CURRENT ISSUES IN URBAN ECONOMICS

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THE JOHNS HOPKINS UNIVERSITY PRESS
BALTIMORE AND LONDON

1979
INTRODUCTION

During the past decade a vast number of legal actions have been taken against state and local governments in an attempt to bring about greater equality in the distribution of public services and taxes. From the point of view of an urban economist, the cases are relevant because they have important consequences for the analysis of expenditure, taxation, and land-use policies. This paper will analyze the likely economic impact of court originated or court ordered policies with income distribution implications. This analysis is relevant for economists (and lawyers) for two reasons: it suggests the kinds of institutional constraints that local public decision-makers are likely to face, and thus, which ought to be incorporated into models of urban fiscal behavior; and it suggests specific empirical policy questions that remain largely unanswered and that may provide fruitful grounds for future research.

The history of legal attempts to attain equity through the local public sector is a complex one. However, one might summarize the recent history by arguing that reformers have focused on the following four objectives: (1) equal provision of education and other public services within jurisdic-
tions; (2) equal (effective) tax rates for all households within jurisdictions; (3) equal capacity (tax bases) among jurisdictions to finance education; and (4) the removal of minimum lot zoning and other land-use controls to open all jurisdictions to low-income housing. To some extent these objectives are consistent with a broad view of horizontal equity (equal treatment of equals) and are thus an end in themselves. What is of direct concern here, however, is that whether intended or not, the objectives can and will lead to a more vertically equitable distribution of income.

Much of the economic underpinning of my analysis lies in the recent (i.e., the past decade) literature of the urban and public economics disciplines. Part 1 of the paper describes some aspects of this literature that are pertinent to my discussion of the impact of the recent court decisions. Parts 2 and 3 consider the economic and legal issues surrounding the four equity objectives. In Part 2 the vertical equity and efficiency consequences associated with each of the two intrajurisdictional equity objectives are considered. I describe the existing case law and ask whether the courts are likely to be successful in bringing about either tax-rate or expenditure equality, whether the imposition of such constraints upon local governments is likely to increase or decrease efficiency, and whether there will be any improvement in the distribution of income.

Part 3 is concerned with the interjurisdictional equity objectives. I consider the legal history relating to the distribution of tax burdens and expenditures among jurisdictions within the metropolitan area, asking whether the courts have been or are likely to be successful in bringing about jurisdictional tax base equality or in removing zoning and other constraints that limit the supply of low-income suburban housing and the access of low-income households to suburban public services. In addition, I consider the efficiency and vertical equity implications of tax base equality and equal access. The final section contains a brief summary of the chapter and some tentative conclusions concerning the legal approach to local public-sector equity. I have attempted neither to survey all substantive areas relevant to the equity issue nor to exhaust the case law in the subject areas mentioned. Specifically, recent developments in the area of environmental law have been omitted, in part because the policy consequences apply more to state and regional than to local government. School desegregation cases are relevant; but, although school desegregation can help to achieve intrajurisdictional expenditure equity and improvements in access to public services among jurisdictions, the topic has been omitted, largely because of Clotfelter's treatment of school desegregation in chapter 11.
1. THE METROPOLITAN SYSTEM

The Model

The analysis of the impact of recent court opinions on the urban system requires an understanding of the motivations of households, firms, and governments viewed in the context of a metropolitan system of fragmented governments with a fixed total population. I choose to distinguish between the motivations of central-city jurisdictions and suburban jurisdictions, in part because a substantial portion of the urban poor reside in the city center, and in part because the policy options available to central-city governments differ from those available to their suburban counterparts. The court decisions are viewed as suggesting changes in the status quo. I then outline the likely responses of economic actors to the mandated changes, placing emphasis on the middle- and long-run impact of the legal attempts to attain equity. However, the courts are concerned with the short-run effect as well and are equipped to monitor the enforcement of decisions so that long-run and short-run impacts are not divergent.

Individual households are assumed to maximize utility subject to an income constraint. Assume first that the maximization process involves the household that chooses as its desired level the actual mean level of public spending in the community. This household calculates its desired level of public service expenditures, given its income (net of journey-to-work costs) and the "tax-price" that it faces. The tax-price (defined as the added cost to the household of financing an extra dollar per household of public services in the community) implicitly defines the household's public-private budget line. Given an exogenous set of matching and nonmatching grants and the assumption that all revenue is raised through the property tax, the tax-price will vary positively with the value of the house owned by the decisive voter, and inversely with the value of the per household fiscal base of the community.

If the decisive household chooses to remain in its present location, the analysis is complete. However, like all households, it has the option of relocating by calculating the desired public expenditure level, given the tax-price and income (net of transport costs) at alternative locations. The level of utility to be attained will be inversely related (other things being equal) to the tax-price that the household faces, and inversely related to the discrepancy between the household's desired level of public expenditure and the actual level of expenditure provided in each community. Only if the increased utility of a more desirable location outweighs the cost of moving will the household choose to relocate. If the household initially under consideration is not decisive, the previous analysis would be slightly more complex because the household suffers a loss in utility that depends on
the difference between its desired expenditures and the level actually provided.

Firms are presumed to be profit-maximizers or at least to be locationally sensitive to profit incentives. As a consequence, an increase in the tax burden facing a firm without a concomitant increase in public services, or an adverse land-use policy change, will increase the probability that the firm will choose to leave the jurisdiction. Governments are assumed to act as agents for the existing group of households and firms residing in that jurisdiction. Thus, each government will attempt to restrict immigration so that new households and firms will increase the utility of the decisive household. Making this objective operational is difficult (for one thing the decisive household may change as a result of any shift in public policy), and various authors have tried alternative approaches. Rothenberg, for example, assumes that the government attempts to maximize aggregate land value in the community; White suggests a number of objectives, including maximization of the total value of existing houses (a proxy for wealth). Whatever the specific form of the objective function, I assume that governments are motivated to encourage immigration of those households that provide a nonnegative (positive) fiscal surplus and to discourage immigration of those with negative surpluses. The fiscal surplus is defined as the additional tax revenues generated minus the increased (marginal) cost of public services associated with the new immigrants. Similarly, the government is likely to encourage immigration of firms that add more to tax revenues than to public expenditures.

The hypothesized governmental attitudes toward new entrants suggests the importance of obtaining empirical evidence concerning the fiscal motivations of local governments. It has usually been assumed that governments find higher-income households more desirable than lower-income households. On purely fiscal grounds, however, this need not always be true. On one hand, if single-family high-income households have several school-age children during their life cycle, the increased tax base may be more than counterbalanced by added expenditures. On the other hand, high-rise apartments with low-income households can be fiscally desirable, especially if the number of bedrooms is limited. In fact, it is not inconceivable that severely limiting all future immigration may be optimal from the government’s viewpoint. This suggests one explanation for the recent appearance of no-growth policies in newly developing suburban communities.

From the viewpoint of immigration by firms, two empirical issues seem relevant. First, to what extent do firms provide a fiscal residual that is available for allocation toward the provision of public expenditures to households? Second, how do available fiscal residuals compare to the environmental costs associated with firm location? If firms were mobile and there were no institutional constraints, communities might bid away much of the fiscal surplus associated with firm location. However, any fiscal sur-
plus that remains is likely to serve as compensation for the undesirable external effects associated with the immigration of the firm. Preliminary evidence suggests that there are fiscal benefits, but that they are not large relative to other determinants of local expenditures and taxes; the fiscal benefits may balance the environmental costs.

The Policy Instruments

Consider the behavior of central-city governments, whose objective is to slow or stop the out-migration of both firms and high-income households. One obvious method is to use variations in assessment ratios to alter the economic incentives of potential out-migrants (hereafter called the assessment-variation policy). While the reasons for existing variations are not solely fiscal, some selected results are consistent with the view that assessors give tax breaks to the more mobile high-income households and the large industrial firms that represent a potentially major fiscal loss to the community.9

An analogous policy instrument is available on the expenditure side of the budget. Many local public services, such as sanitation, fire, and education, may differ in their provision by neighborhood and even by household. As a result, expenditures on inputs can be varied to provide better services to the more mobile households and firms, in particular to those whose out-migration would be likely to adversely affect the central city fiscal base (this is called the expenditure-variation policy).10 I should note that both the assessment and expenditure variation policies typically involve differential treatment by neighborhood and by housing type and value. The impact of such policies on household income is more complex, depending upon the correlation between income and house value and the use of a current or permanent income measure.

Central city governments have the option of altering the mean quantity of public services provided as well as the geographical composition of those services. Higher expenditures are likely to be attractive to mobile high-income households but may involve a loss of consumer surplus for low- and middle-income households with low desired levels of public expenditures. From the point of view of suburban jurisdictions, a substantial increase in public expenditures, with a corresponding tax liability, will most probably diminish the utility to be gained by low-income households choosing to reside in the community, since the tax increases will be valued highly while the expenditure benefits will not. However, any loss in consumer surplus to high-income households is liable to be small. Thus, low-income residents can, in principle, be deterred (despite the low tax-prices), by being forced to consume a luxury level of public goods.

