Partisan preemption:

Intergovernmental conflict in the era of urban-rural polarization

Thesis Proposal

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December 2021

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# **Introduction**

The Covid-19 pandemic has made all too clear just how fraught relations between cities and states have become in many parts of the United States and the human toll of this degree of intergovernmental conflict. In the face of state inaction, localities took the lead in issuing mask mandates, stay at home orders, and other public health regulations on the grounds that these were within the scope of their authorized powers under state home rule provisions (Foster, 2020). When laggard state governments finally did muster a response to the pandemic, their interventions were often less strict than those adopted in their leading cities and explicitly structured to curtail localities’ ability to act in the future. In Arkansas, cities were barred from passing quarantine orders of their own, and by declaring most businesses “essential,” Mississippi’s governor was able to effectively nullify local social distancing requirements in the state (Foster, 2020).

These are only the latest examples of what has come to be called the “new preemption,” in reference to states’ increasingly aggressive curtailment of local governmental power and policymaking autonomy over the past decade (Briffault, 2018). Preemption itself is nothing new, as state governments have always been understood to have the ultimate say in establishing local governments and defining the limits of their powers. But the recent upsurge in state preemption laws differs in both its sweeping nature and partisan motivation, most cases being of Republican state legislatures preempting Democratic mayors, city councilors, and urban electorates (Schragger, 2017).

This thesis contributes to a growing literature on the causes and consequences of the new preemption by empirically testing its relationship to state-level social geography. While previous empirical research on the subject has identified the overriding importance of partisan conflict in driving mounting hostility between state and local governments (Flavin & Shufeldt, 2019; Fowler & Witt, 2019; Barber & Dynes, 2020), none have yet analyzed to what extent the sorting of different social groups across jurisdictional lines has aggravated those partisan conflicts and made preemption more likely. To address this, I have posed my main research question as follows: When a policy’s presumptive supporters are more spatially concentrated in large cities, are opposition-controlled state legislatures more likely to preempt a local policy? In order to hypothesize the relationship between social geography and preemption likelihood, I have restricted my sample to preemption legislation adopted by 2011 and 2019 barring localities from adopting any of six different labor policies (Blair et al., 2020). Material, ideological, and partisan issue alignment is reasonably predictable for these policies among my social groups of interest, defined by race, ethnicity, income, and education.

Valuable in its own right as a contribution to our understanding of contemporary American political economy, this analysis is also relevant to timely policy debates over how to make government institutions more representative and responsive (Weiser et al., 2021). If preemption is being wielded by state legislative majorities to curtail opposition constituencies’ capacity for self-government, this raises serious questions about whether our existing federal system is able to strike the right balance between preserving states’ ability to correct for the externalized costs of local action and empowering localities to experiment in meeting their own unique needs.

# **Literature review**

*The new preemption*

Intergovernmental conflict is inherent in any federal system. The composition of the electorate, their needs and priorities, and the balance of power between competing factions varies across geographic scales, such that the majority’s preferences in any particular region will seldom exactly match the preferences of the national polity as a whole. The same is true within regions, local and regional governments often facing cross-cutting pressures and demands as well. While the U.S. Constitution has much to say about the balance of power between states and the federal government and in what situations federal law preempts state law, it makes no mention of local government at all. Consequently, localities in the United States have long been understood as “mere creatures of their state,” wholly subordinate to state authority (Briffault, 2018).

In practice, states recognize the value of granting substate jurisdictions some autonomy in responding to local concerns, and over the last century municipal governments in states across the country have seen their policymaking discretion expand considerably (Schragger, 2017). This has primarily taken the form of state statutes or constitutional amendments granting home rule to municipalities meeting certain requirements, enabling them to legislate on matters of local concern without explicit state authorization. Even still, home rule has never effectively shielded local governments from state preemption and most courts have tended to narrowly define matters of local concern under grants of home rule (Briffault, 2018).

