

**Counting on Counties:**  
**How the Creation of Three Thousand Counties**  
**Shaped Local Government Across America**

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**Abstract:** Counties are America's most stable and ubiquitous unit of local government. Their origins and dual roles in state and local government resulted from promotion by landowners, who wanted their property included in or near a county seat, and early state governments, which sought to populate, regulate, and tax their territory. The proliferation of counties that resulted concluded a century ago, and counties settled into three regional roles: near irrelevance in the North, default local governments in the West, and instruments of state control in the South. These differences are the result of continental variations in climate and topography and the historical legacy of slavery.

## Overview

The national map of American counties has remained remarkably stable since the 1920s. During the nineteenth century, county boundaries were in constant flux. The original American colonies and newly-formed states cast a network of large-area counties to establish legal and fiscal control over their territory. Oversized original counties were then subdivided by state legislatures to meet settlers' demands for access to courthouses and representation in the state legislature. The local desire to have a county seat probably created more than the optimal number of counties in many states before constitutional limits on their formation were imposed.

Counties serve as both agents of the state and as vehicles for local self-government, but their roles vary by region. In the North, natural precipitation resulted in high rural densities. This allowed for many subcounty local governments to form, and cities and small towns pushed counties into the background, in which they serve mainly as vessels for state-mandated functions.

In the arid and mountainous West, low rural densities could not support a close network of small local governments, and large-area counties have remained the dominant local government outside of a few urban areas. Towns in the West were especially eager to be designated county seats, and the successful competitors live on as the foundations for self-government in much of America's vast rural territory.

The tension between the local and state government roles for counties is most acute in the South. Southern rural densities were even higher than in the North, but the legacy of slavery and segregation discouraged white state legislators from establishing local governments and school districts, where African-Americans might have had political influence. Demands for local government were largely met by creating more counties, making them smaller and more numerous than in other regions of the nation.

The stability of county boundaries in the last century may be their most important attribute. Counties have withstood the 1960s Court decisions that upended their entitlements to representation in state legislatures and revised voting for county officials. Counties remain the basis for genealogical research, voting reports, vital statistics, US Census data, weather reports, disaster relief, and public health measures. Charitable organizations, labor unions, commercial societies, recreation leagues, and political parties are also often organized along county lines. Counties are the conduit of state policies to local communities and the umbrella within which municipal governments can thrive.

## **§1. Not Your English County: The Static Map of American Counties**

Of the present 3093 counties in the United States, only 57 have been created since 1920.<sup>1</sup> Other units of local governments have boundaries that evolved radically since that date. The number of school districts shrank from about 200,000 to fewer than 15,000 today (Fischel 2009). Both the number and boundaries of full-service municipal governments (cities and towns, as opposed to limited civil townships) expanded enormously in the last century, driven largely by suburbanization (Jon Teaford 1979; 1997). Various special municipal service districts, which undertake a limited but often crucial role in urban development, have gone from an inconsequential force to being the most numerous form of municipal corporation over the last century.<sup>2</sup> More recently, private governments such as homeowner associations have grown from covering fewer than one million homes in 1970 to 24 million in 2008 (Barbara McCabe 2011).

Yet except for a handful of new counties in Florida and in the newer western states, both the number and the geographic configuration of counties look about the same as they did a century ago. Table 1 lists states by the year in which they were admitted to the Union and the number of counties created after 1850, 1900 and 1920. Only about ten percent of the present 3093 counties were created in the twentieth century, and most of those were established before 1920. Less than two percent of all counties have been created in the past hundred years. Most of those were in Florida in the 1920s and in Alaska (under the name of “boroughs”) since it was admitted as a state in 1959. (Hawaii, admitted the same year, had established all five of its island counties as a US territory in 1905.)

The closest international parallel to American counties are those of England, whose institutions of local government were the template for those of America. But the British utilization of modern counties is markedly different (J.A. Chandler 2007). Twentieth-century British governments redrew many of their boundaries on several occasions. Metropolitan counties were established in the 1970s to deal with issues that were larger than local but smaller than national.

The United Kingdom does not have units analogous to American states, whose status is defensively enshrined in the US Constitution. The government in London treats counties as its own, much as an American state does. The willingness of British governments to remold their counties to deal with metropolitan governance

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<sup>1</sup> The total of 3093 does not count the 38 “independent cities” of Virginia (now less 3 that rejoined their parent counties), discussed in section 23 below, but Louisiana parishes and Alaska boroughs are included. I have put most other explanatory notes and asides in parentheses in the text and used the author-date method of citation there as well. Footnotes have largely been reserved for sources that appear online to reduce textual clutter. Sources obtained online are not repeated in the references section at the end of this essay.

<sup>2</sup> A US Census report declared that “special districts over the 60-year time period have increased from 12,340 districts in 1952 to 38,266 districts in 2012.” <https://usermanual.wiki/Document/g12org.726445685/view>

nonetheless stands in stark contrast to the experience American states, in which urban counties remain fixed units with boundaries that were drawn when most of the population was rural.

The stasis of American county configurations is also surprising from a public economics point of view. As comprehensive geographic units—there are no areas that lack a county government—the county would seem to be an ideal way to provide metropolitan services. Yet except for the creation of greater New York City in 1898, there are no examples of merging counties or reconfiguring county boundaries to create a metropolitan-wide government (Burrows and Wallace 1998; New York City used to be just Manhattan and part of the present-day Bronx). Even the occasional consolidation of a central city municipality with the rest of its county (discussed below in sections 6 and 21), which combines some service functions without changing county boundaries, has become rare since the 1970s. (Part of the reason for their scarcity may be that the fiscal and development benefits they promise are difficult to discern [Hall, Matti, and Zhou 2019].)

The unchanging borders of urban counties have a rural complement. Most of America's 3093 counties are rural: the median population of all counties in 2010 was about 24,000, and there are (circa 2010 Census) 670 counties with fewer than 10,000 people, 295 below 5,000. Many rural counties' populations have declined since the 1920s. A number have population densities such that they would be beyond the frontier of settlement by the criteria of the 1890s (Lang, Popper, and Popper 1997). Public administration authorities have long argued that rural counties are obsolete (e.g. Thomas Askew 1934). Yet none have merged or appreciably altered their boundaries in the past century.

## **§2. County Size is about Climate and Topography, not Horseback Rides**

The usual justification for the size of counties was based on access to the county seat by horseback. A day's ride was deemed the appropriate distance, which resulted in counties on the order of 400 square miles. (A straight line to the center from the farthest corner of a 20 mile by 20 mile county is about 14 miles.) This folk wisdom is so widespread that most of those who repeat it regard a written source as unnecessary. (And no one seems to ask why those riders wouldn't want a still smaller county in order to be home in time for dinner.)

The travel-time thesis is explored at length by G. Edward Stephan in numerous published works, beginning with Stephan (1971) and amalgamated on his website.<sup>3</sup> Stephan's work does not consider counties as historically important political units, which is central to my approach. He was apparently not aware of the deliberate constitutional constraints on county size, discussed in section 16 below, that states

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<sup>3</sup> <http://www.edstephan.org/Book/contents.html> Stephan's earlier work was undertaken without benefit of the Newberry Library's online maps of county development, which have been enormously beneficial to me.

imposed in the second half of the nineteenth century to keep counties from becoming more numerous and smaller than 400 square miles.

In my research on the origins and rapid spread of municipal zoning beginning in 1916, I put most of the causality on the spread of the low-cost automobile and motorized trucks and buses (Fischel 2004). Footloose vehicles enabled industry and apartment developers to decentralize to the suburbs, to the detriment of single-family homeowners. Homebuilders and the growing ranks of suburban homeowners united to create zoning to protect their neighborhoods.

My first thought about the decline in county creation was that it was caused by the same forces of mobility. (Ed Stephan had the same thought.) But the list of states and dates in table 1 upends this idea. Almost all the states in the northeastern quadrant of the US were completely done with county creation by 1880, and nearly half of all states created zero counties after 1900, well before automobiles and trucks came into general use. (Railroads had a role in county creation and seat location, but usually their extension caused more settlement, which induced local demand for counties and county seats, as will be described presently.)

The horse-travel story has another problem. It does not explain why horses trotted so much faster in western states, where many counties exceed 2000 square miles. (The maximum linear distance to the center of a square county of that size is about 32 miles.) The most striking divide in the national map of counties is the 100<sup>th</sup> meridian. It divides the nation in two by a vertical line running through the western parts of the Dakotas, Nebraska, Kansas, and Oklahoma, and it divides east Texas from real Texas. As can be seen in the county-outline map in figure 1, average county land area increases dramatically to the west of this divide.

To be more exact about this, I calculated the median county land area (not including water bodies, which inflate counties adjoining the Great Lakes and Atlantic barrier islands) for each state on either side of the 100<sup>th</sup> meridian. (See table 2 for the data.) The states named above (the Dakotas, Nebraska, etc.) were counted as being in the West inasmuch as technical discussions of the climate divide usually use the 98<sup>th</sup> meridian, which is closer to the eastern borders of those states (Walter Webb 1959). The mean of the state medians in the east is 573 square miles. The corresponding average to the west (not counting Hawaii and Alaska) was 2191 square miles, or almost four times as large. Using each state's mean county land area in the foregoing calculation does not alter the conclusion that most counties in the states of the West are far larger than those of the East.

County dimensions have less to do with individual state decisions or horseback rides than with the agricultural patterns of rural settlement in the nineteenth century. The 400-square-mile county was a norm based on eastern settlement

densities in which naturally watered farms were small in area. This made for higher rural population densities and towns that are closer together.

Modern population density can be inferred from figure 2, a night satellite photo of the US. The bright spots are lights in urban areas and towns (except for the gas flares in North Dakota's oil patch), and their density declines dramatically west of the 100<sup>th</sup> meridian. This is because the climate becomes too dry to support row crops. With more widely spaced farms and ranches, fewer small towns were necessary to provide urban services to farmers and ranchers. In the mountains of the West, forestry and mining and recreation are the dominant land uses and sources of employment.

The dry and mountainous areas of the US were also lightly populated in the nineteenth century, when most counties were formed. Counties become more compact in the San Francisco Bay area of California, in the Willamette Valley of Oregon, and around Puget Sound in Washington, where more intensive farming was viable because of higher rainfall and small-scale irrigation. As a result, rural population densities were higher. (A few patches of counties west of the 100<sup>th</sup> meridian in Kansas, Nebraska, and Texas are smaller than this rule would predict because of nineteenth-century climate-change optimism, epitomized by the “rain follows the plow” theory, which initially caused more settlement than was ultimately sustainable [Henry Nash Smith 1947; Libecap and Hansen 2002].)

### **§3. Sparse Western Counties Persist Despite Economic Difficulties**

Low population density limits local taxation, especially the property taxes that most counties require to be self-supporting. Arid and mountainous regions usually do not have enough taxpayers (or taxable resources) per square mile to support smaller counties. The fiscal woes of the arid, sparsely populated, and relatively new counties of Cibola, New Mexico (established 1981)<sup>4</sup>, La Paz, Arizona (1983)<sup>5</sup> and Daggett, Utah (1919)<sup>6</sup>, are a direct result of a scarcity of taxable property and are held up as cautionary tales in their states.

Cibola in New Mexico split off from Valencia County when its uranium mines were still promising sources of employment and tax revenue. Uranium mining in New Mexico declined sharply in the 1980s after the Three Mile Island accident hobbled nuclear power development.<sup>7</sup> The decline decimated Cibola County's

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<sup>4</sup> [https://www.santafenewmexican.com/news/briefs/cash-strapped-cibola-county-asks-grants-for-150k-in-aid/article\\_e3e1330a-8e1e-5016-9a1a-e0682fdf344f.html](https://www.santafenewmexican.com/news/briefs/cash-strapped-cibola-county-asks-grants-for-150k-in-aid/article_e3e1330a-8e1e-5016-9a1a-e0682fdf344f.html)

<sup>5</sup> [https://en.wikipedia.org/wiki/La\\_Paz\\_County,\\_Arizona](https://en.wikipedia.org/wiki/La_Paz_County,_Arizona); Genealogy Trails History, “La Paz County Arizona History” <http://genealogytrails.com/ariz/lapaz/history.htm>

<sup>6</sup> <https://www.sltrib.com/news/politics/2019/01/02/one-tiny-utah-county-is/>

<sup>7</sup> <https://www.energy.senate.gov/services/files/A4B8CAE4-9482-C045-F726-7BCD87668162> testimony by Cibola County Manager in Congress supporting uranium production 2008.

workforce and tax base. It is likely that California's cluster of sparsely populated counties along the western slopes of the Sierra (e.g., Sierra, Nevada, Amador, Calaveras) were created under similarly optimistic assumptions about the longevity of wealth created by gold mining.

The persistence of low-population and tax-poor counties is something of a puzzle. Since the widespread adoption of the automobile and development of year-round roads around 1920, nearly every county seat in America is accessible to almost all residents in less than two hours. There's hardly any practical reason to maintain small, inefficient counties that could be joined with their neighbors to achieve some economies of scale.

Yet merger of rural counties is about the last item on the agenda of state legislatures, which have, as the law would have it, the sole power to change their boundaries. (As will be discussed, state constitutions often limit how small the area of a new county can be, but not how large.) This is in distinct contrast to rural school districts, which have consolidated from walkable one-room schools to almost-county area dimensions (if they were not originally county-wide districts) as demand for high school education increased and rural student populations shrank. The only twentieth-century examples of urban county mergers were two Georgia counties that joined with Fulton, Atlanta's county, in 1933, as a result of economic calamity during the Great Depression. The county of James in Tennessee rejoined Hamilton, Chattanooga's county, in 1919, which ended a fifty-year secession by James from Hamilton.

A 1928 attempt by New Mexico to conjoin two large rural counties was overturned by its courts (*State Ex Rel. Dow v. Graham*, 270 P. 897 [N.M. 1928]). The court held that the legislation was "special and local" and not "general" as required by the state constitution. Montana courts also struck down a back-door attempt to merge low-population Petroleum County, Montana, with its neighbor in 1925 (*State ex rel. Foot v. Burr* 73 Mont. Rpts 586 [1925]). The legislature had tried to slip through the dissolution without the notice required by the state constitution. Petroleum had only recently been established under general laws with the obvious intent of residents to monopolize the revenue from the newly discovered oil fields for which the county was frankly named. (Petroleum was the last county created in an orgy of county formation in Montana, discussed below in section 20.)

The governance of sparse western counties is assisted to some extent by other governments. The United States, whose national parks, forests, and federal rangeland occupy half of the West, provides a layer of governance where the county seat is more remote than ranger headquarters. US land is not taxable by the counties in which is it located, but PILOTs (payments in lieu of taxes, which the

US abbreviates as PILTs) make up for some of the difference, and US government personnel such as forest rangers also replace some of the need for local law enforcement (Dayton Hall 2013; Devin Kenney 2014).

