MAKING MIXED-INCOME COMMUNITIES POSSIBLE: TAX BASE SHARING AND CLASS DESEGREGATION

This Note articulates and defends a proposal to regionalize the local property tax to promote greater integration of different income groups within a metropolitan area. Under the current regime, local taxes — particularly the property tax — finance a number of public services, including schools, police, fire protection, and sanitation.[1] It is well known that this system creates dramatic disparities in the level of services different municipalities can afford.[2] However, this Note focuses on another effect of the current regime, namely the powerful incentive for municipalities to prohibit land uses that dilute the local tax base. A wealthy locality will rationally seek to prevent construction of multifamily units and other low-income housing, because the residents of such housing would consume more in local services than they would contribute in taxes.[3]

This fiscal calculus is by no means the only reason that suburban municipalities seek to exclude the poor,[4] but it is one of the most prominent ones.[5] The hostility of wealthy suburbs to low-income residents contributes to poverty concentration in the inner cities and, more recently, in the inner ring of metropolitan suburbs.[6] This geographic isolation creates a self-perpetuating cycle of poverty that compounds the burdens of poverty alone.[7] There are few jobs in the ghetto, and

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[1] *See, e.g.*, Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1129 (1996) ("Local boundaries are central to the raising and spending of local revenue. . . . The principal source of locally-raised revenue for municipalities is the property tax.").

[2] Numerous state supreme court cases challenging the constitutionality of using local property taxes to fund public schools have cited these disparities as primary evidence. *See, e.g.*, Serrano v. Priest, 557 P.2d 929, 932–34 (Cal. 1977) (en banc); Sheff v. O'Neill, 678 A.2d 1267, 1271–72 (Conn. 1996).

[3] Although multifamily housing generates more tax revenue per acre than single-family homes, this surplus is more than offset by increased spending on public services for the additional population. MYRON ORFIELD, METROPOLITICS 5–6 (1997).

[4] Further reasons range from fear of crime and a desire to preserve a semirural neighborhood quality to racial and class prejudice. *See, e.g.*, DUANE WINDSOR, FISCAL ZONING IN SUBURBAN COMMUNITIES 38–39 (1979) (arguing that preferences for open spaces and racial homogeneity motivate zoning decisions more than fiscal considerations).

[5] *See, e.g.*, Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 19 (2000) ("Metropolitan area exclusionary zoning flows from the logic of local fiscal autonomy . . . .").

[6] Studies show that income segregation has been on the rise in the latter part of the twentieth century. *E.g.*, Alan J. Abramson, Mitchell S. Tobin & Matthew R. Vandergoot, *The Segregation of the Poor in U.S. Metropolitan Areas, 1970 to 1990*, *in* 6 HOUSING POL'Y DEBATE 45, 59 (1995) (finding an increase in residential income segregation from 1970 to 1990).

[7] WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 58 (1987) (coining the term "concentration effects" to describe this phenomenon).

opportunities for economic and educational advancement are limited. Residents of these communities often become socially isolated from the rest of society, both because it is difficult for them to break out, and because nonghetto residents will not move into the decaying neighborhoods.[8]

Policy responses to the plight of the urban poor generally adhere to one of two strategies: enrichment or deconcentration.[9] Enrichment approaches seek to provide direct assistance to the ghetto to combat crime, decrease unemployment, and heal fractured communities. Deconcentration approaches, of which this Note's regional taxation proposal is one, seek to help the poor by increasing their mobility, thus allowing them to escape the ghetto's concentration effect.[10] After all, if concentration effects are strong enough, they may cancel out the benefits of any direct aid to poor communities.

The idea of moving from a local to a regional or statewide property tax is not new and has received some degree of attention in the context of school-funding reform.[11] The proposal presented in this Note, however, departs from those reform efforts in at least three ways. First, it defends the regional tax not because it would simply enrich the poor,[12] but because it may promote the regional deconcentration of poverty. Second, its justifications focus on how a regionalized property tax would affect local governments' incentives to allow or to disallow certain land uses. In contrast, the literature rarely addresses the consequences of a regionalized property tax on the housing market. Third, this Note articulates a straightforward, population-based formula for distributing regional tax revenues among various municipalities.

The proposal in this Note also differs from prior attempts to deconcentrate urban poverty. Most past efforts have focused on forcing suburbs to reduce exclusionary zoning — that is, the use of municipal zoning power to prevent the construction of housing suitable for lower-income residents.[13] Due to intense opposition from suburban municipalities, these inclusionary zoning efforts tend to require a complex system of administrative and judicial oversight to ensure that low-income units are actually constructed. However, to the extent that fiscal concerns motivate exclusionary zoning, a system that eliminates the fiscal motive may prompt suburbs to relax their zoning laws voluntarily. Thus, the advantage of this Note's proposal is that, once adopted, it would create an incentive for municipalities to participate more willingly in deconcentrating poverty in the region.

Part I explains how housing market dynamics create income segregation and how local finance and exclusionary zoning contribute to the process. Part II introduces the regional tax base sharing proposal and sketches its predicted effects on local services, property values, and multifamily housing construction. Part III defends the proposal against potential claims of unfairness, inefficiency, and ineffectiveness and suggests ways that the proposal might be tailored to address some of these concerns.

I. MARKET AND POLITICAL FORCES CREATING INCOME SEGREGATION

A. Housing Market Dynamics and Feedback Effects

There are many reasons why people care about the identity of their neighbors. These reasons may be roughly categorized as either fiscal or nonfiscal. Both categories bear on individual well-being and on the value of property, but nonfiscal factors do so indirectly by affecting subjective preferences and expectations. As discussed in Section B, neighbors directly affect individual welfare because the value of neighboring property forms part of the tax base from which the municipal government funds many local services.[14]

Nonfiscal factors encompass a broad range of criteria that affect the desirability of certain neighbors. For instance, residents may have certain aesthetic preferences about nearby buildings.[15] They may care about the character and habits of their neighbors. They may prefer neighbors of a particular race or socioeconomic class.[16] All such aspects of neighborhood composition can influence the market value of

[8] *Id.* at 58–62.

[9] Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 CHI.-KENT L. REV. 795, 796–97 (1991) (calling the two strategies mirror images, because one seeks to bring opportunities to people, whereas the other seeks to bring people to opportunities).

[10] *Id.*

[11] *See, e.g.*, John Schomberg, *Equity v. Autonomy: The Problems of Private Donations to Public Schools*, 1998 ANN. SURV. AM. L. 143, 149 (1998) (describing how some states in which education funding systems were found unconstitutional turned to statewide taxation to reduce the disparities created by local property taxes).

[12] Most writings focus on this direct redistributive function of the regional tax. *See, e.g.*, Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 655–56 (1997).

[13] The most well-known attempts to combat exclusionary zoning include court-ordered fair-share housing, *e.g.*, S. Burlington County NAACP v. Township of Mt. Laurel, 456 A.2d 390, 421–22 (N.J. 1983), and "anti-snob" zoning statutes, *e.g.*, MASS. GEN. LAWS ch. 40B, §§ 20–23 (1998).

[14] *See, e.g.*, Briffault, *supra* note 1, at 1129. The effect on housing markets of local income taxes, sales taxes, and other sources of municipal funding is an interesting topic, but one that is largely beyond the scope of this Note.

