THE POLITICS OF FINANCIAL OVERSIGHT BOARDS IN THE UNITED STATES[1]

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ABSTRACT

Recent crises in Detroit and Puerto Rico have brought Financial Oversight Boards (FOBs) to the forefront. In spite of these developments, there is a huge gap in the literature as social scientists have barely studied this type oversight boards; therefore, we do not have much knowledge about their nature, functions, dynamics, and effects. For instance, scholars have overlooked issues of legitimacy and accountability of these boards, as well as the intergovernmental games played by local, state, and federal governments when facing a FOB.

The objective of this paper is twofold. First, and in light of our limited knowledge on this type of oversight organization, the paper seeks to identify similarities and differences in the type and nature of fiscal control boards across US localities. Second, the paper will highlight intergovernmental and political dynamics that arise with the introduction of FOBs. More specifically, the paper explores how FOBs create specific dynamics that might challenge democratic governance in multilevel settings.

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INTRODUCTION

Recently the cases of Detroit, Puerto Rico, and Greece have put economic emergencies in the forefront of politics. In the case of countries that have undergone fiscal decentralization, the threat of local governments not meeting their debt obligations is notable in countries. Even when municipalities tend to be fiscally responsible, as it is in the case of the United States (US), every now and then, these entities are at risk of not meeting their obligations (e.g., paying debt, providing adequate services, meeting payrolls). To tackle these scenarios, there are a variety of procedural, organizational, and legal options, including Financial Oversight Boards (FOBs).

The basic model for FOBs is "that a state appointed team oversees the budgetary decisions and fiscal management of municipalities recognized as in fiscal emergency" (Kobes 2009: 27). For instance, the New York State Financial Control Board was launched in 1975 to tackle the financial crisis of New York City and its subdivisions. Almost forty years later, the Financial Oversight and Management Board for Puerto Rico was created by Congress in 2016. The island's oversight board is mainly responsible for restructuring its $73 billion debt, as well as reviewing and overseeing government's budgets and fiscal plans. Other cities, such as Bridgeport (Connecticut), Cleveland (Ohio), Detroit (Michigan), Miami (Florida) and Washington DC, have also been under the eye of FOBs when they defaulted, or when they were at risk of defaulting.

While the timing, nature, and powers of FOBs vary widely across jurisdictions, this type of oversight organization share a characteristic—it is an unelected body created by a higher level of government to constrain the decisions and actions of a democratically elected local

government that is facing fiscal distress.[2] In light of their extensive powers and austere policy agenda, these organizations have been perceived as a threat by local politicians, officials, and voters. For instance, in 1997, after the Washington DC control board gained day-to-day control over nine major operating departments, Major Marion Barry called this course of action a "rape to democracy" and a "bloodless coup" (Barnes 2014). More recently, in a set of leaked Telegram messages that costed Ricardo Roselló his position, the ousted governor of Puerto Rico texted—"My official comments--Dear Oversight Board, Go f*** yourself! Sincerely, R2."

Despite the high-profile and controversial nature of FOBs, there is very little scholarly work on these organizations. This piece is the first step of a long-term project that seeks to understand and explain the political economy of FOBs. More specifically, the paper provides contextual information on FOBs, outlines their basic elements, and fleshes out their challenges to democratic governance in multilevel settings. The relevance of FOBs goes beyond of the US, as similar organizations have been created in countries that faced fiscal or financial crises. For instance, Greece faced the Troika to have access to a bailout package. In turn, this country had to implement austere measures and comply with a set of conditions imposed by this institution, composed by the European Council, the European Central Bank and the International Monetary Fund. While this topic might seem technical or legalistic, this project fits within work that has politicisized intergovernmental finance (Wibbels 2006: 476). Moreover, these insights shed much light to politics and policies of economic crises and austerity.

This paper is structured as follows. First, the paper provides a historical context on formal solutions to municipal fiscal or financial distress, including bankruptcy. The second section explores a variety of organizational solution that states and municipalities use to face fiscal or

[2] It is important to clarify two points. First, while most nonprofit organizations have oversight boards, this paper is concerned with organizations created by higher levels of government to provide oversight to elected local governments facing fiscal or financial distress. Second, this paper does not cover school districts.

financial emergencies, particularly Financial Oversight Boards in the United States. The third section focuses on governance challenges of FOBs, particularly to local autonomy and democratic governance in multilevel settings. The final section concludes with a few remarks and discusses future avenues of research.