The other governments in the West are Native American tribes, whose uneasy situation within counties is difficult to generalize because they are governed by individual treaties with the United States, not with individual states. The well informed commentary by Chicago's Newberry Library notes, however: "In general, county boundaries across the United States have been created with almost total disregard for Indian reservations."<sup>8</sup>

This creates difficulties for counties containing land of sovereign tribes, which is not taxable. The federal government does not offer compensation for lost local tax base (as it would if the land were owned by the federal government). Some tribes do negotiate in-lieu payments with counties when expansion of tribal holdings is proposed, but the process is often problematic (Rebecca Webster 2020). The standoffish relation is apparently reciprocated. Two sparsely populated counties that cover entire reservations in South Dakota (Oglala Lakota and Todd) have their seats located in neighboring non-Indian counties as if to emphasize that the American state represents a foreign power. It should be noted, however, that most reservations have residents who are not members of the tribe and thus are subject to state laws and county courts.

#### **§4. Counties Were Shaped by Subdivision Rather than Accretion**

The historical process of county creation can now be visualized by a detailed, year-by-year look at the formation of American counties in every state. The Newberry Library offers a free web site that is the product of an enormous application of historical and geographic scholarship as well as technical labor.<sup>9</sup> You can select a state and go to a narrative list or an interactive map to visualize the creation of successive counties from their earliest beginnings to the year 2000. (The only new county created so far in the present century is Broomfield, Colorado, in 2001.)

There are pre-computer sources that show in successive maps the development of counties for specific states. Two outstanding examples are the painstaking work of George Pence and Nellie Armstrong (1933) for Indiana and John P. Snyder (1969) for New Jersey. The revolutionary aspect of the Newberry Library's project is that one can see the process for every state and detect patterns that are common to most states. I discuss below some generalizations that I have gleaned from going through these states' county histories. I should add that Wikipedia's lists of counties by individual state (search "list of counties in [full name of state]") is an

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<sup>8</sup> [https://publications.newberry.org/ahcbp/documents/MT\\_Commentary.htm#Commentary](https://publications.newberry.org/ahcbp/documents/MT_Commentary.htm#Commentary)

<sup>9</sup> <https://publications.newberry.org/ahcbp/>



excellent complement to the Newberry records, particularly because they can be ranked online by population, land area, and date of creation, and the list indicates current county seats, which the Newberry site does not. (Numerous genealogical sites also offer county histories to help locate ancestral birth records, but they are less systematic in their coverage unless they utilize the Newberry data.)

Counties actually predate most state governments. About a third of all counties now in existence were initially established before their colonies or territories became states. (Most original counties subsequently lost territory as other counties were carved from them, as presently described.) In the original thirteen states, counties were established under colonial governments before the American Revolution. In most states admitted after Independence, the Northwest Ordinance of 1787 set the rules for establishing states, which were generally followed throughout the next century. Federally owned lands (and aboriginal lands that were expected to be acquired) were initially organized and governed as federal territories.

County-building in post-Revolutionary states was a task of territorial governors and, after admission, state legislatures. It was not a “bottom-up” process that could be formally initiated at the local level. This is not to say that settlers and other local interests did not lobby their legislators and governors to establish new counties, but the decisions were made at the state level.

As demonstrated by the Newberry maps, the usual strategy for a colony, territory, or new state was to establish a handful of counties near the initial centers of European-American population and cast their boundaries deep into unsettled and often unknown territory.<sup>10</sup> The oldest counties in Ohio, Indiana, and Illinois are in their southern parts adjoining the Ohio River. The river was initially the main route for migration and trade from the East and to the Gulf. Only after the Erie Canal opened up the Great Lakes trade in 1825 were the now-populous counties that border the lakes around Chicago and Cleveland laid out.

Governors and legislatures were eager to establish a network of counties, however thin, across all of their territory. Typical of the process was Lincoln County, Kentucky (named for the Revolutionary War general Benjamin, not Abraham). When Kentucky was separated from Virginia as a new state in 1792, Lincoln County occupied almost a quarter of the entire state as one of Kentucky’s nine original counties. Over the next half century, scores of counties were carved from Lincoln’s original territory, and Lincoln was reduced to its present size of

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<sup>10</sup> Some animated time-line maps of the US also show this, though they lack the meticulous historical detail of the Newberry maps. A simplified but telling example is <https://www.visualcapitalist.com/history-of-us-counties-animated-map/> Note that almost nothing happens on the map after 1920. Similar version with music: <https://www.youtube.com/watch?v=9UE9uu9fKSG>

344 square miles, about the average size of Kentucky's 120 counties. (Kentucky's counties have the smallest median land area, 306 square miles, of all states.<sup>11</sup>)

This process was repeated over and over. When Wisconsin Territory was separated from Michigan Territory in 1835, it was already divided into four counties that covered almost the entire area of what later became the state of Wisconsin in 1848. (Wisconsin Territory also for a time included much of Minnesota, Iowa, and parts of other states-in-waiting.) The original Wisconsin four were successively subdivided into smaller counties, which themselves were often further subdivided until 1901, when the state had 71 counties. Menominee, the state's 72nd and final county, was formed from parts of two existing counties in 1959 around an Indian reservation. The Menominee tribe was in the process of dissolution by the federal government, and the new county was a vehicle to maintain some semblance of self-government by the tribe. (Stephen Herzberg [1978] demonstrates that it did not go well). The tiny tribe was restored by later federal legislation, but the county remains.

### **§5. Fitting Counties into State Settlement Plans**

In many new nineteenth-century territories, remote and unsettled land was not initially included in a county. The Newberry Library designates such areas as “noncounty area number \_\_\_” and indicates that it was usually paired with some extant county for judicial purposes, meaning crimes and legal disputes would be adjudicated outside the area. New counties would sometimes be delineated and named but not organized for a few years, and these would have to be paired with a previously organized county.<sup>12</sup>

US territories and their subsequent states were eager to bring all of their land under some form of government control. Settlers and businesses were understandably leery of moving to areas that lacked rudiments of law and order (Peter Onuf 1987, p. 52). Boundaries were often modified at this early stage as patterns of settlement developed. Occasionally counties might be dissolved—sometimes for irregularities in their formation, such as overstating their population—and merged into others or entirely reconstituted.

Iowa seemed anxious to establish a regular pattern of counties and avoid the proliferation and confusion that other states had endured. It planned to lay out the entire state in the nice round number of 100 counties.<sup>13</sup> Its constitution of 1857 set

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<sup>11</sup> Rhode Island's historical counties are smaller, but they now lack any government function.

<sup>12</sup> A detailed and lucid account of this process for Iowa is provided by the Newberry Library site: [https://publications.newberry.org/ahcbp/documents/IA\\_Commentary.htm#Commentary](https://publications.newberry.org/ahcbp/documents/IA_Commentary.htm#Commentary) Similar commentaries are provided by Newberry for other states, but unfortunately not all of them.

<sup>13</sup> <https://whotv.com/2015/11/24/what-ever-happened-to-iowas-100th-county/>

a minimum of 432 square miles, which amounted to twelve of the 36-square mile Congressional townships discussed below.

The state's problem was that the northern tier of townships along the Minnesota border were not quite large enough to accommodate a uniform set of 432-square-mile counties to make an even 100 counties. The constitution instead named the prospective counties on the northern tier as allowable exceptions. But one of the named counties, Bancroft, had land so wet that it was unsuitable for farming, and it could not attract the necessary population and tax base to form a county government. It was instead attached to Kossuth County to the south.

A few years later, entrepreneurial engineers figured out how to drain the Bancroft area for farming, and population rose enough to make it eligible. Its residents applied for county status. Unfortunately, they picked a name for the county, Crocker, instead of Bancroft. Crocker wasn't among those named in the 1857 constitution, and the Iowa Supreme Court declared that the undersized county could not be recognized under the state's current constitution. Just why the applicants did not go back to the original name (Bancroft) that was named in the constitution is one of those local mysteries that make writing this essay both interesting and frustrating. Even contemporary local histories seem baffled by the Iowa Court's decision.<sup>14</sup> At any rate, the ruling seems to have been final, and Iowa had to settle for 99 counties, with the northern protuberance of Kossuth County that includes the ghost of Bancroft/Crocker as a lonesome standout on the map.

In contrast to the top-down formation of counties, towns and cities were almost always established by the initiative of local property owners. Changes in their borders were usually incremental and seldom subject to direct manipulation by state legislatures. In thirty-seven states, city boundaries cross into other counties.<sup>15</sup> I have argued that a similar process governed school-district formation (Fischel 2009), but this is less obvious to other commentators, who regard their formal legal status as "creatures of the state" as also describing their actual formation. County boundaries, though, were unarguably controlled by the state.

The process of initially establishing large-area counties and then subdividing them into new counties created some present-day geographic anomalies. Shasta County in northern California originally included majestic Mount Shasta, for which the county was named. The mountain is now in Siskiyou County, which was later carved out of Shasta County. Ontario County in New York originally included most of the western portion of the state and bordered Lake Ontario. Subsequent

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[https://www.google.com/books/edition/History\\_of\\_Kossuth\\_County\\_Iowa/wKAYQAAMAAJ?hl=en&gbpv=1&bsq=Crocker](https://www.google.com/books/edition/History_of_Kossuth_County_Iowa/wKAYQAAMAAJ?hl=en&gbpv=1&bsq=Crocker)

<sup>15</sup> [https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_municipalities\\_in\\_multiple\\_counties](https://en.wikipedia.org/wiki/List_of_U.S._municipalities_in_multiple_counties)

county creations left the present Ontario County many miles from its namesake lake.

County seats could also be misplaced as early counties were subdivided. The city of Bernalillo, New Mexico, was the county seat and namesake of Bernalillo County but is now the seat of Sandoval County. The city did not move; Sandoval County was carved out of the northern side of Bernalillo County, and the city has the distinction of having been the seat of two different counties.

## **§6. Older Urban Counties Were Shaped by Rural Separations**

The subdivision process of county creation could create other anomalies. In several states, their smallest-area counties became the largest-population counties in their state. (Several have fallen from their largest-county perch as their central cores lost population and other areas grew.) Examples of small-area but large-population counties are New York County, which formerly included much of Westchester and is now just Manhattan; Philadelphia County; Ramsey County, Minnesota (St. Paul); San Francisco County; Wyandotte County (Kansas City, Kansas); and Multnomah County (Portland, Oregon). The city-county of Baltimore City, which is distinct from Baltimore County, both of which function as counties, and St. Louis City, also distinct from St. Louis County, could be included here despite their odd status as “independent cities,” a concept discussed in section 23 below.

These small-area counties were among the original counties of the state. They started as early urban enclaves within a much larger county and were set off from their rural hinterlands in an era when a trip to the courthouse really was powered by horses. Rural residents may also have valued a different set of public services than the growing urban area, and an amicable divorce seemed best. San Francisco County originally included modern San Mateo County, and Multnomah (Portland) was set off from Clackamas, one of the original and huge counties of Oregon Territory. As their rural areas became settled, the rural areas were broken off to form separate counties. The county-cities of Denver and Broomfield in Colorado are modern and now-rare examples of this subdivision, separating from larger original counties in 1902 and 2001, respectively.

It is within these small but populous counties that several of the successful consolidations of city and county functions have occurred. Of those named above, only Multnomah County, Oregon, and Ramsey County, Minnesota, have not joined in some fashion with their major cities, Portland and St. Paul.<sup>16</sup> Multnomah and

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<sup>16</sup> A list of consolidations and their dates is at: <https://www.naco.org/sites/default/files/documents/City%20County%20Consolidations.01.01.2011.pdf>.

Ramsey, however, are notable for being the center of functioning metropolitan federations, Portland Area Metro and Twin Cities Metro, respectively. Compact county borders are helpful in finding a regional community of interest because their suburban lands are not too extensive.

The nineteenth-century county subdivision process became less granular as states became more developed. Urban areas that had their adolescent growth spurts well after their state's founding retained much more rural territory in their counties, as in the large-area counties containing Los Angeles, San Diego, Phoenix (Maricopa County), and Miami (Dade). A network of local railroads and eventually the automobile made access to the county seat easier for rural people, and state constitutional brakes on county formation (discussed below in section 16) made subdivision of counties less likely in the early twentieth century.

### **§7. The Public Land Survey Gave County Boundaries Straight Lines**

The previous sections situated county establishment within states. To get a wider context, the following sections turn to the larger historical picture of the settlement of the area west of the Appalachians. Histories on which the following is based are by Peter Onuf (1987) and, more compactly, Robert Hill (1988). My own distillation of this within the context of American school districts is in Fischel (2009, chap. 2).

After the American Revolution, the new United States, whose population was largely confined to the Atlantic coast and its environs, acquired an immense territory that stretched to the Mississippi River and, within a couple of decades, across the Plains to the Continental Divide via the Louisiana Purchase of 1805. Conflicting original-state claims to the region between the Appalachian Mountains and the Mississippi River were resolved by a deal in which the federal government got most of the western land as the “public domain” in exchange for assuming the debts that the states had incurred in fighting the Revolution. Alexander Hamilton hatched a plan to pay off these debts by earmarking the sale of this land to private citizens and immigrants. The national government had incentives to get revenue from land sales and rapidly settle the territory with its citizens to forestall inroads by other nations.

The vast domain needed two types of foundational institutions to quickly populate it with Euro-Americans: property ownership and state government. The Land Act of 1785 provided for a national survey that divided the land into six-by-six mile townships, which were in turn divided into square mile “sections” that could be sold in still-smaller tracts. This created a uniform quilt of townships that mostly ignored geographical features but was easily sold and resold even without examining the property. (These were the “survey townships” or “Congressional townships,” as opposed to the not-always-congruent political townships that states

subsequently established.) Modern evidence indicates that this relentless system of land division worked surprisingly well in peopling the territory and making the land productive (Libecap and Lueck 2011).

As can be seen in figure 1, the county outline map of the US, territories and states to the west of the Appalachians were addicted to straight lines. West of the Appalachians, counties form almost a checkerboard until the Plains end at the Rockies. Even in the mountainous areas, straight line county borders are more the norm than the exception, which are mainly high mountain ridges and larger rivers.

My first impression from the states' dedication to rectilinear boundaries is that it was the product of level terrain. Good parts of the territory are comparatively level so that straight line boundaries make sense, but the straight lines continue into the hilly parts, through wetlands, across all but enormous streams. (The Missouri is partly traceable by county boundaries when it does not form state borders.) The county sheriff seldom had a level territory to patrol.

The more likely reason for linear county boundaries is that the US Public Land Survey defined almost all property lines along straight lines. One of the more important functions of county government is the recording of property deeds and their sales and transformations (as by subdivision and covenants). Each transaction has to be recorded in a courthouse—the recording of deeds is an almost-universal county function—so that buyers are not unhappily surprised by some imperfection in the title of their new property, which might bring an unexpected claimant after the purchase. Recording deeds also provides the government with a means of identifying who should pay the taxes.

Recordation of deeds and title searches are considerably simplified if the land in question does not wander across county lines. That way, land purchasers don't have to go to another courthouse to confirm their titles. Laying out county lines in a way that conformed to the underlying pattern of land ownership—the squares of the surveyed township—was more efficient for both the county officials and for the owners of property. The Newberry Library's herculean task of locating all county boundary changes was often busied with changes so small as not to be evident on their maps. Many of these changes readjusted the county line by almost imperceptible amounts in order to conform with the federal township survey lines and hence the underlying property lines.

