

**The Evolution of the Kangaroo:
The History of Municipal Border Change
in New Haven, Connecticut**

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The borders of New Haven, Connecticut, like those of many other American cities, appear to be wildly irrational. Starting on the west side of New Haven harbor, the boundary follows the West River northward for slightly more than a mile, suddenly jogging west for two miles then continuing north and veering northeast. Before turning eastward, the line juts out to capture two oddly shaped protrusions in the northwest corner of the city. After traveling east for four miles the boundary banks 120° south to include a four mile-long, half-mile wide strip along the east side of the harbor. Somehow, New Haven has taken the shape of a pregnant kangaroo.¹

One view of municipal boundaries is that they developed naturally, through the interplay of economic and physical forces.² Others see the manner in which municipalities have fragmented as a result of a properly-functioning democratic process.³ Still others consider municipal boundaries a fluke, nothing more than an historical accident.⁴ An accurate history of border development can contribute to the ongoing debate over the propriety of metropolitan fragmentation,⁵ by gauging the accuracy of these competing descriptions, and providing a template of past border change processes.

This paper will examine the development of the borders of New Haven, Connecticut. Part One provides a brief summary of local boundary change law, its history, and the theoretical underpinnings of the scholarship dealing with the issue. Part Two presents an exhaustive account of the evolution of New Haven's borders. New Haven is an interesting case for study,

¹ See Appendix B, Map 3, *infra*.

² See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1858 (1994) (characterizing this view as "opaque" and criticizing its explanatory power).

³ See Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 625 (1997) ("The present state of local government, then, should come as no surprise. Its creation was not happenstance, but rather a deliberate attempt to empower the individual.").

⁴ See WILLIAM A. FISCHER, *THE HOMEVOTER HYPOTHESIS* 209 (2001) (describing and rejecting this viewpoint).

Under this conception, present municipal borders are a form of path dependence: starting anew society could draw better borders, but we are constrained from doing so because of past, now irrelevant, events. See generally Mark J. Roe, *Chaos and Evolution in Law and Economics*, 107 HARV. L. REV. 641 (1996) (discussing the role of path dependence in law).

⁵ See *infra* Section I.B.

having undergone both fragmentation, and consolidation in its 350-year history. Part Three analyzes the causes of New Haven's boundary changes, and the ramifications this history has for the study of contemporary boundary change law.

I. Local Government Law

The law of local governments is almost exclusively the domain of the states. While the history of municipal corporations presents an immensely diverse body of law, some trends and consistencies do exist. This section will summarize those trends in the field of boundary change and supply the theoretical bases for boundary change decisions and scholarship.

A. The Law of Municipal Borders

Municipal corporations are political subdivisions of the State The State, therefore, at its pleasure may . . . expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest.⁶

The Supreme Court delivered this declaration of municipal inferiority in 1907, but was in fact simply restating long-established doctrine which remains largely unchanged today. In the context of municipal boundary law, states reign supreme. While this broad grant of legislative authority has changed little in the course of American history,⁷ the manner in which states have exercised it has undergone significant transformation.

⁶ *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907).

⁷ The origins of this tradition can be traced to 1682, when King Charles II successfully claimed legal authority to revoke the charter of the City of London. See Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1092 (1980).

The first municipal corporations in America were created through English charters.⁸

After the Revolution, American States continued the English practice and began incorporating municipalities through special acts.⁹ These charters delineated both the geographic and legal boundaries of municipalities. Courts in the nineteenth century strictly interpreted municipal authority under Dillon's Rule, confining municipal powers to those expressly granted by the legislature, necessarily implied by express grants, or indispensable to the purposes of the corporation..¹⁰ Dillon's Rule reflected and reinforced the widely-held "creature" theory of local governance, which asserted plenary state authority.¹¹

It was against this backdrop of state hegemony that early municipal boundary changes occurred. In the nineteenth century states were proactive, frequently altering the boundaries of municipalities.¹² Driven by dramatic increases in urban population,¹³ city expansion was the

⁸ See JON C. TEAFORD, *THE MUNICIPAL REVOLUTION IN AMERICA* 16 (1975) (describing the earliest American municipal corporations). The first cities to receive English charters in America were New York City (1665), Albany (1686), and Philadelphia (1691). *Id.* at 119 n.5.

⁹ The States were very active during and immediately after the Revolution in incorporating cities. See BRUCE C. DANIELS, *THE FRAGMENTATION OF NEW ENGLAND*, 147 (1988) (noting "a wave of incorporations" during the revolution); TEAFORD, *supra* note 8, at 129 n.1 (listing the twenty-five American cities incorporated between 1775 and 1789). New Haven was among this group; it was incorporated in 1784. An Act Incorporating the City of New Haven, 1 Resolves and Private Laws of the State of Connecticut 406 (1784).

In the early years of the Republic, private corporations were also created through special acts. Until 1819 municipal corporations were legally indistinguishable from private corporations. The distinction was first recognized in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). See also Frug *supra* note 7, at 1099-1109 (describing the development of the public/private distinction in American law).

¹⁰ 1 JOHN F. DILLON, *COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS* 448-49 (5th ed. 1911). Dillon's Rule continues to influence municipal corporation law and scholarship. See Frug *supra* note 2, at 1112 ("Dillon's statement of the law . . . largely remains intact today"); Clayton P. Gillette, *In Partial Praise of Dillon's Rule, or, Can Public Choice Theory Justify Local Government Law?*, 67 CHI.-KENT. L. REV. 959 (1991) (suggesting that Dillon's Rule may be justified in certain circumstances in order to constrain special interests).

¹¹ See Richard Briffault, *Our Localism: Part I – The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 7-8 (1990). See generally 1 ANTIEAU ON LOCAL GOVERNMENT LAW § 1.02 (Sandra M. Stevenson ed., 2d ed. 2003) ("In the United States, state legislatures have plenary power to determine how municipal corporations or other local government entities are to be organized, subject only to the constraints contained in the respective state constitutions.")[hereinafter ANTIEAU].

¹² See KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 140-48 (1985); Richard Briffault, *Our Localism: Part II – Localism and Legal Theory*, 90 COLUM. L. REV. 346, 357-58 (1990); Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1764-68 (2002); John Kincaid, *Regulatory Regionalism in Metropolitan Areas: Voter Resistance and Reform Persistence*, 13 PACE L. REV. 449, 458-61 (1993).

most common form of border change.¹⁴ As Kenneth Jackson notes, “the adjustment of local boundaries has been the dominant method of population growth in every American city of consequence.”¹⁵ Urban expansion was sometimes adopted after conducting referenda of affected residents,¹⁶ but more commonly occurred without their permission.¹⁷ Several factors drove the growth in urban territory. City leaders sought increased prestige, resources, and voters.¹⁸ Suburban residents, who were generally poorer than their urban counterparts, sought access to city services they were unable to afford under independent municipalities.¹⁹ Both cities and suburbs, along with state legislatures, sought to realize economies of scale. Cities were seen as beacons of progress; small border towns could not “be allowed to retard the development of the metropolitan community.”²⁰

Towards the turn of the century, however, urban expansion dramatically subsided. The home rule movement signified a shift towards local control.²¹ Some home rule provisions

¹³ DOUGLAS W. RAE, *CITY: URBANISM AND ITS END* 12 (2003) (describing the confluence of technological advances that led to rapid urban growth in the mid-nineteenth century).

¹⁴ Urban expansion encompasses several distinct procedures. Annexation refers to an incorporated municipality taking within its borders unincorporated land. Consolidation occurs when one incorporated municipality absorbs another (although in popular and some scholarly literature the term annexation is applied to what are, in fact, consolidations). City-County mergers are another form of urban expansion. See ANTIEAU *supra* note 11, §§ 3.01, 5.02.

¹⁵ JACKSON, *supra* note 12, at 140. Between 1850 and 1910 Jackson’s 24 selected large cities increased in area by 1,017 square miles. Only Washington D.C., San Diego and San Antonio failed to expand during this time period. *Id.* at 139 tbl.8-1, 140 tbl.8-2, 149 tbl.8-4.

¹⁶ For example, annexations in Cleveland, and Chicago took place only after majority votes of both the city and the suburbs. Frug, *supra* note 12, at 1767. Some annexations employed advisory votes, for example, in the consolidation of New York City. JACKSON, *supra* note 12, at 143.

¹⁷ See Frug, *supra* note 12, at 1767 (“Predominantly, however, the growth of American cities in the nineteenth century took place either over the objection of suburban residents or without asking their permission.”); JACKSON *supra* note 12, at 147 (“The predominant view in the nineteenth century was the doctrine of forcible annexation.”). Consolidations in Philadelphia in 1854 and New Orleans in 1853 proceeded despite failures in local referenda. Consolidation in San Francisco in 1856, and annexations to St. Louis and Boston in the 1850s took place without a vote of the affected citizens. *Id.* at 148.

¹⁸ See Kincaid, *supra* note 12, at 458 (noting that bringing voters within city limits was especially important to city machines because parties were organized at the county level).

¹⁹ Frug, *supra* note 12, at 1767.

²⁰ JACKSON, *supra* note 12, at 147.

²¹ Generally, home rule provisions prevent state legislatures from interfering in exclusively local affairs. Some also outlaw special acts, although prohibitions on special acts predate home rule amendments (the first embodiment of

eliminated the state's authority to alter municipal borders without local consent.²² Even where states retained such powers, they largely ceased using them.²³ At the same time, suburban residents increasingly opposed merger with urban areas.²⁴ Scholars have posited a variety of explanations for this shift in public opinion: increased class, ethnic, and racial divisions between cities and suburbs,²⁵ the suburbs' increased ability to provide quality services,²⁶ and the suburbs' newfound ability to regulate land use through zoning.²⁷ The vast majority of contemporary annexation and consolidation laws require local consent.²⁸

home rule was the 1875 Missouri Constitution; Ohio barred special acts in 1851). Home rule can be effectuated through statute or state constitutional amendment. DALE KRANE ET AL., *HOME RULE IN AMERICA* 5 (2001).

²² State courts in Ohio, Kansas, Iowa, and Colorado struck down involuntary consolidation and annexation procedures between 1870 and 1896 as violations of state bans on special acts. Briffault, *supra* note 12, at 358 & n.55.

²³ See, e.g., JACKSON, *supra* note 12, at 152; Kincaid, *supra* note 12, at 459. While forcible consolidations have become extremely rare, some states, primarily in the South and West, still allow annexation without popular referendum. See Kincaid, *supra* note 12, at 459; *infra* note 30.

Some states would also devolve municipal boundary-setting powers to courts. See William Hamilton Cowles, *The Distinction Between Legislative and Judicial Power*, 40 AM. L. REG. 433, 440-445 (1892) (criticizing the delegation of the "pre-eminently legislative" task of municipal boundary decisions to the courts).

²⁴ The 1873 decision by Brookline to remain independent of Boston is cited as the beginning of the end for the annexation movement. SAM BASS WARNER JR., *STREETCAR SUBURBS* 163 (1978). Described as the "first really significant defeat for the consolidation movement," failed consolidation attempts in Chicago, Rochester, Oakland, St. Paul, and Cleveland, followed Brookline. JACKSON *supra* note 12, at 149.

²⁵ JACKSON, *supra* note 12, at 150 (discussing the influx of Southern and Eastern European immigrants, and southern Blacks into Northeastern cities); WARNER, *supra* note 24, at 164; Briffault, *supra* note 12, at 364-66 (noting that suburban residents sought to avoid the political power of these new immigrants by remaining separate). See also John E. Filer & Lawrence W. Kinney, *Voter Reaction to City-County Consolidation Referenda*, 23 J.L. & Econ. 179 (1980) (observing that wealthier suburbs are less likely to support consolidating with central cities).

²⁶ JACKSON, *supra* note 12, at 150; WARNER, *supra* note 24, at 164 (noting specifically the Boston suburbs' ability to build public waterworks in the 1870s); Briffault, *supra* note 12, at 374-80 (discussing the importance of special service districts and interlocal contracts in the rise of suburban independence).

²⁷ FISCHER, *supra* note 4, at 213-17; Briffault *supra* note 12, at 367-68. Although suburban zoning did not come into widespread use until after the Supreme Court upheld the procedure in *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926), well after the end of widespread urban expansion, zoning is seen as solidifying the local control necessary for suburban independence.

²⁸ See Briffault, *supra* note 11, at 78 ("It is a nearly universal rule that an incorporated area may not be annexed without its consent and that a consolidation requires the separate consent of each unit proposed for merger."); Laurie Reynolds, *Rethinking Municipal Annexation Powers*, 24 URB. LAW. 247, 247 (1992) ("In all but a few states, annexation of unincorporated territory can occur only with the consent of the residents or owners of the outlying property.").

The Federal government has not been actively involved in annexation and consolidation law.²⁹ The Supreme Court has upheld consolidation procedures that require a majority in each local government unit affected³⁰ and those aggregating of the total vote.³¹ Race discrimination is the only context in which federal courts have stricken municipal boundary changes.³²

In the absence of federal involvement, states have instituted a wide array of municipal boundary change procedures.³³ Some states have no annexation law at all,³⁴ a few still allow involuntary annexations under certain conditions,³⁵ but the majority of annexation laws require voter approval.³⁶ In addition to local consent, several states require endorsement from state courts³⁷ or boundary review commissions.³⁸ Consolidation law is far more uniform, usually

²⁹ See generally Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance*, 92 COLUM. L. REV. 775, 791-805 (1992) (positing that the lack of federal involvement in local boundary voting issues is a result of a general commitment to federalism, and the absence of a solid theoretical basis for making these choices).

³⁰ See *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 271 (1977) (“[I]n the context of annexation proceedings, the fact that the residents of the annexing city and the residents of the area to be annexed formed sufficiently different constituencies with sufficiently different interests could be readily perceived. The fact of impending union alone would not so merge them into one community that their votes be aggregated in any referendum to approve annexation.”). The Court upheld a New York law that required separate majorities in city and non-city portions of a county in order to switch from weak- to strong-county government. The court analogized this change in county status to a consolidation of the city and county.

³¹ See *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

³² See, e.g., *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987) (Invalidating an annexation attempt by an Alabama city that excluded black residents, who sought inclusion, as a violation of § 5 of the Voting Rights Act of 1965); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (Striking an Alabama city’s attempt to redraw its borders to exclude black residents as a violation of the Fifteenth Amendment).

³³ See ANTIEAU, *supra* note 11, §§ 3.01-3.07 for a general discussion of various state annexation laws.

³⁴ Nine states fall into this category. DAVID RUSK, *CITIES WITHOUT SUBURBS* tbl.3.5 at 99 (1993). Variation exists even within this group. Rhode Island forbids any municipal boundary change, Briffault, *supra* note 11, at 78 n.328, while others retain the authority to change municipal boundaries through special acts (though that authority is rarely exercised). ANTIEAU, *supra* note 11, § 3.01.

³⁵ Texas and Missouri allow cities operating under a home rule charter to involuntarily annex surrounding territory. Briffault, *supra* note 11, at 78 n.279. Cities in Virginia may annex territory without consent of the annexees subject to judicial determination that the annexation is in the best interest of the people. Reynolds, *supra* note 28, at 261 n.51. Indiana allows unilateral annexation if the territory to be annexed meets strict urbanity requirements. *Id.*

³⁶ Of the forty-one states with annexation laws thirty-three allow the process to begin by petition, and twenty-four by municipal ordinance (some states allow both). Twenty-three require approval from the residents to be annexed. RUSK *supra* note 34, tbl.3.5 at 99.

³⁷ Courts in Indiana, Tennessee, Kentucky, and Virginia can disapprove of annexations. Kincaid, *supra* note 12, at 460.

³⁸ These commissions generally may veto a proposed annexation if it is not in the interests of the region. Some are state-level agencies, for example the Minnesota Municipal Commission; others are countywide, for example Local Agency Formation Commissions. See Briffault, *supra* note 12, at 81-85; and Reynolds, *supra* note 28, at 262-66, for a discussion of the shortcomings of review commissions.

requiring a majority in each municipality to be consolidated.³⁹ Secession is the least used, and least developed, area and boundary change law; it is generally effectuated through special act.⁴⁰

Despite this varied menu, local government scholars have by and large expressed dissatisfaction with the current regime, particularly with the metropolitan fragmentation that it has wrought.⁴¹ In addition to calls for regional governance,⁴² proposals in local government literature include regional legislatures,⁴³ inter-municipal voting rights,⁴⁴ periodic municipal redistricting,⁴⁵ and merit-based secession procedures.⁴⁶

B. *Dual Conceptions of Municipalities*

The tension between the dual conceptions of municipalities underlies much of the criticism of local government law. On one hand, local government is seen as a democratic association of citizens, “little republics.”⁴⁷ On the other, municipal corporations are understood

³⁹ Of forty-two states that have consolidation laws, thirty-four require double majorities. Kincaid, *supra* note 12, at 459.

⁴⁰ ANTIEAU ON LOCAL GOVERNMENT LAW devotes only three pages to secession law, compared to ninety-four pages on annexation. ANTIEAU, *supra* note 11, §§ 4.05, 3.01-3.10. See also Roni Stutman Bruskin, Note, *Secession as a Connecticut Story*, 14 QUINNIPIAC L. REV. 781, 802-814 (1994) (describing secession movements in New York City; Portland, Maine; Barrington Hills Illinois; Dallas, Texas; Boston, Massachusetts; and New Haven, Connecticut in the 1990s).

⁴¹ See Kincaid, *supra* note 12, at 451 (describing fragmentation trends in American cities).

⁴² See, e.g., MYRON ORFIELD, AMERICAN METROPOLITICS (2002); RUSK, *supra* note, 34.

⁴³ Frug, *supra* note 12, at 1773-1812 (calling for a two-tier regional government structure based on the European Union).

⁴⁴ Ford, *supra*, note 2, at 1909-11; Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 329-30 (1993). But see Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1158-62 (1996) (criticizing the proposals of Ford and Frug).

⁴⁵ Briffault, *supra* note 11, at 72.

⁴⁶ Briffault, *supra* note 29, at 818-19 (proposing a three step process in which the seceding territory, and the municipality that would lose territory would hold referenda, followed by review from a state agency); Joseph P. Viteritti, *Municipal Home Rule and the Conditions of Justifiable Secession*, 23 FORDHAM URB. L.J. 1, 41-45 (1995) (describing the criteria legislatures should use in assessing the legitimacy of secession proposals).

⁴⁷ This oft-used phrase is attributed to Thomas Jefferson. Letter from Thomas Jefferson to John Adams (Oct 28, 1813), reprinted in L. Cappon, ed., 2 THE ADAMS-JEFFERSON LETTERS 387, 390 (1959) (cited in Richard Briffault, *Who Rules at Home?*, 60 U. CHI. L. REV. 339, 419 n.297 (1993)).

as *corporations*, providing public goods and services in a competitive marketplace.⁴⁸ Municipal borders play a role in the debate under either conception.

1. Little Republics

Local governments occupy a romantic place in democratic theory. From Aristotle to Rousseau to Tocqueville, the small political body has been praised.⁴⁹ Smaller governments may increase civic participation.⁵⁰ The costs of such participation are lower because of the relative ease in engaging fellow citizens or attending public events,⁵¹ while potential benefits are higher, since an individual is more likely to influence the decision-making process.⁵² This increased participation may improve local government by fostering reasoned deliberation.⁵³ Participation is also seen as a positive good in and of itself, developing engaged citizens,⁵⁴ and promoting a sense of community among residents.⁵⁵ The fragmentation of metropolitan areas is extolled as an “incubator of democracy”⁵⁶ under this paradigm.