SOLUTIONS TO MUNICIPAL DISTRESS IN THE UNITED STATES: BACKGROUND

At the most basic level, localities should increase revenue and/or cut or defer spending when facing fiscal distress. While most localities in the US have some leeway in launching their own policies and reforms, they are often constrained by intergovernmental institutions and the dynamics of federalism. As Honadle put it, in the US case, "The fiscal health of local governments (and avoidance of fiscal crises) is by no means just a local government concern. It is an intergovernmental issue in every sense. Executive, legislative, and judicial decisions of the state and national or federal governments constrain local financial management" (Honadle 2003: 1435). For instance, to avoid moral-hazards and cost-shifting (Keleman and Teo 2014; Enman 2001), some countries preclude major interventions from the national level and/or states' governments on localities facing fiscal insolvency. In the US, for example, only twenty states[3] allow their governments to intervene in local (i.e., city, town, county) financial emergencies.

Despite these intergovernmental constrains, there is a wide variety of states' responses and interventions available to municipalities, including bankruptcy.[4] "Federal Bankruptcy Codes Chapter 9 allows local governments to continue public service provision while working with all creditors simultaneously to negotiate a debt adjustment plan" (Yang and Yulianti 2019: 5). As of

[3] Twenty states have regulated state intervention on local finances, namely Connecticut, Florida, Illinois, Indiana, Ohio, Oregon, Louisiana, Michigan, Nevada, New Hampshire, New Mexico, New Jersey, New York, North Carolina, Maine, Massachusetts, Pennsylvania, Rhode Island, Tennessee, and Texas. For more information, see Pew Charitable Funds (2013).

[4] For an overview of local distress policies across the 50 states, see Pew Charitable Trust (2013: 6-7).

2013, localities in Georgia and Iowa are not allowed to file for bankruptcy; twenty-seven states authorize some type of bankruptcy; and the remaining states do not have any regulations on bankruptcy (Pew Charitable Trusts 2013). There are also cross-state variations regarding the type of local entity that can file for bankruptcy (e.g. municipal governments, special tax districts, irrigation districts, school districts). Still, bankruptcy is a rare and extreme development, even if there was an increase in the frequency of defaults and bankruptcy during the Great Recession--from 1965 until 2015, only 63 cities, towns, or counties have sought Chapter 9 protection; Puerto Rico is not able to file for bankruptcy; and on average, there were 1.3 defaults per year between 1970 and 2007, and 5 defaults per year between 2008-2014 (Spiotto, Acker, and Appleby 2016: 28) (also see Yang and Abbas 2019). This section provides historical context to how municipalities have tackled distress.

How do US localities face financial crises?

In 1839, the city of Mobile (Alabama) faced the first recorded municipal default in the US after it struggled with two major fires, the Panic of 1837, and a Yellow Fever epidemic. In the 19th century, municipal governments did not have many protections to tackle fiscal insolvency (Spiotto, Acker, and Appleby 2016). For example, bankruptcy was not an option for municipalities as the Constitution[5] established that that bankruptcy law was an exclusive competence of the federal level (Patchman and Collins 1977). A year later, the federal government also stated that it will not provide financial assistance to any state or city making such type of request. Unable to pay their obligations, localities could resort to debt moratoria or "they sought consent agreements from each of their creditors and, where necessary, each of their bondholders" (Patchman and Collins 1977: 288). In instances in which creditors did not accept

[5] In fact, a 1910 Constitutional amendment "expressly excluded municipal corporations from the bankruptcy procedures set up by federal law" (Lehmann 1950: 2141).

the locality's proposal, they could obtain a writ of mandamus, which required municipalities to levy taxes to pay in full.[6]

In the 20th century, a variety of structural, technological, and policy changes (e.g., urbanization, invention of automobile, the welfare state) led to increases in spending, capital investment, and debt service payment at the local level.[7] In light of big municipal defaults since the Great Depression, new solutions to tackle fiscal indiscipline emerged.[8] The 1934 Municipal Bankruptcy Act (technically Chapter IX of the federal Bankruptcy Code) introduced "an orderly procedure of debt adjustment for defaulting municipalities and local government units" (Lehmann 1950: 241). Even if states have to approve localities' bankruptcy applications, the Act was amended in 1937 because it violated states' sovereignty.[9] Until 1946, when the Act became permanent in nature, municipal bankruptcy was viewed as an emergency measure given that local financial problems were viewed as temporary in nature.