One might ask why smaller rivers and streams were not used to demarcate property and county lines after the Public Land Survey was laid down. (Local school district borders did respond to rivers and streams to safely get children to and from the schoolhouse [Fischel 2009; Caroline Hoxby 2000].) Watercourses were often used for county boundaries in the East, where most property was laid out on the generic “metes and bounds” method (see generally Andro Linklater

2003). In this ancient survey method, claimants would undertake their own survey demarked by natural topography. Most private land subdividers accommodated the natural terrain, and they often terminated their surveys at or moved along a sizable river or other inconvenient barrier. As a result, the borders of counties in the original 13 states more often follow watercourses and ridgelines than those in states west of the Appalachians, even though the West often has larger rivers and higher ridges.

Water bodies are actually not ideal government boundaries because their edges and courses are impermanent. Floods and general erosion change the path of many streams, and dams and floods can cause the level of rivers and lakes to enlarge or shrink. An entire county in Tennessee was actually created because of the New Madrid earthquakes of 1811-1812.<sup>17</sup> Uplift from the quakes caused a small tributary of the Mississippi to become an impassible lake, thereby impeding residents on the western side of Obion county to get to their county seat. The Tennessee legislature eventually hearkened to their unusual circumstance and divided the original county at the lake, creating Lake County in 1870 and establishing a more convenient seat at Tiptonville. (The late date was probably caused by a Tennessee constitutional amendment that prohibited creation of counties as small as Lake that took effect that year and presumably induced urgency to the change [John Fairlie 1906, p. 58].)

The second critical institution (the first was the land survey) for post-Independence settlement was governance. The famous Northwest Ordinance of 1787 established the initial governing divisions of the territory north of the Ohio River and the process by which the territory would become a state. Prior to statehood, a territory was supplied with an “organic law” by Congress. Early settlers were governed by a federally established territorial government, with two crucial branches—the governor and the judiciary—appointed by the President and Congress. Residents of territories could elect a legislature, but it lacked much power insofar as the governor had absolute veto power over its enactments.

The Northwest Ordinance set the pattern for almost all subsequent establishment of territories and states. Once a territory had enough people, it could apply for statehood. It wasn’t automatic. A proposed state constitution had to be approved by a plebiscite of the territory and by the US Congress. Many state constitutions failed one or the other before being rewritten and resubmitted and finally accepted into the Union (Paul Gates 1968).

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<sup>17</sup> <https://www.tngenweb.org/records/lake/misc/ff/fflake17.htm>; <https://lakecountyttn.com/>

## **§8. A Theory of American County-Making**

To explain the modern stasis of county boundaries it may be helpful to offer a highly simplified theory of their formation in a federal system. My model has two primary actors: (1) representatives of the state as a whole (territorial and state governor and, later, state legislature) and (2) enterprising landowners and other early settlers of a new territory who want a county and county seat for themselves to enhance their property values. Both actors want to maximize property values, but the former takes a wider geographic view than the latter.

Territories and states were sufficiently large that government administration from a central capital was unrealistic. One possibility—not the one actually chosen—was for the state to set up a centrally controlled administrative apparatus and send its agents into the outback. The agents would receive the laws from the state capital and enforce them upon the local populace. They would have eyes and ears on the ground, but they would not be answerable to anyone but the executive and legislature at the state capital. The key aspect of such a system is that local people have no say in what those officials do. They do have a vote for governor and state representatives, but local voters have no direct role in the local implementation of state law and policy.

Such a system has the potential advantages of uniformity and professionalism. Employees of the state are hired and trained and sent out to the hinterlands to administer the laws the legislature adopts. Their interests are well-aligned with their bosses in the state capital. There may be local governments created as municipal corporations, but they have no role in administering state law. Laws are passed by the state, and the state administers them uniformly across its territory.

Such a system also has the drawbacks of uniformity and professionalism. Local conditions and preferences differ within a state, and local knowledge about how best to deal with them is more difficult to elicit if administrators are appointed remotely. Moreover, if any spirit of self-government had been inculcated, it is possible that locals would be uncooperative, obstructionist, or even rebellious if administrators do not accommodate local variations in preferences. One cannot help but think of the English legend of Robin Hood, though the system of royal appointments might in reality have produced men of better character than the Sheriff of Nottinghamshire.

An alternative means to administering a large area like a state would be to allow each community to form a local municipal corporation, the geographic contours of which would be locally determined. The state would demand, on pain of disincorporation, that each municipality, regardless of how constituted, would administer laws in the same way that its own agents would have under the



previous, highly centralized scheme. In essence, this system combines the roles of local municipal corporations and county government in a single entity.

The difficulties here are that vast areas of the territory and state will be too lightly populated to form a municipality. Even those that are formed will have different capacities to enforce state law depending on their population and tax base. Another problem is that there might be a conflict between the local municipality and the state government that is not easy to resolve. For example, state laws concerning official corruption might require that the locality's police force investigate itself rather than having some independent agencies, such as a county attorney and sheriff, undertake the investigation.

The point of sketching these two extremes is to suggest upper and lower bounds within which a system of county government might successfully operate in a nation with a large and varied land area, a diverse population, and a dedication to democratic ideals and local self-determination. It also suggests that the nature of county government will vary according to different states' circumstances. A state with a large land area that is lightly populated because of desert climate or mountainous terrain might have to rely more on state-directed county governments simply because there are too few citizens on the ground to form an effective municipal government.

Other states that have a population distributed more uniformly could rely on local municipalities to be its agents. Indeed, geographic variations within a single state might dictate some variations in roles of counties, where low population areas need to rely on them to do things that locally-established municipalities do in urban areas. One should also expect that counties' roles will vary across both time and space as transportation and communication technologies change and population patterns change.

Of course, this Goldilocks outcome looks a lot like what the United States does, and I might be accused of fixing the theory to fit the result. In defense of my *ex post* theorizing, I would point out the surprising uniformity among counties of the United States. Their political role and geography vary along interesting dimensions, but the general contours of what they do and their size distribution are more similar than different. Yet the US Constitution has no requirements that would warrant county uniformity among states. The abolition of county government in Connecticut and Rhode Island did not raise a peep from the national government. (Or from most residents of those states, for whom the towns that cover the entire state have long been the fundamental building block of local government.)

Creation and destruction and restructuring of counties is almost never a federal issue. The exceptions include the 1965 Voting Rights Act, which restricted state

reformation of all political units so as to assure meaningful access to the ballot by African-Americans (Hiroshi Motomura 1983). Yellowstone National Park<sup>18</sup> and some Indian Reservations were formerly outside the domain of state-created counties, but counties now cover every territory, even where state sovereignty must contend with tribal treaties. (Reservation Indians can vote in county as well as state and national elections, but their sovereign lands are not subject to local property taxes, which can cause dissonance with non-Indian property owners outside of the reservation, who must pay taxes for county services available to all.<sup>19</sup>)

It is possible that states just slavishly and unthinkingly followed the precedents of English counties, but, as mentioned earlier, the mother country's counties have gone rather different ways, and Americans even in pre-Independence days refashioned counties and other local governments to meet their own circumstances and preferences (John F. Martin 1991). While what follows will often focus on differences among regions, the strange fact is that for all their historical and regional differences—slavery in the South and near-desert climates and high mountains in the West—counties and their role in state government are more alike than different. A behavioral theory of the political economy of county government can be the touchstone for understanding how this remarkable uniformity came about as well as explain their regional differences.

### **§9. The Model Applied: The Imperial State and Local Demand**

A new state (or the federal territory expecting to become a state) needs to establish what I will call, without any pejorative intent, imperial control over its territory. It needs to find out who occupies it so it can protect and regulate them and who owns it so it can tax them. American territories (including the original colonies) had a natural antecedent for this purpose, the English county. Thus the offices of both ancient English counties and modern American ones include protective, regulatory, and revenue-generating functions.

The imperial state establishes county offices that include a property assessor and a tax collector; a sheriff and a coroner; a district attorney and a court clerk; a registrar of deeds; a recorder of births, deaths, and marriages; road agents; and a supervisor of elections. The state judicial system is also usually divided into counties or contiguous amalgamations of counties, but there is variety among the states in how local justice is administered, some electing lower court judges by county and others entirely appointed by the state government.

Most county offices were borrowed from England, and they can be construed as making it possible for the state to control a geographically large and varied territory and maximize tax revenue while minimizing the central government's

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<sup>18</sup> [https://publications.newberry.org/ahcbp/documents/WY\\_Commentary.htm#Commentary](https://publications.newberry.org/ahcbp/documents/WY_Commentary.htm#Commentary)

<sup>19</sup> <https://www.nytimes.com/2018/01/04/us/native-american-voting-rights.html>

cost of doing so. Effective administration of these services should attract more settlers and businesses than it repels, which should generally increase the aggregate value of land within the county's borders and hence its tax base. (This applies the urban-economics model of local governments as property value maximizers as expounded by Sonstelie and Portney [1978], Jan Brueckner [1981], and Fischel [2001], among others.)

The American twist to the English structure was having most of these offices elected by the residents of the county rather than appointed by the Crown or Parliament. Most American states were too large in territory to be governed directly from the state capital. The spirit of local self-government described by Tocqueville (1835) probably increased with western settlement, as Frederick Jackson Turner (1893) famously proposed. And the idea of taxing county residents without input from local representatives would likely have been met with familiar slogans about taxation without representation.

One office the Americans did not import from England was that of Lord-Lieutenant, who was appointed by the Crown to summon and lead the county's militia. (The office in England still exists but is largely ceremonial.) The US militias were controlled by the state governor. The armed body that the sheriff could summon was called the *posse comitatus*. Both the militia and the *posse* are now politicized terms, but their modern legal functions are respectively assumed under the National Guard and sheriff's deputies.

Counties are typically governed by an elected board of supervisors or commissioners, which are most common in the South. Those organized on the "New York" model have a separate legislature and an elected chief executive (Clarke Hagensick 1967). But separation of powers is not a major feature of county governance, as is suggested by the title of "judge" by which chief executives of counties in some Southern states are known. With local self-government came the obligation to finance state-mandated offices such as the sheriff and the coroner. Local financing also reduced the conflict between urban and rural areas in the legislature: Rural counties did not have to pay for the more extensive menu of county-funded services demanded by the residents of urban counties.

The permissive system allowed locals to add functions to the basics of county government. Some might add a fire department, some might run hospitals, parks, and libraries. The county was a standardized vessel that locals could top up if they desired. They were self-financing for most of their state-mandated functions as well as for their discretionary functions.

## **§10. Counties Became the Foundation of State Legislatures**

The other reward for each county's undertaking the role as the state's agent was representation in the legislature. I had always regarded county-based representation

as a mere geographic convenience, adopted because the lines of division were easily ascertained. I changed my mind on reading a comprehensive study by Douglas Keith and Eric Petry (2015) of state constitutional provisions regarding legislative apportionment during the period when counties were most actively formed, 1776 to 1920.

Keith and Petry's inquiry concerned the basis for representation in both houses of each state legislature and its trend over time. It was not precisely about whether representation was equal among counties or other districts, but whether states used population, registered voters, actual votes in previous elections, or some other basis for determining representation. Their conclusion was that the overwhelming unit had become population (not voters) by the late nineteenth century. In any case, by then population and voters were fairly proportional to one another because former slaves were counted as citizens (even if their right to vote was often curtailed) and property requirements for voting had been eliminated almost everywhere, though women had not obtained the right to vote in most states.

In reading the state constitutional provisions pertaining to representation, the most striking trend to me was something Keith and Petry had not emphasized: The county was almost always the unit for assigning seats in *both* upper and lower houses of the state legislature. (The exceptions were mainly in New England, where towns were the atoms of the legislature.) A county was almost always guaranteed at least one seat in one of the houses of the legislature. For a given size legislature, then, additional counties subtracted representation from other counties.

The other important quality of the constitutions is that their earliest versions insisted on the general principle of proportional representation, whether by registered voters or total population. This ideal was directly inherited, for the post-Independence states, from their "organic acts," which were the standard pre-state constitutions for territories created by Congress under the Northwest Ordinance of 1787 and its successors. All of the nineteenth-century organic acts that I could locate (and all were similarly worded) insisted on the ideal of proportional representation, so that larger population counties would get proportionately more representatives and senators (lower and upper house).

The Organic Act for Nevada in 1861 was typical: "An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the Council and House of Representatives, giving to each section of the territory representation in the ratio of its population (Indians excepted), as nearly as may be."<sup>20</sup> After statehood was achieved, most states continued to grant more representatives to larger counties. But one ideal—that no county should lack a

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<sup>20</sup> <https://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/1861Act.pdf>

representative—soon conflicted with the ideal of representation that was proportional to population.

The more obvious reason for the erosion of proportionality was the rise of urban populations. Larger-population counties with cities grew faster than counties in rural areas. But this was not the only problem, and it may have been exaggerated by our views of urbanization. Many put the growth of urban areas to a specific date such as 1890 or 1920. But the general growth of urban places as a fraction of the US population was fairly steady. It grew from five percent in the first US Census in 1790 to 80 percent in 1990 at a fairly steady rate (Mills and Hamilton 1994; there was a slight acceleration between about 1830 and 1930, the era of industrialization, but not a dramatic shift). So there was actually plenty of time for states to reapportion their legislatures for the growing urban counties.

What made their task more difficult was the growth in the number of counties themselves. After pre-state territories were created, counties were quickly thrown over most of or all of what would become a new state. After that, new counties came into being from subdividing previously established counties. Because most of the county formation process was in rural areas, this constant subdivision made each rural county a smaller and smaller fraction of the total. The number of legislators did not keep pace with the creation of new counties, so even if there had not been a marked increase in the population of larger counties, the foundational ideal of proportional representation would have receded. It seems likely that this unexpected circumstance—urban growth and county proliferation—was at least as responsible for malapportionment as supposed plots by rural legislators to suppress urban votes.

Representation by county was the product of the county system itself. To effectively govern and develop their large territories, state legislatures needed both local information and incentives for locals to cooperate and participate. The state legislature became the forum at which local geographies could advocate for their interests and log-roll and compromise with other areas. Counties were the conduit by which local voters sought the aid of the state and dealt with conflicting interests in other parts of the state. Counties, in other words, were part of the fabric of state governance, not mere imprints on the map of the state.

### **§11. Demand for County Seats and Excessive County Creation**

The previous sections describe the implications of the imperial-state part of the model. It might loosely be characterized as the “supply side” of counties, since only the state could create valid county governments. I submit that from the point of view of the state sovereign—the governor and legislature—the optimal number of counties was likely smaller than what most states eventually got.

