

ESSAY

FOUNDATIONS OF INSIDER ENVIRONMENTAL LAW

BY

JONATHAN ROSENBLOOM* & KEITH H. HIROKAWA**

Our Essay questions how we understand local governance of the environment. From the perspective of those outside a city, the city can be understood through an external perception of what is “good” or “bad” about the city. One might visit a city to witness the location of natural wonders, architectural or artistic features, and famous marketplaces, or events such as concerts, marches, and parades. The visitor can say, “I was there” or “I have seen that.” However, there is something missed by the outsider that is captured when an individual and a community declare, “this place is us.” This perspective, what we call the “insider’s perspective,” prioritizes the knowledge that emerges from the insider’s place-based viewpoint, including local values, relationships, myths, and mysteries. The insider perspective illuminates the attachment between local community and environmental features, and, in a meaningful way, helps to explain why that attachment is translated into local regulation of the environment. This view of local environmental regulation is “Insider Environmental Law.” It is the result of a community’s engagement with a particular local environment, the development of that community’s identity in a specific environmental context, and even the community’s survival and flourishing against the challenges and opportunities that are felt locally.

* Dwight D. Opperman Distinguished Professor of Law, Drake University Law School. This Essay benefited immensely from our joint presentation and research retreat at the Vermont Law School (VLS), Summer 2017. We greatly thank VLS and those in attendance during our presentation. Because this Essay is the culmination of our individual and joint research, it would not have been possible without those who have commented on our earlier pieces—thank you.

** Professor of Law, Albany Law School.

By distinguishing an insider's from an outsider's perspective, an analysis of local governance can view local regulation in a way more consistent with local communities and provide a better understanding of why communities do what they do. In the Essay, we explore classic rationales explaining local governance, including representation, democracy, participation, and a commitment to good and efficient governance. Relying on objective, uniformly practiced governance values, the rationales explain some aspects of local governance. In our view, however, the decentralization theories miss an important point about local governance. Specifically, there is no space reserved for the "here"—no space for the consideration of the manner in which place plays a role in the development of community identity and values and how that translates into local regulation.

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I. INTRODUCTION

Those inside a community understand and interact with the environment in a fundamentally different way from those on the outside. From the perspective of those outside, a city and its environs may be understood through an external perception of what is "good" or "bad" about the city. The outsider might visit a city to witness natural wonders, architectural or artistic features, famous marketplaces, or events such as festivals, concerts, and parades. The outsider can preserve the visit in a photograph so as to say, "I was there" or "I have seen that," and check off the items from lists found in Frommer's, lonely planet, Rick Steves, and

Fodor's, travel guides that provide the essential information an outsider needs to appreciate a city. The lonely planet, for example, tells the outsider what to see during a visit to Paris: "From the heights of Sacré Coeur to the gently rolling Seine, feel the *joie de vivre* of Europe's crowning glory. . . . With discerning information *on everything Paris has to offer*, this guide gives you the city at your fingertips."¹

However, there is something missed by the outsider. In contrast to the outsider's visit to "there," the insider declares that "this place is us" or, even better, "we are here." The outsider does not share the insider's history, context, and value. The insider's use of and identification with the word, "here," is a reference to situatedness and a recognition that the speaker is in a particular place, challenged by and benefiting from what that location has to offer. "Here" is the moment *sense of place* begins.

Sense of place is the foundation of the insider's perspective. The insider's perspective attributes deep meaning to words like "here," "us," and "ours" that is often missed or misunderstood by the outsider. The reference to "here" means something concrete to the insider (yet something different to each insider in their respective community) and may include more than the externally appreciated highlights of a city. It may conjure memories, values, and other traits an outsider cannot access by simply visiting or viewing a place. The insider's perspective of place provides a unique view into the inner-workings and character of a community. The insider's perspective raises images, feelings, traditions, culture, and history that may elude an outsider. Despite how rudderless it may feel to an outsider, "here" carries a particular meaning to a community in a specific place. What "here" means to one community is different from what "here" means to others. This specificity based on place eludes the outsider.

Just as the insider's perspective sheds light on the interaction between community and place, it also helps explain how that interaction influences regulation of the local environment. When local governance is observed through the insider's perspective, local reaction to ecological change is more understandable, the entrenchment in controversies becomes more meaningful, and the potential of local governance (particularly in the arena of environmental law) becomes deeper and more emboldened.

The insider's perspective prioritizes the knowledge that emerges from the insider's place-based viewpoint, including local values, relationships, myths, and mysteries. The insider's perspective illuminates the attachment between local community and environmental features, and, in a meaningful way, helps to explain why that attachment is critical to community and the environment and how that attachment is translated into local regulation of the environment. We refer to this understanding as "Insider Environmental Law." Insider Environmental Law is the policy that results from a community's engagement with a particular local environment, the development of that community's identity in a specific environmental

¹ LONELY PLANET, PARIS: CITY GUIDE (2006) (back cover) (emphasis added).

context, and even the community's survival and flourishing against the challenges and opportunities that are felt locally.

Understanding Insider Environmental Law is helped by a brief comparison with federal regulation of the environment. When the federal government regulates the environment, it does so in a manner analogous to an outsider's perspective. Federal regulation universalizes environmental features. It uniformly applies policies to achieve a standardized idea of environmental quality. It does not try to understand the importance of environmental context, such as a specific tree or stream. Rather, it regulates by uniformity under the assumption that standardized requirements are applicable to all communities across the United States, regardless of how the community understands itself in relation to the tree or stream. In this Essay we do not explore the question of whether local governments should regulate alike. Rather, we take note that how local governments regulate a particular tree or stream adds value to "here," and does so in a way that is fundamentally different from the objective standards found in federal regulation.