This effect on low-income households is strengthened substantially if
potential residents are constrained by zoning to buy houses on a minimum-size lot. Zoning is a policy instrument most easily available to suburban governments in jurisdictions with available vacant land. While motivated in part for externality reasons, these minimum-lot regulations, bedroom requirements, and set-back restrictions, as well as land-use regulations controlling apartments and mobile homes, clearly allow governments to discourage low-income entrants. In effect, the government utilizes zoning to increase the tax-price of public services and the housing price-of-entry to suburban communities. Low-income households may also find zoned suburban locations undesirable because they do not place a high value on low-density housing and because the travel costs of commuting to centrality jobs may be substantial. Similar arguments can be applied to firm immigration, since land-use controls on the type and extent of commercial and industrial use provide a powerful policy tool for suburban governments.

The analysis of zoning changes is complex because of the impact of these changes on the fiscal base of the jurisdictions. Consider, for example, the impact of a zoning decision that allows a new industry to enter a community. Any fiscal surplus associated with the new entrant will improve the fiscal situation of the existing residents, but to the extent that there are externalities associated with the firm’s location near residential areas, the market value of those single-family homes (and land) may fall. In fact, there is some evidence that there is capitalization of the externalities associated with residences located near firms.

The effects of minimum-lot residential zoning are also difficult to analyze. Theoretical models of residential zoning suggest that minimum-lot zoning is likely to cause an increase in housing prices in the community, but the impact on aggregate house and aggregate land value is theoretically indeterminate. The reasoning is quite straightforward. On the one hand, a binding zoning policy is likely to create an excess demand for housing and cause housing and land prices to rise. Lower population and housing density, however, are likely to be associated with lower housing prices, making the difference in property values unclear. In addition, a high minimum-lot zoning policy forces the production of houses that are more land intensive than optimal, given the original level of land prices. This housing production inefficiency will be borne in the long run by landowners, and a countervailing tendency to force land prices down will result.11

In this chapter I have chosen to stress the fiscal motives of households, firms, and governments, but I do not mean to imply that fiscal motives are necessarily of paramount importance in each and every instance. Zoning and land-use regulations have clearly been used to deal with many types of externalities, and zoning that is apparently fiscal in motivation may discriminate against racial, ethnic, or occupational groups, intentionally or not.12
Efficiency in the Metropolitan System

Prior to analyzing the judicial attempts to improve the distribution of household income within metropolitan areas, it is useful to consider what an "optimal" allocation of resources within an urban area might involve. I will use this normative discussion in the analysis of the consequences of the four equity objectives to point out the frequent conflict between equity norms and efficiency. The concept of optimality, or efficiency in resource allocation, has been described by a number of authors in the context of a somewhat distinct set of metropolitan models with varying assumptions and objectives. As a result, it is useful to distinguish among several ways in which inefficiencies might arise in a suboptimal system.

Consider a long-run Tiebout-like model of a system of local jurisdictions in which migration is costless and there are no interjurisdictional externalities and no biases in local budget determination. Assume also that public services can be provided at any level but must be available uniformly to all households within a jurisdiction. Then the efficient allocation of resources requires a varying pattern of public services among jurisdictions, with all households in each jurisdiction being satisfied in their public service demands. (I presume here that education is not a merit want, which society provides despite a lack of private demand.) Each household simply moves to the jurisdiction in which its preferred bundle of public service is provided, so that homogeneity of tastes for public services is a necessary condition for efficiency. With assessment rates assumed fixed, efficiency necessitates that all households live in identical houses, consume equal public services, and pay identical property tax bills. For equilibrium to be maintained, any household paying more than it obtained in benefits could move to a more desirable community, while households wishing to purchase a small house and to pay less than their share would be excluded by a properly designed scheme, such as zoning. In effect, the zoning system is used to guarantee that all households consuming identical public services face the identical tax-price; and the property tax serves as a pure benefits tax, since the marginal benefit of public services just equals the marginal cost.

Whenever the actual allocation of resources differs from the Tiebout allocation, inefficiencies can arise. It is difficult to fully characterize the sources of these inefficiencies, but for the present some illustrative examples should suffice. Tiebout presumed that his optimal allocation of resources would involve each community in the production of local public goods at a minimum average cost. Thus, to the extent that population and public services are otherwise allocated, a source of public-sector-production inefficiency is introduced. In addition, optimality requires that all households consume their desired public service bundles; the provision of service bundles at
other than the desired level for all households results in inefficiency in consumption.

In his discussion of the optimality of group segregation, McGuire implies that when high- and low-income households are mixed in a community, house values will generally differ so that high-property-value households face higher tax prices than low-property-value households, even though both consume the identical level of public services.\textsuperscript{15} McGuire illustrates quite clearly that both households could be made better off if the subsidy from high-income households to low-income households was a direct income transfer rather than a transfer involving distortions in tax-price. In effect, the tax-price distortion results from a property tax cum transfer-in-kind, which is clearly less efficient than an unconstrained income transfer.

Now consider a short-run model (without zoning) in which the housing stock is assumed to be fixed. Since house values vary within communities, tax prices also vary (assuming that all households face identical tax rates). As a result, low-income households with low demands for housing tend to migrate to communities in which they obtain positive fiscal residuals, and high-income households have an incentive to move from jurisdictions in which their fiscal residuals are negative. This creates a kind of inter-jurisdictional fiscal inefficiency in that, other things being equal, the distribution of the population among jurisdictions in the metropolitan area is not optimal. To see how the inefficiency is created, consider the impact on the metropolitan economy of a high-income household choosing to migrate from the central city to the suburbs. When the household leaves the central city, the fiscal base is likely to diminish, with relatively slight savings in public-service costs; the suburban community will gain in fiscal surplus as a result, but the members of the central city have no vote in the matter. In other words, in choosing to migrate to the suburbs, the high-income households ignore the costs imposed on the central city and the benefits conferred on the suburbs. Only if newcomers are taxed unequally to account for the social benefits and costs of a move can efficiency be achieved. This suggests that discriminatory taxation is a necessary condition for efficiency.\textsuperscript{16}

To conclude the efficiency discussion, it is natural to ask to what extent the existing pattern of resources in most metropolitan areas approximates the efficient one; although such a question is clearly too complex to answer here, it is worthwhile to reflect briefly on some implications of our analysis. First, policies of assessment variation are likely to be necessary for efficiency, given the nature of fiscal externalities present in our metropolitan system. Second, zoning may be a useful fiscal tool for efficiency purposes, although there is no reason to believe that the existing zoning and land-use system is efficient. Third, a wide pattern of expenditure variation among jurisdictions is likely to be necessary for long-run efficiency.
2. INTRAJURISDICTIONAL EQUITY

The history of judicial involvement in the area of urban equity is long and involved. I have chosen to concentrate on the most recent developments, paying particular attention to the use of the equal protection doctrine of the Fourteenth Amendment as a basis for equity-oriented suits against states and local jurisdictions; focus will be on four objectives that are seen by some lawyers and commentators as means of improving the distribution of income within metropolitan areas and specifically of increasing the well-being of low-income households. In this section judicial attempts to achieve equity within jurisdictions are considered. First, each of the two intra-jurisdictional objectives, and the related case law, are discussed, and several questions are posed: (1) What are the objectives implicit in the court cases in each subject area? (2) Is the use of the equal protection doctrine likely to help in the attainment of those objectives? (3) Are other legal approaches to equity other than equal protection available? Second, I consider the efficiency consequences if the two objectives are met. Finally, I ask whether low-income households are likely to be helped or hurt by such reforms.

The Courts and Expenditure Equity

During the past decade a number of court cases, building on the equal protection clause of the Fourteenth Amendment, have served to define a set of equity requirements for the provision of local public services within each jurisdiction.\textsuperscript{17} The present development of the law is far from requiring expenditure equality, and I believe that further legal attempts to attain intrajurisdictional equity will probably not be very successful. This conclusion, as well as some aspects of the analysis of the equal access (zoning) and equal tax-base (education) objectives, relies heavily on the interpretation of the role of the equal protection clause as an equity-oriented policy tool.