As Schragger (2017) notes, this prevailing conception of home rule especially disadvantages large cities in metropolitan economies. The policy domains generally accepted as matters of local concern—land use regulation, housing, education—are most relevant to suburbs, where residents typically commute across jurisdictional lines for employment and zoning codes are used to maintain high property values. Many of the things, though, that concern city governments are inherently nonlocal, defined as cities are by dense agglomerations of employment and commercial activity that draw on labor and capital from beyond their jurisdictional boundaries (Fennell, 2014). And yet redistribution and regulation of market activity have seldom been upheld as permissible at the municipal level, courts tending to agree with the overriding importance of statewide uniformity (Schragger, 2017).

Briffault (2018) argues that intergovernmental conflict over state preemption has historically arisen out of a lack of clarity over the scope of powers granted to municipalities under state home rule provisions. This is why for him, the spate of preemptory state legislation passed in just the last decade represents a fundamental departure from this kind of “classical” preemption dispute. The so-called “new” preemption is characterized by deliberate efforts to curtail municipalities’ policymaking autonomy in anticipation of or in reaction to locally adopted statutes opposed by elected officials at the state level. In some cases, states have gone so far as to impose civil and criminal penalties on local officials who enforce policies that contravene state statute and have threatened to withhold grants-in-aid from noncompliant localities. Also unique to the new preemption era are the kinds of blanket preemption laws that bar localities from regulating certain kinds of activities without establishing an alternative statewide regulatory framework (Schragger, 2017).

*Causes and consequences of urban-rural polarization*

Both Schragger (2017) and Briffault (2018) link the rise of the new preemption to a larger body of political science work on urban-rural polarization in the United States. Gimpel and colleagues (2020) show that the close association between population density and partisanship is not simply an artifact of systematic variation in population composition, but that density and distance from a city center are themselves significant influences on political behavior net of other individual characteristics like race, gender, or income. The most common explanations for this geographic polarization emphasize spatial processes that have sorted individuals into ideologically homogeneous communities and the role of local social context in shaping political beliefs and partisan identity.

Evidence on the relationship between political and locational preferences suggests that while partisanship may have some impact on where individuals decide to move (Jokela, 2021), for most the desire to be near likeminded neighbors is a secondary consideration that is highly correlated with more salient factors related to the local housing stock (Mummollo & Nall, 2017; Martin & Webster, 2018). Rather, Rodden (2019) argues that the concentration of Democratic-voting groups into large cities is largely the product of changes in industrial geography, in particular the clustering of manufacturing employment and multifamily housing in urban areas and along rail lines in the nineteenth and twentieth centuries. As manufacturing employment began to suburbanize and contract after the second World War, the industrial workforce concentrated in dense urban neighborhoods proximate to these blue-collar jobs began to fragment, and along with it, the national Democratic coalition. The white middle class followed manufacturers out to the suburbs and exurbs, while Black and immigrant workers, the unemployed, and those in poverty remained concentrated in the affordable housing stock left behind. Meanwhile, a subset of cities experienced rapid growth in high value traded service industries—finance, digital and web-based technologies, professional and legal services—drawing high income college educated workers into cities at the same time as the partisan lean of the college-educated was shifting toward the Democratic Party.

That Black and immigrant workers did not also decamp for suburban jurisdictions had little to do with any preference on their part for residing in large cities with high unemployment, rising crime rates, and declining populations. Federal, state, and local governments, realtors, bankers, developers, local law enforcement, and organized white homeowners all worked to ensure that racialized groups were either explicitly or effectively barred from suburban homeownership and remained segregated in increasingly impoverished urban neighborhoods (Massey & Denton, 1998; Rothstein, 2017). Nall (2015) finds the growth of the interstate highway system to have been a significant contributor to geographic polarization, given higher income white Republicans’ greater likelihood of relocating to a commuter suburb. Even though racial prejudice was far from the only motivation compelling white Americans’ flight from the city, job growth and affordable homeownership being powerful draws as well (Jackson, 1985), residing in a more segregated neighborhood has been found to have an independent effect on individual attitudes and political behavior.

