

Municipal Fragmentation in Essex County: Equity, Efficiency and the Evasion of the Social Contract

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Introduction

Newark's story is one that has been told and retold. Once a bustling industrial power and an engine of the middle class, in recent decades the city has been wounded by racial strife, suburban flight, and industrial abandonment. From a high in 1948 of nearly half a million, Newark's population today has plummeted to 277, 540.[1] The intersection of Broad St. and Market St., once the busiest retail nexus in the country, is now a shadow of its former self.[2] More than a quarter of Newark's people are in poverty,[3] and its black population is hypersegregated from its white population[4] according to multiple spatial metrics.[5]

The purpose of this paper is neither to romanticize Newark's past achievements nor lament its present decline. Its purpose is to analyze Newark's continuing struggle, as a city plagued by urban poverty yet circumscribed by suburban wealth, to educate its youth, empower its citizens, and harbor the same opportunities for socioeconomic advancement as its more affluent municipal neighbors.

The problem may be stated simply. There is place-based inequality of opportunity. The place one lives—the zip code in which one grows up, the school district one attends, the region in which one seeks to get a job—has a profound effect on one's access to opportunities for social and economic advancement. Whether one looks at housing, education, nutrition, transportation, or any other proxy for the presence or absence of opportunity, a quick survey of the extant social science literature will show that discrepancies persist along lines of race, class, and most importantly, place.

The root cause of this inequality is the ideology of local control and the fragmented structure of local governance. The former constitutes its ideological justification; the latter, its legal implementation. By concentrating taxable property wealth within their own boundaries, affluent municipalities are empowered to fund their own governments, infrastructures, schools, and other crucial public institutions with a fraction of the property tax burden borne by the less affluent municipalities around them. They need not accommodate or even acknowledge the negative externalities their protectionist and exclusionary policies cause and perpetuate. Some commentators have described this competitive, fragmented, zero-sum system as one of markets, antimarkets, and metamarkets.[6] Others have framed it as an "evasion of the social contract." [7] Whatever one's metaphor of choice, in practice the highly fragmented

structure of local governance in New Jersey in general and Essex county in particular allows the few to hoard society's benefits and forces the many bear its burdens.

The solution may be described only with considerably more complexity. The general trend in the literature on metropolitan equity has been to sidestep the problem of jurisdictional fragmentation by advocating for more regional and widely inclusive approaches to governance, service administration, and resource distribution that do not harm the current municipal boundaries. There have been proposals for independent regional governments, regional legislatures, shared services, tax-base equalization, and "special district" single-purpose bodies. Some of these proposals have been implemented more successfully than others. Some, lacking popular support, remain mere theory. With few notable exceptions,^[8] and not without good reason, neither the obliteration of municipal boundaries through municipal consolidation nor a wholesale shift of power to county level government, either on a voluntary (local-cooperative) or involuntary (state-imposed) basis, has been seriously advanced by contemporary scholars or practitioners as a viable means of achieving metropolitan equity.

This paper challenges this pessimism. It will dissect the legal structures and ideological justifications that perpetuate jurisdictional fragmentation at the local level and analyze Newark's fiscal relationship with its inner and outer suburbs in Essex County. After surveying some of the relevant literature on the warring philosophies of localism and regionalism, it will explore different options for regionalization in Essex county that seek to equalize access to regional property wealth and result in a less competitive and more mutually beneficial relationship between Newark and its (poor) inner and (wealthy) outer suburbs. This survey will be buttressed by an empirical review of the wildly unequal distribution of property tax wealth along jurisdictional lines in Essex County. Finally, after acknowledging the persistence of real social and political limitations, the paper will advocate for the consolidation of poor, adjacent municipalities with the city of Newark as a first step in the pursuit of more comprehensive reforms. The paper will conclude by reaffirming the urgency with which the cause of metropolitan equity must be pursued.

Local Ideology, Municipal Fragmentation, and the Regionalist Response

Localism

The traditional relationship between state and local government is one of "complete hegemony" of the former over the latter^[9]. According to the traditional view, local governments are creatures, delegates, and agents of the state.^[10] They are creatures of the state because they can be created or destroyed at the state's pleasure. They are delegates of the state because they "[possess] only those powers the state has chosen to confer upon [them]", which the state may freely expand, limit, or abolish.^[11] They are agents of the state because the state can compel them to enact or obey certain policies and administer certain services.^[12] Dillon's Rule, a rule of statutory construction that narrowly defines local powers as only those expressly granted, fairly implied, or necessarily implicated, has served to bracket local autonomy and reaffirm the State's legal superiority over its political subdivisions since 1868.^[13]

The modern relationship between state and local government deviates markedly from this formal position of doctrinal hierarchy. Dillon's rule, though still good law in some states, has been steadily eroded by the adoption of home rule. Formal state hegemony notwithstanding, home rule establishes a veritable (and, politically, virtually unassailable) domain of local sovereignty that local governments have come to fiercely protect. Rather than limit the powers of municipalities to only those expressly stated, fairly implied, or necessarily implicated, home rule endows a state's political subdivisions with powers (such as zoning and taxation) and responsibilities (such as education and public safety) required to implement the ideal of local, autonomous self-government.^[14]

New Jersey is a home rule state. It provides both constitutional and statutory provisions that establish the legal basis, scope, and policy of local power. Article IV, Section VII, Clause 11 of the New Jersey constitution provides:

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.^[15]

The Home Rule Act of 1917 N.J.S.A. 40:42 *et. seq.* similarly guarantees:

In construing the provisions of this subtitle, all courts shall construe the same most favorably to municipalities, it being the intention to give all municipalities to which this subtitle applies the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government.^[16]

Thus, although New Jersey's municipalities formally remain creatures, delegates, and agents of the state, in practice they have been granted substantial legal autonomy that they are encouraged to wield in the interest of their constituents.