In this Essay, we do not take a normative position on whether an outsider's or insider's perspective is better or more beneficial to the environment or local governance. We set out to account for the existence and importance of the insider perspective to the way communities regulate the environment and that such perspective is not fully recognized. Acknowledging the distinction between an insider's and outsider's approach to environmental regulation can provide a better understanding of why communities do what they do. Insider Environmental Law views environmental assets and challenges from the integrated manner in which the community is situated. Understanding the convergences and differences between the insider's and outsider's perspectives goes to the heart of how local environmental governance can and does work.

The Essay begins by providing some examples of local governance. Part II examines how the insider's perspective is expressed in local governance, both in the manner and method through which communities express themselves. Communities show their histories, shared values, and priorities in a number of different ways, and it is in these expressions that we find sense of place. Part III builds off Part II by considering the degree to which theories of local governance address this sense of place illustrated in Part II. Part III outlines the debate on decentralization of governance authority to determine how we currently evaluate the benefits of local governance. Specifically, this Part describes how the prevailing theories of local governance omit consideration of the insider perspective. Finally, Part IV of this Essay dives more deeply into Insider Environmental Law, illustrating the insider perspective to show that place matters.

II. HERE IS FOUND HERE, NOT THERE

Our town is . . . in an area that is blessed with rugged mountains, pristine rivers, lakes, and ponds. These waters are deep in history. ~ Trout town, Roscoe, New York²

An explanation of Insider Environmental Law must begin with an exploration into the important ways that local governments govern. What drives local governments? What is at the core of local government values, especially those to which attention is given by local residents?

As a jumping-off point, we might assert that local governance must respond to the values, identities, and artifacts that are designated as local. While there is no doubt that local governments must operate within their legal authority,³ our exploration probes behind the legal confinements of local governance and explores the distinct and particular ways in which local governments exercise their authority based on location, history, and culture. In understanding how and why local governments govern, it is essential to grasp the importance of “here.” “Here” is a first-person perspective, a reference point, and a vantage from which all observations and insights can be made. “Here” is situatedness and provides a basis for sense of place. We always have to start an analysis of local from here.⁴ Without it, we cannot fully understand how or why a particular community regulates in a specific way.

For example, similar to hundreds of local governments, the Town of Addison, Texas, located outside Dallas, regulates the removal of trees.⁵ Addison requires that the existing natural landscape, particularly native oak, elm, and pecan trees, be reasonably preserved.⁶ The Town requires property owners to replace any “dead, removed, missing, improperly pruned, or damaged trees,” within thirty days of notification.⁷ The list of suggested trees for replacement consists of trees native to Texas, as well as those that have

² *Fishing*, ROSCOE CHAMBER COM., <https://perma.cc/7Q9V-CJTM> (last visited Apr. 13, 2019).

³ For a discussion of home rule authority and preemption, see MICHAEL E. LIBONATI, LOCAL GOVERNMENT AUTONOMY: NEEDS FOR STATE CONSTITUTIONAL, STATUTORY, AND JUDICIAL CLARIFICATION 51–58 (1993) (discussing the recent judicial trends limiting and expanding local autonomy and home rule authority); David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2260 (2003) (discussing the majority of states adopting home rule provisions, effectively rejecting the notion that localities have no independent powers); Laurie Reynolds, *Home Rule, Extraterritorial Impact, and the Region*, 86 DEN. U. L. REV. 1271, 1294–302 (2009) (describing the negative consequences associated with the extraterritorial impact of home rule and the limitation on home rule unit authority); Jonathan Rosenbloom, *New Day at the Pool: State Preemption, Common Pool Resources, and Non-Place Based Municipal Collaborations*, 36 HARV. ENVTL. L. REV. 445, 450–53 (2012) (discussing the relationship between preemption and extraterritorial impacts).

⁴ As Rick Su states, “although it is easy to generalize about space at an abstract level, there is no substitute for close analysis of a specific community at a particular point in time.” Rick Su, *Locating Keith Aoki: Space, Geography, and Local Government Law*, 45 U.C. DAVIS L. REV. 1637, 1647 (2012).

⁵ See ADDISON, TEX., CODE OF ORDINANCES ch. 34, art. II (2018).

⁶ ADDISON, TEX., CODE OF ORDINANCES § 34-208 (2016).

⁷ *Id.*

been proven to be suitable to the area.⁸ Further, property owners may not remove or transplant a tree contained on the list without first getting a tree permit.⁹ Considerations for granting removal of a listed tree include the impact removal may have on erosion, soil moisture, retention, flow of surface waters and drainage systems, and impact on the public health, safety, and welfare of the Town.¹⁰ It is quite possible the community in Addison looked at other jurisdictions and determined it too should regulate the removal of trees and protect certain native trees. But the purpose of the local ordinance seems to imply otherwise. It states: “The purpose of this Article is to provide landscape elements which . . . Preserve and protect the unique identity and environment of the Town of Addison . . .”¹¹ It is from this sense of place—a specific, insider’s perspective of their “unique identity and environment”—that Addison’s local regulation of the environment begins.¹² From this purpose, stems the policies.