By widening perceived social distance between groups, racial segregation heightens white Americans’ opposition to policies perceived to benefit people of color. Kinder and Mendelberg (1995) present evidence of the persistent influence of anti-Black racism on white Americans’ policy preferences, which they find is mitigated by greater social contact with Black Americans. Racial isolation heightens the salience of racial prejudice. Enos (2016) validates this finding, showing that the demolition of Chicago’s overwhelmingly Black public housing sites in the early 2000s and residents’ subsequent displacement lead to a significant reduction in voter turnout and Republican support among white residents living in neighborhoods nearby.

*The new preemption and partisan conflict*

Work to date looking at the prevalence of the new preemption across states supports the idea that its rise is at least partly attributable to urban-rural polarization. Republican state legislators and governors have been responsible for the large majority of preemption cases, nullifying legislation made by more ideologically liberal and redistributive Democratic city governments. Flavin and Shufeldt (2019) find the presence of a Republican trifecta at the state level—control of both houses of the state legislature and governorship—to be the strongest predictor of a state’s use of preemption, going so far as to characterize Republican state governments’ use of preemption as a “a political weapon and not a policy tool reliant on institutional features” (p. 303). Both they and Fowler and Witt (2019) also find the share of a state’s population that is Black to significantly predict adoption of a preemption statute, indicating that partisan politics is more racially polarized in these states. Blair and colleagues (2020) present case studies of Southern states that have preempted local wage and labor regulations, showing the disproportionate beneficiaries of preempted policies to be women and workers of color in these states’ large metropolitan cities.

Using a similar multivariate regression framework, Fowler and Witt (2019) reach the same conclusions as Flavin and Shufeldt (2019) on the underlying political motivations driving the new preemption. To directly compare the influence of institutional, as opposed to political, factors on the likelihood of preemption, their models also included controls for the degree of legislative professionalism and the strength of home rule provisions in each state. While both were found to be statistically significant positive correlates, the magnitude of their effect on the probability that a state adopted a preemption law was slight in comparison with variables capturing Republican seats in the state legislature and differences in state political culture. That they find professionalized legislatures to be more likely to preempt municipalities accords with Schragger’s (2017) contention that strong state governments impede the devolution of power to the local level and encourage direct vertical political competition between state and local officials. Even still, these institutional differences between states long predate the surge in preemption legislation since 2010 and are therefore insufficient on their own to account for its sudden increase in use.

Fowler and Witt (2019) acknowledge that using cross-sectional data for this kind of analysis has its limitations. For one, by focusing on variation across states, they are unable to identify city-level factors that predict whether a piece of municipal legislation is likely to be preempted. The same is true for Flavin and Shufeldt (2019). Barber and Dynes (2021) address this shortcoming by collecting data themselves from a survey of local elected officials and administrators that asked respondents whether their locality had been preempted at any point by state legislation. Regressing these data on city- and state-level variables, they find strong evidence supporting their hypothesis that cities whose residents are more ideologically distant from their state as a whole are more likely to be preempted. Unified party control in state government is also associated with a higher probability of preemption, though the effect was greater when the state was led by a Republican trifecta. Still, their results suggest that even state Democratic majorities and governors are more likely to preempt municipal legislation when adopted by more liberal cities. Interestingly, they also find the Black share of a city’s population to be a significant inverse correlate of preemption likelihood. While Flavin and Shufeldt (2019) and Fowler and Witt (2019) find that states with relatively large Black populations are more likely to preempt, which cities in these states tend to be preempted would appear to have more to do with residents’ ideological leanings than their race or ethnicity.

These empirical studies provide important insight as to the motivations and enabling factors behind the new preemption, but none directly test for the influence of internal social geography on states’ likelihood to preempt municipal action. While Barber and Dynes (2021) are able to identify significant city-level factors, their model specification does not allow them to say whether the *difference* between city- and state-level attributes can account for states’ use of preemption. For instance, the Hispanic share of a city’s population may not be a significant predictor of preemption, but it may still be that a state where the Hispanic population is highly concentrated in a few cities is more likely to preempt local governments than a state where the Hispanic population is larger and less segregated across jurisdictions. The same is true for Flavin and Shufeldt (2019) and Fowler and Witt (2019), whose independent variables are all at the state-level. In order to strengthen the link between urban-rural polarization and the new preemption, the analysis that follows seeks to fill this gap.