There are a number of strong arguments for localism as it is embodied in home rule. The three strongest are that local control facilitates democracy, fosters efficiency, and inculcates a strong sense of community.^[17] First, localism fosters efficiency because it allows local policies to be tailored to local needs and preferences, enables individuals to choose communities that fit their preferences by 'voting with their feet,' and maintains a marketplace of governments which forces each to compete with the others to provide the most services at the lowest cost.^[18] Second, localism facilitates democracy by providing a sense of ownership and pride in local political life that qualitatively results in more passionate civic engagement and quantitatively provides more political power per capita due to power being distributed over a smaller population of voters.^[19] Few could deny the allure of a community in which one's desires and

preferences are not only more likely to be heard, but heeded. Finally, localism inculcates a sense of organic commonality, including “a distinctive history, identifiable characteristics, and a unique identity”^[20] that weds geography to political authority, increases potential for the homogenization of preferences (resulting in a more harmonious social interactions), and contributes to the creation of a vibrant public sphere.^[21] In the aggregate, these three principles make the argument for ‘autonomy’ as the supreme civic virtue to which all American communities should aspire.

The problem with the strongest arguments for localism is that there are even stronger arguments against it. The argument from efficiency has two central flaws. First, efficiency requires, as Charles Tiebout observed, that the costs and effects of local actions remain wholly internal to the locality.^[22] Yet local choices often have negative economic and ecological effects on other communities in their region.^[23] In the past, when individual communities were often separated by expanses of unincorporated land, such a claim may have had some basis in fact. In 21st century New Jersey, however, there is no more unincorporated land. Communities directly abut each other, and choices that are ostensibly local in character “are sure to generate externalities.”^[24] These inter-jurisdictional effects have been referred to as “spillovers,” or “externalities,”^[25] and they constitute one of the most damning observations of localism in practice. Few, if any local issues are truly local in character.

Second, the efficiency promised by local control is an empty platitude in light of local fiscal realities. Disparities in tax bases and spending power among localities, rather than resulting from local preferences, instead reflect patterns of residential and commercial land use, access to transportation, and concentrations of poverty that are wholly independent from (and in many cases antithetical to) the preferences of residents. Disparities in individual and family affluence similarly limit inter-local mobility, a precondition for choosing a community most aligned with ones preferences, are similarly inhibited by zoning and land use policies that drive up the cost of housing and preclude less affluent people from being able to choose to live in areas they simply cannot afford. Autonomy has a price. The structure of local government thus ensures that poor residents “will have fewer choices, not more.”^[26]

The argument from democracy is also undermined by two criticisms. First, the externalities created by local decisions often have negative impacts on individuals in other jurisdictions who have no meaningful opportunity to dispute the decision made. Zoning, in particular, in effect regulates people both within and without the deciding locality’s boundaries. This is inherently undemocratic. Second, despite the fear that “democracy becomes more attenuated” with increased distance, the small size of most localities actually prohibits communities from adequately addressing issues of “critical local significance...[such as] sprawl, the adequacy of local tax bases to local service needs, and economic development,” not to mention ecological concerns arising from shared resources.^[27] As a result, “the democracy argument actually supports the case for some form of regionalism.”^[28]

The argument from community is often the least explicitly articulated but most earnestly believed by advocates for localism. First, much of the romance of cultural commonality alleged to obtain in small, independent communities is undermined by the realities of urban sprawl and automobile dependency.^[29] Many towns lack a legitimate town center, and the opportunities for meaningful civic interaction are greatly diminished by the relative rarity of face-to-face interactions among residents. Second, many localities cannot provide for all of their residents' social and economic needs. This requires individuals to "live, work, shop, and go to school in different localities," which undermines the sentiment that the municipality of one's residence is strongly linked to one's local identity. This is not to deny, of course, the existence of organic, undivided, like-minded groups of people. Strong communities certainly exist. It is only to dispute that the feelings of commonality exhibited by these communities are in any way related to the legal boundaries that circumscribe them.