[15] *See* Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 FORDHAM URB. L.J. 23, 31 (1996).

[16] *See, e.g.*, WINDSOR, *supra* note 4, at 37–38 (suggesting that income and racial segregation may be a function of individual preferences rather than fiscal considerations); Paul Boudreaux, *An Individual Preference Approach to Suburban Racial Desegregation*, 27 FORDHAM URB. L.J. 533, 545 ("[W]hite suburbanites dislike the idea of living in close proximity to African Americans . . . .").

residential property. Even residents who have no preferences with respect to their neighbors may still experience effects on property values due to the effects of others' preferences on housing demand in the area. Moreover, property values can rise and fall as a result of the mere expectation that new neighbors will alter the demand for housing, thereby creating a self-fulfilling prophecy.[17]

Thus, a person's housing choice has important feedback effects on the housing choices of others, which in turn affect that person's subsequent housing choices. Such feedback loops may be positive (that is, self-reinforcing) or negative (that is, tending to cancel themselves out).[18] A system characterized by positive feedback is highly unstable, because a small change becomes amplified through successive waves of feedback. A system with negative feedback, in contrast, tends to be relatively stable.[19] The usual assumption about markets is that they exhibit negative feedback, with the "invisible hand" maintaining an equilibrium between supply and demand.[20] As this Note explains, however, housing markets display a disturbing predominance of positive feedback at the neighborhood level. In other words, the neighborhood effects of people's housing choices are compounded, and property values tend either to soar or to plummet as a result.

The predominance of positive feedback stems from property owners' consistent preference for wealthy neighbors. Wealthier neighbors contribute more to the local property tax base than they consume in social services.[21] They may invest more in creating aesthetically pleasing spaces and are frequently presumed to have better moral character. Class bias virtually always leans toward wealthier neighbors, and racial preferences tend to favor white households, which are, on average, wealthier than nonwhite households.[22] Because all fiscal

[17] *See* ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE 98 (1979) ("Various housing participants, individually and subjectively, draw their own conclusions about the future of the neighborhood. Stereotyping and prejudice significantly shape many of these individual assumptions, which easily become self-fulfilling convictions."); OSCAR NEWMAN, COMMUNITY OF INTEREST 83 (1980) (describing how middle-income residents in a declining neighborhood became "critical actors in a self-fulfilling prophecy: their fears as to what would happen to their property values if they did not leave their neighborhoods quickly were realized — partly as a result of their own attitudes and hurried departures").

[18] DIETRICH DÖRNER, THE LOGIC OF FAILURE: WHY THINGS GO WRONG AND WHAT WE CAN DO TO MAKE THEM GO RIGHT 74–75 (Rita & Robert Kimber trans., 1996).

[19] *Id.*

[20] W. Brian Arthur, *Positive Feedbacks in the Economy*, 262 SCI. AM. 92, 92 (1990).

[21] *See, e.g.*, Louis Kaplow, *Fiscal Federalism and the Deductibility of State and Local Taxes Under the Federal Income Tax*, 82 VA. L. REV. 413, 423 (1996) ("[A] resident who lives in a mansion pays much greater property taxes than one who lives in a small house, yet they have access to the same schools, parks, and police department.").

[22] *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID 123 (1993) (arguing that because nonwhites tend to be poorer than whites, racial segregation has poverty-concentrating effects on minority groups).

and nonfiscal factors aggregate in one direction — against poor neighbors and poor neighborhoods — feedback drives property values toward the extremes and thus cultivates economically polarized communities.

The spiral of decline and disinvestment presents one particularly grim aspect of the picture. A relatively small rise in the crime rate, a decline in school quality, or a change in the racial or socioeconomic composition of a neighborhood may trigger this slide.[23] As outsiders lose interest in entering the community, existing residents face a prisoner's dilemma. If no residents leave the neighborhood in response to the change, property values will remain relatively stable.[24] However, some residents might choose to sell at the current market price to avoid risking a future decline, thereby increasing the supply of housing and precipitating a drop in property values.[25] As values fall, more and more residents fear for the future and withdraw their capital from the neighborhood.[26] Landlords may disinvest by reducing or eliminating maintenance on their properties, thus decreasing the attractiveness of the neighborhood even further.[27] In general, those who withdraw from the neighborhood earlier lose far less than those who withdraw later, after the spiral of decline has progressed.

For a number of reasons, wealthier residents tend to react first to what they perceive as negative changes in the neighborhood, and as a result, suffer less from the decline. First, the wealthy tend to assign more importance to subtle changes in the quality of social services and to other neighborhood characteristics that might indicate decline. Second, poor residents may not have the financial ability to relocate, both because they lack the funds to pay for relocation and because they are more limited than the wealthy in their choice of neighborhoods. Finally, the poor are more dependent on community social ties and may

[23] *See, e.g.*, NEWMAN, *supra* note 17, at 82–83 (tracing the beginnings of neighborhood decline to a rise in the crime rate and the departure of a small number of middle-class households).

[24] *Cf.* HOUSING IN AMERICA: PROBLEMS AND PERSPECTIVES 188–89 (Roger Montgomery & Daniel R. Mandelker eds., 2d ed. 1979) [hereinafter HOUSING IN AMERICA] (describing a similar prisoner's dilemma involving the withdrawal of property maintenance).

[25] *See* NEWMAN, *supra* note 17, at 83.

[26] *See* GOETZE, *supra* note 17, at 98 ("Some discretionary sales will result from abutting residents who fear that factors beyond their control will downgrade the neighborhood.").

[27] *See* HOUSING IN AMERICA, *supra* note 24, at 191 (asserting that in a rapidly declining neighborhood "[o]wners of buildings decide not to keep them up at all"); *see also* Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FLA. ST. U. L. REV. 485, 490–92 (1987) (explaining the circumstances under which withdrawal of maintenance is a rational strategy for landlords).

therefore be less mobile.[28] As a result, poor residents tend to suffer the worst consequences of neighborhood decline.

When race enters the picture, the situation appears even more pernicious. The mechanisms of racial segregation in the United States are well-documented.[29] One model posits a neighborhood in which a few whites oppose any racial integration, a few are completely indifferent to their neighbors' race, and the rest have varying levels of tolerance for different amounts of integration.[30] First, when a few minority families move into the neighborhood, only the strictest segregationist whites will leave. If more minority families replace them, however, the shift in racial composition may induce the most segregationist whites of those remaining to exit, and so forth. Beyond a certain "tipping point," this feedback loop becomes self-perpetuating, and white residents begin to leave in droves.[31] Panic feeds a decline in property values, leading even nonracist whites to leave the neighborhood. Ironically, the departing whites in this scenario escape with the smallest losses, and the incoming minority households find themselves in a neighborhood with tumbling property values. Minority families and integration-indifferent whites are thus left to bear the cost of racist preferences.

Gentrification, the upward spiral of property values in the downtown areas of many major cities, is the flip side of this spiral of deterioration. The process begins when a few "risk-oblivious" higher-income "pioneers" move into a neighborhood.[32] As these residents settle in, the area's image improves. A once-neglected neighborhood becomes an attractive destination for higher-income people.[33] Ironically, however, if the upward spiral proceeds unchecked, neighborhood improvement can harm low-income residents by pricing them out of the market.[34] Virtually all low-income inner-city residents are renters and lack an equity stake in their housing. Thus, a rising demand for housing means higher rents. As the low-income residents become unable to pay these higher rents, landlords will evict more and more delinquent tenants and often convert the vacant units to luxury apart-

[28] Gerald E. Frug, *City Services*, 73 N.Y.U. L. REV. 23, 31 n.31 (1998) ("The poor are more dependent than the rich on neighbors, friends, and family for maintaining a support network and, therefore, are less mobile.").