In the public service area, an equal protection suit may be brought if a local jurisdiction has provided its services so as to create a substantial disparity (in services) between identifiable classes of citizens in the community. If the government's action discriminates against a “suspect class” of citizens (such as blacks) or impairs a citizen's “fundamental interest” (such as the right to vote), the suit is very likely to be successful.\textsuperscript{18} \textit{Hawkins v. Town of Shaw}\textsuperscript{19} is perhaps the best known of the suspect classification service equalization suits. In \textit{Hawkins} a class action suit was brought on behalf of the black citizens of Shaw, Mississippi, which argued
that blacks were receiving grossly unequal treatment in the provision of a number of public services, including lighting, water and sewers, and streets. As in many other service equalization cases, the plaintiffs relied entirely on the suspect classification aspect of equal protection; statistical evidence was presented to prove the existence of racial discrimination. Since courts generally defer to legislative judgments, the trial court ruled against the plaintiffs, holding that the actions of the local jurisdiction were not in violation of the law as long as they had a “rational basis.” In reversing the trial court's decision, however, the U.S. Court of Appeals for the Fifth Circuit held that the statistical evidence made out a prima facie case of racial discrimination by Shaw. Since race is considered to be a suspect classification, Shaw was subjected to a stricter standard of review than the rational-basis standard.

The strict scrutiny standard was the more rigid alternative chosen by the appeals court. To survive the strict scrutiny test, a community must prove not only that a compelling interest justifies the treatment of the suspect group but also that such discrimination is necessary to achieve the community’s objective. If a compelling state interest cannot be demonstrated by the community, the court can order the locality to provide its services in a nondiscriminatory way. That is exactly what the appellate court ordered the town of Shaw to do. Thus, despite the “rational basis” for the current distribution of expenditures, the remedial action of equalizing service levels between the predominately black and the predominately white quarters of the town was required. By subjecting the actions of the local jurisdiction to this strict scrutiny analysis, Hawkins suggests that a court may order equality of service where discrimination has occurred with respect to members of a suspect class.

Another case that was successfully litigated along lines somewhat similar to those in Hawkins was Hobson v. Hansen. In Hobson, the court ruled that because of inequities in school spending, Washington, D.C., schools were depriving black and poor people of their right to equal educational opportunity. Hobson is interesting because of the remedy required by the court. Unable to deal with the problem of measuring educational output, the court required the removal of substantial disparities in average levels of per-pupil teaching expenditures between neighborhoods. Clearly, the court set a precedent by relying on input measures rather than (or as a proxy for) output measures of equality. While there are exceptions, the usual stance of the court in service equality cases has been to avoid serious attempts to measure outputs.

In Beal v. Lindsay, Puerto Rican residents of New York City brought a class-action suit claiming that their park had facilities, services, and repairs that were inferior to park facilities in white neighborhoods. In defense, the city did not attempt to argue that conditions in the parks were equal but provided evidence that inputs, or expenditures, had been equal-
ized. The court, finding that output differences were related primarily to vandalism, ruled that equality of input was sufficient to satisfy the constitutional obligation of the jurisdiction; maintaining equality of output was held to be an unmanageable objective.

A related decision was handed down recently in Burner v. Washington.25 In Burner, plaintiffs challenged racially discriminatory apportionment of police, recreation, and fire services, sidewalk maintenance, and refuse collection between two racially distinct Washington, D.C., neighborhoods. Placing heavy reliance on an Urban Institute study, the court ruled against the plaintiffs, holding that there was not substantially conclusive evidence of input differences between neighborhoods.26

While there have been some victories,27 the suspect classification approach to equal service delivery has not been widely successful; in some cases, the plaintiffs were simply not able to prove that the municipal service at issue was allocated on the basis of race, while in others, the jurisdiction admitted past discrimination patterns but argued that it was presently acting to remedy the situation. Consider, for example, the case of Hadnett v. City of Prattville.28 In Hadnett, the court agreed that general fund services had been allocated unfairly on the basis of race but found that a good-faith effort was being made to attain a more equitable distribution. However, the court declined to act against the city with respect to other services, because there was no evidence that blacks had been discriminated against in their right to petition for paving or water or sewage assessments. Of particular interest was the court’s stance on the issue of whether equal protection can be applied when the services provided are allocated under a system of special assessments and user fees;29 the implication was that equal protection was not relevant in Hadnett, because both black and white neighborhoods have the option of improving public services through the application of special assessments. Specifically, the court argued that when there was clear evidence of a difference in “ability and willingness to pay” for public services financed with special assessments or fees, expenditure equalization need not apply.

In Hadnett and other cases,30 the court respected the right of the municipalities in question to provide services either through general funds or by special assessment. No attempt was made to decide what services might reasonably be provided by which method. As a result, municipalities may have the option of avoiding the requirements of the equal protection clause by using special assessments. An important instance of this possibility is Citizens for Underground Equality v. City of Seattle.31 In that case, taxpayers in Seattle challenged a statute that authorized neighborhoods to form local improvement districts in order to collect special assessments for financing part of the cost of burying utility wires. The plaintiffs claimed that the statute was discriminatory against poor neighborhoods that might not be able to form improvement districts and take advantage of available
matching funds. The court dismissed the taxpayers' claim without mentioning Hawkins or Hadnett.\textsuperscript{32} Given that the city did not abuse its discretion in determining the methods of financing the proposed improvement, the court was satisfied that each neighborhood had "an opportunity upon the same terms as all other areas of the city to underground its overhead utility writing."\textsuperscript{33}

Citizens and Hadnett leave the legal limits of the use of special assessments open to question. Unless otherwise authorized by specific statute, a valid special assessment must be for the accommodation and convenience of inhabitants of an area, and must be of such a nature as to confer a special benefit upon the real property adjoining or near the improvement. One of the leading treatises on municipal corporation law,\textsuperscript{34} asserts that it is reasonably clear that the following services can be provided by special assessment: street construction and repair; street sprinkling and cleaning; construction of sewers, ditches, and drains; street lighting; garbage collection; and provision of parking facilities. In contrast, construction and maintenance of municipal buildings and the cost of general education probably cannot be financed by special assessments.\textsuperscript{35} The net result is that one of the consequences of continued equity attacks on the basis of suspect classification could be an expansion of the use of special assessments and fees as revenue raising devices.\textsuperscript{36}

Equal protection analysis applies not only with respect to suspect classification but also when a pattern of discrimination is found with respect to a public service that the court considers to be a "fundamental interest." Just what constitutes a fundamental interest is a hotly debated topic, but traditionally only those interests expressly mentioned in the Constitution—such as the right to vote and the right to peacefully assemble—have qualified.

If a pattern of discrimination relates to a suspect classification, then, independently of the subject about which equal protection is sought, the court will apply the previously mentioned strict scrutiny standard. However, as the classification becomes less suspect, the court appears willing to apply the same strict scrutiny standard the more important the issue. In the extreme case of a fundamental interest like voting, strict review can be applied whether the pattern of discrimination is racially related or not. A number of court cases in the early 1970s involved attempts to extend the fundamental interest notion to public services such as education, welfare, housing, fire protection, and so on, but they were generally unsuccessful.\textsuperscript{37}

The most significant case in this regard is San Antonio Independent School District v. Rodriguez,\textsuperscript{38} in which the U.S. Supreme Court explicitly rejected the plaintiff's contention that public education could be raised to the level of a fundamental constitutional interest. In the words of Justice Powell, "the importance of a service performed by the State does not
determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause . . . the key to discovering whether education is ‘fundamental’ . . . lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.”\textsuperscript{39} The Court also rejected the argument that a close relationship between education and the fundamental right to vote was sufficient to require strict judicial scrutiny of discrimination in service provision. Since Rodriguez, other cases have explicitly held that garbage collection, annexation, fire protection, and the right to live in a healthful environment are not fundamental interests.\textsuperscript{40} I should point out, however, that Justice Powell also suggested (in dicta) that an absolute deprivation of educational benefits might lead the court to examine the actions of the jurisdiction more closely.\textsuperscript{41} This appears to rule out the possibility of a school district closing its public facilities to avoid a desegregation order,\textsuperscript{42} as Jackson, Mississippi, closed its swimming pools.\textsuperscript{43}

While it is difficult to generalize or to forecast on the basis of a limited number of court cases, several tentative conclusions seem reasonable. First, the fundamental interest approach to local public service equity seems unlikely to win cases. Second, service equalization suits on the basis of “suspect class” are liable to be successful only when applied to services financed through general revenues that cannot be provided by special assessment. Third, the courts are inclined to rely on input measures of expenditure variation, rather than on output measures, as long as output measures remain elusive. Fourth, race appears to be the only suspect classification that the courts find relevant in service equalization suits. The fourth conclusion is especially important, because it suggests that successful service equalization suits will most probably concern jurisdictions with substantial black enclaves. Other legal or legislative approaches are necessary if intrajurisdictional expenditure equity is to be required of white jurisdictions and if poor white households are to benefit.