After 30 years in place, the Act was amended in the context of the New York City crisis. As Patchman and Collins (1976: 289) put it, the "Act was workable for a local taxing unit or a small city with a narrow range of financial problems, but the focus needed widening to meet the

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[6] For an analysis of remedies to municipal insolvency prior to the launch of the Municipal Bankruptcy Act, see McConell and Picker (1993).

[7] As explained by Inman (2000: 24-25), from 1920 to 1930, "The level of capital investment by U.S. cities over 30,000 roughly doubled from 1920 to 1930, while the annual issue of new debt more than doubled, rising from $595 million to $1,250 million […] By 1932 debt service payments exceeded 15 percent of annual spending in fourteen states; nineteen more states had annual burdens over 10 percent of annual spending […] The result was an explosion of municipal defaults, rising from 678 state or local governments in default in 1932 to over 3200 governments in default by December, 1935. By 1937, 14 percent of the of the 3,053 U.S. county governments and 12 percent of the 310 cities with populations greater than 30,000 were in default."

[8] Lehmann (1950: 251) states, "estimated municipal bond defaults rapidly jumped from 678 in November, 1932, to 1,729 by January 1, 1934. As of March 1, 1934, thirty- seven municipalities or 11.93 per cent of those in the class with a population of more than 30,000 were in default. Defaults by municipalities had become a national problem." For more information on municipal default, see Petersen (2013).

[9] As stated by Justice McReynolds in Ashton v Cameron County Water Improvement District 1 (1936), "fiscal affairs are those of the State, not subject to control or interference by the National Government, unless the right to do so is definitely accorded by the Federal Constitution" (cited in Lehmann 1950: 245).

needs of a large city." After additional amendments, bankruptcy law has become more limited in scope, in part to provide localities with protections. These federal amendments to municipal bankruptcy, however, does not "provide for uniform oversight or a conditional bailout procedure for cities or states in credit distress" (Inman 2000: 27).

The NY City episode was also relevant because a moderate and conditional federal 'bailout,' in the shape of a loan, was accompanied by the creation of a financial oversight board. Still, FOBs were not an organizational innovation— they have silently spread across the US to carry out interventions in times of financial distress. As of 2009, "since New York's board, over one hundred control boards have been implemented in thirteen states and Washington, DC" (Kobes 2009: 27). The following section provides historical context on FOBs in the US. While this paper will not review every single FOB, it is important to highlight a few cases.

CONDUCTING INTERVENTIONS: FINANCIAL OVERSIGHT BOARDS & CO.

States use a variety of actors or organizations to carry out intervention in times of municipal financial distress (Pew Charitable Trusts 2013: 15) (also see Spiotto, Acker and Appleby 2016). According to a report by the Pew Charitable Trusts (2013:4), "Intervention practices vary among the states that have them. States first designate an intervenor: a receiver, emergency manager, state agency head, or financial control board. Depending on the state, the intervenor is allowed to choose among restructuring debt and labor contracts, raising taxes and fees, offering state-backed loans and grants, providing technical advice, and even dissolving the local governments." While some states have uniform approaches to tackle every municipal scenario, three states (namely New York, Connecticut, and Massachusetts) have adopted an ad-hoc approach to handling municipal distress. More specifically,

1) States might select an outside person, usually with a financial and legal background, who takes over the city's operations and budgets until it recovers. 14 out of 20 states that allow state intervention on local finances have appointed *receivers, financial managers, overseers,* or *coordinators.*

2) States might create, or use an existing, *agency* to supervise the restructuring process. The appointed coordinator can be a person or an expert (e.g., law firm). 12 out of 20 states that allow state intervention on local finances have created this type of agency.

3) States might appoint a group to address the localities fiscal problems. Financial Oversight Boards are typically composed of experts, and sometimes state and local officials. 13 out 20 states, plus Washington DC and Puerto Rico, have adopted this organizational solution.

Below I concentrate on the third type of solution, namely financial oversight boards.