[29] *See, e.g.*, Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1847–49 (1994).

[30] THOMAS C. SCHELLING, MICROMOTIVES AND MACROBEHAVIOR 155–59 (1978).

[31] For a more complete description of the tipping phenomenon, see *id.* at 137–66.

[32] *See* GOETZE, *supra* note 17, at 100.

[33] *See id.* at 100–01.

[34] *See* Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City*, 28 WASH. U. J. URB. & CONTEMP. L. 195, 196 (1985).

ments or condominiums.[35] As gentrification squeezes out the poor, the displaced residents increase the demand for low-income housing elsewhere. Often the only replacement housing available is inadequate, overpriced in relation to the displaced residents' incomes, and located in the sorts of declining neighborhoods discussed above.[36]

Once a community becomes homogeneously rich or poor, the neighborhood effects that created the homogeneity of income continue to impoverish poor neighborhoods and enrich wealthy ones. The ghetto impoverishes its residents by creating an environment in which criminal activity disrupts daily life, education and good jobs are largely unavailable, and a wall of social isolation prevents residents from achieving or even seeking improvement in their condition.[37] Capital drains from the ghetto as businesses relocate to communities in which residents have more money to spend.[38] Landlords, receiving little rent and facing high fixed costs, allow their buildings to deteriorate.[39] In this way, disinvestment perpetuates itself and poverty deepens.

In a wealthy area, by contrast, neighborhood effects aggregate in the opposite direction. The neighborhood's stability and prestige increase its property values. Businesses flock there to take advantage of the residents' spending power.[40] The neighborhood builds a reputation as a good investment — a determination that is often partly based on a self-fulfilling assumption that others will invest there.[41] There is also evidence that these neighborhoods, especially if located in the suburbs, receive a disproportionate share of government-subsidized infrastructure improvements, which further fuels their economic growth.[42] This inequity may result because the residents wield a disproportionate amount of political power[43] or because state and federal officials view these areas as model communities to be encouraged. Al-

[35] *See* Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835, 1838 (1988).

[36] *See* Jenifer L. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. PUB. INT. L.J. 239, 263 (1996).

[37] *See* WILSON, *supra* note 7, at 56–58.

[38] *See* MASSEY & DENTON, *supra* note 22, at 131, 135.

[39] *See* Kennedy, *supra* note 27, at 489–90.

[40] The move of businesses from the central city to the suburbs in the last decades has been "stark and universal." James A. Kushner, *Growth Management and the City*, 12 YALE L. & POL'Y REV. 68, 78 (1994).

[41] *See* GOETZE, *supra* note 17, at 100–03 (explaining neighborhood dynamics in a rising housing market).

[42] *See* Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2003 (2000) (arguing that the outer-ring suburbs "receive massive, disproportionate infrastructure investments that fuel their growth, including new roads and highways, expensive wastewater treatment systems, and other developmental infrastructure" (citations omitted)).

[43] *Id.*

though the latter tendency may appear defensible on the surface, it ignores the fact that these communities are positioned to prosper even in the absence of government subsidies.

B. The Effects of Zoning and a Localized Tax Base

Legal rules currently promote neighborhood wealth polarization by facilitating the fragmentation of metropolitan regions into a large number of relatively independent municipalities.[44] Such fragmentation is far from inevitable, however, and scholars have identified several rules that operate to make it possible.[45] Of these rules, a municipality's ability to zone bears most obviously on residential housing patterns. Since the advent of zoning in America, the practice has been thought to promote the segregation of residents by income. In considering one of the first challenges to the constitutionality of zoning in 1924, District Judge Westenhaver wrote that "[t]he result to be accomplished [by zoning] is to classify the population and segregate them according to their income or situation in life."[46] By setting minimum lot sizes and banning multifamily housing, a municipality can effectively screen entrants for socioeconomic status. This practice is known as "exclusionary" zoning because its primary goal is to exclude lower-income persons from the area. "Fiscal" zoning is a type of exclusionary zoning motivated by a desire to preserve or increase a municipality's tax base/local services ratio.[47] Because there are also many nonfiscal reasons for desiring to exclude the poor from one's neighborhood, it is reasonable to suppose that most exclusionary zoning rules are motivated by a mix of fiscal and nonfiscal concerns.

Whatever their motivations, exclusionary zoning rules are often thought to be both damaging to the poor[48] and inefficient.[49] Setting

[44] *See* WINDSOR, *supra* note 4, at 86 (citing a study that found income segregation to be positively correlated with the level of metropolitan fragmentation).

[45] Gerald E. Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1070 (1996) (listing a variety of state-granted rights necessary for local autonomy, including "the right to incorporate as a separate municipality; immunity from annexation by the central city; the privilege of engaging in exclusionary zoning; the ability to legislate and provide services solely in their own self-interest; the authority not only to tax the real property located within city boundaries but to spend the revenue collected solely on local residents").

[46] Ambler Realty Co. v. Vill. of Euclid, 297 F. 307, 316 (N.D. Ohio 1924), *rev'd*, 272 U.S. 365 (1926).

[47] ORFIELD, *supra* note 3, at 5.

[48] Dietderich, *supra* note 15, at 32–33.

[49] Schill, *supra* note 9, at 813–15 ("The bulk of evidence on suburban land use regulation supports the conclusion that as currently practiced restrictive zoning is inefficient."); *see also* WILLIAM A. FISCHEL, DO GROWTH CONTROLS MATTER? A REVIEW OF EMPIRICAL EVIDENCE ON THE EFFECTIVENESS AND EFFICIENCY OF LOCAL GOVERNMENT LAND USE REGULATION 36 (1990) (noting that increased housing prices in areas adjacent to exclusive communities are an indicator of an inefficient monopolistic supply restriction).

efficiency considerations aside for the moment, there is little doubt that the distributive effects of exclusionary zoning are regressive. In addition to the already-mentioned distributive implications of income segregation, exclusionary zoning has other independent effects on the poor. The restriction of land use to single-family lots, if widespread,[50] dramatically reduces the amount of land available for multifamily construction. This artificial restriction raises the price of unrestricted land, thereby making apartment housing more expensive than it otherwise would be. This increase in price, in turn, forces apartment dwellers to consume less housing as well as to pay more for the housing they do consume.[51] In contrast, the same ban on multifamily housing artificially depresses the price of restricted land, effectively subsidizing single-family homes.[52]

The fiscal effect of exclusionary zoning is to preserve a jurisdiction's property tax base by ensuring that poor people cannot enter a wealthy municipality to take advantage of better social services. Coupled with the use of local taxes to fund local services, such zoning restrictions effectively prevent redistribution from those with the greatest wealth to those with the greatest need.[53] Wealthy jurisdictions are able to raise more money per capita than poorer ones, even with much lower property tax rates.[54] Consequently, exclusive suburbs have the best schools, police protection, and other local services, whereas central cities and working-class inner suburbs sometimes lack sufficient funds to provide adequate levels of these services.