# **Data and methods**

My analysis tests whether states’ internal social geography is correlated with their likelihood of using preemption. I have restricted my sample to laws passed between 2011 and 2019 preventing local governments from establishing prevailing wage and paid leave requirements, their own minimum wage, fair scheduling standards, project labor agreements, and restrictions on the gig economy (Blair et al., 2020). Flavin and Shufeldt (2019) and Fowler and Witt (2019) also use this Economic Policy Institute database, along with several others, to estimate the total number of preemption statutes in each state. Unlike them, I deliberately focus on this subset of preemption legislation where issue alignment is fairly predictable: Democrats, people of color, and those with low incomes tend to support labor market regulations that raise wages, expand benefits, and improve working conditions (Dunn, 2021). Given both parties’ supporters have varied material interests and ideological leanings, looking at just labor-related preemption statutes allows me to hypothesize how the concentration of particular groups in a state’s largest cities affects its likelihood of preempting local action.

*Model and analytical approach*

I test a multivariate model that includes a variable equal to the difference between a state’s largest cities and the statewide average in a given population characteristic. In parameterized form, the model is as follows:

For each regression, my outcome variable is the number of preempted municipal policies in state *i*, or in the case of an individual policy, an indicator for whether it has been preempted. My main variable of interest ( is the difference between the average population share of a particular group in state *i*’s biggest city and any cities larger than 200,000 people and the group share in state *i* as a whole. I also include other state-level control variables captured by vector .

The three dimensions of spatial polarization I test for are race, educational attainment, and income, all of which are significant predictors of partisanship and ideology (Pew Research Center, 2019). People of color and workers without a college education are also more likely to be employed in low wage jobs than white and college educated workers and thus stand to benefit from municipal labor regulations that are stronger than those at the state level (Ross & Bateman, 2019). For polarization on the basis of race, I use *Black population share* and *Hispanic or Latino population share*, since these groups specifically tend to have lower median incomes than white Americans and are overrepresented in low wage occupations.[[1]](#footnote-1) For education-based polarization, I use the *share of adults 25 and older with a bachelor’s degree or higher*, and for income, the *share of households with annual incomes below $45,000*. This group of low income households encompasses roughly the bottom 40% of the household income distribution and own just 6.7 percent of net household wealth (Batty et al., 2019).

Given that Flavin and Shufeldt (2019), Fowler and Witt (2019), and Barber and Dynes (2021) consistently find state-level Republican legislative power to be the strongest predictor of preemption use, my most important control variable is *Republican legislative majorities*, which counts the number of years between 2011 and 2019 that the GOP held majorities in both houses of the state legislature.[[2]](#footnote-2) I also control for the *share of state population in large cities* to capture the state’s overall degree of urban concentration and include an indicator *South* if the state is one of the 12 southern states that seceded during the American Civil War. Slavery, secession, and Jim Crow segregation have had a profound effect on these states’ institutional development and political culture (Acharya et al., 2016), and Blair and colleagues (2020) assert that this history has made them more inclined to block local action perceived to benefit Black and immigrant workers in urban areas.

Table 1 summarizes my hypotheses as to how each independent variable relates to predicted preemption use. I expect the estimated coefficient to be positive in all cases except for *BA share*. Because racial minority groups and low income households tend to support Democrats and work in low wage jobs, the likelihood of a state preempting municipal labor regulations will be greater where these groups are more concentrated in a state’s largest cities. This could either be due to the fact that more spatially concentrated groups face a structural disadvantage turning votes into legislative seats, as discussed in Chen and Rodden (2013), or because spatial polarization heightens partisan and social polarization. Both are plausibly at work, but my model does not allow me to distinguish between these two channels. The expected effect of *BA share* is ambiguous because while educational attainment is a strong correlate of Democratic support, college educated workers also have higher average earnings and therefore may not feel themselves to be personal beneficiaries of stronger local labor laws.