Having a large number of counties complicated state governance for both administrative and political reasons. A multitude of counties—the mean number for the states is about 60—made it more difficult to track taxes and expenditures from the state capital. Evidence for this is that most modern statewide offices that require field representatives are appointed over territories that are larger than counties, except in a few big cities. The states that have mostly abolished county government (though not their traditional borders) are small in area but larger than most counties: Rhode Island in 1842, Connecticut in 1960, and Massachusetts in ongoing parts. These states have no trouble administering their internal affairs from the state capital or by ad hoc field regions. (Connecticut sheriffs were abolished in 2000 and replaced by state marshals, though marshals are listed under the traditional counties.<sup>21</sup>)

More evidence that counties are too numerous and small comes from court administration. In rural areas of most states across the nation, county courts have long been replaced by regional amalgams of county-based districts. They hold trials and keep records in individual county courthouses, but judges are assigned by the state to multi-county districts except for the largest urban counties.

Nebraska provides a typical example. It has 93 counties, each with a courthouse at which trials are held, but the state’s trial-court system is divided into only 12 districts, all but two of which contain multiple counties.<sup>22</sup> (The two single-district counties contain the state’s largest city, Omaha, and the state capital, Lincoln.) Judges travel among courthouses to hold trials, though the Nebraska site mentions that each judge has a county “home court,” at which, one presumes, the visiting team might find victory more elusive. To require each county to have a complete judicial system would result in too many in rural areas and too few in larger cities.

Historically, territorial governors were reluctant creators of counties from the onset of American Independence. Arthur St. Clair, the Revolutionary War general who was the first governor of the immense Northwest Territories (eventually Ohio, Indiana, Illinois, Michigan, and Wisconsin) complained of the demand by locals to create more counties in Ohio than he thought wise (Kevin Kopper 2005, W. Henry Smith 1882). The imperial desire to establish state control over a large and diverse territory did not require as many counties as the local demanders regarded as desirable. Too much decentralization could also lead to secession movements, as it did when several western North Carolina counties tried to secede in 1784 and form the short-lived state of Franklin.<sup>23</sup> (Wikipedia’s “List of U.S. state partition

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<sup>21</sup> <http://www.jud.ct.gov/faq/marshals.htm>

<sup>22</sup> <https://supremecourt.nebraska.gov/courts/county-courts>

<sup>23</sup> <https://www.smithsonianmag.com/smart-news/true-story-short-lived-state-franklin-180964541/>

proposals”<sup>24</sup> are mostly quixotic secession attempts but are nonetheless typically organized by county boundaries.)

Another indicator of “too many counties” is that so many are smaller than the 400-square-mile ideal that is so frequently referred to and was the standard for the minimum county-size laws which are discussed below. By my count, the 24 states that adopted the 400 minimum limit actually have 20 percent of their counties smaller than that. If only states east of the Mississippi River are counted (because of their earlier start and higher rural density), fully one-third of their counties are below the 400 square mile ideal. A few of these are smaller by necessity, mainly by being confined to islands such as Nantucket and Martha’s Vineyard (officially “the County of Duke’s County”) in Massachusetts, Grand Isle in Vermont, and Manhattan Island in New York. But most of the rest of the small counties are in the South and Midwest that had no special geographic constraints. County proliferation in the nineteenth century left a legacy of small counties in much of the eastern United States.

## **§12. County Seat Location: Local Motivation**

The local demand for counties that were smaller (and hence more numerous for a state of fixed area) included both economic and political elements. Local pioneers shared the imperial state’s interest in law and order and general improvements. But beyond that, locals cared how close the county seat (defined by its courthouse) was to their farms and businesses.

Travel time to the county seat was an important cost to residents. They went there to register deeds and vital statistics, serve on juries, obtain records, and seek legal redress. The other side of the coin was that a distant county seat made it more costly for the sheriff or coroner or road agent to get to the outer edges, which raised everyone’s county taxes and could also create remote pockets of lawlessness and poor public services. So small was beautiful from a local point of view, especially if the county’s overall population was large enough to support basic county functions with property taxes.

From this functional analysis, it would seem logical that the county seat, where services were concentrated, should be at some central point in the county. If population were uniformly distributed over the landscape, this would obviously be the geographic center of the county. With less uniform population distribution, the seat would be drawn towards cities and away from sparsely populated rural areas. But where there were more than one plausible candidate for the establishment of county seats, local initiative would seek to move the official seat to within its limits

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<sup>24</sup> [https://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_state\\_partition\\_proposals](https://en.wikipedia.org/wiki/List_of_U.S._state_partition_proposals)

or, if already the incumbent, to defend the courthouse from envious relocation efforts.

The problem is that almost all counties have only one courthouse: one seat to a county. (As described below in section 19, there are 36 counties, a little over one percent of the US total, that have two seats, each with its own courthouse. It isn't a practical option.) That fact concentrates the effort both to get the courthouse and, failing that, to create a new county so as to be eligible for county seat status. This concentration of interest in a small, contiguous area is at least as powerful as the previously-mentioned conveniences of having a shorter journey to the seat itself.

The courthouse was a great economic prize. In lightly populated areas, attracting or keeping the courthouse was a matter of life or death for the municipality itself. More than a few county seat “wars” (the overly dramatic term for political contests that seldom involved violence) resulted in losers becoming ghost towns. Ernest Shockely’s (1914) account of the many contests for county seats in early Indiana confirms this. I tried to locate some of the towns that lost their courthouses, and many had simply disappeared. Even losers that survived seldom prospered thereafter. Their populations almost always declined relative to the town that won the courthouse competition.

Unlike modern economists who decry municipal competition for large scale firms, local politicians were almost unanimous and apparently correct in their belief that winning the county-seat contest meant economic prosperity or at least avoidance of decline and possible extinction. As Stephen Visher (1955, p. 345) points out, “More than half of the 92 county seat towns and cities of Indiana were planned as county capitals. Many additional townsites were laid out in the hope of their being chosen as county seat, but when another site was selected, most of them failed to develop.”

The local landowners who organized to form county seats seem analogous to the actors in my “homevoter” theory of local government (Fischel 2001). Local homeowners have a large asset whose value increases as a result of successful local programs and declines with failures. This in turn motivates homeowners to “vote their homes” at the local level. County-seat seekers of the past also had a large asset—their location-bound property—that was sensitive to their political decisions and motivated cooperative actions within their town.

One difference is that county-seat seekers were eager to have development, while homevoters are usually interested in passive continuity—maintaining school quality, peaceful neighborhoods, low-density development. Both types faced risks from future development, but homevoters shy away from it while county-seat seekers embraced the rewards that come with risk. They came from an era that unabashedly embraced what sociologist Harvey Molotch (1976) famously called



“the growth machine,” where local politics catered to the business boosters satirized by Sinclair Lewis in his 1920s novels *Main Street* and *Babbitt*.

Much of the competition for the county seat took the form of offers of free land and often the construction of a courthouse and jail and other facilities. The town itself might pay it from local taxes, and it was not uncommon for public-spirited locals to donate property and funds. County property itself was not taxable by the town (as is true of all government property), so the seat’s winner was not getting a direct tax windfall. It got the auxiliary business attendant on county judicial and administrative activity: Law offices, printers, newspapers, surveyors, construction firms, bail bondsmen, restaurants, and hotels would cluster around the courthouse and employ locals and add to the tax base.

The county seat tournaments also benefitted the state in that the locals rather than the state’s taxpayers footed the bill for construction as well as operations. This fiscal benefit may have partly offset, at least for a while, the increases in state administrative and political costs of more numerous counties.

### **§13. County Seat Contests: Creative and Destructive Competition**

The desire to become a county seat sometimes involved modifying the county itself. The principal property owner in Davenport, Iowa, realized that his chances of getting the county seat were poor because his land was near the edge of the county. He improved his fortunes and eventually got the seat by lobbying the legislature of the territory (then part of Wisconsin) to change the county boundaries so that his town was closer to the center than its principal rival (Timothy Mahoney 1990, p. 107). The uniform Iowa county grid is still interrupted on its southeast side to accommodate Davenport’s successful maneuver to become the seat of Scott County.

It wasn’t just a single county boundaries that could be modified. A number of counties were formed primarily as a result of a town’s desire to become the county seat. The city of Athens, Georgia, home of the University of Georgia, was apparently not satisfied with being the location of the state’s flagship university. It appealed to the legislature to make it the seat of Clarke County in 1871. But Clarke County already had a seat, Watkinsville, located nearly at dead center. Athens had grown more populous but was not centrally located. Athens’s representatives nonetheless persuaded the Georgia legislature to transfer the courthouse<sup>25</sup> (Edwin Jackson 2002). (A similar story played out in Idaho, where the land-grant university town of Moscow in 1888 got itself a new county, Latah, in order to also become its seat [Benjamin Thomas 1949].)

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<sup>25</sup> <http://web.archive.org/web/20071102173430/http://www.cviog.uga.edu/Projects/gainfo/countyhistory.htm>

As consolation to Watkinsville in Georgia, the legislature divided the original Clarke County in two. Athens kept the northern half, and Watkinsville became the seat of newly created Oconee County, formerly the southern half of Clarke County. The rural folk in Oconee County were equally satisfied, as their old seat (Watkinsville) remained in place in the new county, and those in the remaining northern part of Clarke were mostly better off for having a nearer county seat in Athens. The only losers were the diffuse voters elsewhere in the state, since the new Oconee County itself represented a new district in the legislature—every Georgia county got a state senator—and diluted the representation of other counties.

In 1860, a politician seeking state office in North Carolina thought he needed the votes of a particular corner of his county. The locals wanted to create their own county out of the one in which they currently resided, and the candidate offered to work for that goal if he was elected. He was elected, and he introduced a bill to create Clay County, which now has the least land area and fourth smallest population of any county in North Carolina.<sup>26</sup>

Similar stories unfolded in Indiana. As Pence and Armstrong (1933, p. 21) observed in their compendious history of Indiana's local boundaries, "Speculators in land values gambled on the probable location of new county boundaries to lay out towns which might logically become county seats, and county boundaries were juggled to favor towns already established." A prime example was the Ohio River town of Rising Sun, Indiana. It wanted to be a county seat, but it was poorly positioned at the far south of Dearborn County. But it saw an opportunity for a deal.

The former seat of Dearborn County was Lawrenceburgh. It had recently lost its courthouse to a more centrally located town. To get it back, Rising Sun and Lawrenceburgh struck a bargain. They elected legislators who would hive off the southern third of Dearborn County to create Ohio County in 1844. Rising Sun was thus the only city in Ohio County (Indiana) and was named its seat. Not coincidentally, the division caused Lawrenceburgh to become more centrally located than its rival, and the courthouse was returned to it. Both cities remain the seats of their respective counties, and the former seat of Dearborn County, Wilmington, Indiana, is now just a crossroads hamlet.

A more straightforward battle arose in New Jersey. The city of Newark wrested the seat of Essex County from the city of Elizabeth in an election in 1807. Later population growth around Elizabeth rekindled its desire to regain its county seat status. The contest was amicably settled in 1857 by the legislature, which divided

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<sup>26</sup> [https://en.wikipedia.org/wiki/Clay\\_County,\\_North\\_Carolina](https://en.wikipedia.org/wiki/Clay_County,_North_Carolina)

Essex in two to create Union County from its southern half. Union was the last county to be formed in New Jersey, with Elizabeth as its seat (John F. Snyder 1969, p. 19).

There were instances where seat competition was sufficiently destructive that the state legislature had to take stern measures.<sup>27</sup> Howard, Kansas, was once the seat of Howard County. But it was vulnerable to competition from two other towns in the county. Peaceful elections were supposed to settle the matter, but the proceedings were marred by persistent violence instituted by Howard's rivals. The violence escalated to murders, and the state legislature lost its patience. In 1875, it dissolved Howard County and split it into two new counties, Elk and Chautauqua. The city of Howard, whose partisans had not instigated the violence, ended up smack in the center of Elk County and became its seat. The original warring contenders ended up at the edges of their counties, from which becoming a seat was hopeless, and both are now ghost towns. Don't mess with Kansas.

#### **§14. County Seat Naming Was Part of the Competition**

Founders of would-be county seat communities could also choose a name for their new town that seemed more appropriate for the seat than that of other candidates. Examples include simply the name of the county itself, as in Ellsworth, seat of Ellsworth County or Smith Center in Smith County. Both are in Kansas, and nineteen of the 102 counties in Kansas have a seat so named. Kansas was not alone: nationally, about 15 percent of all counties have a seat that repeats its name. (The champion state is South Carolina, with two-thirds of its county seats bearing the same name as the county.) By way of comparison, only two US states have a capital that repeats the state name, Indianapolis and Oklahoma City. Of 196 world capitals, only 7.5 percent repeat their nation's name and most, like Monaco, Singapore, and San Marino, are very small.

Slightly more subtle advertisements for the county seat are the first and last names of a famous personage, such as Ulysses, seat of Grant County, Kansas; Hernando, seat of Desoto county, Mississippi; Quincy, seat of Adams County, Illinois; Schuyler, seat of Colfax County, Nebraska; Zebulon, seat of Pike County, Georgia; and my favorite because it reverses the usual order, Fillmore, seat of Millard County, Utah. (President Millard Fillmore endeared himself to the Utah-based Mormon Church by appointing their leader, Brigham Young, as territorial governor of Utah.)

Sometimes the pairing is the intentional product of a famous association: Alamo is the seat of Crockett County, Tennessee; Monticello is seat of Jefferson County, Florida; the seat of Texas County, the largest by area in Missouri, is Houston;

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<sup>27</sup> [https://www.kshs.org/geog/geog\\_counties/view/county:HO](https://www.kshs.org/geog/geog_counties/view/county:HO)

Warsaw is the seat of the Indiana county of Kosciusko, honoring the Revolutionary War general with his home town; and the seat of Montezuma County, Colorado, is named Cortez, strangely joining the conquistador with his Aztec victim. (An extensive exploration of these associations that lacks any theoretical baggage is William Ashton [1954].) More obscure to modern eyes is that Newton is the seat of Jasper County, Iowa. Jasper and Newton were two lower-ranking soldiers valorized in Parson Weems's popular histories of the American Revolution, and they stand side by side on the maps of counties in several states.

Perhaps the most intensive efforts in naming were those of Greeley County, Kansas, the state's least populous, which rubs its western border. Horace Greeley was a New York newspaper publisher and a founder of the Republican Party in the 1850s. He supported emigration to Kansas by anti-slavery settlers. The centermost town of the new county chose the name Horace in an obvious bid for the seat. Two miles to its east, entrepreneurial town founders countered with the name of the New York newspaper that Horace Greeley had edited, the *Tribune*.

The city of Tribune had originally been named Chappaqua—Greeley's town of residence in New York—and was built north of its site, but the town was literally moved south to adjoin the newly built railroad. (It wasn't the only town to have done so in the American West.) Other Greeley County hamlets with aspirations for greatness included Whitelaw and Reid, named for the New York *Tribune*'s later editor (Whitelaw Reid); Astor, for Jacob Astor, Horace Greeley's well-moneyed nemesis; and Hector, the name of Greeley's dog.<sup>28</sup> All but Horace and Tribune are now extinct.

### **§15. County Name Changes Reflect National Issues**

The names of counties themselves often played a different competitive role. Names of early presidents and other prominent Americans are widespread. They express to potential residents the state's identification with icons of the nation and acceptance of its values. Thirty states have a county named for George Washington, twenty-three for Benjamin Franklin, and seventeen for Lafayette. (California is a curious exception in that none of its fifty-eight counties is so named; an "island called California" indeed.) In most cases, state or territorial legislatures chose the name, not local residents.