A unifying theme of these arguments for local control is that "localism has come to be expressed through the logic, rhetoric, and methodology of property rights."^[30] This rhetoric "dominates the arguments . . . and frames the public's conception of municipal identity as property"^[31] so as to create "a perceived right to municipal location" that regards the adjustment or abolition of municipal boundaries as tantamount to "an infringement of vested rights in private property."^[32] Such a claim has no basis in law.^[33] Nevertheless, the result of its wide proliferation is that the law of local governance has become "less about substantive legal doctrine than . . . about institutional design."^[34]

Fragmentation

The institutional design of New Jersey's current form of governance has been described as "Byzantine."^[35] New Jersey has 566 municipalities. It has more than 600 school districts and nearly 200 fire districts.^[36] Some of its municipalities, like the borough of East Newark, are barely one tenth of a square mile in size. Essex County alone contains twenty two municipalities, two of which (Livingston and Millburn) jointly approximate the city of Newark in geographic size, but which contain a tiny fraction of Newark's population.^[37] Property tax rates and expenditures on public safety and education, often inversely proportional to one another due to disparities in taxable property wealth, swing wildly among the county's western and eastern subdivisions.^[38]

As the arguments for localism indicate, the greatest barriers to reforming this highly fragmented system are political, not legal.^[39] The reality is that "[t]he city-as-a-community- is expanding more rapidly than the city-as-a-political-entity,"^[40] and, as a result, "our legal and political precepts have not kept pace[.]"^[41] With respect to the shift of jobs, population, and political influence to the suburbs, an increasingly globalized economy in which metropolitan areas are major economic players, and a national demographic shift that is disrupting traditional patterns of suburban homogeneity, it is clear that they have not. But with respect to the basic legal and political principles upon which this country was founded—federal principles^[42]—they have kept up remarkably well. Through a federal structure of government, the founders sought to insulate

minority groups from the tyrannical impulses and unreasonable demands of combined majorities. Localism and the jurisdictional fragmentation it engenders constitute a modern application of the principles of federalism applied at a higher resolution of governance than was likely ever intended. Seen in this light, one could argue (without putting one's tongue too far into one's cheek) that this novel reappropriation of federalist principles at the local level has resulted in a 'federalism within federalism'^[43] that neither our laws nor our politics have yet to account for.

One further comparison between local and national governance is warranted. The deleterious effects of one municipality's internal regulatory decisions on other municipalities at the local level can be likened to the deleterious effects of one state's internal regulatory decisions on other states. While the effects of the latter are governed and limited by the (dormant) commerce clause's prohibition on protectionist policies that burden interstate commerce, the former is governed by no equivalent doctrine. At the state level, there is no attempt to regulate the conduct of individual municipalities whose actions (through, for instance, exclusionary zoning) burden businesses, governments, or residents of other municipalities. In the aggregate, local zoning decisions and flights to the suburbs can have the cumulative effect of eviscerating the central city's tax base, centralizing low cost housing in undesirable areas, and ultimately centralizing poverty in jurisdictions other than their own. In this way, unable to afford to live elsewhere (except, perhaps, in another similarly distressed area), the poor are concentrated in urban centers and inner suburbs as a natural consequence of autonomous local decisions made without malicious, concerted, or even intentionally discriminatory action on the part of any one locality.^[44] The persistence of a system in which some municipalities are permitted to burden others in this way has created the extreme disparities in property tax bases, racial segregation, and spatial mismatches (to name a few) so readily observable in daily life and so frequently lamented in the literature on regional equity.

Fragmentation causes place-based inequality in a number of ways. Fragmentation serves "to operationalize and reinforce a social order organized around race and economic class."^[45] The laws supporting jurisdictional fragmentation are "one of the many, seemingly neutral, legal regimes that ultimately reinforce geographic segregation and the maldistribution of income, wealth, and resources within metropolitan regions."^[46] In essence, wealth is courted, sequestered, and quarantined by those municipalities most able to acquire it, and simultaneously repelled, yielded, siphoned from those municipalities most in need. The result is a classism and racism that tacitly enforces the preferences and caters to the interests of those already in power. Further, the almost exclusive reliance on the local property tax to fund crucial public institutions results in a system in which "[p]ublic goods are increasingly being transferred into private hands."^[47] More accurately, public goods (tax revenues) are kept in the *same* private hands and circulated almost exclusively in the jurisdiction of their origin. The result is that existing spatial inequalities along lines of race and class are exacerbated along the lines of local jurisdictional lines. Wealthy municipalities

seek to escape sharing in the tax burdens of the poor....In a setting of inter-local and interpersonal wealth inequalities, not only does the value of local autonomy turn on the wealth of the locality, but such autonomy often tends to exacerbate the disparities between rich and poor. ...Local residents seek to use local powers to insulate their parochial interests from broader regional concerns.[48]

The real utility of fragmented local government is thus its ability to “insulate one set of local people or interests from the regulatory authority and population of another local government,”[49] effectively allowing more affluent suburban municipalities to leverage their larger accumulations of property wealth to raise more revenue for their own municipality by taxing at a fraction of the rate of less affluent and/or more socially burdened jurisdictions. In essence, property wealth in concert with sufficiently exclusionary zoning ordinances can be used to keep the poor and their problems physically from residing in the excluding jurisdiction. There are, of course, state and county taxes that distribute tax revenue more widely, but the bulk of a municipality’s budget continues to be derived from local, jurisdictionally quarantined property tax revenue. Consequently, a sea of spatial funding inequalities based on local boundaries that, absent the parochial interests that sustain them, are entirely arbitrary and detrimental to a majority of the state’s residents. A municipality’s access to property wealth often fails to comport with their populations, infrastructural needs, or regional economic influence. The need to fund local government, education, and public safety employees via property tax revenue, in conjunction with an almost exclusive reliance on the property tax, creates a strong incentive for the wealthy residents of a municipality to keep their property wealth and the tax revenue it generates within the borders of their small slice of the State.