⁴⁸ This body of literature is based on the work of Charles Tiebout. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

⁴⁹ See ROBERT A. DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* 5-16 (1973) (discussing the history of polity size in political thought).

⁵⁰ See J. ERIC OLIVER, *DEMOCRACY IN SUBURBIA* 65 (2001) (concluding, after an empirical study that “[i]n metropolitan America, civic participation is higher in smaller places”).

⁵¹ See *id.* at 39 (positing that because larger governments are more complex, citizens will find it more difficult to effectively participate); Briffault *supra* note 44, at 1123.

⁵² See, e.g., DAHL & TUFTE, *supra* note 49, at 43 (noting Rousseau’s assumption that in smaller polities each individual has a larger share of the total power).

⁵³ See Frug *supra* note 2, at 1069.

⁵⁴ See Briffault, *supra* note 12, at 395 (“In addition, through political participation it is hoped that people will learn about the issues, processes and institutions of government.”).

⁵⁵ See *id.* at 397 (“It is often assumed that people in smaller units are likely to have common interests and share values and norms, and that, as a result, they may be willing to put aside individual self-interest for the local city’s common good. In other words, localities may have a greater sense of community.”) (internal citation omitted); Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1556 (1988) (Noting that political participation “is also a vehicle for the inculcation of such characteristics as empathy, virtue, and feelings of community”).

⁵⁶ Briffault *supra* note 44, at 1123.

Opponents of fragmentation note the paucity of empirical evidence linking size and participation.⁵⁷ They contend that, even if some relationship does exist, larger governments are necessary in order to deliver the benefits of civic involvement. If the purpose of participation is to allow individuals to take part in the decisions that affect their lives,⁵⁸ then municipalities must be large enough to undertake meaningful public activities.⁵⁹ The lack of a heterogeneous population in small municipalities may likewise limit the citizenship-enhancement function of participation.⁶⁰ Furthermore, small governments may be more prone to capture by special interests.⁶¹ From this perspective, the law should encourage municipal consolidation.

2. Public Service Provider

In his 1959 article *A Pure Theory of Local Expenditure*, Charles Tiebout theorized that a multiplicity of local governments offering a variety of tax and service levels, coupled with resident mobility, creates a market in municipal governance.⁶² This market mechanism allows

⁵⁷ In perhaps the most thorough work on the topic, the authors conclude that “there is no general relationship between [voter] turnout and unit size.” DAHL & TUFTE *supra* note 49, at 61.

⁵⁸ See Frug, *supra* note 2, at 1068 (applying Hannah Arendt’s definition of “public freedom”).

⁵⁹ See OLIVER, *supra* note 50, at 40-41 (hypothesizing that the more ambitious projects made possible by larger governments may ignite citizen interest and debate); Briffault, *supra* note 12, at 427 (“A participation-based theory of local autonomy requires localities . . . large enough so that local governments would have the fiscal and administrative resources to carry out the results of local deliberations.”).

⁶⁰ See Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1047-49 (1996) (alleging that the fragmentation of metropolitan areas has “undermined the ability of metropolitan residents to even understand each other, let alone work together on the region’s problems”).

Much of the anti-fragmentation literature has decried the racial and class segregation of American metropolitan areas on normative grounds, principally because it severs the connection between tax revenues and social problems at the local government level. See, e.g. ORFIELD, *supra* note 42, at 49-64; RUSK *supra* note 34, at 1-3.

⁶¹ See Briffault, *supra* note 12, at 403-04 (discussing James Madison’s support for larger government as a check on factional dominance); Gillette, *supra* note 10, at 981-82 (claiming that privileged interest groups are more likely to arise in small governmental units).

⁶² Tiebout, *supra* note 48, at 418-24.

individuals to choose the mix of taxes and services they prefer,⁶³ while constraining inefficient administration within government.⁶⁴ Empirical evidence has provided some support for the Tiebout hypothesis.⁶⁵ In addition to providing a market in public service provision, smaller government may be more efficient because of increased citizen vigilance.⁶⁶ According to these theories, a variety of smaller governments will behave more efficiently than a single metropolitan government.⁶⁷

Critics of metropolitan fragmentation point to the inefficiencies it causes. Larger local governments would result in economies of scale that smaller units cannot match.⁶⁸ Fragmented metropolises may create inefficient allocation of resources because of cross-border spillover effects.⁶⁹ Inter-municipal competition may result in a regional prisoners' dilemma, creating sub-optimal results in regulating, for example, land use.⁷⁰ This camp supports laws that encourage municipal consolidation as a way of enhancing rational planning.

⁶³ See *id.* at 418 ("The consumer-voter may be viewed as picking the community which best satisfies his preference pattern for public goods.").

⁶⁴ See Briffault *supra* note 29, at 825 (noting that competition for consumer-voters "penalizes administrative inefficiency").

⁶⁵ See, e.g., FISCHEL *supra* note 4, at 59-61 (describing studies testing the Tiebout hypothesis, focusing on homebuyers and school quality); Poindexter, *supra* note 3, at 613-16 ("Empirical data, in fact, bear out the Tiebout hypothesis.").

⁶⁶ See FISCHEL *supra* note 4, at 91-93 (cataloguing a series of studies that suggest small municipalities are more responsive to the service demands of voters).

⁶⁷ The use of interlocal contracting can accommodate economies of scale for some services without abandoning the intra-region competitive model. See Filer and Kinney, *supra* note 25, at 188. See Briffault, *supra* note 12, at 374-80 for a general discussion of interlocal contracting and special service districts.

⁶⁸ See Briffault *supra* note 29, at 823 (reviewing the literature that supports region-wide government); Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter*, 88 GEO. L.J. 1985, 2046 (2000) (positing that "regionalist approaches" provide "economies of scale that enable regions to effectively address public issues that are regional in scope"). But see Filer & Kinney, *supra* note 25, at 187-88 (noting limited empirical support for economies of scale in the provision of public goods).

⁶⁹ See Briffault, *supra* note 44, at 1133 (noting that municipal externalities challenge the conception of local governments as self-contained democracies).

⁷⁰ Suburban sprawl is commonly attributed to a failure of region-wide cooperation. Each individual municipality has incentive to exclude certain land uses, displacing development to the fringe of the metropolitan area, thereby increasing commuting, infrastructure, and transportation costs on the entire region. See *id.*; Cashin, *supra* note 68, at 2046.

These themes (community, diversity, efficiency, and externality) form the basis of the scholarship, and, as the following sections will demonstrate, for the individual decisions that have shaped present-day boundaries.

II. The New Haven Experience

The history of border change in New Haven can be divided into four rough periods. In the first, from New Haven's settlement to 1760, a dispersing population formed villages to serve the church and school needs of outlying residents. The second, from 1760 to 1790 witnessed the development of an urban-rural divide in town politics, culminating in the creation of the modern-day suburban towns. In the third period, from 1790-1900, the City of New Haven expanded from a compact area encompassing little more than the harbor and the nine squares to its current limits. Inactivity characterizes the final period, from 1900 to the present, as the State became dramatically less involved in the border change arena.

A. Villages

The settling of New Haven in 1639, and the platting of the nine squares, is a well-known story that need not be repeated here. A few details, however, are in order. John Davenport and Theophilus Eaton purchased several tracts of land from the Montowese and Momauguin tribes in 1638.⁷¹ Though the precise limits of this purchase are unclear,⁷² they did include present-day

⁷¹ For a discussion of early New Haven-Native American relationship see ROLLIN G. OSTERWEIS, *THREE CENTURIES OF NEW HAVEN, 1638-1938*, at 10-11 (1953).

⁷² The bounds of New Haven were not explicitly described until 1686. 3 *NEW HAVEN TOWN RECORDS 1684-1769*, at 30 (Franklin Bowditch Dexter ed. 1917)[hereinafter *TOWN RECORDS*].

New Haven, East Haven, West, Haven, North Haven, Hamden, Wallingford, and Cheshire; and parts of Orange, Woodbridge, Bethany, Prospect, and Meriden.⁷³ The original Town stretched along the Long Island Sound from Oyster River to Farm River, and inland approximately eighteen miles.⁷⁴ The Town formed an independent colony, along with the towns of Branford, Guilford, Milford, Stamford, and Southold, but was forced to join the Colony of Connecticut by 1665.⁷⁵

The proprietors of the town distributed land based on wealth and household size, usually providing each family a number of scattered lots.⁷⁶ The vast majority of homes were in or adjacent to the nine squares, which made cultivation of the outer lands inconvenient.⁷⁷ Farmers could greatly increase their efficiency by living on their distant plots,⁷⁸ but this practice was generally frowned upon. Settling away from the town prevented neighbors from observing one's conduct, an important aspect of Puritan life.⁷⁹ Another obstacle to outliving was church attendance, which required trips to the town green twice a week.⁸⁰ These trips could be very difficult in the absence of quality roads, especially in the winter.

⁷³ See OSTERWEIS *supra* note 71, at 10. Osterweis includes Branford and North Branford on this list, but the tract including these towns was purchased later, in 1644, and transferred to a settling party from Wethersfield. See EVERETT G. HILL, *A MODERN HISTORY OF NEW HAVEN AND EASTERN NEW HAVEN COUNTY* 330 (1918).

⁷⁴ See 3 TOWN RECORDS, *supra* note 72, at 30 (using natural markers to delineate the borders, for example "to a white oak marked H.T.B. . . . to a great stone called new mill swamp stone"); Timothy Dwight, *Statistical Account of the City of New Haven*, in 1 A STATISTICAL ACCOUNT OF THE TOWNS AND PARISHES IN THE STATE OF CONNECTICUT 1, 1 (Connecticut Academy of Arts and Sciences eds. 1811). See also Appendix B, Map 1, *infra*.

⁷⁵ For a history of the New Haven Colony, see CHARLES M. ANDREWS, 2 COLONIAL PERIOD OF AMERICAN HISTORY 144-94 (1936); EDWARD E. ATWATER, HISTORY OF THE COLONY OF NEW HAVEN TO ITS ABSORPTION INTO CONNECTICUT (1902); ISABEL MACBEATH CALDER, THE NEW HAVEN COLONY 150 (1970); and OSTERWEIS, *supra* note 71, at 32-66.

⁷⁶ See CALDER, *supra* note 75, at 148-50.

⁷⁷ The costs of production increased by 20% for each kilometer a farmer had to walk to his field. Distances of 3 to 4 kilometers tended to provoke changes in home siting. BRUCE C. DANIELS, THE CONNECTICUT TOWN 144 (1979).

⁷⁸ See RICHARD L. BUSHMAN, FROM PURITAN TO YANKEE 56 (1967) (noting that "outlivers" frequently began by temporarily dwelling on their outlands, only to make it their permanent settlement later).

⁷⁹ See *id.*

⁸⁰ See DANIELS, *supra* note 77, at 96.

Despite these centering incentives, the town's population began to disperse as it grew. By 1659, just twenty years after the Town's founding, New Haven received its first village petition.⁸¹ Village governments in Connecticut were established on an ad-hoc basis before their duties were officially established by the General Assembly in the 1720s.⁸² Even before the General Assembly acted, villages were generally responsible for maintaining churches and schools, and were authorized to levy taxes over a specified area.⁸³ These were, of course, very important governmental functions, and signified a large part of a town's budget.⁸⁴ The potential withdrawal of revenue frequently engendered town opposition to village petitions,⁸⁵ but the General Assembly usually established the village, provided the petitioners could demonstrate their ability to support a church.⁸⁶

The process of village formation occurred repeatedly in colonial New Haven, not only establishing a layer of decentralized governance, but also creating semi-independent communities that would later form the basis of seceding towns.

⁸¹ 1 TOWN RECORDS *supra* note 72, at 392. This petition is discussed in Section II.A.2, *infra*.

⁸² See DANIELS, *supra* note 9, at 64; 6 COLONY OF CONNECTICUT, THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 277 (1850-1890) [hereinafter COLONY RECORDS] (establishing the office of village tithingman in 1722); 7 *id.* at 245 (granting villages the authority to lay taxes, elect officers and ministers, and establish schools).

⁸³ The towns performed these duties themselves until a group of residents sought a village. If a village was granted, the town was divided into two ecclesiastical societies (the original church usually was designated the First Society), which took over these functions in their respective areas. For a general discussion of village governance in colonial Connecticut see BUSHMAN, *supra* note 78, at 54-72; DANIELS, *supra* note 9, at 64-66; and ; DANIELS, *supra* note 77, at 94-118.

⁸⁴ While the town-meeting form of government has received the most attention in both scholarly and popular works, other bodies held considerable powers in colonial Connecticut. Towns were responsible for roads and bridges, fences, chimneys, town and colony tax collection, along with serving as a general court for both Colony and Local law enforcement. Proprietors separately disposed of common lands, ecclesiastical societies maintained churches and schools, while militia companies trained soldiers. See DANIELS, *supra* note 77, at 119-139.

⁸⁵ See BUSHMAN, *supra* note 78, at 66.

⁸⁶ *Id.*

1. Wallingford

The villages around New Haven followed a familiar pattern in their formation. When an area relatively far from the center of town became sufficiently populous, its inhabitants would apply to the Town and the General Assembly for permission to form a new church. Wallingford was settled differently; it was a planned community, much like New Haven itself.

The General Assembly granted a New Haven petition in October 1667 to “make a village on the East River . . . provided they settle a village there within four years from May next.”⁸⁷ To manage the settlement, the Town appointed a seven-member committee, which selected a site and platted home lots in 1669.⁸⁸ The next spring, thirty-eight families, led by Reverend Samuel Street, moved to “New Haven Village.”⁸⁹ New Haven granted a committee of settlers the tract of land, free of charge, which they distributed to the individual farmers.⁹⁰

Unlike the other villages New Haven would spawn, Wallingford almost immediately incorporated as a town.⁹¹ In May of 1670, the General Assembly made Wallingford “a plantation without any relation or subordination to any other town.”⁹² New Haven’s consent, and indeed encouragement, of Wallingford’s independence is somewhat puzzling considering its

⁸⁷ 2 COLONY RECORDS, *supra* note 82, at 75. For the sake of clarity, early texts are translated to reflect modern spellings throughout this paper. For example, in this quote “four years” replaces “fower yeares.”

Connecticut did not switch from the Julian to the Gregorian calendar until 1752. Prior to this switch, the legal year began on March 25, so that records from January and February were dated the previous year. This paper notes these dates according to the Julian calendar.

The East River refers to the Quinnipiac River.

⁸⁸ See MARY HEWITT MITCHELL, HISTORY OF NEW HAVEN COUNTY CONNECTICUT 168 (1930).

⁸⁹ See *id.* All but three of the families were from New Haven. Several families in this founding party were “substantial members” of the New Haven community, including portions of the Yale and Eaton families. HILL, *supra* note 73, at 320.

⁹⁰ Each family received a six-acre town plot, followed by subsequent divisions based on wealth, in keeping with the New Haven practice. See MITCHELL *supra* note 88, at 170.

⁹¹ Technically, the Colony of Connecticut was itself a corporation, and therefore powerless to create additional corporations. However, the towns and ecclesiastical societies behaved as if they were municipal corporations, and, except for a brief period when England challenged some colonial governments, their status was not questioned. DANIELS, *supra* note 77, at 13.

⁹² 2 COLONY RECORDS, *supra* note 82, at 127. This act also established the name “Wallingford.”

stance towards other villages.⁹³ Perhaps the Wallingford settlement was seen as a release for excess population, a method of spreading religion, or as a potential trade outpost. In any event, the considerable distance between the towns was a key factor in New Haven's support.⁹⁴ At the founding of Wallingford, New Haven had only distributed common lands relatively near the town center.⁹⁵ The distant Wallingford property would be of little use to farmers living within New Haven, while the availability of unsettled land throughout Connecticut would have made selling it infeasible.⁹⁶ Without any profitable use for the property for the foreseeable future, the New Haven proprietors' consent was, in all probability, easy to attain.

2. East Haven

East Haven was the first village to request independence, and among the last to receive it. In the 127 years between the village's first petition and its incorporation as a town, East Haven's relationship with New Haven was beset by enmity, to a far greater extent than any other suburb.

East Haven was first settled in 1644, when Thomas Gregson moved his family to Solitary (now Morris) Cove.⁹⁷ The population of the area increased substantially when an iron-works was established at Lake Saltonstall a decade later.⁹⁸ In February of 1659, the "farmers at Stony River and South End"⁹⁹ and those "on the further side of the East River"¹⁰⁰ requested permission

⁹³ See, *infra* notes 127-30, 138-40 and accompanying text.

⁹⁴ Wallingford is approximately ten miles from the center of New Haven. See Appendix B, Map 1, *infra*.

⁹⁵ See CALDER, *supra* note 75, at 148-50.

⁹⁶ The area northeast of Wallingford, as far as the present-day Connecticut-New York border was unsettled at this time. See DANIELS *supra* note 77, at 16.

⁹⁷ See MITCHELL, *supra* note 88, at 188.

⁹⁸ See *id.*

⁹⁹ East Haven at that time was three distinct settlements: Stony River, South End, and the Iron Works.

¹⁰⁰ This refers to the area now called Fair Haven East.

to form two villages.¹⁰¹ The petitioners requested a fenced village commons, to be paid for by both village and Town, a piece of land on which to build a meeting house, and, perhaps most importantly, they asked that “whosoever holds lands within their limits, and dwells not upon it, may be enjoined to pay rates to the village.”¹⁰²

John Davenport noted that the Town must “use all due means to prevent sin in others;” without the Town’s watchful eyes, “many great abominations may be committed, and bring the wrath of God on the plantation.”¹⁰³ Several men expressed concern over lost tax revenue: “if the village go on, it would bring the Town so low that we should not be able to maintain the ministry.”¹⁰⁴ The matter was eventually referred to a committee, which reported that “the committee could not grant all that the farmers desired, nor would [the farmers] accept of all the terms which the committee propounded.”¹⁰⁵

It is likely that the tax issue was crucial to this decision. A number of town leaders owned large tracts of land in the proposed village,¹⁰⁶ and several declared that they were unwilling to either sell that land or move to the village.¹⁰⁷ Taxes may have been an important impetus for the villagers’ action as well. In the time between the petition and the committee

¹⁰¹ 1 TOWN RECORDS *supra* note 72, at 392.

¹⁰² 1 *id.* The ability to tax land owned by town residents who did not live in the village was a major source of opposition in many of the village formation fights. A colony magistrate from Fairfield, Nathan Gold, demanded the General Assembly explain how “one of your first born, a lovely beautiful child, should be disinherited and lose its birthright to an inferior brat” when the Assembly allowed a new village to tax town lands. BUSHMAN, *supra* note 78, at 66.

¹⁰³ 1 TOWN RECORDS *supra* note 72, at 393. Davenport did support the village however, suggesting that a village constable could overcome this problem.

In 1663 the Town would outlaw living on distant lands mandating that “no one should go out to live on them in settled dwellings, except by particular approval of the Town; as they were too remote for attending worship on the Sabbath and were liable to damage from the heathen.” 2 *id.* at 28.

¹⁰⁴ 1 *id.* at 395.