Twenty-four American counties are named Lincoln, but those in Georgia, North Carolina, Kentucky, Missouri, and Tennessee are named for Benjamin Lincoln, a hero of the Revolutionary War, not for Abraham Lincoln. Eight counties in the South are named for Robert E. Lee and four for Jefferson Davis. Neither Confederate leader is honored elsewhere.

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<sup>28</sup> <http://kansasghosttowns.blogspot.com/2013/05/go-west-young-man-greeley-county-ghost.html>

The most unusual namings arose in Michigan. The ethnographer and explorer Henry Schoolcraft was asked to name a number of counties in the state. Ten of those he came up with were invented to sound like an Indian name but with a Latin syllable thrown in to make it more pronounceable (Virgil Vogel 1986). Michigan is thus graced with counties such as Allegan, Oscoda, and Tuscola whose names meant nothing to Native Americans or anyone else. Schoolcraft apparently couldn't help himself. He famously discovered the true source of the Mississippi River and named it Lake Itasca. He explained it was derived from adjoining syllables of two Latin words, "*veritas caput*" ("true head").

Changing political winds could alter county names. Senator Thomas Hart Benton, a leading advocate of American territorial expansion, had his name bestowed upon counties in Washington, Oregon, Indiana, Iowa, Minnesota, and his home state of Missouri. (The Bentons in Mississippi and Tennessee were named for different men.) Senator Benton was also popular in the South as an advocate of western expansion, but his popularity there crashed once he abandoned his support for slavery. The counties in Florida and Alabama that had been named for Benton were renamed "Hernando" in Florida and "Calhoun" in Alabama after Senator Benton supported anti-slavery policies.

Counties in the North likewise switched names to disassociate themselves with pro-slavery politicians. The present Wilkin County, Minnesota, started out as Toombs County, but its original namesake, a Senator from Georgia, became a leading Confederate official, and the county's residents asked the Minnesota legislature to change its name in 1862. It took what it assumed was a distinguished loyalist name, that of Andrew Johnson, a Tennessee Senator who continued in service to the Union despite his state's secession.

But in 1865, Johnson became President after Lincoln's assassination. He turned out to be notoriously soft on the former Confederates and an embarrassment to the Minnesota county. It again changed its name, this time to Wilkin, a hero of the Union Army who had died in battle and was thus unlikely to change his views on slavery and disunion (Calvin L. Brown 1922). The seat of Wilkin County, however, is named for John C. Breckinridge, a Kentucky Senator and Vice President under Buchanan, who defected to the Confederacy. Perhaps the county's residents had become weary of the drama of name changes, and Breckinridge remains the name of its seat.

The politics and legacy of slavery have influenced more recent county names, too. King County, Washington, whose seat is Seattle, was named for William R. King, Franklin Pierce's vice-president. Pierce County is just to the south, and both were obvious flattery to the undistinguished men at the top of a distant national government that had to approve statehood.

Seattle is now known for its progressive politics, and in 1986, the King County Council decided to repurpose the name to honor Martin Luther King, Jr. (Advocates for the switch who noted that the original King was offensive because he was a slave owner dismissed as “snarky” a proposal to rename the entire state for Booker T. Washington rather than the slave-holding first President.<sup>29</sup>) But counties can’t just go around renaming themselves. They need the state’s permission, and the Washington state legislature had to validate the renaming when the King County Council sought to use Dr. King’s image on official media in 2005.

### **§16. Constitutional Discipline to Control County Formation**

Return now to the issue of excessive county creation, as exemplified by Indiana’s inclination to subdivide its southernmost county to accommodate the county-seat aspirations of Rising Sun. One might ask why the Indiana legislature (along with those of other states) was so compliant in creating new counties. After all, new counties created additional legislative seats and reduced the influence of existing counties and their representatives and generally added to state’s burden of administration. The answer I found recently was given by Naomi Lamoreaux and John Joseph Wallis (2020). They found that before 1851, the legislature of Indiana was almost entirely occupied with the passage of private and local bills. Legislators largely logrolled their pet projects through, much as Chicago aldermen are reputed to do. There was little thought given to the overall effects of these bills.

The exuberant creation of counties was a problem created by this undisciplined process. Americans wanted institutions that responded to their local needs and interests. If a new county and courthouse would enhance local prosperity, the system was geared to bring it home. Enhancing the property values of people who might vote for you is always a political winner.

Until it wasn’t. In the latter half of the nineteenth century, it became evident that state legislatures were not up to the task of limiting the growth of counties. By 1872, at least half of the states, mainly those outside of New England (which never had much use for counties) and east of the Rockies, adopted state constitutional provisions to limit county proliferation. (The earliest states’ constitutions are found in Franklin B. Hough [1872].)

These county-restraining reforms were not isolated. They were part of a mid-century movement. Lamoreaux and Wallis (2020) found that a series of fiscal crises that stemmed from failed canals and other public projects in Indiana started a constitutional reformation that spread to other states. The leading reforms were constitutional constraints on the legislative process, which banned “local and

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<sup>29</sup> <https://www.historylink.org/File/11261>

special” legislation of the sort that had gotten the states into fiscal trouble (and also produced many new counties). This ban required legislatures to be more disciplined in their law-making process. A state senator’s request to fund a particular canal or create a new county was denied unless there was a general law for funding canals and creating counties that applied to the whole state. The breadth and cost of a general law would give pause to other legislators who might otherwise indulge their esteemed colleague.

A provision in Indiana’s 1851 constitution that was consistent with this reform was a ban on the creation of new counties that would result in land area smaller than 400 square miles for either the new or the old counties from which it was carved. This and related requirements for minimum population and local county elections (requiring countywide majorities, not just voters in the affected area), effectively slowed county establishment to a crawl. Only one of Indiana’s 92 counties was created after the 1851 constitution went into effect. It was Jasper, carved from Newton (named for the aforementioned Revolutionary War heroes), and both were safely above the constitutionally required minimum of 400 square miles. (Indiana had an earlier constraint on county creation that required that no existing county could be reduced below 400 square miles, but it was easily evaded by subsequent boundary adjustments that chewed away at the parent county [Pence and Anderson 1933, p. 21].)

Indiana’s 1851 constitutional reforms inspired similar constraints on county creation throughout the eastern part of the nation (here meaning east of the 100<sup>th</sup> meridian). A minimum size of 400 square miles seemed to be the baseline. According to John Fairlie (1906, p. 58) the 400 square mile minimum was adopted by Ohio (1851); Maryland (1867); Illinois (1870); Pennsylvania (1874); Kentucky (1891); South Carolina (1895). Based on my searches of individual constitutions (mostly in Hough [1872], which is digitized and searchable, and on-line modern state constitutions), the 400 square mile minimum was also adopted by Idaho, Minnesota, Mississippi, Nebraska, Oklahoma, Oregon, and West Virginia. Other states imposed higher limits or multistage limits: Michigan, 576 square miles; Virginia, Alabama, and Arkansas, 600 square miles; Wisconsin, 900 (but allowed local votes for smaller divisions); Tennessee, 275 but leaving no parent county smaller than 400; Missouri, 500; Iowa, 432; Kansas, 432; Texas, 900.

In all, twenty-four states adopted specific land-area minimums. Most of them also required that the counties from which the new county was created could not be reduced below a stated minimum, a requirement often applied to both land area and population. These provisions were not mere parchment barriers. As described above in section 5 the Iowa Supreme Court rejected a proposed county for being too small. The courts of Kansas rejected Garfield county for lacking only about

one square mile of the 432 square mile minimum (*Ives v. Garfield County*, 54 Kan. 372 [1894].) The Kansas case was brought by the sore loser in a county seat contest, and both contesting cities became ghost towns after their defunct county was joined with neighboring Finney County, which rendered both towns off-center and redundant as potential county seats. (Robert DeArment 2006).

In Alabama, the scholars of the Newberry Library found that a too-small county may have allowed a murderer to go free. This gives a possibly real-life example of a hypothetical “perfect crime” that Brian Kalt (2005) cleverly found in Yellowstone National Park. I ordinarily do not like long quotations, but I make an exception in part to honor the Newberry Library’s scholarship that inspired the present work and in part because it exhibits some story-telling that slipped out from their usually businesslike commentary:

Alabama also provides the unique instance of a murder case nullifying a county boundary line change. In 1903 Calhoun County gained a little territory from Cleburne County; legislators voting for the change were unaware that this reduced Cleburne County to less than five hundred square miles, required by the state constitution as the minimum area for a county. In December 1905 William Kline was arrested for murdering John Phillips in the area that had recently been added to Calhoun County, a crime for which he was subsequently found guilty and sentenced to twenty-five years in prison. Kline appealed the case to the Alabama Supreme Court on the grounds that he was tried in the wrong court since the boundary change was illegal. The Supreme Court agreed (*Kline v. The State*, Ala. Reports, 146:1), and declared the boundary change unconstitutional and void and remanded the case to the Circuit Court of Calhoun County. Records indicate that the Calhoun County Sheriff was sent to find Kline and take him to Cleburne County for a new hearing, but the sources are silent regarding the final disposition of the case.<sup>30</sup>

States that did not establish minimum land area requirements nonetheless also moved to retard county proliferation. After the California legislature proved unable to limit county creation, a statewide vote adopted constitutional rules in 1894 (Owen C. Coy 1923). The most important constraint was that a new county had to have the affirmative vote of each county’s entire electorate from which it was carved. No new counties were established after this rule took effect. (Georgia’s limitations on the number of counties rather than on area or concurrent voting were much less effective, as described below in section 21.)

An additional, quite telling constraint in most of these constitutions pertained to county seats. The new county could not have borders that were closer than ten

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<sup>30</sup> [https://publications.newberry.org/ahcbp/documents/AL\\_Commentary.htm](https://publications.newberry.org/ahcbp/documents/AL_Commentary.htm)



miles (to take a typical standard) to any current seat of a neighboring county. Without this constraint, a once centrally placed county seat might find itself at the edge of its remaining county territory. It would be highly vulnerable to a subsequent attempt by another city, now more centrally located than before, to usurp its position. The extension of constitutional protection to existing seats demonstrates again that county seats were not residual details; they were part of the main force of county creation.

### **§17. Location Lessons of County Seat Competition: Survival and Centrality**

The pattern of county seat location can address two modern problems in political geography. One is whether democratic competition results in a wasteful “race to the bottom” that ends up exhausting the benefits of being the winner of the contest, as many modern commentators insist (e.g. Peter Enrich 1996). The other is whether geographic or population centrality matters most.

One aspect of the first question—whether the race was worth it to the winners—has a pretty clear answer. Competition usually came down to two towns with plausible claims for the prize. As mentioned above, the loser almost always lost population relative to the winner in subsequent censuses. In lightly populated areas, the loser often became a ghost town. Whatever costs there were to making the effort, the winners made out much better. (I am mindful of the possibility that winners might have done just fine without the win, but the poorer outcomes for the losers are almost always so stark as to allay my misgivings about selection bias.)

The other aspect of the first question is whether the costs of the competition—the “rent seeking” costs, as economists would put it—could have been avoided by a different process, say having the state dictate the location and rebuff all efforts to change it. As noted above in section 13, local competition could get violent. Even after winners were established, suspicious courthouse fires were not unknown, which may account for the many stone and brick edifices that were built even in places where wood was plentiful.<sup>31</sup> Several states tried to dampen the intra-county competition with rules that forbade courthouse removals for a period of four to ten years after a vote to relocate the seat. Illinois and Texas gave central locations a political bonus by requiring a supermajority of votes to approve a county seat move that was not in the direction of the center point of the county (John Fairlie 1906, p. 73).<sup>32</sup>

A firm state policy of seat location might have been desirable, but there are two suggestions to the contrary. The more obvious is that many, perhaps most states did start with a process of setting up both county boundaries and dictating a county

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<sup>31</sup> A comprehensive national postcard collection of classic courthouses can be found at [courthousehistory.com/](http://courthousehistory.com/), assembled as a hobby by a Maryland minister.

<sup>32</sup> The text of the Texas law is at <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.73.htm>

seat. This often was the final resting place for the courthouse. This was most often the case in the old South, where establishing any commercial center, for which county seats often served, seems to have been difficult.<sup>33</sup>

But more often, things changed; some cities grew and others declined as railroads and other infrastructure projects were built. The state can be informed of this, but many of the costs of inconvenient locations are best known to local residents who experience them. Giving locals the option to change their seats at some cost to themselves (the winner usually had to pay for a new courthouse and relocation costs) could be a better way to measure the net benefits of relocation than a benefit-cost analysis by a state legislative committee.

The second question, about geographic centrality versus population centrality, has a less obvious answer. A meticulous study of the historical relocations of American state capitals indicates that population centrality is more important (Engstrom, Hammond, and Scott 2013). Almost all of the states moved their capitals in the direction of the center of population as their populations increased and residents were redistributed by farm settlement and urban growth into different regions. The few state capitals that never moved—Boston and Salt Lake City, for example—were often at the core of metropolitan areas that became so large that they remained close to the population center of their states despite development elsewhere.

I have looked at enough county boundaries and seat locations, and read numerous instances of county seat wars, both successful and unsuccessful, that I would be surprised if the story for county seats was not the same as for state capitals. If the initial seat is not near the population center, it tends to move in that direction.

To get a less anecdotal read of this, I sampled 100 counties, two from each state. To avoid extremes, one of the counties had the state's mean population (the county closest to the state's population divided by number of counties) and the other had the median land area of the state's counties. I "eyeballed" the hundred counties on Google Earth, which shows county and city boundaries as well as satellite photography.

Counties have fairly regular shapes, so I doubt that a more systematic study (such as the state-capital-relocation authors conducted) would yield different results. In close cases, seats were judged to be at the geographic centers if they were nearer to the center point than any other population concentration. Population concentrations are easily inferred from the satellite images of Google Earth. (The US Census does

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<sup>33</sup> The Hornbook of Virginia History. Cities of Virginia. (December 19, 2016). In Encyclopedia Virginia. [http://www.EncyclopediaVirginia.org/Cities\\_of\\_Virginia](http://www.EncyclopediaVirginia.org/Cities_of_Virginia).

designate both population and geographic centers for counties,<sup>34</sup> but the site is cumbersome, and it is misleading in several instances: Counties that border Lake Michigan have official boundaries that extend to the center of the lake—the state lines—and thus often have geographic centers that are in the water.)

Only about half of the seats in my sample of 100 were geographically central. My first sample of fifty (the mean population) had 28 county seats near their geographic center, and the second sample (median land area) had 25 seats near the center of the county. The seats that are nearer to the edge of the county are almost always explainable by the city being within a population center—often on the shores of a navigable river or lake—that happens not to be near the dry-land geographic center of the county. Other off-center seats are in counties where much of the land area is nearly uninhabited desert or mountainous terrain or where a railroad line hugged the edge of the county. Population centrality seems to prevail over geographic centrality for county seats, as it does for most state capitals.