Financial Oversight Boards

The first state appointed oversight boards appeared in Missouri in the 1870s. Explaining the origins of FOBs, Kobes (2009: 27-28) notes,

> State intervention in local governance became controversial later in the decade when Tennessee placed Memphis in receivership, dissolved the city in 1879, and then reformed it as a tax district only. These actions spurred the Supreme Court case of Meriwether v. Garrett ("Meriwether v. Garrett," 1880) that established precedent for local government laws addressing bad debt, control boards, and receivership. The Court cemented control boards as an accessible state option by determining that the state legislature has a right, even over the courts, to define local revenue structures and appoint individuals to manage local finances. With this approval, additional states turned to control boards during the Great Depression.

The 1970s case of New York City marks the modern era of FOBs. In the Spring of 1975, it was discovered that New York City was unable to market its debt because, for longer than ten years, it was using shady accounting and borrowing practices (Spiotto, Acker, Appleby 2016: 78). Facing the possibility of default, the Municipal Assistance Corporation for the City of New

York (MAC) and the New York State Emergency Financial Control Board (EFCB)[10] were launched in that year by Governor Hugh Carey. MAC, an independent public-private corporation composed of nine private citizens, was charged with issuing a series of securities to keep the city solvent. When this solution was not successful in getting the city out of trouble, the EFCB became the "state's agent in overseeing city spending and revenue collection in order to regain the confidence of investors in MAC bonds" (Berg 2007:59).

The division of responsibilities between both boards point at the political nature of the emergency board, which was later renamed the Financial Control Board (FCB). For instance, four out of the seven members of the FCB board were government officials (Governor, State Comptroller, Mayor, and City Comptroller) and they were responsible for enforcing austerity measures (Finder 1986). In addition, the FCB formulated and implemented a four-year financial plan, reviewed operations, recommended measures, directed the city's budgets, and audited compliance, among other functions (McCormick 1978: 129). Since then, the New York legislature may create FOBs to support municipalities in distress, as it was in the case of Yonkers in the late 1970s.

Ohio followed the steps of NY in 1978 when Cleveland defaulted its $15.5 million debt obligation—the first sizable city to do so since the Great Depression (Hildreth and Zorn 2005). To avoid filing for bankruptcy, the city borrowed money from the state, but in exchange the city was imposed an FOB. The spread of oversight boards did not stop with Cleveland; in fact, Ohio "also passed statewide legislation with standardized criteria for all municipalities to establish future control boards" (Kobes 2009: 28). In the 1980s, Bridgeport (the largest city in the state of Connecticut) followed Cleveland. As a condition for financial assistance to tackle the $50

[10] Three years later, the first word (namely "Emergency") was dropped and the name of the Board became the Financial Control Board.

million illegal balance deficit, the state created the Bridgeport Financial Review Board. In 2004, the city of Springfield (Massachusetts) was also assigned an FOB. "The board's powers were significant, including the authority to replace binding arbitration with voluntary mediation for future labor contracts; hiring and firing city employees; approving all contracts for goods and services; organizing the city government as it saw fit; and raising or cutting any fee, rate, or other charge for a city service, license, or permit" (Pew Charitable Trusts 2013: 15). The cities of Miami (Florida), Detroit (Michigan), and Philadelphia (Pennsylvania)[11] also have had FOBs in place.

The cases of Washington DC and Puerto Rico are somewhat unique in that Congress created their FOBs, in light of their special political status. The District of Columbia Financial Responsibility and Management Assistance Authority was created in 1995 to face a $722 million deficit and it became inactive in 2001 after four consecutive years of balanced budgets. Throughout its 6-year existence, the DC Board gained major powers and resembled a "fully-empowered city government" (Cook 1997: 1019). The DC board gained budgetary powers over the District's agencies, was empowered to approve or reject the city's budget, any borrowing, reviewed all existing and future city contracts, and could override the decisions of the Major (and subordinate agencies) and the DC Council (e.g., Bouker et al. 2001). As an enforcement mechanism, federal funds were issued directly to the FOB, rather than the city, so it could withhold funds, if necessary. After Puerto Rico defaulted on its debt obligations, Congress created the Financial Oversight and Management Board for Puerto Rico in 2016 to restructure its $73 billion debt and to review and oversee its budgets and fiscal plans. The case of Puerto Rico was also unique as the island was unable to file for bankruptcy, despite facing the largest

[11] On the case of Pennsylvania, see Inman (2000).

restructuring in the history of US bond market. Both cases shed much light on how FOBs are perceived as encroaching on local government's power (and in the case of PR some call it, engaging in colonial practices).