To justify the current pattern of income segregation, some scholars assert that individuals simply have a preference for living with members of their own income group or socioeconomic class.[55] Although this statement may be intuitively appealing, it is at best half true, because municipalities virtually never seek to exclude higher-income residents. Rather, municipalities have an incentive to zone so that only residents who are wealthier than the average current resident can

[50] One survey indicated that only 5.1% of undeveloped land in New Jersey was zoned for multifamily units, whereas 76.1% was zoned for single-family uses. WINDSOR, *supra* note 4, at 52–53.

[51] Michelle J. White, *Fiscal Zoning in Fragmented Metropolitan Areas*, *in* FISCAL ZONING AND LAND USE CONTROLS 31, 98 (Edwin S. Mills & Wallace E. Oates eds., 1975) [hereinafter FISCAL ZONING] ("Fiscal zoning . . . causes the market to undersupply low-value housing.").

[52] Dietderich, *supra* note 15, at 31–32.

[53] *See* William W. Bratton & Joseph A. McCahery, *The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World*, 86 GEO. L.J. 201, 212 (1997) (noting that "a decentralized system likely leads to a lower level of government-mandated wealth redistribution").

[54] *See, e.g.*, WINDSOR, *supra* note 4, at 16 (presenting data on New Jersey school districts).

[55] *E.g.*, Robert C. Ellickson, *The Irony of "Inclusionary" Zoning*, 54 S. CAL. L. REV. 1167, 1198–1200 (1981).

move into the municipality.[56] This practice, known as "fiscal-squeeze" zoning, creates a situation in which newcomers effectively cross-subsidize existing residents.[57] Moreover, it cannot be presumed that there is a general preference for income-based segregation simply because it exists in many neighborhoods. A municipality's choices with respect to zoning are constrained by the behavior of other municipalities in the region: no suburb can afford to open its doors to the poor if every other suburb excludes them. Thus, the ubiquity of exclusionary zoning is not merely the inevitable result of a preference for socioeconomic homogeneity.

The problem of externalized social costs, the phenomenon of jurisdictional competition, and the inability of municipalities to act in concert are all functions of the fragmentation of regional authority among autonomous jurisdictions.[58] Proponents of fiscal autonomy and exclusionary zoning often argue that such a system enhances efficiency and promotes free choice by allowing individuals to select among different packages of social services from competing municipalities.[59] This argument traces back to an influential article by Charles Tiebout entitled *A Pure Theory of Local Expenditure*.[60] Tiebout hypothesizes a world in which households are freely mobile and jurisdictions differ in the type and quantity of public services they are best able to provide. To achieve optimal size, jurisdictions compete for households, and households choose among jurisdictions based on the tax rate and the bundle of services that the jurisdictions offer.[61]

Tiebout's model has been widely criticized for its unrealistic assumptions, which limit its applicability to the real world.[62] In particular, critics have demonstrated that the model does not tend toward equilibrium as long as the assumption of free mobility remains in place.[63] Because local revenues are based on taxes rather than some sort of uniform user fee, the wealthy contribute more to local revenues than do the poor residing in the jurisdiction. Thus, the poor always have an incentive to migrate into wealthy jurisdictions, and the wealthy always have an incentive to leave jurisdictions in which poor residents predominate. Without restrictions on mobility, the poor would therefore end up chasing the wealthy from suburb to suburb in an endless game of "musical suburbs."[64] Bruce Hamilton, among others, has addressed this problem by adding exclusionary zoning to the model,[65] an addition that reduces the model's instability by restricting the mobility of the poor and makes the model more reflective of modern-day conditions.

After this realistic modification, however, the Tiebout model loses its strong normative appeal. Rather than promote free choice, it actually restricts the choices of the poor. Moreover, if the concern over tax-base cross-subsidies is in fact a major reason for locational decisions, even the wealthy are no longer truly choosing their jurisdiction based on the types of social services they prefer. Instead, they simply choose the highest tax-base jurisdiction that they are permitted to move into to receive the most value for their money.[66] Thus, the residents of an exclusive suburb may have vastly different preferences for public services, but they will pay the standard rate for each of them, because the benefits of a large tax base outweigh the drawbacks of not having their relative preferences perfectly matched. For instance, wealthy childless families may still locate in a jurisdiction with high expenditures on schools, despite the fact that they reap no direct benefit from such expenditures. This behavior does not stimulate local governments to provide efficient levels of public services — the outcome Tiebout sought to achieve — but merely leads to competition over tax base. Seen in this context, the Tiebout justification for decentralization is merely a mask for internally homogeneous jurisdictions differentiated largely on the basis of residents' wealth. It promotes neither efficiency nor any morally compelling concept of choice.

II. CREATING INCENTIVES FOR INCOME DESEGREGATION

A. The Proposal and Its Effect on Local Property Taxes and Services

One way to create a system that removes the fiscal incentive to segregate by income would be to pool property taxes from the entire metropolitan area into a common fund, so that no municipality's budget depended on the amount of taxable property within its borders. This

[56] White, *supra* note 51, at 31. The municipality may, for instance, require a one-half-acre minimum lot size for all new housing, even though existing lots average only one-quarter acre.

[57] *Id.*

[58] *See* Bratton & McCahery, *supra* note 53, at 205 (listing these effects as among the potential negative effects of decentralization).

[59] *E.g.*, Schill, *supra* note 9, at 812–13.

[60] Charles M. Tiebout, *A Pure Theory of Local Expenditure*, *in* READINGS IN URBAN ECONOMICS 513 (Matthew Edel & Jerome Rothenberg eds., 1972).

[61] *See* Briffault, *supra* note 5, at 15–16 (summarizing the Tiebout hypothesis).

[62] *E.g.*, Vicki Been, *"Exit" as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473, 515–17 (1991); Bratton & McCahery, *supra* note 53, at 231–32; Briffault, *supra* note 5, at 18–19.

[63] Bratton & McCahery, *supra* note 53, at 227–28 (explaining that built-in inducement for low-income immigration makes the Tiebout equilibrium unstable).

[64] Bruce Hamilton, *Property Taxes and the Tiebout Hypothesis: Some Empirical Evidence*, *in* FISCAL ZONING, *supra* note 51, at 14–15 ("[T]he Tiebout hypothesis seems to be a formula for 'musical suburbs,' with the poor following the rich in a never-ending quest for a tax base.").

[65] *Id.*

[66] *See* Briffault, *supra* note 5, at 19 (arguing that "local taxing and spending decisions are often based not on idiosyncratic local tastes but on the stark differences in local fiscal capacity that divide localities within a metropolitan area").

Note proposes that the fund be divided among jurisdictions in direct proportion to the share of the regional population that each contains.

The primary effects of this proposal may be illustrated by imagining two suburban municipalities, *A* and *B*, with equal populations. For simplicity, assume that the only taxable property within their borders is residential owner-occupied housing. Assume further that the housing consumption of each household is directly proportional to its income.[67] If the average family in Community *A* earns $25,000, well below the regional average of $50,000, and the average family in Community *B* earns $100,000, then the value of taxable property in *B* will be four times the value of such property in *A*. If local expenditures were financed exclusively through a flat-rate property tax on property within the jurisdiction, the tax rate in *A* would have to be four times higher than in *B* to finance the same level of local services. If residents prefer a level of local services that is directly proportional to their income, the two communities might choose to tax themselves at an identical rate, with *B* obtaining four times the revenue of *A*. However, given that at some point each new dollar spent on services is marginally less valuable than the last dollar, we might expect residents of *B* to tax themselves at a lower rate than they otherwise might. For instance, we might expect *B* to set a tax rate of 0.5%, thereby collecting twice as much revenue as *A* with a tax rate of 1%.[68] Figure 1 illustrates the tax rates and per capita revenues of the two communities under this scenario.