¹⁰⁵ 1 *id.* at 454. The appointment of ad hoc committees was a common practice in early Connecticut towns. On average two to three committees were appointed each year. They were usually comprised of a small group of prominent men, and their recommendations were almost always approved by the town. DANIELS, *supra* note 77, at 72.

¹⁰⁶ Including Davenport and Eaton. MITCHELL, *supra* note 88, at 187.

¹⁰⁷ 1 TOWN RECORDS, *supra* note 72, at 396

decision, the South End farmers unsuccessfully sought a tax abatement to correct what they considered an over-assessment of their property.¹⁰⁸

In 1666, the Town voted to encourage a village on the East Side of the East River.¹⁰⁹ New Haven appointed committees in 1667, 1668, and 1669 to study the matter,¹¹⁰ and approved the village 1670.¹¹¹ However, there is no record of a church, school, or other government being established there, and the General Assembly never incorporated an ecclesiastical society.

Twenty years after the first petition, Samuel Hemingway, on behalf of the East Haven farmers, petitioned the Town once again for village privileges.¹¹² They referred the matter to a committee, which favorably reported in December 1679.¹¹³ The Town granted most of the villager's requests, providing them freedom from New Haven ministers' rates as soon as they established their own ministry, the right to admit inhabitants, and to set up a commons for grazing.¹¹⁴ The Town expressly cautioned that individuals "that live in the Town and have property in land on the Indian side [East Haven] . . . continue [to] pay their rates to New Haven."¹¹⁵ The General Assembly granted East Haven society status that May, along with the customary freedom from "country rates" for three years.¹¹⁶

¹⁰⁸ 1 TOWN RECORDS, *supra* note 72, at 402. The farmers alleged that "they have found [the tax] very heavy, it being an overplus beyond what other inhabitants pay." The Town was unmoved noting "they have an overplus of land beyond what other inhabitants have." 1 *id.*

¹⁰⁹ 2 *id.* at 194.

¹¹⁰ 2 *id.* at 207-08, 216, 225.

¹¹¹ 2 *id.* at 255. The terms of agreement were read in the meeting but not recorded by the clerk.

¹¹² 2 *id.* at 381. The farmers based their petition on the difficulty of attending worship, "they finding it so difficult generally and sometimes many of the dwellers on that side cannot come over on the Sabbath." 2 *id.*

¹¹³ The residents of East Haven were anxious to have the matter decided. In September they inquired about the matter, but were told it was still in committee. 2 *id.* at 387. The residents would also have to obtain the General Assembly's consent, and were most likely looking for a decision before the Assembly met in October. The Assembly met twice per year, in October and May.

¹¹⁴ 2 *id.* at 390-91.

¹¹⁵ 2 *id.*

¹¹⁶ 3 COLONY RECORDS, *supra* note 82, at 57. The freedom from colony taxes is further evidence that the Colony supported the formation of these parishes. See *supra* note 82 and accompanying text.

The first village tax generated £50 for support of a minister, and residents collected donations to build a meetinghouse.¹¹⁷ In 1684 the village elected officers, which the Town confirmed.¹¹⁸ By 1687, however, after several years of disappointing crops, the village had collapsed.¹¹⁹

In 1703 East Haven's population had risen to 200 people, with a grand list of £2,550, and they decided, once again, to form an independent village.¹²⁰ Assuming the Town and General Assembly grants were still in effect, the village announced their intentions in a New Haven Town meeting.¹²¹ In November 1704, despite the clear admonishment of the General Assembly, East Haven voted to distribute the undivided lands within the village.¹²² New Haven was not pleased with this action. Viewing the move as an expropriation of their proprietors' property, they voted that the village grant had lapsed, and further, that "the right of undivided land . . . in no wise is or ever was granted to the inhabitants of said village."¹²³ East Haven sought, and received, reestablishment of the village grant from the General Assembly, but the land matter remained unsettled.¹²⁴

The village was more successful this time, acquiring Yale's first student, Jacob Hemingway, as a minister in 1706.¹²⁵ The village soon petitioned the General Assembly to

¹¹⁷ SARAH E. HUGHES, *HISTORY OF EAST HAVEN*, 71-72 (1908). The donations for the meetinghouse ranged from £20 from Samuel Hemingway and two others, to Matthew Moulthrop, who "will do what he can." *Id.* at 72.

¹¹⁸ The village elected a constable, selectmen, collectors and listers of the minister's rate, and a recorder. 3 TOWN RECORDS, *supra* note 72, at 9.

¹¹⁹ A town meeting in February 1687 refused to confirm land grants made by the former village, because it had "dissolved." 3 *id.* at 49.

¹²⁰ CHARLES LEVERMORE, *THE REPUBLIC OF NEW HAVEN* 189 (1886).

¹²¹ 3 TOWN RECORDS *supra* note 72, at 203; HUGHES, *supra* note 117, at 148. The village sought confirmation from the General Assembly in May 1704. The Assembly delayed action until the next session, so that they could hear from New Haven representatives. The Assembly agreed to grant the petition if New Haven had no objections, except that "the property of lands shall not be concerned with." 4 COLONY RECORDS *supra* note 82, at 471.

¹²² HUGHES, *supra* note 117, at 148.

¹²³ 3 TOWN RECORDS *supra* note 72, at 232.

¹²⁴ 4 COLONY RECORDS, *supra* note 82, at 527.

¹²⁵ Jacob was Samuel Hemingway's son. HUGHES, *supra* note 117, at 75.

become a full-fledged town, a step New Haven strongly opposed.¹²⁶ In May 1707 the General Assembly granted East Haven an unclear charter, which three times referred to it as a village, and five times as a town.¹²⁷ East Haven claimed full town status, which New Haven disputed; the ensuing controversy lasted several years. The General Assembly appointed a committee to settle the debate, but it was ultimately unable to do so.¹²⁸ In October 1710, after two years of legal wrangling, the Assembly officially declared East Haven merely a village, and part of the Town of New Haven.¹²⁹

According to East Haven lore, then-Governor Gurdon Saltonstall was the driving force behind this failure. Saltonstall and the village had a rocky relationship after the Governor shot a large number of the villagers' geese, which he considered a nuisance.¹³⁰ While the story seems somewhat improbable, there is some supporting evidence that Saltonstall was involved with the decision. The Upper House, which was appointed by the Governor, passed a bill in 1709 reducing East Haven to a village.¹³¹ The Lower House not only rejected the bill, but admitted the East Haven town representative from October 1708 through October 1710.¹³² The Lower

¹²⁶ The meeting in which the Town voted to oppose East Haven's petition displays considerable animosity, declaring that the village has "given us unjust and causeless trouble and charge in that they have four times summoned us to answer them before the General Court," and their actions have been "not only injurious to our right property . . . but are also accompanied with great disturbance of the piece and much disorder." 3 TOWN RECORDS, *supra* note 72, at 272.

¹²⁷ The charter made the "village distinct" from New Haven, with "all immunities and privileges that are proper and necessary for a village" and that "said village have liberty to have a school." The document also allowed them to elect all officers "proper and necessary for a town" by means "allowed by law for each or any town" who shall have the powers "granted them as any such officers of any town whatsoever." East Haven received the taxing power "as every town hath by law" and the responsibility for their poor "as all towns are obliged by law to do." 5 COLONY RECORDS, *supra* note 82, at 24.

¹²⁸ 5 *id.* at 47. The committee apparently proposed a settlement favorable to New Haven. The Town voted to approved its recommendations in October 1708. 3 TOWN RECORDS, *supra* note 72, at 275-76.

¹²⁹ 5 COLONY RECORDS, *supra* note 82, at 176.

¹³⁰ Saltonstall came into possession of a large tract of land on what was then called "Furnace Pond" (now Lake Saltonstall). Several East Haven residents raised geese, and the Governor, angered by the birds trespass onto his land, shot as much as half the villagers' flock. See HUGHES, *supra* note 117, at 156; MITCHELL, *supra* note 88, at 190-91.

¹³¹ 2 Connecticut Archives: Towns and Lands Collection 214 (ser. 1)[hereinafter Towns and Lands].

¹³² 2 *id.* at 219; 5 COLONY RECORDS, *supra* note 82, at 66, 90, 107, 114, 141, 162, 169.

House only approved the October 1710 bill after the Upper House requested a conference to settle the debate.¹³³

Even after the General Assembly's declaration the East Haven controversy continued. East Haven refused to divulge their grand list figures to the New Haven lister from 1712 through 1714.¹³⁴ They sent a representative to the General Assembly in 1713, who was not seated.¹³⁵ Eventually, East Haven would obey the Assembly order. They found village status beneficial in 1716 when the General Assembly held that the villages' poor were New Haven's responsibility.¹³⁶

The matter, however, was far from settled. East Haven voted to "take up the privileges that the General Assembly and the Town of New Haven have formerly granted" at a village meeting in 1752.¹³⁷ They renewed their intransigence in 1753, by electing town officers and sending a separate tax list to the General Assembly.¹³⁸ The village sent a delegation to the Assembly in 1755 to apply once again for town privileges, but they were once again denied.¹³⁹ East Haven would not seek town status again until after the Revolutionary War.

¹³³ 2 Towns and Lands, *supra* note 131, at 221.

¹³⁴ 4 COLONY RECORDS, *supra* note 82, at 330, 464.

¹³⁵ 5 *id.* at 364.

¹³⁶ 5 *id.* at 582.

¹³⁷ HUGHES, *supra* note 117, at 159.

¹³⁸ *Id.* The Assembly rejected this list as contrary to the law of the colony, and merged it with the New Haven list.

10 COLONY RECORDS, *supra* note 82, at 320.

¹³⁹ See HUGHES, *supra* note 117, at 161. East Haven's petition was essentially a restatement of its 1910 case, asserting that the Town had assented to a Town of East Haven in 1679, and that the General Assembly had done so in 1707. 8 Towns and Lands *supra* note 131, at 130. New Haven sent deputies to oppose East Havens' petition in 1755, 3 TOWN RECORDS, *supra* note 72, at 715, and, anticipating further village reaction, appointed agents to answer "all actions which the inhabitants of East Haven have or shall bring against the Town the year ensuing." 3 *Id.* at 720.

3. West Haven

The first settlers on the “West Farms” arrived in 1695.¹⁴⁰ Like East Haven, they were separated from the rest of New Haven by a substantial body of water, the West River. West Haven’s first move towards independence came in May, 1706, when the General Assembly granted them permission to form a “distinct foot company for mustering and exercising.”¹⁴¹ Six years later the farmers petitioned New Haven for consent to form a separate parish, arguing that “God has been pleased to increase our numbers” and that “we find it a great burden to come to the public worship of God with yourselves.”¹⁴² New Haven did not act on the petition; the town records do not register a vote on the matter.

Without New Haven’s consent, the farmers appealed to the General Assembly in 1714, but they delayed action until the May 1715 session.¹⁴³ In the meantime, the Town established a committee to meet with the “committee from the west side” about “setting up the public worship of God amongst them.”¹⁴⁴ At the next town meeting that body is referred to as the “committee about bounds in order to their being a village,”¹⁴⁵ suggesting that General Assembly approval was a forgone conclusion at this point. The Town formally granted permission on April 26, 1715, and the Assembly followed suit a week later, incorporating the West Haven ecclesiastical

¹⁴⁰ See HILL, *supra* note 73, at 313.

¹⁴¹ 4 COLONY RECORDS, *supra* note 82, at 538. The presence of an independent militia company reveals a relatively large population. A full trainband was composed of sixty-four adult men, and the Assembly, wary of allowing “undermanned, and perhaps undependable trainbands from coming into existence” usually required a figure near this number. DANIELS, *supra* note 77, at 134-35.

¹⁴² Peter Justin Malia, *The Colonial History of West Haven, 1640-1785*, at 24 (1975) (unpublished manuscript, available in the New Haven Colony Historical Society Whitney Library).

¹⁴³ FED. WRITERS PROJECT, *HISTORY OF WEST HAVEN CONNECTICUT, 1648-1940*, at 11 (1940). This source asserts that New Haven argued against the petition in 1714, but neither the town, nor the colony records indicate that this occurred. The town records usually note when an agent is sent to Hartford to support or oppose such petitions.

¹⁴⁴ 3 TOWN RECORDS, *supra* note 72, at 360.

¹⁴⁵ 3 *id.* at 363.

society.¹⁴⁶ The village was not granted authority to tax landowners who lived outside village limits.¹⁴⁷

The society's boundaries ran from the West River to the Milford town line, and north to the "country road leading to Milford."¹⁴⁸ In what may be an early example of burden splitting, the new village also included a farm north of the road belonging to "the widow Mallery."¹⁴⁹ West Haven was apparently unhappy with their bounds, summoning New Haven to the Assembly eight days after gaining their independence to seek further territory. The Town defeated this petition, contending that the Assembly should not "enlarge the parish bounds that [the west farmers] consented unto at the last meeting."¹⁵⁰

The village built a church and settled their first minister, Samuel Johnson, in 1719, but soon thereafter encountered serious difficulties. Confirming Davenport's concerns voiced sixty years earlier, Johnson was one of seven signors of a 1722 letter to the Yale faculty questioning the validity of the Congregational Church, a shockingly heretical act.¹⁵¹ Johnson promptly resigned and the village settled another minister, at great expense, who served only a few years.¹⁵² By 1734 the village was "left destitute" and petitioned the Assembly to "relieve them under their poor and low circumstances."¹⁵³ The Assembly assented, granting them £200 for a new pastor, effectively rescuing the village from extinction.¹⁵⁴ The next year the Assembly

¹⁴⁶ 3 *id.* at 370; 5 COLONY RECORDS *supra* note 82, at 494.

¹⁴⁷ 5 COLONY RECORDS, *supra* note 82, at 494.

¹⁴⁸ 5 COLONY RECORDS *supra* note 82, at 494.

¹⁴⁹ 5 *id.* The bulk of the town poor in the eighteenth century New Haven were widows who required town support, and would therefore be unable to contribute to society tax base.

¹⁵⁰ 3 TOWN RECORDS, *supra* note 72, at 381.

¹⁵¹ Malia, *supra* note 142, at 34. The document described as a "fire-brand sent through the standing corn of the Congregationalists" was the major scandal of the era. SHELDON B. THORPE, NORTH HAVEN ANNALS, 38 (1892).

¹⁵² See DANIELS, *supra* note 77, at 112 (noting that the minister's "settlement payment" (akin to a signing bonus) was a great burden on ecclesiastical societies, often amounting to several times the ministers yearly salary).

¹⁵³ 7 COLONY RECORDS, *supra* note 82, at 496.

¹⁵⁴ 7 *id.* The society also levied a special tax at this time, ranging from £6.5 on the wealthiest residents, to 2 shillings from the poorest. See FED. WRITERS PROJECT, *supra* note 143, at 11.

established a £40 per year subsidy for the village that continued through 1739.¹⁵⁵ These actions clearly manifest the Assembly's support for ecclesiastic decentralization.¹⁵⁶

4. North Haven

The early history of North Haven is remarkably similar to West Haven's. The "North East Farms" were settled slightly earlier, beginning in 1670, when Jonathon Tuttle began operating a toll bridge over the Quinnipiac River.¹⁵⁷ By 1715 the population had grown to approximately 200.¹⁵⁸ These farmers were spurred towards ecclesiastical independence in December 1714 when Reverend James Pierpoint, of New Haven's First Society, devised the villagers "eight or ten acres" on which to build a meetinghouse.¹⁵⁹

The following winter the farmers petitioned the Town for the "liberty of a village."¹⁶⁰ The Town referred the matter to a committee, which reported favorably in March 1716.¹⁶¹ Taxing power again played a key role in the negotiations, with the Town requiring "that the land within said village belonging to the inhabitants of New Haven . . . shall not pay towards

¹⁵⁵ 8 COLONY RECORDS, *supra* note 82, at 50.

¹⁵⁶ The first half of the eighteenth century was something of a golden age for ecclesiastical society formation in Connecticut. In 1710 Connecticut had 49 societies, that number tripled by 1750 with the formation of 98 new parishes. By contrast, the 1750-90 period witnessed the birth of only 56 societies. DANIELS, *supra* note 77, tbl. 11 at 97.

¹⁵⁷ THORPE, *supra* note 151, at 6.

¹⁵⁸ LUCY MCTEER BRUSIC, AMIDST PLEASANT AND CULTIVATED FIELDS: A BICENTENNIAL HISTORY OF NORTH HAVEN, CONNECTICUT 22 (1986).

¹⁵⁹ THORPE, *supra* note 151, at 24.

¹⁶⁰ 3 TOWN RECORDS, *supra* note 72, at 382.

¹⁶¹ 3 *id.* at 384-85. The committee also recommended boundaries for the proposed village.

upholding the worship therein” as a condition of their consent.¹⁶² The General Assembly incorporated the society, expressly limiting their taxation powers to village residents that May.¹⁶³

The new village was apparently unsatisfied with its boundaries from the start; the act of incorporation includes the notation that the matter of “the addition of twelve families” is referred to the October session.¹⁶⁴ These twelve families “of the town adjoining” were added to North Haven, provided that any decisions on the location of the meetinghouse be remade.¹⁶⁵ In April 1717, the village hired its first minister, recent Yale graduate James Wetmore.¹⁶⁶ That winter the village levied a three pence per pound tax for the building of a meetinghouse.¹⁶⁷ The village renewed the tax each year, until 1722, when the meetinghouse was completed.¹⁶⁸

Wetmore, like Johnson, lost his devotion to the Congregational Church outside the confines of the nine squares. Wetmore was another signor of the infamous letter to the Yale faculty, and was ousted from the village in January 1723.¹⁶⁹ This turn of events did not harm North Haven as it did West Haven, as their next preacher was the enormously popular Isaac Stiles.¹⁷⁰ Stiles’ popularity led to North Haven’s annexation of surrounding farms. In 1737, a group of East Haven farmers successfully petitioned the General Assembly to be included in the

¹⁶² 3 *id.* The Town also required the village to continue paying ministers rates to New Haven until “they regularly uphold the worship of God amongst themselves.” This would effectively result in double taxation for the villagers, as they paid the New Haven minister, and taxed themselves in order to build funds for a settlement payment.

¹⁶³ 5 COLONY RECORDS *supra* note 82, at 554.

¹⁶⁴ 5 *id.*

¹⁶⁵ The location of the meetinghouse was often a source of contention in new villages. In 1731 the General Assembly required all new ecclesiastical societies to abide by a committee’s determination for the location. DANIELS, *supra* note 73, at 113-14. Although in this case the decision appears to have been predetermined by the will of James Pierpoint. See text accompanying note 159 *supra*.

¹⁶⁶ BRUSIC, *supra* note 158, at 29. Wetmore moved to New Haven in August of that year.

¹⁶⁷ THORPE, *supra* note 151, at 24. This amounts to a tax of 12 mills, or 1.2%, a standard minister’s levy at this time.

¹⁶⁸ *Id.* at 24-26.

¹⁶⁹ BRUSIC, *supra* note 158, at 33-34. North Haven was able to recover a portion of their settlement payment, under an agreement brokered by Yale.