### **§18. County Seat Removals Support Population Centrality**

Population shifts over the years explain cases where county seats were successfully removed from a central location. I do not have a complete census of them, but the instances I found indicate that when seats are removed, they are almost always in the direction of population centers. For example, the population of Youngstown, Ohio, had by 1870 overtaken and greatly exceeded that of Canfield, the original seat of Mahoning County. Youngstown was at the northern edge of the county, while Canfield sat near its geographic center.

Youngstown had to get authorization from the state legislature to hold a county-wide seat removal election (Joseph Butler 1921). Prominent citizens of Youngstown formed a committee to elect a county representative to the statehouse to sponsor a bill to allow such an election. (Ohio's 1851 constitutional limits on county formation did not constrain seat relocation.) He succeeded, and the county-wide election, hotly contested by Canfield, was successful. Canfield then put up a legal defense, taking its case to the US Supreme Court on the dubious claim that its original location constituted a “contract” with the state, which it finally lost.

The Ohio state legislature, which had authorized the local election, demanded that Youngstown supply at its own expense (not to be borne by county taxpayers at large) the new courthouse and pay for the entire relocation of county offices and records. Youngstown did so and remains the seat of Mahoning County, though its source of prosperity, the steel industry, has declined. Canfield, the former seat, did not become a ghost town—it is in a metropolitan area, not on the Great Plains—but

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<sup>34</sup> Population centers: <https://www.census.gov/geographies/reference-files/time-series/geo/centers-population.html>  
Geographic centers: [https://www2.census.gov/geo/docs/maps-data/data/gazetteer/2019\\_Gazetteer/](https://www2.census.gov/geo/docs/maps-data/data/gazetteer/2019_Gazetteer/)

its population grew only modestly until after World War II, when it became a commuter suburb of Youngstown and other Mahoning Valley employment centers.

A more colorful example was the removal of strategically-named Centerville as the seat of Wayne County, Indiana in 1873.<sup>35</sup> The city of Richmond, which is on the eastern edge of the county, grew faster after it got a railroad line, and it sought to become the county seat. Centerville countered with large fixed capital investments, including a new jail, in the hope of deterring rivals. Richmond was not deterred. In order to win the move under state law, Richmond had to get 55 percent of the countywide vote and build a new courthouse, both of which it did.

Centerville was slow to transfer county records, and when Richmond agents arrived for them and entered the old courthouse, Centerville partisans drove them out with cannon shots. The scars are still visible on the building. But soon the state militia arrived and the records were removed from the midst of these warring Quakers. (I don't know that the participants were Quakers, but both towns had been settled by that pacifist sect.) The jail and some other capital improvements were also eventually removed to the new seat. Centerville declined in population after its loss but did not disappear, and animosity between the towns is said to persist to the present day.

Population centrality can sometimes fail, however. Crown Point, Indiana, is the town nearest the center of Lake County and has long been the county seat. But Lake County's population center is on its northern edges, which border the southern tip of Lake Michigan and the southern suburbs of Chicago. The largest northern county cities are Hammond, Gary, and East Chicago. All are much larger than Crown Point and could outvote it in a county seat election. But the bigger cities cannot agree which of them should gain the county seat, and so the courthouse remains in Crown Point (Stephen Visser 1955, p. 346).

In Kansas, centrally located Gove City—population 80 in 2010—remains the seat of Gove *County* for perhaps the same reason: its larger but off-center competitors are all of similar size and on a rail line, which Gove City lacks. But Gove City also used a clever ploy to keep its courthouse.<sup>36</sup> Its residents successfully campaigned *against* a 1905 proposal to build an elaborate new courthouse within the city. Gove City's residents argued that it would be too large an expense for its small county, whose 2010 population was 2,695, about the same as it was in 1905.

I infer that opposing a new structure was a signal to other county residents that the inconvenience of travelling to Gove City was offset by the overall economy of

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<sup>35</sup> Spahr, Walter Earl. *History of Centerville, Indiana*. Wayne County Historical Society, 1966; abstracted online at Centerville Library site: <https://www.waynet.org/waynet/spotlight/2001/011126-war.htm>

<sup>36</sup> <http://genealogytrails.com/kan/gove/historyofgove1-3.html> pictured.  
<http://courthousehistory.com/gallery/states/kansas/counties/gove>

a modest courthouse. The Gove County Courthouse was a converted hotel and is still in use. Its modesty may account for Gove City's survival as a town. By way of comparison, the adjacent county of Logan, Kansas, removed its seat from centrally located Russell Springs to the larger but noncentral town of Oakley in 1963, and the population of Russell Springs has declined to 24 in 2010, about a quarter of its former size.

### **§19. Two-Seat Counties: Rare and Costly**

An alternative to county seat struggles is offered by those counties that have two county seats. There are thirty-six such counties, more than half of them in Arkansas (10) and Mississippi (10).<sup>37</sup> (Of the sixteen not in Arkansas and Mississippi, five are in New England states, where the county courthouse is not a significant prize. The removal of the Rockingham County courthouse from Exeter, New Hampshire, to a neighboring town in 1997 caused no stir at all.) In the dual-seat counties of Arkansas and Mississippi, two separate cities have fine-looking courthouses and offices for most county functions. But all of those offices and the county records are duplicates. A single sheriff has offices in two cities, as do most other county officers. The dual seats apparently arose when their states divided some counties into two separate judicial districts, perhaps to make it easier for jurors to report. The new districts built courthouses, and the duplicate courthouses eventually housed other county functions besides the judiciary.

I inspected maps showing counties with two seats in the two leading dual-courthouse states, Arkansas and Mississippi. The seats are usually at different sides of the county and sometimes separated by a river or a range of hills that might make travel difficult. Usually, there is no obvious candidate city in a centrally located place.

Difficulty in reaching the courthouse was often the reason for establishing new counties in the nineteenth century. After states established constitutional limits on new county formation, a second-best work-around for excessive travel time to the courthouse might have been to establish a second county seat. But the savings in citizen travel cost comes at the substantial cost of duplication of offices and buildings, which may be why the number of such arrangements (36 in all) is small—about 1.2 percent of all US counties—and shows no sign of increasing.

The persistence of these inefficient dual seats is likely caused by the same forces that motivated county-seat competitions: Losing the seat would be a substantial economic loss to the city. Few state legislators would want to stir up the voters on an issue that was a small gain to many (taxpayers in the county at large) and a large cost to some (the residents of the losing county seat), even though the net benefit

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<sup>37</sup> [https://en.wikipedia.org/wiki/County\\_seat#U.S.\\_counties\\_with\\_more\\_than\\_one\\_county\\_seat](https://en.wikipedia.org/wiki/County_seat#U.S._counties_with_more_than_one_county_seat)

would be substantial. In any case, the idea is unlikely to spread. Unlike county-city consolidations, the dual seat arrangement gets almost no attention from professional societies of public administrators or academic studies. The only article on the topic that I could find is Sansing, Jones, and Bush (2009), which is disapproving of Mississippi's dual-county arrangement.

## **§20. Why Western States Kept Promoting County Formation**

States in the arid and mountainous West—basically those in Mountain and Pacific Time Zones east of the three Pacific Coast States—did not adopt aggressive constitutional measures to limit county proliferation. County formation for these areas was often an economic development strategy. The most notorious case was that of Montana.

After what became known as World War I began in 1914, world prices of grain and many minerals rose rapidly. Montana had excess grain-growing capacity in its eastern half and plentiful minerals in its mountainous western half. To encourage settlement to exploit them, the Montana state legislature removed itself from county formation and allowed local citizens to petition for division of existing counties without further approval of the legislature. This was highly unusual, and entrepreneurs quickly grasped the opportunity.

County-founding facilitators pointed out the local advantages of having a county seat that would generate jobs and shore up property values as well as make travel to the county seat easier. The number of Montana counties increased from 29 in 1911 to 56 by 1925, after which no more have been created.<sup>38</sup> Wheat and mineral prices crashed in the 1920s after wartime demand declined. Many of the new counties teetered on the brink of bankruptcy as property values and tax revenues declined. No county was dissolved, however, perhaps because at the time every county was entitled to elect a state senator.<sup>39</sup>

As was pointed out in section 3 above, a few later twentieth century counties were formed in the West with the apparent goal of facilitating economic development and relieving their residents of long journeys to the courthouses of their previous counties. Cibola, New Mexico (established 1981), La Paz, Arizona (1983) and Daggett, Utah (1919) were the last counties established in their states. As noted earlier, all have encountered fiscal difficulties from sparse populations and declining tax bases.

The lax Western attitude towards new counties continues to be evident in Colorado into the twenty-first century. The city of Broomfield, located between Denver and Boulder, was rapidly expanding in both population and annexed area.

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<sup>38</sup> [https://publications.newberry.org/ahcbp/documents/MT\\_Commentary.htm](https://publications.newberry.org/ahcbp/documents/MT_Commentary.htm)

<sup>39</sup> <https://leg.mt.gov/content/about-the-legislature/2017guidetomontanalegisature.pdf>

Its problem was that it was located at the intersection of four counties. (Cities that overlap two counties are not uncommon, but an overlap of four is close to the national maximum.) This made taxation, voting, and law enforcement complicated, since residents of the same city were in different counties. Local Broomfield police had to deal with courts and sheriffs in four different counties. The city solved this by persuading the state's voters to adopt a constitutional amendment that allowed the city to become its own county in 2001, making it the newest and one of the smallest (33 square miles, less than the size of a township) in the country.<sup>40</sup> (Denver had done something similar a century before and was the smallest county in Colorado by land area until Broomfield.)

Another late-blooming western county was Los Alamos, New Mexico, which became a consolidated city and county in 1947. It is by far the smallest (and most affluent) county in the state, and it required an amendment to the state constitution to establish it. Its special identity was evident in the call letters of the local radio station, KBOM. Los Alamos had been established during World War II specifically as a desert home for the top-secret Manhattan Project, which developed the atomic bomb. The consolidated city-county has kept going as a high-level scientific center ever since.

I cannot resist repeating a Los Alamos story that John Kemeny, a mathematician and late president of Dartmouth, often told. He was assigned to the Manhattan project during World War II and was sent to Santa Fe and told to wait at a corner for a bus to Los Alamos. When the bus failed to arrive, a woman on the street noticed his puzzlement and asked Kemeny where he was going. He said that he could not tell her, to which she replied, "Oh, you must be one of those nice young men working on the atomic bomb!"

Los Alamos also had the distinction of attempting to get rid of its sheriff's office, a defining feature of all counties. An amendment to its charter allowed its locally appointed police force to do all the services that a sheriff's department does.<sup>41</sup> Sheriffs are not locally appointed; as constitutional officers, they are elected separately from the governing body. The incumbent sheriff of Los Alamos sued to retain his position in 2016, and the New Mexico courts ruled in his favor. However, the court did not say what his role had to be in a county where all the sheriff's law-enforcement duties had legally been transferred to the county police force. That transfer was upheld. The city found a job for him besides occasionally

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<sup>40</sup> <https://coloradoencyclopedia.org/article/city-and-county-broomfield>

<sup>41</sup> Daniel J. Chacón. Los Alamos sheriff fights for office in showdown with county. *The New Mexican*, Oct 15, 2016. [https://www.santafenewmexican.com/news/local\\_news/los-alamos-sheriff-fights-for-office-in-showdown-with-county/article\\_0ee96edb-be70-5453-b5da-5aeec9ffd4f9.html](https://www.santafenewmexican.com/news/local_news/los-alamos-sheriff-fights-for-office-in-showdown-with-county/article_0ee96edb-be70-5453-b5da-5aeec9ffd4f9.html)

serving noncriminal writs: keeping track of the county's list of sex offenders, an insignificant job for which the sheriff is paid an insignificant salary. Nonetheless, in the 2018 election, four candidates ran for the job, one of them a former atomic physicist.<sup>42</sup>

## **§21. The County is Primary in the South**

The counties of the South are at least as important for local governance as those of the West but for quite different reasons. The traditional reason that almost all accounts offer is that it started with Virginia and spread throughout the old South (John Fairlie 1906). Counties were the original form of government, their legal forms imported from England. Cities and towns were scarce because the economy was based on large-scale plantation agriculture. The few Virginia cities that developed had to be encouraged to facilitate agricultural exports and imports of consumer and capital goods needed on the plantation. Unlike Yankee townships, which were primary units of self-government, the Southern county's magisterial districts, similar in size to townships, were merely subsidiary units of the county to administer local courts.

An alternative account emphasizes racial tensions rather than English heritage. At the close of the Civil War, part of the Union Reconstruction effort was to replace the magisterial district with the township and establish New England style self-government in the South. Instead of merely taking orders from the county judges (who served both judicial and executive functions and were beholden to state officials), the township would function more independently with a popularly elected local government (Edgar Knight 1913).

It did not take. As soon as white Southerners could rewrite their constitutions without Yankee or African-American voter influence, the township was discarded and the top-down county structure was reinstated (Fairlie 1906, p. 49). The reason was that local self-government might have allowed newly minted black citizens to vote, and they wanted their share of government's services. To deny blacks their due, the re-admitted state governments disabled the townships and returned to top-down county government.

Some historians note that people in the South came from particular parts of England, which were different from those of New England and the Middle Atlantic colonies (Fischer and Kelly 2000). This is reflected in speechways and folk customs that persist to this day, even among people unrelated to the original settlers. But all English settlers, North and South, emigrated from a regime in which monarchial authority was channeled to local areas via the county.

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<sup>42</sup> Edmundo Carrillo. 4 vie for contentious post as county sheriff. Albuquerque Journal, Friday, October 26th, 2018. <https://www.abqjournal.com/1237655/4-vie-for-contentious-post-as-county-sheriff.html>



The difference was what happened after original counties were laid out. In the North, towns and townships soon blanketed the settled areas. Farms were relatively small and close together. Northerners' wealth was tied up in land, and they founded towns and used town governments to increase land values (John F. Martin 1991; John Faragher 1986). The Northern county was undermined from within, so much so that Tocqueville (1835) could declare (with some exaggeration) that in America "the township was organized before the county, the county before the State, the State before the Union." One illustration of the county's inferiority to the town is that county boundaries in New England were adjusted when towns merged or traded territory. County followed town, not the other way around. (And the US Census uses town boundaries to define official metropolitan areas in New England; elsewhere only counties are so used.)

In the South, plantations were large and spread far apart. Their owners used slaves, which were the property that the ruling elite was more interested in than land values (Gavin Wright 2006). Plantations were self-sufficient, and planters saw little need to attract free labor. For the planter elite, self-government more often took the form of carving out a new county. Counties per state continued to increase in the South long after county formation in the North petered out.

The differences were not small. In the six New England states, and in New York, Pennsylvania, and New Jersey, only 10 new counties were formed after 1850. (Three were in Maine and three were the product of the formation of Greater New York in 1898.) In nine states of the old South (excluding border states Delaware and Maryland but including West Virginia) there were 249 counties formed after 1850. The disparity of 249 new counties in the South to 10 in the North is striking, even allowing for the later nineteenth-century admission dates of four of the southern states. (The latest admission was Florida in 1845, and it accounted for 39 of the South's 249 new counties since 1850.)