\textit{The Courts and Tax Equity}

Because the property tax is the largest source of local revenue, attempts to improve tax equity within jurisdictions have concentrated on the property tax assessment process. As a rule, these attempts have focused on differential assessment practices and argued that intrajurisdictional variations in effective tax rates (the actual tax rates multiplied by the assessment-sales ratios) are inherently unfair. However, from a legal viewpoint, it is important to distinguish between two different types of tax “inequity”: assessment rates (and thus effective tax rates) that vary within the same class of property; and different tax rates (or assessment practices) applied to each of various property classes.
Appeals based on the inequity within classes can be brought in a federal court, since the Supreme Court has held that the due process clause of the Fifth Amendment (as applied to the states under the Fourteenth Amendment) forbids a state from discriminating in its assessments within a given class of property. Federal assessment suits by individual taxpayers, however, are unlikely to be successful unless the taxpayer can prove intentional and systematic discrimination by the local assessor. Success requires either proof of overassessment relative to market value, or proof of assessment at full market value while other properties were intentionally underassessed. Unfortunately, the latter is the more usual situation, and the more difficult to prove.

Appeals based on inequities between classes of property seem less likely to have a federal basis, since the Supreme Court has upheld the rights of states to classify property for the purpose of taxation and to assess various classes of property differently. As a result, attempts to establish tax rate equality have proceeded and are likely to continue in the state courts. The reason is that many state constitutions require that all residential, commercial, and industrial property be taxed uniformly—a requirement that is not affected by the Supreme Court decisions just mentioned. The greatest success has occurred in states with constitutional provisions that also require uniform full-market-value assessments; proof of inequity is somewhat easier to demonstrate in such cases, and enforcement of full-market-value assessment leads to tax rate equality.

One of the important tax rate cases was *Hellerstein v. Assessor of the Town of Islip*. Hellerstein, a property owner in the town, argued that the entire assessment roll was void because all assessments were based on a percentage of market value. The case is somewhat unusual because no attempt was made to claim that the plaintiff's individual property was treated unfairly relative to other properties in the community. The argument was simply that the assessments were not made in accordance with the property tax laws of the state of New York, which require full-value assessment. The New York Court of Appeals agreed that fractional assessment had long been a custom but was not satisfied with a defense so based. Rather, the court took into consideration the fact that (despite the existence of a State Equalization Board) fractional assessments make possible the receipt of proportionately more state aid by certain communities that intentionally underassess their property. The court then directed the defendant township (Islip) to make all future assessments at full market value.

A more significant case, in terms of the magnitude of its impact, was *Sudbury v. Commissioner of Corp. and Tax*. The case arose because, despite the Massachusetts State Tax Commission's responsibility to develop reasonable measures of fair market value as a basis for determining state aid allocations, substantial inequities remained. The plaintiffs, the town of
Sudbury and some of its officials, sought to clarify the role of the State Tax Commission and the commissioner of Corporations and Taxation in enforcing full-market-value assessments. The court ruled that the tax commission had the power and the duty to direct local assessors to take action to produce uniformity throughout the state. Sudbury thus differs from Hellerstein by directly revising assessments for property in most jurisdictions throughout the state.

These cases suggest a possible trend toward substantial property-tax-assessment reform in many states. Whether such reform will actually occur on a large scale is not clear, however, since the decree in Sudbury is unusual. As a rule, courts seem reluctant to compel a state executive agency to reform its assessment practices and seem even more reluctant to supervise that reform. In addition, the ability of individuals to obtain assessment relief without attacking the tax system as a whole indicates the likelihood that cases such as Sudbury will occur infrequently.

A second issue that remains unresolved is whether the inequitable distributions of state aid resulting from fractional assessments are in violation of the Fourteenth Amendment. If such a decision were handed down, it would have a significant impact on tax and expenditure equity among—as well as within—jurisdictions. In Levy v. Parker, the state’s formula for providing property-tax relief to jurisdictions was overturned because the formula was sensitive to fractional assessments. In Scarnato v. Parker the plaintiffs also argued that fractional assessments caused Louisiana's temporary state equalization plan for educational aid to be unconstitutional; but, citing Rodriguez, the district court held that the formula rationally furthered the state’s purpose in reforming its system of financing schools.

Implications of the Equity-Oriented Objectives

The foregoing establishes that the courts are not likely to be fully successful in achieving each of the intrajurisdictional equity-oriented objectives of tax-rate and expenditure equality, but it is interesting to consider the implications of the successful enforcement of each of the objectives. If per-household public-service-expenditure equality were pursued by the courts or by the legislatures (which I view as unlikely), the end result would be the equality of input expenditures in many, if not all, public services (by neighborhood). The enforcement would most probably occur in the central city, where most low-income blacks reside, but intrajurisdictional expenditure equality could possibly be attained everywhere.

Equity considerations of the intrajurisdictional spending requirement were implicit in the point that, in some situations, equal expenditure inputs may well cause unequal and inequitable outputs. Clearly, compensatory spending programs must be kept intact if low-income households are to
gain from the equal expenditure reform. However, the equity implications become more important when the probable responses of the economic actors in the system are taken into account. Consider the problem from the perspective of a central-city government in which the reform may be instituted; the change in expenditure distribution is liable to improve the well-being of the low-income population in the short run and to hurt those with high incomes (although the converse will be true if expenditures favor the poor to begin with). This will increase the probability of out-migration of high-income households and may well lead to a decline in the central-city fiscal base.\textsuperscript{55} If the impact on the fiscal base is substantial, the long-run outcome could be a tangibly lower level of public service for most, or all, central-city residents.\textsuperscript{56} Thus, the requirement of intrajurisdictional equity could hurt the central-city poor and increase interjurisdictional inequities.

One response of the central-city government (although unconstitutional) is to use its assessment-variation instrument to diminish the likelihood that high-fiscal-residual households will choose to migrate to the suburbs. However, further extensive use of assessment changes on either residential or commercial and industrial property will probably not be successful, since substantial use is already being made of the instrument. Other responses do not seem very promising; the initial conclusion appears likely to stand. In the long run, central-city expenditure equality requirements are liable to increase the rate of “flight” to the suburbs and may cause the income distribution of the metropolitan area to become more unequal.

If a suburban, within-jurisdiction policy of expenditure equality were pursued in isolation, it is doubtful that it would be effective, since suburban governments have more ways of avoiding the consequences of enforcement than do central-city governments. The issue is more interesting from the tax side, however, since there is good reason to expect assessment-ratio variations to be lessened in all metropolitan communities. Consider a policy of tax-rate equality and expenditure equality in the central city. If no strategic response occurs, the move toward equality of tax rates and expenditures in the central city may well improve the position of low-income households initially, but may make them worse-off in the long run if the rate of out-migration increases substantially. Of course, the result depends upon the extent to which assessments on all residential properties increase and on the assumptions one makes about the incidence of tax changes on commercial and industrial property. When tax-rate and expenditure equality policies are applied to suburbs, however, there are a number of responses or options available to avoid the equity consequences even when the expenditure-variation and tax-variation instruments are no longer in their control.

I have previously argued that a change (either up or down) in the level of expenditure may discourage the immigration of the poor, and that tighter fiscal zoning controls would presumably accomplish the same result. But it is important to realize that the community has important options
available even if it decides to make no meaningful changes in the overall level of public services provided; the community can alter its revenue collection pattern, so as to rely more heavily on user charges and special assessments. Each of these revenue collection methods, although more efficient, approximates a benefits tax and is likely to be disadvantageous to low-income households when compared with the original property tax.

The difficulties of improving the distribution of real income through the local public sector are compounded by the direct conflict between equity and efficiency implicit in the tax-rate- and expenditure-equality objective. Consider the case in which all public services are homogeneous and all residents of a given community state their preferences for public services as a function of the level of expenditure in the community. Given that households in the community are inclined to vary in tastes and face different tax-prices, their demands for public expenditures will differ substantially. The legislation of expenditure equality clearly involves inefficiency in consumption, since most households will be forced to under- or overconsume public services. Likewise, inefficiency will result from the variance of tax-prices among households, even though public services are consumed equally. Assuming that governments have been concerned with the maximization of aggregate fiscal residuals, however, there is no reason to expect the actual behavior of governments prior to reform to coincide with the efficient solution. Recall that under the property tax system, an efficient outcome can only occur if, at the margin, the tax burden faced by a household just equals the marginal benefit to be obtained by consuming the public service (whether purely public or partly private). If locations are fixed, this necessary condition is equivalent to the condition that the marginal fiscal residual of all households is zero. Governments, however, are concerned with the total fiscal residual in the community and therefore will distribute expenditures, and tax burdens, so as to encourage households with high average fiscal residuals to remain in the community.

