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THE ROLE OF LOCAL CONTROL IN SCHOOL FINANCE REFORM

*Richard Briffault**

Local control is a puzzle, or rather, a series of related puzzles that has both structured and hindered the uncertain development of school finance reform. The first puzzle is really a paradox: courts and commentators generally assume that local control of education exists, that it is a basic organizational principle of American public elementary and secondary education, and a norm that must be taken into account when the existing school finance system is challenged. Yet for the law of local government generally, local control is the exception, not the rule. The ground rule of state-local relations is state control and local powerlessness, not local control. How, then, can local control be such a basic tenet of school finance?

The second puzzle grows out of the first. What is the meaning of local control? Courts and commentators discussing local control in the school finance setting generally have treated it as a self-evident concept. They have often failed to address its meaning or the values it is intended to serve. What is local control about? Courts which have gotten past the simple invocation of the term generally present a laundry list of values: parents' rights, community choice, efficiency and interlocal competition, educational excellence, accountability, and participatory democracy all have been proffered as possible explanations. On occasion, these possibilities have been presented simultaneously, apparently without awareness of the tensions among them. The courts' use of the term "local control" has obscured, more than it has enlightened, our understanding of the appropriate role of local factors and local decisionmaking in public education.

The third puzzle, in turn, grows out of the second. Is local control an unmitigated good? This is the usual assumption of proponents of local control, an assumption derived, in part, from the lack of precision

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in using the term. In the school finance context, local control has been more of a mantra than an analytical concept. Once local control is defined with greater rigor, the costs associated with it may become more apparent, even if one concludes that some of the values latent in local control generally are desirable. These costs may go beyond the concern with disparate fiscal capacities of local school districts to include the impact of local control on the structure of metropolitan government and the level of funding normally provided for education.

In this Article, these puzzles are examined. In Part I, I explore the "paradox" inherent in the very concept of local control, given the usual local-government law norm of local powerlessness. In Part II, I examine some of the potential meanings of local control, drawn, in part, from the federal and state decisions that have invoked local control in the analysis of school finance reform claims, and, in part, from broader contemporary legal theories of local autonomy. In Part III, I look at some of the costs of local control, including its interaction with metropolitan area economic and social stratification and its contribution to the fiscal vulnerability of education.

I conclude by suggesting that the principal value of local control is political, providing parents and local residents with the opportunity to increase the accountability of educators and school administrators, and to participate in collective decisionmaking concerning a vital community issue. This political value would require primarily local financial responsibility only if increased state assistance to promote greater equity would inevitably result in state administrative control of local schools. But if local control is as important a value in our legal and political culture as many courts and commentators have insisted, then state governments might be able to augment local revenues without automatically attaching "strings" that impair local autonomy. If not, that is, if greater state aid inevitably is accompanied by greater state control, then, perhaps local control is not as central a norm as many courts have determined, and courts should not rely upon the asserted interest in local control as a basis for rejecting legal challenges to the inequities in existing school funding systems.

I. THE PARADOX OF "LOCAL CONTROL" IN THE LAW OF LOCAL GOVERNMENT

Local control has played a central role in the school finance reform litigation of the past quarter-century. Many courts and commentators have treated local control as the cornerstone of the American system of

public education, and as a value of constitutional magnitude.¹ Most of the courts that have refused to invalidate the local property tax-based system of school finance have relied on local control as the principal justification for sustaining the status quo.²

The United States Supreme Court led the way with its paean to "the merit of local control" in *San Antonio Independent School District v. Rodriguez*,³ and nearly a dozen state supreme courts have since followed, often citing *Rodriguez* and quoting its language with approval.⁴ In these cases, local control generally has been used as a shield, to ward off claims that the state has an obligation to revamp the existing school finance system. In at least one case, local control was used as a sword as well, to invalidate a school finance reform that limited the power of wealthier communities to outspend poorer ones.⁵

Even some of the courts that invalidated their states' school finance systems have placed a high value on local control. A number of these courts have sought to combine requirements of greater equalization of spending or resources for education—which generally entails an increased financial role for the state—with continued scope for local control, including the ability of school districts to raise and spend revenues from local resources.⁶ Other reforming courts have contended that

1. See, e.g., Kern Alexander, *Equitable Financing, Local Control and Self-Interest*, in *THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE* 299, 306-07 (Julie K. Underwood & Deborah A. Verstegen eds., 1990) (local control treated as "sacred," or "sanctified," by the courts); JAMES W. GUTHRIE ET AL., *SCHOOL FINANCE AND EDUCATION POLICY* 208 (2d ed. 1988) ("[T]he doctrine of local control has broad legislative and popular support."); David L. Kirp, *Introduction: The Fourth R: Reading, Writing, 'Rithmetic—and Rules*, in *SCHOOL DAYS, RULE DAYS 1* (David L. Kirp & Donald N. Jensen eds., 1986) (quoting state school administrator that local control "was the historic watchword . . . the 'Battle Hymn of the Republic'").

2. See, e.g., Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307, 328 (1991).

3. 411 U.S. 1, 49 (1973).

4. See *Shofstall v. Hollins*, 515 P.2d 590, 593 (Ariz. 1973); *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1021-23 (Colo. 1982) (en banc); *Thompson v. Engelking*, 537 P.2d 635, 645 (Idaho 1975); *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758, 788-89 (Md. 1983); *Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 367-68 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138 (1983); *Board of Educ. v. Walter*, 390 N.E.2d 813, 820-22 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); *Olsen v. State*, 554 P.2d 139, 146-48 (Or. 1976); *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979); *Kukor v. Grover*, 436 N.W.2d 568, 580-82 (Wis. 1989); *Buse v. Smith*, 247 N.W.2d 141, 150-52 (Wis. 1976); see also *School Bd. v. Louisiana State Bd. of Elementary & Secondary Educ.*, 830 F.2d 563, 572 (5th Cir. 1987), *cert. denied*, 487 U.S. 1223 (1988).

5. See *Buse v. Smith*, 247 N.W.2d 141 (Wis. 1976).

6. See, e.g., *Robinson v. Cahill*, 303 A.2d 273, 294, 298 (N.J.), *modified on other grounds per curiam*, 306 A.2d 65 (N.J.), *cert. denied*, 414 U.S. 976 (1973); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 398 (Tex. 1989); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 99

true local control requires school finance reform so that all school districts can have the fiscal capacity to benefit from local control.⁷

Moreover, a number of the leading school finance reform strategies, such as "district power equalization"⁸ and "minimum adequacy,"⁹ have been premised on the continuation of considerable local autonomy. Under power equalization, local spending differences could result from local decisions concerning the level of taxation and the share of local budgets devoted to schools. Similarly, local control has been seen as consistent with a minimum adequacy requirement because local areas "would remain free to augment their programs above" any state- or court-mandated minimum.¹⁰

The paradox arises if one looks at school finance reform from the broader perspective of state-local relations.¹¹ The basic ground rule of state-local legal relationships is not local control, but local powerless-

(Wash. 1978) (en banc); *Pauley v. Kelly*, 255 S.E.2d 859, 880 (W. Va. 1979).

7. See, e.g., *Serrano v. Priest*, 487 P.2d 1241, 1260 (Cal. 1971) (en banc), *aff'd*, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907 (1977); *Horton v. Meskill*, 172 Conn. 651, 651-52, 376 A.2d 359, 376 (1977).

8. The "district power equalization" proposal was first developed in JOHN E. COONS ET AL., *PRIVATE WEALTH AND PUBLIC EDUCATION* 200-42 (1970), in order to combine the benefits of local administrative authority with state support for poorer districts. Under district power equalization, local school districts would continue to set the local tax rate, determine the portion of local revenues allocated to education, and, within the school budget, fix local spending priorities. The state, however, would have to guarantee all districts an equal fiscal capacity for school programs. In other words, any given tax rate would have to yield an equal amount of local school revenues, regardless of the district's tax base. For low-wealth districts, the state would provide the revenues to match what high-wealth districts obtained at a comparable tax rate. Interdistrict spending differences could still result, but these would be due to local decisions concerning the level of taxation and the share of local budgets to be devoted to schools, not to differences in local taxable wealth.

9. "Minimum adequacy" is not a formal legal doctrine, but a way of grouping together the strands in several state school finance reform decisions that focused on the sufficiency of the resources devoted to education in poorer districts, rather than interdistrict funding disparities. See, e.g., *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Seattle Sch. Dist. No. 1*, 585 P.2d 71; *Pauley*, 255 S.E.2d 859. The gravamen of the minimum adequacy claim is not inequality (with the implicit remedy of equality), but the failure to provide a basic level of education in some districts. A plaintiff pursuing a minimum adequacy, or "minimum standards," theory need not proceed under the state equal protection clause, but will instead claim that the education article of the state constitution mandates some absolute minimum level of education that is not being provided in certain districts. See McUsic, *supra* note 2, at 326-27.

10. See McUsic, *supra* note 2, at 328.

11. I have previously examined the black letter principles and traditional assumptions of local government law in Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 6-11 (1990) [hereinafter Briffault, *Our Localism I*]. Much of the analysis in the next several paragraphs is built on the cited portion of *Our Localism I*, *supra*.

ness.¹² As a matter of conventional legal theory, state-local interactions are profoundly structured by concepts of hierarchy and delegation. States enjoy complete hegemony over hierarchically inferior local governments. Local governments have no rights against their states;¹³ nor do the residents of local governments have any inherent right to local self-government.¹⁴

Instead, local governments are nominal creatures, delegates, and agents of the state. Local governments exist only because they are created by their states, and as creator, the state has plenary power to alter, expand, contract, or abolish at will, any or all local units. A local government is a delegate of the state, possessing only those powers that the state has chosen to confer upon it. Absent a specific limitation in its constitution, a state can modify or withdraw any power it has delegated to a local unit, much as it can impose new duties or take away old privileges. Ultimately, a local government is an agent of the state, exercising specific, limited powers at the local level on behalf of the state. In the absence of a specific grant of state constitutional protection, a local government has no more legal autonomy relative to the state than does a state administrative agency. Indeed, a local government is similar to a state agency, serving the state in a specific area of expertise, although a local government has a territorial jurisdiction rather than a functional specialty.¹⁵

The scope of local power often is restricted by Dillon's Rule, the traditional measure of judicial review of local authority under state enabling legislation. Under Dillon's Rule, local governments may exercise only those powers "granted in express words," or "those necessarily or fairly implied in or incident to the powers expressly granted," or "those essential to the declared objects and purposes of [the local govern-

12. See, e.g., 1 CHESTER J. ANTIEAU, *MUNICIPAL CORPORATION LAW* § 2.00 (1991); GORDON L. CLARK, *JUDGES AND THE CITIES* 70 (1985); 2 EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* §§ 4.03, 4.05 (3d ed. 1988); 1 C. DALLAS SANDS ET AL., *LOCAL GOVERNMENT LAW* § 3.01 (1981); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

13. Localities may not assert the Contracts Clause, *City of Trenton v. New Jersey*, 262 U.S. 182, 188 (1923), the Equal Protection Clause, *City of Newark v. New Jersey*, 262 U.S. 192, 196 (1923), or the Privileges and Immunities Clause, *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933), against their state governments.