¹⁷⁰ *Id.* at 35. Isaac was another young Yale graduate, and the father of future Yale President Ezra Stiles. See THORPE, *supra* note 151, at 56-64, for a discussion of Stiles’ prominence.

parish,¹⁷¹ and a group from northeastern New Haven did the same in 1739.¹⁷² While both petitions cited distance as their motivation, the moves can be seen as Tiebout's theory in action.¹⁷³

5. Amity and Bethany

In the absence of a navigable river connecting the area to the shoreline, the district northwest of the town plat took longer to settle, and thus longer to form a parish. The first moves towards independence occurred in 1721, when Stephen Perkins petitioned the Town for village status.¹⁷⁴ A committee appointed to the matter found the area not "yet prepared to be societies for religious worship and that they do not appear to be likely in a long time to be erected parishes."¹⁷⁵ In 1728, the farmers of "Chestnut Hill" requested winter privileges from the General Assembly.¹⁷⁶ That appeal was unsuccessful, but the farmers eventually prevailed, attaining the privilege in 1734.¹⁷⁷

Apparently too small for full village status, the Chestnut Hill farmers reached an agreement with fifteen families from northern Milford to apply to the Assembly together. The

¹⁷¹ 8 COLONY RECORDS *supra* note 82, at 144-45.

¹⁷² 8 *id.* at 250-51.

¹⁷³ Tiebout envisioned individuals physically moving from one municipality to another, but the results can also be achieved through boundary change.

¹⁷⁴ 3 TOWN RECORDS, *supra* note 72, at 470.

¹⁷⁵ 3 *id.* at 477.

¹⁷⁶ WOODBRIDGE BICENTENNIAL COMM'N, A HISTORY OF WOODBRIDGE, 5 (1984). Winter privileges allowed residents to hold worship in a prominent citizen's home from December to March. They would be freed from paying the minister's rates to the Town during that time period.

¹⁷⁷ 7 COLONY RECORDS, *supra* note 82, at 536-37. The grant also contained a sunset provision, expiring in five years. Although not specifically provided for in the act, the quasi village established a three pence per pound tax during the winter months to support the ministry. See LENA ZERVIAH NEWTON & ROLLIN CLARK NEWTON, A HUNDRED YEARS OF AMITY PARISH 3 (1915).

group petitioned in October, 1737, and a committee was appointed to study the matter.¹⁷⁸ The committee reported favorably at the next session, but the villagers rejected the report,¹⁷⁹ citing dissatisfaction with the location chosen for the meetinghouse.¹⁸⁰

The General Assembly appointed a new committee, which reported favorably, and to the liking of the residents. This resulted in the creation of the society of “Amity” in May, 1738.¹⁸¹ Unlike the other parishes surrounding New Haven, ideology played a role in Amity’s formation. Both the New Haven and Milford societies had “new light” preachers at this time, but Amity residents preferred the more staid “old light” style.¹⁸² The village grew quickly, building a meetinghouse and settling a minister by 1742.¹⁸³ This growth required a substantial tax levy, raising the familiar non-resident tax issue.¹⁸⁴ That year the village unsuccessfully requested the power to tax lands owned by “rich gentlemen in other societies.”¹⁸⁵

The land area of the Amity was society was quite large, and in 1755 the residents in the northern half applied to the General Assembly for winter privileges. Amity opposed this petition, but the Assembly assented.¹⁸⁶ Following Amity’s path, the northern farmers requested

¹⁷⁸ 8 COLONY RECORDS, *supra* note 82, at 154. The New Haven town records do not record the Town consenting or dissenting to this petition.

¹⁷⁹ 8 *id.* at 177. This action was not taken lightly, potential villagers were forced to pay for these committees, and revenue would be scarce, with residents contemplating a settlement payment in the near future. *See* note 152 *supra*.

¹⁸⁰ *See* DANIELS, *supra* note 9, at 66. By this time these committees, and not the potential villagers chose the meetinghouse site. *See* note 165 *supra*.

¹⁸¹ 8 COLONY RECORDS *supra* note 82, at 201-02.

¹⁸² *See* NEWTON & NEWTON, *supra* note 177, at 6. For a description of the disagreements between “new lights” and “old lights” in Connecticut *see* BUSHMAN, *supra* note 78, at 183-266.

¹⁸³ *See* HILL, *supra* note 73, at 407. That first minister was Benjamin Woodbridge, namesake of the town that now includes this area.

¹⁸⁴ In 1739 the village levied a 12 pence per pound tax, four times the standard rate. WOODBRIDGE BICENTENNIAL COMM’N, *supra* note 176, at 8.

¹⁸⁵ JAN CUNNINGHAM, HISTORIC WOODBRIDGE 16 (1995). The petition passed the Lower House, but failed in the Upper.

¹⁸⁶ 10 COLONY RECORDS, *supra* note 82, at 431. *See* NEWTON & NEWTON, *supra* note 177, at 13.

full village status in 1762, citing the “inconveniences they [are] under in attending the public worship.”¹⁸⁷ The Assembly formed the new society, named “Bethany,” in October.¹⁸⁸

6. Mount Carmel

The land directly north of the town plat was the last to be settled, beginning in 1735 when Joel Munson built a mill on the aptly named Mill River.¹⁸⁹ The mill served as a focal point for the small development, which received New Haven’s permission to attend church at either North Haven, or, in 1739, Cheshire.¹⁹⁰ This arrangement satisfied the residents until 1757, when they attained parish size and sought ecclesiastic independence.¹⁹¹ Though the Town did not formally grant its consent, they were likely supportive since the residents already paid their minister’s rates elsewhere. North Haven, however, was incensed. The society sent an agent to oppose the petition, which would include several families from their parish, complaining “we were never notified of such doings.”¹⁹²

The General Assembly granted the petition in October,¹⁹³ subtracting over twenty families from North Haven.¹⁹⁴ The act establishing Mount Carmel’s bounds was poorly drawn, and the next year the village was back in Hartford, praying for clarification (and extra

¹⁸⁷ 12 *id.* at 23, 107.

¹⁸⁸ 12 *id.* at 107. The formation followed the Assembly’s pattern of appointing a committee, the committee reporting favorably, and the society being formed.

¹⁸⁹ RACHEL M. HARTLEY, *THE HISTORY OF HAMDEN CONNECTICUT* 51 (1959).

¹⁹⁰ Cheshire was at this time a newly formed parish in the western side of Wallingford.

¹⁹¹ 11 COLONY RECORDS, *supra* note 82, at 39-40. Original resident Joel Munson was one of the signors.

¹⁹² THORPE, *supra* note 151, at 84.

¹⁹³ 11 COLONY RECORDS, *supra* note 82, at 77-78. The passage followed a favorable committee report.

¹⁹⁴ HARTLEY, *supra* note 189, at 61. The estimate is Benjamin Trumbull’s, mentioned in his “century sermon” to the North Haven Church in 1801. Trumbull reports that eighteen members “had by mutual consent been embodied with the Mount Carmel Society.” It is unclear whether he is referring to the residents and the society, or North Haven and Mount Carmel.

territory).¹⁹⁵ North Haven again sent an agent to oppose them, voting in a village meeting “that they were utterly unwilling to part with one inch of land.”¹⁹⁶ The Assembly extended Mount Carmel’s borders to the south, but not at North Haven’s expense.¹⁹⁷

Mount Carmel completed its meetinghouse in 1761, but it took seven years for the society to find its first minister, Nathaniel Sherman.¹⁹⁸ Heading into the revolutionary period then, New Haven was surrounded, by a functioning level of subordinate governments.

B. A Town Divided

Throughout this period of village formation, New Haven’s population was rapidly expanding. By 1774 New Haven held over eight-thousand inhabitants.¹⁹⁹ The Town was finally becoming the commercial center its founders envisioned. Between 1748 and 1774, harbor activity expanded forty-fold.²⁰⁰ Nearly one-tenth of the town’s inhabitants were engaged in maritime activity.²⁰¹

While this commercial activity brought greater prosperity to New Haven, it also formed the basis for a significant schism in the community. The new commercially spirited men, or “interlopers,” sought to stimulate trade, while the “town-born” farmers were uninterested in such

¹⁹⁵ 11 COLONY RECORDS, *supra* note 82, at 166 (noting that “there was a mistake or uncertainty with respect to a highway referred to”).

¹⁹⁶ THORPE, *supra* note 151, at 84. The agent was ordered to “oppose them . . . to the last extremity.”

¹⁹⁷ 11 COLONY RECORDS, *supra* note 82, at 193.

¹⁹⁸ HARTLEY, *supra* note 189, at 62-65. Nathaniel was the younger brother of celebrated patriot (and first New Haven Mayor) Roger Sherman.

This ten-year gap between society formation and settlement of a minister was longer than usual but not extraordinary. The average search lasted three years, but some stretched as long as twenty. DANIELS, *supra* note 77, at 111.

¹⁹⁹ 14 COLONY RECORDS, *supra* note 82, at 486 (reporting the 1774 census, which lists the total population of New Haven at 8295).

²⁰⁰ OSTERWEIS, *supra* note 71, at 102. The enterprising young men who would become New Haven’s post-revolutionary leaders immigrated to the Town at this time, including James Hillhouse, Roger Sherman, and David Wooster.

²⁰¹ *Id.* at 104. The estimate is David Wooster’s. In a letter to the Governor Wooster placed the number at 756.

projects.²⁰² The Town had been successful in accommodating diverse interests through the creation of sub-governments (villages), and attempted to do so once again. In 1771, the Town appointed a committee to consider petitioning the General Assembly for “the privileges of a city.”²⁰³ A city would be contained within the Town, serving the mercantile needs of the central business district in the same way ecclesiastical societies served the religious needs of the outlivers.²⁰⁴ This committee, however, never reported its findings to the town meeting.

The Revolutionary War severely damaged the commercial health of New Haven. In addition to harming the shipping trade in general, the British invaded the Town in 1779.²⁰⁵ Though the war temporarily distracted residents from their conflicting interests, it encouraged fragmentation in several respects. First, the fight for independence, and the selection of a new form of government, stimulated discussion of democracy, rights, and the like.²⁰⁶ Second, town meetings, which were difficult for outlying villagers to attend, became both more important and more frequent.²⁰⁷ Finally, the economic downturn caused by the war forced merchants to look towards city corporations as a means of rebuilding trade.²⁰⁸ By 1786 the Town of New Haven would be splintered into six municipalities.

²⁰² *Id.* at 102. For example, the Town received permission to extend the long wharf in 1772, which was paid for by lottery. 13 COLONY RECORDS, *supra* note 82, at 622.

²⁰³ Records of the Town of New Haven, Dec. 9, 1771 (unpublished, available in the New Haven Colony Historical Society Whitney Library). The committee included many of the originators of the 1783 petition for city privileges, such as John Whiting and Daniel Lyman. See Section II.B.2 *infra*.

²⁰⁴ Like villages, the General Assembly would grant the city corporation the power to levy taxes over a certain portion of the town, and to provide certain services within those limits. For a general discussion of city government’s focus on trade in this era, see TEAFORD, *supra* note 8, at 47-63.

²⁰⁵ See OSTERWEIS, *supra* note 71, at 138-49. The British destroyed some public supplies, especially military supplies, but unlike many other towns, New Haven was not burned.

²⁰⁶ See DANIELS, *supra* note 77, at 35.

²⁰⁷ *Id.*

²⁰⁸ See DANIELS, *supra* note 9, at 147.

1. The Villages Seek Independence

The first steps toward fragmentation actually occurred before the end of the Revolution. In 1779, Amity inquired whether Bethany would be interested in forming a town.²⁰⁹ Bethany at first refused, objecting to the proposed location of the town meetinghouse, but the parishes negotiated throughout the winter and eventually reached an agreement.²¹⁰ The following May the villages sent representatives to the General Assembly.

The petition mirrored those seeking ecclesiastical independence, citing the inconvenience of traveling to the Town, but with an added touch of revolutionary rhetoric: “The people of every community ought to have a face whether personally or by representation in all regulations made respecting them.”²¹¹ The villagers complained that they were unable to attend town meetings, and therefore effectively disenfranchised. The proposed town would include portions of New Haven and Milford, and both towns opposed the petition.²¹² Milford complained that “[i]f said parishes are incorporated into a town our taxes, which we now groan under, will become much greater.”²¹³ Not only would the towns create inefficient governance, Milford argued, but incorporation would be economically unfair:

[S]aid Town of Milford have contracted a large debt as much for the benefit of the inhabitants of Milford being within the limits of the proposed town as for the inhabitants of said Milford, and therefore it will be unreasonable that those inhabitants . . . be excused from the burdens of paying their proportional part of such debt.²¹⁴

²⁰⁹ NEWTON & NEWTON, *supra* note 177, at 16. The villagers were perhaps motivated by the independence of their northern neighbors Cheshire, Southington, and Watertown, which became towns between 1779 and 1780. DANIELS, *supra* note 77, at 42, app. 4.

²¹⁰ 9 Towns and Lands, *supra* note 131, at 287 (recording Amity’s vote to join Bethany); 9 *Id.* at 290 (recording Bethany’s vote to join Amity).

²¹¹ 9 Towns and Lands, *supra* note 131, at 285.

²¹² New Haven sent two agents to oppose the petition. Records of the Town of New Haven, *supra* note 203, May 8, 1780.

²¹³ 9 Towns and Lands, *supra* note 131, at 286.

²¹⁴ 9 *id.* at 288.

The Assembly rejected the villagers' petition, but they persisted in lobbying the New Haven, and in February 1781, the Town voted to support their petition, provided they abide by the "determination of a disinterested committee who shall say what is just and right for said societies to pay with regard to the poor [and] bridges."²¹⁵ Why did the Town reverse positions in just nine months? In his authoritative history of New Haven, Osterweis suggests an implicit bargain: the Town would support the villages' independence if the villagers supported the incorporation of a city.²¹⁶ This explanation, though, seems improbable. Town leaders would not seek city incorporation for almost another three years. Furthermore, if the villages were separated, their support or opposition would hold little weight before the General Assembly. They would be reduced to neighboring towns intermeddling in the internal workings of New Haven.

A more likely explanation can be found in the second clause of the consenting vote, where the petition of North Haven and Mount Carmel is approved using identical language. These parishes had voted just a week before to request New Haven's permission to form an independent town.²¹⁷ Though not mentioned at the meeting, East Haven (still nursing a seventy-three year-old grudge) voted to apply for "our town privileges, granted . . . in 1707" the previous May.²¹⁸ The precise population count of each parish is unavailable, but the existing evidence suggests that a majority of the Town's voters lived in the petitioning villages. In the 1790

²¹⁵ Records of the Town of New Haven, *supra* note 203, Feb. 12, 1781. The committee would also divide the "town stock."

²¹⁶ See OSTERWEIS, *supra* note 71, at 164 ("[T]he New Haven leaders sought compensation for the dismemberment of their area in the form of the advantage inherent in a city charter.").

²¹⁷ See THORPE, *supra* note 151, at 254. North Haven vote appointed a committee to "confer with the committee appointed by the parish of Mount Carmel" on February 6. The new town would be called "Mount Haven."

²¹⁸ HUGHES, *supra* note 117, at 162 (quoting the East Haven Town Records).

census, these five parishes held 56% of the area population.²¹⁹ A 1766 enumeration of the town's grand list puts 59% of the area's households in these societies.²²⁰ By forming a coalition, the peripheral villagers would comprise a majority of the Town's voters and could effectively control its agenda.

The Town established a committee to "report a plan for the division of this town . . . the stock & burdens."²²¹ Men from the town center such as James Hillhouse, David Austin, and Samuel Bishop dominated the committee, but leaders from the outlying districts were also included.²²² On December 31, 1781 the Town approved the committee's report which would form three new towns, East Haven; Amity and Bethany; and North Haven and Mount Carmel.²²³ The towns would divide the "estate, stock, soldiers in the Continental Army, town poor, bridges,

²¹⁹ By this time, the parishes had become towns. The total for Woodbridge (Amity and Bethany), East Haven, North Haven, and Hamden (Mount Carmel) was 5837, while New Haven, which still included West Haven, contained 4484 people. U.S. CENSUS BUREAU, 1790 CENSUS (<http://www.sots.state.ct.us/RegisterManual/SectionVII/Population1756.htm> (last visited Apr. 29, 2004)).

²²⁰ New Haven 1766 Grand List, New Haven Colony Historical Society, New Haven City and County Documents Collection, Box 47 [hereinafter City and County Documents]. The outlying parishes list 722 families, New Haven and West Haven have 525. This enumeration seems fairly accurate. Using Timothy Dwight's figure of 5.47 people per family (for New Haven in 1787), DWIGHT, *supra* note 74, at 80, the population of the Town would be 6821 which falls near the midpoint of the census enumerations for 1756 (5085), and 1774 (8295), 14 COLONY RECORDS, *supra* note 82, at 492, 486.

The individual assessments for each household are provided, categorized by parish, (New Haven comprises the First Society and the White Haven Society by this time) except for Amity which simply gives the grand list total. Amity's population is estimated by dividing this total by the average assessment per family for the entire Town (£45/family). Substituting the average assessment of the wealthiest parish (£51/family), or the poorest parish (£40/family) results in population distribution figures of 59% and 58% respectively. Because of this limited variation in average income levels, it is unlikely that any parish contained a disproportionate number of men able to meet the property qualification.

There may be some variation among the average household size for the villages, but this variation would have to be substantial in order to affect the outcome. Maintaining a population estimate 6821, the town center would remain a minority unless the average central family size was 6.5, and the average outlying family size was 4.7.

²²¹ Records of the Town of New Haven, *supra* note 203, Dec. 10, 1781.

²²² For example, Nehemiah Smith was the lead signor of the 1787 petition for incorporation of West Haven, City and County Documents, *supra* note 220, at Box 48, Folder E; Isaac Chidsey successfully petitioned the Assembly to appoint a new committee for determining East Haven's share of the town stock, *Id.* at Box 48, folder E2; and Bahaleel Munson, and Jonathon Dayton were the representatives of Mount Carmel and North Haven when they sought incorporation in 1782, 10 Towns and Lands, *supra* note 131, at 44.

²²³ Records of the Town of New Haven, *supra* note 203, Dec. 31, 1781.

and other burdens” based on their grand lists.²²⁴ The maintenance of bridges was a large portion of the town funds;²²⁵ the committee’s only additional proviso was that the “two lower bridges over the East River . . . remain a common expense.”²²⁶

East Haven acted almost immediately, on January 3, 1782 the village voted to apply for town privileges at the Assembly’s next session.²²⁷ Their petition again argued that in “1707 [the General Assembly] did grant to this parish of East Haven that they should be a town distinct from New Haven.”²²⁸ Echoing Amity and Bethany’s claim, they noted that many inhabitants were “nine mile lengths” from New Haven, making it difficult for them to attend town business.²²⁹ Though this period witnessed a relative flood of incorporations, the General Assembly carefully scrutinized town petitions to ensure that the new town would be able to function.²³⁰ Even with New Haven’s consent, the petition was rejected. Daniels states that the Assembly required (1) legitimate physical difficulties, (2) a sufficiently large population and grand list, and (3) a showing that neighboring towns would not be harmed, before they would establish a new town.²³¹ East Haven likely failed to satisfy the second condition; it was only one-third the size of Mount Carmel and North Haven, and less than half the size of Bethany and Amity.²³²

²²⁴ *Id.* The reference to Continental Army soldiers presumably refers to the pensions of those soldiers.

²²⁵ The expense of outlying bridges is also cited as cause of New Haven’s support for the new towns. See BRUSIC, *supra* note 158, at 74 (noting that in 1788 North Haven’s six bridges cost £47); HARTLEY, *supra* note 189, at 88. See also 3 TOWN RECORDS, *supra* note 72, index (listing forty entries for bridges between 1684 and 1769).