As a result of such government behavior in a world in which migration is costly, there is no reason to expect the actual distribution of expenditures to be efficient. This raises an interesting empirical issue: to what extent do public service demands deviate from the actual distribution of public services? In the absence of more extensive evidence, all that can be said is that the equalization of expenditures appears to introduce greater inefficiencies than exist under the present system. The problem is difficult from an empirical perspective, because an expenditure-equality reform is likely to bring about a change in tax-prices faced by households and thereby create a new optimal level of public services to be provided.

The conflict between efficiency and equity becomes especially clear when public services are recognized as nonhomogeneous and the courts are seen as willing to legislate expenditure equality for each public service rather than for the entire public service bundle. The problem is that households
with different tastes may prefer to consume different mixes of public services. As a result, the requirement of expenditure equality in each service area may actually create inequities (and consumption inefficiencies) in situations that were at first equitable.

An additional source of inefficiency arises since, without further empirical evidence, the courts and the legislatures appear inclined to rely on expenditure variations (input measures) as evidence of inequalities, rather than seriously trying to deal with the problem of output measurement. The inefficiencies arise because, depending on the size of the community and the neighborhood environment, equal inputs may result in unequal outputs. For instance, if police output is measured by the probability of a crime being committed, higher inputs will probably be needed in the neighborhoods with the highest population densities.

A move to tax rate equality within the residential sector will be most likely to raise the tax-price of high-income households and lower the tax-price of low-income households. This will bring about a change in the desired level of consumption, and may, in fact, reduce the average discrepancy between desired and actual expenditures. However, nothing can be said with certainty about the efficiency change, because the actual level of public services provided may not be optimal. When the commercial and industrial tax base is taken into account, the analysis is even more complicated. Evidence from Massachusetts suggests that equal tax rates in most communities will increase the burden on residential property and decrease the burden on industrial property. As a result, the tax-price facing most households may increase, lowering the public-service demands of many households, but again leaving the efficiency outcome in doubt. Finally, when we view the question from an interjurisdictional viewpoint, the equal-tax-rate solution looks clearly inefficient; given the presence of fiscal externalities in the system, the presence of varying effective tax rates in a community is a necessary prerequisite for interjurisdictional fiscal efficiency.

3. INTERJURISDICTIONAL EQUITY

A review of the recent history of school finance cases, comparing the impact of those cases whose decisions were based on either state constitutions or the United States Constitution, will introduce the discussion of the interjurisdictional equity objectives of equality of tax base and equality of access. Next, I will examine the use of state constitutions and the Fourteenth Amendment’s equal protection clause in equal access cases. Third, I will analyze the income distributional consequences of both tax-base equality and equal access reforms, arguing that the responses of households and governments are likely to diminish the distributional impacts. Finally, the
apparent conflict between the goal of equity and efficiency will be considered.

The Courts and Interjurisdictional Equity

The most important legal push toward interjurisdictional tax equity has concerned education. In the recent school finance cases, it is important to distinguish between suits brought in federal courts and those brought in state courts, since individual state suits cannot necessarily be generalized and may therefore not be relevant in other states.

Perhaps the best-known educational finance case is *Serrano v. Priest.* In *Serrano*, the California Supreme Court responded to the inequality in levels of school spending that resulted from equal tax rates in jurisdictions having different property-tax bases. The court then invalidated the existing system of educational finance, in part because access to public education was deemed to be a “fundamental interest.” The court held that the quality of a child’s education should not be a function of the “wealth” (here considered to be a suspect classification) of his parents or of his community (unless there is a compelling state interest). The state was therefore required to restructure its school finance program so that communities with equal tax rates could raise equal school revenues. Equal expenditure per pupil was not required, nor was the state forced to eliminate the property tax as a means of financing school revenues.

As pointed out in section 2, some of the force of *Serrano* was taken away by the U.S. Supreme Court’s decision in *Rodriguez.* *Rodriguez* is important not only because education was declared not to be a fundamental interest but also because the Court was unwilling to consider wealth as a suspect classification. Thus, attempts (in the near future, at least) to argue for either intrajurisdictional or interjurisdictional equity using the Fourteenth Amendment in conjunction with reference to poverty, without explicit reference to race (an acknowledged suspect classification), seem likely to fail.

The obvious outcome of the Supreme Court’s unwillingness to be flexible in its application of the equal protection argument is a substantial increase in the use of state courts to challenge the unequal provision of municipal services, within and among jurisdictions. One instructive case in the education area is *Robinson v. Cahill.* In *Robinson*, the New Jersey Supreme Court struck down the existing means of school finance based on the state’s constitutional requirement that “the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in this state between the ages of five and eighteen years.”

It is difficult to predict the outcome of a state approach to interjurisdic-
tional tax equity, but *Robinson* is not unique in this respect. A number of states have constitutional provisions that are similar to New Jersey’s provision, while many others contain statements that have been or might be conducive to successful state suits. Thus, while it is unlikely that most states will explicitly follow New Jersey, it is conceivable that many states will strike down the existing finance system based solely on state constitutional grounds.\(^{61}\)

Improvements in the welfare of low-income households can be achieved by expanding their opportunity to select among bundles of public services and taxes. In this sense, *Serrano* can be viewed as an equal access case as well as a school finance case, since *Serrano* requires school financing reforms that give citizens in low-wealth jurisdictions a greater opportunity to consume adequate levels of education. However, most access cases have concentrated on the ability of low-income households to obtain housing in high-income communities and on the constitutionality of minimum-lot zoning provisions.

In the housing area, the court has been willing to utilize the equal protection clause to regulate the use of building permits by local jurisdictions. *Gautreaux v. Chicago Housing Authority*\(^ {62}\) is especially pertinent because the defendants were found to have violated the plaintiffs’ Fourteenth Amendment rights by selecting public housing sites and assigning tenants on the basis of race. In another case, the federal courts ruled against a municipality that refused a housing project permission to use municipal water and sewer systems.\(^ {63}\) Finally, the equal protection clause has been utilized in cases in which zoning ordinances were seen to be restrictive and racially motivated. For example, in *Kennedy Park Homes Ass’n v. City of Lackawanna*,\(^ {64}\) the city council had adopted a moratorium on new subdivisions and had zoned certain acreage, including a proposed low-income housing project site, as open space and park area, despite a planning recommendation to the contrary. The court ruled for the plaintiff on equal protection grounds.

Despite these cases, the use of federal equal protection is limited, because for all practical purposes, an explicit proof of racial discrimination is needed. In fact, the difficulty of proving that local government decisions are racially motivated has been increased (although not to the point of impossibility) by recent Supreme Court decisions. In both *Washington v. Davis* and *Village of Arlington Heights v. Metropolitan Housing Development*,\(^ {65}\),\(^ {60}\) the court clearly indicated that the action of a community will not be held unconstitutional simply because the impact is racially disproportionate. Recall that in *Hawkins v. Shaw* it was sufficient, according to the appeals court, for the plaintiffs to prove that most blacks had received and were receiving unequal municipal services. In *Arlington Heights*, however, the fact that 40 percent of those eligible for a multifamily housing project were minorities did not lead the court to apply a stricter level of
review. As Justice Powell said, "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."68

In the zoning area, the Court has also shown a reluctance to utilize the equal protection clause. For example, in Belle Terre v. Boraas the U.S. Supreme Court upheld a local ordinance restricting land use to one-family dwellings.69 Lower courts have generally been unwilling to overturn large-lot zoning, given the Supreme Court's rejection of wealth as a suspect classification and housing as a fundamental interest.70

As in the intrajurisdictional equity area, the natural consequence of the Supreme Court's position has been an increased use of the state courts in the struggle for equal access. Perhaps the best known of the equal-access zoning cases is Southern Burlington County NAACP v. Mt. Laurel.71 In Mt. Laurel, the New Jersey Supreme Court affirmed a trial court recommendation that the community of Mt. Laurel be required to devise a zoning plan that would utilize undeveloped land in such a manner as to accommodate the community's "fair share" of the region's low- and moderate-income housing needs.72 If enforced, the outcome of the Mt. Laurel decision would ensure that low-income households are not restricted in their access to low-income suburban housing and suburban public services because of exclusionary zoning. The fair-share housing plan is limited in its scope, however, because it applies only to communities with undeveloped land; many of the older suburban communities have little undeveloped land and may not be affected by the Mt. Laurel decision.

It is difficult to generalize about the likelihood of most states ruling against exclusionary zoning, because suitable cases have not been brought to the courts.73 However, there is no reason that the decision in Mt. Laurel could not be extended to other jurisdictions. The New Jersey Constitution requires that zoning regulations (a use of police power) must promote the general welfare. The court simply ruled that zoning regulations restrict the options of low-income households and thereby hurt the general welfare. Since most state constitutions contain provisions concerning the relationship between the delegation of police power and the general welfare of the population, additional Mt. Laurel-like decisions seem possible.

