Means, Motives, and Opportunities in the New Preemption Wars

Vladimir Kogan
Ohio State University

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States legislatures across the country have in recent years acted repeatedly to block, undo, and overrule policies adopted by local governments — particularly big municipalities — on topics including single-use plastic bags (Michigan), minimum wages (Alabama), discrimination in public facilities (North Carolina), and immigration enforcement (Texas). A new political war over state preemption appears to be on.

Today’s battles bear striking resemblance to city-state dynamics during the middle of the 19th century, an era marked by flagrant state interference in local affairs (e.g., Bridges 1984; Erie 1988; Griffith 1974). In the aftermath, many states adopted new constitutions that expressly prohibited state legislatures from passing “special” legislation targeting individual localities and gave local governments the power of “home rule” — the ability to govern their internal affairs without first seeking consent from state government. Nevertheless, even these constitutions retained the power for state governments to preempt local laws through general legislation. (Since local governments are mentioned nowhere in the U.S. constitution, they remain legal creatures of the state and empowered to do only what their state governments or constitutions allow.)

Although states have exercised their preemption authority for much of the previous 150 years, what makes today’s preemption wars unusual is both the national salience of the issues at stake and the clear ideological dimension that underpins many of these conflicts. Although blue states see preemption controversies from time to time — in California, for example, over state laws requiring local governments to pay prevailing wages on public works projects — many recent battles have involved conservative state legislatures trying to roll back liberal policies adopted at the local level. Understanding these dynamics requires paying attention to the means, motives, and opportunities of both elected officials and strategic policy entrepreneurs.

Today, as was the case in the latter half of the 19th century, big cities are demographically distinct and politically isolated from the rest of their states (Chen and Rodden 2013; Wasserman 2017). Although historically Democratic, major cities — generally younger, diverse, and more cosmopolitan — have become increasingly blue, with growing partisan polarization and sorting remaking American political geography. Just as malapportionment prevented big cities from making their due influence felt at the state level in the 1800s and early1900s, gerrymandering limits local influence in state policymaking today. The 2010 Tea Party wave that brought historical Republican gains at the state level put the party in the driver’s seat of the decennial redistricting process, helping consolidate Republican control of state government and protect it from potential erosion even as national partisan tides receded in subsequent years (Daley 2016). One way to do so was to pack big-city Democratic voters in just a few safe Democratic super-majority districts.
Control over state government gives Republicans the means and opportunity to meddle in local affairs, but the fiscal constraints they face also provide the motive. In the wake of the Great Recessions, states faced massive budget shortfalls — complicated further by balanced-budget requirements in most states. Although state finances have recovered somewhat, many remain in deficit and major oil-producing states have faced additional pain due to the sharp decline of international oil prices. During time of fiscal scarcity — when passing major tax cuts or increasing spending is politically difficult (e.g., Klarner, Phillips, and Muckler 2012) — state politicians can more easily build their political reputations by exploiting symbolic issues. (A prominent Ohio Republican official recently told my class that tight budgets necessarily mean more abortion restrictions and pro-gun laws, since legislators have little else to do.) Local efforts to protect sexual minorities and avoid cooperation with federal immigration authorities are thus perfect targets for conservative state legislators looking for credit-claiming and position-taking opportunities that can attract attention.

Democrats governing most big American cities receive similar tangible political benefits from conflicts with their Republican legislatures. With Democratic ranks greatly diminished at the state level, much of the party’s future talent is holding local offices. Picking fights with state government over high-profile issues is a great way for big-city mayors to attract national notoriety — among from party activists and mega-donors whose support will be necessary for successful statewide or national campaigns (e.g., Oklobdizija 2017).

The final set of critical actors is interest groups such as labor unions and other left-leaning policy entrepreneurs. Shut out of power for much of the last decade at the state level, and with the polarization paralyzing national policymaking during the same period, activists have increasingly turned to local governments to pursue their policy objectives, such as increasing the minimum wage (e.g., Constantelos 2010). A series of local successes, they hope, can build momentum for broader victories — in the same way that city-specific tobacco bans helped set the stage for subsequent statewide legislation (Shipan and Volden 2008). (Similarly, conservative groups have responded by lobbying state legislatures for preemption, using the need for “uniformity” as justification to prevent leftward policy shifts at the local level.)

Although they might not admit so publicly, both Democrats and Republicans earn tangible political dividends from prominent state-local conflict. For this reason, we can expect the battles to rage on for the foreseeable future.

Vladimir Kogan is an assistant professor at the Ohio State University’s Department of Political Science. His e-mail address is kogan.18@osu.edu. Kogan’s research focuses on state and local government, and his recent work has been published in the American Journal of Political Science, Journal of Politics, Journal of Policy Analysis and Management, and Journal of Public Administration Research and Theory. He is also co-author of Paradise Plundered: Fiscal Crisis and Governance Failures in San Diego (Stanford University Press, 2011), which won the best book award from the Urban Politics Section of the American Political Science Association.
References


