corporate status remains intact.[155]

One of the first recorded dissolutions provides another interesting example of involuntary dissolution to address economic problems. An 1879 dissolution of the City of Mobile, Alabama, was an involuntary revocation of the city's charter that sanctioned the city for chronic problems incurring and repaying debt. Absent partisan rancor between the state and city, the dissolution may

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150. Bibb City dissolved through merger and was thus omitted from Appendix B, but nonetheless, the city provides a useful referent for long-term industrial decline that precipitates the disincorporation of a "company town." *See Bibb Manufacturing Company*, THE NEW GA. ENCYCLOPEDIA, http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-3213 (last visited Feb. 13, 2012); *see also* Joe Chapman, *Mesa Weighs Legal Options*, TRI-CITY HERALD (Kennewick, WA), April 30, 2009 (reporting on city research into disincorporation and bankruptcy as responses to the budgetary shock of a legal judgment against the city); Julia Scott, *The End of Half Moon Bay?*, SAN JOSE MERCURY NEWS, Aug. 28, 2010 (describing city council deliberations about disincorporation as a possible answer to dire financial straits precipitated in part by a $15 million lawsuit settlement).

151. Wiese, *Once a Speed Trap*, *supra* note 88.

152. *Former "Speed Trap" Town To Circulate Petitions To Disincorporate*, KAN. CITY STAR, Nov. 5, 2004, at B3.

153. Wes Johnson, *Election 2005: Macks Creek Residents Vote To Remain Incorporated*, SPRINGFIELD NEWS LEADER, Apr. 6, 2005, at A4.

154. David McGrath Schwartz, *Commissioner: North Las Vegas Headed Toward State Takeover*, LAS VEGAS SUN, Aug. 4, 2011, http://www.lasvegassun.com/news/2011/aug/04/whats-store-north-las-vegas.

155. Michelle Wilde Anderson, *De Facto Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. (forthcoming 2012).

never have occurred—historians have attributed the dissolution in part to the desire of Democrats in the state capital to dethrone a sitting Republican mayor in the New South.[156] The city's dissolution led to federal case law on the treatment of debt following dissolution.[157]

Economic crises are thus common across dissolving cities. Dissolution is seen as a way to cut costs quickly and dramatically by laying off employees and politicians, consolidating and restructuring services and administration with the county, selling or transferring assets, and the like. While economic malaise is clearly a cause of dissolution, we do not yet know the circumstances, if any, in which dissolution provides a cure.[158]

B. Taxes

Dissolution has become one expression of the rising antipathy to taxes, government spending, and government regulation more generally. Policy analyst David Stokes of the libertarian Show-Me Institute in Missouri, for instance, has observed that disincorporation "is an important option for cities in Missouri to consider, and for taxpayers to keep in mind, every time some tiny city tries to enact another tax increase."[159] Yet the politics of dissolution as an anti-tax, antigovernment reform are in fact more complicated than that, with calls for dissolution also coming from the political left in the name of cutting costs through modernization and consolidation.

Anti-tax sentiment is particularly strong in cities with a municipal tax burden that is high relative to that in the county, or where city government is seen to be duplicative of a competent county administration. A cluster of dissolution drives in Florida offers a case in point. In the city of Port Richey, citizens have led seven attempts at dissolution in thirty years, with one dissolution campaign led by a group dubbed "Port Richey Citizens for Lower Taxes."[160] Tax comparisons between city residents and the unincorporated

156. *See* George Ewert, *The New South Era in Mobile, 1875-1900*, *in* MOBILE: THE NEW HISTORY OF ALABAMA'S FIRST CITY 127, 133-34 (Michael V.R. Thomason ed., 2001).

157. *See* Mobile v. Watson, 116 U.S. 289 (1886); *supra* note 54 and accompanying text.

158. *See infra* Section IV.D.

159. David Stokes, *Municipal Disincorporation in the News*, SHOW-ME DAILY (May 27, 2009, 1:41 PM), http://www.showmedaily.org/2009/05/municipal-disincorporation.html.

160. Phil Davis, *Legislators Won't Help To Disband Port Richey*, ST. PETERSBURG TIMES, Nov. 2, 2005, http://www.sptimes.com/2005/11/02/Pasco/Legislators_won_t_hel.shtml; *see also* Klint Lowry, *City Dissolution Closer to Vote*, SUNCOAST NEWS (Pasco, Fla.), Jan. 29, 2009, http://www.tbo.com/news/pasco/2009/jan/29/pa-city-dissolution-closer-to-vote-ar-129295

areas of the county have served prominently in the campaign,[161] with proponents grieving "double taxation"[162] by the county and the city's "redundant layer of government."[163] Cedar Grove, Florida, (dissolved in 2008) similarly emphasized tax savings under county management. Similarly situated Florida cities are carefully watching these cities' experiences for more information about the perils and prospects of dissolution, including the cities of Marathon, Marco Island (where a lawsuit has erupted over city-dissolution procedures), San Antonio, and West Park.[164]

Dissolution rhetoric in Texas has characterized city government as an "unwanted bureaucracy" that imposes costly taxes.[165] Villages in Wisconsin and Ohio saw vitriolic contests over dissolution in the name of tax reduction. Anti-tax advocates led a campaign dubbed "Operation Eagle Freedom," a so-called "tax revolt," to dissolve the Village of Eagle, Wisconsin in 2004.[166] They argued that town government would reduce property taxes and permit residents to vote on any new taxes directly.[167] Dissolution proponents collected the signatures necessary to trigger a dissolution election, though the measure ultimately failed.[168]

("Disbanding the City has been the political equivalent of an active volcano in Port Richey for most of the decade, always simmering in the background, erupting every few years.").

161. Christian M. Wade, *Port Richey Dissolution Case Taken to Legislators*, PASCO TRIB., Nov. 2, 2005, at 1.

162. Camille C. Spencer, *Port Richey City Council's Deadline Nears To Resolve Dissolution Issues*, ST. PETERSBURG TIMES, Mar. 23, 2009, http://www.tampabay.com/news/localgovernment/article986155.ece.

163. *Id.* (quoting a supporter of dissolution).

164. *See* Associated Press, *Broward County Tax Reform Vote Will Decide West Park's Fate*, ST. PETERSBURG TIMES, Aug. 27, 2007; David Ball, *Has* MARATHON *Had Its Run as a City?: Dissolution Could Be Tough, If Support's There*, MCCLATCHY-TRIB. BUS. NEWS, Mar. 28, 2007; Christine Girardin, *Judge Rejects Public Vote on Marco's Dissolution*, NAPLES DAILY NEWS, June 23, 1999; Lorie Jewell, *Residents Cool to Breakup Proposal*, TAMPA TRIB., Aug. 6, 1992; Todd Wright, *As West Park's Future Hangs in the Balance, Residents and Leaders Focus on the Floundering City's Flawed Foundation*, MIAMI HERALD, Aug. 26, 2007.

165. Zeke MacCormack, *Center Point Sets "Colonia" Election—Kerr County Residents To Decide on Referendum To Disincorporate on May 1*, SAN ANTONIO EXPRESS-NEWS, Mar. 10, 1999, at 1B; *see also* Appendix A (listing other disincorporated cities in Texas).

166. *See, e.g., Fate of Village Up to Voters,* ST. PAUL PIONEER PRESS, Mar. 3, 2004, at B2.

167. Darryl Enriquez, *Push To Dissolve Eagle Rare in State's History*, MILWAUKEE J. SENTINEL, Jan. 26, 2004, at B1.

168. Kay Nolan, *Eagle Board Questions Town's Role: Trustees Request Minutes from Meetings on Village*, MILWAUKEE J. SENTINEL, April 9, 2004, at 1.

Two incorporated suburbs of Cincinnati, Ohio, have similarly raised heated dissolution fights. In 1998, residents of Cleves Village (founded in 1818[169]) formed a group called Concerned Citizens for Lower Taxes in Cleves, later renamed Team EFFECT (Ensuring the Financial Future and Enhancing Cleves for Tomorrow), and led a dissolution drive that successfully qualified for election.[170] The group argued that Cleves's tax rate compared unfavorably with that of the surrounding township.[171] Opponents called the leaders of Team EFFECT "Tax Nazis" and emphasized bitterly that the dissolution leaders were relatively new residents.[172] Team EFFECT characterized its effort as a "strike for the little man," in which it was proving that people can "fight city hall . . . if you just have the fortitude to do it."[173] Prior to the election, local press reported "heated talk" and "[h]undreds of signs" on the vote.[174] The ballot measure was defeated 58% to 41%,[175] and dissolution gave way to consolidated town-village services.[176] A similar fight over tax rates between older and newer residents erupted nearby in the Village of North Bend, Ohio, in 2003. News reports suggested that dissolution was put on the ballot by the developer and residents of a new development with home values (and thus property taxes) much higher than those in the older part of town.[177] The proposal was defeated, with 79% opposing dissolution.[178]

Statewide anti-tax activism is also showing up in dissolution activity, with taxpayer advocacy organizations now funding local ballot initiatives that may lead to dissolution. In Damascus, Oregon, for instance, two statewide groups (Americans for Prosperity Oregon and Taxpayers Association of Oregon) contributed nearly $12,000 to a local group promoting four voter initiatives in

169. *History of Cleves*, VILL. OF CLEVES, *available at* http://web.archive.org/web/20100531120917/http://www.cleves.org/history-mainmenu-38 (last updated July 13, 2009).

170. Ken Wilson, *Cleves Group: Scrap Village: Lawyer Hired To Help Prepare the Petitions*, CINCINNATI POST, Mar. 19, 1998, at 2.

171. *Id.*

172. Rick Van Sant, *Boom Puts Cleves at War with Itself*, CINCINNATI POST, May 13, 1998, at 1A.

173. *Voters To Decide Future of 180-Year-Old Village*, CLEVELAND PLAIN DEALER, Aug. 15, 1998, at 4-B.

174. *Villagers Feud Over Dissolving To Cut Cost*, CLEVELAND PLAIN DEALER, Oct. 25, 1998, at 6-B.

175. *Hamilton County Election Results: Issue 20, Miscellaneous Question, Village of Cleves*, SMART VOTER (Nov. 3, 1998), http://www.smartvoter.org/1998nov/oh/hm/issue/20.

176. Ken Wilson, *Towns Finally Talking: Shared Services Could Cut Costs*, CINCINNATI POST, Sept. 21, 1999, at 1A.

177. *Id.*

178. John Kiesewetter, *North Bend Votes To Remain Village*, CINCINNATI ENQUIRER, Nov. 5, 2003, http://www.enquirer.com/editions/2003/11/05/loc_northbend05.html.

2010 that would severely restrict the city's ability to provide public transit and most other services.[179] Opponents of the initiatives, which were ultimately defeated by narrow margins,[180] argued that the measures would so weaken the city's ability to provide services that the community would be forced to disincorporate rather than sustain a powerless government.[181] The taxpayer groups had publicly supported the initiatives as pilots for similar measures across the state.[182]

Proponents who argue for dissolution often frame local government and excess taxation as perpetrators of economic decline. Here too, Western New York demonstrates this argument connecting the number of local governments to tax rates. Newspaper op-eds by dissolution advocate Kevin Gaughan (see *supra* Section II.C) bemoan property tax rates that purportedly give Erie County the fifth-highest rate of taxation in any American county,[183] with one cuttingly suggesting that "Western New York has become a two-company town: politicians and poverty."[184] Such commentary has railed publicly against a "political class" that has stymied change and innovation, including efforts at regional government, in favor of self-preservation and political advancement.[185] "Redundancies 'R Us," one article chimed, because of responsibilities duplicated at the village and town level.[186]

While most of these calls for reducing the layers and costs of local government evoke antigovernment animus, dissolution is not the exclusive province of the political right. From the political left, it has been framed as a means of progressive-style modernization of the state. In New York, as

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179. Dana Tims, *Is Damascus in Danger of Death by Initiative?* OREGONIAN, Feb. 21, 2010, http://www.oregonlive.com/clackamascounty/index.ssf/2010/02/is_damascus_in_danger_of_death.html.

180. *Summary Report: March 9, 2010 Election Results*, CLACKAMAS CNTY., http://www.co.clackamas.or.us/elections/archives/20100309.htm (last updated Mar. 19, 2010).

181. Tims, *supra* note 179.

182. Dana Tims, *Voters in Damascus, Estacada Reject Key Initiatives*, OREGONIAN, Mar. 10, 2010, http://www.oregonlive.com/clackamascounty/index.ssf/2010/03/damascus_voters_rejecting_key.html.