Once again it is difficult to summarize the general trend in the courts, but several conclusions do seem clear. First, despite the U.S. Supreme Court's unwillingness to treat income as a suspect class or to declare education to be a fundamental interest, a strong stimulus for the reform of educational finance will probably be brought through the state courts. Whether based on equal protection grounds, as in Serrano, or on other state constitutional grounds, many state suits have been and are likely to be successful. Second, despite some successes, the use of the federal equal protection doctrine in equal-access cases is likely to be limited, because proof of intent to racially discriminate appears to be required for a successful suit. The present U.S.
Supreme Court seems unwilling (in these cases) to rely solely on statistical evidence to prove discrimination, since statistics themselves imply nothing about intent. Of course, the view of the Supreme Court could change over time, but for the present, the state courts appear to provide a more fruitful avenue for plaintiffs pursuing equal-access cases. However, present evidence suggests that equal-access cases such as *Mt. Laurel* are not liable to set a trend, despite the presence of a constitutional basis for similar actions in many state constitutions.

The Implications of Tax-base Equality

I argued previously that in *Serrano* (and in some of the other cases) the Court ruled that if property taxation is used to finance school expenditures, it must be done so that children in districts with low fiscal bases per pupil will have the same opportunity or access to tax bases (supplemented by state aid) that finance education as do children in high fiscal-base-per-pupil districts. I interpret this requirement to mean that, if the property tax remains the primary local revenue source, per pupil fiscal bases must be equalized across all jurisdictions in the state. There is some disagreement in the literature as to whether the courts implied other necessary conditions, but in my view, the equal per-pupil fiscal-base requirement is the only explicit requirement that follows from *Serrano* if one chooses to rely on the local property tax and maintain local fiscal autonomy.74

A number of fiscal-base equalizing schemes have been proposed, but the most widely discussed has been the district power equalizing scheme of Coons, Clune, and Sugarman.75 In one version, the authors propose that the state allocate aid to local education in such a manner that each jurisdiction is guaranteed an identical key per-pupil fiscal base from which to raise school expenditures (this is often called the *district power equalizing* plan—DPE). As a result, a tax levy of one mill in each community will raise an identical amount of revenues per pupil. Communities that are lower in fiscal base per pupil than the key per-pupil fiscal-base level receive subsidies from the state, while those that are higher contribute funds. It is important to note that the *Serrano* decision did not imply equality of expenditures (nor does DPE); nor did it imply that after the reform, expenditures had to be uncorrelated with wealth (nor does DPE). Property tax bases may be equalized, but the choice of tax rate and thus total spending would remain under the control of local jurisdiction.

In my view, one major equity concern of reformers ought to be impact of DPE on low-income households, not on expenditures directly. In this case, equality of expenditures is not considered to be an end in itself, even though one might argue for such an objective on equal opportunity grounds. To clarify the discussion I will first describe the probable initial equity
impact when the state aid system is altered to follow a DPE plan. Then I will consider the likely outcome when communities and households respond to the reform.

In terms of initial impact, DPE may cause the pattern of expenditures among jurisdictions to become more equal. This can best be seen by analyzing the effect of the reform on the tax price of education faced by the decisive household in each community. Recall that the tax-price of education is defined as the cost to the household of financing an extra dollar per pupil of local school expenditures. As a result, the tax-price varies directly with the value of the family’s house, and inversely with the value of fiscal base per pupil and with the percentage of the tax base that is nonresidential. Initially, communities with low fiscal bases per pupil will receive additional aid, thus raising their effective fiscal base per pupil to the level of the key community. This implies a lower tax-price and a demand for more school expenditures. Analogously, decisive households in jurisdictions with high per-pupil fiscal bases will face an increased tax-price and will, other things being equal, demand a lower level of school expenditure. Thus, the extent to which expenditure patterns are equalized depends, of course, on the extent to which low-fiscal-base communities were originally spending less on schools than were high-fiscal-base communities and on the price elasticity of the demand for education.76

There are several reasons why the initial impact of such reforms on low-income households may be small and possibly inequitable. The primary reason is that low-fiscal-base communities are often middle- and high-income suburban communities, while central-city jurisdictions with substantial numbers of low-income households are often high in fiscal base because of the extensive commercial and industrial base. To the extent that low-fiscal-base communities actually spend more than central-city communities, the effect of the reforms may be increased inequality. Some corroborating evidence is provided by a comparison study of central cities in large metropolitan areas by Netzer.77 Netzer found that central cities have lower per-pupil spending levels than suburban communities, but that fiscal base per pupil in central cities was not consistently lower than in other school districts. In fact, more than half of the central cities studied had higher than average levels of measured fiscal base per pupil.78

The distributional impact may be muted because fiscal base per pupil and income are not very highly correlated, making the link between base equalization and income equality a weak one at best. The correlations between income and fiscal base per pupil are likely to vary substantially among states, but recent evidence from Michigan is suggestive. For a sample of 177 school districts, high-income districts tended to be residential in nature (the correlation between the income variable and percentage residential was .43) so that the simple correlation between fiscal base per pupil and
percent residential was actually negative (−.32). As a result, the correlation between the fiscal base per pupil and the percentage of families with incomes above $15,000 was only .28.

However, the problem does not lie completely with the weak correlation between fiscal base and income. Since “wealth” is normally measured in terms of base per public-school pupil, the demographic and school attendance pattern of each jurisdiction is also important. Central-city jurisdictions often house an older population with fewer children; these jurisdictions may look quite “wealthy” when in fact they have lower than average incomes. This effect is compounded by the parochial school attendance of a substantial number of children in many central cities.

Now consider the long-run implications of DPE reform, when households are presumed to respond to the changing aid structure. Initially, tax-prices will fall in those communities with low fiscal bases and rise in those communities with high fiscal bases. The long-run result will be a migration of families away from high-fiscal-base areas toward low-base areas. When account is taken of the effects of this migration on land values, DPE is likely to cause positive capitalization in low-fiscal-base areas (higher land prices), and vice versa. From the point of view of the average household in the low-fiscal-base community, the increased value of its house will tend to increase the tax-price that it faces (although it might lower the tax rate in the community). Likewise, the tax-price faced by the average household in the high base community will fall somewhat. At the least this will mitigate the previously described tendency toward expenditure equality, and if the capitalization effects are substantial, the DPE reform might tend to produce greater inequality in terms of expenditures, which is inequitable from the point of view of low-income households. Of course, to the extent that low-income households own houses in low-fiscal-base areas, they will enjoy a gain in wealth as a result of the capitalization process.

Finally, DPE is likely to increase the incentive of high-income households to send their children to private schools. To the extent that this outcome is important, the level of public education provided to poor families in those jurisdictions could fall, and although schools may be less crowded, greater income segregation of households could result. The empirical evidence is not yet conclusive, but the previous analysis suggests that reforms promoting equal fiscal base per pupil may or may not tend to equalize expenditures and are likely to have a much less beneficial impact on low-income households than might have been expected. The benefits will be divided somewhat unequally, with low-income families residing in fiscally “poor” suburbs made better off, but with the outcome for center-city low-income families in doubt.

To summarize, note that there are two “problems” that hinder the de-
scribed DPE's effectiveness in redistributing income. First, there is a measurement problem that arises because fiscal base per pupil is not an appropriate base upon which to structure a wealth or income redistribution plan. This follows in part because the "benefits" of an industrial base may be more apparent than real and in part because adjustments for public school attendance tend to hurt those central city schools that are fiscally poor. Second, there is a conceptual problem that arises because the benefits of schooling are capitalized into land values. As a result, education is paid for by homeowners in two parts: the increased purchase price of their houses due to capitalization, and the direct property-tax payments. Thus, the equalization of fiscal base per pupil may unfairly penalize households in high-fiscal-base communities that have partially paid for their education in the purchase price of their homes.

Since a district power equalization scheme will have no direct impact on intrajurisdictional assessments and expenditures, the most important efficiency issues that arise concern interjurisdictional expenditure patterns. To the extent that a DPE plan does tend to equalize expenditures, the equity and efficiency goals are in conflict. Equalization of expenditures among districts involves a lesser breadth of public service choice for metropolitan households, and therefore of efficiency in Tiebout's sense. DPE also involves an intentional restructuring of state aid to school districts, and thus a restructuring of school subsidies. Since the objectives of such subsidies relate to equity and are not based on any technical externalities relating to the provision of education among districts, it is difficult to see how the restructuring of state aid in itself will affect the efficiency of the system.