14. See 1 ANTIEAU, *supra* note 12, § 2.06; 1 MCQUILLIN, *supra* note 12, § 1.42 (3d ed. 1987). Local residents may not assert a federal constitutional claim to belong to a particular local government or any local government at all.

15. A school district is both functionally and territorially specialized.

ment]—not simply convenient, but indispensable.”¹⁶ Dillon’s Rule reflects the view of local governments as agents of the state by requiring that all local powers be traced to a specific delegation. As a canon of construction, the Rule requires that courts assume, in doubtful cases, that a local government lacks the contested power. Moreover, by denying local governments broad authority, Dillon’s Rule reaffirms their hierarchical inferiority to state governments and casts doubt on the legitimacy of independent local decisionmaking in the absence of clear state authorization. Generally followed in the late nineteenth century, the Rule has been formally abandoned in a number of states, though several commentators contend that the Dillon’s Rule tradition still structures judicial review of state-local relations.¹⁷

Even where Dillon’s Rule has been superseded nominally by “home rule,”¹⁸ the formal legal inferiority of local governments may remain. State home rule provisions typically follow two models. The original form of home rule sought to treat a locality as if it were a mini-state within the state, possessing the full state police-power with respect to a designated sphere of local matters while enjoying a correlative degree of immunity from state control. Courts, however, have experienced great difficulty in delineating a category of municipal affairs beyond the reach of state interference. Findings of “state concern” in most local matters have served to validate state legislative actions in the face of many home rule claims.¹⁹ Thus, this “state within a state” form of home rule has failed to create true local control over local matters.

As a result, proponents of home rule developed a second model that sought simply to broaden local lawmaking authority without attempting to construct a formal barrier against state legislation.²⁰ This

16. 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 237(89) (5th ed. 1911).

17. See CLARK, *supra* note 12, at 77 (Dillon’s Rule is still “the major judicial model of local government powers and dominates American debates of the proper role of localities with respect to state governments.”); Frug, *supra* note 12, at 1112-13; Edwin A. Gere, Jr., *Dillon’s Rule and the Cooley Doctrine: Reflections of the Political Culture*, 8 J. URB. HIST. 271, 296 (1982) (“[T]he courts continue to construe the fundamental state-local relationship in the narrow, inflexible fashion in which it was defined by John Dillon more than one hundred years ago.”).

18. See Briffault, *Our Localism I*, *supra* note 11, at 10-11.

19. See, e.g., CLARK, *supra* note 12, at 113-14; Frug, *supra* note 12, at 1116-17; W. Bernard Richland, *Constitutional City Home Rule in New York*, 54 COLUM. L. REV. 311, 320-23 (1954); Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 652 (1964).

20. See, e.g., Kenneth Vanlandingham, *Constitutional Municipal Home Rule Since the AMA*

form of home rule grants affected local governments the powers a state legislature could grant, subject to the legislature's authority to restrict or deny localities a particular power or function. Legislative home rule cannot be equated with local control because the scope of local autonomy remains entirely subject to state determination. Rather, legislative home rule functions primarily to permit greater local initiative in the absence of conflicting state legislation. This form of home rule is really a "Dillon's Rule in reverse," presuming that power to act has been delegated to a locality, subject to possible state retraction. The state retains the residual power to withdraw authority from localities, and therefore, legislative home rule does not disturb the formal hierarchical superiority of the states.

According to most local government scholars,²¹ state home rule measures generally have failed to empower local governments. These commentators assert that states have continued to legislate on local matters, often displacing local decisionmakers in the process. State courts, they contend, have upheld state legislative interventions in local areas, and thus have failed to vindicate local autonomy.²² The very development of legislative home rule has been treated as indicative of the failure of the notion of local autonomy to take root in the legal system, because legislative home rule provides local governments with no immunity from state legislation, and the scope it affords local initiative turns entirely on the willingness of the legislature to restrain itself from interfering in local matters. According to Professor Michael Libonati, home rule "firmly establishes local subordination to the center,"²³ and Professor Gordon Clark states, "Everywhere, local autonomy is compromised by centralized authority. . . . Practically, the rhetoric of local autonomy is difficult to take seriously given overwhelming evidence of the fiscal, political, and judicial domination of local governments by higher tiers of the state."²⁴

The subordinate position of local governments should be particularly compelling in the area of public education. Education is consid-

(NLC) Model, 17 WM. & MARY L. REV. 1, 2-5 (1975).

21. See, e.g., Frug, *supra* note 12, at 1062-63 & nn.11-12.

22. See, e.g., Michael E. Libonati, *Reconstructing Local Government*, 19 URB. LAW 645 (1987); Richland, *supra* note 19, at 313 ("[A]lmost universally throughout the country, the results of judicial interpretation of constitutional provisions in regard to home rule have been a source of bitter frustration to the sponsors of these measures.").

23. Michael Libonati, *Home Rule: An Essay on Pluralism*, 64 WASH. L. REV. 51, 67 (1989).

24. CLARK, *supra* note 12, at 113-14.

ered a subject of plenary state power.²⁵ In home rule states, education falls within the doctrine of state concern, so that state regulation of education generally is unfettered by any state constitutional protection of local autonomy.²⁶ Moreover, the local role in education is frequently vested in an independent school district. Although home rule mostly has failed to immunize local governments from state interference, in many states, home rule has resulted in the expansion of local discretion to initiate policies responsive to local needs and concerns in the absence of conflicting state law.²⁷ Home rule and attendant concepts of local autonomy, however, are usually reserved for municipal corporations and other general purpose local governments. Home rule is rarely, if ever, extended to special districts, such as school districts.²⁸ Thus, more than municipal corporations or general purpose localities, local school districts are likely to be considered arms of the state, and state power to create, alter, reorganize or destroy school districts is not affected by home rule.²⁹ Indeed, in some states, the nexus between a local school board and the state is so tight that the local board lacks standing to sue the state.³⁰

In addition, virtually every state has created some form of state institutional bureaucracy for public education, typically a state board of education; most states also have a state-level chief education officer. This structure allows for formal state administrative monitoring of, and policymaking for, local school districts. States usually do not have a comparable administrative mechanism for the oversight of general purpose local governments.³¹ State boards often enjoy broad powers of regulation in such areas as student discipline, teaching personnel, educational policy, and enforcement of state education laws.³² Occasionally,

25. See TYLL VAN GEEL, *THE COURTS AND AMERICAN EDUCATION LAW* 65-70 (1987).

26. See, e.g., *Board of Educ. v. City of New York*, 362 N.E.2d 948 (N.Y. 1977); E. EDMUND REUTTER, JR., *THE LAW OF PUBLIC EDUCATION* 139-41 (3d ed. 1985).

27. See Briffault, *Our Localism I*, *supra* note 11, at 15-16 & nn.47-50.

28. For example, the Home Rule Article of the New York Constitution extends the benefits of home rule to four forms of local government: county, city, town, and village. N.Y. CONST. art. IX, § 3(d)(2).

29. See Briffault, *Our Localism I*, *supra* note 11, at 86-90.

30. See, e.g., *Unified Sch. Dist. No. 335 v. State Bd. of Educ.*, 478 P.2d 201 (Kan. 1970); *Minnesota Ass'n of Pub. Sch. v. Hanson*, 178 N.W.2d 846 (Minn. 1970).

31. Cf. *Community Communications Co. v. City of Boulder*, 455 U.S. 40, 63-64 (1982) (under home rule, local economic regulations are not the result of a "clearly articulated and affirmatively expressed" state policy and are not "actively supervised by the State itself" and therefore are not protected by the state's immunity from federal antitrust laws).

32. See, e.g., REUTTER, *supra* note 26, at 98-120.

state boards have the power to supervise local school board activities and even take them over in cases of incompetence or mismanagement.³³

A recent and striking instance of the broad scope of state control over education is the "education excellence" reforms of the 1980s. Across the nation, states adopted a variety of measures intended to enhance the quality of education. These included raising high school graduation requirements, initiating student assessment tests, adopting career ladders or merit pay for teachers, setting tighter teacher certification or minimum competency requirements, extending the school day and the academic year, and imposing minimum homework requirements. Most of these standards and requirements were adopted by legislatures or administrators at the state level and imposed on local districts. As one observer has noted, "This enormous amount of activity has all taken place without the necessity of a change in legal doctrine because state legislatures have plenary authority over education [T]hese changes have occurred with few doubting that the legal authority existed to make the changes."³⁴

There is then an apparent paradox. A system of state-local relations predicated on state authority and local subordination has yielded a legal norm of local control of public schools. How do we account for this?

The most straightforward explanation is that local control is state policy. While retaining plenary authority over the organization, finance, and content of education, the states have chosen to delegate substantial administrative and fiscal responsibility to local districts. This explanation is certainly consistent with the posture of the many school finance cases which arose as challenges to state laws vesting responsibility for raising funds for public schools in districts with radically disparate taxable property. Judicial invocation of local control to reject school finance reform claims and validate the existing funding system is simply judicial deference to a state's decision to adopt a policy of local control. Although this reasoning fits many cases, and certainly provides a partial reconciliation of the two elements of the apparent paradox, it is not a complete explanation.

33. See, e.g., Robert Hanley, *Bid for Takeover of School District Is Begun by Jersey*, N.Y. TIMES, May 25, 1988, at A1 (state takeover of second largest school district in the state); N.J. First to Attempt Complete Takeover, EDUC. WK., June 1, 1988, at 12 (discussing takeover activities in five states); Mark Walsh, *Citing Deficiencies, Georgia Board Votes to Cut Off Funds to District*, EDUC. WK., Nov. 23, 1988, at 10. See also N.J. STAT. ANN. § 18A:7A-15 (West 1989).