Georgia has 159 counties, more than any other state except vastly larger Texas. Georgia's nineteenth-century legislature had trouble restraining itself in creating counties. While other states adopted constitutional limits on creating small counties, Georgia relied on the political process to promote moderation. Not very successfully. Its constitution of 1868 required a two-thirds vote of the legislature to create a new county. In "A Brief History of Georgia Counties," Edwin Jackson (2002) describes county formation as rapid and unconstrained until 1877, when a new constitution froze the number at 137.

The freeze did not last in Georgia's hothouse politics, where constitutions were mere speed bumps in slowing down county formation. The state adopted a Constitutional amendment in 1904 that allowed for eight more counties, to 145. But then the Georgia legislature simply started amending the state constitution for

individual counties, and 16 more were created by 1924 to get 161. Two were merged with Fulton in the Depression, so the total is now 159.

Georgia's 1945 Constitution put conditions on county formation that stopped the creation of new ones but did allow for consolidations of city and county, which did not change the total number of counties. Later constitutions, of which Georgia seems to have had many, relaxed county formation standards, but none were established. (Kentucky, Tennessee, and North Carolina rival Georgia for county proliferation, but most of their tiny counties were created before the constitutional movement to restrain their creation took hold, and their legislatures mostly held back after that point.)

Even after desegregation in the 1960s, the county has persisted as the paramount unit of local government in the South. Its largest cities have achieved a semblance of self-governance (and added suburban population) by merging with the counties that contain them. Ten of the South's fifteen largest municipalities are combined city-counties, though not all are as unified as that name implies.

The ten are, in population rank order, Jacksonville (Duval County), Charlotte (Mecklenburg), Washington (DC), Nashville (Davidson), Baltimore (independent city), Louisville (Jefferson), Virginia Beach (independent city), Miami (Dade), New Orleans (Orleans), and Lexington (Fayette County, Kentucky). (Several of those named contain holdout municipalities such as Jacksonville Beach, Florida, in Duval County, and Anchorage, Kentucky, in Jefferson County.) And the roster of smaller city-county combinations is likewise over-represented in the South, with Georgia heading the list.<sup>43</sup>

Washington DC is difficult to classify, as it was created by the US Constitution and shed its county subdivisions (one in Maryland and one in Virginia) long ago. It is not a state and has no Senators or voting Representatives, though since 1961 its residents do vote for three Presidential electors as a result of the Twenty-third Amendment. A proposal to reattach it to Maryland, from which its present limits were carved, as Frederick Douglas County would have the effect of giving residents of the District the right to vote for two Senators in Maryland (along with all other Maryland citizens) and a voting member of the House of Representatives.<sup>44</sup> This would avoid creating a fifty-first state that would be one-twentieth the area of Rhode Island. The District's elected officials, however, are adamantly opposed to anything but full statehood. In any case, Maryland has not planned a welcome-home party like that of Virginia, which in 1847 accepted the "retrocession" of the part of the District south of the Potomac River as Alexandria County (now Arlington County and the city of Alexandria.)

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<sup>43</sup> <https://www.nlc.org/resource/cities-101-consolidations/>

<sup>44</sup> <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0330-douglass-county-20180328-story.html>

## **§22. Racial Politics Shaped Southern County School Districts**

What accounts for this difference in popular demand for counties in the South that developed late in the nineteenth century? Around that time, demand for more systematic public education increased everywhere (Goldin and Katz 2008). The reason was that a high school education was beginning to have a high payoff. In the South as well as the North, local governments were eager to form public school districts to enable children to go to high school (William Link 1992). In the North, cities and towns collected their one-room school districts into town-wide districts to create a more systematic education. Successful schools, then as now, attracted new residents and raised local property values in the district. Towns could thus capitalize on the net benefits of schools; even property owners without children could benefit.

Racial segregation and political subjugation of blacks made the county the main unit for school districts in the South. To see why this was so, it must first be noted that blacks and whites lived in close proximity to one another in the South both before and after the Civil War and emancipation. The separate urban ghetto was the product of the Great Migration of blacks to the North (and to Southern cities) in the twentieth century.

Whites in the rural South had no less desire for local government, but they did not want to include blacks in local government or offer more than minimal access to local services or schools (Link 1992; Schragger and Retzliff 2021). Attempts to disfranchise blacks were only partly successful; the Fifteenth Amendment forestalled explicit laws, and the subterfuges such as the poll tax ended up disfranchising many poor whites (Robert Margo 1990).

In the post-Civil War era Union occupiers attempted to set up local schools along the lines of Northern townships (Daniel Farbman 2017). This system was ditched (along with Yankee-style townships) once Southern whites resumed control of their state governments in the later nineteenth century. But schools still had to be provided for both blacks and whites, albeit in separate campuses. Southern county officials—all white, of course—required racially segregated schools and routinely diverted education funds distributed by the state to white schools (Louis Harlan 1958, p. 19). Whites in a county with disproportionate numbers of black schools enjoyed better funded education because of the larger amounts diverted by white county officials.

By the 1930s and 1940s, Southern states began to set up age-graded elementary and high schools for blacks as well as whites in an effort to appear at least nominally equal under the “separate but equal” doctrine that the US Supreme Court had approved under *Plessey v. Ferguson*, 163 U.S. 537 (1896) (Donohue,

Heckman, and Todd 2002). The two systems were separate but costly. Black and white families in the rural South lived in close proximity to one another. Where a hypothetical all white or all black county might have one high school, a segregated county of the same population would require two schools along with separate teaching and support staff (Horace Mann Bond 1934).

Because of the great expense of redundant systems, the county became the logical unit for a school district. This by itself discouraged subcounty local government. I have argued in *Making the Grade* (2009) that local schools are a major source of local political cohesion beyond the governance of schools themselves. Parents of school children get to know other parents in the locality, and this “social capital” translates into the ability to organize for local political action. Segregated county-wide schools discourage this both because they are segregated and because county governments are relatively remote from neighborhoods. In many cases, the county school board was appointed by state officials or, if not, by county “judges” who held much of the executive authority.<sup>45</sup> It is almost needless to say that none of those exercising control were black.

In sum, the county government remained the most important unit of local government in the South after the Civil War because of whites’ fear of local influence by blacks. Southern county numbers continued to expand long after Northern states’ counties had come to rest because in the North, the town, township, and city were more attractive vessels for local self-government and public schools.

### **§23. Virginia’s “Independent Cities” Are Undersized Counties**

In my previous calculation of the South’s greater enthusiasm for forming new counties, I glossed over one of the more puzzling phenomena of county formation, the “independent city.” They are almost entirely a product of Virginia, where 38 such cities have formed since 1902, when they were officially authorized by a new state constitution. (Three have since surrendered the status and remerged with the counties from which they were extracted.) A few others had by tradition operated as such before 1902, but the constitution that year opened the gate to many others. The independent city combines within its borders both the functions of a county,

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<sup>45</sup> Elected or Appointed School Boards: Is One More Accountable than the Other? Catherine L. Staples, George S. Lowry [no date] <http://webapps.roanoke.edu/businessweb/SEINFORMS%202008%20-%20Proceedings/proc/p080526004.pdf>; <http://www.wboc.com/story/4717598/school-boards-with-appointed-members-starting-to-disappear-in-maryland>; <https://thenerve.org/state-lawmakers-have-strong-grip-on-local-schools-in-two-s-c-counties/>; Georgia, Maryland, North Carolina, South Carolina, Tennessee, and Virginia provide for the appointment of all local school boards cite: Hall, Morrill M., Provisions Governing Membership on Local Boards of Education,” Washington DC: US. GPO, 1957. US Department of Health. Education and Welfare, Office of Education., Bulletin No. 13, 1957, p. 14.

particularly a court system, and the government and departments of a city. (My main source for this and what follows is Chester Bain [1967].<sup>46</sup>)

One important advantage of this for Virginia's cities is that they get to have their own independent school districts. School finance and school governance in Virginia, as in other Southern states, has always been centralized at the state level. County control of schools was not a big issue when Virginia was largely rural and one-room school houses were the rule. But after 1900 or so, age-graded elementary and high schools became regarded as a necessary local service, at least in urban areas. With county governance, though, it was difficult to convince rural representatives of the needs of urban areas.

Separating entirely from the rest of the county by becoming an independent city enabled the urban district to go its own way and establish better schools (Bain 1967, p. 46). This was also one of the reasons for the rapid creation of New Jersey's boroughs in the late nineteenth century, according to John Snyder (1969). New Jersey's new urban boroughs separated from the rural parts of their townships in order to provide better schools (and other urban-specific services such as sidewalks and sewers) without the resistance of rural taxpayers.

Numerous other counties in the US have merged with their city in what are called consolidated city-counties, and they are run very much like Virginia's independent cities. (As previously described in section 21, such consolidations are most common in the South.) Virginia's are different in several respects. One is that Virginia's independent cities are authorized by the state's 1902 constitution and have the option (not the requirement) to become independent when they reach certain (modest) population thresholds. (A higher threshold enables it to have a court of more general jurisdiction.) No special act of the legislature is required, unlike city-county consolidations in most other states.

The second difference is that most of Virginia's independent cities are subdivisions of existing counties, and the remainder of the county has no say when it loses territory to the city. It also loses tax base, unlike city-county consolidations outside of Virginia, which do not involve subdivision of the existing county's boundaries. Resident of "holdout" cities in consolidated counties elsewhere still pay county taxes. The big city, such as Indianapolis or Kansas City (KS, not MO) takes on the existing county's boundaries (in the examples, Marion County, Indiana, and Wyandotte County, Kansas) and governs the unincorporated area and that of other cities that consent to it. A few Virginia independent cities (Chesapeake, Newport, and three others in the southeast) now actually occupy the

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<sup>46</sup> More recent: [https://vig.coopercenter.org/sites/vig/files/Virginia\\_News\\_Letter\\_2012\\_Vol.\\_88\\_No\\_1.pdf](https://vig.coopercenter.org/sites/vig/files/Virginia_News_Letter_2012_Vol._88_No_1.pdf)

entire territory of their former county and so are geographically indistinguishable from city-county consolidations elsewhere.

Once they are established, Virginia's independent cities can annex additional territory from adjacent counties. The extant county has no say in the city's subsequent annexations of county territory. Annexations are not done by the city, though. A state judge is appointed to make the determination of what areas are to be annexed and how public assets are divided. (The Census must keep track of the changing boundaries of Virginia's independent cities, and one can imagine the frustration the changes caused for Census statisticians and their gratitude that annexations have mostly stopped.<sup>47</sup>)

In terms of their political and administrative functions, Virginia's independent cities look like many consolidated city-counties in other states. They have a mayor and council (or sometimes a council and city manager) like regular cities. They continue to have the independently-elected county officers that are mandated by the state's constitution. They have their own court system, recorders of deeds, coroners, and sheriffs. As noted earlier, many of the largest Southern cities have consolidated with their surrounding county.

Both city-county consolidations and independent cities can be a little awkward for city management. The sheriff who did general law enforcement in the part of the county that previously was not within a city now has his or her duties limited. The sheriffs may end up just managing court security and the county jail instead of general law enforcement. The main awkwardness comes from the city council's inability to fire the sheriff, who is elected by voters of the county or, in the case of Virginia, the independent city. The Virginia city's mayor and council can direct and discipline a police chief that they have hired, but they cannot do anything to the sheriff. Most other state-mandated county offices, such as recorders of deeds, do not have as much potential for conflict, but they too are insulated from city council and mayoral control.

The final major distinguishing characteristic of Virginia's independent cities is the official insistence that they are not counties. This denial is the fabric of the emperor's new clothes. The independent cities' boundaries have all of the offices of a county. Once formed, Virginia cities look and function just like the frankly-named consolidated city-counties in the rest of the country except for the name. Walks, flies, and quacks like a duck...but it's not a duck?

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<sup>47</sup> The Newberry Library's discussion of Virginia describes the problems of tracking the boundaries of independent cities and notes that even their assiduous scholars have been frustrated by the process.  
[https://publications.newberry.org/ahcbp/documents/VA\\_Commentary.htm#Commentary](https://publications.newberry.org/ahcbp/documents/VA_Commentary.htm#Commentary)

Why the fiction? One cannot be sure (Chester Bain [1967], the major authority on independent cities, came to no definitive conclusion), but my strong suspicion, not mentioned by Bain, points to the state's 1871 constitution. Like many others of its time (described above), the new constitution sought to limit county proliferation by requiring that no new county could be less than 600 square miles, among other limitations. And after that time, no new counties appeared in Virginia. But three decades later, the Virginia constitution of 1902, which did not change the 600 square mile minimum, authorized independent cities that every Virginia official insists are not really counties.

The problem that this charade solved is that the new "independent cities" would have been too small if they were called counties. None of those hived off from an existing county came close to meeting the constitutional minimum of 600 square miles. (Some of the independent cities that eventually swallowed entire counties, such as Virginia Beach and Suffolk, might be said to have inherited the grandfathered status of the former counties, the largest of which, Suffolk, is only 400 square miles.) The smallest, Falls Church, is two square miles. If a Virginia official admitted that these cities were really counties (the US Census counts them as such), they would obviously be unconstitutional, and all of their decisions, taxes, and regulations would be called into question.

Virginia has by far the most independent cities (35), but there are three others. Baltimore, Maryland, is an independent city set off in 1851 from Baltimore County (with two expansions later on). The independent city of St. Louis, Missouri, was carved from St. Louis County in 1876. Both of these cities would be the smallest county in their states if they were called counties. Under that designation, they would also violate their state's constitutions, since they would be too small in land area, just like Virginia's cities. The independent city of Carson City, Nevada, would also be the smallest county in the state if it were frankly called a county (it simply coalesced around and extinguished Ormsby County), but I could locate no state constitutional minimum for county land area in Nevada or any other explanation for Carson City's unique status. Except for its name change, it seems indistinguishable from other city-county consolidations. Some things that happen in Nevada just stay in Nevada.

Why hasn't Virginia's ploy been copied in the rest of the South, where county government is also the major vehicle of local government? No obvious answers appear here. Bain points to the colonial tradition of independent cities in Virginia, a tradition apparently absent or less robust elsewhere. And it is partly refuted by the absence of independent cities in West Virginia (as Bain says), which continued most of its parent state's laws, except for those relating to slavery, when it was set off as a result of the Civil War.

The clue to Virginia's uniqueness might be that other Southern states were willing to give way somewhat on local demands for school districts, which otherwise follow county boundaries. (Virginia has no school districts that do not follow county boundaries or those of "independent cities.") This is at least suggested by the several central-city districts and a few rural districts that are evident today in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, and Mississippi. But the county is still the exclusive school district in Maryland, Florida, and Louisiana. (West Virginia had subcounty, local school districts until a major fiscal crisis during the Great Depression, which led to county-only school districts.)

It may also be relevant that formation of Virginia's independent cities halted around 1970. Three formerly independent cities have actually reverted to "town" status and rejoined their parent county. One problem with the independent city was that it could annex contiguous suburban property as it was developed, without the consent of the county. In five instances, the entire county was swallowed up by the city.