183. Gaughan, *supra* note 128. I did not verify this figure, but rather quote it here as an expression of the sentiment around dissolution. Even if it is true, the ranking deserves the caveat that the regional tax burden is unlikely to be high in any absolute sense, because housing costs in the depressed region are extremely low.

184. Gaughan, *supra* note 141, at G2.

185. Gaughan, *supra* note 142 (describing falling income levels and housing values in Erie County).

186. Donn Esmonde, *Activist Sees Issue Ripen After 15 Years*, BUFFALO NEWS, June 14, 2009, www.buffalonews.com/incoming/article159290.ece.

discussed in Section II.C, the Democratic executive and legislative branches of state government, as well as a left-leaning grassroots leader on the ground, have called for dissolution to reduce fragmentation in the name of modernization, efficiency, and tax reduction. While these efforts have no doubt been buoyed by animus against government and taxes, their leadership from the left has more in common with modern city-county consolidation advocacy and early twentieth-century progressive municipal reform movements—sounding themes of "government performance," "technical efficiency" (meaning creation of economies of scale and professional accountability structures, and the reduction of government duplication), and a reduction in the confusion (and thus shelter for corruption) caused by fragmentation.[187] These arguments both implicitly and explicitly associate size and regional scale with efficacy and cost savings, and they target smaller units of government for elimination. As such, they work against conservative allocative-efficiency arguments in favor of fragmentation, including the theories of residential preference sorting associated with Charles Tiebout.[188] In other words, these proponents see dissolution as saving public funds through defragmentation and regionalism.

Whether dissolution is about forcibly shrinking government or making it more effective, proponents across dissolving cities seem to agree on two things: in times of local economic crisis, cutting taxes and spending is necessary, and dissolution may offer a dramatic way to do just that.

C. Reform

As a sanction for corruption, or a call for new management, a citizenry riled up about the failures of a local government delivers quite a message of reform with a disincorporation drive, whether successful or not. Such a message can come from the state or from voters alone; in other words, reform-oriented dissolutions may be involuntary or voluntary.

The City of Vernon, California, is a case in point on the involuntary side. A corruption scandal of outsized public salaries (for instance, a 2008 salary of

187. Suzanne M. Leland & Gary A. Johnson, *Consolidation as a Local Government Reform: Why City-County Consolidation Is an Enduring Issue*, *in* CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES: RESHAPING THE LOCAL GOVERNMENT LANDSCAPE 29-32 (Jered B. Carr & Richard C. Feiock eds., 2004).

188. *See id.* at 32; Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

$1.65 million for one official[189]) and lavish self-dealing has drawn a probe by the State Attorney General.[190] In 2006, the District Attorney recommended disincorporation as the best way to break apart the city's "fiefdom," but the plan was declined by a civil grand jury, which determined that the matter should go to the state legislature.[191] In light of new revelations of ongoing corruption, a state assembly bill was proposed to disincorporate California cities with fewer than 150 residents, a category that included only the City of Vernon.[192] While the bill was pending, officials and businesses of the city threatened a lawsuit contesting the constitutionality of involuntarily dissolving a charter city, a move that allegedly disenfranchises the city's own voters.[193]

Involuntary dissolution has also arisen recently in Isleton, California. The town weathered a mayoral recall; public debt amounting to about $100,000 per resident; and six different civil grand jury reports in the 1990s and 2000s that described management improprieties and a scandal regarding the issuance of hundreds of unlawful weapons permits.[194] The town has less than half the population it did at its height, with decades of economic depression dating back to cannery closures in the 1930s and 1940s.[195] The grand jury reports recommended dissolution on the basis of incompetence if not corruption, and described the city as "in a state of perpetual crisis."[196] Yet dissolution has so far been held off by voters, who have told local media "[w]e're too tough to die."[197]

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189. Sam Allen & Hector Becerra, *L.A. City Council Backs Plan To Dissolve Vernon's Cityhood*, L.A. TIMES, Mar. 2, 2011, http://articles.latimes.com/2011/mar/02/local/la-me-0302-vernon-20110302-1.

190. Kim Christensen & Sam Allen, *Vernon Officials' Compensation Is Focus of Attorney General Probe*, L.A. TIMES, Sept. 16, 2010, http://articles.latimes.com/2010/sep/16/local/la-me-vernon-investigation-20100916.

191. Hector Becerra & Sam Allen, *Plan To Disband Vernon Gains Steam*, L.A.TIMES, Oct. 27, 2010, http://articles.latimes.com/2010/oct/27/local/la-me-vernon-city-20101027.

192. Sam Allen, *Vernon Mounts Campaign To Squelch Legislation That Would Remove Its Cityhood*, L.A. TIMES, Dec. 30, 2010, http://articles.latimes.com/2010/dec/30/local/la-me-vernon-20101230; Allen & Becerra, *supra* note 189.

193. Allen, *supra* note 192. The bill has since been rejected, and Vernon has been given a new lease on cityhood, albeit under attentive state and local scrutiny.

194. Elaine Herscher, *Delta's Toughest Town Refuses To Die: Isleton Digs In at Idea of Disbanding, Firing City Staff*, S.F. CHRON., Aug. 31, 1995, http://articles.sfgate.com/1995-08-31/news/17814462_1_isleton-crawdad-festival-mayor-leonard-maxey; *see also* Loretta Kalb, *Grand Jury Admonishes Isleton*, SACRAMENTO BEE, Feb. 16, 2008, at B1.

195. Herscher, *supra* note 194.

196. Kalb, *supra* note 194.

197. Herscher, *supra* note 194.

Research for this Article also identified voluntary efforts that resulted from corruption and scandal. The Village of North Bend, Ohio, outside of Cincinnati, saw its first of two dissolution efforts (the second of which grew up as an anti-tax effort, discussed above) in 1994 after a corruption scandal entangled Village officials in charges and convictions for theft in office, bribery, and other offenses.[198] Dissolution did not formally make it to the ballot that year (the Village Council instead disbanded its police and fire departments), but it resurfaced as a solution to the city's trouble a few years later.[199] Criminal prosecution of local officials similarly triggered dissolution activity in Cedar Grove, Florida, after a 2006 state audit identified accounting problems. "Elderly ladies in tennis shoes"[200] led a successful dissolution campaign in 2007 that emphasized mismanagement as well as dissatisfaction with the services provided for their taxes.[201] Corruption also served as a rallying cry for dissolution in failed elections in Marathon, Florida (2007) and Foxfield, Colorado (2002), where citizen-led campaigns emphasized that county administrators would better manage affairs.[202]

Largest and most notable among the voluntary anticorruption campaigns was the failed dissolution drive in the City of Miami, where a corruption scandal was among the triggering events for a dissolution effort. In 1996, in a scandal dubbed "Operation Greenpalm," city officials and a councilmember were alleged to have taken kickbacks on public contracts, resulting in several resignations and removals. These events were followed only two weeks later by an announcement that the city's deficit had reached at least $38.9 million.[203] As described in Part I, proponents of Miami's dissolution had additional motives (most prominently, to break away from the larger city and form their own cities), but the surface of their campaign emphasized the Miami City Council's untrustworthy and incompetent government.

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198. *Looking Ahead*, CINCINNATI POST, Sept. 26, 1994, at 8A; Ken Wilson, *North Bend Wins Dispute Over Ex-Officer's Benefits*, CINCINNATI POST, Jan. 12, 1995, at 3; Ken Wilson, *There's Big Trouble in Little River City: North Bend So Broke It's Selling Assets*, CINCINNATI POST, May 12, 1994, at 10A.

199. *North Bend Survival Subject of Whispers: Newcomers Don't Like Taxes*, CINCINNATI ENQUIRER, Jan. 30, 1999, http://www.enquirer.com/editions/1999/01/30/loc_north_bend.html.

200. Telephone Interview with Terrell Arline, Bay Cnty. Counsel (Sept. 22, 2010).

201. Ryan Burr, *Residents Rip Cedar Grove Official: Commissioner Beier Knocked for Role in Dissolution Petition*, NEWS HERALD (Panama City, Fla.), Aug. 15, 2007, http://www.newsherald.com/articles/city-65495-residents-beier.html.

202. See Ball, *supra* note 164; Karen Rouse, *Judge Upholds April 2 Vote on Whether To Dissolve Foxfield*, DENVER POST, Feb. 22, 2002; Robert Sanchez, *Vote May Dissolve Foxfield as Town Money, Officials' Lack of Experience Cited*, DENVER ROCKY MTN. NEWS, Apr. 3, 2002.

203. Steinacker, *supra* note 1, at 108-10.

D. Race

Race surfaces in the history of dissolution in complicated, even contradictory ways. The earliest identified role of race in dissolution was one of expulsion – white racial violence and other measures of discrimination to expel the population from an all-black town, leading to its disintegration.[204] But if race accounts for why some cities dissolved, it also accounted for why some cities did not. Just as cities have formed in order to achieve or preserve white self-segregation, so too might residents hold onto cityhood over time in order to protect racial homogeneity. In the context of majority-minority cities, racial autonomy has been an argument for retaining cityhood despite immense pressures to dissolve. Dissolution, this argument goes, can dilute a minority electorate within a larger population.[205] Yet here too we find an interesting complexity: dilution can also mean redistributive desegregation, with greater racial mixing within a larger, whiter, and wealthier electorate. This Section explores each of these dynamics, which turn on two questions. First, how has race factored in deliberations over dissolution? Second, what does it mean to lose cityhood in a majority-minority town? Dissolution activity in Oklahoma, Tennessee, California, Georgia, Alabama, and Florida helps work through these questions.

The nineteenth and twentieth centuries included a little-known history of racial empowerment through the formation of majority-minority towns.[206] Among the most significant episodes in this history is Oklahoma's "all-black towns" movement, a wave of incorporations that included five towns before

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204. *See infra* text accompanying notes 215-223.

205. Vote dilution refers to the merging of the minority population into a larger whole such that minority voters can no longer elect candidates of their choice.

206. These incorporations have not received the attention they deserve, despite several valuable historical contributions about specific cities or regions. *See, e.g.*, SUNDIATA KEITA CHA-JUA, AMERICA'S FIRST BLACK TOWN: BROOKLYN, ILLINOIS, 1830-1915 (2000); NORMAN L. CROCKETT, THE BLACK TOWNS (1979); KENNETH MARVIN HAMILTON, BLACK TOWNS AND PROFIT: PROMOTION AND DEVELOPMENT IN THE TRANS-APPALACHIAN WEST, 1877-1915 (1991); HANNIBAL B. JOHNSON, ACRES OF ASPIRATION: THE ALL-BLACK TOWNS IN OKLAHOMA (2002); ANDREW WIESE, PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY (2004); Albert M. Camarillo, *Cities of Color: The New Racial Frontier in California's Minority-Majority Cities*, 76 PAC. HIST. REV. 1 (2007); Ankur J. Goel et al., *Black Neighborhoods Becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker than* Brown, 23 HARV. C.R.-C.L. L. REV. 415 (1988); Harold Rose, *The All Black Town: Suburban Prototype or Rural Slum?*, *in* PEOPLE AND POLITICS IN URBAN SOCIETY 397 (Harlan Hahn ed., 1972); Harold Rose, *The All-Negro Town: Its Evolution and Function*, 55 GEOGRAPHICAL REV. 362 (1965).

