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Compilation: the doctrine of preemption
By Katherine Watt

Jon C. Teaford, *The Municipal Revolution in America: Origins of Modern Urban Government, 1650-1825* at 37 (1975):

> "In 1819 in *Dartmouth College v. Woodward*, the U.S. Supreme Court introduced a distinction between the rights of a public corporation and a private one. The U.S. Constitution's contract clause did not protect the political powers granted in the charter of a public corporation such as a municipality.
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> State legislatures could, therefore, unilaterally amend or revoke municipal charters and strip a city of authority without the municipality's consent. But the charter of a private corporation, such as a business enterprise or a privately endowed college, was an inviolate grant of property rights guaranteed by the nation's Constitution.
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> During the late nineteenth century, American courts reinforced the subordination of municipal corporations to state legislative authority when they embraced Dillon's Rule.
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> In his standard treatise on the law of municipal corporations (1872), Judge John F. Dillon held that municipal corporations could exercise only those powers expressly granted by the state or necessarily incident or indispensible to those express powers. The municipal corporation was a creature of the state, and most courts interpreted Dillon's Rule to mean that city governments only possessed those powers specified by the state.
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> Although the distinguished Michigan jurist Thomas M. Cooley postulated an inherent right of local self-government that limited the state's control over the municipality, American courts generally rejected this doctrine. Agreeing with Dillon, the late-nineteenth-century judiciary held that the words of the municipal charter defined municipal authority, and absent any authorization by the state, local governments had no right to act."

Key quotes:

> In 1868, Judge John Forrest Dillon wrote: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control."
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> Thomas Cooley, a Michigan Supreme Court Judge, believed in an inherent human right to local self-determination, in line with the revolutionary ideals of the Declaration of Independence, writing in 1871: "Local government is a matter of absolute right; and the state cannot take it away."

Watt v. North Plainfield Borough Clerk, North Plainfield Borough Attorney, Superior Court of New Jersey, SOM-L-1853-07, *pro se* brief in opposition to motion to dismiss at pp. 21-22 (2007):

> "…A cascade of consequences followed from the Dartmouth decision. State legislatures defined charters between the State and private corporations as contracts between equals, but defined charters between the State and municipal corporations as non-contracts, between a superior (the State) and an inferior (the municipality, as an administrator working on the State's behalf).
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> The legal reasoning employed to further this sleight of hand hinged on defining citizens of municipalities, not as individual incorporators competent to enter into contracts as equal parties, but as tenants of the municipal corporation with no such legal capacity.
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> Corporate officers in private corporations, however, were and are legally recognized as competent parties able to enter into contracts.
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> The result: private corporations became and continue to be equal partners with State governing bodies, while municipalities and their citizens became, and continue to be, subordinate to both the State and the private corporations.
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> Plaintiff also notes that, although both municipal and private, for-profit corporations are chartered by the state Legislatures, only private, for-profit corporations have been construed as "persons" by judicial precedent, for the purposes of civil rights enforcement.
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> Municipal corporations continue to be legal non-persons afforded no civil rights protections under U.S.C. 42 §1983. *Monroe v. Pape*, 365 U.S. 167 (1981); *Kenosha v. Bruno*, 412 U.S. 507 (1973).
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> As the legal ramifications of the Dartmouth case have played out since 1819, private corporations and business lobbying groups have used their role as equals to become quasi-governing bodies, drafting and submitting preemptive bills to State legislatures to regulate – in the private interest, not the public interest – questions of common public concern from real estate and banking to energy services and agriculture.

Once in the state legislature, these bills are adopted as preemptive codes, limiting self-governance authority through municipal charters, land use laws, environmental regulations, corporate codes, building codes, banking regulations, electoral laws and other statutes.

Once adopted by the State legislature, these codes bind local municipal officials. The codes are enforced by two local administrators: the local governing body and the local solicitor. Those local officials, in turn, police their own populations, not to protect the public health, safety and welfare, but to promote the original private interests of the original corporate drafters of the preemptive bills passed by the State legislature.

The result is "virtual citizenship." Under the U.S. Constitution, every citizen has citizenship in the State and in the nation, but not in the municipality where he or she actually lives.

Thus, preemption is the doctrine whereby citizens elect state and federal representatives, who then eliminate from the decision-making options an array of decisions which the People themselves would choose.

The legislatures, backed by the courts, and on behalf of a class of men identifiable by the benefits they accrue from the bestowal of personhood rights on corporations, have effectively filtered citizens right out of American democracy, in every community under U.S. jurisdiction. Preemption, then, is an illegitimate usurpation."

Dark Age America: The End of the Market Economy, essay by John Michael Greer, Nov. 5, 2014

"A fully developed feudal system takes several centuries to emerge. The first stirrings of one, however, begin to take shape as soon as people in a declining civilization start to realize that the economic system under which they live is stacked against them, and benefits, at their expense, whatever class of parasitic intermediaries their society happens to have spawned. That's when people begin looking for ways to meet their own economic needs outside the existing system, and certain things reliably follow.

The replacement of temporary economic transactions with enduring personal relationships is one of these; so is the primacy of farmland and other productive property to the economic system—this is why land and the like are still referred to legally as 'real property,' as though all other forms of property are somehow unreal; in a feudal economy, that's more or less the case."

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