A sense of place emerges from this type of locationally-dependent experience, from suffering through and capitalizing on situated experience (in a fishing village, logging town, farming community, etc.). As humans face their environmental challenges, they learn how to dwell in their space. This is important, as it becomes an integral part of the community. As Keith Basso notes, “the concept of *dwelling* assigns importance to the forms of consciousness with which individuals perceive and apprehend geographical space.”¹³ But the process only begins at perception: “People don’t just dwell in comfort or misery, in centers or margins, in place or out of place, empowered or disempowered.”¹⁴ Rather, making a place from a space is the act of fashioning identity: I work in that pasture; I chased through that stream; I read under that tree. As humans engage in making place, “so, too, do they fashion themselves.”¹⁵ Sense of place tells a story about how a community creates itself in a specific place.

⁸ *Id.* § 34-209; see *List of Trees, Trees of Texas*, TEX. A&M FOREST SERV., <https://perma.cc/C4GW-W2M9> (last visited June 13, 2018) (supplying a list of trees common to Texas).

⁹ ADDISON, TEX. CODE OF ORDINANCES § 34-208 (2016).

¹⁰ *Id.* § 34-208(c)(2)(c).

¹¹ *Id.* § 34-201.

¹² Importantly, we look to how locals describe themselves and their place. Local language can tell the local story. As noted in the Millennium Assessment, “[l]anguage is among the most powerful forms of cultural mapping, and cultures provide maps of meaning through which the world is made more intelligible.” MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: POLICY RESPONSES 406 (Kanchan Chopra et al., eds., 2005).

¹³ Keith H. Basso, *Wisdom Sits In Places: Notes on A Western Apache Landscape*, in *SENSES OF PLACE* 53, 54 (Keith H. Basso & Steven Feld eds., 1996) (emphasis in original).

¹⁴ Keith H. Basso & Steven Feld, *Introduction to SENSES OF PLACE* 3, 11 (Keith Basso & Steven Feld eds., 1996).

¹⁵ *Id.*

A. Planning to Protect Their Own Values: Town of Weare, New Hampshire

The Town of Weare, New Hampshire boasts a rural character, dominated by agricultural, recreational, and natural open space areas.¹⁶ Over the last several centuries, the Town of Weare has undergone a variety of changes that have contributed to its character and helped define the community. Such changes were often directly connected to Weare's place. Early on, logging was supported by the Weare lumber mills,¹⁷ including local involvement in the Pine Tree Riot of 1772,¹⁸ until fires and the rise of plastics challenged the industry.¹⁹ Not long after, agriculture was significant, bolstered by the Weare woolen and cotton mill construction, until regional competition and severe storm events and fires depleted local production.²⁰ In 1909 the Piscataquog River, running through Weare, was dammed to form a reservoir to produce hydroelectric power.²¹

Recently, Weare has experienced a residential and economic upturn.²² Despite the boost such changes offer to the local economy, Weare commissioned a natural resources inventory to more clearly identify its relationship with the local environment and to ensure the quality of life did not suffer in the wake of such "progress."²³ The inventory states:

The Town of Weare is truly blessed with exceptional natural resources—abundant lakes, rivers and streams, productive farm and forest land, high-quality drinking water supplies, diverse wildlife habitat, and spectacular scenic vistas. This study has documented these resources and many more. Thanks to the foresight of earlier generations, much of what makes Weare special has been permanently protected for the benefit of those that will follow.²⁴

To implement this policy, the Town has created overlay districts to protect scenic, historical, and natural resource assets²⁵ and adopted a Right-to-Farm ordinance.²⁶ These laws are the outgrowth of Weare's identity and its place and its desire to preserve that identity or at least support it.

The Town of Weare is not just any other town: it is Weare. That means that the Town and community are inundated with Weare values, Weare practices, and Weare norms. If Weare takes on new development, the Town

¹⁶ S. N.H. PLANNING COMM'N, TOWN OF WEARE OPEN SPACE PLAN 2, 30–31 (2002), <https://perma.cc/MWP2-4DSP>.

¹⁷ *Roadside History: Only 1 of Weare's 22 Piscataquog River Mills Remains*, N.H. UNION LEADER (June 18, 2017), <https://perma.cc/L8YD-M4LG>.

¹⁸ *The Pine Tree Riot*, WEARE HISTORICAL SOC'Y, <https://perma.cc/GR79-DJ92> (last visited Apr. 13, 2019).

¹⁹ S. N.H. PLANNING COMM'N, *supra* note 16, at 9.

²⁰ *Id.* at 9–10.

²¹ *Id.* at 9.

²² *Id.*

²³ See CHRISTOPHER KANE & PETER INGRAHAM, TOWN OF WEARE, N.H., NATURAL RESOURCE INVENTORY SUMMARY REPORT 1–2 (2011); see also S. N.H. PLANNING COMM'N, *supra* note 16, at 10.

²⁴ KANE & INGRAHAM, *supra* note 23, at 2.

²⁵ TOWN OF WEARE, N.H., ZONING ORD. art. 30-A (2017); *Id.* art. 30-B.

²⁶ *Id.* art. 3.11.

is likely to consider whether the proposed development is like—or unlike—Weare. Not surprisingly, Weare values are decidedly local, historical, and confined to its place.

B. Different Spaces, Different Places: Town of Brookhaven

Insights about how and why a community regulates place are commonly available in the community's own words, such as in planning and zoning documents. Consider the divergent views offered by the several hamlets in the Town of Brookhaven, New York. Before preparing its 1996 Comprehensive Plan, eight of the eighteen hamlets adopted their own community vision statements.²⁷ Each of these statements addressed a unique local history, community vision, local needs, and local environmental assets.²⁸ The Town identified the most important fact that grounded the hamlet-based cooperative planning process: “[e]ach of these [statements], prepared with strong citizen participation, provided in-depth local emphasis and reflected *insights that can only be realized by people who live in, are concerned with and are committed to their neighborhoods.*”²⁹ Further, these insights serve as the foundation upon which the Brookhaven comprehensive plan was built and future development for the town realized. The story of two of these hamlets illustrates the complex and important relationship a community has with place and how that relationship translates into regulation.