**Table 1. Expected effects of independent variables on preemption**

|  |  |  |
| --- | --- | --- |
| **Independent variable** | **Variable description** | **Expected effect** |
| *Large cities minus state* | Share of… |  |
| Black share | …population that is Black alone | Positive (+) |
| Hispanic or Latino share | …population that is Hispanic or Latino | Positive (+) |
| BA share | …adults 25 and older with a bachelor’s degree | Ambiguous (±) |
| Low income share | …households with income less than $45,000 | Positive (+) |
|  |  |  |
| *State-level controls* |  |  |
| Republican majorities | Years of GOP state legislative control, 2011-19 | Positive (+) |
| South | One of 12 states in former Confederacy | Positive (+) |
| Large cities’ share | Share of state population in large cities | Negative (−) |

My expectation that *Republican majorities* and *South* will have a positive estimated effect on preemption use is based on findings from existing empirical work, and the fact that Republicans tend to oppose stronger labor standards and industry regulations generally. I also expect states where *primate city share* is relatively high to be less likely to pass preemption laws, since large cities will be better represented in state government and have more power to defend their policymaking autonomy.

*Data sources*

As noted above, I have compiled the number of preempted local labor policies in each state using the data presented in Blair and colleagues’ (2020) report. My race, education, income, and population variables are based on 5-year (2013-17) American Community Survey data for U.S. states and incorporated places (Social Explorer, 2021). This five year period is when the large majority of preemption legislation in my sample was enacted. My remaining two state-level control variables, *Republican majorities* and *South*, were hand coded, the former using Ballotpedia’s page on state trifectas over the last thirty years (Ballotpedia, 2021).

Table 2 presents summary statistics for all of my variables. States preempted an average of 2.2 policies between 2011 and 2019, and three states, Kansas, Michigan, and Tennessee, preempted all six. Seven states did not adopt any legislation preempting local labor laws in this period. The four groups whose social geography I consider were on average relatively urbanized, states’ largest cities tending to have higher shares of Black, Hispanic, college educated, and low income residents than states as a whole. Black Americans were the most likely to be concentrated in large cities. Detroit, the largest city in Michigan and the state’s only city with more than 200,000 residents, had a Black share 65 percentage points higher than Black residents’ share of the state population. While the college educated tended to be concentrated in large cities as well, there was greater variation across states in their social geography. In Bridgeport, Connecticut, the state’s primate city, only 18% of residents have at least a bachelor’s degree, more than 20 percentage points less than the share of all residents in the state.

**Table 2. Summary statistics**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Variable** | **Mean** | **Std. deviation** | **Minimum** | **Maximum** |
| *Local labor policies preempted, 2011-19* | 2.2 | 1.8 | 0 | 6 |
| *Large cities minus state, 2013-17* |  |  |  |  |
| Black share | 13.8 pp | 13.7 pp | -0.1 pp | 65.3 pp |
| Hispanic or Latino share | 3.8 pp | 6.2 pp | -4.9 pp | 27.4 pp |
| BA share | 4.7 pp | 8.3 pp | -20.4 pp | 18.8 pp |
| Low income share | 5.4 pp | 7.0 pp | -4.3 pp | 25.9 pp |
| *State, 2013-17* |  |  |  |  |
| Black share | 10.5% | 9.6% | 0.4% | 37.6% |
| Hispanic or Latino share | 11.6% | 10.3% | 1.5% | 48.2% |
| BA share | 30.1% | 5.1% | 19.9% | 42.1% |
| Low income share | 40.2% | 6.4% | 28.0% | 52.8% |
| *Controls* |  |  |  |  |
| Republican majorities, 2011-19 | 5.3 yrs. | 4.1 yrs. | 0 yrs. | 9 yrs. |
| Large cities’ share, 2013-17 | 17.3% | 12.6% | 2.7% | 55.8% |
| *Note: “Large cities minus state, 2013-17” is for each social group.* | | | | |
| *Sources: Blair et al. (2020) and author’s calculations using Ballotpedia (2021) and 5-year (2013-17) American Community Survey data (Social Explorer, 2021).* | | | | |