²²⁶ Records of the Town of New Haven, *supra* note 203, Dec. 31, 1781.

²²⁷ See Donald Chidsey, History of East Haven 1785-1930, at 1 (unpublished manuscript available in the New Haven Colony Historical Society Whitney Library).

²²⁸ 9 Towns and Lands, *supra* note 131, at 325.

²²⁹ 9 *id.*

²³⁰ Of the twenty-nine towns that were incorporated between 1767 and 1789, seventeen required multiple petitions. DANIELS, *supra* note 77, at 41.

²³¹ DANIELS, *supra* note 77, at 41.

²³² East Haven’s 1784 grand list was £5703, City and County Documents, *supra* note 220, at box 2, folder B8, Amity and Bethany’s 1782 grand list was 13,133, *id.* at box 2, folder B9, North Haven and Mount Carmel’s 1785 grand list was £19,179, *id.* at box 2, folder B10.

North Haven and Mount Carmel also moved quickly to seek independence. Their January 1782 petition for incorporation notes “The Town of New Haven . . . almost unanimously voted” to support them.²³³ Despite the familiar grievance about distance, and a grand list of “about twenty thousand pounds,” the Assembly also rejected their petition.²³⁴ The Assembly was probably wary of the somewhat anomalous arrangement for town meetings, which would be held “3/5 of the time at North Haven, and 2/5 at Mount Carmel.”²³⁵ After the sometimes-bruising battles over meetinghouse locations, the Assembly would avoid creating a town with such an obvious source of potential conflict.²³⁶

2. The City of New Haven

In the fall of 1783 a petition circulated in central New Haven calling for a portion of the Town to be incorporated into a city. The petitioners noted that they were “utterly unable to gain subsistence by agriculture . . . [and] have been obliged to turn their attention to commerce.”²³⁷ Even though their business had been “plundered, burned, and destroyed by the incursions of the common enemy” they were willing to renew their efforts “so beneficial to a large interior country.”²³⁸ Such commerce required “full credit and a strict punctuality in performing contracts” that was impossible without “a court of their own to sit often for the dispensation of justice.”²³⁹ To ensure that “wharves, streets, and highways be commodious for business and kept

²³³ 10 Towns and Lands, *supra* note 131, at 74.

²³⁴ *Id.* This petition explicitly addressed all three of Daniels criteria. DANIELS, *supra* note 77, at 41.

²³⁵ THORPE, *supra* note 151, at 255 (quoting the Mount Carmel Society records).

²³⁶ See *supra* note 165.

²³⁷ 10 Towns and Lands, *supra* note 131, at 1a.

²³⁸ 10 *id.*

²³⁹ 10 *id.*

continually in good repair” the memorialists required “a jurisdiction of their own . . . enabling them to enact by-laws for their particular commercial welfare.”²⁴⁰

The petition garnered 214 signatures, representing a substantial portion of the proposed city’s population.²⁴¹ It is unclear who the driving force behind the measure was. Osterweis claims the petitioners were “headed by [Yale] President [Ezra] Stiles.”²⁴² Stiles, however, is an unlikely candidate; his signature falls about two-thirds of the way down the list of supporters.²⁴³ Stiles himself suspected that “city politics are founded in an endeavor silently to bring Tories into equality and supremacy among the Whigs.”²⁴⁴ The Town would vote to readmit loyalists as full citizens just three months after creation of the city,²⁴⁵ but this explanation also fails. The lead signatories of the document, Abraham Bradley and John Whiting, were officers in the Continental Army.²⁴⁶ The most sensible explanation is simply that the petition reflected the broad consensus that a city would stimulate New Haven’s commercial activity.²⁴⁷

The petition reached the General Assembly in October and a bill incorporating the city was drawn.²⁴⁸ It passed the Upper House, but the Lower House requested further consideration.²⁴⁹ The Assembly held a special session that January, which New Haven

²⁴⁰ 10 *id.*

²⁴¹ Osterweis estimates the city included about 600 adult white males in 1785. OSTERWEIS, *supra* note 71, at 164. Timothy Dwight counted 614 families in 1787. DWIGHT, *supra* note 74, at 80. It is unclear, however, whether individuals from outside the proposed city limits signed the petition.

²⁴² OSTERWEIS, *supra* note 71, at 163.

²⁴³ 10 Towns and Lands, *supra* note 131, at 1b.

²⁴⁴ Ezra Stiles Literary Diary, Feb. 13, 1784 *microformed on* Ezra Stiles Papers, General Collection, Beinecke Rare Book and Manuscript Library, Yale University, reel 9. Political parties had not fully taken shape, but the Revolutionary War allegiances supplied the basis for political divisions.

²⁴⁵ Records of the Town of New Haven, *supra* note 203, Mar. 8, 1784. The vote took place after a committee reported favorably, suggesting that many loyalists would benefit the Town through their mercantile activities. OSTERWEIS, *supra* note 71, at 129.

²⁴⁶ 10 Towns and Lands, *supra* note 203, at 1b. Bradley was a captain, Whiting was a colonel.

²⁴⁷ The idea that cities would promote trade was not limited to New Haven. Four other Connecticut towns sought cities in 1783 for the same reason: Hartford, Middletown, New London, and Norwich. *See* DANIELS, *supra* note 9, at 147. Nor was the city movement limited to Connecticut. *See supra* note 9.

²⁴⁸ 10 Towns and Lands, *supra* note 131, at 2.

²⁴⁹ Franklin Bowditch Dexter, New Haven in 1784: A Paper Read Before the New Haven Colony Historical Society, Jan. 21, 1884, *in* New Haven Pamphlets (available at The New Haven Public Library, Local History Room).

representatives attended, under orders to “exert themselves that the act for incorporating a part of the Town of New Haven be passed with all convenient speed.”²⁵⁰ The representatives were effective, securing passage of the unamended bill just three days later.²⁵¹

The new city extended south of a line from the long bridge over the East River to Thompson’s bridge over the West River.²⁵² The city also exercised jurisdiction over the greater part of the harbor including the east shore of the harbor (which would become part of East Haven) “on the line of the high-water mark.”²⁵³ The new government was based on the English model, with a Mayor, four Aldermen, and a Common Council elected at large.²⁵⁴ The Mayor and two Aldermen served as a general court for all civil cases arising within city limits.²⁵⁵ The Common Council, which included the Mayor and the Aldermen, was authorized to regulate “markets and commerce, . . . streets and highways, . . . wharves, anchoring and mooring of vessels, . . . trees planted for shade, ornament, convenience, or use, . . . inspectors of produce brought into said city, . . . a city watch, . . . public lights and lamps, . . . the mode of taxation, . . . [a]nd the catching of fish and oysters.”²⁵⁶

At the first meeting of the City 249 ballots were cast, electing Roger Sherman as New Haven’s first mayor, with 125 votes.²⁵⁷ Ezra Stiles lists the political breakdown of the new officers as “Mayor and two Aldermen, Whigs; two Aldermen Tories. Of the Common Council,

²⁵⁰ Records of the Town of New Haven, *supra* note 203, Jan. 5, 1784.

²⁵¹ The dates of passage are not included in the Special Acts until volume 5 (1857), but the bill’s passage was noted by Ezra Stiles. Stiles, *supra* note 244, Jan. 8, 1784.

²⁵² See Appendix B, Map 3, *infra*. In a sign of the importance of bridges, the borders are drawn to include both Thompson’s and long bridge. An Act Incorporating the City of New Haven, 1 Resolves and Private Laws of the State of Connecticut, § 1 at 406 (1784).

²⁵³ 1 Resolves and Private Laws of the State of Connecticut, *supra* note 252 § 1 at 406.

²⁵⁴ 1 Resolves and Private Laws of the State of Connecticut, *supra* note 252 § 4 at 407; See DANIELS, *supra* note 9, at 147 (comparing the charters of the five newly incorporated Connecticut cities to their English counterparts).

²⁵⁵ 1 Resolves and Private Laws of the State of Connecticut, *supra* note 252 §§ 9-17, at 408-10.

²⁵⁶ 1 Resolves and Private Laws of the State of Connecticut, *supra* note 252 § 32 at 412-13.

²⁵⁷ Dexter, *supra* note 249, at 70. The runner-up Deacon Howell was elected Alderman. Thomas Darling also received 22 votes.

five Whigs, five flexibles but in heart Whigs, eight Tories”²⁵⁸ The Common Council met in October, focusing immediately on the harbor; their first order of business was to “examine into the utility of building a wharf from the new ferry point to the Channel, or of Extending Union Wharf.”²⁵⁹

3. The Towns Are Born

Three years after their first attempt, Amity and Bethany revived their effort to secure town privileges. They sent a petition to the General Assembly in December, generally restating their case, though with less rhetorical flourish.²⁶⁰ This time they were successful; the Assembly incorporated the Town of Woodbridge in January 1784, the same session that created the City of New Haven.²⁶¹ Pursuant to their 1781 agreement, the new town entered negotiations with New Haven over the division of burdens.²⁶² The apportionment was based on the 1782 grand list, which reported that Woodbridge held £13,133 of New Haven’s £62,742.²⁶³ In addition to the bridges within its borders, Woodbridge was required to pay for half the maintenance costs of Thompson’s bridge for ten years.²⁶⁴ The new town also became responsible for its own

²⁵⁸ Stiles, *supra* note 244, Feb. 13, 1784.

²⁵⁹ OSTERWEIS, *supra* note 71, at 169 (quoting the Common Council records).

²⁶⁰ 9 Towns and Lands, *supra* note 131, at 293. The petition focused on the “great inconveniences by reason of there being a great distance from the places where the business of the town is transacted.”

²⁶¹ 9 *id.* at 294. The Assembly requested the appearance of representatives from New Haven and Milford. New Haven had granted its support two years previously, *see supra* notes 215-226, and accompanying text. Milford did not send representatives to oppose the bill, and the petition passed the Upper House first. 9 Towns and Lands, *supra* note 131, at 294

The new town was named for Amity’s first minister, Benjamin Woodbridge. *See* note 183, *supra*.

²⁶² Records of the Town of New Haven, *supra* note 203, Feb. 12, 1781.

²⁶³ New Haven-Woodbridge Agreement, Apr. 22, 1784, City and County Documents, *supra* note 220, at box 2, folder B9. Woodbridge held 20.9% of New Haven’s ratable estate.

²⁶⁴ *Id.* Thompson’s bridge was included in the newly formed City of New Haven, forming its northwestern border.

highways, and poor, plus the care of “two negroes now living in aforesaid town of New Haven, . . . Old Robin, and Old Dinah.”²⁶⁵

North Haven was determined to emulate Woodbridge’s success, with or without Mount Carmel. In February 1785 the parish voted that while “desirous of joining with the Parishes of Mount Carmel and Northford . . . we will use our Endeavors to get set off by ourselves as a separate Town from New Haven” in the absence of an accord.²⁶⁶ They sent a committee to Mount Carmel and Northford, but apparently, no agreement was reached. In March, New Haven reauthorized the formation of new towns, with North Haven and Mount Carmel to form separate entities.²⁶⁷ In December, the Town also granted its consent to West Haven’s attempt to form an independent town.²⁶⁸

Heartened by this additional grant, East Haven returned to the General Assembly in April 1785. The new petition catalogued East Haven’s difficulties, stressing that “they are obliged upon all occasions to cross one of the ferries to attend Town business which is not only very expensive to them but often dangerous.”²⁶⁹ Additionally, the villages’ once-plentiful oyster grounds had been “almost wholly destroyed for want of proper town regulations.”²⁷⁰ The petition also exaggerated the village’s grand list, estimating “about £9000.”²⁷¹

²⁶⁵ *Id.* An accounting of the town poor from this month places £2-2-3 of £10-16-6 in poor costs in Amity and Bethany. This amounts to 19.5%, slightly less than their share of the burdens, necessitating the transfer. List of Town Poor, Apr. 1784, City and County Documents, *supra* note 220, at box 47, folder D.

²⁶⁶ THORPE, *supra* note 151, at 255 (quoting the society records). Northford was then a parish in the northern portion of Branford.

²⁶⁷ Records of the Town of New Haven, *supra* note 203, Mar. 28, 1785. Mount Carmel would also include “the inhabitants of the fifth society that are included within the lines of the 17th Company in the 2nd regiment.” North Haven was also called the fifth society, being the fifth parish formed.

²⁶⁸ Records of the Town of New Haven, *supra* note 203, Dec. 12, 1785.

²⁶⁹ 9 Towns and Lands, *supra* note 131, at 326. Their representatives were often forced to stay in New Haven overnight, further burdening the village funds.

²⁷⁰ 9 *id.* The flats on the east side of the harbor were prime oyster catching grounds, and would remain a source of contention between New Haven and East Haven. See notes 301-305 and accompanying text, *infra*.

²⁷¹ The actual total was £5703. City and County Documents, *supra* note 220, at box 2, folder B8

The Assembly approved East Haven's incorporation in May 1785, 101 years after their first attempt at town status.²⁷² The act included the stipulation that citizens of New Haven be permitted to "catch[] fish, oysters, and clams within the bounds of said town of East Haven under the same restrictions and regulations that the inhabitants of East Haven shall be."²⁷³ True to form, the division negotiations between East Haven and New Haven did not go smoothly. Whereas Woodbridge settled its account in two months, East Haven successfully sought a new committee to divide the burdens seventeen months after its incorporation.²⁷⁴ This new committee acted swiftly, reaching an agreement by December 1786.²⁷⁵ In order to meet their proportional share of town obligations, East Haven accepted an additional pound per month in poor support, and £5 of the bridges account.²⁷⁶

At the Assembly's next session, North Haven and Mount Carmel presented separate petitions, generally restating their previous arguments; the Town was much too large, North Haven claimed, "so that the prudential affairs of it cannot be transacted with any tolerable degree of economy."²⁷⁷ For the first time, however, the villagers emphasized the differences between themselves and the residents of the new city. Mount Carmel's petition asserted that the city dwellers are "habituated to a very different mode of living . . . being of the trading interest, whose plans and ideas are . . . totally diverse from those of your memorialists" and that "this

²⁷² 9 Towns and Lands, *supra* note 131, at 327. The new town assumed the boundaries of the old parish.

²⁷³ *Id.*

²⁷⁴ City and County Documents, *supra* note 220, at box 48, folder E2. The Document is untitled, but dated October 1786.

²⁷⁵ The agreement between New Haven, North Haven and Hamden, dated December 15, 1786, indicates that the Town had already settled with East Haven. City and County Documents, *supra* note 220, at box 58, folder E.

²⁷⁶ The bridge figure is listed in City and County Documents, *supra* note 220, at box 2, folder B8. The town poor figure requires some estimation; in April 1784 the entire New Haven area spent £10-16-6 monthly on poor support. Woodbridge accepted £2-2-3 per month, leaving £8-14-3 per month by 1785. In 1786 New Haven, North Haven, and Hamden divided £7-5-7 per month, and £0-8-0 per month already belonged to East Haven. That leaves £1-0-8 per month to be accounted for, the poor burden for all the towns but East Haven are recorded, so this total is presumably the amount added to East Haven's burden. *Id.* at box 47, folder D; box 58, folder E.

²⁷⁷ 10 Towns and Lands, *supra* note 131, at 39.

circumstance is often the source of conflicts.”²⁷⁸ North Haven concurred, claiming the incorporation of the city “has created distinct and separate interests, as your petitioners have no concern in trade and navigation, but wholly subsist themselves by agriculture and husbandry.”²⁷⁹ Mount Carmel embodied this new conception of community, protesting the costs associated with the town center, especially “the expense of maintaining *their* poor.”²⁸⁰ Both petitions passed in the Upper House before stalling in the Lower.²⁸¹

The villages renewed their petitions in May 1786, increasing the focus on their dissimilarity to the city, claiming the management of New Haven was

thrown into the hands of a few inhabitants of said town who live near the usual place of holding the meetings of said town. Those few being . . . professional men and merchants [who] have notions of men and things and modes of conducting business very different from those which are your petitioners who are all farmers.²⁸²

The villages also gave inflated estimates of their grand lists: £13,000 for North Haven, and £11,000 for Mount Carmel.²⁸³ Bowing to the villagers’ persistence, the Assembly granted Mount Carmel’s petition in May (the town was named Hamden),²⁸⁴ and North Haven’s in October.²⁸⁵

Both acts of incorporation prevented New Haven from passing discriminatory fish, clam or oyster regulations, and Hamden’s charter permitted New Haven to continue quarrying East

²⁷⁸ 10 *id.*

²⁷⁹ 10 *id.* at 45.

²⁸⁰ 10 *id.* at 39 (emphasis added).

²⁸¹ 10 *id.* at 39, 45. This result is somewhat counterintuitive. The Lower House consisted of representatives of the various towns, many small and newly-incorporated. The Upper House was dominated by the larger towns, between 1701 and 1784, 40% of this body came from urban towns, 50% from “secondary centers,” and only 10% from country towns. DANIELS, *supra* note 77, at 163-64 & tbl. 22.

²⁸² 10 Towns and Lands, *supra* note 131, at 41. This passage is contained in Mount Carmel’s petition.

²⁸³ 10 *id.* at 46, 41. The actual totals were £9257 and £9922, respectively. City and County Documents, *supra* note 220, at box 2, folder B10.

²⁸⁴ 10 Towns and Lands, *supra* note 131, at 43. The Town was named after John Hampden (the missing *p* seems to have been a spelling error), an English Puritan who died in battle, fighting against the army of Charles I in 1643.

²⁸⁵ 10 Towns and Lands, *supra* note 131, at 47.

and West Rocks.²⁸⁶ The towns entered tripartite negotiations with New Haven, settling in December 1786. North Haven accepted an additional half-pound per month in poor expenses, and £8-18-7 of the bridge account.²⁸⁷ Despite Mount Carmel's earlier protestations, Hamden was not required to accept any further poor, but did take on £9-11-2 of the bridge account.²⁸⁸ The new towns succeeded in immediately lowering their administrative costs; while New Haven's tax was eight pence per pound during this period,²⁸⁹ both Hamden and North Haven instituted their first tax at 4 pence per pound.²⁹⁰

West Haven was the last village to seek New Haven's permission for independence, and the last to petition the General Assembly. The parish sought independence in 1785 and 1787. By this time, the elements of town petitions had become standard. West Haven cited the difficulty in traveling to the town meetings, "the differing interests between the city and your Honor's petitioners, the large taxes necessarily arising in large towns," and the size of their grand list, "about eight or nine thousand."²⁹¹ Both petitions failed, probably due to West Haven's diminutive size. Based on the other villages' embellishments, their grand list was likely less than £8000. The town would also comprise a very limited area, limiting the future population growth for a low-density farming community.

West Haven waited thirty-five years before again petitioning the General Assembly. The village reached an agreement with the society of North Milford to join in forming a new town, overcoming the size issue.²⁹² North Milford was substantially less urban than West Haven, and

²⁸⁶ 10 *id.* at 43, 47.

²⁸⁷ City and County Documents, *supra* note 220, at box 58, folder E; box 47, folder D. This brought the Town's total expenditure on paupers to £23-9-0 annually. Thorpe notes that "[f]or at least sixty years after the birth of the town the heaviest expense was its pauper list. THORPE, *supra* note 151, at 263.

²⁸⁸ City and County Documents, *supra* note 220, at box 58, folder E; box 47, folder D.

