

Does Dillon Rule? Formal and Operational Autonomy in American Public Education

Bryan Shelly
Department of Political Science
Wake Forest University
shellybt@wfu.edu

Paper prepared for Conference on States as Facilitators or Obstructionists of Local
Governments
February 25-27, 2010

Throughout the Twentieth and Twenty-First Centuries local officials saw their ability to make autonomous policy decisions become more and more difficult. One of the primary reasons local government often feel powerless in relation to their state government stems from a series of court cases beginning in 1868 that established Dillon's Rule, which quickly became the dominant legal relationship between state and local governments throughout the United States (Berman 2003). Iowa Supreme Court Justice John Forrest Dillon authored a series of majority opinions ruling that state governments may create and destroy local governments as the state saw fit and local governments had only the powers expressly given by their state government. In 1891 the U.S. Supreme Court recognized Dillon's Rule as the basis for disputes between state and local governments nationwide. Today, through either legislation or state supreme court decision, 40 states have formally adopted Dillon's Rule for at least some of its local governments (Coester 2004).

Legal scholars have shown that judicial rulings often offer insufficient conditions to guarantee implementation into policy (Rosenberg 1991). While Dillon's Rule may make local governments legally subordinate to state, it may not preclude local governments from undertaking independent policy if, for example, the state fails to vigorously enforce it or fails to pass legislation and regulation that restricts the range of choices local leaders can independently choose. This paper examines whether the strength of a state's legal commitment to Dillon's Rule influences the extent of its regulation over public education. Presented are estimates of two sets of logit models using an original data set containing information on all 50 states. The central hypothesis is that strong Dillon's Rule states will also adopt a higher level of regulations that

impinge upon the United States' tradition of locally controlled education. The evidence presented does not support this hypothesis. A state's legal commitment to Dillon's Rule does not increase its likelihood of pursuing two education reforms that dramatically restrict the autonomy of local actors.

Literature Review

Scholars have offered a variety of reasons why Dillon's Rule compromises local autonomy. At the most basic level, in "hundreds" of cases involving state/local disputes, state courts applied the rule, serving to cut off potential areas of local independence (Gillette 1991). Even in those states that have not formally adopted it, and even in those situations in these 40 states where Dillon's Rule does not apply, logic associated with it usually rules the day. In practice courts can have a hard time distinguishing state issues from local issues, and most courts consistently rule in favor of the state in such instances. Even in states like North Carolina and Wyoming that have passed constitutional amendments in favor of local home rule, courts have tended to continued to rule in ways consistent with Dillon's Rule (Berman 2003; Smith 1996). Local officials also express frustration with courts' inconsistent application of the Rule and report being frightened away from undertaking new policies because of fears of losing in court (Gillette 1991).

While Dillon's Rule may pose a significant obstacle to vigorous local policy, ultimately local autonomy is about whether local governments can and do undertake their own policies. Speaking of "Dillon's Rule" states is somewhat misleading, because states vary in the types of local governments to which it applies and how aggressive or lax they are in enforcing it. Some Dillon's Rules states have even passed home rule amendments or legislation. Thus how well Dillon's Rule predicts the constraints state governments

place on local governments is a question that begs for empirical evidence (Coester 2004).

The author has not been able to locate studies that link the strength of a state's legal commitment to Dillon's Rule to state regulation that impinges upon local government.

The politics of public education offer an ideal testing ground for the power of Dillon's Rule. Every state constitution contains language charging the state with providing a public education. State courts have interpreted these provisions to mean that the state government is the supreme authority on all public education decision making.

For some purposes they are treated not simply as legally subordinate to the states but as essentially no more than an agency or arm of the state, rather than as an independent government...The state can amend, abridge, or retract any power it has delegated, much as it can impose new duties or take away old privileges (Briffault 2005)

Unlike other types of local government, which usually have more than one responsibility, local school boards have only one task, meaning they are completely and unambiguously legally subordinate to their state governments. Schools also illustrate that formal Dillon's Rule status may not have as strong link to local autonomy in practice as may first appear. American public education has its roots at the local level, and preserving local control of certain aspects of public education remains a prominent concern in many policy debates (Reed 2001). In numerous court cases the US Supreme Court and state supreme courts have acknowledged the importance of local control. For example, in state-level school finance reform cases, state supreme court decisions have consistently found that local control of public education is a legitimate state interest that can trump arguments for a more equitable distribution of resources (Briffault 2005). No existing studies have examined the link between the strength of a state's legal commitment to Dillon's Rule

with the amount of burdensome legislation states impose on local schools and school boards.