1. The Hamlet of Brookhaven/South Haven

The hamlet known as Brookhaven/South Haven traces its history—particularly its natural resources history—back to the later part of the seventeenth century.³⁰ Settlers were drawn to this area for its abundant opportunities of whaling, fishing, and farming.³¹ The practice of lighting fires to guide whaling boats crossing the bay resulted in the nickname “Fire Place.”³² The Brookhaven/South Haven area provides habitat for several endangered and sensitive species, such as the osprey and mud turtle.³³ The hamlet also serves as a base for commercial fishermen who harvest crabs, clams, scallops, eels, flounder, snappers, Menhaden and oysters.³⁴

²⁷ TOWN OF BROOKHAVEN, LONG ISLAND, N.Y., FINAL 1996 COMPREHENSIVE LAND USE PLAN 11 (1996), <https://perma.cc/9YZM-8XBE>.

²⁸ See generally *id.* at 11–12. (showing that Hamlet plans were developed with input from local community members addressing “historic preservation concerns and environmental and park recommendations”).

²⁹ *Id.* at 11 (emphasis added).

³⁰ *Growth of Brookhaven*, TOWN BROOKHAVEN, N.Y., <https://perma.cc/829J-NNPJ> (last visited Jan. 29, 2019).

³¹ *Id.*

³² *Brookhaven/South Haven Hamlets Study: Chapter III*, TOWN BROOKHAVEN, N.Y., <https://perma.cc/9CY7-63JX> (last visited Jan. 29, 2019).

³³ *Id.* at 3.

³⁴ *Id.*

Even now, the Brookhaven/South Haven residents revere much of the local geography, but several features stand out. As noted in the Brookhaven/South Haven statement, “[t]oday there is still much to remind us of that early, primeval Brookhaven. The natural wetlands and open space that originally attracted settlers to this area still characterize our community.”³⁵ At the Squassux Landing, the approximately 200 wooden docks continue to serve as a landing and mooring place for working boats and residents.³⁶ The Landing is maintained by the Village Association and is considered a local treasure.³⁷ In addition, the hamlet played a role in the country’s revolutionary history as the home of William Floyd and Nathaniel Woodhull.³⁸

In light of its history and environment, the hamlet is understandably protective:

The Brookhaven Village Association believes that the pastoral, semi-rural character of the community is one of its most important assets. Another is its water resources: Bordered on the east by the wild and scenic Carmans River and on the south by the Great South Bay, and with the mostly protected 2.5-mile-long Beaver Dam Creek running through the middle, our Hamlet is surrounded by a wetlands environment. We believe that any development that takes place within the Hamlet should preserve these assets as much as possible.³⁹

Brookhaven/Southaven knows, recognizes, and embraces its identity. Further, that identity was born out of its place. The hamlet is not inviting change to its place. Such changes could affect its history, character, and identity.

2. *The Hamlet of Medford*

The Hamlet of Medford is a community in a very different part of the Town of Brookhaven. Its existence is likely due to the completion of part of the Long Island Railroad in 1844.⁴⁰ However, the area had only one structure—the house built for the stationmaster—until the turn of the twentieth century.⁴¹ Efforts to incentivize development were largely unsuccessful:

Initial development was very slow, in part because the potential settlers wanted property that was suitable for agriculture and the Medford area was largely

³⁵ *Id.* at ii.

³⁶ *Id.* at iii.

³⁷ *Id.*

³⁸ *Id.* at ii. Floyd was one of the signers of the Declaration of Independence. *Id.* at 9. Woodhull was a brigadier general of the New York Militia during the American Revolution. *Nathaniel Woodhull*, MIL. HALL HONOR, <https://perma.cc/K8TB-MG55> (last visited Apr. 13, 2019).

³⁹ *Id.* at 12.

⁴⁰ PLAN COMM. OF THE MEDFORD TAXPAYERS & CIVIC ASS’N, MEDFORD HAMLET COMMUNITY COMPREHENSIVE PLAN 1 (1994).

⁴¹ *Id.* at 1.

pine barrens. In order to dispel the notion that light sandy soils were unsuitable for farming, the Railroad hired Hal B. Fullerton to prove otherwise. The Medford Demonstration Farm was started on an 80 acre tract along Long Island Avenue. The experiment was a success in terms of proving that crops could be raised - but was a failure in attracting settlers. By 1955 the Railroad lost interest in the venture and sold the land.⁴²

Medford eventually began to grow as community needs morphed in a way that differed from the original plan. Sometime after 1918, the Long Island Expressway was extended, and developers built homes that attracted a diverse base of residents.⁴³ The hamlet continued to expand by constantly changing who and what it wanted to be.

At the time of its hamlet planning process in 1994, the Medford population had grown to over 20,000.⁴⁴ One interesting observation of the hamlet's plan is its perspective on its own character. Medford notes that it had zoned lands for industrial use, but that those lands have remained vacant.⁴⁵ Commercial properties were also suffering a high vacancy rate.⁴⁶ The manner in which Medford's Plan assesses its strengths and challenges seems haphazard. Not surprisingly, the Plan notes that residents and civic leaders "feel dis-enfranchised from the decision making process of the Town" in what seemed like an arbitrary practice of granting variances and lack of code enforcement, and that "most were dissatisfied with traffic, zoning patterns, the attention given to Medford by officials and very concerned about the garbage problem and the future of the community."⁴⁷ Residents of Medford have participated in the planning process by confirming their commitment to maintaining an acceptable quality of life, but appear unsure about how that value is illustrated in local governance. In contrast to its neighbor, Medford's sense of place is plagued by reactionary decision making,⁴⁸ resulting in a complicated and fractured sense of place.