²⁸⁹ Records of the Town of New Haven, *supra* note 203, Dec. 13, 1784.

²⁹⁰ See HARTLEY, *supra* note 189, at 102 (Hamden); THORPE, *supra* note 151, at 260 (North Haven).

²⁹¹ City and County Documents, *supra* note 220, at box 48, folder E.

²⁹² MARY R. WOODRUFF, HISTORY OF ORANGE, NORTH MILFORD CONNECTICUT 1639-1949, at 33 (1949).

agreed to consolidate only on the conditions that town elections occur near their meetinghouse, and the societies keep separate expenses for the first ten years.²⁹³ In spite of this potential source of discord, the Assembly incorporated the Town of Orange in May 1822.²⁹⁴ The new town became responsible for the New Haven poor living within its limits, and half of the bridge crossing the West River.²⁹⁵

By 1822, each of New Haven's abutting suburbs had been created. In just three short years, (from 1783-1786), the Town underwent a dramatic transformation, shrinking to less than one-third its former size, and less than half its former population. In addition to the subtraction of the new towns, the old town plat became subject to the overlapping jurisdiction of the new city, which, as the next section will show, would come to swallow the entire Town.

C. *The City Expands*

Over the next hundred years, the Town of New Haven would expand from a sleepy New England community with just over 4000 inhabitants to a bustling metropolis of nearly 100,000.²⁹⁶ The vast majority of this growth took place in the central city, and New Haven, like the other cities of its time, broadened its borders to accommodate this growth.

²⁹³ *Id.* North Milford also required West Haven to pay the entire costs of the petitioning process.

²⁹⁴ Resolve Incorporating the Town of Orange, 1 Resolves and Private Laws of the State of Connecticut 1173, (1822). The act was passed over the objections of Milford, which voted to send representatives to block the incorporation in April 1821. ORANGE SESQUICENTENNIAL BOOK COMM., HISTORY OF ORANGE SESQUICENTENNIAL 1822-1972, at 7 (1972).

²⁹⁵ 1 Resolves and Private Laws of the State of Connecticut, *supra* note 294, at 1173. The settlement with Milford was more complicated, mandating a division of town poor and debts similar to the system used in the separation of Woodbridge, East Haven, North Haven, and Hamden. *Id.* at 1174.

²⁹⁶ See <http://www.sots.state.ct.us/RegisterManual/SectionVII/Population1756.htm> (last visited Apr. 29, 2004) (listing the census enumeration for Connecticut towns, 1790-1890).

1. Early Border Changes

The original borders of the City of New Haven lasted just fifteen years. In 1798, the General Assembly by special act annexed “that part of the town of New Haven which lies easterly of the long lane, or Cheshire Road.”²⁹⁷ The move is somewhat curious; the Connecticut Archives contain no record of a petition for the act, and the vast majority of the land was undeveloped. James Hillhouse, who, as one commentator describes it, “took energetic steps to steer the growth of the city in his direction” owned much of this area.²⁹⁸ Hillhouse would also serve as president of the Hartford and New Haven Turnpike Company, chartered in 1798.²⁹⁹ By placing the turnpike within city limits, the first stretch of the road would be eligible for upkeep from the city, perhaps making the annexation attractive to the area’s largest landowner.³⁰⁰

At the time of incorporation, the city included the east side of the harbor up to the high water mark, placing regulation of the valuable oyster flats in the city’s care.³⁰¹ East Haven sought control of these oyster beds, specifically mentioning them in their petition for town privileges.³⁰² The act incorporating East Haven adopted the village’s borders for the new town; unfortunately, the village grant never specifically established these boundaries.³⁰³ In 1803, in a dispute over oyster rights, the General Assembly once again mediated between East Haven and

²⁹⁷ An Act in Addition to an Act Incorporating the City of New Haven, 1 Resolves and Private Laws of the State of Connecticut 416 (1798).

²⁹⁸ ELIZABETH MILLS BROWN, *NEW HAVEN: A GUIDE TO ARCHITECTURE AND URBAN DESIGN* 134 (1976).

²⁹⁹ OSTERWEIS, *supra* note 71, at 187. This turnpike later became Whitney Avenue.

³⁰⁰ The area also included the Cheshire, and Middletown Turnpikes, which would later become Dixwell Avenue, and State Street. Maintaining the New Haven portions of these roads would have been important to merchants who relied on the turnpikes before the advent of canals and railroads.

³⁰¹ An Act Incorporating the City of New Haven, 1 Resolves and Private Laws of the State of Connecticut, § 1 at 406 (1784).

³⁰² See note 270, and accompanying text. The inclusion of oyster regulation-limitations in the acts incorporating East Haven, North Haven, and Hamden highlight the importance of the oyster collecting industry. See *supra* note 273 (East Haven); note 286 (North Haven and Mount Carmel).

³⁰³ See 5 COLONY RECORDS, *supra* note 82, at 24.

New Haven, setting the new dividing line down the middle of the harbor channel.³⁰⁴ This precise limit of the new border was a source of contention between the two towns for years to come; oyster rights were litigated until the 1870s, when the Assembly clarified the border.³⁰⁵

2. Fair Haven West

The Farmington Canal, which would connect New Haven with the Farmington Valley and western Massachusetts, was completed in 1828, largely with the funds of New Haven shareholders.³⁰⁶ Constant washouts and competition from the new railroads prevented the project from ever turning a profit, and by 1839, the New Haven and Northampton Company asked the City of New Haven to rescue the canal by purchasing \$100,000 worth of stock.³⁰⁷ Many of the city leaders held stock in the corporation, and it provided some incidental benefits to the city, but voters rejected the authorization at a city meeting on February 27, 1839.³⁰⁸

³⁰⁴ Resolve Establishing the Dividing Line Between the Towns of New Haven and East Haven, 1 Resolves and Private Laws of the State of Connecticut 1168 (1803); 2 Connecticut Archives: Towns and Lands Collection 102-04 (ser. 2) (appointing a committee to examine the matter, and the committee's report). This division of the harbor would later play a role in the enlargement of the Town of New Haven. See note 335 and accompanying text, *infra*.

³⁰⁵ Defining the Boundary-Line Between the Towns of New Haven and East Haven, 8 Special Laws of the State of Connecticut 118 (1877); Defining the Division Line Between the Towns of New Haven and East Haven, 8 Special Laws of the State of Connecticut 222 (1878). See also *Rowe v. Smith*, 48 Conn. 444 (1880) (remanding a trespass case in which the oyster rights for a portion of the harbor was granted to one man by East Haven, and another man by New Haven).

³⁰⁶ OSTERWEIS, *supra* note 71, at 246.

³⁰⁷ Loan on the Credit of New Haven, Connecticut State Archives, General Assembly Papers, box 29, folder 11, at 1 [hereinafter General Assembly Papers]. Two separate companies ran the canal until 1836 when the New Haven and North Hampton Company took control of the assets and debts of both. OSTERWEIS, *supra* note 71, at 246-47.

³⁰⁸ See General Assembly Papers, *supra* note 307, box 29, folder 11, at 2. According to the Assembly's Joint Committee on the Judiciary (which determined that the city could purchase the bonds without running afoul of the public use doctrine), these benefits included "the diminution of the price of wood and other articles, the improvement of the harbor, the furnishing of an abundant and unfailing supply of water in case of fire, [and] the improvement of the health of the city by cleansing low grounds." *Id.* at 1.

Residents of Fair Haven, who were distant from the canal, and received few of its benefits,³⁰⁹ overwhelmingly opposed the purchase.

After the negative vote, those in favor of the bailout approached the freemen from Fair Haven and offered their support for setting the village off from the city, in exchange for their favorable votes.³¹⁰ On March 20, the city held another vote, and, with the support of Fair Haven's inhabitants, the measure passed.³¹¹ The residents of Fair Haven petitioned the General Assembly to be set off from the City of New Haven that April, arguing they "derive comparatively little advantage from the proceedings of the city, while they are subjected to their full proportion of all expense."³¹² While a description of Fair Haven in the 1840 New Haven Directory notes "a large mercantile business is done in the village,"³¹³ they were certainly less urban than the nine squares. Their location on the Quinnipiac River also made some city services unnecessary; their petition specifically complained of paying for "the construction of cisterns, reservoirs, and public pumps . . . in all which we have little or no interest"³¹⁴

A group of citizens opposed the separation, arguing that "much has been expended by the city corporation for the particular benefit of the said village."³¹⁵ They recounted the deal made between the canal supporters and the villagers, urging the Assembly to "promptly disapprove of such fraudulent proceedings."³¹⁶ The city leaders were able to deliver on their promise,

³⁰⁹ The remonstrance against the Judiciary Committee's report states that "the inhabitants . . . of Fair Haven were all opposed to the grant of aid." *Id.* at 2.

³¹⁰ *Id.*

³¹¹ *Id.* at 1.

³¹² Petition to Set Off Fair Haven, General Assembly Papers, *supra* note 307, box 30, at 41. The petition garnered 93 signatures.

³¹³ PATTEN'S NEW HAVEN DIRECTORY FOR THE YEAR 1840, at 112 (1840). The directory claims Fair Haven "contains about 1200 inhabitants."

³¹⁴ Petition to Set Off Fair Haven, General Assembly Papers, *supra* note 307, box 30, at 41.

³¹⁵ Remonstrance, General Assembly Papers, *supra* note 307, box 30, at 42.

³¹⁶ *Id.*

however, and in May, the Assembly passed a special act removing Fair Haven from the city.³¹⁷

Fair Haven remained part of the Town of New Haven, and became responsible for their proportion of the city debt existing on March 16, 1839, four days before the canal bonds were purchased.³¹⁸

The remonstrance against detachment argued that Fair Haven was growing rapidly, and “but a short time can elapse before their . . . being reannexed to the corporation.”³¹⁹ By 1870, the population of Fair Haven had grown to nearly 4000, and the need for better services was manifest.³²⁰ The New Haven Morning Journal and Courier, for example, noted that Fair Haven “needs some measure by which the streets may be placed in respectable condition.”³²¹ The lack of a police force was especially troubling.³²² Following a failed proposal to allow the Town to create a police force, consolidation was suggested. The Journal and Courier urged consolidation in a June 5th editorial;³²³ one month later, the Assembly passed a bill reannexing the village of Fair Haven.³²⁴ While no formal referendum occurred, New Haven’s corporation counsel “went around Fair Haven and got a majority of taxpayers to sign a petition.”³²⁵ Fair Haven returned to the city, as predicted, in just thirty-one years.

³¹⁷ Resolve Setting Off Fair Haven from the City of New Haven, 3 Private Laws of the State of Connecticut 401 (1839).

³¹⁸ *Id.*

³¹⁹ Remonstrance, General Assembly Papers, *supra* note 307, box 30, at 42.

³²⁰ See DORIS B. TOWNSHEND, FAIR HAVEN: A JOURNEY THOROUGH TIME 68 (1976).

³²¹ *Suburban Improvements*, NEW HAVEN MORNING J. & COURIER, May 7, 1870, at 2.

³²² *Id.* The newspaper noted that the village was so near the city that “our uneasy elements can easily visit it and disturb the place.”

³²³ NEW HAVEN MORNING J. & COURIER, June 13, 1870, at 2.

³²⁴ An Act Extending the Limits of the City of New Haven, 6 Special Laws of the State of Connecticut 815 (1870). The bill moved quickly through the Assembly. After clearing the Judiciary Committee on June 18, the bill faced “no serious opposition.” NEW HAVEN MORNING J. & COURIER, June 18, 1870, at 2.

³²⁵ SPEECHES AND PAPERS AGAINST CONSOLIDATING THE TOWN, CITY, AND SCHOOL GOVERNMENTS OF NEW HAVEN CONNECTICUT 19, 23 (William S. Pardee ed., 1891), *reprinted in* 8 SOCIAL SCIENCE PAMPHLET COLLECTION, doc. 11 (Yale Law Library ed., 1935) [hereinafter SPEECHES AND PAPERS].

3. The East Shore

Thus far, the discussion of Fair Haven has centered on Fair Haven West, but the booming oyster village extended to the eastern side of the Quinnipiac River as well. Fair Haven East belonged to East Haven, which remained a relatively quiet country town. The two halves of East Haven had come into conflict in the past. In 1849, the rapidly expanding Fair Haven East lost a vote to move the town meetings to the banks of the Quinnipiac.³²⁶ Two months later the village unsuccessfully sought to divide the town.³²⁷ Fair Haven East needed city services, but, as part of East Haven, could not join the city of New Haven. They remedied this predicament in 1872 by forming the Borough of Fair Haven East.³²⁸

Even with the borough government, Fair Haven East was desirous of entering the city, but the city refused to accept the borough alone.³²⁹ In 1881, the leaders of the Towns of New Haven and East Haven reached an agreement. New Haven would make Tomlinson's bridge toll-free, and accept East Haven's entire town debt, in exchange for the western portion of East Haven, including Fair Haven East.³³⁰ The area would enter the Town of New Haven, and could join the city pending a majority vote. The Assembly passed an act that would effectuate this

³²⁶ Chidsey, *supra* note 227, at 37. The vote was 164-122, taking the Fair Haven residents (who had prepared a carriage with bunting for a victory march back to the village) by surprise.

³²⁷ *Id.* at 37-38.

³²⁸ Incorporating the Borough of Fair Haven East, 7 Special Laws of the State of Connecticut 345 (1872). Borough government was analogous to city government, though less powerful. The act created a warden, and six burgesses with the power to create a police force, tax property within the borough, and regulate streets, drains, sewers, and sidewalks. *Id.* at 346-51.

³²⁹ SPEECHES AND PAPERS, *supra* note 325, at 4.

³³⁰ *Id.* at 3-7. East Haven representative William A. Woodward stated, under oath, that he negotiated this agreement with New Haven corporation counsel Stoddard on a train to Hartford. Several other prominent men corroborated the story, also while under oath.

At that time, the General Assembly was considering a bill that would have required the Towns of New Haven and East Haven purchase Tomlinson's bridge (which crossed the mouth of the Quinnipiac River). The toll was a major issue for East Haven residents, who would have to cross the bridge in order to reach the New Haven's markets.

deal, but required referenda in New Haven, the portion of East Haven to be annexed, and the residents who would remain in East Haven.³³¹

The benefits of this deal to the residents of East Haven were clear; the town of just over 3000 was laboring under a debt of \$160,000.³³² By joining the Town of New Haven, the annexed residents' taxes would drop from twelve to seven-and-one-half mills, and they would receive superior services.³³³ Those who remained in East Haven would also see their taxes fall dramatically.³³⁴ Furthermore, the split would relieve the conflict between the burgeoning village and the rural town factions.

New Haven, meanwhile, would gain full jurisdiction over the harbor; a petition of many of the Town's luminaries lamented, "New Haven, the ninth port of importance in the U.S. has really no waterfront available for wharfage or manufacturing purposes."³³⁵ Not only would the East Shore provide industrial facilities, but the Town would also gain \$1.5 million in taxable property that would only appreciate in value.³³⁶ One citizen excitedly declared that the East Shore would become the most valuable part of Town, "the Brooklyn of New Haven."³³⁷

The election took place May 2, 1881. With lower than expected turnout, the measure passed in New Haven 2088 to 744.³³⁸ The balloting was even more lopsided in East Haven; the

³³¹ Annexing a Part of the Town of East Haven to the Town of New Haven, 1881 Special Act No. 219, 9 Special acts of the State of Connecticut 270 (1881).

³³² See *Id.* (noting the debt of \$160,000); <http://www.sots.state.ct.us/RegisterManual/SectionVII/Population1756.htm> (last visited Apr. 29, 2004) (reporting the East Haven 1880 census population at 3057)

³³³ *Some Arguments Against Annexation*, NEW HAVEN MORNING J. & COURIER, Apr. 30, 1881, at 2.

³³⁴ In his 1884 testimony before the General Assembly Committee on Cities and Boroughs, New Haven Town Agent James Reynolds noted that East Haven was tied for the lowest tax rate in the state at 5 mills. SPEECHES AND PAPERS, *supra* note 325, at 39.

³³⁵ *Annexation*, NEW HAVEN MORNING J. & COURIER, Apr. 28, 1881, at 4. Many companies also endorsed the letter, led by Sargent & Co.

³³⁶ *Annexation*, NEW HAVEN MORNING J. & COURIER, Apr. 30, 1881, at 1. The Town would also gain the valuable oyster grounds.

³³⁷ Charles W. Bradley, *Letter, For Annexation*, NEW HAVEN EVENING REGISTER, Apr. 30, 1881, at 2.

³³⁸ *Annexation Voted*, NEW HAVEN EVENING REGISTER, MAY 3, 1881, at 1. The Town held 14,000 eligible voters at that time. Approximately 10,000 votes were cast in the previous election. A majority supported annexation in each of the Town's 13 wards.

annex voted 301 to 85 in favor, while the area that would remain East Haven supported the measure 123 to 9.³³⁹ The East Shore became the fourteenth and fifteenth wards of the Town of New Haven, joining Westville (the thirteenth ward) as an area subject to the jurisdiction of the Town, but not the City of New Haven.

4. Consolidation

Soon after the Town expanded across the harbor, calls surfaced for the consolidation of the Town and City governments. The city had gradually taken over most town functions, leaving the selectmen with few duties other than registering voters, managing Westville and the East Shore's highways, and running the almshouse.³⁴⁰ As early as 1883, Simeon Baldwin, in a speech before the New Haven Civil Service Reform Association, proposed consolidation.³⁴¹ The argument rested on the inefficiency, and corruption, of town government.³⁴² A group led by Baldwin, the Taxpayers Association, petitioned the General Assembly in 1883 and 1885, but was unable to get a bill introduced.³⁴³

The movement for consolidation was rekindled in 1889 when the New Haven Chamber of Commerce, amidst accusations of fraud at the town almshouse, voted to petition the Assembly to merge the two governments.³⁴⁴ The Committee on Cities and Boroughs reported favorably on

³³⁹ *Annexation Carried*, NEW HAVEN EVENING REGISTER, MAY 2, 1881, at 1.

³⁴⁰ See LEVERMORE, *supra* note 120, at 288-99 (discussing the responsibilities of the town and city governments in 1886).

³⁴¹ Simeon E. Baldwin, Address upon the Expediency of Consolidating the Town and City Governments in New Haven Before the New Haven Civil Service Reform Association (Dec. 14, 1883).

³⁴² Baldwin complained that the Town Agent received nearly as much pay as the mayor, "and has patronage much greater," *id.* at 6, the Town spent more on the care of poor than other towns, *id.* at 7, and was prone to capture by special interests, *id.* at 5.

³⁴³ SPEECHES AND PAPERS, *supra* note 325, at 21.

³⁴⁴ See JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF CONNECTICUT 1889, at 267 (recording the submission of the Chamber of Commerce petition on February 12) [hereinafter HOUSE JOURNAL]; Report of the

a bill that would consolidate the Town and City pending approval of the entire Town.³⁴⁵ The bill went to the House floor, where the East Haven representative successfully moved to amend the bill to require separate approval from the voters of Westville and the East Shore.³⁴⁶ The amended bill passed on May 28.³⁴⁷ The Senate passed the original version of the consolidation bill, but refused to support the double majority amendment.³⁴⁸ The House, meanwhile, declined to rescind their amendment, effectively killing the bill.³⁴⁹ Town agents sent to oppose the bill were influential in defeating the measure, but caused a scandal when an investigative committee revealed the funding for these agents has been surreptitiously appropriated from the town coffer (along with funds to bribe two of the town newspapers into editorializing against the consolidation).³⁵⁰

The following year, the City of New Haven established a special committee to study consolidation.³⁵¹ The committee found that consolidation would be desirable, but “it would be neither wise, practicable, nor expedient to coerce or attempt to coerce the portions of the town . .