This process of self-containment has been described as mechanism for the “institutionalization” [50] of political, economic, and cultural power by the “favored quarter”—the “high growth, developing suburbs that typically represent about a quarter of the entire regional population” but that also attract a disproportionately high amount of public investment and, through “local powers . . . avoid taking on any of the region’s social service burdens.”[51] Through the zoning, police, and taxation powers, affluent communities are able to “export” the costs of sprawling suburban development (such as environmental stress, wasted public infrastructure, and the concentration of poverty and crime that come as a necessary consequence of excluding the poor) to those communities unable to leverage their property wealth to defend themselves.[52] Fragmentation is therefore “not only a barrier to effective growth management, but also a leading cause of social separation, sprawl, and fiscal disparities between those areas.”[53]

In short, localism and jurisdictional fragmentation “[reflect] territorial economic and social inequalities and [reinforce] them with political power.”[54] Legally defined and politically reinforced fragmentation of local governance perpetuates disparities in property wealth that, in turn, spatially concentrate poverty and place a much larger tax burden on those in inner cities than those in the “favored quarter.” The ideology of

localism and the machinery of jurisdictional fragmentation, ostensibly designed to ensure administrative efficiency, vibrant democracy and idyllic community, in fact serve primarily, if not exclusively, to allow affluent individuals to tax themselves for their own benefit, to escape the social burdens of those less fortunate than themselves, and to insulate their wealth from the wider needs of the society in which they are an integral part.[55]

Regionalism

Regionalism, as a movement, combats localism and the fragmented metropolis it engenders. It advocates for a wider conception of community that transcends local borders and more equitably distributes socioeconomic benefits and burdens.[56] It is a reaction to localism, and exists in contradistinction to it. A region is defined, in functional terms, as “a real economic, social, and ecological unit.”[57]

There are many proposals for achieving the policy goals of regionalism. The current pedagogical terrain includes denominations such as Old Regionalism, New Regionalism, Fiscal Regionalism, Equitable Regionalism, and even “Equitable Fiscal Regionalism” [58] as discrete approaches to the problem of place-based inequality. There are also theoretical divides with respect to whether shared services, tax base sharing, outright consolidation, or some other innovation is the most fruitful means of achieving regional equity. Paradoxically, the literature on regionalism is itself burdened by needless division and lacking in coordinated effort much like the objects of its criticism. In order to better facilitate the common core of regionalist principles, then, some simplification is warranted. A brief explication of the work by two of regionalism’s most visible and prolific proponents—Myron Orfield and David Rusk—will help to clear the air and lay the foundation for an empirical review of options for municipal defragmentation in Essex County that seeks to implement the goals they share.

Orfield advocates for discrete regional governing bodies that are both democratically accountable and possessed of regulatory power.[59] Depending on the circumstances presented, consolidation, annexation, and adoption of metropolitan planning organizations (MPOs) are all potential steps in the right direction.[60] MPOs in particular should take precedence in “gradually [assuming] the power to promulgate an efficient and orderly regional land-use plan” and dealing with other regional challenges, such as tax base disparities and environmental concerns, that individual localities cannot unilaterally address.[61]

MPOs are generally calculated not to disturb extant local boundaries to the greatest degree possible. Rather than attempt to directly defragment the structure of local governance in the same way as annexation or consolidation, MPOs create a “two-tier” intermediate system of government that attempts to preserve local autonomy to the greatest degree possible.[62] Although substantial progress[63] has been made in regions that employ two-tier systems, some commentators have argued that even the most prominent and successful examples of two-tier MPOs—the Portland Metro in Oregon and the Twin Cities Metropolitan Council in Minnesota—have not had a

sufficiently transformative effect on regional governance. They fail to recognize that “[the] conflict cannot be resolved by a functional division of power because the fundamental issue . . . is political, not technical.”^[64] In short, to meet the challenge of regional equity, “even the most creative regional bodies in the country . . . [would] need more power” than they currently possess.^[65]

Rusk’s approach is somewhat different. Instead of advocating for a discrete regional body designed to facilitate a more symbiotic relationship between cities and their suburbs, Rusk advocates for the “elasticity” of central cities themselves.^[66] Elasticity is defined as the ability for a city to expand its boundaries via annexation in order to capture sprawling suburban growth on the city’s unincorporated suburban periphery.^[67] The greater a city’s elasticity, Rusk argues, the greater the economic health (measured in terms of equitable poverty distribution) of the region the city economically anchors.^[68] Elastic cities are typically found in large, “big box” states that still have unincorporated land to annex; inelastic cities are typically found in smaller, “little box” states that are mostly or, in New Jersey’s case, entirely, composed of incorporated municipalities.^[69] Although Rusk’s research has become central to regional thinking, it is not unassailable. Rusk’s statistical methodologies have been questioned,^[70] and it is difficult, if not impossible, to imbue the correlations he has established regarding city elasticity with the causal power his argument seems to require. Nevertheless, it is undeniable that Newark is situated among some of the smallest boxes in one of the smallest “small box” states in the country. Annexation in such a completely inelastic environment is impossible. Consolidation, however, remains at least a legal possibility.