Average state-level shares for these four groups were unsurprisingly similar to their national share. In all cases, though, the range of values across states was roughly 30 percentage points. In the nine years between 2011 and 2019, Republicans held majorities in both houses of the state legislature an average of 5.3 years, however, the distribution of Republican legislative control was highly polarized. Republicans did not once control the state legislature in 15 states, and in 24 states, they maintained majorities for all nine years. Finally, large cities were home to an average of 17.3% of states’ total population, ranging from only 2.7% in West Virginia to nearly 56% in Nevada. In seven states, more than a third of residents lived in a large city.

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Jacob -- A nice start on your Masters’ thesis. From the introduction to the end of the data and methods section your style of writing was logical and easy to follow. I have only a few minor editorial concerns that I highlighted in the text, which will be easy to fix. I do not have any substantive concern regarding your proposal since I have been tracking your progress over the course of the semester. You clearly provided the supporting discussion based on the existing literature that supports your research question: When a policy’s presumptive supporters are more spatially concentrated in large cities, are opposition-controlled state legislatures more likely to preempt a local policy?

Score: 45/45

* **Content**: Develops and supports a central thesis. Provides a focused, logical argument.

Your thesis proposal focused on your central theme of wanting to investigate when a policy’s presumptive supporters are more spatially concentrated in large cities, are opposition-controlled state legislatures more likely to preempt a local policy. As stated above, from the start of the introduction to end of the data and methods section, you provided a clear, logical focus to your thesis research question. Your literature review provided the support need for developing your methods section. All the respective sections in your thesis proposal followed a focused, logical flow. 10/10

* **Clarity**: Writes clearly by developing a coherent, well-organized paper; arranging sentences in a logical manner; using correct punctuation, spelling, and grammar; and providing correct citations when necessary.

Throughout your thesis proposal you provided a logically, organized discussion that followed the central theme regarding investigating whether presumptive supports of local preemption are in opposition to the state level mandates. Your proposal was well written with no major concerns on substance and style. There are a couple of editorial concerns that I have highlighted in the text, but these are easy enough to fix. Overall, there were no real issues or concerns regarding your writing style. 10/10

* **Comprehensiveness**: Has reviewed the relevant literature and material, shows an in-depth understanding of the topic, and uses multiple bibliographic sources (books, journal articles, interviews, etc.), with limited, but appropriate, use of web-based sources.

You created your literature review into three distinct sections, with each of the sections providing a comprehensive review of the relevant literature for the respective section topic. Also, you did a great job on your bibliographic citations as footnotes. As discussed in your data and methods section, you are using existing, publicly available data sources which, to my knowledge, have seen limited use in the literature dealing with this specific subject of measuring preemptive state-level action on local community matters. 15/15

* **Creativity**: Draws the reader attention and engages him/her in the topic. Makes an original contribution to the topic. Presents material in an interesting or unique way that is particularly insightful to the reader.

Jacob, you have made significant progress on your thesis research over the course of the fall semester, congratulations. You have an interesting topic and given that there is currently such a polarized environment in the U.S. between state and local governments it will be interesting to see your results with respect to your key independent variable, the difference between the average population share of a particular group in state *i*’s biggest city and any cities larger than 200,000 people and the group share in state *i* as a whole. It appears that there is still a lot of empirical work that you need to do with your data but for the most part, your introduction and literature review are fairly complete. Overall, I find your thesis research topic unique and well thought out and I believe it will contribute to the empirical political science and political economy literature in a significant way. 10/10

1. These groups are not mutually exclusive. Both include those who identify as both Black and Hispanic or Latino. [↑](#footnote-ref-1)
2. Nebraska has a unicameral nonpartisan state legislature, though state legislatures still tend to be affiliated with state Republican and Democratic parties. For this variable, I count years when a majority of seats in the Nebraska state senate were held by Republican-affiliated members. [↑](#footnote-ref-2)