Methods

TABLE 1 ABOUT HERE

This paper presents results of statistical analyses of an original data set designed to test whether the strength of a state's commitment to Dillon's Rule makes it more likely to undertake burdensome regulations that compromise the autonomy of local schools and school boards.¹ Table 1 presents summary statistics for all variables discussed below. The first dependent variable measures whether each state government requires students pass high-stakes standardized tests. At the end of the 2000-1 school year 18 states had tests in place that students needed to pass to advance to the next grade level or graduate from high school. Such tests receive frequent criticism from teachers, local officials, and parents who resent the state intruding on the traditional local and school-level prerogatives to set the terms for student advancement. The second dependent variable measures whether a state government has take over at least one school district. 17 states have taken over school districts deemed failing, usually for academic reasons. Takeovers wrest power from elected local school boards and place ultimate control in the hands of the state's Department of Education. Thus takeovers represent the ultimate obliteration of local control.² Both dependent variables are dummies that indicate whether states have pursued either course. Available data allowed for the high-stakes testing models to

¹ (Shelly 2011) explains this data set more comprehensively.

² The No Child Left Behind Act of 2001 threatens state takeover of any school district that fails to meet its Adequate Yearly Progress goals for five consecutive years. So that any takeovers measured reflect state, rather than federal, initiative, the State Takeover variable includes only takeovers enacted up to and including the 2002-3 school year.

contain a control for previous level of the dependent variable. Such data was not available for the takeovers models.

The data set contains 70 variables measuring each state's demographic characteristics and educational policies. As controls the author considered 18 demographic variables measuring a state's minority, youth, and elderly populations, its support for the two parties, and its region of the country. Due to degrees of freedom concerns with small N model estimation, the author chose four independent variables—the percentage of a state's residents that are African American and Hispanic, its support for George W. Bush in the 2000 election, and its per-capita income divided by 1000—for inclusion in the models described here.³ Of the 18 demographic variables these four had robust, statistically significant effects on the dependent variables in preliminary models, although, as the reader will see, the author had to relax conventional standards of statistical significance to identify even four demographic variables worthy of inclusion ($z \leq .30$). They also have extremely strong theoretical justifications as to why they should affect the two dependent variables. Rightly or wrongly, Americans associate the country's educational problems with Hispanics and African Americans, so state governments serving larger African and Hispanic American populations may feel greater pressure to remedy failing schools. Democrats support state-level education policy reforms at a higher rate than Republicans. States with higher per capita incomes have greater resources to embark on ambitious reforms.

The data set also includes variables that measure 16 additional factors one might think influence state government's decision to adopt education policies, including the

³ Because the data for the dependent variables is taken from 2000-2004, the author uses data from the 2000 presidential election. Using per-capita income divided by 1000 is a standard methodological technique that does not affect results but makes any income effect easier to detect.

percentage of a state's students who are designated special education, its per-pupil spending amount, and percentage contribution of all three levels of the intergovernmental system to the state's total K-12 public school funding . Of these 16 variables only one, the percentage of each state's teachers that belonged to teachers' unions, was significant at the $p \leq .30$ level in enough preliminary models to warrant inclusion in the limited models described here. Teachers unions are thought to oppose most attempts at reform, and large membership may allow unions to mobilize more voters and resources towards achieving their desired policy ends.

Comment [WFU1]: Insert citations

The critical independent variables measure the strength of each state's legal commitment to Dillon's Rule. The National Association of Counties (NACO) frequently updates a list of each state's Dillon's Rule status (Coester 2004). The first set of models measures Dillon's Rule status dichotomously. According to NACO, Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, and Utah are not Dillon's Rule states and are coded as "0" in the "Dillon Dich" variable, with all other states coded as 1. NACO's list also indicates that Alabama, California, Florida, Illinois, Indiana, Kansas, Louisiana, South Dakota, and Tennessee exempt certain local governments from Dillon's Rule. A second variable that may better reflect the diversity of each state's legal approach to the Rule seemed in order. In "Dillon Three," these "in-between" states are coded as 1, the 11 states with no Dillon's Rule as 0, and all other states, which NACO described as having an unmitigated commitment to the Rule, as 2.