The modern experience with regional approaches, as framed by Orfield and Rusk, warrants three major observations. First, regionalism is still in its infancy. Few (such as the Portland Metro and Twin Cities Metropolitan Council) regional reforms have been implemented, and none have been vested with the full panoply of regional powers desired by those who conceived of them. Second, no one approach has proven to be the most effective means of achieving regional equity, whether seen through the lenses of race, class, place, or any combination of the three. Third, regionalism is an inherently ecological concept. It is premised on the fundamental interconnectedness of the modern metropolis, and on the shared fate of cities and their suburbs as a result of their mutual economic interdependence. It could be said that where Marxists sought to democratize the economy, regionalists seek to ‘ecologize’ it—to recognize that individual choices have a systemic effect on the political economy of their regions in a way that defies traditional notions of local autonomy and rejects the contention that the political and economic aspects of local choices can be severed from one another or analyzed in a vacuum. With these observations in mind, the following section will analyze new regional possibilities for a more equitable distribution of property tax revenue in Essex County, New Jersey.

Property Tax Base Inequality

As a result of its fragmented structure of governance, there are wide disparities in taxable property wealth per capita in each of Essex County's municipalities. It will be helpful to gain some perspective on the sheer magnitude of inequality before some remedies are explored. While Newark has a population of 277,540^[71] and a net valuation of \$10,839,929,709 in taxable property wealth, nearby Millburn boasts a net valuation of \$8,196,988,436.00 with a population of only 20,149.^[72] Per capita, this is a ratio of \$406,819^[73] to \$39,057, or *10.4 to 1*. A comparison between the population and property tax base of Newark with the aggregated populations and property wealth of **Livingston, Millburn, North Caldwell, and Essex Fells** (four of the wealthiest municipalities not only in Essex County, but in the United States as a whole) yields an almost unbelievable figure. Collectively, these four municipalities boast a net valuation of \$17,995,437,273 and an aggregate population of 54,074.^[74] This yields \$332,793 of taxable property wealth per capita. These four municipalities, collectively which contain less than *one fifth* of Newark's population, contain *eight and a half times* more taxable property wealth than the central city less than a dozen miles away from them. A comparison of average residential property values yields similar figures. While Newark has an average residential property value of only \$182,185, Essex Fells and Millburn's residential property values average \$938,661 and \$1,082,015, yielding ratios of approximately 5.2 and 5.9 to 1, respectively.^[75]

These extreme discrepancies in Essex County's property tax bases yielded equally extreme variations in property tax burdens, both in terms of how high property tax rates must be raised in order to generate enough revenue from diminutive urban and inner suburban tax bases, and in terms of the way in which those revenues must be allocated to fund more costly urban services and responsibilities. While Newark has to tax its residents at a rate of 4.12% in order to spend 47.77% on municipal operations and 30.24% on education,^[76] nearby Essex Fells has the luxury of taxing its enormous per capita property tax base at an average of only 1.83% in order to spend 23.35% on municipal operations and 51.50% on education.^[77] The same pattern is observable when comparing affluent Livingston and struggling Irvington. The former taxes its residents at a rate of 2.2% in order to pay 16.97% on municipal operations and 59.94% on education,^[78] while the latter taxes its residents at 3.40% and yet must spend a whopping 67.28% on municipal costs (such as law enforcement) and only 19.09% on education.^[79] The pattern could again be observed by comparing any property-poor district with any property-rich municipality in the County. Without exception, the fragmented structure of local governance in Essex County forces Newark and its poor inner suburbs to pay more in taxes for less in crucial services.

The enormous burden placed on Newark and its poor inner suburbs has had a particularly deleterious effect on education funding. Although New Jersey's decades-long history with school finance litigation has resulted in some of the most progressive and redistributive finance reforms, educational outcomes have not correspondingly increased with the huge amount of state aid funneled into poor districts in general, and Newark in particular.^[80] Essex County received over a billion dollars (\$1,169,643,770) in state funding educational funding from 2011-2012.^[81] For the 2012-2013 year, the lion's share of the state's funding—\$714,315,679—went solely to the city of Newark.^[82]

These disparities have a common cause. This is an enormous amount of property wealth essentially locked inside a handful of municipalities, and unavailable to the rest of the county (indeed, each municipality, even the wealthiest, actively compete against one another to retain exclusive access to their individual fortunes) as a result of the legal boundaries that define them. The fragmented structure of local governance and the ideology of localism that justifies and perpetuates it as a necessary (and even desirable) consequence of local freedom is what makes inequality of this magnitude possible. Concentrated wealth necessitates concentrated poverty because the only way to maintain such astronomical amounts of per capita property wealth, such low property tax rates, and such high ratios of educational to operational revenue expenditures is to keep the poor and needy out of the same taxation pool as the wealthy and self-sufficient.