[67] This assumption appears to be empirically justified. *See* Richard F. Muth, *Redistribution of Income Through Regulation in Housing*, 32 EMORY L.J. 691, 693 (1983) ("Proper interpretation of the evidence strongly suggests that the fraction of income spent on housing is roughly constant throughout the income range.").

[68] One well-known comparison arising from the *Serrano* litigation, *see supra* note 2, showcased two Los Angeles County school districts in which relative revenues and tax bases corresponded almost exactly to this hypothetical situation. *See* William A. Fischel, *How* Serrano *Caused Proposition 13*, 12 J.L. & POL. 607, 610 (1996).

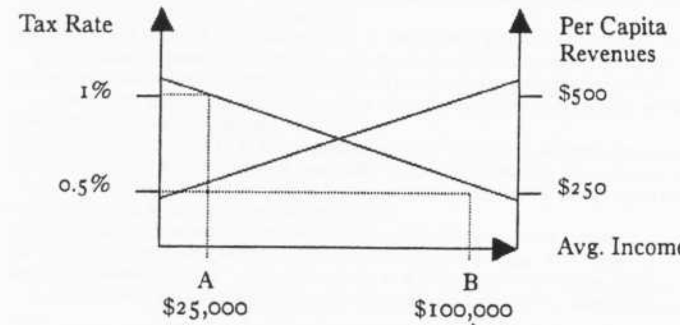

Figure 1. Current Regime

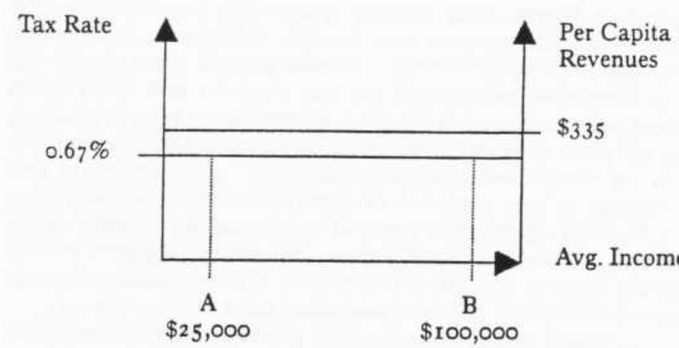

Figure 2. Proposed Regime

The adoption of a uniform regional property tax rate and a population-based revenue-distribution system would dramatically change the fiscal situations of *A* and *B*. They would both be required to assess the same new tax rate, which would be calculated by dividing the total regional revenues by the total regional tax base to ensure that the proposal does not affect the amount of capital invested in real estate. In the example, assume that rate is approximately 0.67%. Because under the new regime the revenue per capita is equal across the region, *A* and *B* would each receive the same amount from the regional fund. Notice that municipalities that are closer to the regional average in terms of income will experience far less difference between the old and new regimes.

Because revenues under the proposal are tied to the population rather than to the tax base, municipalities should be fiscally indifferent to the wealth of entrants into the jurisdiction.[69] Moreover, because the marginal cost of providing a public service decreases as the number of people in the jurisdiction increases, jurisdictions would likely compete for residents. Yet unlike in the competition envisioned by Tiebout, municipalities would seek to attract residents regardless of their income. In this way, the proposed regime will highlight an incentive for economies of scale that is currently obscured by the fiscal advantages of excluding the poor.[70]

Under the new regime, exclusive jurisdictions would have to decide whether to remain exclusive or to begin allowing lower-income housing within their borders. If they choose to remain exclusive, they will be forced to pay for their exclusionary preference with a relatively small public services budget. In response, the wealthy may decide to opt out of the public system of local services and send their children to private schools or hire private security guards to police their streets.[71] They should not be forbidden to do so: it would be sufficient to require them to pay the same amount of local taxes as those who do take advantage of public services. Such a rule would be consonant with current practice, because no one is entitled to withhold taxes for public services he does not consume.

B. Winners and Losers in the Housing Market

In addition to redistributing property tax revenue from wealthy jurisdictions to poor ones and equalizing their levels of social services,[72] regionalization of the tax base is likely to have important secondary effects on the housing market. First, property values in each municipality are likely to increase or decrease depending on whether the municipality's tax-rate-to-services ratio used to be higher or lower than the regional average.[73] In most metropolitan regions, the standardization of the tax rate will mean that central cities and working-class suburbs will experience a significant decrease in their property tax rate, whereas the tax rate in exclusive suburbs will increase. High-density jurisdictions in and around the urban core will receive a much higher proportion of the regional revenues than will less populous low-density jurisdictions at the periphery of the region. Thus, a rise in property values in poor populous jurisdictions, accompanied by a corresponding decline in suburban property values, would be expected.[74] Although many suburbanites are sure to perceive the shift as an assault on their property, the change would take place on the heels of decades of federal subsidies to the suburbs in the form of home mortgage interest deductions and highway construction grants.[75]

The second, and more important, effect of the proposal would be to increase dramatically the incentives for suburbs to allow the construction of multifamily housing. In the present system, developers often lobby suburbs for permission to build multifamily housing,[76] because such housing is more profitable to construct due to savings on land and infrastructure.[77] However, these developer efforts are almost always opposed by residents of the suburbs and their local governments. Under this Note's proposal, in contrast, each new entrant would effectively bring new revenues into the jurisdiction, regardless of whether the immigrant is poor or wealthy. Municipalities may respond to this incentive by repealing or relaxing their exclusionary zoning ordinances. Alternatively, they may simply become more willing to grant zoning

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69 This does not mean that municipalities will be fiscally indifferent to the type of entrants altogether because not all residents require the same expenditures. Most notably, families with school-aged children tend to be a net drain on the municipal treasury. ROBERT ELLICKSON & VICKI L. BEEN, LAND USE CONTROLS: CASES AND MATERIALS 755 (2000). Although it may be difficult for a jurisdiction to exclude families with schoolchildren directly, the local government may attempt to prevent the construction of housing, such as multibedroom units, that tends to be occupied by families with young children. *See, e.g.*, WINDSOR, *supra* note 4, at 73 (documenting this practice in suburban New Jersey). One way to reduce the incentive for such behavior would be to provide greater per-pupil federal or state subsidies to schools.

70 The incentive for economies of scale affects not only the density of jurisdictions, but also their size. Some of the smallest jurisdictions affected by this proposal therefore might find it uneconomical to provide their own public services and thus might either enter interlocal agreements for the common provision of some services or merge entirely with a neighboring jurisdiction. This possibility, however, does not detract from the argument that higher densities will become desirable, even for large low-density jurisdictions.

71 *Cf.* Clayton P. Gillette, *Opting Out of Public Provision*, 73 DENV. U. L. REV. 1185, 1188 (1996) ("[T]he case for opting out of the governmentally supplied level of service proceeds from the desire to achieve one's preferences privately where one is unable to satisfy them through the political process.").