The Implications of Improvements in Access

As described previously, there have been a number of cases in recent years in which the courts have struck down land-use plans and municipal ordinances that restricted the access of low-income families to suburban jurisdictions. While the motivations for restrictive land-use policies may vary, the fiscal advantage is to restrict the access of low-income families to the community's public services (unless adequate payment is made). A court-enforced or legislative end to minimum-lot zoning and other housing-related restrictions on migration is very likely to increase the opportunities for suburban migration with the net result of the increased income heterogeneity of suburbs being an increase in net fiscal benefits to the poor (although some high-income households will suffer windfall losses). With zoning and income homogeneity, no such redistribution is possible. From an empirical point of view, the magnitude of the income redistribution resulting from the zoning change is clearly an important issue.
One problem is that zoning may not be a binding constraint for most central-city low-income households choosing a housing location. This point can be seen more clearly in the context of a simple monocentric urban model in which all households are assumed to work in a central business district. With reasonable assumptions, the equilibrium outcome is for low-income households to reside in the central city and high-income households in the suburbs. In the context of such a model, it is entirely possible that suburban zoning will not be constraining. In a model with suburban jobs, however, the identical zoning ordinance may be severely constraining. The crucial issue relates, therefore, to the growth of suburban jobs in urban areas. To the extent that jobs suitable to low-income households move to the suburbs, zoning laws tend to become more exclusionary, and to the extent that they do, firms are likely to be discouraged from locating in the suburbs where a pool of unskilled labor is unavailable. It is therefore extremely difficult to separate the impact of zoning on residential access of the poor from other access-restricting factors, such as lack of job opportunities, high transaction costs, and discrimination.

There is an additional reason why zoning might not be a binding constraint to low-income migrants. If zoning is binding, there will be market incentives to bring about zoning changes—most probably through the passage of amendments rather than the redrafting of ordinances. Maser, Riker, and Rosett argue that only if the political and economic power of those likely to gain by zoning outweighs the power of those likely to lose is zoning inclined to become constraining. They present empirical evidence that is consistent with this view, arguing that in Monroe County, New York, zoning either has no effect or “it achieves its effect without significant distortion of the market allocation of land.” Of course, there are arguments and evidence to the contrary.

But in the end, the courts have been forced to base their decisions on rather flimsy statistical evidence; clearly, additional empirical research would be helpful.

Now, consider the response of suburban governments to the elimination of zoning as a policy instrument. To the extent that tax and expenditure variation instruments are not constrained by intrajurisdictional equity legislation or court enforcement, suburban governments will probably increase the use of both—to the disadvantage of low-income households that might potentially migrate into the community. If such options are no longer open, some of the other alternatives previously discussed might also come into play. As a result, the enforcement of exclusionary zoning cases is unlikely to improve the status of low-income households very much, unless some control is available over other suburban policy instruments, and the strategic fiscal-base oriented responses of the suburban communities can be limited.
Unlike the expenditure and tax cases, the enforcement of the court’s new view on zoning involves the removal of a constraint. Whether the removal of the minimum-lot housing constraint actually leads to an improvement in efficiency depends very much on one’s view of the existing zoning system.

There are a number of reasons why the actual system of zoning and land-use controls is not efficient. Most important are the existence of externalities and the lack of sufficient jurisdictions to provide “adequate” choice for the households determined to “vote with their feet.” As a result, even among suburban jurisdictions, governments may well find it advantageous and feasible to overuse the minimum-lot-size requirement in order to increase the fiscal surplus obtained from new migrants.

The interesting empirical question is, To what extent does the existing zoning and land-use system deviate from the “efficient system”? From our point of view, the evidence is mixed and inconclusive. Evidence presented by Hamilton and Mills and Puryear provide some support for the Tiebout view by suggesting that a higher concentration of high-income households in suburban jurisdictions would be expected without the Tiebout-like incentives.86, 87 Pack and Pack, 88 however, provide some evidence to suggest that suburban communities are much less homogeneous than would be expected from the purest form of the Tiebout model. The subject area is clearly an important one and needs further empirical study.

SUMMARY AND CONCLUSIONS

The major focus of this chapter has been whether the courts have been and are likely to be an effective force for bringing about a more equitable distribution of real household income within metropolitan areas. It is easy to argue that state and, particularly, federal levels of government are more appropriately equipped to handle income distribution. However, from a pragmatic point of view, it is understandable that reformers have attempted to achieve their desired equity norms through the local public sector. Unfortunately, my prognosis for the success of such legal attempts to attain equity is not favorable, for several reasons. First, the legal mandates for each of the four equity-oriented objectives (intragovernmental tax and expenditure equality, interjurisdictional tax-base equality, and equal access) are not strong. This is especially true of the intrajurisdictional-service-provision cases, in which the use of the Constitutional equal protection clause seems to offer a limited avenue for success. It is also true to a large extent in the equal access cases, in which the Supreme Court is requiring evidence of intent to discriminate on racial grounds rather than relying on statistical evidence of unequal access to low-income housing by race. Second, even if the courts were to intervene successfully to achieve each
of the equity objectives, the long-term impact on the distribution of income is not likely to be substantial, primarily because suburban jurisdictions have a number of available policy options that will probably be used to mitigate the effect of the court-determined equity requirements. Finally, it is important to realize that there may be substantial efficiency costs if the equity norms are mandated. For example, in terms of allocative efficiency in the metropolitan system of government, a movement toward equality in service provision may limit the public-service-consumption choice of households. The inefficiency would arise even if all households had the same money income. In this case, different tastes might cause households to choose different bundles of public services. Court-mandated expenditure equality, while seemingly equitable, is in fact horizontally inequitable (and inefficient) since it forces households with identical money incomes (assuming costless mobility) to attain different levels of utility, or real income.

Are the courts really a useful vehicle for improving the distribution of income? My analysis suggests that the answer is a qualified no. To the extent that any of the equity norms have been partially achieved, legislative action (as in the school finance cases) has usually been responsible. It is simply extremely difficult to bring about a substantial improvement in the distribution of income without legislative intervention, either at the state or federal level. This is especially true when one considers the kinds of strategic response available to suburban jurisdictions faced with a court-ordered equity mandate. The legal approach is of necessity a piecemeal one (and the judicial process makes monitoring difficult), while, in principle, a legislative approach can deal simultaneously with a set of policy options.

Despite these arguments, I have qualified the answer to the question of the role of the courts for several reasons. First, legal mandates can and do change over time, so that the kinds of equity decisions made by the courts may look substantially different one or two decades from now. Second, even though the courts by themselves are not likely to achieve the equity norms, legal decisions can and do have an important impact on legislative policy—school finance is a case in point. A number of states began to reform their school financial-aid systems before legal suits were brought, but in some of these cases, school-finance decisions in other states probably stimulated the reforms. Third, the negative forecast of the success of the four-equity objectives in redistributing income arose in part because the proposed reforms were not well thought out. Reform strategies that are more carefully designed to take account of potential responses of all metropolitan jurisdictions may be more successful. Finally, the legal approach to equity may be the proper one if one's objectives go beyond the goal of improving the distribution of income. For example, if equality of educational opportunity or, possibly, educational output were a goal in itself, the courts might be a promising arena for reform. Likewise, if the right of access to adequate housing is a goal in itself, direct legal attacks
may be successful, even though the overall distributional impact is small or nonexistent.

NOTES

1. Allowing for the possibility of migration would probably strengthen the conclusions presented in sections 2 and 3, since the possibility of interurban migration of high-income households makes intraurban income redistribution difficult.

2. In fact, a substantial number of low-income households reside outside the central city in many SMSAs, and suburban jurisdictions are not nearly as homogenous in income as might be suggested by a strict interpretation of the Tiebout model of metropolitan location. See, for example, H. Pack and J. R. Pack (1976), "Metropolitan Fragmentation and Suburban Homogeneity."

3. Output levels may differ among communities with identical input expenditures, not only because input prices vary but also because the size of one community may allow for economies of scale and more efficient production.


5. Changes in tax burdens may arise either through increases in nominal tax rates (without comparable benefits) or through increases in commercial and/or industrial property tax assessment rates. Land-use changes may adversely affect the position of existing firms by increasing the costs of expansion or of meeting existing statutory requirements, but they are more likely to discourage the immigration of firms—either by adding to development costs or simply by limiting the extent and type of new commercial and industrial development.


7. The competing fiscal and environmental considerations involved with the location of firms in suburban communities are described by W. A. Fischel, "Fiscal and Environmental Considerations in the Location of Firms in Suburban Communities," Fiscal Zoning and Land Use Controls, ed. E. S. Mills and W. Oates, and M. J. White, "Fiscal Zoning and Firm Location," in Fiscal Zoning and Land Use Controls, ed. Mills and Oates. In the long run, competition among governments may bid away some or all of these fiscal surpluses.