When it comes to their functions, what do FOBs have in common? At the most basic level, they provide technical assistance[12] after it has been determined that the local government cannot face fiscal distress, or solve a crisis, without 'impartial' intervention. The expertise of the appointed team is usually beyond that of elected officials and most policy-makers, thus enabling FOBs to help with complex fiscal and financial matters, including debt restructuring and access to markets and credit. Based on this expertise, FOBs have the legislative authority to "help a city restore its financial accounting system; advise the city in developing a financial plan and budget; approve, amend, or reject a city's budget, financial plan, contracts, and debt issuance; and recommend improvements in city operations and management" (Kobes 2009: 61).

Yet, each FOBs has its own particularities, including membership and powers; for example, NY city's MAC, Cleveland, and Philadelphia had the power to issue bonds; NY city's FOB was able to impose wage freezes on state employees; Buffalo's FOB set spending limits; DCs took over various agencies; and Puerto Rico's is responsible for restructuring debt (Kobes 2009: 62). Once specified conditions are met, (e.g., number of years with balanced budgets), FOBs become inactive and their existence range from one year to 18 years (Kobes 2009: 30).

Beyond the functional perspective, FOBs share key features—its board members are *appointed* by a higher level of government to constrain the policy decisions of local politicians that are confronting fiscal distress or a crisis. This, in turn, create a set of incentives and dynamics that some perceive as threatening democratic governance in multilevel settings.

[12] According to a report of the Pew Charitable Trusts (2013), New Hampshire is an exception, as it does not provide technical assistance to municipalities.

However, others view FOBs as problem solvers with extensive expertise in very complex scenarios. The following section explores these tensions.

THE GOVERNANCE OF FOBs: A CHALLENGE TO DEMOCRACY?

The creation of FOBs through legislative decree is grounded on their alleged *raison d'être*—FOBs ought to be neutral entities which provide expertise and oversight in environments where "hard choices" need to be made. Given that these organizations ought not be constrained by electoral incentives and cycles, as it is the case for elected officials, oversight boards are charged with implementing unpopular, but often necessary, policies like austerity and increasing taxes. For example, former DC major Marion Barry said that DC-FOB "was able to do some things that needed to be done that, politically, I would not do, would not do, would not do," such as firing 2,000 human-service workers (López-Santana 2017). Once FOBs become dormant, the threat of reactivation serves as an incentive for municipalities to be fiscally and financially responsible; in other words, they represent the "bogeyman" (De Bonis 2011). While these features might be beneficial to tackle financial crises, they often are the source of conflicts in democratic settings, especially those characterized by multilevel governance.

In light of their extensive powers and their inclination to impose an austere policy agenda, FOBs are often characterized as being cruel creatures, who have not been given a popular mandate to exercise their powers. For example, all six campuses from the University of Puerto Rico shut down for close to five months, as students marched against the proposed austerity measures of the island's FOB (commonly known as "la junta"). This dissatisfaction goes beyond young students—according to a survey from El Nuevo Día, in May of 2019, 58% of the respondents were not in favor of "la junta" (El Nuevo Día, 2019). Yet, FOBs are not likely to respond to these events and trends as they are not directly accountable to the people.

Beyond the austere nature of the policies, FOBs are often accused of overreaching their powers and encroaching upon local governments' autonomy; thus, challenging key principles of democratic governance and self-governance in multilevel settings. For example, in a survey conducted in 1997 in Washington DC, seven out of ten survey respondents agreed with the statement "replacing elected officials with unelected ones in the city of Washington DC goes against the principles of American democracy" (Richards 1997) (cited in Kobes 2009: 25).[13] In these scenarios, voters and local officials do not have many spaces or mechanisms to scrutinize this type of oversight organization and consequently affect their actions. Local politicians, whose survival is dependent on electoral cycles, have an incentive to be vocal to differentiate themselves from a FOB's policy agenda. In an attempt to check and clarify FOB's powers, members of civil society and public officials have also brought cases to courts.