This is not to say that Essex County's affluent municipalities have absolutely nothing to gain from consolidation with less affluent ones around them. Consolidation of services and the elimination of duplicative and superfluous agencies would likely yield considerable gains in efficiency and cost-effectiveness.^[83] Neighboring Bergen County, for instance, with its seventy towns, owns more fire equipment than all of New York City despite having a tenth of its population.^[84] This is "probably because there's five times as much money, and because in New York City there is standardization of equipment."^[85] The key to overcoming affluent suburban resistance to the cause of regional equity is clearly identifying the ways in which affluent suburbs would nonetheless experience a net benefit from having their property tax base placed into the same regional pool as the much poorer municipalities around them. In a purely fiscal sense, consolidation will not provide Essex County's affluent outer suburbs any net gains in the short term. Rather, the positive social consequences that property tax base consolidation is likely to have on the County as a whole will produce only more diffuse, long-term benefits (such as more equal education funding, lower crime, and leaner, more efficient government) that will be felt years after consolidation is effectuated.

Consolidation will undoubtedly impose costs on New Jersey. Some residents will pay higher taxes, others will receive lower quality services, and many will lose their jobs in local government. The benefits will be diffuse and uneven, often rewarding those who live in poorer neighborhoods and others who do not benefit from the state's current municipal structure. . . . In the long-term, however, most experts agree that the benefits will outweigh the costs. Consolidation will avert an even greater budget crisis than the one the state currently faces, as well as help correct the state's history of severe socioeconomic segregation. The real question, then, is how to implement a policy with so many short-term costs.^[86]

There is no question Newark and its inner suburbs such as Irvington and East Orange desperately need access to the property wealth pent up in the outer suburbs; "[t]he demand for regional equity and the protection of local autonomy conflict with each other, and it is disingenuous to pretend otherwise."^[87] The only foolproof way of solving

structural problem of this type, however, is through a structural solution—that is, one that does not simply attempt to smooth out the inequalities created by the chronic evasion of the social contract, but prevents its evasion in the first place.

Consolidation and Defragmentation

Municipal consolidation—either on a voluntary, ad hoc basis or an involuntary, state mandated basis, is the most effective means of defragmenting Essex County’s balkanized governance structure and achieving a more equitable distribution of property tax wealth.

Certain methodological objections will inevitably be raised against this claim. It will therefore be prudent to dismantle them at the outset. First, the resilience of extant legal and political boundaries, the strength of certain interested factions, and the persistent entrenchment of the ideology of localism is fully appreciated. It is clear that, if such a seemingly radical proposal were actually to be introduced by the state legislature, the Millburns and Essex Fells of the county (not to mention the wealthy municipalities of other counties) will have much to say about it. Any approach that optimistically relies on an entirely “voluntary negotiation process ignores the realities of metropolitan politics. Any notion that affluent suburban localities can be depended upon to voluntarily engage in metropolitan coalitions that require them to sacrifice some benefits or to take on more in the way of regional burdens is fanciful.”^[88]

It is conceded that if municipal defragmentation through voluntary or involuntary consolidation is actually going to be taken seriously, a fiscal “crisis climate” will be necessary.^[89] Overcoming localism will be a major challenge, not just in the wealthy outer suburbs but in Newark and its inner suburbs as well. Without some dire event to precipitate radical change, municipalities will almost certainly not be consolidated—either voluntarily or involuntarily—because they will not be in a position to appreciate the mutual benefits of doing so.

A “crisis climate” may be closer to occurring that most local officials would be willing to admit. The state has had persistent problems with controlling its property tax rates, which are some of the highest in the nation.^[90] Municipal consolidation is distinct from other equity approaches, such as tax base sharing, because it is an explicitly structural solution to a structural problem; it attempts to strike at the root of tax base inequality. Although tax-base sharing has been shown to decrease disparities in per capita tax bases,^[91] *property itself is not more equally distributed among jurisdictions* by sharing tax bases. Tax-base sharing, in other words, does not strike at the root cause of property tax base inequality in the same way that consolidation would.

Single purpose “special districts” have been implemented with some success, but they also fail to account for broader social and economic concerns at the heart of regionalism.^[92] Single purpose regional administrative entities impose yet another layer of government on top of extant political apparatuses that should, at least in principle, be

capable of handling the responsibility of regional planning. Since “[e]very large city in America . . . is itself a form of regional government,”^[93] the imposition of an additional layer of government on top of an already highly fragmented and complex system would be self-defeating.

Finally, and most importantly, consolidation is advocated for because it has not been taken seriously in the literature. One of the greatest virtues of consolidation is that it, like annexation, “moves borders—not homes or people—in order to ‘relocate’ a neighborhood from one jurisdiction to another.”^[94] In moving borders, consolidation makes two or more communities legally, politically, and fiscally one in order to create conditions for increased efficiency and equality.

A consolidation of Newark’s inner suburbs into Newark itself, while seemingly counterintuitive to the interests of regional equity because outer suburban wealth is not captured by the consolidation, may nonetheless prove to be a step in the right direction. A consolidation of Irvington and East Orange into Newark, without any more sophisticated calculation than determining what the average per capita property tax base of the new “Greater Newark” would be, would cause Newark’s property tax base per capita to increase by \$4,776, Irvington’s to decrease by \$6,652, and East Orange’s to increase by \$8,495.^[95] On the basis of this simple arithmetic, this is a mixed result. If a consolidation of Newark with some subset of its poor inner suburbs were to be realized, however, the economies of scale achievable through leaner and less redundant police, fire, and governmental departments would almost certainly be beneficial in the mid- to long-term. In addition, since the law of consolidation in NJ requires the consent of all communities involved,^[96] a consolidation that deals uniformly with municipalities and communities that are similarly socially and economically situated—that is, municipalities that have much more collectively to gain than they have individually to lose—is far more likely to be achievable on a voluntary basis. More abstractly, the consolidation of these municipalities into Newark may have the effect of helping their residents realize their shared interests, and to more effectively organize to advocate for more far-reaching reforms within and without Essex County.