C. Portland as an Environmental Community

The planning documents prepared in Portland, Oregon suggest that local governments can understand the outsider perspective, while also implementing insider visions. Portland's planning documents convey a deep

⁴² *Id.*

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 6-8.

⁴⁷ *Id.* at 17.

⁴⁸ *Id.* at 6, 11, 17 (showing how sudden changes in Medford's zoning ordinances have resulted in nonconforming uses, undesirable uses, and a lack of enforcement of the existing zoning codes).

appreciation for the City's natural setting: "Portland would not be here today were it not for an historic abundance of natural resources."⁴⁹ The City notes:

Long before Portland was established in 1851, native peoples lived for thousands of years on salmon and game that were abundant in the Willamette Valley and lower Columbia River basin. When immigrants came to the United States from Europe and Asia, many traveled westward via the Oregon Trail and settled in the Willamette Valley. Surrounded by waterways, forests, woodlands and prairies, fish and furbearing animals, and fertile soils, these settlers could build their homes, feed their children, and establish businesses and transport their wares.⁵⁰

Portland residents have evolved with a deep connection to those resources, reflected in the city we see today:

Today, approximately 562,700 people reside within the 130 square mile area that is the City of Portland. The Portland metropolitan region is home to roughly 2.12 million people. Portland metropolitan regional population is expected to grow by another estimated 832,200 people by the year 2025. This growth can be attributed in part to Portland's reputation as a beautiful, livable, and "green city," with easy access to nature and many outdoor recreational opportunities. Although many parts of the city are developed, a wealth of streams, wetlands, forests and other types of natural open spaces remain and support a wide variety of fish and wildlife species. Important natural resources are interwoven throughout major parts of the city, including public parks and natural areas, many residential neighborhoods, golf courses, cemeteries and college campuses, and industrial areas along the Willamette River and in the Columbia Corridor.⁵¹

Over the years, Portland residents have accommodated the threats and pride that come from surviving the Portland environment—volcanoes (Mt. St. Helens),⁵² wildfires,⁵³ floods,⁵⁴ competition for space with sensitive species (spotted owl),⁵⁵ and other diminishing species populations resulting from human use and industry (salmon).⁵⁶

⁴⁹ CITY OF PORTLAND, OR., BUREAU OF PLANNING & SUSTAINABILITY, NATURAL RESOURCE INVENTORY UPDATE, RIPARIAN CORRIDORS AND WILDLIFE HABITAT 3 (2012), <https://perma.cc/D83L-474B>.

⁵⁰ *Id.*

⁵¹ *Id.* (citations omitted).

⁵² Meagan Nolan, *On the Anniversary of an Eruption, Mount St. Helens is a Study in Resilience*, PORTLAND MONTHLY (May 16, 2017), <https://perma.cc/5YEV-8SXX>.

⁵³ *Reducing the Risk of Wildfire*, CITY PORTLAND, <https://perma.cc/8WNJ-TWSW> (last visited Apr. 13, 2019).

⁵⁴ Tom Hallman Jr., *A Look Back at the Great Portland Flood of 1894: Portland Weekly History*, OREGONIAN (Sept. 2, 2014), <https://perma.cc/7ZWF-FEH3>.

⁵⁵ Or. Fish & Wildlife Office, *Northern Spotted Owl*, U.S. FISH & WILDLIFE SERV., <https://perma.cc/7D5Z-C4EP> (last visited Apr. 13, 2019).

⁵⁶ Guido Rahr, *Why Protect Salmon*, WILD SALMON CTR., <https://perma.cc/EHN5-A8YK> (last visited Apr. 13, 2019).

The City has linked its natural features to the well-being of its residents. By describing its local environment as natural assets that contribute (financially, aesthetically, and socially) to the success of the city, Portland has associated its identity with its environment. Portland describes its important connection with its place that goes beyond an outsider's appreciation of the place:

These resources provide important ecosystem services that can protect public health, safety and property, and reduce local infrastructure costs. For example, although the city has developed an elaborate stormwater pipe system, local rivers, streams, wetlands and floodplains still provide critical water storage and conveyance capacity throughout Portland's watersheds. Trees, shrubs and groundcover help reduce the impacts of stormwater runoff by intercepting precipitation and filtering out pollutants. Vegetation also helps prevent erosion and landslides by stabilizing streambanks and steep slopes. Trees and vegetation help maintain healthful air quality and reduce energy demand.⁵⁷

D. Celebrating Local: Christmas in July

Local character and community sense of place embedded in natural resources is also found in local celebrations, social practices and artifacts. Every year since 1987, Ashe County, North Carolina has hosted the "Christmas in July" Festival in West Jefferson.⁵⁸ Exuberant planning begins well in advance to insure a celebratory event that is attended by thousands.⁵⁹ Visitors can sample local foods, attend Civil War re-enactments throughout the day, cheer roving performers, shop at the Farmer's Market, learn about local non-profit organizations, play in the children's activities, dance, clog, sing, and enjoy performances at the Community Stage.⁶⁰

Although the festival takes place in the summer, the driving force behind this event is the local natural resource economy: Ashe County is a place known for Christmas trees.⁶¹ "In 2015, Ashe County . . . was named the [foremost] Christmas Tree producer in the United States."⁶² Tree farmers in Ashe County annually harvest approximately 20 million trees from 12,000 acres⁶³ and benefit from the County's Voluntary Farmland Preservation Program.⁶⁴ Ashe County tree farms have provided Christmas trees for the

⁵⁷ BUREAU OF PLANNING & SUSTAINABILITY, CITY OF PORTLAND, OR., NATURAL RESOURCE INVENTORY UPDATE: RIPARIAN CORRIDORS AND WILDLIFE HABITAT 3 (June 2012), <https://perma.cc/R8J3-R7XZ>.