34. VAN GEEL, *supra* note 25, at 70.

First, one state court has indicated that local control is a value of such constitutional magnitude as to require invalidation of a state law that reduced local autonomy in raising and spending money for local schools. In *Buse v. Smith*,³⁵ the Wisconsin Supreme Court relied on the principle of local control to strike down state legislation that would have redistributed some locally raised revenues from wealthier districts to poorer ones. The redistribution would have served the double function of limiting the ability of more affluent districts to outspend poorer ones while simultaneously providing some of the revenues for raising the fiscal capacity of the poor districts.³⁶ Although the *Buse* court acknowledged that school districts are "but arms of the state, carrying out state duties,"³⁷ the court noted that the provision of the Wisconsin Constitution that obligated the state legislature to provide for free public schools "'which shall be as nearly uniform as practicable'" also referred to "'district schools'."³⁸ Based on that slender textual reed, the court held that local districts had a constitutionally protected interest in administering and funding schools.³⁹ In a subsequent case, the Wisconsin Supreme Court found the state's interest in providing local control sufficiently compelling to justify disparities in district fiscal capacities, even if strict judicial scrutiny were applied to the school finance system.⁴⁰

Buse's use of local control as a sword to invalidate equalizing state laws is unusual. But even in cases in which local control is only a shield, relied upon by courts to sustain state legislative actions concerning school finance, local control has been given a weight beyond that normally attributed to a mere "rational basis" for state regulation. The Colorado Supreme Court, for example, like the Wisconsin Supreme Court, looked to its state constitution, and found, in textual references to the use of local school district directors and to textbook selection, a constitutional principle of local control of schools.⁴¹ Other state courts

35. 247 N.W.2d 141 (Wis. 1976).

36. The Wisconsin plan at issue in *Buse* provided for a guaranteed tax base for poorer districts and required that districts with spending or assessed valuation per capita above a certain level make payments into a state fund. Those payments, known as "negative aid," were to supplement "positive" state aid to poorer districts. *Id.* at 143-44.

37. *Id.* at 151.

38. *Id.* at 166 & n.19 (quoting Wis. CONST. art. X, § 3).

39. *Id.* at 151-52.

40. *Kukor v. Grover*, 436 N.W.2d 568, 582 n.13 (Wis. 1989) ("The requirement that local control of schools be retained is of constitutional magnitude and necessarily compelling.").

41. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1023 (Colo. 1982); *see also Olsen v. State*, 554 P.2d 139, 147 (Or. 1976) ("emphasis on local control is constitutionally accentuated")

have looked to their state histories to find local control to be a long-standing principle of education finance—in effect, a constitutional norm, even in the absence of a textual reference.⁴²

More significantly, the local control principle has been vindicated in the face of strong evidence of the connection between local control and unequal local resources. School finance reformers have sought to invoke the principle of equal educational opportunity, which has long been a powerful norm in American history and law. To ensure that all children have access to education, most state constitutions require that free public schools be provided; education is the only public service that has been so widely mandated. *Brown v. Board of Education*,⁴³ perhaps the most important Supreme Court decision in this century, indicates how far courts have been willing to go in challenging long-standing, deeply rooted and legislatively authorized social institutions in the name of equal access to education. Federal legislation on access to education for the handicapped,⁴⁴ and the Supreme Court's invalidation of state legislative restrictions on education for undocumented alien children in *Plyler v. Doe*,⁴⁵ are more recent reminders of political and judicial insistence on the importance of equal access to education.

The school finance reform movement should have been able to combine this powerful contemporary concern for equality in education with the formal legal treatment of local units as mere administrative arms of the states to secure judicial decisions invalidating state legislative schemes that resulted in proven inequalities. The mixed results of school finance reform to date, and especially the repeated assertion of local control as a reason for limiting or denying equalization claims, suggests that the local control idea goes beyond mere deference to state legislative decisionmaking and has considerable independent power.

A second and ultimately more persuasive way to resolve the paradox of local control in a legal system of state power and local powerlessness is to recognize that the school finance cases simply have

by state's home rule amendment).

42. See, e.g., *Robinson v. Cahill*, 303 A.2d 273, 292-94 (N.J.), *modified on other grounds per curiam*, 306 A.2d 65 (N.J.), *cert. denied*, 414 U.S. 976 (1973); *Board of Educ. v. Walter*, 390 N.E.2d 813, 820-21 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980); *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979) ("[T]he framers [of the Pennsylvania Constitution of 1873] endorsed the concept of local control to meet diverse local needs and took notice of the right of local communities to utilize local tax revenues to expand educational programs subsidized by the state.").

43. 347 U.S. 483 (1954).

44. See Education for All Handicapped Children Act of 1975, 20 U.S.C. §§ 1400-1485 (1988).

45. 457 U.S. 202 (1982).

elucidated a tension always latent in local government law between the formal legal superiority of the states and a deep-seated political and social preference for local autonomy. The role of the local control idea in school finance litigation is indicative of the power of the concept of local control generally, rather than opposed to the main current of legal developments in local-government law.⁴⁶

As I have suggested elsewhere, theory and practice are profoundly at odds in local-government law.⁴⁷ The theory of state superiority and control, of local governments as creatures, agents, and delegates of the states, is regularly coupled to a practice of state delegation of substantial policymaking, regulatory, and fiscal responsibility to localities, often without significant active state legislative, judicial, or administrative supervision.⁴⁸

The "paradox" in local control, then, is not so much a paradox between school finance law and the rest of the law of state-local relations, but an instance of the paradox at the heart of the law of state-local relations itself. In practice, local control is often the norm, not the exception, despite the continued black-letter law assertion of state superiority. The school finance cases are important for helping scholars to reconsider the paradigm of state-local relations, rather than as an inexplicable departure from an asserted tradition of local powerlessness.

The school finance cases are, however, unusual in one respect: The *formal* articulation of local control as a legal norm by courts. As I have suggested, state-local relations ordinarily are marked by formal state superiority, in theory, combined with *de facto* local autonomy in practice. Local autonomy is usually seen as the consequence of state grants of power followed by a state reluctance to supervise local utilization of that power, or an unwillingness to withdraw such power. Decentralization is the practical accomplishment, not necessarily the theoretical principle.

In school finance litigation, though, local control often has been

46. Indeed, school finance may be a particularly appropriate setting for local control because public primary and secondary education is the leading object of state and local expenditure and the property tax is the principle source of local revenue. See Briffault, *Our Localism I*, *supra* note 11, at 3.

47. *Id.* at 111-15.

48. Local control is a major factor not only in the area of public education, but also in land use control, which is the most important local regulatory power. Local control over zoning is, as much as the local property tax based system of school finance, testimony to the powerful hold of the principle of local autonomy in practice in the American legal system. *Id.* at 39-58. So, too, the rules governing the very formation and expansion of local governments and the alteration of local boundaries are often quite "localist" in orientation. *Id.* at 72-85.

lifted to the level of theory. Here, courts treat local control as more than simply an appropriate consequence of state legislative decisions, but instead, as a constitutional or quasi-constitutional imperative. When assessing a school finance system, courts view local control as a fundamental constitutional value, comparable to equal protection or the right to a basic education found in many state constitutions. Moreover, local control is consistently considered to be a constituent element of the governance of public education.

To determine what accounts for the special power of local control in the area of school finance requires a closer inspection of the meaning, or rather, the meanings of local control.

II. THE MULTIPLE MEANINGS OF LOCAL CONTROL

A. *Parents' Rights*

One of the most powerful explanations of local control is its association with parents' rights. The Idaho Supreme Court put it quite nicely:

[T]he "Little Red School House" became an American institution, the center of community life, and a pillar in the American conception of freedom in education, and in local control of institutions of local concern. In the American concept, there is no greater right to the supervision of the education of the child than that of the parent. In no other hands could it be safer.⁴⁹

This notion of local control as parental control has both defensive and offensive significance. On the one hand, local control is seen as vital to protect parental control of their children. Education is not only the most widespread and expensive public service, but it also may be the most intrusive. Public education has the potential to restructure the relationship between parents and their children, to introduce new and alien values, or to lead children to question and challenge the values of their families. Public education often is seen as subversive of family autonomy. Vesting control of education in the level of government generally considered closest to the home and family serves to mitigate this apparent threat to family interests.

49. *Thompson v. Engelking*, 537 P.2d 635, 645 (Idaho 1975). See also *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1023 (Colo. 1982) (citing earlier Colorado decision finding "parents have inherent civil right to exercise control over the education of their children").

On the other hand, education serves family interests by providing children with the necessary tools and training for economic success as adults. Public education supplements parental resources and facilitates family achievement in the next generation. Local control of school finance allows parents to go beyond state spending minima in order "to devote more money to the education of one's children."⁵⁰

This intuitive association of local control with family autonomy may, in fact, explain the powerful hold of local control on judicial thinking and legislative policymaking in this area.⁵¹ But it is of uncertain utility in determining whether and how much local control should be built into the school finance system. The public schools are not simply the parents' system. A central purpose in providing for public schooling is to shift control of education out of the hands of parents and into the arena of community decisionmaking. As Professor Amy Gutmann has pointed out, in a democratic society, the state has an obligation to assure personal and political freedoms for children, to teach them respect for opposing points of view and ways of life, and to provide them with the intellectual skills necessary to evaluate ways of life different from their parents. "Democratic education" is a public concern because the public has a stake in teaching children these democratic values.⁵²

The broad public interest—apart from the parents' interest—in elementary and secondary education, is demonstrated by two basic legal rules. First, every state has adopted a compulsory attendance law, requiring parents to enroll their children in schools whether they want to or not.⁵³ This indicates a collective decision that education is too important to be left to the wisdom of parents alone.⁵⁴ Second, the United

50. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49 (1973).

51. This idea is developed further in Richard Briffault, *Our Localism: Part II — Localism and Legal Theory*, 90 COLUM. L. REV. 346, 382-92 (1990) [hereinafter Briffault, *Our Localism II*].

52. AMY GUTMANN, *DEMOCRATIC EDUCATION* 28-33 (1987).

53. The first general compulsory education law was adopted by Massachusetts in 1852. Today all states have compulsory education laws. VAN GEEL, *supra* note 25, at 18. On the significance of compulsory attendance laws, see DAVID TYACK ET AL., *LAW AND THE SHAPING OF PUBLIC EDUCATION, 1785-1954* 97 (1984) ("The theory behind compulsory attendance laws introduced new assumptions about the authority of the state in education"—including the authority of the state to educate children over the objection of parents.). Of course, compulsory attendance laws do not require education at public schools; but even private schools must satisfy certain basic state licensing requirements.