1860 and more than fifty after the Civil War, between 1865 and 1920.[207] On both Oklahoma Territory and Indian Territory, black boosters, promoters, and pioneers came to Oklahoma in the Land Run of 1889,[208] establishing new towns and growing older ones as both a shelter and a symbol. The towns protected individuals from southern racism, including the late-nineteenth-century rise in lynching and the "Mississippi Plan" laws that excluded blacks from voting rights through poll taxes and other qualification barriers.[209] One historian recounted that "[i]n the end, it mattered less what these African-American seekers thought Oklahoma was, and more what they thought it was not . . . 'racism, violence, and death.'"[210] The towns offered "a real possibility of political participation" without racial exclusion and hierarchy, the chance for land ownership, and the opportunity to engage in economic activity free of racial discrimination.[211]

At least eleven of these towns, which are listed in Appendix A, did not survive. The historical record has focused more on the towns' founding than their fate, leaving few particularized details of why and when each town faded away.[212] What we know is that there was a major wave of dissolutions from depopulation in the 1920s and 1930s, when the Great Depression dealt devastating blows to the towns' agricultural economies and residents fled to cities and to the North in search of jobs.[213] Isolation from markets caused by

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207. JOHNSON, *supra* note 206, at 78-79. The most extensive historical effort to document and catalogue these towns was the Oklahoma Historical Society's "The All-Black Towns Project" in 1998. *See* Larry O'Dell, *Oklahoma's All-Black Towns*, OKLA. HIST. SOC'Y'S ENCYCLOPEDIA OF OKLA. HIST. & CULTURE, http://digital.library.okstate.edu/encyclopedia/entries/A/AL009.html (last visited Sept. 14, 2011). In addition to Johnson and O'Dell's valuable sources, historians and sociologists have produced several fascinating narrative accounts of the towns' history, motivations, and development. *See, e.g.*, LINDA WILLIAMS REESE, WOMEN OF OKLAHOMA, 1890-1920, at 144-84 (1997); William E. Bittle & Gilbert L. Geis, *Racial Self-Fulfillment and the Rise of an All-Negro Community in Oklahoma*, 18 PHYLON Q. 247, 257-58 (1957); Mozell C. Hill, *The All-Negro Communities of Oklahoma: The Natural History of a Social Movement*, 3 J. NEGRO HIST. 254 (1946).

208. *See* O'Dell, *supra* note 207.

209. JOHNSON, *supra* note 206.

210. *Id.* at xi.

211. *Id.* at xiii; *see also* O'Dell, *supra* note 207. A 1968 news feature on Boley, one of the largest all-black towns, recounted that for its founders, "Boley seemed anyway an earthbound haven from white rule and white racism – one place where the Negro could 'transmit to his children the gift of man and womanhood.'" Luther P. Jackson Jr., *Shaped by a Dream: A Town Called Boley*, LIFE MAG., Nov. 29, 1968, at 72.

212. In future work, I will develop the history and significance of these towns' and cityhood's salience today as a mode of racial independence.

213. *See* O'Dell, *supra* note 207.

railroad failures in the 1930s and racial discrimination in credit lending magnified the blow of hard economic times and the towns' tax bases declined with town populations.[214] Racism added a powerful push northward. Oklahoma established Jim Crow segregation laws immediately upon the adoption of statehood in 1906,[215] and blacks in the state were disenfranchised by a "grandfather clause" in the state constitution in 1910, as well as through gerrymandering and precinct disqualification measures during this time period.[216] Segregation was enforced through violence, including white county law enforcement raids of all-black towns, arson of black homes, and mob violence against residents.[217] Further racial banishment of blacks from the state was promoted by racially restrictive covenants against black agricultural land ownership as well as white oaths to prevent the hiring of black labor.[218] Movements to escape racism through black relocation to Canada, Africa, and Mexico took hold to further drain population from the towns.[219]

The loss of many of these all-black towns, along with the steep depopulation of others, dealt a particularly stinging blow in light of the aspirations that fueled their development. In a 1957 historical account of the towns, the authors captured that acute loss: "[T]he degree of disillusionment encountered by Oklahoma Negroes was perhaps as intense a Negro disillusionment as has ever been felt in this nation, and that this disillusionment was proportional to the degree to which the Negroes had achieved a partial fulfillment of their wish to control their own destiny."[220]

Racial cleansing[221] shows up in Florida as well, including a 1923 race riot in which a mob destroyed the all-black town of Rosewood, killed several

214. *Id.*

215. JOHNSON, *supra* note 206, at 63-65.

216. Bittle & Geis, *supra* note 207, at 257.

217. In an infamous incident in 1911, a woman and her thirteen-year-old son were taken from a county jail by a white mob, which lynched the pair after reportedly raping the mother. WILLIAMS REESE, *supra* note 207, at 179.

218. *Id.* at 180; Bittle & Geis, *supra* note 207, at 257; *see* O'Dell, *supra* note 207, at 7.

219. JOHNSON, *supra* note 206, at 98-99; *see* O'Dell, *supra* note 207, at 6-7.

220. Bittle & Geis, *supra* note 207, at 260.

221. This phrase comes from a valuable new historical account of racial violence and banishment followed by land confiscation across Southern counties in the five decades following the Civil War. *See* ELLIOT JASPIN, BURIED IN THE BITTER WATERS: THE HIDDEN HISTORY OF RACIAL CLEANSING IN AMERICA (2007).

residents, and seized their property.[222] A variant of dissolution as a means to racial exclusion also appears in the dissolution of the City of Mobile, Alabama, where a city's new boundaries following a dissolution in 1879 cut several hundred black residents out of city limits.[223]

The modern record indicates that the dissolution of majority-minority towns raises particular concerns. The election on dissolution in Miami starkly illustrates the power of racial independence in a public debate regarding dissolution. When dissolution was put on the ballot in the city, the racial consequences of dissolution were immediately at issue, including dilution of the city's African-American and Hispanic electorates within Dade County and the loss of an important cultural symbol, if not cultural capital, for the Cuban community in the United States.[224] Miami's demise felt like failure, loss. Indeed, a newspaper poll taken before the referendum on dissolution found that a majority of residents who agreed with all of the main arguments for dissolution nonetheless continued to oppose dissolution itself because "the city was a symbol of Hispanic achievement and had unique cultural and historical significance."[225] And if race was part of "saving" Miami, it was also part of the motivation to break it apart—the neighborhoods that put dissolution on the ballot were much whiter than Miami as a whole, making dissolution the first of two steps needed to pull away from Miami's African-American and Hispanic majority and form majority-white city councils. Race may have factored as strongly in the effort to dissolve Miami as in the decision to save it.

Knowing this distinct history changes the stakes when it comes to an important current dynamic: majority-minority towns that are considering or have considered dissolution, and those that are struggling to survive. West Park, Florida, is an interesting case in point. It is a young city, more than 95% black, which was shaped not by racial self-determination but by exclusion—it was created from a pocket of unincorporated land left over after neighboring cities, most of which were predominantly white, had cherrypicked all white residential areas through annexation and city formation. The county sought to withdraw from its service obligations to stranded "islands" of unincorporated

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222. *See* CAROLYN COHENS, BLACK AMERICA SERIES: LEVY COUNTY, FLORIDA 51-52 (2005); *History's Lost Black Towns*, THE ROOT (Jan. 27, 2011, 3:27 PM), http://www.theroot.com/multimedia/lost-black-cities.

223. *See* MICHAEL W. FITZGERALD, URBAN EMANCIPATION: POPULAR POLITICS IN RECONSTRUCTION MOBILE, 1860-1890, at 231-33 (2002).

224. *See* Steinacker, *supra* note 1, at 113 (describing opponents' campaign imagery depicting Miami as "a city built by Cuban-Americans, a 'second Havana,' now lost," and advocating "[p]reservation of Miami as a symbol of the Cuban experience in the United States").

225. *Id.*

land in the middle of the county, including the neighborhoods that became West Park, and it pushed cityhood for the area quite heavily.[226] For West Park to survive the current calls for its dissolution, residents must believe that cityhood has value, and racial autonomy and independence may prove part of that assessment.

The other dimension of white self-segregation with a potential role for dissolution has appeared in Georgia, where the Georgia Legislative Black Caucus has filed a lawsuit against the state seeking to dissolve five recently incorporated, majority-white municipalities.[227] The plaintiffs allege that the incorporations, which took place between 2005 and 2008, violated the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments by creating "super-majority white" cities.[228] The plaintiffs will be required to prove a discriminatory purpose in order to prevail on their constitutional claims; the case is pending.

One final dynamic of race in dissolution shows up in Vallejo, California, and Memphis, Tennessee—cities that starkly illustrate that vote dilution and redistributive desegregation can come together. Vallejo, a majority Latino and African-American city of 115,942 people,[229] recently considered dissolution in the face of a debt and budget crisis. It opted for bankruptcy first, but dissolution remains one of the options for cutting costs in the face of the drastic budgetary cuts necessitated by bankruptcy. Dissolution of a city like Vallejo is particularly significant and challenging because the unincorporated population of Solano County (into which Vallejo would dissolve) numbers about 19,000 and is majority white.[230] A dissolution of Vallejo's scale would require a dramatic reworking of the county budget, services, and governance, and it could fundamentally change the county's political economy, including racial power.

Dissolution's potential for desegregation or racial redistribution is also vivid in a dissolution underway in Memphis, Tennessee.[231] At issue in

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226. Wright, *supra* note 164; Associated Press, *supra* note 164.

227. Katie Leslie, *Lawsuit Seeks Dissolution of Dunwoody, Sandy Springs, Johns Creek, Milton, Chattahoochee Hills*, ATLANTA J.-CONST., Mar. 28, 2011, http://www.ajc.com/news/lawsuit-seeks-dissolution-of-888729.html.

228. *Id.*

229. *State and County Quickfacts: Vallejo (city), California*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/06/0681666.html (last visted Nov. 29, 2011).

230. *County Facts and Figures*, SOLANO COUNTY, http://www.solanocounty.com/about/county_facts_n_figures.asp (last visited Feb. 13, 2012).

231. For more complete treatment of the Memphis school district dissolution, see Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolves into Its Suburbs*, 112

Memphis is not the city but the school district.[232] The Memphis school district has 103,000 students, the vast majority of whom are African-American.[233] Shelby County, which includes the City of Memphis, has a separate school district that is defined to include all children not within Memphis city and school district boundaries—that is, 47,000 students, the majority of whom are white.[234] In February 2011, the Memphis School Board passed a resolution dissolving its district, a move that, under Tennessee law, would require the county district to absorb responsibility for Memphis children.[235] Opponents have described the dissolution as "more like a takeover" than a "we're going out of business" declaration.[236] Shelby County turned immediately to the state legislature and the courts to prevent the dissolution, but neither effort derailed it.[237]

In theory, dissolution in this context could offer a mode of desegregation accomplished without a civil rights lawsuit and without a court order—indeed, under circumstances that have been declared beyond the remedial power of a federal court.[238] Yet in the context of education, where a school's catchment area within a district can perpetuate racial segregation as much as interdistrict demographics, there is every reason to think that the Memphis dissolution will not affect the racial makeup of individual schools. It is likely, however, to achieve redistributive consequences among racial groups, resulting in a net fall in property taxes within the City of Memphis.[239] A city dissolution on the scale of Memphis city schools would have similar implications for race—it would not change where people live (i.e., force housing integration), but it could fundamentally alter distributive dynamics within the larger receiving entity. In

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COLUM. L. REV. SIDEBAR 42 (2012), http://www.columbialawreview.org/assets/sidebar/volume/112/47_Anderson.pdf.

232. School districts are outside the scope of this Article as a general matter, but the Memphis case offers important lessons transferable to city dissolutions.

233. Anderson, *supra* note 231, at 47.

234. Campbell Robertson, *Memphis To Vote on Transferring School System to County*, N.Y. TIMES, Jan. 28, 2011, http://www.nytimes.com/2011/01/28/us/28memphis.html?pagewanted=all.

235. MEMPHIS CITY COUNCIL, CITY COUNCIL RESOLUTION, *available at* http://media.commercialappeal.com/media/static/Microsoft_Word_-_Resolution_-Surrender_of_MCS_Charter_and_Plan_of_Dissloution.pdf (last visited Feb. 7, 2012).

236. Campbell Robertson, *Memphis To Vote on Transferring School System to County*, N.Y. TIMES, Jan. 27, 2011, http://www.nytimes.com/2011/01/28/us/28memphis.html.

237. *See* Anderson, *supra* note 231, at 47-48.

238. Milliken v. Bradley, 418 U.S. 717, 741 (1974) (striking down a district court's reorganization of Detroit and its suburban school districts as a remedy for unconstitutional racial segregation).

239. *See* Anderson, *supra* note 231, at 55-57.

so doing, however, it would return us to the point where this Section began: dissolution may achieve racial redistribution, but at some cost to racial autonomy and minority political leadership.

E. Community

Most of the themes discussed in this Part turn on why dissolution drives are launched and why some of them succeed. What are the crosswinds? The concept of community captures a major opposing force after commencement of a dissolution campaign. It is a notion that cityhood defines a place, forges community bonds, and preserves local history. Captured here as well is the idea that bonds—residents with one another, but also residents with their government—are stronger when formed at a small scale, because participation is better and government closer. Only a few specific examples are worth noting from the media record, but thematically, glimmers of these ideas about community flicker across dozens of cities.