72 *See, e.g.*, ORFIELD, *supra* note 3, at 145 (describing the distributive benefits of Minnesota's tax base sharing plan).

73 Studies have shown that the relative desirability of a jurisdiction's tax/services ratio is capitalized into property values. Vicki Been, *"Exit" as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473, 521–22 (1991) (citing a number of studies that support the capitalization hypothesis). Thus, a change in the tax/services ratio should exert a direct effect on property values.

74 It is important to note that most of the urban poor do not directly benefit when property values increase because they rent their dwellings. Thus, the immediate winners from the shift in property values are likely to be urban landowners and residents of working-class inner suburbs, where home ownership is common.

75 *See* PETER HALL, CITIES OF TOMORROW 291–94 (1988) (identifying federal mortgage subsidies and highway programs as among the primary foundations of the suburban boom).

76 *Cf.* ORFIELD, *supra* note 3, at 80 ("Th[e building] industry has long argued that regulatory barriers such as large lot sizes, prohibitions on multifamily housing, and assorted fees hurt the natural marketplace for affordable housing.").

77 Dietderich, *supra* note 15, at 52 (showing the cost savings from higher density construction).

variances to developers of dense residential projects.[78] Under either scenario, it is likely that more multifamily housing will be constructed in the suburbs.

The immediate beneficiaries of reducing exclusionary zoning will be developers and occupants of new multifamily housing. In addition, suburban landowners are likely to enjoy an appreciation in the value of their land in response to the possibility of converting it to multifamily uses. This appreciation will be offset by the possibility that multifamily housing may now be constructed on nearby property; however, if exclusionary zoning is inefficient,[79] the net effect on land values should still be positive. Current owners of multifamily housing or land zoned for multifamily housing will simply lose the premium on land value they enjoyed due to the supply restriction imposed by exclusionary zoning.[80]

Persons migrating into the new multifamily housing are likely to be middle-class renters rather than the poorest city residents because the poorest residents cannot afford the rents in a new building. Nevertheless, those with low incomes are likely to benefit indirectly because middle-class residents create vacancies in the existing housing stock when they move into new buildings.[81] This process of housing "filtering" down the income ladder is often invoked by law and economics scholars to argue that the poor benefit from all types of high-income residential construction.[82] There are a number of reasons, however, that filtering arguments in that context are problematic. First, the inhabitants of new luxury homes on the urban fringe are so far from the poor on the income scale that it would take an extremely long chain of housing moves for this new construction to create vacancies in housing that the poor can afford to occupy. The more steps there are in this chain, the more likely it is that interim owners will appropriate any consumer surplus resulting from the new construction and the filtering chain will stop.[83] Second, the types of housing amenities valued by

[78] WINDSOR, *supra* note 4, at 73 (noting that local officials may grant ad hoc variances for multifamily structures if large-scale zoning for such purposes is politically unpopular).

[79] *See, e.g.*, FISCHEL, *supra* note 49, at 53 (criticizing all growth controls as imposing a net cost on society).

[80] For a detailed consideration of this "exclusivity premium," see Dietderich, *supra* note 15, at 55–59.

[81] John C. Weicher, *Private Production: Has the Rising Tide Lifted All Boats?*, *in* HOUSING AMERICA'S POOR 45, 53–63 (Peter D. Salins ed., 1987) (describing this filtering phenomenon).

[82] *See, e.g.*, Ellickson, *supra* note 55, at 1185 ("[L]ow- and moderate-income families benefit from the construction of housing at all levels of quality, including the highest quality units that they could not conceivably afford to buy.").

[83] Studies show that filtering chains resulting from new construction are, in fact, relatively short. *See, e.g.*, Gary Sands, *Housing Turnover: Assessing Its Relevance to Public Policy*, *in* HOUSING IN AMERICA, *supra* note 24, at 180 (discussing findings that filtering-chain lengths for a variety of newly constructed units in Rochester, N.Y., ranged from 2 to 2.5 units).

high-income residents are different from those that the poor value. Thus, luxurious amenities are wasteful if the goal is to give better housing to the poor. Most claims about filtering fail to take this fact into account, because they use a unit's price to determine the amount of housing it represents.[84] Finally, low-income renters may not benefit from vacancies in the fee simple housing stock, because the rental and ownership markets are sufficiently distinct from each other. The difficulty of saving for a down payment or obtaining a mortgage may prevent low-income renters from becoming homeowners, and local zoning rules may prevent conversion of vacant homes to rental uses.[85]

The proposal under consideration, however, minimizes these concerns by stimulating the construction of housing that is much closer in terms of price, amenities, and type to the kind occupied by the poor. Dense multifamily housing is generally much more affordable than single-family units, and the amenities in such housing tend toward utility rather than luxury. Finally, units in multifamily buildings are more likely than single family structures to be available for rent rather than sale.

In light of the already-mentioned potential effects of the tax-base regionalization proposal, it is important to consider the proposal's impact on the phenomenon of gentrification. If regionalizing the tax base would cause many suburbanites to move to the city, the effects of this migration on the poor would have to be considered.[86] However, it is unclear whether gentrification pressure will actually increase under the proposal. On the one hand, inner-city properties will become more desirable to high-income individuals because, with a regionalized tax base, residents of these properties will no longer have to bear a disproportionate burden of the financial costs associated with regional poverty. On the other hand, if more multifamily housing were constructed throughout the metropolitan region, those who prefer apartment living would no longer be forced to compete for a small number of luxury apartments in the central city. Regardless of how these two factors balance, however, the market for gentrified housing would likely become more efficient because it would be unhampered either by arbitrary financial burdens that require neighbors to pay for each other's public services, or by artificial restrictions on the housing supply that result from exclusionary zoning.

Finally, this proposal has the potential to reduce urban sprawl. Sprawl is the pattern of low-density and leapfrog development in a

[84] *See* Dietderich, *supra* note 15, at 44–45 (criticizing this practice).

[85] *Id.* at 95 & n.189, 96.

[86] *Cf.* Allison D. Christians, *Breaking the Subsidy Cycle: A Proposal for Affordable Housing*, 32 COLUM. J.L. & SOC. PROBS. 131, 139 (1999) ("Gentrification . . . has an overall negative impact on low-income families.").

metropolitan region.[87] Among the negative effects of sprawl, scholars list: the destruction of natural open space; the high cost of public improvements such as roads and sewers; the increased mismatch between the location of jobs and residences, which leads to increased commute times; and the spatial isolation and fragmentation of regional communities.[88] The proposal is likely to reduce sprawl in two ways. First, by encouraging high-density construction, the proposal ensures greater use of land that is already within developed areas. Second, by ensuring that the wealthy cannot evade the taxation burden by moving, the proposal reduces the incentive to incorporate new municipalities on the urban fringe. Unlike an outright prohibition on sprawl, this proposal leaves the details of sprawl reduction up to the market rather than to a planning agency.[89]

III. POTENTIAL CRITICISMS OF THE PROPOSAL

Regional tax base sharing of the type proposed in this Note has never been adopted in any metropolitan region,[90] but if implemented, it would inevitably have far-reaching effects. The nature and desirability of these effects is clearly open to debate, and detractors are sure to attack this idea on a number of grounds. This Part responds briefly to the most likely objections related to the proposal's fairness, efficiency, and effectiveness.