While it is tempting to advocate for a wider scope of consolidation that includes some or all of Essex County’s wealthier suburbs (such as Millburn, Essex Fells, and North Caldwell), a ‘Robin Hood’ approach of this sort is politically doomed to fail. Such an approach would invariably be *ad hoc*, and include some wealthy jurisdictions and not others. It would also be perceived as a blatant attempt by the city to capture suburban wealth. Municipal consolidation, if it is to be pursued at all, will have to be pursued fairly and incrementally, with the mutual best interests of the participating municipalities constantly in mind.

Conclusion

There is no silver bullet for pursuing regional equity in Essex County, but this paper has argued for municipal consolidation as one underestimated possibility for reform. Consolidation is an admittedly radical means of pursuing regional equity, but it

is designed to deal with equally radical structures of inequality. Unless there is some degree of municipal defragmentation and consolidation, the fragmented structure of local governance will continue facilitate the evasion of the social contract and perpetuate the disparities in property tax wealth that form the bedrock of local inequality.

[1] *State & County Quickfacts*, U.S. Census Bureau
, <http://quickfacts.census.gov/qfd/states/34/3451000.html> (last updated Jun. 6, 2013).

[2] Nancy Solomon, *A Walking Tour: Newark Broad Street*, WNYC News, <http://www.wnyc.org/articles/wnyc-news/2011/dec/15/newark-broad-street/> (Dec. 15, 2011).

[3] *Id.*

[4] Rima Wilkes & John Iceland, *Hypersegregation in the 21st Century*, *Demography*, Volume 41-Number 1, 23-36 (2004)

[5] Douglass Massey & Nancy Denton, *The Persistence of the Ghetto* 76 (1993) (Unevenness, Isolation, Clustering, Centralization, Concentration).

[6] David. D. Troutt, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 *Harv. C.R.-C.L. L. Rev.* 427, 427 (2000).

[7] Paul Boudreaux, *E Pluribus Unum Urbs: An Exploration of the Potential Benefits of Metropolitan Government on Efforts to Assist Poor Persons*, 5 *Va. J. Soc. Pol'y & L.* 471 n.295.

[8] See State of N.J., County and Municipal Government Study Commission, *Consolidation: Prospects and Problems* (1972); see also *Courage to Connect NJ*, <http://www.couragetconnectnj.org/> (last accessed Jul. 1, 2013).

[9] Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 *Colum. L. Rev.* 1, 7 (1990).

[10] *Id.*

[11] *Id.*

[12] *Id.* at 8.

[13] *Id.*

[14] Home Rule Act of 1917, N.J.S.A. 40:42 *et. seq.*

[15] N.J. Const. art. IV, § VII, cl. 11.

[16] N.J.S.A. 40:42 *et. seq.*

[17] Richard Briffault, *Localism and Regionalism*, 48 Buff. L. Rev. 1, 14-17 (2000).

[18] See Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1123-29 (1996).

[19] *Id.*

[20] *Id.*

[21] See Briffault, *supra* note 15.

[22] See *id.* at 18; See also Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. Polit. Econ. 416-24 (1956).

[23] See Briffault, *supra* note 15 at 18.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 19.

[27] *Id.* at 21.

[28] *Id.*

[29] Carrie Daniel, Note, *Land Use Planning—The Twin Cities Metropolitan Council: Novel Initiative, Futile Effort*, 27 Wm. Mitchell. L. Rev. 1941, 1945 (2001).

[30] Christopher J. Tyson, *Localism and Involuntary Annexation: Reconsidering Approaches to New Regionalism*, 87 Tul. L. Rev. 297, 301 (2012).

[31] *Id.*

[32] *Id.* at 327.

[33] See *id.* at 301.

[34] *Id.* at 298.

[35] Andrew J. Bruck & H. Joseph Pinto III, *Overruled by Home Rule: The Problems With New Jersey's Latest Effort to Consolidate Municipalities*, 32 Seton Hall Legis. J. 287, 290 (2008).

[36] Local Unity Alignment, Reorganization, and Consolidation Commission (LUARCC), N.J.S.A 52:27D-501 (2007), available at <http://www.state.nj.us/dca/affiliates/luarcc/pdf/n.j.s.a.52.27D-502.pdf>.

[37] *Political Subdivisions of New Jersey*, N.J. Office for Planning Advocacy (2012) <http://nj.gov/state/planning/maps/municipalitiesmap.pdf>.

[38] 2012 Tax Apportionment Analyses, <http://www.essextaxboard.com/taxrates.html>.

[39] William Miller, *Metropolitan Regionalism: Legal and Constitutional Problems*, 105 U. Pa. L. Rev. 588, 601-02

[40] *Id.* at 588.