⁵⁸ *About the Festival*, CHRISTMAS JULY FESTIVAL, <https://perma.cc/U733-VSLX> (last visited Apr. 13, 2019).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Quick Facts*, ASHE COUNTY CHRISTMAS TREE ASS'N, <https://perma.cc/Q8CV-XGMU> (last visited Apr. 13, 2019).

⁶⁴ ASHE COUNTY, N.C., CODE OF ORDINANCES § 161.06(A)(3)(a) (2001).

White House,⁶⁵ and local Christmas tree farms provide over 700 local jobs throughout the year, except during harvest, when the industry provides over 2,000 jobs.⁶⁶ The Christmas in July Festival began as a celebration of the Christmas Tree Industry in Ashe County.⁶⁷ The Festival is a celebration of something unique and special about Ashe County, rooted in the community's sense of place.

E. The Here of Regulating

We have previously described the unique recognition that local governments have given in the engagement with their surroundings, such as in detailing and protecting the contributions of Minnehaha Falls in Minneapolis to local economy and identity and Jericho Mountain in Pennsylvania to local history.⁶⁸ We have written about the drinking water benefits from the forested watersheds surrounding New York City, Santa Fe, Portland, and Seattle.⁶⁹ We have also told the story of Louisville, Kentucky in designing the Louisville Loop, a multi-use trail designed to link the city's parks and reinvigorate and re-engage the residents with their surroundings.⁷⁰ These examples help locate the values that pervade local governance. They illustrate how local governments identify local values rooted in place and base regulation on these values. Local governments express values in a way that is hitched to place. Without that connection, governance is unmoored and aimless. This is reflected in Medford's struggles and Weare's clarity of who and what it is and wants to be. The examples are not meant to condone or condemn a local government's decisions. Rather, they are illustrations of how communities operate from the insider's perspective.

III. VALUING LOCAL GOVERNANCE AND FRAMING THE DECENTRALIZATION DEBATE

How should we understand the remarkable expressions of self-awareness set forth in Part II, and what do the examples reveal about local governance? Scholars searching for why local governments govern the way they do have resulted in numerous rationales that are typically articulated as part of the debate on whether to decentralize authority or allocate more or less power to local governments.⁷¹ This debate has been raging since the

⁶⁵ *Ashe County*, ASHE COUNTY GOV'T, <https://perma.cc/DU9D-RXQV> (last visited Apr. 13, 2019).

⁶⁶ *Quick Facts*, *supra* note 63.

⁶⁷ *About the Festival*, *supra* note 58.

⁶⁸ Keith H. Hirokawa, *Sustaining Ecosystem Services Through Local Environmental Law*, 28 PACE ENVTL. L. REV. 760, 818–23 (2011).

⁶⁹ Keith H. Hirokawa, *Driving Local Governments to Watershed Governance*, 42 ENVTL. L. 157, 177, 180, 194, 196 (2012).

⁷⁰ Keith H. Hirokawa, *Environmental Law from the Inside: Local Perspective, Local Potential*, ENVT. L. REP. (Envtl. L. Inst.) 11048, 11051 (2017).

⁷¹ See generally Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339 (1993) (discussing the relationship between the functions of local governments and the one person/one vote doctrine);

founding of the nation and continues today.⁷² Importantly, while the debate has identified numerous important characteristics about government locally, it has yet to reveal the importance of the insider's perspective.

A. Decentralization Debate in the United States

During an early part of the debate on decentralization, James Madison characterized citizens' connection with subnational governments as the "most natural attachment of the people."⁷³ Yet, others such as Thomas Jefferson and Ralph Waldo Emerson were "ambivalent about cities. Despite awareness that cities might be an inevitable and essential part of the American landscape, eighteenth- and nineteenth- century observers viewed them with suspicion."⁷⁴

The coming of age of local governments' legal authority in the nineteenth century reflects not only a hostility towards decentralization, but also an absence of place and the insider's perspective. As the nation emerged from the Revolution and cities began to grow, two major developments in law occurred: local governments were determined to be entirely creatures of state law; and their authority was bounded by Dillon's Rule.⁷⁵ Dillon's Rule, articulated by Judge John F. Dillon in *Municipal*

Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253 (1993) (discussing the relation of local government structures with principles of decentralization); Michael Libonati, *Home Rule: An Essay on Pluralism*, 64 WASH. L. REV. 51 (1989) [hereinafter Libonati, *An Essay on Pluralism*] (discussing the power struggle between central and peripheral government entities); Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. CHI. L. REV. 1484, 1491-511 (1987) (discussing the founders intentions regarding the centralization of government powers); Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CAL. L. REV. 837, 882-87 (1983) (discussing the historical debate between federalist and anti-federalist regarding local governance of land use issues). For cases discussing the decentralization debate, see *Nat'l League of Cities v. Usery*, 426 U.S. 833 (1976) (resolving the role of the Commerce Clause in relation to state authority to handle employment issues), *overruled by* *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985); *City of Montpelier v. Barnett*, 49 A.3d 120 (2012) (ruling that the City of Montpelier did not have the authority to regulate recreational use of a local pond without state delegation).