Some might argue that it is only fair that residents of exclusive suburbs receive the full benefit of the wealth and taxes that they generate. This argument considers the sharing of tax revenue to be an illegitimate cross-subsidy from rich jurisdictions to poor ones. Yet it is difficult to see why residents of suburbs are entitled to avoid redistribution through property taxes, whereas landowners in the central city are not. To justify the distinction, critics might fall back on some form of expectation-based argument,[91] which would turn the objection into

[87] Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 137, 141 (1999).

[88] Shelby D. Green, *The Search for a National Land Use Policy: For the Cities' Sake*, 26 FORDHAM URB. L.J. 69, 77–79 (1998).

[89] In this respect, this proposal differs from the solutions to sprawl advocated by most critics. *See, e.g.*, *id.* at 118–19 (lamenting the defeat of a federal bill that would have required more comprehensive land use planning). For skeptical perspectives on planning, see ELLICKSON & BEEN, *supra* note 69, at 76–83 (noting that "public planners are unlikely to have the knowledge, incentives, and legitimacy to succeed at comprehensive planning").

[90] The most ambitious existing program, in force within the Twin Cities area of Minnesota, redistributes 40% of the growth in the commercial industrial property tax base. *See* ORFIELD, *supra* note 3, at 87–90 (describing the Twin Cities program).

[91] For instance, they could assert that the proposal would interfere with suburbanites' investment-backed expectations, whereas current urban residents choose to live in the city knowing that their taxes will be redistributed.

an argument against change rather than against the rule itself. But a though death and taxes are both certain, the exact rate of taxation - like the timing of death — is not predictable and should not be reli on as unchanging.

Arguments based on individual rights are incoherent in this co text. The "right" to have one's taxes spent on one's own househol does not currently exist in any meaningful sense and would contradi the very concept of taxation if it did. Given this understanding, th argument is reduced to the contention that geographically broadenin the tax base violates some individual right to cross-subsidize or to b cross-subsidized only by one's immediate neighbors.

The only plausible rights-based attack on the proposal appears t be rooted in some group right to local autonomy vested in suburba municipalities. In this vein, the supreme courts of Wisconsin an Texas have held that property tax redistribution schemes in whicl some municipalities subsidize other municipalities' school expenditure violate their respective states' constitutional provisions that reserve th local property tax to local uses.[92] Such provisions, however, stand a exceptions to the general rule that state legislatures are free to abrogat local government power.[93] Despite most states' adoption of "hom rule" provisions during the twentieth century,[94] local government have few vested rights. This assertion does not, of course, put to res the argument that local autonomy should be respected as a matter o policy. There is, however, a strong argument against autonomy when local action imposes costs on other jurisdictions, and this Note has attempted to demonstrate that local fiscal autonomy does in fact produce undesirable effects throughout a metropolitan region.

However, because local decisionmaking certainly has some advantages, the proposal could be amended to allow jurisdictions to set their tax rate above the regional minimum. A community desiring to tax itself more heavily to produce a higher level of local services should be permitted to do so. However, a community's desire for local services is more equitably measured by the tax effort it is willing to undertake, that is by the tax rate rather than by the amount of taxes collected.[95] This is the case because wealthier jurisdictions receive a much higher return on every tax rate increment than poorer ones, so that the

[92] Carrollton-Farmers Branch v. Edgewood, 826 S.W.2d 488, 524 (Tex. 1992); Buse v. Smith, 247 N.W.2d 141, 143 (Wis. 1976).

[93] Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1062 (1980).

[94] *Id.* at 1062–63.

[95] In this aspect, the regime resembles district power equalization, a proposal put forth by school funding reformers to address educational inequities. For a summary of the concept of district power equalization, see Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 27–28 (1990).

amount of taxes collected depends much more on a jurisdiction's wealth than on its relative desire for local services. By allowing municipalities to draw from the regional pool in proportion to the locally-set tax rate, the proposal equalizes the power of wealthy and poor jurisdictions to set the level of social services they desire. In this way the proposal, unlike systems such as the Tiebout model that make choices contingent on ability to pay,[96] makes choices available to the poor and the wealthy alike.

In sum, the proposal should not offend our notions of fairness and actually promotes fairness in a fundamental way. Under the current regime, the poor pay at a higher rate than the wealthy for basic services such as education, police protection, and sanitation, yet the services they receive in return are often inadequate. The proposal would eliminate this regressive aspect of the property tax, and would spread the burden of funding local services in proportion to people's ability to pay.

It is important to note that if this distributive goal were the only benefit of the proposal, critics would claim that another means, such as the federal income tax, might achieve it better.[97] However, as discussed above, the regional property tax has unique secondary benefits: it is a means of alleviating harmful feedback effects in the housing market and allowing mixed-income communities to exist. If there is value in the creation of mixed-income neighborhoods,[98] the regional tax may be the best way to counteract housing market dynamics that lead to income segregation. Moreover, if racial and class prejudice is a strong motivating factor in the suburbs' desire to exclude the poor, imposing a cost on them might be justified should they choose to remain exclusive.

The second category of objections to the proposal involves claims that it will decrease net social welfare. Law and economics scholars always have a ready arsenal of arguments to challenge the efficiency of government efforts to assist the poor, because these efforts almost inevitably interfere with the functioning of markets.[99] Nevertheless, the proposal under consideration should be less offensive to these scholars than more typical government interventions. First, despite the Tiebout

[96] In the market context, the number of choices available to an individual is directly proportional to the size of that individual's bank account. Whenever society finds this consequence inequitable, there is a strong argument for interventions that would distribute goods and services on a more egalitarian basis.

[97] *E.g.*, Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. LEGAL STUD. 821, 821 (2000).

[98] *See* Schill, *supra* note 9, at 811.

[99] *E.g.*, Ellickson, *supra* note 55, at 1187 (criticizing inclusionary zoning programs as inefficient).

hypothesis, there is significant evidence that centralization may b more efficient because local autonomy leads to prisoner's dilemmas[1 and externalities that cannot be cured by voluntary bargaining.[1 This Note has attempted to highlight the existence of some of the conditions, any of which would ordinarily be sufficient to negate th general presumption of market efficiency. Second, the proposal ir volves very little government oversight and decisionmaking.[1 Rather, it acts on the background rules of local finance and relies o the resulting incentives as the engine of change. Third, the propos modifies incentives through the tax system, which economists accept a a relatively efficient method of achieving public policy goals.[103] Natu rally, all taxes are not alike, and this proposal's reliance on the prop erty tax to achieve redistributive goals is likely to be questioned. Afte all, property taxes decrease investment in real property,[104] so they ar potentially more distortive than the income tax or more esoteric taxe like the land-value tax.[105] In response, it is important to point out tha the proposal would not increase the total amount of taxes collected o the regional level, so in the aggregate there should be no deterrent t investing in real property. Thus, arguments regarding the relative in efficiency of the property tax, whether meritorious or not, are argu ments against the status quo as much as against the proposal.

Law and economics scholars often argue that cross-subsidies ar inefficient because they cause overconsumption of the good by the sub sidized and underconsumption by the subsidizers. However, this ar gument may not apply to local public services because, as explaine above, one's level of consumption of public services does not directl affect their price. The objection is nevertheless relevant to the exten that the proposal is likely to effect a subsidy of low-income and multi-family housing at the expense of a decrease in the property values o single-family homes. Because there is a market for housing, it could be argued that the proposal might lead the wealthy to consume less housing while the poor will consume more. This criticism, however,

[100] Cashin, *supra* note 42, at 1988.