54. *But cf.* *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (granting a limited religious-based exemption for children of Old Order Amish from last two years of Wisconsin's compulsory education law).

States Supreme Court, in *Kramer v. Union Free School District*,⁵⁵ invalidated a state's laws that limited the franchise in school-board elections to parents and the owners or renters of real property. In effect, the Court determined that the governance of public education is sufficiently important to the community as a whole, so that all qualified adult resident citizens—not just parents or taxpayers—are entitled to participate in the election of school-board members.⁵⁶

How “local control as parents’ control” fits into school finance reform is also questionable. As the United States Supreme Court observed in *Rodriguez*, local control has been associated with the right of parents “to do more” for their children.⁵⁷ But, assuming that this right is a valid government goal, local control is neither necessary nor sufficient to attain that goal.

As a practical matter, local control will not necessarily entail parents’ control. That is, a local decision “to do more” will require the approval of residents and taxpayers generally, not just parents. In communities where the parents of school-age children are in the minority,⁵⁸ where some sizeable number of parents have chosen to send their children to private or parochial schools, or where parents and nonparents may be of different ethnic groups, local control of school budgets may harm, not help, parents’ interests.

Conversely, parents can “do more” for the education of their children without having to control public resources. Educational resources, such as books, computers, tutors, and college preparatory courses, can be, and often are, purchased privately to supplement the publicly provided education. Controls on local public-school spending would not limit the ability of parents with financial resources to do more for their children, although it would require that they do so by using their own private, rather than local, collective wealth. Thus, local control does not necessarily serve parents’ control, and parents’ ability to advance the education of their children does not require local responsibility for pub-

55. 395 U.S. 621 (1969).

56. See also *Fumarolo v. Chicago Bd. of Educ.*, 566 N.E.2d 1283 (Ill. 1990) (invalidating provision of Chicago School Reform Act that vested control of elected neighborhood school councils in the hands of parents and not area residents).

57. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49 (1973).

58. My colleague Jim Liebman has suggested that one reason for urban educational decline has been the increasing number of childless adults. “As a result, the older and less fertile constituencies whose approval was needed to increase property tax rates as educational costs inflated simply stopped saying yes. Being less well funded, school systems declined.” James S. Liebman, *Voice, not Choice*, 101 YALE L.J. 259, 298 (1991) (book review).

lic education.

B. *Choice and Diversity*

As common as the association of local control with parents' rights is the assumption that local control is a particularly appropriate mechanism for capturing and reflecting our national diversity. As the Supreme Court stated in *Rodriguez*, under local control, "Each locality is free to tailor local programs to local needs. . . . No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education."⁵⁹ Many state courts have echoed this belief in the value of "local control to meet diverse local needs."⁶⁰

The relevant diversity is not just one of needs, but preferences, and the diversity reflects not just differences among communities, but among people. As courts and commentators have recognized, people may disagree as to: the proper size of government; the appropriate balance between taxation and private consumption; the allocation of government resources among a variety of contending public services, including police, fire, roads, schools, and education; and, within education, different programs, such as science, mathematics, foreign languages, sports, and music. Government is inherently coercive—that is, once a government makes a decision involving taxing and spending, all the people within the jurisdiction, including those who opposed the government's action, are bound by the collective determination. One economist has characterized this as the "political externality" costs of government action.⁶¹

According to one of the dominant contemporary theories of localism, local control provides a mechanism to minimize government coercion by expanding the opportunity for choice among people with diverse preferences. In a leading article, economist Charles Tiebout contends that local autonomy provides a "market-type solution" to the question of how to determine the level and mix of government expenditures responsive to popular desires. He explains that two aspects of lo-

59. 411 U.S. at 50.

60. See, e.g., *Hornbeck v. Somerset County Bd. of Educ.*, 458 A.2d 758, 788-89 (Md. 1983); *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979).

61. ROBERT L. BISH, *THE PUBLIC ECONOMY OF METROPOLITAN AREAS* 35-37 (1971). Bish suggests that political externality costs correlate with the size of the unit of government, since bigger units typically are more heterogeneous. In larger, more diverse units, more people are likely to have preferences that diverge from the mean, while in smaller, more homogeneous units, there may be less internal disagreement. *Id.* at 51-52.

cal government make such a "solution" possible: The large numbers of localities, and the relative ease of individual movement from one locality to another.⁶²

The multiplicity of local governments in a metropolitan area means that, as long as each locality is free to adopt its own mix of services, regulations, and charges, people will be offered a wide array of types and levels of public services, and a wide variety of rates of taxation. By moving from one locality to another, an individual can select from among those diverse local tax, service, and policy packages the one that best matches her preferences. The multiplicity of local governments, the ease of movement among them, and local control over public services and taxation, together, create a market in public services.

The dynamic element in this economic localism is the individual, or rather, the "consumer-voter,"⁶³ and the central mechanism for revealing public service preferences is relocation: "The act of moving or failing to move . . . replaces the usual market test of willingness to buy a good and reveals the consumer-voter's demand for public goods."⁶⁴ People decide on the type and level of services they wish to receive and the tax burdens they are willing to assume by "shopping around" among the various localities in a metropolitan area before "purchasing" and by moving to the one that best suits their needs. As a result, people sort themselves through free movement, with those of similar preferences for local public goods, services, and taxes settling in the same localities and apart from other people with different preferences.

As a result, local units tend to become more internally homogeneous, thereby reducing political externality costs in the aggregate because, by definition, more people will be satisfied by the decisions of their particular government. Ease of exit from one locality and relocation to another reduces the coercive component of government action generally, because it is usually easier for someone dissatisfied with a government action to leave a locality than a larger region or state.

There are, however, at least two basic flaws with "local control as choice." The first is its blithe assumption that most interlocal tax and spending differences are attributable to differences in "tastes," and not to differences in wealth. In theory, one locality might prefer a municipal golf course, another a new computer lab for its schools, a third

62. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J POL ECON 416, 416 (1956).

63. *Id.* at 417.

64. *Id.* at 420.

might opt to repave its roads, and a fourth might decide to lower taxes and spend less on local services. In fact, however, many local taxing and spending decisions are based not on idiosyncratic local taste differences, but on the stark fiscal disparities that divide localities within each metropolitan area.

As the records in many of the school finance cases have demonstrated, in state after state, the level of local spending on education and the quality of local schools correlate with local taxable wealth, not local tax rates. Many affluent communities spend more per capita on their schools but tax their residents at relatively low rates, while low-wealth jurisdictions typically tax themselves at much higher rates but still can manage only relatively low levels of school spending. The differences in spending among these jurisdictions are attributable not to differences in the "taste" for education—if anything, the elevated school tax rates of many low-wealth communities demonstrate a strong preference for education—but to differences in the sufficiency of local taxable resources.⁶⁵ Moreover, many communities are limited in their ability to devote local resources to education. Older, more crowded cities, with poorer, more dependent populations, have qualitatively different and greater demands on their local resources than do smaller, newer communities with relatively more affluent inhabitants.⁶⁶ Critical aspects of the size and mix of city spending programs, and the differences between the larger cities and the more affluent suburbs, are significantly determined by economic and social forces, in addition to the variations in preferences among residents of different localities.⁶⁷

That wealth—not wealth-neutral preference diversity—accounts for much of the interlocal variety in taxing and spending is borne out by the finding that areas of similar per capita wealth tend to engage in similar spending programs. "If Tiebout's views were correct, suburban political units would exhibit a wide variety of public-service packages. . . . In fact, the most striking characteristics of suburban units are their . . . nearly identical public-service mixes, with quality of service rising quite consistently with class composition of residents."⁶⁸

65. See, e.g., *Serrano v. Priest*, 487 P.2d 1241, 1244-52 & n.15 (Cal. 1971) (en banc), *aff'd*, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907 (1977); see also GARY J. MILLER, *CITIES BY CONTRACT* 167-72 (1981) (rejecting Tiebout's "tastes" explanation for spending differences among Los Angeles metropolitan area localities).

66. See Briffault, *Our Localism II*, *supra* note 51, at 424.

67. See *id.*; see also HELEN F. LADD & JOHN YINGER, *AMERICA'S AILING CITIES: FISCAL HEALTH AND THE DESIGN OF URBAN POLICY* 291-93 (1991).

68. Ann R. Markusen, *Class and Urban Social Expenditure: A Marxist Theory of Metropol-*

Thus, although a considerable part of the case for local control is the desire for local choice with respect to school spending programs, differing local spending preferences are influenced sharply by differences in local fiscal capacity. Without greater state equalization assistance, "local control as local choice" is local control only for those with the resources to choose.

Moreover, even if local wealth differences could be mitigated, there still might be some normative doubt about the ideal of local determination of the content of public education. As Amy Gutmann notes, "Unlimited local control can readily subvert two of the primary purposes of democratic education: to teach essential democratic values and to cultivate a common culture."⁶⁹ Local control has an important role to play in shaping education to meet local concerns. Localities are, however, part of a broad and diverse society. Local choice may respect the diversity in local preferences and needs. But local control, in a setting of relatively homogeneous districts and untempered by broader standards, could fail to contribute to the mutual respect and informed understanding necessary for deliberation and debate in a pluralistic society.

C. *Efficiency*⁷⁰

In addition to promoting the opportunities for local choice, it has been asserted that local control constrains the unit costs of government services. These efficiency benefits derive from the relatively small size and greater homogeneity of most school districts, compared to the state or to possible metropolitan-area-wide districts. Economists have suggested that economies of scale turn into diseconomies once a government unit grows past a certain size. Larger units are particularly inefficient for labor-intensive services, such as education, in which larger units often mean a greater percentage of government budgets devoted to management and supervision rather than service provision.⁷¹ Under this theory, local control directly limits administrative and bureaucratic

itan Government, in MARXISM AND THE METROPOLIS 82, 83-84 (William K. Tabb & Larry Sawers eds., 2d ed. 1984).

69. GUTMANN, *supra* note 52, at 74.

70. I have considered the efficiency case for local autonomy previously in Briffault, *Our Localism II*, *supra* note 51, at 402-03.

