

## JEFFERSON B. FORDHAM: HIS CONTRIBUTION TO LOCAL GOVERNMENT LAW

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The study of local government has not, by and large, attracted and held the interest of the ablest minds in the legal profession. Much of the same has been true within economics and political science, the social sciences from which lawyers might have anticipated most assistance in designing legal institutions to cope with the problems of an urban nation. Lawyers who have come to the area during the past decade have not, in consequence, had the advantages of a strong intellectual tradition upon which to build in the effort to understand and to come to grips with current problems.

For nearly four decades, the work of Jeff Fordham has been the most significant exception to this otherwise generally bleak picture. His perceptive and imaginative contributions during these years have left a significant imprint upon local government law, both by their influence upon teaching and scholarship and, more directly, by their impact upon constitutional draftsmen. To select the most significant from among these varied contributions is difficult, for the dean's career as a local government scholar has been long and fruitful. Nevertheless, two of his efforts stand out in my mind as especially noteworthy: the *Model Constitutional Provisions for Municipal Home Rule*, which he drafted for the American Municipal Association, and his pioneering casebook, *Local Government Law*.

To appreciate fully the contribution made by Dean Fordham's *Model Constitutional Provisions*, it is necessary to understand something of the chaotic condition of home rule doctrine. A constitutional grant of home rule is now generally understood to serve potentially two distinct functions: a grant of lawmaking power to local governments and a restriction upon the power of the legislature to enact legislation affecting local governments. Constitutional provisions which had been adopted prior to Dean Fordham's model failed, however, to separate these functions clearly or to define either the limits of the power conferred upon local governments or the extent of the restrictions placed upon legislatures. The consequence in most states was a confused body of decisional law, a confusion compounded by the failure of courts and commentators to distinguish adequately the two

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types of cases. The central accomplishment of Dean Fordham's *Model Constitutional Provisions* was the sharp separation of the two functions combined with the articulation of distinct standards defining the limits of local lawmaking authority and the restrictions upon legislative power. One may, as I have elsewhere, question the wisdom of the precise standards embodied in the model provisions. What is more significant is that the model advances clear thinking about home rule by focusing attention upon the fact that there are distinct problems and policies with which a constitutional draftsman or a court ought to be concerned when dealing with one or the other of the functions of home rule.

*Model Constitutional Provisions* was not intended to promote uniformity among the states nor to serve as an exact guide for constitutional draftsmen but, as Dean Fordham wrote, "to provide a helpful formulation of ideas for those concerned with home rule in the political context of any state of the Union." That purpose was admirably achieved. The influence of the *Model Constitutional Provisions* is clearly visible (to mention only the states of which I am aware) in the constitutions of Alaska, Connecticut, Massachusetts, and South Dakota. Moreover, the Advisory Commission on Intergovernmental Relations and the National Municipal League in its *Model State Constitution* have both adopted the central conception of Dean Fordham's draft, thereby increasing the likelihood that it will be of continuing importance as state constitutions are revised in the years ahead.

Equally influential, although in a very different sphere, was the casebook which Dean Fordham published in 1949. It is a fair measure of the importance of the book that its title—"Local Government Law"—has generally replaced the traditional "Municipal Corporations" as the appellation for law school courses concerned with urban government. The choice of a title for the casebook, as Dean Fordham explained in his preface, was not "a mere exercise in relabeling old wine." It rested, rather, upon his perception—which has enriched law school courses ever since—that the appropriate subject of study was "the legal problems encountered in the conduct of government at the local level without any predetermined stress upon any particular type of local unit." The shift was important not only in drawing attention to governments other than "municipal corporations" which operate at the local level but also in providing students with an opportunity to explore problems which, though increasingly important, had theretofore been largely ignored, *e.g.*, legal problems associated with overlapping governmental units and interlocal cooperation arrangements.

*Local Government Law* broke new ground in other ways by its abandonment of a strict "case method" of presentation and its coverage of other subjects (such as personnel) which had been ignored in earlier books, but most notably by the broad perspectives which Dean Fordham brought to bear on the problems with which the book was concerned. The latter point is especially worthy of comment because it is characteristic of so much of what Dean Fordham has written. Some years ago, he published a short article entitled *Local Government in the Larger Scheme of Things*. That title captures the spirit which permeates the casebook. The standard fare of legislative supremacy, home rule, and bans upon local legislation which earlier books had dealt with only at the level of doctrinal exposition and analysis became, in Dean Fordham's hands, merely aspects of a more comprehensive exploration of "the place of local governmental units in the governmental structure." Similarly, he taught us that zoning was not a power to be studied in isolation, as traditionally had been done, but as one of many legal tools employed in community planning and development. This embracing view of local governmental institutions reflected in the casebook brought about what one student has called the "Jeffersonian revolution" and contributed significantly to the growth of interest in the subject in the law schools.

Not many law teachers, looking back over a career, can record such accomplishments. It is a measure of Jeff Fordham's preeminence that one may confidently assert without risk of contradiction that, though he is now to retire as dean of one of the nation's great law schools, he remains the dean of the nation's local government lawyers.