In Williamsville and Sloan, two villages in Erie County, New York, dissolution proposals were "crushed" at the polls with record turnout in 2010 because, in one opponent's words: "For all the problems Sloan has and for all the problems we have [in Williamsville], with all the politicians, it wasn't about that. It was about community."[240] The Deputy Mayor described Sloan as "a community of one square mile of people knowing each other. . . . We know what we have, and the people don't want it to stop."[241] Some residents echoed this idea that dissolution threatened community bonds, referring to it as an effort by outsiders to "mess with a way of life."[242]

Kevin Gaughan has tried to disentangle people's affection for their "village" from village government, arguing that "a village is not a government," but rather "an idea, a sense of place, a community."[243] Yet opponents seem to see a strong relationship between government and their sense of community, an expectation that government is "more responsive" when it is small.[244] An analysis of failed dissolution votes in New York State by the Center for Governmental Research, which has done much of the dissolution planning in New York, included a comment that the sense of uncertainty and fear of

240. Sandra Tan & Charlie Specht, *Village Voters Reject Dissolution*, BUFFALO NEWS, Aug. 17, 2010, http://www.buffalonews.com/city/article104127.ece.

241. *Id.*

242. *Id.*

243. Gaughan, *supra* note 120.

244. Tan & Specht, *supra* note 240.

community change can outweigh claims of tax savings: "The tax savings piece is very important, but . . . [i]f all you have is tax savings, it's still hard for people to see why they should give up what they're used to having."[245] It is something of an endowment effect, status-quo bias, or loss-aversion argument—people value cityhood once they have it, perhaps in excess of its actual benefits for their quality of life.

Opposition in dissolution has also turned on a dimension of history within notions of community. The dissolution fight in Village of North Bend, Ohio, in 2003 pitted property-tax reduction claims against "the desire to maintain our history," which emphasized the village's eighteenth-century origins.[246] In Miami, a newspaper poll taken before the referendum on dissolution found that large majorities of African-American and Cuban respondents to the poll (as well as 43% of non-Cuban Hispanics and 38% percent of whites) approved of the statement "Miami's cultural and historical importance will be lost if the city is abolished,"[247] indicating a strong notion of equivalence between cityhood on the one hand, and identity, history, and community on the other.

* * *

Dissolution can serve many purposes. Yet across this varied terrain, five themes emerge repeatedly: economic collapse, rebellion against taxes, corruption and mismanagement, race, and the link between legal independence and community. Each theme constitutes a hypothesis for why dissolutions do or do not occur, providing a foundation for scholars of law, sociology, urban theory, and political science who turn their attention to dissolution.

Cutting through and across these themes is of course the law itself. By prohibiting dissolution in most contexts, state dissolution laws[248] are surely one of the primary reasons that places hang onto legal cityhood, even when the motivations described throughout this Part invite dramatic restructuring. Section IV.C comments on ways to loosen state constrains of this form of local reorganization.

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245. Sandra Tan, *Opposition to Change, Unknown Kills Dissolution*, BUFFALO NEWS, Aug. 19, 2010, http://www.buffalonews.com/city/article105153.ece.

246. Randy McNutt, *North Bend's Existence in Hands of Voters*, CINCINNATI ENQUIRER, Aug. 23, 2003, http://www.enquirer.com/editions/2003/08/23/loc_NorthBend23.html.

247. See Steinacker, supra note 1, at 114 tbl.3.

248. *See supra* Section I.B.

IV. WHAT DISSOLUTION MEANS AND HOW WE MIGHT CHANGE IT

After one town's dissolution in 2008, a reporter editorialized:

> How [the dissolution] is handled may answer one of the biggest questions that rears its heads on the east side: Would the county and its residents be better off with fewer cities and a more centralized government? The argument against consolidation has been that the cities wouldn't stand for it. We now know that's not necessarily correct. In these lean times, it bears another look.[249]

"Centralized government" is not a popular term these days. Yet the reporter above captured a curious feature of dissolution: it reduces the fragmentation of metropolitan regions into numerous municipalities, uniting more land under the exclusive jurisdiction of county or township government. It thus creates the potential for counties and townships to serve goals associated with regional government, such as land-use coordination, reduced interlocal conflict, and service consolidation. Dissolution's potential service to defragmentation and regional governance is surprising, because proponents claim to be reducing the scale of local government, not pursuing regionalist—let alone redistributive—ends. Indeed, these proponents are right that dissolution means less government, but it paradoxically also means bigger government. By cutting out the most proximate tier of government, voters and leaders in dissolving cities are opting to rely instead on more distant county or township governments with accountability to larger territories. Perhaps it is for this reason that dissolution cuts across the familiar divides in the debate over regionalism. It can align antigovernment animus with regional government advocacy, poor with middle class voters, and residents of cities with residents of suburbs. Everyone might favor defragmentation, but only some would do so in the name of empowering counties and townships.

Regionalism represents just one of dissolution's implications for local government law, urban theory, and public policy. This Part explores those implications. I also draw on the themes of dissolution that were developed in Part III, five of the most significant issues at stake in dissolution. Using these insights, this Part asks not just what dissolution has meant thus far but what it might mean—and what it should mean—in the decades ahead. Offering

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249. Mike Cazalas, Op-Ed., *Cedar Grove: Thanks for the Memories*, NEWS HERALD (Panama City, Fla.), Oct. 3, 2008, http://www.newsherald.com/articles/caz-68591-cedar-grove.html (paragraph breaks omitted).

theoretical context, seeds of legal reform, and a road map for future research, it lays a path for how to nourish dissolution's potential and restrain its risks.

A. Dissolution in Local Government Law

Questions of local government institutional design and boundary change have long been about cities, whether urban or suburban. Taking nothing away from the significance of cities, a debate limited to them positions another key local institution, our counties, as a mere passive backdrop against which cities act. City-centered local government theory neglects important public law and policy questions relating to the capacity and performance of counties and townships as important local governments, as well as to, in human terms, life and politics under county rule.[250] Accounting for dissolution focuses attention on county power and institutional design, and it leads to a reconceptualization of boundary change that focuses on shifting relationships between cities and counties.

City formation, along with various forms of post-incorporation institutional and legal restructuring among cities, has been treated as a one-way trajectory of urbanization, if not progress. When we put dissolution on the map of governance choices, an interesting change occurs: it foregrounds the shifting relationship between cities and counties. Instead of boundary change looking like a spectrum from rural to urban, from county to city, it looks like a loop. The loop starts with counties, the original baseline of American local government law.[251] All land in the United States is located within a county, whether or not it has a functioning government.[252] County boundaries are virtually indelible—only in the rarest circumstances are new counties created, old ones destroyed, or borders moved.[253] From this starting point, landowners and communities may choose to travel an upward arc that eliminates

250. This larger focus on county governments articulates my own multi-year research agenda, which began with Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) [hereinafter Anderson, *Cities Inside Out*]; and Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931 (2010) [hereinafter Anderson, *Mapped Out*].

251. The county layer of government is known as parishes and boroughs in Louisiana and Alaska, respectively. *See* 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at v.

252. Rhode Island, Connecticut, and most of Massachusetts, for instance, are divided into counties, though the counties have no functioning governments. Such counties serve only as territorial descriptions for the delivery of federal grants and services. *See id.* at v & app. B.

253. This Article does not reach boundary changes to counties or their subdivisions, but as is the case with municipal dissolutions, research on the matter is scarce and dispersed.

unincorporated land by creating or expanding legal cities.[254] Other landowners never leave the baseline—they express a choice for counties by failing to form or join incorporated territory. For those who do enter incorporated territory, they can undo that decision by turning downward to eliminate incorporated land, returning to the county through dissolution or deannexation.[255] County to city, and perhaps back again. It is simple, but conceptualizing boundary change in this way focuses attention on the effect of any given change on county as well as city government, and it differentiates changes that choose cityhood from those that choose dependence on counties or county subdivisions.

Conceiving of boundary change as a loop rather than a spectrum has several implications. It first captures in law and legal theory what historians have known for centuries: urbanization is not an upward ratchet. Places that were once important can subside in significance and in scale. Populations can rise or fall. That being the case, government should be flexible enough to make institutional changes that reflect evolution on the ground. Yet because the second half of the twentieth century was marked by tremendous urbanization and fragmentation, we have built a legal system (including legislative attention, the range and depth of state law, and policy analysis) focused primarily on the upward arc of boundary change—incorporations, annexations, and vertical consolidations.[256] This system assumes the continuation of that rise and the continued dominance of cities in our local government legal culture. Seeing the move to legal cityhood as something retractable contradicts our expectations of urbanization, and thus marks a surprising, seemingly regressive, and counterintuitive change.

Dissolution captured as the downward arc of the loop also draws attention to the fact that people can choose county governments as their exclusive

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254. This point on our loop describes all incorporated municipalities, whatever their legal status (city, village, etc.) or degree of urbanity (our casual labels "city," "suburb," or "town"). States vary in their menu of municipalities. Incorporated places in some states (such as California) are all legally designated as "cities," whatever their size. Other states (like New York and North Carolina) have "cities" and "villages" distinguished by their degree of legal autonomy, if not their size. *See* 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at vi.

255. Deannexation (known in some states as "detachment" or "exclusion") describes the reversion to unincorporated status for only part of a municipality. Though related, dissolution and deannexation deserve separate consideration, as they are governed by independent bodies of law, and they serve different purposes. Dissolution presents additional complexity absent from deannexation—politicians and public employees lose their jobs, an entity that may carry debt in its name evaporates, and a government with an attached body of laws folds. Nonetheless, the present account's contribution to understanding the choice to become unincorporated offers a foundation for better understanding deannexations.

256. *See supra* Section I.B.

general-purpose local governments, and they do. Counties are not merely a default baseline, a primordial sea from which cities are born. As I have argued elsewhere, millions of Americans live in unincorporated areas, which can be rich, poor, urban, or rural. They can be tiny pockets or major swaths of land. My past research on counties' responsibilities for many high poverty urban areas and other forms of development has indicated both problems and potential with county governance. For instance, counties have languished as a problematic manager of high-poverty urban enclaves.[257] Yet counties also hold a great deal of potential to evolve into leaders for regional coordination if they are given tools to do so, including a role in local intergovernmental negotiations on boundary changes like dissolution.[258]

As a final observation, the loop of city to county power, including the option to dissolve back into unincorporated status, invites a comparison of the way law structures counties and cities. Returning to the dissolution in Miami (described in Section I.A) provides a useful frame for such a comparison. At the time of the City's dissolution election in 1996 and upon reflection since, commentators have understood the vote as a bid for regional governance—a vote that placed Miami in a class with Jacksonville and other cities that fused or considered fusing city and county government into a metropolitan-scale whole.[259] Yet Miami's election was fundamentally different from the choices made in Jacksonville, Indianapolis, and other city-county consolidations.[260] Lining up Miami and Jacksonville in particular to understand that difference offers a window on what dissolution means and how it could change dominant views of local government institutional design and boundary change.

The dissolution vote in Miami was triggered by problems—economic crisis, corruption, and dissatisfaction with government—that had a great deal in common with events in Jacksonville and Duval County during a period of tumult in the early 1960s: disaccreditation of all fifteen of Duval County's

257. Anderson, *Cities Inside Out*, *supra* note 250. This work considered whether county governments are capable stewards of urban life; in other words, "whether two tiers of general-purpose local government—a city and a county—offer urbanized areas greater participatory voice, stronger protection from undesirable land uses, improved collective services, and greater housing choice than county rule alone." *Id.* at 1095.

258. Anderson, *Mapped Out*, *supra* note 250.

259. Annette Steinacker offered a careful, valuable consideration of the Miami vote. *See* Steinacker, *supra* note 1. However, she fell prey to the limited view described above. *See id.* at 100 ("Consolidation with the city would have . . . created a very extensive regional government, similar to that advocated in several contemporary works in urban politics.").