71. See VINCENT OSTROM ET AL., LOCAL GOVERNMENT IN THE UNITED STATES 97-99 (1988); HOWARD W. HALLMAN, SMALL AND LARGE TOGETHER: GOVERNING THE METROPOLIS 190 (1977).

costs and increases the efficiency of the funds devoted to education.⁷²

Local control also promotes school district efficiency through the mechanism of interlocal competition. With local wealth dependent on the local tax base, local governments strive to retain their current taxpayers and to attract new ones. As the Supreme Court noted in *Rodriguez*, local wealth is not "a static quantity. Changes in the level of taxable wealth within any district result from any number of events, some of which local residents can and do influence. For instance, commercial and industrial enterprises may be encouraged to locate within a district by various actions—public and private."⁷³ The quest for taxpayers, and the knowledge that many neighboring jurisdictions are engaged in the same quest, creates incentives to reduce administrative inefficiency and, in general, constrains the aggregate costs of local services, such as education. In this sense, "rivalry among local governments is analogous to rivalry among firms" in the provision of consumer goods.⁷⁴

Local control may promote greater efficiency in the delivery of government services, but how helpful this is for public education is uncertain. To the extent that local control holds down the size of bureaucracy and reduces the costs of government waste, it is certainly beneficial—although much of the argument for "local control as efficiency" stems from the assumption that local units are small. In reality, local school districts that encompass large cities are anything but small or efficient. Still, given that even large city districts are smaller than regional or state districts would be, local control's constraint on administrative inefficiency is clearly a positive value.

The efficiency benefits from interlocal competition are more doubtful. The interlocal competition for business and residential taxpayers is focused largely on holding down tax rates. The Supreme Court optimistically treated the mobility of taxpayers as a source of solace to low-wealth school districts by implying that the pursuit of the proper public policies permits any poor unit to become rich. In fact, interlocal competition favors already affluent areas which have the substantial tax bases that enable them to provide better services at a lower tax rate. In gen-

72. It also has been suggested that heterogeneity contributes to the size of bureaucracy. See JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* 167-69 (1990). If so, then the relatively greater homogeneity of most local districts, as compared to regions or states, also holds down the size of bureaucracy and the unit costs of education.

73. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54 (1973).

74. OSTROM ET AL., *supra* note 71, at 206.

eral, competing for new taxpayers by holding down tax rates often entails limiting government spending, including spending for schools.⁷⁵ For all but the wealthiest districts, "local control as interlocal competition" may tend to suppress spending on education.

Local control may reduce the waste and administrative costs involved in running public schools and, thus, contribute to efficiency. The interlocal competition, however, central to the efficiency-enhancing aspect of local control, also may result in less spending on education than would be the case if education were financed by a higher level of government. This reduction in spending will probably be greatest in those poorer districts where a more substantial investment in education is needed.

D. *Excellence*

Local control often is associated with the potential for excellence. As the Supreme Court asserted in *Rodriguez*, "Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence."⁷⁶ Some commentators, too, have contended that local control permits "progressive communities to expand the range and improve quality of local services, almost without limit."⁷⁷ Local control permits "local leadership," which in turn serves as a "stimulus" to the development of education over a wider geographic area, because some "lighthouse" districts will set new standards and others will copy "what the more alert and richer places have shown can be done."⁷⁸

Local control as excellence resembles, to some extent, the view of local control as local choice—the choice "to do more." Yet rather than simply benefiting the parents and children of the high-spending districts, local innovations and reforms will set the standard by which some affluent districts will compete, and to which all districts, rich and poor alike, will aspire. "Local control as excellence" is a one-way ratchet, steadily broadening and deepening the content of a public education.

The "local control as excellence" principle, no doubt, has some merit. Certainly, some districts have led the way with innovations that other schools copied, and which, through experimentation and emula-

75. See, e.g., MILLER, *supra* note 65, at 63-99.

76. 411 U.S. at 50.

77. CHARLES S. BENSON, *THE ECONOMICS OF PUBLIC EDUCATION* 131 (2d ed. 1968).

78. *Id.*

tion, eventually obtained broader currency and ultimately became basic educational requirements. Local control without state intervention and support, however, threatens to become a very selective excellence. Although some districts have the resources to follow the innovators, many other districts do not. Therefore, the progression from innovation to state standard would often not occur without the state's adoption of the innovation through its inclusion in the state-wide mandatory curriculum or creation of a financial incentive, in the state aid formula, for local adoption of the innovation. Local control may be necessary for innovation, but it is certainly not sufficient to secure the widespread adoption of any innovation that entails new costs.⁷⁹

Moreover, at a time of strained local budgets, there is some tension between the "excellence" and "efficiency" elements in local control. Both excellence and efficiency are based on the assumption that local control entails interlocal competition. Interlocal competition is, in fact, a central premise of the economic model of localism. But what is the focus of interlocal, and particularly, school district competition? "Excellence" and "efficiency" suggest two different answers. Some districts may compete to provide the best schools and thereby attract taxpayers who are especially interested in high quality education—in effect, education "connoisseurs."⁸⁰ But many others compete by holding down the tax price of residency in the district and thus will prefer to curtail spending and forego the opportunity for educational excellence. Whether more districts compete by enhancing quality or curbing price is an open question, but assuming that many districts are price-competitors rather than quality-competitors, educational excellence in those districts will not be served by local control.

E. *Accountability and Participation*

Local control also is viewed as a mechanism to increase popular direction of the public schools and to enhance the popular role in public school decisionmaking. "Local control as choice" built on the assumption of a diversity of tastes among people and looked to the multiplicity of local governments, residential mobility, and the variety of local policies to sort out people and thereby increase public satisfaction with

79. Nor is it clear that local control is necessary for educational innovation. Many of the "educational excellence" reforms of the 1980s were first adopted at the state level and then imposed on local districts.

80. On the notion of "quality-conscious" consumers of public goods as "connoisseurs," see ALBERT O. HIRSCHMAN, *EXIT, VOICE AND LOYALTY* 49-51 (1970).

government performance. "Local control as accountability" is concerned with the general problem of democratic control over government, not with the differences among people.

Education, like many public services, is provided by public institutions⁸¹ that are subject to multiple political and special interest group pressures. Administrators, education professionals, teachers' unions, business groups, politicians, and others all may seek to influence or control education decisions. Implicit in the "local control as accountability" concept is the belief that the general public will have a better chance of influencing education decisionmaking and holding politicians, bureaucrats, and public employees accountable for educational performance, or the lack of it, if decision-making control is kept at the local level.

Local control may promote popular control in several ways, many of which relate to the relatively small size of local units. First, local control facilitates public information. If the local district is the relevant unit of decisionmaking, the amount of information needed to assess school performance will be less, and it will be easier to gather than if control is vested at the state level. It is more simple to monitor the functioning of a local district than the schools statewide.⁸²

Second, organizing local groups and mobilizing them for action is easier. Collective action is always difficult,⁸³ but the larger the group to be organized, the greater the difficulty. With fewer people there will be a reduced temptation to "free ride" on the efforts of activists. Moreover, smaller, more homogenous groups are likely to have fewer internal conflicts, thereby facilitating organization.

Finally, it simply may be easier for community groups to confront politicians and bureaucrats directly and get involved in school decisions at the grass-roots level. The physical and psychological distance between people and their public institutions is likely to be reduced at the local level. Assuming that people may be more effective at the local

81. This, of course, need not be the case. Government may choose to contract with private firms for the supply of public services. In such a case of privatization or contracting out, government articulates public demand and collects and spends public revenues for the service, but the service is actually provided by a private firm.

82. Cf. Ostrom, et al., *supra* note 71, at 135-36, 136 (contending that the consolidation of school districts and the increased regulation of districts by state departments of education "precludes parents knowing very much about the policy preferences of those willing to run for [school board] office," and "citizens who do serve on school boards for large school districts are immersed in the highly complex issues of running a large system. . . . It is extremely difficult for [them] . . . to exercise substantial monitoring and control . . .").

83. See, e.g., Mancur Olson, *THE LOGIC OF COLLECTIVE ACTION* (1965).

level, any successes in influencing school decisions are likely to create satisfaction and a sense of empowerment, which in turn may reinforce the likelihood of further involvement.

Indeed, going beyond the importance of holding public institutions accountable to their constituents, many theorists argue that local control is vital for enhancing the possibilities of individual participation in public life. Their focus is not simply on government accountability, but on individual fulfillment as well.⁸⁴ Following Hannah Arendt,⁸⁵ many proponents of local autonomy return to the concept of "public freedom—the ability to participate actively in the basic societal decisions that affect one's life."⁸⁶ Political participation can serve as a form of political empowerment and a corrective to the anomie and alienation of modern mass society. Moreover, because political issues are collective issues, individuals participating in public life will be compelled to discuss, deliberate and debate with one another—to engage in what Professor Gerald Frug has referred to as "a conversation designed to find a satisfactory resolution of differences."⁸⁷ Participation, it is asserted, will strengthen fraternal feelings within a community. Moreover, participation itself provides an education in self-government, enabling people to learn about the issues, processes, and institutions of government, equipping them with "individual attitudes and psychological qualities," and providing them with an opportunity for "practice in democratic skills and procedures."⁸⁸

This longing for a greater degree of citizen involvement in public life has been combined with a belief that such involvement is more likely to occur in small political units, particularly local governments. Much as small size facilitates organization, it also may enhance the deliberative process—the exchange of information and ideas that is at the heart of participation. Moreover, as just noted, in smaller units people are more likely to feel that their participation can make a difference. At the national or state level, an individual may determine that her voice cannot be heard, that her views will have a minimal effect on the outcome, and, therefore, that participation is futile. In a small unit, each member has a greater share of power, and the resulting sense of

84. I have previously discussed the political participation case for local autonomy in Briffault, *Our Localism II*, *supra* note 51, at 393-99.

85. See HANNAH ARENDT, *ON REVOLUTION* (1963).

86. See, e.g., Frug, *supra* note 12, at 1068 (quoting ARENDT, *supra* note 85, at 114-15).

87. Gerald E. Frug, *Empowering Cities in a Federal System*, 19 URB. LAW. 553, 559 (1987).

88. CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* 42 (1970).

"citizen effectiveness"⁸⁹ will contribute to further participation.

From this political perspective, local control both enables citizens to obtain greater accountability from public institutions and provides benefits through their public involvement and participation. Given the vital importance of public schools in the lives of many families and in the well-being of most communities, local control of elementary and secondary education provides a promising vehicle for individual involvement in the resolution of public issues. Thus, local control promotes "democratic education" and is itself a form of "democratic education."