Results

TABLE 2 ABOUT HERE

Table 2 presents estimates of logit models using the high-stakes testing dependent variable. The model that includes neither Dillon's Rule variable establishes a baseline and shows that three factors have statistically significant effect. Both the black and Hispanic variables are statistically significant and indicate that states with larger African American and Hispanic populations are more likely to require students to pass high-stakes tests. The union share variable is so close to conventional statistical significance ($z=.058$) that one can accept its effect as real. States with a greater percentage of its teachers belonging to unions are more likely to enact high-stakes tests. The effects of all three variables are robust across the two models that include the two Dillon's Rules variables. When added to the model, neither of the Dillon's Rule variables approaches statistical significance. The models provide no evidence that formal Dillon's Rule status or the strength of the state's commitment to the Rule affects their willingness to enact high-stakes testing.

TABLE 1 ABOUT HERE

Estimations of the models using the state takeover dependent variable provide similar results, at least with respect to the Dillon's Rule variables. Neither the dichotomous nor three-point Dillon's Rule variable approaches statistical significance, suggesting that a state's Dillon's Rule status has not affected its willingness to take over school districts deemed failing. An increase in George W. Bush's 2000 vote share increased the likelihood of its state government taking over at least one school district, a result that squares with Republicans' relative reticence to encroach upon local control. The effect of the Hispanic variable is statistically significant enough ($z=.132$) that one

can be confident its effect is real, with larger Hispanic populations increasing the likelihood of state takeovers.

Discussion

The results presented in this paper give no support for the proposition that the strength of a state's legal commitment to Dillon's Rule is related to its enactment of two public education regulations that decrease local control of public education. No matter how scaled, variables using the NACO data do not approach statistical significance in estimations of logit models using state takeovers of allegedly failing school districts or high-stakes testing as dependent variables.

One can take these results as limited evidence that the legal status of local governments does not affect the amount of burdensome state regulations they will face. This finding is consistent with findings that state home rule legislation and even constitutional amendments have failed to stem the tide of court decisions that employ Dillon's Rule logic (Berman 2003; Smith 1996). Countless steps in the implementation process can change the way local governments experience the Rule, meaning formal legal status will always be an incomplete measure of a state's position towards local government. Clearly, before one can claim this relationship holds for state-local relations in general, much more work, in both public education and other policy areas, needs to be done. Ultimately, the author suspects that both legal status and regulation have profound effects on local autonomy. When states adopt home rule provisions or send signals that they will not exercise the harshest parts of Dillon's Rule, they allow local officials to understand the areas in which they can make policy without fear of legal challenge. Regulations that do not impose burdensome conditions open up opportunities to local

officials and do not force them to spend time and resources implementing state programs. In keeping with the spirit of the conference, one must acknowledge the state can also pursue programs like school-based management teams that increase the ability of local schools and school boards to act independently.

Readers may wonder whether the stronger explanation for local school board autonomy is not its state's Dillon's Rule status but the strength of the educational clause in its constitution and the ways in which its judiciary has interpreted that clause. In subsequent versions of this paper, the author hopes to find or develop such a measure. Courts seem likely to have a consistent attitude towards all forms of local governments; that is, a justice who strongly and consistently rules in favor of the state in cases against municipalities seems likely to do the same in cases pitting state governments about school boards. Again, this is speculation on the author's part and needs further testing.

Table 1: Description of Variables

N=50

Dependent Variables

<i>Variable (Year of Measurement)</i>	<i>Source</i>	<i>Min. Value</i>	<i>Max. Value</i>	<i>Mean (Std. Var.)</i>
High-stakes testing (2001)	Education Week 2002	0	1	.36 (.4849)
State takeover (2002)	Education Commission of the States 1998	0	4	.96 (1.4702)

Independent Variables

Black	US Census Bureau 2000	.3	36.3	9.902 (9.5801)
Bush Vote 00	infoplease 2007	32	68	50.48 (8.7113)
Hispanic	US Census Bureau 2000	.7	42.1	7.786 (8.9147)
Income/1000	US Census Bureau 2002	30.1	55.6	43.094 (6.5675)
Union share	NCES 2005	0	100	71.1474 (37.06784)