This sounds like an urban planner's dream—tax base could not escape to the suburbs—but it proved to be a nightmare for the finances of the county, which lost the same tax base. In this respect, Virginia's independent cities are similar to Britain's experiment with "county boroughs," and counties in the British version complained of the same problem of losing tax base to the urban borough (J.A. Chandler 2007, chap.9). County boroughs in Britain have been abolished and have been succeeded by a system of "metropolitan districts" to provide county services in urban areas.<sup>48</sup>

In response to county concerns, Virginia's legislature placed a moratorium on independent city annexations in 1979 (Robert Spicer 1982). It has been continued several times and is still in effect in 2021. It seems possible that one of the important reasons for creation of independent cities—having an independent school district—has withered away as formerly rural counties have developed better-quality, suburban-style school systems. Indeed, at least one county, Albemarle, pays the independent city of Charlottesville not to annex its territory in order to preserve its suburban school system (Clayton Gillette 2001).

Virginia's systematic attempt to create cities that still operate as counties is unique but also a symptom of the South's problem with local government. Modern Southerners seem to want local governments that they elect without the overburden of county obligations, but the tradition of state control of local affairs has not gone

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<sup>48</sup> See [https://en.wikipedia.org/wiki/County\\_borough](https://en.wikipedia.org/wiki/County_borough).



away. Perhaps sometime the “independent cities” can become truly independent of the county-based governance system that they serve.

#### **§24. Conclusion: Reapportionment and the Persistence of Counties**

As discussed in section 10 above, counties formed the basis for representation in most state legislatures. One of the reasons to form a county was to get local representation. In many states, each county could elect its own representative or state senator. In some others, low-population counties were grouped to elect a representative. But in almost all cases, county lines were respected. The county was the unsplitable atom of state legislatures.

As also previously noted, urbanization and rural depopulation made representation on this basis inconsistent with the organic acts and most early state constitutions, which expressed fealty to proportional representation. As counties increased in number, mostly in rural areas, more populous areas steadily lost their influence in state legislatures. Everyone recognized this problem, but politically entrenched legislators proved unwilling to surrender their electoral advantages (Arthur Goldberg 1962).

The US Supreme Court finally cut through the political ice jam with a series of decisions that now come under the rubric of “one person, one vote.” The two decisions that affected counties most were *Reynolds v. Sims*, 377 U.S. 533 (1964) and *Avery v. Midland County*, 390 U.S. 474 (1968). *Reynolds* required that state legislatures had to be elected from districts of approximately equal population. Small counties, or even groups of small counties, could no longer be guaranteed to have their own representative or state senator. *Avery* required that general purpose municipalities like counties and cities also had to be elected according to the same principle.

The justification of these remarkable decisions, which overturned many years of state government practice, is masterfully discussed by John Hart Ely (1980). I would only add that acceptance of these decisions was enhanced by the fact that the Court was ordering states to do what most of their original (and often current) constitutions had demanded. Far from inventing new rights, the reapportionment decision in *Reynolds* was insisting that states live up to their own ideals.

The decisions had a measurable impact. Urban counties got significantly more resources from the state as a result of loss of rural over-representation due to *Reynolds* (Ansolabehere, Gerber, and Snyder 2002). The downside of *Reynolds* appears to be that breaching county boundaries to create numerically equal districts greatly facilitates gerrymandering (Gordon Baker 1986; Ashira Ostrow 2016). *Avery* is not as widely admired in legal circles because of its unclear justification—why can’t properly apportioned state legislatures tailor voting rules for their state subdivisions?—and its exceptions for single purpose districts, in which property

ownership can still be the basis for voting (Robert Ellickson 1982; Richard Briffault 1993).

A remarkable aspect of these revolutionary decisions, however, is that they seem to have had zero effect on the geographic structure of counties, the chief focus of this essay. One might have expected that a legislature now dominated by urban interests would want to reconfigure counties in many states. As demonstrated here, their structure is largely the product of rural demands. An urban-dominated legislature might have wanted to merge the inefficiently small rural counties and perhaps reconfigure urban counties to form the basis of metropolitan governments. The latter could have involved something on the order of New York City's amalgamation of counties into its present form in 1898. Or it could have subdivided giant counties like Los Angeles and San Bernardino into rural and urban parts.

None of these scenarios took place. The stasis of urban county boundaries, which was almost complete in the 1920s, was not at all disturbed by either *Reynolds* or *Avery* in the 1960s or any decade thereafter. Perhaps even more surprising, counties have retained their traditional status in political geography. Political parties have county chairmen and chairwomen. Counties organize and supervise elections. Both state and national results are reported at the county level. Counties appear on modern media maps as “red” and “blue” subdivisions of states, a display that misleads about total votes (the mass of “red” counties have many fewer voters per square mile) but gives an accurate description of the divisions of American society: American regional politics are less about East, West, and South than about rural—which is what most counties are—versus urban.

The comparatively unchanging landscape of counties has its virtues. Their steady borders make them the ideal geography for statistical, scientific, and historical studies. US Census geography is founded on the idea of nesting data within counties. Metropolitan areas are defined on county boundaries (outside of New England), which makes it easier to plot urban trends over time.

The state and national response to the Covid-19 pandemic was reported and directed along county lines. That nearly every county has a functioning health department with a steady history of charting disease made it easier to track the pandemic and administer preventive measures. The geographic variety within states was much easier to detect, and accountability for success and failures can be assigned to people who work within well-established structures like counties. Americans count on counties, the steadiest of local governments.

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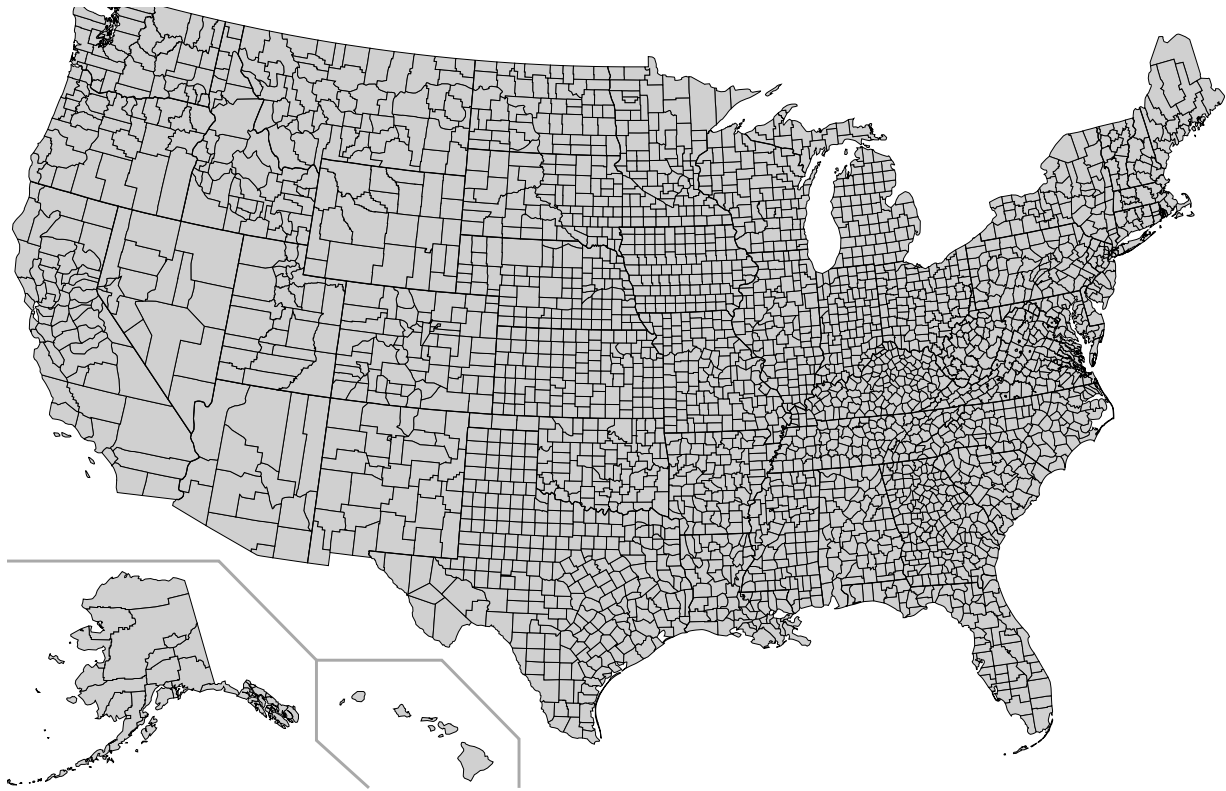
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**Figure 1: Outline of US County Boundaries, 2010**





**Figure 2**

Night Satellite Photo of North America, 2012 (Credit: NASA Earth Observatory/NOAA NGDC)



**Table 1**  
 Number of Counties Created after 1850, 1900 and 1920,  
 in Order of States by Year of Admission to the Union  
 (Includes Virginia's Independent Cities\*)

<b>admit year</b>	<b>state</b>	<b>#2010</b>	<b># 1900</b>	<b># 1850</b>	<b>Δ1850- 1900</b>	<b>Δ1900- 2010</b>	<b>Δ1920- 2010</b>
1787	<b>PA</b>	67	67	64	3	0	0
1787	<b>NJ</b>	21	21	20	1	0	0
1787	<b>DE</b>	3	3	3	0	0	0
1788	<b>NH</b>	10	10	10	0	0	0
1788	<b>MA</b>	14	10	14	0	0	0
1788	<b>CT</b>	8	8	8	0	0	0
1788	<b>NY</b>	62	61	59	2	1	0
1788	<b>MD</b>	24	24	20	4	0	0
1788	<b>VA</b>	133	95	90	5	38*	(17*)
1788	<b>SC</b>	46	40	30	10	6	0
1788	<b>GA</b>	159	135	94	41	24	6
1789	<b>NC</b>	100	97	80	17	3	0
1790	<b>RI</b>	5	5	5	0	0	0
1791	<b>VT</b>	14	10	14	0	0	0
1792	<b>KY</b>	120	119	100	19	1	0
1796	<b>TN</b>	95	95	80	15	0	0
1803	<b>OH</b>	88	88	87	1	0	0
1812	<b>LA</b>	64	59	46	13	5	0
1816	<b>IN</b>	92	92	91	1	0	0
1817	<b>MS</b>	82	75	59	16	7	0
1818	<b>IL</b>	102	102	99	3	0	0
1819	<b>AL</b>	67	66	52	14	1	0
1820	<b>ME</b>	16	16	13	3	0	0
1821	<b>MO</b>	115	115	99	16	0	0
1836	<b>AR</b>	75	75	53	22	0	0

1837	<b>MI</b>	83	83	70	13	0	0
1845	<b>FL</b>	67	45	28	17	22	13
1845	<b>TX</b>	254	243	82	161	11	1
1846	<b>IA</b>	99	99	61	38	0	0
1848	<b>WI</b>	72	70	31	39	2	1
1850	<b>CA</b>	58	57	27	30	1	0
1858	<b>MN</b>	87	82	6	76	5	1
1859	<b>OR</b>	36	33	8	25	3	0
1861	<b>KS</b>	105	105	0	105	0	0
1863	<b>WV</b>	55	55	42	13	0	0
1864	<b>NV</b>	17	16	0	16	1	1
1867	<b>NE</b>	93	91	0	91	2	0
1876	<b>CO</b>	64	57	0	57	7	1
1889	<b>ND</b>	53	46	0	46	7	0
1889	<b>SD</b>	66	56	0	56	10	0
1889	<b>MT</b>	56	25	0	25	31	6
1889	<b>WA</b>	39	36	8	28	3	0
1890	<b>WY</b>	23	13	0	13	10	2
1890	<b>ID</b>	44	21	0	21	23	0
1896	<b>UT</b>	29	27	7	20	2	0
1907	<b>OK</b>	77	21	0	21	56	0
1912	<b>NM</b>	33	20	0	20	13	5
1912	<b>AZ</b>	15	13	0	13	2	1
1959	<b>AK</b>	19	0	0	0	19	19
1959	<b>HI</b>	5	0	0	0	5	0
	<b>US</b>	3131	2802	1660	1150	321	57**

<b>admit</b>	<b>#counties</b>	<b>#1900</b>	<b>#1850</b>	<b>Δ1850-</b>	<b>Δ1900-</b>	<b>Δ1920-</b>
<b>year</b>				<b>1900</b>	<b>2010</b>	<b>2010</b>

\*\* Last column total does not include independent cities of Virginia.

**Table 2**  
 Land Area of States' Median County and Mean County Area  
 by Admission Date, Separated into East and West of 100<sup>th</sup> Meridian

<b>admit year</b>	<b>States EAST of 100th meridian</b>	<b>median county's square miles</b>	<b>mean county square miles</b>	<b>#counties in 2010</b>
1787	PENNSYLVANIA	668	677	67
1787	NEW JERSEY	350	373	21
1787	DELAWARE	649	686	3
1788	NEW HAMPSHIRE	895	930	10
1788	MASSACHUSETTS	557	590	14
1788	CONNECTICUT	605	626	8
1788	NEW YORK	760	800	62
1788	MARYLAND	404	441	24
1788	VIRGINIA w/ ind cities	297	307	133
1788	SOUTH CAROLINA	653	675	46
1788	GEORGIA	362	370	159
1789	NORTH CAROLINA	486	526	100
1790	RHODE ISLAND	207	243	5
1791	VERMONT	658	686	14
1792	KENTUCKY	329	337	120
1796	TENNESSEE	434	445	95
1803	OHIO	464	468	88
1812	LOUISIANA	675	758	64
1816	INDIANA	389	394	92
1817	MISSISSIPPI	572	582	82
1818	ILLINOIS	544	553	102
1819	ALABAMA	756	770	67
1820	MAINE	1928	2076	16
1821	MISSOURI	598	606	115
1836	ARKANSAS	694	708	75
1837	MICHIGAN	681	701	83
1845	FLORIDA	800	874	67
1846	IOWA	564	569	99
1848	WISCONSIN	752	780	72
1858	MINNESOTA	915	966	87
1863	WEST VIRGINIA	437	440	55

<b>admit year</b>	<b>States on or WEST of 100th meridian</b>	<b>median county's square miles</b>	<b>mean county square miles</b>	<b>#counties in 2010</b>
1845	TEXAS	1028	1053	254
1850	CALIFORNIA	2686	2736	58
1859	OREGON	2666	2694	36
1861	KANSAS	779	783	105
1864	NEVADA	6458	6502	17
1867	NEBRASKA	826	830	93
1876	COLORADO	1619	1629	64
1889	NORTH DAKOTA	1302	1333	53
1889	SOUTH DAKOTA	1149	1167	66
1889	MONTANA	2599	2627	56
1889	WASHINGTON	1704	1749	39
1890	WYOMING	4221	4257	23
1890	IDAHO	1878	1899	44
1896	UTAH	2833	2928	29
1907	OKLAHOMA	891	908	77
1912	NEW MEXICO	3676	3687	33
1912	ARIZONA	7573	7594	15
1959	ALASKA	30034	31040	19
1959	HAWAII	1284	1290	5