There is, undoubtedly, an unduly utopian quality in these assertions of the democratic quality of local control. Inherent in the concept of "local control as participation" is the assumption of small school districts. However, many school districts are far from small. Indeed, the principal trend in school district organization in the last half-century has been school district consolidation. While population has grown significantly, the number of school districts has declined sharply, from 128,000 in 1932 to 15,500 today.⁹⁰ At the beginning of the twentieth century, each school-board member represented 200 people. Today the ratio is one member to 3000 people.⁹¹ And that is only the average. In large urban school districts, the opportunities for direct participation are dramatically reduced.⁹²

Moreover, opportunity for participation may not benefit all people equally. The likelihood of participation depends on the capacity of the individual to participate. The less well-educated, the less articulate, the less affluent, and those struggling to earn a living may lack the time, the resources, or the skills to participate.

Nonetheless, "local control as accountability and participation" is certainly the least wealth-biased meaning of local control and the one that most resonates with the normative assumptions about local self-government that have long been basic to American political thinking. At least since Jefferson and de Tocqueville, the appeal of localism has been rooted in a view of local governments as "little repub-

89. ROBERT A. DAHL & EDWARD R. TUFTS, *SIZE AND DEMOCRACY* 41 (1973).

90. See GUTHRIE ET AL., *supra* note 1, at 36 (citing U.S. DEP'T OF EDUC., *THE CONDITIONS OF EDUCATION: 1986* (1986); U.S. DEP'T OF HEALTH, EDUC. & WELFARE, *A CENTURY OF U.S. SCHOOL STATISTICS* (1974)).

91. *Id.* at 20.

92. Within these districts, true local control would require a devolution of power from the district to the neighborhood or school. For an account of the effects of a decentralization program within a large urban school district, see David Moberg, *Can Democracy Save Chicago's Schools*, *AM. PROSPECT*, Winter 1992, at 98.

lics”⁹³—places of self-determination, of collective decisionmaking by local residents about local problems—and a belief that local self-government enables local units to serve as “primary schools” of liberty,⁹⁴ educating and training citizens in democracy. Local control as a means of strengthening popular control of, and involvement in, governance has been at the heart of the movement for home rule and other state measures providing for the decentralization of regulation or the provision of public goods and services.

F. *Local Control and Local Finance*

What is the connection between local control and the local property tax-based system of public school finance?

“Local control as efficiency” is probably the meaning of local control most closely associated with funding public schools primarily through local resources. Local efficiency is promoted through the internalization of costs at the local level. The more education expenses are funded by local resources, the more closely local residents will monitor school costs, act to control inefficiency, and hold down taxes. Thus, financial support from upper levels of government, in theory, is counterproductive because such aid would only blunt the role of local fiscal responsibility in constraining spending and sharpening interlocal competition. Significantly, few courts and commentators have taken this position, as it appears to prize economy over education.⁹⁵

The “parents’ rights,” “choice and diversity,” and “excellence” interpretations of local control all are compatible with the requirement of some significant state equalization aid—to extend rights, choice, and excellence to all localities—but they all also require some local discretion “to do more,” that is, to go beyond the state minimum.⁹⁶ This will

93. Letter of Thomas Jefferson to John Adams (Oct. 28, 1813), in 13 THE WRITINGS OF THOMAS JEFFERSON 394, 400 (Albert Ellery Bergh ed., 1905).

94. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 63 (Phillips Bradley ed., 1945).

95. *But cf.* Appellant State of California’s Opening Brief, *Butt v. Richmond Unified Sch. Dist.* (Cal. docketed May 8, 1991) (No. S020835) (appealing, to the Supreme Court of California, a decision of the Contra Costa County Superior Court directing the state to provide the funds necessary to enable a bankrupt local school district to complete the school year without closing, and contending that local control requires local fiscal accountability).

“In times like these, local responsibility means that governing boards must make ‘tough’ decisions that will be unpopular. They must chop programs, lay off teachers, make do with tired equipment.” *Id.* at 21.

96. *See Robinson v. Cahill*, 303 A.2d 273, 297-98 (N.J.), *modified on other grounds per curiam*, 306 A.2d 65 (N.J.), *cert. denied*, 414 U.S. 976 (1973); *Pauley v. Kelly*, 255 S.E.2d 859, 879-80 (W. Va. 1979).

often result in some affluent districts outspending other districts.⁹⁷

These variations on the meaning of local control are congruent with the state-guaranteed spending floor implicit in the "minimum adequacy" requirement.⁹⁸ They also might sustain, however, school finance systems marked by great spending inequalities if all school districts were providing a satisfactory basic education with differentials in services and facilities subject to "the willingness of the taxpayers of many districts to pay for and to provide enriched educational services and facilities, beyond what the basic per pupil expenditure figures permit."⁹⁹

Although the minimum adequacy requirement is consistent with these proposed readings of local control, a number of the courts embracing one or more of these interpretations have been hostile to requirements of greater interdistrict spending uniformity or limitations on the expenditures of affluent districts.¹⁰⁰ The California Supreme Court was unusual in denying that an "asserted policy interest . . . of allowing a local district to choose how much it wishes to spend on the education of its children" justified primarily local funding, "since under the present financing system, such fiscal freewill is a cruel illusion for the poor school districts."¹⁰¹ Instead, most courts that have read local control to protect the right of parents or communities to "do more" for their children effectively have condoned the inevitable inequalities in the use of public resources.

These interpretations of local control view local public resources as extensions of the private resources of local residents, rather than as public resources of the state allocated to localities through state decisions concerning the formation of local districts and the delegation of

97. See *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 97-99 (Wash. 1978); *Pauley*, 255 S.E.2d at 879-80.

98. See, e.g., *Robinson*, 303 A.2d at 297-98; *Seattle Sch. Dist.*, 585 P.2d at 97-99; *Pauley*, 255 S.E.2d at 879-80.

99. *Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 367 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138 (1983).

100. See, e.g., *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1023 (Colo. 1982) (local control as district's "freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount"); *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979) ("uniformity" not required; local control as "the right of local communities to utilize local tax revenues to expand educational programs subsidized by the state"); *Buse v. Smith*, 247 N.W.2d 141, 151 (Wis. 1976) (local control as "the power possessed by local districts to determine what educational subjects it will offer over and above those required by the state, and to raise the funds therefor").

101. *Serrano v. Priest*, 487 P.2d 1241, 1260 (Cal. 1971) (en banc), *aff'd*, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907 (1977).

taxing and spending authority. The traditional legal view of local governments as creatures, agents, and delegates of the state¹⁰² is largely obscured. Instead, the local district is perceived as an extension of local homes and families. Similarly, differences in district fiscal capacity are ignored. All districts are presumed capable of greater school funding and the failure of some districts to exceed the state minimum is implicitly attributed to a lack of local effort or to parental disinterest rather than to local inability. When given these meanings, local control becomes "a socially useful and politically palatable justification for educational inequality."¹⁰³

"Local control as accountability and participation" neither assumes nor implies inequality in school spending. Does it require local financial responsibility? Several state courts have answered no. For example, the California Supreme Court found no necessary connection between administrative control and finance: "No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts."¹⁰⁴ The Connecticut Supreme Court agreed¹⁰⁵ "that there is no reason why local control needs to be diminished in any degree merely because some system other than the [traditional one] . . . is adopted."¹⁰⁶ Indeed, it generally has been the view of the courts that have invalidated traditional school finance systems under state equal protection clauses that local financial responsibility is not necessary for local administrative control.

Other state courts have found otherwise. The New York Court of Appeals, for example, concluded that there is "a direct correlation" between the local school financing system and the implementation of local concerns.¹⁰⁷ Local financial responsibility for education has been interpreted as a vital incentive to community involvement and as essential for local administrative control. As the Colorado Supreme Court asserted, "The use of local taxes . . . enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent."¹⁰⁸ The Oregon Supreme Court

102. See Briffault, *Our Localism I*, *supra* note 11, at 7-8.

103. Alexander, *supra* note 1, at 306.

104. *Serrano*, 487 P.2d at 1260.

105. *Horton v. Meskill*, 172 Conn. 615, 646, 376 A.2d 359, 373 (1977).

106. *Id.* at 652, 376 A.2d at 376.

107. *Board of Educ., Levittown Union Free Sch. Dist. v. Nyquist*, 439 N.E.2d 359, 367 (N.Y. 1982), *appeal dismissed*, 459 U.S. 1138 (1983).

108. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1023 (Colo. 1982). *See also* *Board of Educ. v. Walter*, 390 N.E.2d 813, 820 (Ohio 1979), *cert. denied*, 444 U.S. 1015 (1980) ("By

bluntly explained: "The local control argument is generally based upon the political principle that the governmental body supplying the funds, despite initial protestations to the contrary, ultimately directs how the funds shall be spent."¹⁰⁹

Thus, the strongest argument for local financial responsibility may be "the political principle" that he who pays the piper calls the tune. Intergovernmental grants often come with strings attached. It is quite possible that decision-making authority may be tied to the primary revenue source, whatever the formal organization charts provide. Mandating greater state financial control may erode local administrative control and whatever possibilities of enhanced accountability and political participation local control provides.

The "piper" principle is, however, an empirical claim, and scholars of intergovernmental relations are sharply divided concerning the extent to which intergovernmental money actually comes with strings attached. For some observers, it is virtually axiomatic that "[s]tate aid . . . often diminishes home rule and increases the centralization of control at higher levels of government, for there is a tendency for those who control financing to try also to control policy. Money without strings attached is rare."¹¹⁰ After reviewing administrative developments in California and New Jersey following state court decisions requiring greater financial equalization in those states, one critic found, "Rather than increasing democratic participation in public decision making the net effect of the school finance reform cases was increased centralization and bureaucratic decision making."¹¹¹

Other analysts disagree, finding that "intergovernmental revenues do not fundamentally alter local processes. Nonlocal revenues essentially reinforce existing local influences."¹¹² Some have found no consistent relationship between the degree of state funding and the relative

local control, we mean not only the freedom to devote more money to the education of one's children but also control over and participation in the decision-making process as to how those local tax dollars are to be spent.").

109. *Olsen v. State*, 554 P.2d 139, 146 (Or. 1976).

110. James P. Pfiffner, *Inflexible Budgets, Fiscal Stress, and the Tax Revolt*, in *THE MUNICIPAL MONEY CHASE: THE POLITICS OF LOCAL GOVERNMENT FINANCE* 37, 57 (Alberta M. Sbragia ed., 1983).

111. James G. Ward, *Implementation and Monitoring of Judicial Mandates: An Interpretive Analysis*, in *THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE* *supra* note 1, at 225, 246.