⁷² See, e.g., THE FEDERALIST NO. 46 (James Madison); THE FEDERALIST NO. 10 (James Madison) (discussing the allocation of power between states and the federal government); see also Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 101 n.29 (2003) (noting that the decentralization debate was "left unresolved at the founding of the nation").

⁷³ THE FEDERALIST NO. 46, *supra* note 72 (speaking predominantly about states).

⁷⁴ CHARLES R. ADRIAN & ERNEST S. GRIFFITH, A HISTORY OF AMERICAN CITY GOVERNMENT: THE FORMATION OF TRADITIONS, 1775-1870, at 3 (1976); *id.* at 4 (quoting Ralph Waldo Emerson, "Cities force growth and make men talkative and entertaining, but they make them artificial" and Thomas Jefferson writing to Madison in 1787, "I think our governments will remain virtuous for many centuries, as long as they are chiefly agricultural; and this will be as long as there shall be vacant lands in any part of America").

⁷⁵ *Id.* at 29. For more on the history of state creatures and charters, see *id.* at 32-39 (discussing the doctrine of state supremacy from the time of "medieval Renaissance England" to post-Civil War nineteenth century American cities). For Dillon's Rule, see *id.* at 39-42 (contrasting Dillon's Rule with the concepts of local self-government and municipal home rule).

Corporations, gives little attention to the importance of place when considering the legal authority granted to cities:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.⁷⁶

Since Dillon's Rule and these foundations of local authority, preeminent local government scholars, particularly during the 1980's and 1990's, put forth a variety of rationales supporting and countering the benefits for local governance.⁷⁷ Often these rationales are "overlapping" in their attempt to promote critical values concerning democracy and representation.⁷⁸

The rationales raised as part of the decentralization debate have been categorized and organized in a number of ways.⁷⁹ Below, we summarize these rationales to illustrate how the decentralization debate is framed and the broad spectrum of what has been thus far put forth as rationales for local governance. Some of the rationales have been thoroughly debated and even refuted. We do not describe all of the counter arguments because our objective is to observe the values weighed as part of the decentralization debate, how that debate characterizes local governance, and how it fails to account for the insider's perspective.⁸⁰

⁷⁶ 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 448–50 (5th ed. 1911); *see also* *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (1868) ("Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature."); *Merriam v. Moody's Executors*, 25 Iowa 163, 170 (1868) (Judge John F. Dillon articulates "Dillon's Rule").

⁷⁷ *See, e.g.*, Frug, *Decentering Decentralization*, *supra* note 71 (arguing in support of local governance via an improved understanding of local governance based on collective entities instead of the subjective individual); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990) [hereinafter Briffault, *Part I*] (criticizing the proponents of greater local power as overlooking the complexities of state-local relations); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 348, 354 (1990) [hereinafter Briffault, *Part II*] (arguing that concepts of local governance need to be analyzed, not just within the confines of cities, but in the context of smaller suburbs, as they each pose different considerations to the facets of local governance); McConnell, *supra* note 71 (arguing that the reviewed text ignores the important intellectual complexities surrounding dual sovereignty, in the form of Federalism, and its values to 1700s United States); Rose, *Planning and Dealing*, *supra* note 71 (arguing against local governance on the basis that local governments cannot be trusted on a fundamental level to make land use decisions in an equitable manner).

⁷⁸ Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 381 (2001).

⁷⁹ *See, e.g.*, Reynolds, *supra* note 72, at 102–03 (noting two primary rationales); Briffault, *Part II*, *supra* note 77, at 392–93 (same); McConnell, *supra* note 71, at 1493–511 (noting three primary rationales, further divided into nine rationales).

⁸⁰ For example, we describe participation as a previously articulated rationale for local governance. *See* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING

As we discuss in more detail at the end of this Part, the rationales described below raise lofty ideals concerning efficiency, participation, democracy, and direct representation. Local governance justified on these ideals is measured against objective, normative standards about what constitutes good governance.⁸¹ Until this point, local governance has not been observed or analyzed based on what is arguably the most tangible, relevant, and identity-laden aspect of local governance—a sense of place. In short, the insider perspective has thus far been absent from discussions rationalizing and countering the need for local governance.

1. *Self-Governance and Private Rights*

This rationale for decentralization is based on private rights and the ability of local governments to protect those rights.⁸² “[d]ecentralization . . . gives people better incentives, more opportunities to exercise their facilities, and fewer reasons to oppress each other.”⁸³ “The most important reason offered by the defenders of state sovereignty was that state and local governments are better protectors of liberty.”⁸⁴ From this view decentralization is considered “the backbone of self-government,” because it allows individuals to control their own decisions and destinies, often “to the exclusion of persons not so ‘affected.’”⁸⁵ “In short, decentralization serves the goal of self-government, whether the ‘self’ doing the governing is an individual . . . or the population of a local jurisdiction.”⁸⁶

The idea that governing locally can promote self-governance predominantly focuses on the democratic values that can be achieved and oppression that can be avoided through smaller, more localized means of governing. Determining whether local governance is a good idea or whether a particular local government is properly functioning is a product of whether the local government objectively is able to protect individuals’ liberty and, thereby, encourage democratic rule.

2. *Spirit and Form*

Another rationale for local governance is to preserve the spirit and form of popular government and has been discussed as having three major advantages concerning: “(1) enforcement of laws, (2) nature of

WALLS 85–89 (1999) [hereinafter FRUG, CITY MAKING] (describing a rationale for local governance based on participation); Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1069–70, 1073 (1980) (same). We do not, however, recite the counter arguments because the operative point for our purposes is that this aspect of the decentralization debate is focused on participation. See Briffault, *Part II*, *supra* note 77, at 396–98 (countering Frug’s arguments based on participation).