260. For a complete list of cities with a consolidated city-county government, see 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at app. B. *See also infra* note 265 (describing the basis for the Census Bureau's differentiation among city-county consolidations).

public high schools, an empanelled grand jury investigating corruption allegations against numerous Jacksonville officials, rising property taxes, hemorrhaging city population and revenue, among others.[261] Proponents of consolidation with Duval County promised lower taxes, economic development, and better public administration.[262]

Properly understood, however, the similarity between the two cities' restructuring proposals ends there. The proposal in Miami was a breakaway attempt to carve wealthy enclaves into separate cities; Jacksonville's solution was a consolidation that locked more people into a larger incorporated government. The new government approved in 1967 for Jacksonville was created not by eliminating the City of Jacksonville, but by expanding it to include all land within Duval County, except land already contained within four municipalities in existence before the consolidation, and moving the offices of Duval County into the city government. News headlines declared the new Jacksonville to be the "Biggest City in the World!" (a true statement in terms of land area, at least in the lower forty-eight).[263] To this day, the consolidated city has the powers of both a "municipality" and a "county" under Florida law, and its charter specifically withholds the authority to form new municipalities within the city without amendment of the city charter, which must be approved by a majority of the citywide electors.[264] Subsets of the consolidated City of Jacksonville are thus unable to break away as new cities without approval from the whole of Duval County. No new municipalities have been created in the City of Jacksonville since consolidation.

Miami and Jacksonville represent two distinct models of governmental consolidation. The proposal in Miami sought dissolution—a move toward county government—because it would have created a consolidated government

261. *Jacksonville's Consolidated Government*, JACKSONVILLE HIST. SOC'Y, http://jaxhistory.com/journal11.html (last visited Feb. 13, 2012).

262. *Id.*

263. *Id.*

264. *See* CHARTER OF THE CITY OF JACKSONVILLE, FLA., art. 3, § 3.01(a) (providing that the consolidated government "[s]hall have and may exercise any and all powers which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of the State of Florida"); *id.* art. 3, § 3.01(e)(2) (providing that "[a]ny change in this chapter made by ordinance which affects the creation or existence of a municipality . . . cannot become effective without approval by referendum of the electors as provided in s. 166.031, Florida Statutes"); *see also* FLA. STAT. ANN. § 166.031 (West 2000) (establishing procedures for a referendum on a municipal charter amendment).

that "acts like a county."[265] The consolidation in Jacksonville moved the area toward city government; that consolidation resulted in an entity that "acts like a city." While both consolidations involved the vertical merger of one or more city governments with their county to form a single general-purpose local government, the critical differences between them illuminate law's distinct treatment of cities and counties.

As illustrated by the Miami-versus-Jacksonville contrast, it matters a great deal whether a city-county consolidation "acts like a city" or "acts like a county." That fact determines whether residents need permission to break away from the consolidated government to form new cities. What is behind this difference? The answer lies in a legal asymmetry between city and county power. Insiders to city government are the only ones with power to travel the loop to and from cityhood. To travel the upwards arc towards city power, landowners in nearly every state do not need permission from those they intend to leave behind in unincorporated territory. Only a few states let counties negotiate incorporations and annexations (but never veto or redraw city lines against the proposed city's will); in the majority of states counties have no power to determine the boundaries or terms of incorporations or annexations.[266] As discussed in Section I.B, counties also have little to no say in dissolutions. Whether a boundary change removes territory from the general-purpose responsibility of the county (the upward arc towards cityhood), or

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265. These terms, city-county consolidations that "act like a city" and those that "act like a county," come from U.S. Census classifications, which usefully distinguish the two forms. Consolidations that "act like a city" make up the much larger group of cities, which includes the following general types of consolidations: the City-County of San Francisco and the City-County of Honolulu (governments legally designated as city-counties and operating primarily as cities); the Metropolitan Government of Nashville and Davidson County (an area designated as a metropolitan government and operating primarily as a city); and the City of Jacksonville (which subsumed the government of Duval County and thus has certain types of county offices within the city government). The same is true for municipalities that perform county functions but lack any formal "county" government (like Baltimore City or thirty-nine cities in Virginia). At least a dozen other cities belong on this list as well. *See* 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at app. B.

266. The primary determinant of incorporation is simply whether the residents of the territory proposed for cityhood approve the change. *See* Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 74 (1990). It is not that states do not give power to any local agencies to block or modify a proposed city formation; indeed, in states with extraterritorial jurisdiction laws, creation of a new city may require approval by adjacent city governments. *See generally* STEVENSON, *supra* note 27, § 1.05[7] (describing rules requiring consent by existing municipalities). For a detailed exploration of disparities in law's treatment of cities and counties in annexations, see Anderson, *Mapped Out*, *supra* note 250.

adds territory to that responsibility (the downward arc of dissolution), counties are positioned as silent and passive.

This treatment positions counties as a default in local government. Yet counties are fundamentally changed as land moves along the loop of city power, and we have a great deal of work to do to understand what land and power is left to them as land cycles toward and away from cityhood. Differences between cities' and counties' power to influence the movement of land to and from cityhood renders the territory of counties' unincorporated land an involuntary terrain mapped by the choices of others. Counties are involuntary at their origin in that their first borders are created by decisions at the state level, rather than by local constituencies making democratic decisions. They remain involuntary over time, in that county governments (and county subdivisions in a minority of states) serve as the residual tier of general-purpose local government for any land that has not incorporated or been annexed—whether that land is urban, rural, poor, rich, compact, or splintered.[267] In most states, counties have weak or no control over the transformation of unincorporated land and people into cityhood.

While a state-by-state comparative analysis of incorporation and dissolution procedures is beyond the scope of this Article, as a general matter, it is noticeable that the law also *substantively* favors the upwards arc, i.e., makes it easier to incorporate than to dissolve. The substantive restrictions on what types of cities are eligible for dissolution are quite severe, for instance, when it comes to population and city size (as discussed in Section I.B). By contrast, few states set a population threshold or a minimum city size for incorporation purposes.[268] I will say more about my own view of those differences in Section IV.C, but for now, suffice it to observe that if boundary change is a loop, there are ways that law privileges cityhood by making it difficult for territory to exit that status.

In short, land and its occupants can leave an unincorporated jurisdiction with greater ease than they can return to it, and counties enjoy little influence over either change. By contrast, cities draw the boundaries of their territory by

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267. Elsewhere, I have argued that counties' position as residual governments, as well as their formally equal accountability to incorporated and unincorporated area voters, has had adverse impacts on unincorporated high poverty neighborhoods and county governments themselves. *See* Anderson, *Cities Inside Out*, *supra* note 250; Anderson, *Mapped Out*, *supra* note 250.

268. At least eighteen states do not require a minimum population to qualify for incorporation as a municipality, or the population threshold they set is 300 or less. *See* 1 U.S. CENSUS BUREAU, *supra* note 30. The only states with a minimum population above this number are Arizona, Florida, Illinois, Massachusetts, Ohio, Pennsylvania, and Tennessee. *Id.* at 12, 54, 77, 138, 223, 240, 263.

choice. Once a city has formed, state laws generally lock its residents together, holding them mutually accountable within a democracy governed by participatory rights over boundary changes. Landowners and neighborhoods cannot leave without citywide approval, whether through secession or deannexation. That is why secession efforts in Staten Island, New York, and San Fernando Valley, Los Angeles, failed, and why the wealthy neighborhoods in Miami thought they could not prevail at breaking away from Miami in a single step.[269] The unified interests of the whole are thus favored over the personal interests of some to pursue self-determination and self-interest. Leaders of the breakaway attempt in Miami thus tried to annul the entire democratic unit of the City of Miami, returning land to the starting point—the involuntary default of county governance where residents are no longer tied to one another through equal voting rights on boundary changes.

Law thus treats municipalities as voluntary democracies with rights to include and exclude territory, and counties as a primordial state with weak or absent rights to shape their unincorporated territory. This positions counties as lying closer to state governments, with relatively immovable borders and a role more akin to an "arm[] of the state[]" than a locally "representative bod[y]."[270] Yet such a view is in tension with the position held by the U.S. Supreme Court since 1968 that counties, like cities, are subject to the Fourteenth Amendment's constitutional guarantee of one person, one vote, a position that depended on a view of counties as democratic, general-purpose governments and deemphasized counties' specialized responsibilities for rural areas.[271]

Situating dissolution within the larger context of local governance requires one final note. Dissolution belongs within a larger public-policy conversation about consolidation of smaller units of local government into larger ones—a conversation that, as mentioned, has revived in recent years.[272] However, that conversation should maintain an awareness of two different forms of change and consolidation within it. One form is those boundary changes that alter the

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269. *See supra* note 24.

270. Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 339, 346-48 (1993).

271. Avery v. Midland County, 390 U.S. 474, 481 (1968) ("In a word, institutions of local government have always been a major aspect of our system, and their responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens. We therefore see little difference, in terms of the application of the Equal Protection Clause . . . between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties."). I took up these challenges in earlier work, and will return to them down the road. *See* Anderson, *Cities Inside Out*, *supra* note 250, at 1140-45.

272. *See supra* notes 92-94 and accompanying text.

city-county relationship (I will call them vertical boundary changes). The other is those that do not, i.e., those that shift power among municipal governments (horizontal boundary changes). Horizontal changes reorganize municipal territory to change the governments that serve that territory, but do not change the amount of land served by a municipal government. They may rename, reform, and remap incorporated entities; they may even eliminate a municipality, though only on the path to creating or expanding one. For instance, mergers, secessions, and reclassifications terminate a municipal corporation, but do so as a legal step towards horizontal reconfiguration of municipal territory.[273] Horizontal power shifts are interesting and important, whether they reflect a city's health and expansion, or weakness and loss of identity. Yet they do not require either vertical integration or disentanglement of city and county governments nor change the unincorporated/incorporated status of land. As I have argued elsewhere, it is inappropriate to blur the distinctions between counties and incorporated municipalities;[274] rather, much work is needed to understand their differences and the relations between them. For that reason, mergers and dissolutions are meaningfully distinct, even though both of them offer a version of consolidation.

Dissolution thus changes the landscape of institutional design and boundary change in several ways. It differentiates vertical from horizontal boundary changes—those that do and those that do not change the city-county relationship. Within vertical boundary changes, it illuminates how the shifting relations among cities and counties amount to a loop of jurisdictional choices—county to city, city to county. The way that law structures the rules for moving along this loop fundamentally affects the nature of county and city government, indicating a legal preference for cityhood. Law makes it relatively difficult for residents to go from incorporated to unincorporated status, something that, on the one hand, impairs the fragmentation of that territory into new, smaller cities, but, on the other hand, also protects existing levels of municipal fragmentation by constraining municipalities whose residents wish to rejoin larger county territories. Herein lies an important reminder of a point made in this Article's Introduction: dissolution, like other boundary changes,

273. For instance, the merger of two cities requires dissolution of one or both cities, but it ultimately only consolidates rather than removes the municipal layer of government. Merger's mirror image, secession, breaks one larger municipality into two smaller ones. Local government reclassification (for instance, changing the legal status of a city from a third-class to first-class city) may also require termination and reformation of the municipal corporation, but it does not change land's inclusion within a municipal corporation.

274. Anderson, *Cities Inside Out*, *supra* note 250; Anderson, *Mapped Out*, *supra* note 250.

can be used to pursue varied values. Liberating its positive potential and constraining its downsides requires a carefully developed body of nuanced law.

B. Dissolution in Urban Theory

If dissolution presents important implications for local government law, so too does it bring a new and necessary conversation to urban theory: shrinking local governance to adapt to urban and regional decline. When that shrinkage manifests as dissolution, it presents a paradox and perhaps an opportunity: dissolution offers an unusual and noncoercive mode of regionalism, particularly in suburban and rural areas, that might reduce local fragmentation without coercing municipal residents. To understand these observations and their significance, including the break they mark from prior academic theory, this Section begins with a quick tour through the intellectual history of post-World War II American urban and local government theory and the changes it responded to on the ground.

Local government law as an academic field grew up amidst the postwar suburban boom and the toll it took on older core cities. The widespread incorporation of new municipalities and the resulting landscape of legally fragmented metropolises generated a spirited debate about the causes, costs, and benefits of small municipalities and metropolitan fragmentation.[275] For some commentators, incorporations of small cities in certain contexts had the potential to cultivate political participation, racial empowerment, and community building.[276] Others, particularly economic theorists, viewed local fragmentation as an innovation that cut local government costs, encouraged local differentiation and specialization, and maximized residential choice.[277] Alongside this admiration came widespread criticism. Suburban incorporations were condemned as mechanisms of privatism, wealth accumulation, and

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275. One of the most significant milestones in understanding the incorporation boom was an empirical analysis of the purposes of city formation. *See* NANCY BURNS, THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS (1994). Burns's work offered a role model for aspects of research in the present Article, and I hope that it will inspire future empirical work on dissolutions.

276. *See, e.g.*, GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS (1999); Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729, 762-76 (2001); Goel et al., *supra* note 206.