Special Committee Appointed to Investigate the Affairs of the Government of the Town of New Haven 10 (Nov. 26, 1889), , in New Haven Pamphlets (available at The New Haven Public Library, Local History Room) [hereinafter Special Committee Report] (reporting on the alleged over-billing at the own almshouse); SPEECHES AND PAPERS, *supra* note 322, at 30 (criticizing the newspapers’ exaggerated accounts of corruption in the town government in 1889).

³⁴⁵ H.B. 417, Reg. Sess. (Conn. 1889); HOUSE JOURNAL 1889, *supra* note 344, at 978.

³⁴⁶ HOUSE JOURNAL, *supra* note 344, at 1034.

³⁴⁷ *Id.*

³⁴⁸ JOURNAL OF THE SENATE OF THE STATE OF CONNECTICUT 1889, at 878, 1005.

³⁴⁹ The representative from New London (the Town and City of which were consolidated in 1874, 7 Private Laws of the State of Connecticut 641 (1874)) moved to withdraw the amendment but was defeated by eleven votes. HOUSE JOURNAL, *supra* note 344, at 1116; *Consolidation Killers*, NEW HAVEN MORNING J. & COURIER, June 7, 1889, at 1.

³⁵⁰ Special Committee Report, *supra* note 344, at 17-35. The Town hired an associate of the Wallingford representative (a member of the Committee on Cities and Boroughs) as a lobbyist. Despite accusations that the money allotted to this lobbyist was used to bribe members of the Cities and Boroughs Committee, the investigation declared these intimations “without foundation.” *Id.* at 17. The investigation did report that \$500 in Town funds was given to the editors of the New Haven Union, and the New Haven Morning Journal and Courier to “secure their more active assistance in opposing the consolidation bill.” *Id.* at 16. The investigation also found that “these appropriations were actually concealed from the public, by suppressing the records of a large part of the proceedings in this matter.” *Id.* at 18.

³⁵¹ JOURNAL OF THE BOARDS OF ALDERMEN AND COUNCILMEN 1890, at A363 (1890).

. to become part of the City.”³⁵² The Board of Aldermen supported a consolidation bill in 1893,³⁵³ but the city would not send its corporation counsel to the General Assembly until 1895.³⁵⁴

The Assembly approved a measure to consolidate the city and town governments, pending a vote of the outlying wards.³⁵⁵ Though the bill would formally consolidate the governments, virtually eliminating the Town,³⁵⁶ the action would involve far less than a complete merger. The outlying wards would only formally come into the city; they would be ineligible for “city improvements,” would not be able to vote on matters that did not affect the districts, and the city could not tax them at a rate higher than four mills.³⁵⁷ The wards could then hold referenda to become full members of the city on the petition of twenty residents.³⁵⁸

Though requiring the districts’ consent, the act provided for as little democracy as possible. The president of the Good Government Club complained that the city was not included in the vote, and that granting the town selectmen the authority to set the date would leave little time to campaign.³⁵⁹ On November 25, the Town provided one day’s notice of the election, which would not employ a secret ballot.³⁶⁰ Proponents of consolidation cited the need for better services in the outlying districts, especially police. One editorialist noted that, because of the

³⁵² *Id.*

³⁵³ JOURNAL OF THE BOARDS OF ALDERMEN AND COUNCILMEN 1893, at C113 (1893). The Board of Councilmen voted against the supporting the bill, as a rebuke to Mayor Sargent, who had lied to the Board of Aldermen about the level of support for the bill. See *The Councilmen’s Vote*, NEW HAVEN REGISTER, Mar. 14, 1893, at 1. The article also notes that “Nearly all of the town officials were present in opposition to the measure.”

³⁵⁴ JOURNAL OF THE BOARDS OF ALDERMEN AND COUNCILMEN 1895, at C32-33 (1895). The Council supported this measure unanimously.

³⁵⁵ Consolidating the Governments of the City and Town of New Haven, 1895 Special Act No. 422, 12 Special Acts of the State of Connecticut 589 (1895).

³⁵⁶ The office of Town Clerk would remain to register voters, as required by the State Constitution. CONN. CONST. of 1818, art. V, § 5.

³⁵⁷ 12 Special Acts of the State of Connecticut, *supra* note 355 at 590.

³⁵⁸ *Id.*

³⁵⁹ *Dr. Smyth’s Address*, NEW HAVEN EVENING REGISTER, Nov. 1, 1895, at 5.

³⁶⁰ *Town May Join City*, NEW HAVEN EVENING REGISTER, Nov. 25, 1895, at 1. The Register supported consolidation in an editorial, arguing that it would reduce taxes. *Id.* at 4.

“large number of law-breakers who make this shore their howling and game place on Sunday, we have to call upon the city authorities to help suppress this lawlessness.”³⁶¹ Westville leaders supported the bill because it would allow them to determine when they would come under city taxes.³⁶² The strongest opposition came from the East Shore, where most of the developed land already received services from the Borough of Fair Haven East. The measure failed 293 to 361, passing in Westville but failing in both wards of the East Shore.³⁶³

Undeterred, the city achieved passage of essentially the same bill at the Assembly’s next session, in 1897.³⁶⁴ This time, the date of the election was set well in advance, allowing for considerable campaigning. The “Committee of Fifty,” headed by Yale Professor George Watrous, distributed literature supporting the bill.³⁶⁵ The prominent citizens of Westville once again supported the measure. Judge Henry Hotchkiss argued

[i]t is very rare that the legislature lets the people vote upon the question of consolidation By this consolidation act the question of complete consolidation is left with us to decide, and perhaps it can be postponed for 10 years or more, whereas if we do not accept this plan we may be consolidated by the legislature in 2 years.³⁶⁶

The arguments largely rested on the question of administrative efficiency, with supporters asserting “the recognized need of consolidation for purposes of economy and better administrative result,”³⁶⁷ and opponents claiming that “costs increase more rapidly in a large city

³⁶¹ *The Consolidation Question*, NEW HAVEN MORNING J. & COURIER, Nov. 25, 1895, at 2. The author, a resident of the fifteenth ward, also noted the city had “roads widened and hardened, public parks laid out, and other improvements made.”

³⁶² *For Consolidation*, NEW HAVEN MORNING J. & COURIER, Nov. 22, 1895, at 1.

³⁶³ The vote by ward was: thirteenth – 181 for, 66 against; fourteenth – 63 for, 181 against; fifteenth – 49 for, 114 against. *Consolidation Loses*, NEW HAVEN MORNING J. & COURIER, Nov. 27, 1895, at 1.

³⁶⁴ The only difference was that a petition to hold a referendum to come fully under city jurisdiction would require one hundred, rather than twenty, signatures. An Act to Consolidate the City and Town of New Haven, 1897 Special Act No. 417, 12 Special Acts of the State of Connecticut 1108 (1897).

³⁶⁵ *Work for Consolidation*, NEW HAVEN MORNING J. & COURIER, June 10, 1897, at 1.

³⁶⁶ *Id.* Hotchkiss, addressing a meeting of Westville voters, noted that recent consolidations of Hartford, Meriden, and Bridgeport occurred without referenda.

³⁶⁷ *Editorial*, NEW HAVEN EVENING REGISTER, June 14, 1897, at 6.

than in a small place.”³⁶⁸ The New Haven Register argued that “[r]apid transit has made the union [of Town and City] close and indissoluble.”³⁶⁹ On election day, an early report noted that “men employed in the city” overwhelming supported consolidation.³⁷⁰

Despite pleasant weather and heavy campaigning, the voter turnout was low.³⁷¹ The act passed 374 to 358.³⁷² Once again, the East Shore opposed consolidation, but this time the Westville support was enough to create an aggregate majority. The pro-consolidation forces were buoyed by the strong turnout of the Town’s paupers, who, according to one account, were handed yes ballots and driven to the polls.³⁷³ The almshouse was again the source of controversy, with consolidation opponents alleging voter fraud.³⁷⁴ Nevertheless, the City of New Haven had absorbed the Town.

D Stagnation

The consolidation of the town and city governments in 1897 was the last border change for New Haven. Other than the 1921 amicable division of Orange and West Haven, it would be

³⁶⁸ *An Argument Against Consolidation*, NEW HAVEN MORNING J. & COURIER, June 12, 1897, at 4.

³⁶⁹ *Editorial*, NEW HAVEN EVENING REGISTER, June 14, 1897, at 6. A horse railroad had connected the outer wards since 1860, OSTERWEIS, *supra* note 78, at 249. New Haven’s first electric trolley began operating in 1892. OSTERWEIS, *supra* note 71, at 334.

³⁷⁰ *Vote on consolidation Act is in Progress*, NEW HAVEN EVENING REGISTER, June 15, 1897, at 1.

³⁷¹ “The workers for the measure had two carriages carrying voters to the voting place in Masonic Hall, but it was difficult to get the voters out. Many appeared indifferent and refused to go to the polls.” *Id.*

³⁷² *Under One Government*, NEW HAVEN EVENING REGISTER, June 16, 1897, at 1.

³⁷³ *Id.* The Town Almshouse was located in the northernmost area of the thirteenth ward (the ears of the Kangaroo), which had been acquired from Hamden in 1883 for \$160 to be used for a town farm. An Act Extending the limits of the Town of New Haven, 1883 Special Law No. 105, 9 Special Laws of the State of Connecticut 773 (1883).

³⁷⁴ Sixty-one of the seventy-three almshouse residents voted, an unusually large number. An anonymous source reported that the paupers voted “according to the political sympathies of the superintendent” and that the current superintendent was set to receive the new Superintendent of Charities position in exchange for his support. *Under One Government*, NEW HAVEN EVENING REGISTER, June 16, 1897, at 1. If the promise was made, it was not honored. John F. Gaffey did not become the Superintendent of Charities. CITY YEAR BOOK FOR THE CITY OF NEW HAVEN FOR 1898, at 96 (1898). The City did prove more efficient in maintaining the poor, lowering the costs of the almshouse, and town farm from \$64,490 in 1897, to \$38,952 in 1898. *See id.* at 545; CITY YEAR BOOK FOR THE CITY OF NEW HAVEN FOR 1897, at 367 (1897).

the last major boundary change in the greater New Haven area.³⁷⁵ The General Assembly ceased intervening, and residents no longer sought to join the central city. By 1930, all of New Haven's bordering suburbs (except Woodbridge) had populations larger than the original City of New Haven.³⁷⁶ With increased populations, residents no longer needed the city to provide municipal services. By 1924 Hamden had spent \$350,000 in extending sewer service to nearly all of its residents.³⁷⁷ West Haven began garbage collection in 1937.³⁷⁸ Police departments were established in West Haven in 1914,³⁷⁹ Hamden in 1923,³⁸⁰ East Haven in 1925,³⁸¹ Woodbridge in 1937,³⁸² and Hamden in 1943.³⁸³

The full consolidation of the outlying wards illustrates this shift. The fourteenth ward, which included most of Fair Haven East, joined the city in 1918.³⁸⁴ Westville joined the city in 1921, in exchange for the city's acceptance of a \$160,000 bond used to construct a new high school.³⁸⁵ The Southernmost portion of the East Shore joined in 1923.³⁸⁶ The desire for city services motivated each move. The lower portion of the East Shore was fiercely independent, and continued to subsist on minimal services through the 1920s. Eventually the population expanded enough so that the area could provide its own services. The Fairmount Association

³⁷⁵ An Act Dividing the Town of Orange and Creating the Town of West Haven, 1921 Special Act No. 482, 18 Special Acts of the State of Connecticut 1067, (1921). West Haven had been operating under a borough government, and had considered incorporating as the City of Orange, with two taxing districts, creating a system analogous to that New Haven was operating under, but ultimately chose complete division. See WOODRUFF, *supra* note 292, at 129; An Act Incorporating the City of Orange, 1907 Special Act No. 445, 15 Special Acts of the State of Connecticut 426 (1907).

³⁷⁶ The totals were: East Haven – 7815; Hamden – 19,020; North Haven – 3730; West Haven – 25,808; Woodbridge 2822. <http://www.sots.state.ct.us/RegisterManual/SectionVII/Population1756.htm> (last visited Apr. 29, 2004).

³⁷⁷ HARTLEY, *supra* note 189, at 421.

³⁷⁸ FED. WRITERS PROJECT, *supra* note 143, at 51.

³⁷⁹ *Id.* at 26. West Haven was at that time still a district of Orange.

³⁸⁰ ROBERT L EATON ET AL., 150TH ANNIVERSARY, HAMDEN CONNECTICUT 21 (1936).

³⁸¹ 175TH ANNIVERSARY COMMITTEE, 175TH ANNIVERSARY, EAST HAVEN CONNECTICUT 30 (1960).

³⁸² WOODBRIDGE BICENTENNIAL COMM'N, *supra* note 176, at 34.

³⁸³ BRUSIC, *supra* note 158, at 245.

³⁸⁴ TOWNSHEND, *supra* note 320, at 71.

³⁸⁵ See An Act Concerning the Westville School District, 1921 Special Law No. 436, 18 Special Laws of the State of Connecticut 1019 (1921); *No Opposition Likely to Joining Westville to the City*, NEW HAVEN REGISTER, June 22, 1921, at 1.

³⁸⁶ TOWNSHEND, *supra* note 320, at 71.

managed separate police, fire, garbage, and sewerage services in the ward, escaping city taxes until 1959.³⁸⁷ In that year the city bond counsel determined that the city could not pledge its full faith and credit on bond issues as long as its taxing power was limited in the annex.³⁸⁸ As a result, it was unable to sell long-term bonds.³⁸⁹ The city appealed to the General Assembly, which merged the district into the city against its will.³⁹⁰

Around the same time the suburbs gained the ability to provide public services they also acquired the authority to control land use through zoning. Following the Supreme Court's endorsement of zoning's legality in 1926,³⁹¹ the suburbs instituted procedures to maintain their less urban characters.³⁹² Zoning signified a shift towards local control, codified by Connecticut's first home rule act in 1915.³⁹³ The increased control over local matters heightened the stakes involved in border changes, concomitantly reducing their frequency.³⁹⁴

Another important factor in the decline of boundary changes was the development of ethnic, racial, and class differences between New Haven and its suburbs. The City experienced three waves of immigrant arrivals, Irish and German between 1830 and 1860,³⁹⁵ Italian from

³⁸⁷ The Assembly incorporated the association in 1911, granting the association the authority to levy limited taxes and provide these services in the thirty-second ward. An Act Incorporating the Fairmount Association, 1911 Special Act No. 361, 16 Special Laws of Connecticut 382 (1911).

In 1959 the Association exercised jurisdiction over 6000 inhabitants, levying a 4.5 mill tax on a \$33,000,000 grand list. Fairmount Association Records, box 1, folder B (unpublished, available at the New Haven County Historical Society Whitney Library).

³⁸⁸ See *City's Annex Measure Approved by Senate*, NEW HAVEN REGISTER, Apr. 29, 1959, at 1.

³⁸⁹ *Id.*

³⁹⁰ An Act Concerning the Full Consolidation of the 32nd Ward of the City of New Haven with the Remainder of Said City, 1959 Special Act No. 138, 29 Special Acts of the State of Connecticut 141 (1959).

The wards protest against the bill cited efficiency, "[t]his bill abolishes an efficient community," and democratic values, "our plight should be recognized by all believers of democracy . . . YOUR TOWN COULD BE NEXT" New Haven Colony Historical Society, Fairmount Association Records, *supra* note 387, at box 1, folder B.

³⁹¹ See *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926).

³⁹² West Haven instituted its first zoning law in 1931, FED. WRITERS PROJECT, *supra* note 143, at 51, Woodbridge in 1932, WOODBRIDGE CONSERVATION COMM., OPEN SPACE FOR WOODBRIDGE 3 (1965), Hamden by 1936, EATON, ET AL., *supra* note 380, at 4, and North Haven in 1938, BRUSIC, *supra* note 158, at 236.

³⁹³ An Act Concerning Home Rule for Cities and Other Municipalities, 1915 CONN. PUB. ACTS 2185.

³⁹⁴ Richard Briffault argues that zoning (along with school finance) is a principal operation of local government, and the legal arena most likely to cause conflict between local governments. See BRIFFAULT, *supra* note 11, at 3, 39-72.

³⁹⁵ OSTERWEIS, *supra* note 71, at 367.

1880 to 1890,³⁹⁶ and black from 1950 to 1970.³⁹⁷ The city also became much less wealthy.

Between 1910 and 1950, New Haven went from being richer to being poorer than its surrounding towns.³⁹⁸ This trend towards relative City poverty continued through 2000.³⁹⁹

The city witnessed an unsuccessful border-change fight recently, spearheaded by the East Shore Secession Organization (E.S.S.O.). E.S.S.O. complained that New Haven government was ineffective, "People are fed up with high taxation and inefficient government."⁴⁰⁰ The area sought either independence or consolidation with East Haven, which at the time had a tax of 34.6 mills, compared to New Haven's 79.8.⁴⁰¹ The group also claimed the East Shore was underrepresented on the Board of Aldermen, as State Representative Chris Depino claimed "[t]he issue is representative democracy."⁴⁰² As a result, the East Shore paid for services that had little effect on the geographically distant wards.⁴⁰³ The organization ignited public interest, holding rallies, calling public meetings, and distributing literature, but met with limited legislative success.

In 1995, the group petitioned the General Assembly to authorize a non-binding referendum, but the bill died in the Planning and Development Committee.⁴⁰⁴ New Haven opposed the measure, citing the difficulties secession would bring. The city counsel suggested taxes might actually increase, while disposing of city property in the East Shore would be

³⁹⁶ *Id.* at 371.

³⁹⁷ RAE *supra* note 13, at 255-60.

³⁹⁸ *Id.* at 375.

³⁹⁹ *Id.*

⁴⁰⁰ Joe Palmeiri argued this point at an E.S.S.O. rally in 1993. *Crowd Forces Two Meetings on East Shore Secession*, NEW HAVEN REGISTER, June 10, 1993, at 1.

⁴⁰¹ *Id.*

⁴⁰² *East Shore Secession Hits Hurdle*, NEW HAVEN REGISTER, Jan. 31, 1995, at 1.

⁴⁰³ See BRUSKIN, *supra* note 40, at 785.

⁴⁰⁴ An Act Authorizing a Referendum in Certain Wards of the City of New Haven on Secession from New Haven, H.B. No. 5123, 1995 Gen. Assem. Reg. Sess. (Conn. 1995). The bill would have conducted a referendum in the three wards of the east shore. If supported by a majority of residents, the Assembly would have established a special committee to investigate the matter. New Haven opposed the bill. Testimony of Charles A. Allen III, H.B. No. 5123, 1995 Gen. Assem. Reg. Sess. (Conn. 1995).

problematic.⁴⁰⁵ Although the state determined it could change New Haven's borders through a special act,⁴⁰⁶ its failure to consider the bill seriously is emblematic of the states withdrawal from the municipal boundary issue. Because of this non-involvement, New Haven's borders have remained constant for more than a century.