112. TERRY N. CLARK & LORNA C. FERGUSON, *CITY MONEY: POLITICAL PROCESSES, FISCAL STRAIN AND RETRENCHMENT* 225-27 (1983).

balance of state and local control.¹¹³ Indeed, according to Amy Gutmann,

the best evidence available . . . does not support the conventional wisdom that he who pays the piper calls the tune. The correlation between the amount of state control over local schools and state share of school financing is low: "some states supply state funds with few controls, others with many controls."¹¹⁴

Given the limitations of current data, no certain connection between financing and control can be established. Increased state financing may erode popular participation in education decisionmaking and limit the ability of local residents to hold their school boards accountable to them; or, money may be provided with relatively few strings attached. The central issue in school finance may be, as many courts and commentators believe, how to calculate the tradeoff between equity and local autonomy; however, the former goal may be attainable without imperiling the accountability and participation benefits of the latter.

Moreover, rejecting the claims of equity does not necessarily preserve or promote the interest in autonomy. States may limit local autonomy and centralize control over education decisionmaking even without providing equalization aid. Given the formal hierarchical superiority of the states with respect to education, state governments regularly can and do impose requirements that restrict the scope of local control and supersede local decisions. Indeed, mandates without money is a central problem of contemporary intergovernmental relations.¹¹⁵ It is ironic that courts may raise the banner of local control to repel claims to equalize interdistrict education resources while generally vindicating the power of states to impose, without additional funding, burdensome requirements concerning curriculum, testing, discipline, and teacher qualifications.

113. GUTHRIE ET AL., *supra* note 1, at 207-08 (citing BETSY LEVIN & MICHAEL A. COHEN, *LEVELS OF STATE AID RELATED TO STATE RESTRICTIONS ON LOCAL SCHOOL DISTRICT DECISION-MAKING* (1973)).

114. GUTMANN, *supra* note 52, at 143 (quoting WALTER I. GARMS ET AL., *SCHOOL FINANCE: THE ECONOMICS AND POLITICS OF PUBLIC EDUCATION* 152 (1978)).

115. See, e.g., WILLIAM G. COLMAN, *STATE AND LOCAL GOVERNMENT AND PUBLIC-PRIVATE PARTNERSHIPS* 44-45 (1989); Elaine S. Knapp, *Those Maddening Mandates*, *STATE GOV'T NEWS*, Dec. 1990, at 10; Jonathan Walters, *Just One Mandate too Many*, *GOVERNING*, May 1991, at 14.

III. THE COSTS OF LOCAL CONTROL

The focus of the school finance reform movement has been on the dramatic inequalities in taxation and spending that result from primary reliance on the local property tax to fund public schools. Due to the uneven geographic distribution of rich and poor residents and of industrial and commercial facilities, different districts have dramatically different amounts of taxable property wealth per capita, resulting in comparably different levels of local spending. Wealthier districts are able to spend far more on schools and provide better services and more extensive programs than poorer districts, and usually they may do so while levying much lower tax rates than their poorer neighbors. The purpose of the school finance reform movement has been to demonstrate and ameliorate these costs of local financial control.

There are, however, additional costs of local control that are not always attended to in the school finance setting. Local control contributes to the economic and social stratification of contemporary metropolitan areas. Furthermore, local control may contribute not simply to inequity in school funding, but to a broader inadequacy in the level of support for public education.

A. *Local Control and Metropolitan Area Stratification*

Local financial responsibility for education contributes directly to the economic and social stratification of contemporary metropolitan areas. It provides an incentive for exclusionary zoning and other land use practices whereby affluent communities seek to exclude the less wealthy. Similarly, it also provides a motivation for the fragmentation of metropolitan areas into numerous race- and class-segregated communities.

Local fiscal control means that local property taxes must fund local services. Because, for any given level of service, tax rates will be lowest when per capita property values are highest, local governments have "natural economic interests"¹¹⁶ in excluding potential new residents who would bring down the local wealth average. Thus, local responsibility for the funding of education leads to the practice of "fiscal zoning"—the use of local zoning ordinances to restrict local land to users that would enhance the local tax base.¹¹⁷ Communities have im-

116. Werner Z. Hirsch & Joel G. Hirsch, *Exclusionary Zoning: Local Property Taxation and the Unique-Ubiquitous Resource Distinction*, 52 S. CAL. L. REV. 1671, 1724 (1979).

117. See, e.g., *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d

posed large lot and high minimum floor space requirements and mandated other amenities in order to make new homes more expensive.¹¹⁸ Many localities exclude multi-family housing, mobile homes, and all forms of subsidized housing.¹¹⁹ Communities that allow multi-family units may impose tight limits on the number of bedrooms in order to limit the number of school-age children and thereby reduce the education burden for local tax bases.¹²⁰

Of course other social and attitudinal factors, including snobbism, class prejudice, and plain old racism contribute to exclusionary local land use practices. Nevertheless, the reliance on local tax bases to fund public services provides a sharp economic spur to efforts to increase local wealth per capita by excluding the less affluent. Indeed, local tax base funding and the concomitant incentive to zone to enhance community wealth and reduce local taxes provides a ready, race-neutral economic justification for local policies which are racially exclusionary in practice.¹²¹

Together, local fiscal responsibility and local land use controls exacerbate existing inequities in the quality and availability of local public services, and contribute to the ever-widening race and class inequalities of metropolitan areas.¹²² As a result of exclusionary zoning, people who cannot afford expensive suburban homes effectively are denied access to suburban jobs at a time when the suburbs are the principal area of job growth.¹²³ In addition, fiscally-motivated zoning increases the cost of housing and the degree of general economic segmentation in a metropolitan area.¹²⁴

Local fiscal responsibility and local zoning authority, in combination, provide incentives for the incorporation of more affluent areas, thereby increasing the fragmentation of regions into large numbers of

713 (N.J. 1975).

118. See, e.g., MICHAEL N. DANIELSON, *THE POLITICS OF EXCLUSION* 59-62 (1976).

119. See *id.* at 52-59, 62-64, 79-106.

120. See *Mount Laurel*, 336 A.2d at 718-22.

121. See, e.g., *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977); Daniel R. Mandelker, *Racial Discrimination and Exclusionary Zoning: A Perspective on Arlington Heights*, 55 TEX. L. REV. 1217 (1977).

122. See JOHN J. HARRIGAN, *POLITICAL CHANGE IN THE METROPOLIS* 282-304 (4th ed. 1989).

123. See, e.g., *Mount Laurel*, 336 A.2d at 724.

124. See, e.g., MICHAEL N. DANIELSON & JAMESON W. DOIG, *NEW YORK: THE POLITICS OF URBAN REGIONAL DEVELOPMENT* 100-05 (1982); DAVID HARVEY, *SOCIAL JUSTICE AND THE CITY* 134-36 (1973); Barbara S. Burnell & James D. Burnell, *Community Interaction and Suburban Zoning Policies*, 24 URB. AFF. Q. 470 (1989).

municipalities.¹²⁵ Suburban residents incorporate their neighborhoods into separate municipalities, at least in part, to reserve their taxable wealth for their immediate use and to keep it secure from the fiscal demands of the needy cities.¹²⁶ They also strive to obtain the land use regulatory powers necessary to adopt zoning ordinances that will help to maintain local per capita wealth.¹²⁷ In turn, the increased governmental fragmentation of metropolitan areas furthers the intermunicipal inequality of resources and the concomitant interlocal differences in the quality and scope of local public goods and services.¹²⁸

Thus, local financial control contributes to inequality in the provision of local education in several ways. First, it does so directly, dividing states into districts of radically different taxable wealth, making the quality of local services dependent upon the amount of local wealth. Second, it reinforces the consequences of the initial inequality by creating a regional "centrifugal force," that leads the affluent to physically segregate themselves from the less affluent, to deploy local land use powers to heighten the barriers to local economic integration, and to incorporate separately so as to protect local wealth and immunize local taxpayers from regional fiscal needs and demands. Finally, local financial responsibility may have a more subtle, long-term negative impact on the ability of local control to provide residents of less affluent areas with a mechanism for accountability and participation. Local financial responsibility encourages affluent parents with an interest in "doing more" for their children to move to high wealth areas, where the local district, in fact, can provide greater educational opportunities. These are the very parents and residents likely to have the time, money and political skills to be the most effective in participating in local educational decisionmaking, and in monitoring and influencing the actions of local politicians and school bureaucrats. In contemporary metropolitan areas, local financial responsibility encourages residents dissatisfied with the quality of education in their community to take the Tiebout solution and "exit" to communities with the resources and programs to provide the desired educational services, rather than loyally remain in their old communities, engage in local political action, and "voice"

125. See MILLER, *supra* note 65, at 63-84.

126. See *id.*

127. See, e.g., Briffault, *Our Localism II*, *supra* note 51, at 363-74.

128. See generally GREGORY R. WEIHER, *THE FRACTURED METROPOLIS POLITICAL FRAGMENTATION AND METROPOLITAN SEGREGATION* (1991); Richard C. Hill, *Separate and Unequal: Governmental Inequality in the Metropolis*, 68 AM. POL. SCI. REV. 1557 (1974).

their concerns and preferences.¹²⁹ In effect, local financial responsibility may "skim off" the ablest, most active, and most effective parents from inner city communities that need them most, thereby leaving those communities not only with fewer economic resources, but bereft of the political resources necessary to secure the accountability of local political institutions and to empower local participation.

Local financial responsibility, then, both reflects and contributes to interlocal wealth disparities by creating fiscal incentives for the economic and political fragmentation of metropolitan areas, reducing the taxable resources of less affluent communities, and possibly even impairing their ability to hold on to the residents most capable of voicing local concerns.

B. *Local Control and the Fiscal Vulnerability of Education*

Local financial responsibility for public schools means that education is dependent on the willingness of local majorities to pay for it. This makes education a particularly vulnerable public service.

First, education is vulnerable when closely tied to local tax bases. Local government finance depends heavily on the locational decisions of businesses and more affluent residents, who can relocate if they find local property taxes too high. As the efficiency argument for local autonomy indicated, the multiplicity of small localities in one economically intertwined metropolitan area may promote intense interlocal competition for ratables, a competition that creates incentives to hold down local taxing and spending, with significant consequences for public services, like education, that are dependent on local budgets.

Second, local government finance particularly is subject to state constitutional limitations, with many states imposing tight limits on local property tax assessment increases, tax rates, tax yields, and expenditures. Even if a local government wanted to spend more on education, a state constitutional property-tax cap might limit the ability of the district to do so.