277. *See, e.g.*, WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES (2001); THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES (William A. Fischel ed., 2006); Tiebout, *supra* note 188.

exploitation by higher-income areas, as well as means for white households to exclude minorities without using de jure segregation tools.[278] Commentators also observed interlocal competition and race-to-the-bottom dynamics generated by fragmentation within single metropolitan areas.[279]

For those who objected to the racial segregation and spatial economic polarization that came with fragmentation, regional governments enjoyed early favor as a redistributive solution.[280] So too did involuntary annexation rules, a way to permit cities to capture growth in their suburbs without permission from suburban residents.[281] Some scholars sharing concern for the racial and socioeconomic consequences of fragmentation, however, came to advocate forms of regional cooperation and responsibility that derived not from centralization by regional governments but from city empowerment to combat interlocal problems.[282] Still others have continued to advocate for regional governance under the banner of reforms promoting "regional equity," an umbrella policy principle encompassing distributive issues in employment, education, transit, and housing across metropolitan areas.[283]

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278. For key works of legal scholarship considering the distributive and racial impacts of metropolitan fragmentation, see, for example, FRUG, *supra* note 276; JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND-USE 67-85 (2006); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996); Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994); Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93 (2003); Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 405-15 (2001); and David Dante Troutt, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C.R.-C.L. L. REV. 427 (2000).

279. *See, e.g.*, DAVID RUSK, CITIES WITHOUT SUBURBS (1993).

280. *See* Briffault, *supra* note 278; Cashin, *supra* note 278; Reynolds, *supra* note 278.

281. *See* Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247 (1992).

282. Gerald Frug and David Barron are leading voices for this view. *See, e.g.*, GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION (2008) (arguing that state law often prohibits cities from addressing problems, especially regional ones, like housing and crime); David J. Barron, *The Promise of Cooley's City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487 (1999) (exploring local governments' ability to give life to constitutional principles); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1083-90 (1980) (arguing that our conception of cities as subdivisions of state power has constrained their ability to address current problems).

283. *See, e.g.*, BREAKTHROUGH COMMUNITIES: SUSTAINABILITY AND JUSTICE IN THE NEXT AMERICAN METROPOLIS (Paloma M. Pavel ed., 2009); GROWING SMARTER: ACHIEVING

The latest chapter in the evolving conversation about America's cities has turned back to urban policy within inner cities hopelessly divided from their suburbs. It confronts the accumulated consequences of several decades of decline in cities hit hardest by white flight, population loss, and economic abandonment—Detroit, Buffalo, and other Rust Belt cities in particular. These cities are the focus of the shrinking cities movement in scholarship and policy, which has developed a range of urban-planning techniques to reconcentrate and reorganize remaining populations into a reduced number of neighborhoods served by the city government.[284] These techniques include both familiar and novel elements: zoning strategies, land banking, block- and even neighborhood-scale demolition, withdrawal of services, and the like. Goals include reducing the territory covered by city government services, greening the city with new parks and urban agriculture, and reducing the social isolation and public safety risks caused by blighted urban land within occupied, high-poverty neighborhoods. From the point of view of environmental amenities, it is a green-space centralization program reminiscent of the egalitarian ideals embodied in Frederick Law Olmstead's landscape architecture.[285]

By structuring the machinery of decline, such techniques signify a surprising but pragmatic pessimism that assumes these cities' sliding populations will not rebuild any time soon. The shrinking cities movement thus rejects an important assumption that animated the debate over metropolitan fragmentation: that urban areas were growing, traveling an upward arc towards increasing local government complexity, if not progress. This assumption posited that even though core cities were struggling, their regions continued to grow—more incorporated cities, more special districts, more development and growth across the metropolitan territory. Scholars and policymakers largely focused on trying to seduce that growth back to the

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LIVABLE COMMUNITIES, ENVIRONMENTAL JUSTICE, AND REGIONAL EQUITY (Robert D. Bullard ed., 2007).

284. *See* Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010); Witold Rybczynski & Peter D. Linneman, *How To Save Our Shrinking Cities*, PUB. INT., Mar. 22, 1999, at 30; Joseph Schilling & Jonathan Logan, *Greening the Rust Belt: A Green Infrastructure Model for Right Sizing America's Shrinking Cities*, 74 J. AM. PLAN. ASS'N 451 (2008).

285. The "greening" ideals of shrinking cities' land-use planning are equally fascinating in that they are beginning to move open space away from the "greenbelt" concept embodied by cities like Portland and towards the "green heart" concept in the Netherlands, where the nation's four major cities surround a large nature preserve. The center of Detroit will never hollow out to become a rural area, of course, but one can imagine significant blocks of the city offering consolidated green space of a scale that is rare in the city's greater metropolitan area.

central city. Shrinking cities reform ideas, by contrast, focus on inner cities and inner cities alone, giving up hope that population and economic activity lost to the suburbs will return to the city without a fundamental reorganization of the city's housing, transportation, and parks. In short, they give up on regionalism and growth, at least in the near term.

Dissolution opens a new chapter in understanding shrinking cities, a chapter we can think of as shrinking governance. Like the land-use strategies of the shrinking cities movement, dissolution recognizes that cities may not grow and grow. In some places, what goes up will come down. Dissolution shifts focus from a land-use context (how do we adapt our use of urban space to reflect reduced population and economic hardship?) to a governance context (how do we change our institutions of local government to reflect these conditions?). Shrinking cities prompt a range of governance questions: Should these governments shrink their territory through deannexation? Should they reduce the size of their governing bodies or reorganize and contract their bureaucracies? Should they outsource more services to counties or special districts? At the most dramatic end lies dissolution: Should shrinking cities dissolve their governments altogether?

Whether in reference to land-use planning or governance, the word "shrinking" is important for its reference to ongoing decline rather than complete abandonment. Just as the "shrinking cities" concept does not refer to true ghost towns, but rather to places that we would call "depopulated" only relative to their former size, so too is modern dissolution a response to increments of economic decline and/or population loss that are proportionally substantial but not complete. Like shrinking-cities ideas, dissolution offers a mode of coping with these increments long before the ghosts take over.

Dissolution moves us beyond shrinking cities as well. First, it offers a backdoor way of achieving regionalism and defragmentation in suburban and rural areas.[286] In counties where the dissolution of one or more cities will unite large amounts of suburban and rural land under county/township governance, dissolution can offer suburban and rural regionalism. This form of regionalism differs significantly from the aspirations that came before, as it recognizes unification of territory outside the urban core as a form of consolidation, even if it leaves the inner-city borders intact. Such an approach fails to address the problems of a big inner city directly, though it might improve things that are important to the metropolitan area as a whole, like service coordination and cost control.

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286. Consideration of dissolution in large, central cities like Vallejo, Oakland, and Miami suggests that it may become a coping tool for larger cities as well.

Instead of creating new regional governments—federations of municipalities and the like—dissolution offers the hope that removal of some suburban and rural local governments can strengthen counties as rational, responsive governments capable of strategic land-use control across larger areas of suburban and rural land. Yet even imagining that dissolution might consolidate more authority under a bigger tier of local government, dissolution may nonetheless be about smaller, weaker local government insofar as counties are understaffed and unregulated in comparison to cities. When moving on a vertical axis between city and county government, bigger need not mean stronger. Counties vary dramatically in their capacity to provide urban services, engage in serious land-use planning, and foster civic engagement.

Even where dissolution fails to unify a "region" in any complete sense, it can nevertheless be said to achieve progressive modernization of local government law by reducing local fragmentation, and, in particular, by eliminating separate governments for areas that are too small to sustain them efficiently. Many states have seen vociferous calls to reduce the number of local governments. Illustratively, New York's government reform website (discussed in depth in Part II) features a graphic of a house being crushed by falling bricks standing for thousands of local governments.[287] A reform report in Pennsylvania quoted a local news article lamenting: "The complicated web of little governments snares tax dollars like a spider traps insects. Residents must demand an end to the steady feeding . . . ."[288] The legislative findings behind formation of a statewide commission to reduce the number of local governments in New Jersey carried a similar message—many local governments means higher taxes, and both sets of numbers are just too high.[289] Beyond tax control, there is surely a coordination argument to be made as well—a proliferation of local governments means there are just too many politicians around to get much done across a metropolitan area. Gaughan, the crusader for dissolution in Western New York, suggested this argument when he bemoaned: "With 439 elected officials throughout Erie County—each with individual purposes, powers, and views—accountable leadership, or just plain

287. *10,521 Governments*, OFFICE ATT'Y GEN., http://www.reformnygov.com/govs.html (last visited Nov. 29, 2011).

288. FRANK J. LUCCHINO, RECLAIMING HOPE: VOLUNTARY DISINCORPORATION IN ALLEGHENY COUNTY 3 (1994), *available at* http://www.briem.com/files/LucchinoDisincorporate1.pdf (quoting the May 9, 1993 edition of the *North Hill News Record*).

289. N.J. STAT. ANN. § 52:27D-501(a)-(b), (e) (West 2010). With mention of Pennsylvania and New Jersey, however, it bears noting that dissolution is not currently an option under those states' laws, because both lack land in unincorporated status. As discussed in Section IV.C, reform of the law of dissolution in those states would thus require unlocking dissolution as a restructuring option, which has been the subject of legislative proposals in Pennsylvania.

leadership, has eluded us."[290] Seen simply as a means to reduce the number of governments, whatever its other effects, dissolution thus has the potential to correct a problematic feature of incorporation laws: they fail to set population minimums and thus have long enabled creation of legal cities for tiny populations.[291]

To move beyond mere talk of regionalism or government reduction—to move from words to institutional change—requires either coercion by the state or consent by affected areas. Herein we find two other important characteristics of dissolution as a means to the ends of regionalism or consolidation. Unlike many of the regionalist proposals to have come before, most dissolutions are wholly voluntary, although the population whose preferences are accounted for in the decision is relatively narrow. While the state sets the terms of dissolution, making it easier, harder or impossible to dissolve, states very rarely force a city to dissolve. Several states have established commissions to recommend consolidation and streamlining in government, but none have given those commissions the power to coerce or mandate restructuring.[292] From the vantage point of municipal residents, the power to dissolve (or not) lies in municipal residents' hands. In that way, it does not intrude on city empowerment and autonomy—the most consistent basis for criticism of coerced or state-led regionalist solutions.[293] Yet in every state except Michigan, the right to consent to a dissolution is limited only to the city's population. This sets a much lower bar for approval of dissolution than that generally set for mergers and other consolidations, where bilateral consent is nearly always required. Dissolution may thus be both more palatable and more likely than other means of consolidation, making it an attractive site of reforms to enable consolidation, if, as developed in the next Section, counties are given the tools to receive dissolving cities and govern them effectively.

Dissolution is thus interesting and important for its contrast with the twentieth-century valence in local government law and theory, focused on the easy widespread formation of new municipalities and the resulting landscape of legally fragmented metropolises. It may represent an important innovation to cope with economic and urban decline at the level of the individual municipality and wider region.

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290. Gaughan, *supra* note 123.

291. *See, e.g.*, Briffault, *supra* note 266, at 73-75.

292. *See supra* notes 287-289 and accompanying text.

293. *See, e.g.*, Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763 (2002); Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047 (1996).

C. Dissolution as Public Policy and Seeds of Legal Reform

Hundreds of America's municipalities—whether urban, suburban, or rural—are in extreme fiscal distress. These are our cities facing population loss, commercial or industrial retraction and restructuring, rising taxes, and strained services. Some are rusting capitals like Buffalo or Detroit, others are sunbaked centers of the housing market collapse, like Vallejo and Stockton in California. Some are tiny and some are sizable. Some are dutiful, like towns seeking merger, consolidation, or shared services but unable to secure willing partners. Some are choked by corrupt or incompetent management. All raise questions about reform and restructuring. Is there a breaking point in population diminution, economic contraction, or mismanagement when city elimination might help? Especially in an era when state aid is thinning and bailouts are increasingly infeasible, might dissolution belong on our list of coping strategies for fiscal distress?

The void in research on dissolution makes these normative questions difficult to answer. Shaping a modern law of local government that provides tools for these places tomorrow requires an understanding of dissolution's place today and yesterday, and this Article takes a first, foundational step at that understanding. Based on that research, I offer here some normative thoughts to guide a long-term discussion of dissolution as a matter of public policy, to lay some parameters for state-level legal reform, and to inform local voters and leaders about worthy considerations when contemplating a dissolution.