Control

High-stakes testing (1997)	Education Week 1998	0	1	.32 (.4712)
----------------------------	---------------------	---	---	-------------

Table 2: High-Stakes Testing

Estimates of logit models with dependent variable measuring use of state required high-stakes tests in 2000-1 school year

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>
Black	.382 (.127)**	.380 (.128)**	.387 (.130)**
Bush Vote 00	.140 (.096)	.133 (.098)	.132 (.095)
Hispanic	.131 (.057)*	.133 (.057)*	.126 (.057)*
Income/1000	-.041 (.093)	-.045 (.094)	-.044 (.093)
Union share	.045 (.024)	.046 (.024)	.041 (.024)
High Stakes 97	1.655 (1.129)	1.719 (1.156)	1.516 (1.13)
Dillon Dich		-490 (1.501)	
Dillon Three			-496 (.637)

Model Summary Statistics

	50	50	50
N	50	50	50
Cox & Snell R2	.511	.512	.517
Nagelkerke R2	.701	.702	.709

* $z < .05$

** $z < .01$

Table 3: Stake Takeovers

Estimates of logit models with dependent variable measuring number of state school districts deemed failing before and including 2002-3 school year

	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>
Black	.051 (.044)	.052 (.044)	.049 (.044)
Bush Vote 00	<i>-.141 (.064)*</i>	<i>-.142(.065)*</i>	<i>-.142(.065)*</i>
Hispanic	.060 (.040)	.060 (.041)	.058 (.040)
Income/1000	-.062 (.069)	-.062 (.069)	-.059 (.070)
Union share	-.004 (.014)	-.005 (.015)	-.005 (.015)
Dillon Dich		-.440 (.890)	
Dillon Three			-.113 (.454)

Model Summary Statistics

	50	50	50
N	50	50	50
Cox & Snell R2	.229	.232	.230
Nagelkerke R2	.313	.319	.315

* $z < .05$

** $z < .01$

Works Cited

- Berman, David R. 2003. *Local government and the states : autonomy, politics, and policy*. Armonk, N.Y. ; London: M.E. Sharpe.
- Briffault, Richard. 2005. The local school district in American Law. In *Besieged : school boards and the future of education politics*, edited by W. G. Howell. Washington, D.C.: Brookings Institution Press.
- Coester, Adam. 2004. *Dillon's Rule or Not?* Washington, DC: National Association of Counties.
- Education Commission of the States. 1998. *State takeovers and reconstitutions*. Denver, CO: ECS.
- Education Week. 1998. *Quality counts 1998: the urban challenge*: Education Week.
- Education Week. 1999. *Quality counts 1999: rewarding results, punishing failure*: Education Week.
- Education Week. 2002. *Quality counts 2002: building blocks for success*: Education Week.
- Education Week. 2003. *Quality counts 2003: if I can't learn from you...* Education Week.
- Education Week. 2007. *Quality counts 2007: from cradle to career*: Education Week.
- Gillette, Clayton P. 1991. In partial praise of Dillon's Rule, or, can public choice theory justify local government law? *Chicago-Kent Law Review* 959 (3):959-1010.
- infoplease. 2007. *Presidential election of 2000, electoral and popular vote summary 2007* [cited February 5, 2007 2007]. Available from <http://www.infoplease.com/ipa/A0876793.html>.
- National Center for Education Statistics. 2006. *1999-2000 Schools and Staffing Survey (SASS) and 2000-01 Teacher Follow-Up Survey (TFS) CD-Rom: public-use data with electronic codebook* U.S. Department of Education, 2005 [cited June 1, 2006 2006].
- Reed, Douglas S. 2001. *On equal terms: the constitutional politics of educational opportunity*. Princeton, N.J.: Princeton University Press.
- Rosenberg, Gerald N. 1991. *The hollow hope: can courts bring about social change?* Chicago: University of Chicago.
- Smith, Thomas S. 1996. No home on the range for home rule. *Land and Water Review* 31 (2):791-810.
- U.S. Census Bureau. 2005. *United States Census 2000 2000* [cited May 25, 2005 2005].
- U.S. Census Bureau. *Three-year-average median household income by state: 2000-2002* Census Bureau, 2002 [cited February 8, 2007. Available from <http://www.census.gov/hhes/income/income02/statemhi.html>].