III. Analysis

Two themes dominate New Haven's border change history: efficiency in government, and community. The first and last calls for decentralization, both made by residents of the east shore, are separated by 336 years but are remarkably similar. In both cases residents essentially argued that they could better provide government services independent of New Haven. Within this ostensibly neutral declaration lays the second theme; the efficiency comparison necessarily requires defining the relevant community. The residents' claims of greater efficiency refer not to greater New Haven, but to their own distinct geographic area. By defining themselves as a discrete community, the expenses that fall outside this community are transformed from costs of government to externalities. These two pressures arose in nearly every boundary change dispute in New Haven history.

⁴⁰⁵ *East Shore Secession Hits Hurdle*, NEW HAVEN REGISTER, Jan. 31, 1995, at 1. Among the city holdings were the Tweed Airport, a sewage treatment plant, and Lighthouse Point Park.

⁴⁰⁶ Report of John Rappa, Principle Analyst, Office of Legislative Research, H.B. No. 5123, 1995 Gen. Assem. Reg. Sess. (Conn. 1995).

A. *Efficiency*

In a few instances, New Haven's boundaries were clearly inefficient at providing an important service. In these cases, residents invariably convinced the Assembly to correct the problem. The clearest example of this phenomenon was the formation of villages.⁴⁰⁷ New Haven was plainly too large to efficiently provide church services to an expanding and dispersing population.⁴⁰⁸ The Assembly, therefore, routinely approved village petitions.⁴⁰⁹ Inefficiencies were often solved in a manner beneficial to all involved parties. When Fair Haven West's expanding population saw a pressing need for police protection, the City was happy to accept the increased tax base and harbor facilities the area could provide.⁴¹⁰ When it became clear that East Haven was too small to finance its debt, New Haven agreed to accept the obligation in exchange for taxable property.⁴¹¹ Even when an agreement could not be reached the Assembly would act. When the City found it could not sell bonds the Assembly consolidated the thirty-second ward against its will.⁴¹²

As governments provided an increasing array of services, the optimal borders for municipalities became more difficult to discern. The ideal size for the provision of highways is different than the ideal size for care of the poor.⁴¹³ In the absence of clear inefficiency the

⁴⁰⁷ See *supra* Section II.A.

⁴⁰⁸ See, e.g., *supra* notes 142, 187 and accompanying text. The General Assembly granted the petitions of both West Haven, and Bethany without the consent of the neighboring villages upon complaints of the residents' difficulties in attending church.

⁴⁰⁹ See BUSHMAN, *supra* note 78, at 66.

⁴¹⁰ See *supra* notes 320-25 and accompanying text.

⁴¹¹ See *supra* notes 330-39 and accompanying text.

⁴¹² See *supra* notes 388-90 and accompanying text.

⁴¹³ This point is made by Clayton Gillette, who argues that "[b]oundaries that seem satisfactory for the provision of one service may prove awkward for delivering another service, so ideal boundaries cannot readily be drawn for a municipality that provides a bundle of services at a particular set of tax rates, or 'price.'" Clayton P. Gillette, *Expropriation and Institutional Design in State and Local Government Law*, 80 VA. L. REV. 625, 676 (1994).

Assembly was more hesitant; villages submitted multiple petitions before gaining town status,⁴¹⁴ City-Town consolidation failed in its first four attempt.⁴¹⁵ As local government became vastly more complex in the twentieth century the Assembly retreated from the issue altogether, granting only cursory review to the East Shore secession movement.⁴¹⁶

It should be unsurprising that the Assembly acted so cautiously. The transition costs of border changes were frequently substantial. An area seceding from a local government takes with it the extensive investments that the municipality has provided, while abandoning many burdens.⁴¹⁷ An area joining a municipality will require services, the cost of which the entire jurisdiction will share. The bargaining localities must undertake to make a border change mutually advantageous creates a degree of friction that is only overcome by a significant benefit surplus.

When a large enough surplus did exist, however, New Haven's local governments proved capable of bargaining effectively. The formation of the surrounding towns provides numerous examples of this bargaining process.⁴¹⁸ In the presence of potential mutual reward, even historical animosity was unable to derail successful negotiations, as in the case of the East Shore annexation.⁴¹⁹ Fair Haven West's exit from the city in exchange for what was essentially voter fraud shows that these bargains can have negative consequences as well.⁴²⁰

⁴¹⁴ See *supra* notes 211-14 (Amity and Bethany), 227-36 (East Haven, North Haven, and Mount Carmel), 277-81 (North Haven and Mount Carmel) and accompanying text.

⁴¹⁵ See *supra* notes 343-63 and accompanying text.

⁴¹⁶ See *supra* Section II.D.

⁴¹⁷ This fact was a recurring source of opposition from the municipal body that would lose territory. See, e.g., *supra* text accompanying note 214 (opposing the formation of the Town of Woodbridge due to the debt Milford compiled, partly in support of the seceding section); note 405 (citing the difficulties East Shore secession would create because of New Haven's ownership of assets in the area).

⁴¹⁸ The division of the bridge and poor expenses, and the swapping of quarry for oyster rights are examples. See *supra* notes 262-65 (Woodbridge); 273-76 (East Haven); 286-88 (North Haven and Hamden) and accompanying text.

⁴¹⁹ See *supra* notes 330-37 and accompanying text.

⁴²⁰ The residents of Fair Haven voted to support a bond that they knew they would have no part in repaying, essentially imposing externalities on the city's voters. See *supra* notes 310-12 and accompanying text.

Two factors led to the decline of border change bargaining. First, the central city progressively lost its bargaining chips. By the mid twentieth century, it was no longer able to offer suburban towns superior services, or economies of scale in exchange for taxable property. Second, the rise of local power in the early twentieth century shifted the General Assembly's local boundary decision-making norm from efficiency maximizing to non-involvement. Municipalities were far more willing to negotiate under the threat of state action.⁴²¹ New Haven was willing to bargain with seceding villages because it feared the Assembly would grant the villages' petitions even without its consent, perhaps under less favorable terms.⁴²² The residents of the outer wards would probably not have agreed to City-Town consolidation without complete, involuntary consolidation looming as a reasonable option for the city to pursue.⁴²³ In contrast, New Haven saw no reason to accommodate the East Shore in 1995 because the secessionists completely lacked a credible threat.⁴²⁴ By placing such a strong entitlement on the status quo, the state has severely limited the opportunities for efficient bargaining.

B. Community

Some interested group initiated each of New Haven's boundary changes. Often this group was bound together by common interest and inter-personal relationships so thoroughly that few would deny the group the "community" designation. Even where this was not the case, once a border was established, public events bolstered a sense of community, and shared decision-

⁴²¹ Gillette argues that bargaining is most likely when "annexees' consent is necessary to affect annexation." Gillette *supra* note 413, at 677. However, in instances where one party is unwilling to negotiate, whether because of risk aversion, information, or agency problems, the consent requirement reduces the potential for efficient reallocation.

⁴²² See BUSHMAN, *supra* note 78, at 66.

⁴²³ Other Connecticut city-town consolidations did not require voter approval. See *supra* note 366.

⁴²⁴ See *supra* notes 404-06 and accompanying text.

making magnified their common interest.⁴²⁵ Most importantly, the legal designation reinforced the sense of identification with others from the area. Once the state officially recognized a community, they became remarkably resilient. Each of New Haven's six parishes is now an independent town.⁴²⁶

Communities may be defined by a variety of common interests, but for local boundary changes, shared service preferences are the relevant metric. In a few instances border changes occurred because an area's residents sought better, or more efficient provision of services. This was the case when parishioners joined the North Haven Society for its gifted minister,⁴²⁷ or the Borough of Fair Haven East attained full consolidation with the city.⁴²⁸ The clearest distinction between communities, however, was the desire for varying levels of services. The incorporation of towns at the end of the eighteenth century best exemplifies this feature.⁴²⁹ As the areas adjacent to the city grew, the urban-rural split once again altered boundaries, creating the Borough of Fair Haven East,⁴³⁰ the Town of West Haven,⁴³¹ and a fully consolidated City of New Haven.⁴³²

As the suburbs developed, they might have merged with the city due to their increasingly similar service-level preferences. Two factors dissuaded them from doing so. First, zoning allowed the suburban towns to limit growth, slowing the confluence of their community character, and service-level preferences. Second, changes in population and technology allowed the suburbs to offer services themselves.

⁴²⁵ See Briffault, *supra* note 44, at 1141 (noting the role local boundaries play in creating communities).

⁴²⁶ Bethany was incorporated as a town in 1832. Resolve Incorporating the Town of Bethany, 1 Resolves and Private Laws of the State of Connecticut 1132 (1832).

⁴²⁷ See *supra* notes 170-71 and accompanying text.

⁴²⁸ See *supra* note 384 and accompanying text.

⁴²⁹ See *supra* Section II.B.3.

⁴³⁰ See *supra* notes 326-28 and accompanying text.

⁴³¹ See *supra* note 375 and accompanying text.

⁴³² See *supra* notes 385-86 and accompanying text.

Community perceptions also played an important role in stimulating border moves, by demarcating legitimate government expenses from externalities. In seeking independence, Mount Carmel,⁴³³ Fair Haven West,⁴³⁴ and the East Shore⁴³⁵ each viewed services that did not directly affect their residents as externalities imposed by another community. The petitioners' delineation of the relevant community shifted the terms of the debate from intra-municipal politics to inter-community equity. The General Assembly was more likely to accept that delineation when the relevant community was defined by service-level preferences, and therefore more likely to intercede. As municipal service packages became more similar, the Assembly became less interventionist, which in turn solidified the association between boundaries and communities.

C. Conclusion

This paper sought to accomplish the seemingly straightforward task of detailing New Haven's border development. The manner in which these decisions were made helps to determine the deference due to these borders, and provides numerous alternatives for making future decisions. The clear conclusion of this history is that New Haven's borders were no accident. The present-day boundaries are a result of democratic decision-making, influenced by notions of community and efficiency, and effectuated through successful bargaining.

That said, it is equally clear that this process has broken down over the last century. Before 1900 New Haven's borders were dynamically flexible, undergoing eighteen major changes in just over two hundred years. Since then not a single alteration has occurred. It seems

⁴³³ See *supra* note 280 and accompanying text.

⁴³⁴ See *supra* note 314 and accompanying text.

⁴³⁵ See *supra* note 403 and accompanying text.

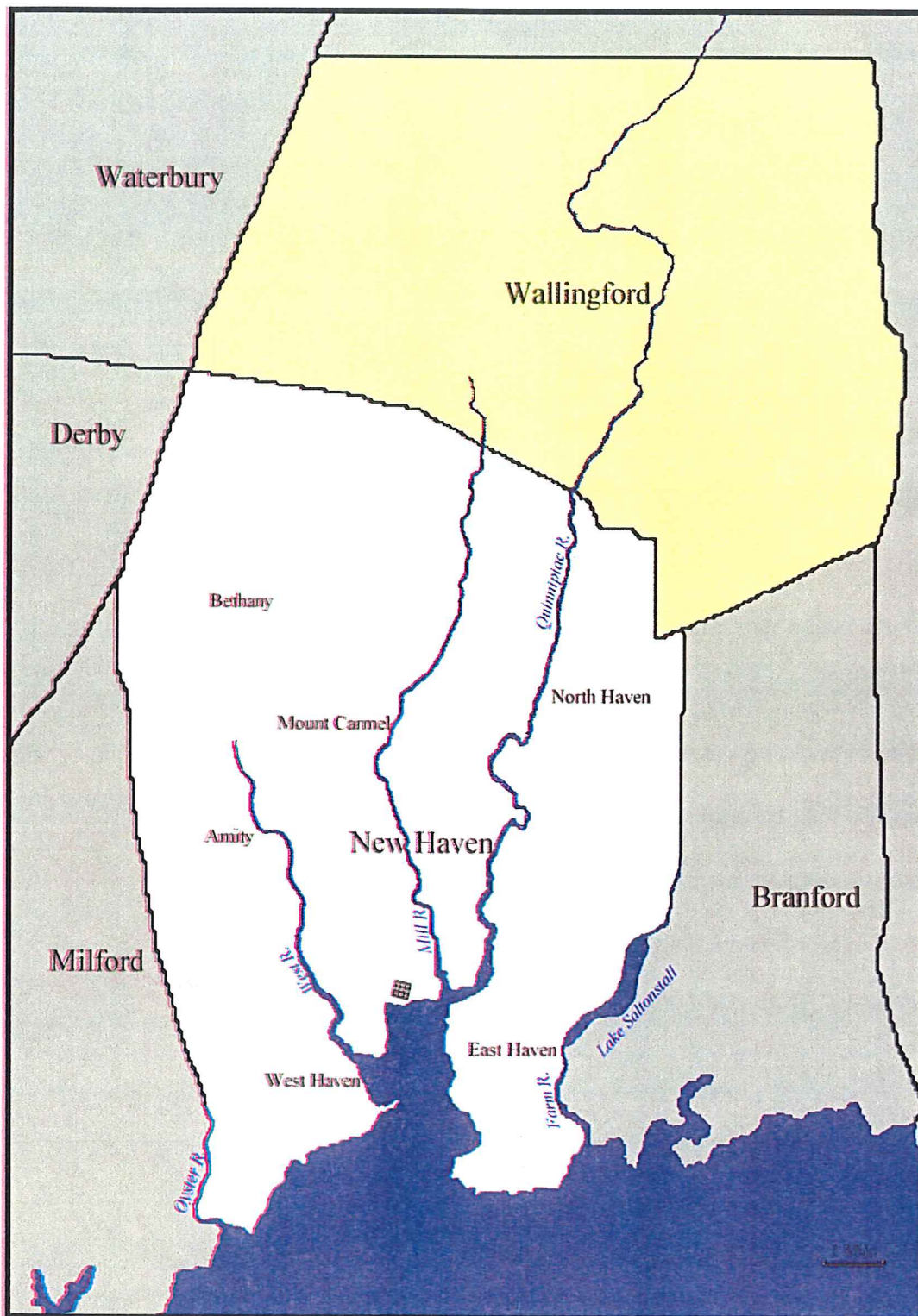
unlikely, given the dramatic growth in population and technological innovation, that these borders remain the most efficient or desirable. New Haven's bounds are based on efficiency and community. Unfortunately, it is the efficiency of the horse railroad, and the community divisions of the seventeenth century Congregational Church, not contemporary concerns, that continue to dominate the border change process.

Appendix A: Timeline

- 1639 New Haven founded
- 1667 Village of Wallingford established
- 1670 Town of Wallingford incorporated
- 1684 Village of East Haven established
- 1704 Village of East Haven reestablished
- 1715 Village of West Haven established
- 1716 Village of North Haven established
- 1738 Village of Amity established
- 1757 Village of Mount Carmel established
- 1762 Village of Bethany established
- 1784 City of New Haven incorporated
- 1784 Town of Woodbridge incorporated
- 1785 Town of East Haven incorporated
- 1786 Town of Hamden incorporated
- 1786 Town of North Haven incorporated
- 1798 City annexes portion of Town east of Cheshire road
- 1822 Town of Orange incorporated
- 1839 Fair Haven set off from city
- 1870 City of New Haven reannexes Fair Haven
- 1881 Town of New Haven annexes the East Shore
- 1897 City and Town of New Haven consolidated

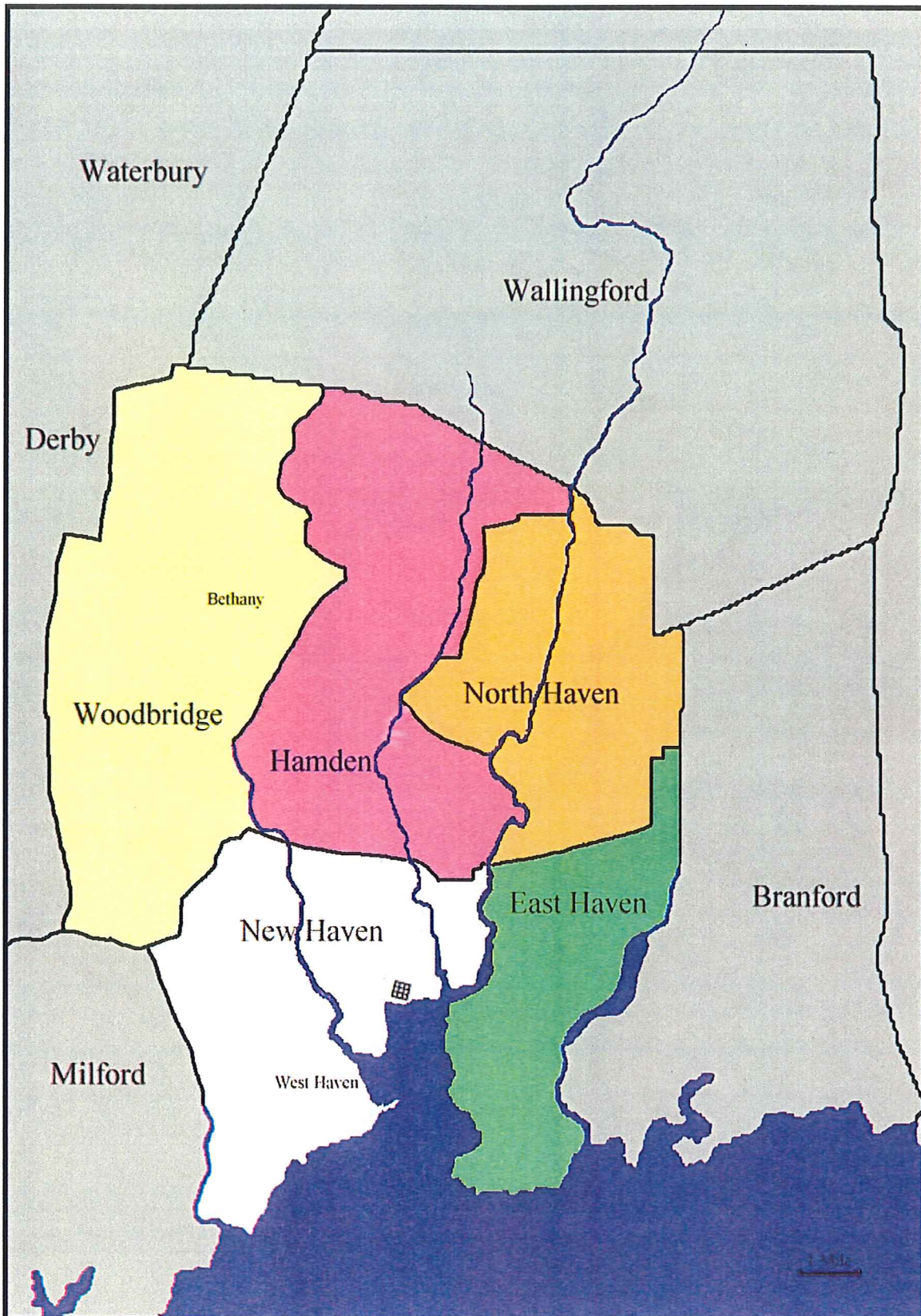
Appendix B: Maps⁴³⁶

Map 1: New Haven, Circa 1770



⁴³⁶ All maps are adapted from the Connecticut Department of Environmental Protection Index Map, <http://dep.state.ct.us/gis/Resources/indexmaps.htm> (last visited Apr. 29, 2004).

Map 2: New Haven, Circa 1790



Map 3: New Haven, Present Boundaries