To answer whether dissolution should be available as a mode of restructuring starts with this question: What is the state's vision of the nature of its cities and counties? Some states are committed to a vision of cities as the governing body for all urbanized (and suburbanized) land, with unincorporated area status reserved for agriculture and industry. Such a vision assigns housing and housing-related services to cities. Florida has made recent efforts in pursuit of this conception in some counties (notably Broward County), as have states with involuntary annexation laws.[294] Elsewhere, counties have grown into major urban-service providers for unincorporated territories—something that makes counties and cities alternative forms of governance for residential and other land uses. In the first version of the city/county division of labor, dissolution of populated territory should be constrained, because it would work against the state's long-term vision of governance. In the second version, dissolution rules should be much looser, allowing landowners to consider the

294. *See* Anderson, *Mapped Out*, *supra* note 250, at 985 & n.216.

pros and cons of city and county government and creating the potential for counties to govern larger areas of unbroken unincorporated territory. Under such circumstances, dissolution permits residents to say that they no longer want, need, or are willing to pay for that level of proximity to their local government.

Where it makes sense as a matter of state policy, I strongly support legal changes to permit experimentation and flexibility with dissolution. Section II.C's discussion of New York's legal reforms explains one state's trajectory to clear the underbrush of those municipal governments deemed unnecessary, expensive, and dysfunctionally competitive, and I find New York's laws to be a model in most respects. Calls for a reduction in the administrative costs of local government have been particularly acute in postindustrial regions with declining populations, as in New York. Shrinking cities theory has not yet taken on the shrinking region, yet many shrinking cities, indeed much of the Rust Belt, are located within entire metropolitan regions—core cities, incorporated suburbs, outer villages—that have lost economic activity and population. In outer areas, decommissioning land from developed use may not yet be necessary; however, pressure is mounting to address sliding economic fortunes and the reduced ability of citizens to sustain costly services and governance models. Dissolution, with its potential to help trim away government in suburban and rural cities at least, should be considered a viable option for reform in these regions.

Changes to support experimentation and flexibility with dissolution should take two forms: (1) adding dissolution codes in those states that lack them, and (2) raising and reforming population maximums where they exist. On the first, reform to enable dissolution as a mode of government consolidation and cost-cutting may be appropriate in states where dissolution is not currently possible at all, for instance because of a structural characteristic like the lack of unincorporated land. Pennsylvania has seen two recent efforts to establish dissolution laws, and thus, unincorporated territory. In response to depopulation and economic decline in many of the state's towns, from the rural to the postindustrial, Frank Lucchino, the Controller for Allegheny County, Pennsylvania, authored draft legislation and a lengthy policy evaluation championing dissolution in 1994.[295] Pennsylvania does not have unincorporated land; every inch of the state is included in a municipal corporation, including cities, towns, and boroughs.[296] This gives the state more

295. *See* LUCCHINO, *supra* note 288.

296. *Id.* at 1; *see* LOCAL GOV'T COMM., GEN. ASSEMBLY OF THE COMMONWEALTH OF PA., PENNSYLVANIA LEGISLATOR'S MUNICIPAL DESKBOOK 11 (3d ed. 2006), *available at* http://www.lgc.state.pa.us/deskbook.shtml.

than 1000 municipalities, which ranks it third in the nation for the number of municipalities.[297] Yet that legal structure has necessitated municipal governments for areas with tiny populations,[298] extremely low tax revenue, and plummeting real estate values.[299]

Lucchino's efforts resulted in Pennsylvania House Bill 1321, which proposed the creation of unincorporated areas and a mechanism for dissolution.[300] The preamble of the bill expressed the need for dissolution and its promise for positive change. The bill described how some municipalities "have significantly diminished populations and have become sufficiently economically distressed that their viability as independent municipalities is doubtful, but such municipalities are not attractive candidates at this time for merger or consolidation."[301] Dissolution, it claimed, would "substantially" reduce "[t]he administrative duties and costs of such municipalities," and their management by county government would "stabilize them, facilitate their economic revitalization and make them more attractive candidates for merger with other municipalities."[302] The bill was ultimately unsuccessful, but the effort revived in 2010 with a more radical legislative proposal: to pass a constitutional amendment to eliminate nearly 2500 local governments—all but sixty-four of the state's municipalities and towns—and make counties the basic level of government in Pennsylvania.[303] In addition, the Governor's Office has promoted a bill to create a commission that would recommend local consolidations across the state. Meanwhile, extreme stresses on municipal

297. 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at 3 tbl.3.

298. Municipalities in the state have populations as low as three to a few hundred people. A total of 409 municipal corporations in the state have populations under 1000. This places Pennsylvania ninth in the nation for the highest number of municipalities with populations below 1000. *See* 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at 9 tbl.7.

299. LUCCHINO, *supra* note 288, at 1-3 (describing population losses as high as seventy-eight percent in municipalities hit by mine closures and other changes); *id.* at 5-6 (describing tenfold differences in tax yield between the most and least economically distressed municipalities in Allegheny County).

300. H.B. 1321, 2001 Leg., Reg. Sess. art. XXXI-D, § 3102-D (Pa. 2001), *available at* http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2001&sessInd=0&billBody=H&billTyp=B&billNbr=1321&pn=1550.

301. *Id.* § 3102-D(2).

302. *Id.* § 3102-D(3)-(4).

303. Jan Murphy, *Bill Calls for Eliminating Pennsylvania's Municipal Governments, Switching to County-Based System To Save Taxpayers Money*, PENNLIVE.COM (Apr. 28, 2010, 12:00 AM), http://www.pennlive.com/midstate/index.ssf/2010/04/bill_calls_for_eliminating_pen.html. For the total number of subcounty general-purpose local governments in Pennsylvania, see 2002 CENSUS OF GOVERNMENTS, *supra* note 4, at 3 tbl.3.

governments, including major service cuts and plummeting revenues have meant, in the words of Pittsburgh-based regional economist Christopher Briem, "[t]he de facto disincorporation of our region's municipalities has already begun."[304] Even if cityhood still exists legally, it is little more than a geographic label if the government has no money or power.

The second realm of legal change to enable dissolution's defragmentation potential involves lifting population ceilings—i.e., dissolution eligibility rules that require the nearly complete depopulation of a municipality.[305] Research for this Article indicated that populated municipalities do dissolve in the majority of states that have dissolution codes but no population limits for them, indicating demand for dissolution among populated places in states that permit it. City deaths in those states indicate that a falling population symptomatic of local economic depression is a common trigger even in the absence of rules requiring it; however, such population drops may bring a city down to a population much higher than the ghost town numbers of 50 to 1100 people that are set as maximums for dissolving cities in many states. A truly depopulated ghost town is only one manifestation of outmigration, deurbanization, and loss of community, whether rural or urban. Indeed, it may well be that the relatively low number of twentieth-century dissolutions (compared with city formations) is due in part to law's role in stifling dissolution as an answer to depopulation and distress.

The population figures in these codes are thus excessively low in a modern era. As states consider appropriate numbers, the most useful metric may not be absolute population figures at all, but rather proportionality of the dissolving city's population to the county's unincorporated territory. For instance, a hypothetical city of 120,000 that dissolves into Los Angeles County's population of more than one million unincorporated residents would be different from Vallejo's similar population dissolving into Solano County's unincorporated population of just 19,000. Proportionality measures offer a ready alternative. In the context of a school district dissolution law, for instance, the State of Tennessee recently passed a law establishing special approval procedures in cases where the dissolving district's population would more than double the size of a county district.[306]

One final big picture reform is warranted. Incorporation law and dissolution law should be planned and developed as an integrated body of law.

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304. Christopher Briem, *Forum: Why Regionalism Is So Hard*, PITTSBURGH POST-GAZETTE, July 9, 2006, http://www.post-gazette.com/pg/06190/704221-109.stm.

305. *See supra* Section I.B.

306. S.B. 25, 107th Gen. Assemb., 1st Reg. Sess. (Tenn. 2011).

With boundary change conceived of as a loop, as described in Section IV.A, we notice that incorporation law matters not only as an area is urbanizing and forming a new legal city in response to that growth, but also after a period of cityhood and dissolution. Where incorporation is easy, it favors use of dissolution to further later breakaways by prosperous neighborhoods—the Miami example. This city formation, in turn, can undermine redistribution and polarize regional wealth. Asymmetries between incorporation and dissolution law may be appropriate in some cases (e.g., one can easily imagine that New York would not wish to permit new villages to form as easily as they can dissolve, when the state hopes to phase out that governmental form), but they should not be the result of careless assumptions about dissolution only mattering for ghost towns.

Innumerable specific issues lie beneath these meta-questions of "whether dissolution" and the overall structure of dissolution law. These issues are usefully divided according to constituencies affected by dissolution law, including: the governments and residents of counties and their subdivisions, the residents of dissolving cities, and the state. Below, I present a few thoughts about structuring dissolution law according to each group's needs and interests.

Arguably the most important constituents of dissolution law are counties and their subdivisions—their governments, their residents, and (as a distinct subset of those residents) unincorporated residents. Any state legislator should care about counties for counties' own sake, i.e., because they govern existing unincorporated populations, and they may carry a great deal of regional administrative responsibility, including provision of metropolitan services. But counties or their subdivisions also must be a central concern to a dissolving city's residents, who will come to depend on them following a successful dissolution.

Do dissolutions and the law of dissolution make counties stronger or weaker? On the one hand, current law makes counties quite powerless over dissolutions—the rules governing dissolution instantiate a view of cities as voluntary associations (mini-democracies in which the power to create or destroy the city lies with their populations alone), in contrast to counties and townships, which passively gain and lose population from their tax base and their police powers.[307] In terms of their territory at least, counties are awkwardly powerless. They must manage their budgets independent of the state, just like any local government, and yet they do not enjoy the territorial self-determination that is a hallmark of local autonomy and fiscal planning.

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307. *See supra* Section IV.A.

Yet county powerlessness need not be the whole picture when it comes to dissolution. Unlike the loss of unincorporated population through incorporation or annexation, dissolution could give counties more power in the long run – more territory to govern, tax, serve, and plan for, along with more geographic and regional cohesion in unincorporated county territory. Because most approved dissolutions have occurred in smaller cities, they offer the potential for the rural and suburban regionalism discussed in Section IV.B: the unification under county government of any territory that is not within the core of the metropolitan area. Reducing local agency fragmentation is extremely important for land-use planning in such areas, because interlocal competition for development at the urban edge is a major contributor to sprawl.[308] Dissolution has significant advantages as a means towards regionalism, because it is achieved through defragmentation. It removes a local government rather than creating a new regional entity, something for which there is little appetite. To boot, it is locally grown: county empowerment through dissolution does not require coercion by higher levels of government.

This version of county empowerment, however, will not apply in all counties. It depends on the amount, character, and spatial arrangement of unincorporated land already under county authority. For instance, as mentioned earlier in this Section, some highly urbanized counties are trying to get out of the business of governing unincorporated areas and move towards specialization as a second-tier metropolitan government and state administrative unit. In such cases, acquiring a patch or two of territory would be unwanted and inefficient. Dissolution of a suburb bordered by large areas of unincorporated land, on the other hand, may help counties to harmonize land-use planning at the urban fringe, assuming (and this is a key criterion to note) that counties in that state have the power and resources to engage in meaningful land-use planning.[309] For this reason, states with urbanized counties should look to Florida's example of a substantive dissolution factor regarding the postdissolution composition of unincorporated territory.[310]

As a general matter, taking counties' interests seriously, which I consider a normative commitment, could take two forms: (1) give counties the power to block dissolutions (as is currently the case only in Michigan), or (2) let counties shape substantive terms of a dissolution through pre-dissolution negotiations,

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308. *See* Michelle Wilde Anderson, *Sprawl's Shepherd: The Rural County*, 99 CALIF. L. REV. (forthcoming 2012) (on file with author).

309. *Id.* (manuscript at 11) (discussing differences among counties in the legal authority and administrative capacity to engage in land-use planning and control).

310. *See supra* note 45 and accompanying text.

or at least construct the law to account for their interests through factors considered by boundary agencies or reviewing courts (as in Florida and California). From the state and public-interest point of view, the first track is unwise. While counties should be integrally involved and considered in enacting and planning a dissolution, a regime that would instead make counties capable of vetoing proposed dissolutions would mean that the most marginal municipalities are given the least room for institutional restructuring. Indeed, my aspiration for some counties to mature into regional governments requires that, with the support of their states, counties rise to the occasion of enabling regional defragmentation.