[101] *Id.* at 2030–31 (arguing that interlocal agreements are unlikely to resolve regional problems such as the shortage of affordable housing).

[102] In fact, monitoring would only be needed to verify that localities faithfully collect property taxes and do not inflate the number of persons actually residing in their jurisdictions. If necessary, a regional auditing authority might be established for that limited purpose.

[103] *E.g.*, Kaplow & Shavell, *supra* note 97, at 821 (asserting that the income tax is a more efficient means of redistribution than the modification of legal rules to assist the poor).

[104] George E. Peterson, *The Issues of Property Tax Reform*, *in* PROPERTY TAX REFORM 1, 10 (George E. Peterson ed., 1973).

[105] Scholars in the tradition of Henry George have often argued that taxes on land value are efficient, equitable, and easy to collect. *See generally* Andrejs Skaburskis, *The Consequence of Taxing Land Value*, 10 J. PLAN. LITERATURE 3 (1995) (reviewing the literature and empirical evidence on the subject).

overlooks the one-time nature of the shift in property values; consequently, the losses of the wealthy area should not affect future housing consumption.[106] Of course, in a manner of speaking, the regime will create a continuing cross-subsidy in favor of those who prefer class-integrated neighborhoods at the expense of those who prefer income segregation, but virtually all legal rules have distributive consequences of this type.[107]

The final economic argument against the proposal considered here involves its effect on nonresidential property. Given a population-based disbursement of regional revenues, the presence of industrial property in a jurisdiction ceases to be a tax advantage and actually decreases the municipality's revenues by taking up space that could be used for residences. Thus, under the proposal, industrial property may replace multifamily housing as a locally undesirable land use (LULU). This local effect may result in sub-optimal amounts of space dedicated to industrial development if each jurisdiction would prefer such development to occur elsewhere.[108] Alternatively, however, a jurisdiction may believe that industrial development within its borders will attract employees to locate there in order to minimize commute time, thereby increasing the local population. In that case, some industrial development may remain a fiscally attractive proposition for municipalities. As is the case with other elements of the proposal, this element's efficiency or inefficiency is difficult to demonstrate theoretically, and it cannot be tested empirically until it is tried.[109]

The last category of objections to the proposal is potentially the most devastating because it consists of claims that the proposal will fail to achieve its stated goals. First, it may be argued that the proposal does not address income segregation at the neighborhood level. Just as central cities now have wealthy and poor neighborhoods, each suburb, although motivated to attract residents regardless of wealth,

[106] Economically rational people will ignore sunk costs. *But see* Christine Jolls, Cass R. Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1482–83 (1998) (acknowledging that "according to traditional analysis, decisionmakers will ignore sunk costs (costs that cannot be recovered[)] . . ." but arguing that in reality they do not).

[107] *E.g.*, Duncan Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 STAN. L. REV. 387, 422–23 (1981).

[108] For an explanation of the LULU phenomenon, see Vicki Been, *What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1001–03 (1993).

[109] If the proposed regime does, in fact, negatively impact industrial or commercial property in the region, it could be tailored to eliminate these effects by reducing the tax rate assessed on such property throughout the region. Although the proposal's benefits depend on a uniform tax rate for residential property, it does not follow that commercial and industrial property must be taxed at the same rate. Because all local property tax revenues would be pooled into a regional fund, smaller tax receipts from nonresidential uses should not affect a municipality's willingness to allow such uses within its borders.

might try to segregate them in discrete neighborhoods within the jurisdiction. After all, eliminating the fiscal advantages of income segregation leaves intact the nonfiscal incentives for such segregation on the block and neighborhood levels. Admittedly, the inability of the proposal to encourage desegregation on those levels is a serious shortcoming. Nevertheless, the proposal is likely to result in much greater proximity between different income groups simply because it will reduce the homogeneity of municipalities. Moreover, the proposal creates a greater possibility of fiscally stable mixed-income neighborhoods, even though it stops short of mandating their creation.

Whereas the first ineffectiveness claim focuses on the neighborhood level, a second claim takes a supraregional perspective and asserts that the wealthy will be able to escape regional redistribution by leaving the region. They may do so by migrating either outside the boundaries of the metropolitan region or into other metropolitan regions that have not adopted regional tax-base sharing. The first alternative, however, is limited by the wealthy household's tolerance for commuting, the cost of relocation, the state's ability to redefine metropolitan boundaries to include new territories, and zoning rules that preserve rural land for agricultural use or open space. The second alternative is limited by the costs of relocation, the extent to which people perceive cities as nonfungible, and the likelihood that other regions will adopt regional tax-base sharing. It is likely that some families will be undeterred by these costs and risks, but it is even more likely that the vast majority of homeowners will remain exactly where they are. The cost of interregional migration is much higher than the cost of moving to another jurisdiction within the same region,[110] so an analogy to white flight in the face of racial desegregation is less appropriate than it might otherwise appear.

IV. CONCLUSION

The problem with the current approaches to income desegregation, such as "fair-share" housing,[111] is that they operate within a framework in which wealthy municipalities have incentives not to allow lower-income residents into their jurisdiction. Because the construction of low- or moderate-income housing is so dependent on an array of local decisions, these municipalities are quite likely to be able to delay and frustrate the goals of income desegregation programs in the

[110] It is often possible to move within the metropolitan region and preserve one's job and social network, but it is rarely possible to do so when moving between regions.

[111] For instance, New Jersey's *Mt. Laurel* doctrine requires that each developing municipality provide affirmative opportunities for the development of low- and moderate-income housing within its borders. NAACP v. Mt. Laurel, 456 A.2d 390, 413 (N.J. 1983). *See also* Schill, *supra* note 9, at 845–47 (summarizing the *Mt. Laurel* cases and their impact).

same way that school districts have been able to frustrate the goals of racial desegregation for decades. The proposal in this Note alleviates this problem by creating incentives for each jurisdiction to take the initiative in class desegregation. Naturally, the residents of wealthy jurisdictions are likely to oppose the proposal because, from an *ex ante* perspective, it creates incentives at their expense. Yet once the proposal is adopted, their calculus should change: income desegregation will be in the immediate self-interest of the wealthy suburbs, or at least much more so than under the current regime.

The prospects of such a proposal being adopted by a state legislature are relatively low due to the fierce suburban opposition it is likely to generate. However, as Myron Orfield points out in *Metropolitics*, the residents of central cities and working-class suburbs may unite into a majority coalition when they realize that regional redistribution would be to their benefit.[112] Members of the "favored quarter"[113] would then have to submit to the decision of the majority of voters, and the proposal would be enacted. Many practical barriers lie in the path of organizing all the groups that would benefit under the proposed regime, but they are beyond the scope of this Note. This Note has only attempted to demonstrate the social desirability of a regional tax base sharing regime and its beneficial consequences for income desegregation in the housing market.

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[112] *See* Cashin, *supra* note 42, at 2035; *see also* ORFIELD, *supra* note 3, at 104–72 (devoting two chapters to demonstrating the possibility of regional coalition-building of this type).

[113] Cashin, *supra* note 42, at 1987.