A preliminary analysis of legal cases against FOBs in Washington DC and Puerto Rico suggests that most disputes seek to clarify the issues of hierarchy and autonomy of local governments vs. FOBs. In at least two legal cases, plaintiffs in the District of Columbia maintained that the DC-FOB violated the separation of powers doctrine.[14] For example, the Executive Director of DC's Lottery Board, Frederick L. King, Jr., was discharged by the members of the Lottery Board, who were appointed by the DC major. After the DC-FOBs ordered to reinstate Mr. King, members of the Lottery Board sued the DC oversight board. In *D.C. Lottery Board v. D.C. Financial Responsibility and Management Assistance Authority*, the plaintiffs maintained that Congress, who created the DC-FOB, "impermissibly expanded its

[13] Along these lines, "A national survey conducted in September 1997, in the wake of Washington, DC's fiscal crisis, finds that only 37 percent of respondents agree with the statement that 'if your local town or city government is poorly managed, your state or the federal government should take over and put different leaders in charge'" (Kobes 2009: 25).

[14] See Shook v. D.C. Financial Responsibility and Management Assistance Authority; Chavous v. D.C. Financial Responsibility and Management Assistance Authority; D.C. Lottery Board v. D.C. Financial Responsibility and Management Assistance Authority.

legislative power in violation of the separation of powers doctrine" (Justia US law). The local Court sided with the FOB by establishing that when Congress enacted the Home Rule Act of 1973, it created "the City Council and authorized it to legislate, but Congress expressly reserved its constitutional authority to alter the institutions of the District of Columbia government at any time and for nearly any reason. [..] When it created the Financial Control Board in 1995, Congress 'exercise[d] its constitutional authority as legislature for the District.' Id. The creation of a Financial Control Board with authority to take over, replace or eliminate the Lottery Board accordingly does not present the 'dange[r] of congressional usurpation of Executive Branch functions'." (Justia US law).

Similarly, in 1991, the Major of Bridgeport (Connecticut), Mary C. Moran, announced that the she would not comply with an FOB layoff order. To justify her decision, the Major said that "the state had not adequately analyzed the impact of the most recent round of spending cuts ordered by the financial board and that therefore she would not comply with the layoff order." Moreover, she noted, "that the additional layoffs would implications that were not addressed by the financial review panel and that could affect the legal liability and 'social responsibility' of the city" (Johnson 1991).

The case of Puerto Rico also illustrates how the local government, as well as public and private actors, have used courts to clarify the nature, functions, and powers of the FOB. In fact, the mere existence of the board is still questioned—on February 2019, the First U.S. Circuit Court of Appeals in Boston ruled that the members of the oversight board members were not constitutionally appointed. When it comes to the question of FOBs powers, in the aftermath of hurricane Maria, the board sought to appoint an emergency manager to the PR Electric Power

Authority, thus expanding its powers beyond financial matters. Judge Laura Taylor Swain[15] ruled that the PR-FOB did not have the authority to appoint public officials; therefore, it was overreaching its powers.

Officials' reactions to this ruling illustrate the tensions between efficiency and democracy in scenarios ruled by FOBs. On the one hand, Congressman Bruce Westerman (Arkansas)—a member of the subcommittee on Oversight and Investigations—sided with the FOBs by referring to the notions of oversight and transparency. "I believe […] the oversight board should be granted more authority. While we understand the sense of urgency for the people of Puerto Rico, oversight and transparency are vital to this recovery process" (Bases 2017). On the other hand, the then governor of PR, Ricardo Roselló, applauded Judge Swain's ruling by calling upon the notions of self-rule and democracy.

> We are very pleased with the decision issued today by Judge Laura Taylor Swain, since it reiterates our position regarding the limit of power of the Financial Oversight and Management Board. Since the first day, we have been clear in terms of the powers that the Board has and those it does not have. It is clear that the Financial Oversight and Management Board does not have the power to take full control of the Government or its instrumentalities. Our position has been validated and it has been recognized that the administration and public management of Puerto Rico remains with the democratically elected government. As Governor of Puerto Rico, I will defend the democratic rights of my people over any challenge and in any forum (La Fortaleza, 2017).