Thus I strongly favor the second course, which allows lawmakers to tailor criteria to reflect the specific circumstances of their state and the public values that should be protected in any boundary change. The interests of dissolving city residents under county government require that among these substantive criteria should be a concern for postdissolution services, as appears in California's dissolution law.[311] Services are critical from residents' point of view, but also for reasons of public safety and the environment. What cities and counties will find upon consideration of such criteria will vary, but in many contexts, special districts and county providers of urban services offer a way to liberate cities to dissolve without losing services.

A decision not to grant counties the power to consent to dissolution is only desirable if counties are given what they need to succeed in the governance of unincorporated areas and if counties embrace their role as regional entities in a vertical hierarchy with municipalities. Specific dissolutions and dissolution law in general give counties the opportunity to discuss and consider their needs and potential at a regional scale—particularly the opportunity for coordinated land-use planning to reduce sprawl. To nurture counties' fiscal health and good government, their consent and power in city incorporation proceedings is independently and symmetrically as significant as their power over dissolution. Losses or gains in taxable land and service territory both matter. If dissolution laws that give counties no power to consent and affect the terms of the dissolution illustrate a form of county powerlessness that may hurt counties facing dissolutions of troubled cities, so too does it hurt counties when their richest property tax base can escape into incorporated status and leave the county with leftover pockets of rural and suburban poverty.

Separate and apart from their shared interests with counties, dissolving-city residents have an additional interest: in states that will enable dissolution, what do voters need to know to make informed decisions about it? State law

311. *See* CAL. GOV'T CODE § 56668 (West 2010).

must facilitate decisionmaking with better information and study of dissolution by requiring a certain amount of pre-election voter education and interjurisdictional planning over the terms of a dissolution. Pre-election planning is key, as illustrated by the spate of failed dissolution drives in New York, where anxiety about uncertainty is widely seen to have squashed dissolutions that may have been in the state's broader interests.[312] Such planning and study should account for the ability of new or expanded special districts, or the extension of county service networks, to serve residents' needs.

As a mode of boundary change, dissolution cannot be classified merely as uniformly good or bad; in varied circumstances, it serves varied values. This will always be the case. But we can and should learn much more about dissolution's ability to alleviate fiscal crisis, achieve lasting local defragmentation, and pursue other public-policy objectives. The next Section charts a path to answer those questions.

D. Directions for Future Research

In the dissolution debates taking place in cities across the country, assumptions fly. Proponents claim tax reductions and service improvements and opponents decry the dilution of democratic influence and the loss of community. Grandiose promises oppose grave warnings; details are loose and tempers run hot on all sides. Such claims are no surprise given how little we know about dissolution. This Article builds a foundation of information; this Section suggests some structure for future research.

The first dimension of necessary research is further empirical analysis of the determinants of dissolution activity—a more detailed look at the "where, when, why, and why not" of dissolution. Which cities are candidates for dissolution? How do population size, the age of the municipality (i.e., years since incorporation), public debt, foreclosure rates, the taxes levied in the city, and the taxes levied by other units of government relate to the potential for dissolution? From these inquiries we can learn answers to the following questions: Is dissolution a phenomenon limited to small cities or old cities, debtor cities or high-tax cities? In addition, how do political preferences (as measured by the party affiliations of city elected officials and national election preferences) relate to the risk of dissolution? Researchers should investigate alignment (or lack thereof) between dissolutions and ideological or political

312. *See supra* Section II.C.

commitments. Political scientists have conducted analogous research on incorporations and the dissolutions of special districts.[313]

Empirical analysis is also needed to investigate the consequences of dissolution—what ends does it serve, under what conditions? Paired with the values of good governance more broadly, the issues identified in Part III indicate that dissolution's impacts should be measured against the following sets of values: (1) local democracy, including local autonomy, electoral accountability and participation, and public transparency; (2) the preservation and pursuit of local health, safety, and welfare through local law and services; (3) racial equity and fairness in the distribution of political power, economic opportunity, and prosperity; and (4) efficiency, including the cost-effective management of public services, the reduction of externalities and "races to the bottom" among local governments units, and front-end incentives for competent, responsible management of public funds.

Dissolution also has impacts on other local governments, and state-specific research is needed to assess the capacities of governments that would receive a dissolving city's territory (whether a town (as in New York), a county (as in Florida), or a township (as in Wisconsin)). Do these receiving units have experience and staffing to provide city services, such as urban law enforcement, water and wastewater utilities, and sophisticated land-use planning? Although such research would be hampered by our currently poor understanding of county and township governments (a problem that my research seeks to address over the longer term), it is critical that we not assume that all receiving entities are alike in their capacity or institutional design.

Future research must also consider who is affected by dissolutions, and the resulting implications for economic and social inequality. Demographic and socioeconomic data (including poverty rates, race and age demographics, housing tenure) about the individuals who reside in cities with dissolution activity would help identify who is experimenting with—or pushed to—this form of boundary change. To assess the potential effects in terms of stratification, comparative analysis would be useful. Data about dissolving cities and their residents should be compared to data from similar cities that do not consider dissolution, which would help tease the effects of dissolution as opposed to the larger socioeconomic forces at work. Comparative studies may also explore why some cities undergo dissolution while other, similar cities do not.

Finally, empirical analysis is needed about the effects of the legal environment—that is, particular dissolution law regimes—on whether or not

313. *See* BURNS, *supra* note 275; Bauroth, *supra* note 1, at 577-78.

cities dissolve. Such research would have two independent facets. The first is quantitative analysis of specific features of dissolution law, e.g., identifying which states provide notice to a county government, and which states require a plan for municipal services. Research on annexation law provides models for this work.[314] The second facet needed is longitudinal analysis of dissolving cities: comparing taxation rates and service fees, the range of services provided, the local election participation rates, the number of special districts serving the city's territory, and other factors before and after dissolution. Longitudinal analysis, which will build our understanding of the impact of dissolutions, will be critical for comprehensive normative evaluation and policy recommendations.

Moving beyond empirical work, my own legal theory work will continue to build our understanding of the nascent ideas offered in this Article, including the concepts of shrinking governance and de facto dissolution;[315] the value of cityhood or census-designated place status for a community; the significance of dissolution for the vertical relationships among states, counties, and cities; and the potential for counties to serve as regional governments.

As research moves forward, I hope that dissolution will teach us not only why and how cities decline, but also why they do not. Historian Emily Mackil captured this imperative: "Analysis of [urban abandonment] is . . . as important for our understanding of the polis as analysis of its origins, for failure can effectively highlight the conditions, practices, and procedures that were essential to its viability and flourishing."[316] Why cities decline may hold important lessons for why they thrive.

V. DEAD CITIES, RECONSIDERED

This Article has used the language of city "death." Yet dead in law may be living within. Inside a city falling in population or losing economic ground, one still sees people and life and urbanity. From the outside, such a city may appear to be only its absences, a relation to its larger, grander past. One is a modern, lived experience; the other is an act of memory concerned only with what is lost.

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314. *See, e.g.*, PAULA E. STEINBAUER, AN ASSESSMENT OF MUNICIPAL ANNEXATION IN GEORGIA AND THE UNITED STATES: A SEARCH FOR POLICY GUIDANCE 68-69 (2002), *available at* http://www.cviog.uga.edu/free-downloads/53.pdf (providing a detailed, four-state comparative study of the features of annexation law and recommendations for reform in Georgia).

315. *See* Anderson, *supra* note 155.

316. Mackil, *supra* note 9, at 493 (referring to the abandonment of Greek city-states).

Artists and photographers working on our sliding, shrinking postindustrial cities provide a valuable reminder of these contrasting perceptions. Photographers from the strong cities of New York City, Paris, and elsewhere have descended on Detroit, creating a small cottage industry of coffee table books memorializing the city's "ruins."[317] These pictures document buildings once full now empty, floors littered with debris, nature in the process of reclaiming land, deteriorating symbols of the city's greatness. The artists capture beauty, sorrow, change, and history. Their photos are acts of reverence for silent places where the only life is moss overtaking a floor, seeming to capture a void where posturban might become pre-urban again, and posthuman might return to prehuman wilds.

Photographers living in Detroit reject this eulogy for their city. In a project called "Can't Forget About the Motor City," photographers Romain Blanquart and Brian Widdis resist pronouncements of death and memory. Their images depict movement (fresh car tracks, people dancing, a child on a bike, parades) and ongoing vitality (pregnancies, musicians, beekeepers, meditating monks, young romance, plants in nurseries).[318] They do not pretend that their city is prosperous, but they focus on the people instead of the empty spaces. Blanquart and Widdis write: "The global media and many visiting photographers see Detroit as an abandoned and dead city. Picture after picture of our modern ruins, buildings that were once the pride of our city. What is constantly absent from this soulless pictures are the people. 850,000 residents still call it home . . . ."[319] These words remind us of the difference between decline and death; 850,000[320] is less than half of Detroit's population at its height—a stunning fall that requires dramatic public-policy interventions to manage the physical abandonment caused by such depopulation. Yet Detroit is still big—bigger in fact, than many of our obviously living cities, like San

317. *See, e.g.*, DAN AUSTIN & SEAN DOERR, LOST DETROIT: STORIES BEHIND THE MOTOR CITY'S MAJESTIC RUINS (2010); DETROIT DISASSEMBLED: PHOTOGRAPHS BY ANDREW MOORE (Barbara Tannenbaum ed., 2010); YVES MARCHAND & ROMAIN MEFFRE, THE RUINS OF DETROIT (2010).

318. *See* Jennifer Guerra, *Ruin Porn*, STUDIO 360 (Jan. 7, 2011), http://www.studio360.org/2011/jan/07/-ruin-porn.

319. Romain Blanquart & Brian Widdis, *Statement*, CAN'T FORGET THE MOTOR CITY, http://www.cantforgetthemotorcity.com/index.php?/about (last visited Feb. 6, 2012).

320. Unfortunately, their statement is no longer numerically accurate, though its sentiment holds. The 2010 Census records greater decline in Detroit's population—now down to 713,777. Press Release, U.S. Census Bureau, U.S. Census Bureau Delivers Michigan's 2010 Census Population Totals, Including First Look at Race and Hispanic Origin Data for Legislative Redistricting (Mar. 22, 2011), http://2010.census.gov/news/releases/operations/cb11-cn106.html.

Francisco, Boston, and Washington, D.C. For the people who live there, Detroit is alive. Reconfigured, perhaps even disfigured, but alive.

Blanquart and Widdis remind me that a catalogue of so-called dead cities includes places that are alive but changed. Like abandoned buildings, the dissolution of a city marks urban change—it describes something that has come before and no longer remains—but dissolution does not stop history or end a community. A local government is dead, but all is not ruins and tumbleweeds. Life carries on, with memories mixing into the landscape of a living present. So too does civic engagement—to pull down a city government takes meetings, op-eds, petitions, and voters. A local government may not be required to mark a community or establish placehood.

CONCLUSION: CITIES OF YESTERDAY

Years ago, in a cornerstone analysis of local government law, Richard Briffault observed that courts treat incorporation as a "healthy development" signifying the growth and democratic maturity of an area's citizens.[321] What then is signified by dissolution? Failure, migration, modernization, macroeconomic decline, political housecleaning, a win for the people against government, a win for larger government against the people? This Article has laid a foundation for thinking about how we might reshape the law of dissolution to reflect the roles it has played in the past: as the machinery of government disassembly for a locality that has withered away, as a coping mechanism for acute economic crisis, as punishment for corruption and mismanagement, as a means to reduce government costs or improve redistribution, as a way to reshape local racial power. Dissolution emerges as a way to improve, exclude, cope, and reform.

Dissolving Cities paves the way for the modernization of dissolution law, bringing it out of the era of early twentieth-century ghost towns and into the territory of twenty-first-century fiscal distress and shrinking governance. Since the year 1995, at least 373 cities have dissolved—more than the number we know to have dissolved in the hundred years before that. Postindustrial cities that have lost huge portions of their revenue and population have begun to give up the aspiration of a full recovery to a vibrant past. Now needing to move beyond land-use planning for the shrinking city, such places are confronting local governance itself. From the histories and analysis herein, we see that for cities that struggle, dissolution may be part of the life cycle of urbanization and the management of decline. It belongs in the toolbox of local government

321. Briffault, *supra* note 266, at 77.

reform. To put it there in more states for more cities, and to do so with the interests of counties and residents in view, will require policy change and experimentation. The latter, at least, is well underway.