Third, localities are especially vulnerable to the contemporary popular backlash against government taxing and spending. The federal and state budgets are often beyond the reach of the voters, and federal and state spending programs are often heavily committed to national defense, the interest on the national debt, and entitlement programs, leaving relatively little room for discretionary reductions. Local spending is,

129. See HIRSCHMAN, *supra* note 80, at 45-52.

however, discretionary, and local tax and spending decisions are within the voters' reach. If given a choice, say, between the B-1 bomber or primary schools, people might prefer to cut back on the bomber, but they are not provided that choice. Instead, the choice they get at the local level is between greater or lesser amounts of spending on education. Local residents, thus, "may vote to decrease funding for schools simply for lack of any other effective vehicle for expressing their wish to reduce government spending."¹³⁰ Associated with the greater popular accountability of local government, then, is the greater susceptibility of local programs to popular tax-cutting pressures.

Even within the category of services funded at the local level, education may be vulnerable. In most places, schools are operated by independent school districts. Thus, the school budget is separated from the budget for other local services and may be more readily focused on and criticized by anti-spending residents. Tied to school district independence is the fact that school budgets are often subject to direct voter approval.¹³¹ People concerned with local taxing and spending generally have to monitor the various budgetary decisions of their elected officials and can only register their dissatisfaction by voting out incumbents and replacing them with other politicians. But voters dissatisfied with school budgets may have the opportunity to vote directly against a proposed budget.

Finally, education may be of primary concern to parents of school-age children. With the declining number of such parents and an aging population, a larger percentage of local residents may prefer other services, or tax cuts, to a service that in their view does not provide direct benefits.¹³² Parents, then, are dependent on the kindness of their nonparent neighbors. As "baby boom" has turned into "baby bust," many constituencies whose approval is needed to increase property tax rates to meet rising educational costs simply have withheld that approval.¹³³

Local financial responsibility, thus, not only creates the conditions for interlocal inequality in the provision of public education, but also makes education particularly vulnerable to mounting public anxieties about government taxing and spending. Local control may itself be a constraint on the aggregate public investment in education.

130. GUTMANN, *supra* note 52, at 142.

131. See GUTHRIE ET AL., *supra* note 1, at 152.

132. See *id.* at 194.

133. See Liebman, *supra* note 58, at 298.

IV. CONCLUSION: THE PLACE FOR LOCAL CONTROL

There are, I believe, three ways to view local control: as a desirable financing mechanism; as a desirable political mechanism consistent with (if not requiring) greater financial equalization; and as a questionable financing mechanism that may be necessary to preserve local participation and accountability.

Local financial responsibility is a desirable financing mechanism primarily for those who prize the efficiency benefits of interlocal competition and the ability of more affluent, education-oriented communities to do more for their children. Although both efficiency and educational excellence are important public values, efficiency alone will not improve educational quality or adequately prepare today's children for tomorrow's challenges. And local financial responsibility without significant state assistance inevitably will fall short of achieving educational excellence in many less affluent communities. From a societal perspective, local control cannot be justified as a desirable financing mechanism.

The real value of local control is political—increasing the accountability of educators and administrators to parents and in providing parents and local residents with the opportunity for making collective decisions that have vital implications for the community and society as a whole. Local control can increase generally the level of democratic participation in society. Furthermore, by providing an avenue for parents to meet the educational needs of their children, local control can contribute to educational quality.

Even from this political perspective, local control is not an unalloyed good. Given the ethnic and economic divisions between localities characteristic of many metropolitan areas, there is the danger that local control can turn into local particularism and result in the propagation of parochial local values inconsistent with the broader goal of education for life in a diverse and multi-cultural society. Similarly, due to interlocal economic competition, there is the real possibility that purely local control can lead to an underinvestment in education, particularly in times of tax-cutting fervor and especially in localities where the interests of parents and politically dominant nonparents diverge. Local control as participation and accountability must be tempered by state oversight to ensure that local curricula are not inconsistent with a democratic appreciation of the cultures and concerns of all communities, and by state requirements of local tax effort and administrative com-

mitment to the support of local schools.¹³⁴ Still, local control is, overall, a desirable political involvement, if it can promote the involvement of local residents in collective self-governance and contribute to the likelihood that local educational institutions and policies will satisfy local needs.

The real issue, then, is the nature of the connection between local political participation in school governance and the mechanism for school finance. Is local financial responsibility, despite the burden it places on poor communities and its tendency to exacerbate the inequities between rich and poor, necessary to ensure participation by, and accountability to, local residents? Or can local political control be detached from financing so that the states may be required to assume a much greater share of the costs of public education? This question is, in part, an empirical one. What has been the practice in programs of intergovernmental aid? Does the higher level government, in this case the state, attach detailed conditions to the use of financial assistance which impair local autonomy or has money been provided with relatively little restriction, so that the funds serve as general support for assisted localities? As the previous discussion indicates,¹³⁵ the empirical surveys are divided, and there is no certain answer.

But the question is also one of political culture and political values. Local control is a reflection of our beliefs concerning the appropriate level of decisionmaking on a subject of major concern to local residents. Nothing *requires* the states to attach burdensome or intrusive restrictions and requirements for local districts to state funding legislation. If local control really is the important value in our society that it is so often asserted to be—especially to states defending themselves against school finance reform suits and to some courts rejecting school finance reform claims—then state governors and legislators should be able to pass school aid measures incorporating that value and providing greater financial assistance while maintaining a place for local political control over public schools. The concern whether state assistance will be tied up with restrictive and intrusive “strings,” and consequently lead to an erosion of local autonomy is really a question of how strong the local autonomy norm is for state political decisionmakers.

134. Cf. N.J. STAT. ANN. § 18:7A-15 (West 1989) (provision for state board of education to remove local school board after a finding that the “district has failed to take or is unable to take the corrective actions necessary” to improve the quality of local education up to the level set by the state).

135. See *supra* text accompanying notes 110-14.

This should be the perspective for state courts. In the state school finance cases, the courts that have treated local control as a norm of constitutional magnitude have done so primarily by referring to state political culture and institutional practices, including the state legislative delegation of substantial autonomy to local units, rather than state constitutional provisions.¹³⁶ The principal values of local control are its potential for local political participation and the opportunity for enhancing the accountability and responsiveness of public institutions to the people, not the provision of a mechanism for translating differences in local wealth into differences in tax rates and the quality of local education. This value still can be attained even if greater state financial assistance is required. Indeed, there is a powerful argument that greater state financial assistance is necessary in order to provide local autonomy to all communities, regardless of their wealth (or the lack of it).¹³⁷

If the state courts are right in determining that local control is a powerful, virtually constitution-level, state value, then surely the state executive and legislative branches will respect that value and enact school finance measures that minimize the intrusion on local political and administrative autonomy. Thus, the education and equalization benefits of state financial support would be combined with the political benefits of local participation and accountability. If, on the other hand, state financial assistance legislation comes with strings attached, that indicates that local autonomy is not the compelling, quasi-constitutional norm that the state courts have assumed it to be. There would be little constitutional basis, then, for using a concern for local control to deflect school finance claims based on state constitutional equal protection clauses or education articles.¹³⁸

136. See *supra* text accompanying notes 42-48. *Buse v. Smith*, 247 N.W.2d 141 (Wis. 1976), is an important exception, but it is the exception that proves the rule.

137. See, e.g., *Serrano v. Priest*, 487 P.2d 1241, 1260 (Cal. 1971) (en banc), *aff'd*, 557 P.2d 929 (Cal. 1976), *cert. denied*, 432 U.S. 907 (1977); *Horton v. Meskill*, 72 Conn. 615, 651-52, 376 A.2d 359, 376 (1977); see *supra* text accompanying notes 101, 104-05.

138. The state school finance claims generally have been based on one or both of two state constitutional provisions—state equal protection clauses or state constitutional articles directing legislatures to provide for free public school systems. See, e.g., Briffault, *Our Localism I*, *supra* note 11, at 24-25. The gravamen of an equal protection claim is interdistrict spending inequalities that result from interdistrict tax base disparities, and the relief sought is equalization. The focus of an education article claim is the failure of the state's educational system to comport with the standard set in the state education clause, such as a "thorough and efficient" education or a "general and uniform" system. See *id.* at 25 n.79; Betsy Levin, *Introduction to Reform Through the State Courts: Strategies for Reform in Selected States*, 38 LAW & CONTEMP. PROBS. 309, 310

In other words, because the usual basis for judicial protection of local control is the courts' understanding that states prize local control, the courts should not rely on local control to deny rights to equal educational opportunity or constitutionally adequate education based on state constitutional provisions.¹³⁹ If local control is, in fact, a real value in the political culture of a state, the political branches of the state government will respect local political and administrative autonomy in the school aid formula. If, on the other hand, greater state aid comes with state strings attached, then local control cannot be a primary state value. Therefore, local control would not be a sufficient basis for rejecting constitutionally-grounded claims that the state guarantee an adequate basic education in all districts or equalize educational opportunity.¹⁴⁰

Thus, the role of local control should be to enhance the political efficacy of local residents and the responsiveness of the public schools to their communities. In state constitutional jurisprudence, local control should not rest with the courts in their determination of whether the state constitution requires the state to assure local schools constitutionally sufficient financial resources. The place for local control should be in the deliberations of the legislature and the governor when they decide whether to attach restrictions and requirements to state school aid and what kind of conditions to impose on local schools.

(1974). As one commentator has noted, "education clause claims are more versatile than equal protection claims. They can provide a basis for arguing not only that the schools should be equal, but that schools must meet a minimum quality standard." McUsic, *supra* note 2, at 317.

139. I am not arguing here that state courts should recognize a right to equal educational opportunity or a constitutionally sufficient education; that will turn on the text and history of particular constitutional texts and particular state constitutional jurisprudence. Rather, my argument is that if there is a basis for constitutional recognition of a school finance-reform plaintiff's claim, it should not be denied because of a generalized belief in the value of local control.

140. This argument would not necessarily govern if the text of the state's constitution clearly establishes a principle of local control. The Wisconsin Supreme Court is the only state supreme court that has held that its state constitution textually is committed to local control, and the textual provision on which that court relied—a reference to "district schools"—would not appear to bear the weight that court has placed on it. See *Buse v. Smith*, 247 N.W.2d 141, 151-52 (Wis. 1976); *supra* text accompanying notes 35-40. The Colorado and Oregon supreme courts have noted references in the texts of their state constitutions that support a finding that local control is an important state principle, but those courts treated the textual references as ancillary to their reasoning, which focused on local control as a political value. See cases cited *supra* note 41 and accompanying text.