These responses also shed light to the expectations of FOBs enhancing transparency and accountability. However, given their unelected nature, the question is: to whom are the members of FOBs responding? To higher levels of government or to the public? In the case of PR, this issue was posed in 2017 by the Centro of Periodismo Investigativo (CPI)— a nonprofit investigative journalism organization. The journalists asked the board for access to their public

[15] Chief Justice John G. Roberts Jr. appointed Judge Laura Taylor Swain to hear all proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

records, but the FOB claimed that it was "exempt from the provisions of Puerto Rico's constitution and laws that provide a public right of access to government documents and information" (Matthews 2018). As a consequence, CPI asked local and federal district courts for clarification on the board's legal standards of transparency and accountability. In its response, the Court made clear that PR's FOB was not exempt from protecting key principles of democratic governance—transparency, public's right to access public records, freedom of speech, and freedom of press. "The court explained, 'a citizen's right to access public documents goes hand in hand with PROMESA's purpose. When enacting [Puerto Rico Oversight, Management, and Economic Stability Act, author's clarification], Congress expressed concern with Puerto Rico's lack of transparency and unaudited financial information.' The court's opinion also stressed that 'the public's right to inspect public documents in Puerto Rico serves an important local interest' and is 'closely related to freedom of speech and freedom of the press, and accordingly, should be highly protected' (Matthews 2018).

This episode on the Puerto Rican financial crisis is also relevant as it brought to light the potential of FOB members to engage in rent-seeking activities, a "scandalous" action as these actors' mandate is to solve fiscal and financial crises. As it has been established, "winning elections" is not part of the incentive structure of FOB members; rather, "career advancement," "public service," and/or "profit-making" might be part of their calculations, in part because the members of the board are not paid for their services. While the concern of having a few "bad apples" is present in any type of organization, the unclear nature of FOBs accountability chain and its independence might make these organizations more susceptible to rent-seeking dynamics. Members of FOB are not accountable to the public; they are not accountable to local governments; and its accountability to higher levels of government is unique and often vague.

Some might compare FOBs to bureaucracies, but for the most part civil servants follow a principal-agent model of delegation which is not truly applicable to the case of FOBs.

In this regard, the $625,000 salary of Natalie Jaresko —the Executive Director of the Financial Oversight & Management Board for Puerto Rico— has been a source of conflict when we consider that Puerto Rican taxpayers are footing the bill in times of crisis. Similarly, the Puerto Rican government estimates that by 2023, bankruptcy executives (mainly lawyers and consultants who go from one crisis scenario to another) will cost more than $1.4 billion (Valentín Ortiz 2018). However, this type of claim is not unique to PR—the financial manager of the city of Detroit from 2013 to 2014, for instance, was also criticized for approving contracts that helped his friends' businesses whose salaries were higher than those of elected officials (Presbey 2015).

Reforms, especially those involving cuts in spending and tax increases, are likely to create contentious politics. However, when local politicians do not make these changes and still pay for them when voters cast their ballots, then they have an incentive to enter into conflictual relationships with FOBs. In these scenarios, litigation is one of the limited strategies to check the powers of FOBs. Yet, this a lengthy and costly strategy that will likely extend processes of debt repayment and restructuring. These issues, therefore, have noteworthy 'real-world' implications, especially on the resolution of municipal fiscal or financial crises, as well on democratic governance in multilevel settings.

CONCLUDING REMARKS

This paper has explored the nature and functions of Financial Oversight Boards in US municipalities. While this type of organization has been overlooked by social scientists, FOBs have been increasingly present in municipalities that have faced fiscal or financial emergencies. In fact, FOBs often become 'de facto' governments. By politicisizing intergovernmental finance

(Wibbels 2006: 476) all the way down to the local level and including FOBs in the picture, these insights shed light to scholarly debates regarding: 1) the dynamics of fiscal federalism in times of crises, and 2) governance of municipalities in distress.

The last section starts to illustrate how FOBs might support processes of financial or fiscal restructuring yet hurt democratic governance. Still, there are many unanswered questions on the table. For instance, are some TYPE of FOBs more likely to overcome these antidemocratic tendencies? What TYPE of FOB increase efficiency? When it comes to issues of encroachment and popular dissatisfaction, does it make a difference to have elected officials as members of the board? Do members of FOBs attempt to influence public opinion? If so, how do they seek to legitimize their actions and policies? Future work seeks to answer these questions by looking at the cases and data more systematically.

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