9. For example, O. Oldman and H. Aaron ("Assessment Sales Ratios under the Boston Property Tax," National Tax Journal 17 [1965]: 40) found that Boston
assessment ratios ranged from .341 for single-family houses to .650 for multi-family units in more than one structure (two-family houses or apartments were at .412, three- to five-family apartments at .520, and six- or more-family apartments at .579). D. M. Holland and O. Oldman ("Estimating the Impact of Full Value Assessment on Taxes and Values of Real Estate in Boston," in Metropolitan Financing Principles and Practice, ed. G. F. Break [Madison: University of Wisconsin Press, 1977]) used data for the state of Massachusetts and found current effective tax rates on new commercial property to be substantially lower (3.7%) than on old commercial property (10.6%). Residential properties faced an average effective property tax rate of 5.5%. The magnitude of the impact of such a policy depends upon the extent to which firms and households respond to tax incentives, but the potential for such a policy instrument seems clear. For details on this issue, see G. E. Peterson, A. P. Solomon, H. Madjid, and W. C. Appar, Jr., Property Taxes, Housing, and the Cities (Lexington, Mass.: Lexington Books, 1973), and R. F. Engle, "De Facto Discrimination in Residential Assessments," National Tax Journal 28 (1975): 445-51.


12. There remains considerable disagreement as to whether suburban zoning is motivated for fiscal or racial reasons. In one interesting analysis, E. J. Branfman, B. I. Cohen and D. M. Trubek ("Measuring the Invisible Wall: Land Use Controls and the Residential Pattern of the Poor," Yale Law Journal 82 [1973]: 483) provide some support for the view that zoning and other land-use controls do affect the income clustering of households and that the motivation for such controls is at least partially racial.

13. If tastes for housing differ, efficiency could arise with varying house sizes, but only if assessment rates vary to equate marginal benefits to marginal costs.

14. See B. W. Hamilton, "Zoning and Property Taxation in a System of Local Government," Urban Studies 12 (1975): 205-11. If there is exclusionary zoning, low-income (i.e., low-value) housing may be scarce and therefore capitalized upward in value, raising the tax-price, while the value of high-income housing might be capi-


16. Interjurisdictional fiscal inefficiency is described in J. Buchanan and C. Goetz, “Efficiency Limits of Fiscal Mobility: An Assessment of the Tiebout Model,” Journal of Public Economy 1 (1972): 25. Of course, fiscal inefficiency can occur when fiscal factors cause any distortion in the metropolitan land market. For example, suppose that, absent any fiscal factors, a firm chooses to locate in the central city. If a fiscal distortion causes the firm to move to a new urban location, the pattern of urban land prices will change, with, for example, suburban land prices rising and central-city land prices falling. This may increase the physical size of the urban area, adding to transportation costs and lowering the total social product.

17. Municipal corporations have long been subject to common-law rules concerning the equitable distribution of services to public utilities, which have been construed to require equal provision of services in certain cases: Veatch v. City of Phoenix, 102 Ariz. 195, 427 P.2d 335 (1967), fire protection; Travaine v. Maricopa Co., 9 Ariz. App. 228, 450 P.2d 1021 (1969), public sewers. In addition, there is some support for the public utility doctrine, which holds that a municipality providing services similar to those provided by privately owned utilities has a duty to serve all of the members within its territorial boundaries in an equal and nondiscriminatory manner. This doctrine has been limited to utility-oriented services such as telephone, water, gas, electricity, and transportation. See Abascal, “Municipal Services and Equal Protection. Variations on a Theme by Griffin v. Illinois,” Hastings Law Journal 20 (1969): 1367.


20. In some cases the jurisdiction must also show that there are no reasonable alternative means of accomplishing the stated purpose without discriminating and that the classification of citizens (the suspect group) is neither impermissibly broad nor underinclusive. See Shapiro v. Thompson, 394 U.S. 618 (1969), and “Developments in the Law—Equal Protection.”


23. The remedy required that pupil expenditures be equalized within 5 percent of the average, with exceptions made for compensatory and special education programs. However, the court did not explicitly require equal spending for black and white students.

24. Beal v. Lindsay, 468 F.2d 287 (2d Cir. 1972).


27. See, for example, Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2d Cir. 1968), in which the court ruled that the defendants did not assure, or attempt to assure, relocation for Negro and Puerto Rican objects to the same extent as they did for whites when planning and implementing an urban renewal project. In Selma Improvement Assoc. v. Dallas County Commission, 339 F. Supp.
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477 (S.D. Ala. 1972), the court ordered the defendant to appropriate funds for planning and constructing paved streets in black residential areas. In Franklin v. City of Marks, 439 F. 2d 665 (5th Cir. 1971), in dicta, the court stated that the defendant could not avoid a discriminatory claim by deannexing an area.


30. In Fire v. City of Winner, 352 F. Supp. 925 (D.S.D. 1972), the court refused to order the equalization of similar services between an Indian and a white portion of the community. During the lawsuit, the defendant began to remedy its discriminatory provision of surface water drainage ditches, fire hydrants, and street lights. The court found that the remaining improvements to which the plaintiff attached discrimination—street paving, sidewalks, and sewage facilities—were reasonable attributes of property ownership for which the plaintiff might pay by means of special assessment. According to the court, “the Equal Protection Clause was never intended to be a constitutional command forcing municipalities to assume the responsibilities of landowners for the development of their land.” (Ibid., p. 928.)


32. 51 ALR 3d 943, 945.


35. This should be contrasted with Johnson v. N.Y.S. Ed. Dept., 449 F.2d 871 (2d Cir. 1971), cert. denied 405 U.S. 916 (1972), in which the court upheld a state law that required school boards to supply free textbooks to children in grades one through six only in the event of majority approval of tax assessments. The court held that the state was privileged to assign to the school district the task of financing textbooks used in the lower grades and that it was privileged to assign to the voters of that school district the task of deciding whether or not to supply the funds for such textbooks.

36. Of course, services have been provided by special assessment for a long time. Whether the court would respond similarly when the means of financing have been recently changed does not seem clear. Fessler and May, “The Municipal Service Equalization Suit,” point out that one additional legal means of avoiding the consequences of equal protection decisions is the transfer of some public services to the private sector or to privately owned public utilities.

37. See, for example, Dandridge v. Williams, 397 U.S. 471 (1970), public welfare; and Lindsey v. Normet, 405 U.S. 56 (1972), housing.


41. Rodriguez, at 23.

42. Bush v. Orleans Parish School Bd., 187 F. Supp. 42 (E.D. La. 1960), invalidated a state law that authorized the governor to close all public schools if any were forced to desegregate. In Griffin v. County Sch. Bd. of Prince Edward Cty., 377 U.S. 218 (1964), the court ruled that the closing of city public schools while
tuition grants and tax concessions were given to assist white children in private segregated schools violated the Fourteenth Amendment.


47. Nashville, Chattanooga and St. Louis Railway v. Browning, 310 U.S. 362 (1940). However, classifications of property must have some rational basis, and thus cannot be completely arbitrary.


49. See, for example, Merlin v. Tax Assessors for Town of North Providence, 337 A.2d 796 (1975).


63. United Farm Workers of Florida Housing Project Inc. v. City of Delray Beach, Florida, 493 F.2d 799 (5th Cir. 1974).


68. Ibid., p. 4077. This should be contrasted with the earlier decision of U.S. v. City of Black Jack, which stated that once a prima facie case of a racially discriminatory effect had been made, the defendant must demonstrate a compelling state interest, or Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), in which the court stated that a good-faith denial of equal protection was of no consolation.


73. Of course, the state constitution approach is not the only possible avenue to achieving equal access. A second approach may entail placing additional reliance on federal statutes. For example, in Arlington Heights, the U.S. Supreme Court remanded the case to the court of appeals to determine whether the refusal of Arlington Heights to rezone violated the Fair Housing Act. (42 U.S.C. 3601 et seq.)

74. Thus, M. S. Feldstein ("Wealth Neutrality and Local Choice in Public Education," American Economic Review 65 [1975]): 75–89 may be overstating the case when he argues that Serrano implied wealth neutrality, i.e., that fiscal base per pupil and expenditures be uncorrelated.

76. Feldstein, "Wealth Neutrality," estimates low (.28) but positive wealth elasticities for educational spending, but since low-wealth communities often face lower prices for schooling (as defined by Feldstein), low-wealth communities may spend more than high-wealth communities. Feldstein points out, in fact, that his "adjusted wealth elasticity exceeds the price elasticity, DPE would still leave a positive elasticity with respect to wealth." (Ibid., p. 78.)


78. R. D. Reischauer and R. W. Hartman (Reforming School Finance [Washington, D.C.: Brookings Institution, 1973], p. 67) also conclude that "central cities exhibit property values per pupil well above the average for their states, and in many instances property values per pupil are higher in central cities than in their suburbs."


82. The potentially progressive consequences of many statewide equalization programs is often blunted, because little money is actually contributed by wealthy districts and the range of expenditures that is subsidized is often severely limited.