[41] *Id.*

[42] See Federalist No. 10, at 79 (James Madison) (Clinton Rossiter ed., 2003) (“A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it, in the same proportion as such a malady is *more likely to taint a particular county or district than an entire State*”) (emphasis added). See also Federalist No. 51, at 320-21 (James Madison) (Clinton Rossiter ed., 2003) (“If a majority be united by a common interest, the rights of the minority will be insecure. . . . *The society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.*” (emphasis added)).

[43] Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 Stan. L. Rev. 931, 963 (2010) (“[Local governments are] a separate tier of American federalism—like municipalities with independent legitimacy.”)

[44] Briffault, *supra* note 7 at 81 (“Each jurisdiction may decide based on its own perception of its self-interest, without considering the interest of the region as a whole.”).

[45] Tyson, *supra* note 28 at 329.

[46] *Id.* at 331.

[47] *Id.* at 337.

[48] Briffault, *supra* note 7 at 5.

[49] *Id.* at 84.

[50] Sherryl D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 *Geo. L.J.* 1985, 2023-227 (2000).

[51] *Id.* at 1887.

[52] *Id.* at 2012-13.

[53] Myron Orfield, *American Metropolitcs* 130 (2002).

[54] Briffault, *supra* note 7 at 1.

[55] See Tyson, *supra* note 28 at 331-32.

[56] Cashin, *supra* note 49 at 2033-34.

[57] Briffault, *supra* note 15 at 4.

[58] Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 *Temp. L. Rev.* 49, 50 (2012).

[59] Orfield, *supra* note 52 at 148.

[60] *Id.* at 137.

[61] *Id.* at 149.

[62] *Id.* at 107.

[63] *Id.* (“The program reduced local tax-base disparities by roughly 20 percent . . . and reduced the ratio of the ninety-fifth to fifth percentile tax base by about 25 percent.”).

[64] Gerald E. Frug, *Beyond Regional Government*, 115 *Harv. L. Rev.* 1763, 1780 (2002).

[65] *Id.* at 1778.

[66] David Rusk, *Measuring Regional Equity* (May 27, 2005) (unpublished manuscript) (on file with author).

[67] *Id.*

[68] *Id.* at. 44.

[69] *Id.* at. 6.

[70] *Measuring Happenstance: David Rusk's City Elasticity Hypothesis*, Demographia (Feb. 6, 2000) <http://www.demographia.com/db-rusk.htm>.

[71] *Community Facts*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/34/3451000.html> (last accessed Jul. 1 2013).

[72] U.S. Census Bureau, *American FactFinder*, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml (search "Millburn township") (last accessed Jul. 1, 2013).

[73] Property Tax Information, N. J. Dept. of Community Affairs, http://www.state.nj.us/dca/divisions/dlgs/resources/property_tax.html (2011) (select "Property Tax Tables" excel document for 2011).

[74] *Id.*

[75] *Id.*

[76] *Tax Apportionment Analysis*, Essex Tax Board (2012), <http://www.essectaxboard.com/pdfs/2012Newark.pdf>.

[77] *Tax Apportionment Analysis*, Essex Tax Board (2012), <http://www.essectaxboard.com/pdfs/2012EssexFells.pdf>.

[78] *Tax Apportionment Analysis*, Essex Tax Board (2012), <http://www.essectaxboard.com/pdfs/2012Livingston.pdf>.

[79] *Tax Apportionment Analysis*, Essex Tax Board (2012), <http://www.essectaxboard.com/pdfs/2012Irvington.pdf>.

[80] Council of the Great City Schools, *Raising Student Achievement in the Newark Public Schools* (2007), <http://www.eric.ed.gov/PDFS/ED498848.pdf>.

[81] N. J. Dept. of Education, *2013-2014 K-12 Projected State School Aid* (2012), <http://www.state.nj.us/education/stateaid./1314/district.pdf>.

[82] *Id.*

[83] Bruck & Pinto, *supra* note 33 at 287, 297.

[84] *Local mayors discuss cost-saving tactics, energy receipts tax*, NorthJersey.com (2012), http://www.northjersey.com/news/159117875_Local_mayors_discuss_cost-saving_tactics_energy_receipts_tax.html.

[85] *Id.*

[86] *Id.* at 338-339.

[87] Frug, *supra* note 63 at 1780.

[88] Cashin, *supra* note 39 at 2031.

[89] Bruck & Pinto, *supra* note 33 at 346-47.

[90] *Id.* at 299.

[91] Myron Orfield & Nicholas Wallace, *Minnesota Fiscal Disparities act of 1971: The Twin Cities' Struggle And Blueprint for Regional Cooperation*, 33 Wm. Mitchell L. Rev. 591, 603 (2007).

[92] Briffault, *supra* note 15 at 4-5.

[93] Frug, *supra* note 63 at 1770.

[94] Anderson, *supra* note 41 at 944.

[95] Property Tax Information, N. J. Dept. of Community Affairs, http://www.state.nj.us/dca/divisions/dlgs/resources/property_tax.html (2011) (select "Property Tax Tables" excel document for 2011).

[96] Municipal Consolidation Act, N.J.S.A. 40:43-66.35 *et seq.*