⁸¹ Briffault, *Part I*, *supra* note 77, at 5, 115.

⁸² McConnell, *supra* note 71, at 1500; Rosenbloom, *supra* note 3, at 479–80.

⁸³ Roderick M. Hills, Jr., *Is Federalism Good for Localism? The Localist Case for Federal Regimes*, 21 J.L. & POL. 187, 191 (2005).

⁸⁴ McConnell, *supra* note 71, at 1500.

⁸⁵ Hills, *supra* note 83, at 189–90.

⁸⁶ *Id.* at 191.

representation, and (3) cultivation of public spiritedness.”⁸⁷ As to the first advantage: “The confidence which the people have in their rulers, in a free republic . . . arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave.”⁸⁸ The closeness that local governance affords individuals helps facilitate a higher level of confidence in governance and enforcement of the law.

The nature of representation, the second advantage supporting spirit and form “emphasizes improved management, accountability, and creativity, as local units are more likely to have a direct experience with the challenges they face.”⁸⁹ When viewing decentralization as an organizational system it becomes clear that the “main reason to decentralize is to achieve effective management.”⁹⁰ Highlighting the importance of efficiency in management, this advantage focuses on how localizing decision making and voting can improve accountability because those affected by decisions likely have more access to the decision makers.⁹¹ Furthermore, the local citizenry can utilize voting rights and remove decision makers when so desired, better ensuring responsiveness and efficiency.⁹²

Cultivation of public spiritedness is a “philosophical argument premised on public virtue, in which smaller units of government are thought to motivate people to participate in governance.”⁹³ This advantage posits that the absence of public virtue (which arises from decentralized governance) causes indifference toward the community’s goals and objectives, focusing instead on individual ambition with little regard for community.⁹⁴ Public virtue can be maintained by allowing individuals a meaningful opportunity to participate in government, which can be facilitated by localized decision making.⁹⁵ An individual’s ability to make decisions in and for their locality transforms them from being a passive resident to an active citizen.⁹⁶

⁸⁷ McConnell, *supra* note 71, at 1507–08.

⁸⁸ *Id.* at 1508 (internal quotations omitted); *see also* Carroll Doherty, *Key Findings on Americans’ Views of the U.S. Political System and Democracy*, PEW RES. CTR. (Apr. 18, 2018), <https://perma.cc/9KLQ-PDRU>.

⁸⁹ Rosenbloom, *supra* note 3, at 479–80.

⁹⁰ Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903, 910 (1994). *But see* FRUG, CITY MAKING, *supra* note 80, at 167–73 (pointing out some deficiencies in the fetishization of the benefits/advantages of the localization of decision making—namely, that consumption is an individualized activity, undertaken (generally) without regard for others or the community).

⁹¹ Rubin & Feeley, *supra* note 90, at 916, 951.

⁹² *See, e.g.*, Sharyn Jackson, *Iowa Gay Marriage Ruling a Turning Point for Justices*, USA TODAY (Apr. 2, 2014), <https://perma.cc/KT9Q-7BVJ> (describing how Iowa citizens did not reelect three Iowa Supreme Court Justices after they ruled in favor of legalizing gay marriage in the state).

⁹³ Rosenbloom, *supra* note 3, at 480.

⁹⁴ *See* 1 M. DE SECONDAT, BARON DE MONTISQUIEU, THE SPIRIT OF LAWS 22 (J.V. Pritchard ed., Thomas Nugent trans., Fred B. Rotham & Co. 1991) (noting that fundamental laws cannot exist in absence of intermediary channels of government).

⁹⁵ *Id.*; Schragger, *supra* note 78, 381–82.

⁹⁶ *See* ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 62 (J.P. Mayer ed., George Lawrence trans., Harper Perennial 1960).

Participation can help instill a sense of pride and responsibility in citizens, as they are able to craft a government responsive to their unique needs.⁹⁷

Relatedly, since 1980 Jerry Frug has articulated a rationale for local governance based on participation.⁹⁸ Centralized governments, Frug argues, are not as effective, responsive, or connected to individuals as local governments are.⁹⁹ Failure to empower local governments “produces citizen apathy and destroys their incentive to participate in local government. . . . In Frug’s view, then, enhanced local power will both increase the individual’s connectedness with and involvement in the business of government, and achieve higher levels of social justice and equality.”¹⁰⁰

3. *Public Good*

Local governance has been justified and analyzed on the idea that local governments are better able to provide for the “public good” because they are closer and more responsive to citizens.¹⁰¹ This argument has been further divided into several distinct advantages of decentralizing power for the public good. “The first, and most axiomatic, advantage of decentralized government is that local laws can be adapted to local conditions and local tastes, while a national government must take a uniform—and hence less desirable—approach.”¹⁰² The idea is that as long as there is diversity among citizen preferences, decentralizing authority is more responsive to these differences.¹⁰³

In similar fashion, the public good rationale has been characterized as an economic defense of local governance.¹⁰⁴ Pursuant to this perspective, the

⁹⁷ *Id.* at 62–63.

⁹⁸ Frug, *The City as a Legal Concept*, *supra* note 80, at 1071. Richard Briffault has characterized Frug’s argument as having three parts “(i) individual participation in public decision making is an important political value, yet opportunities for participation are inadequate and declining; (ii) individual involvement can occur only in small political units, primarily local governments; and (iii) individuals will participate in local politics only if there is ‘a genuine transfer of power’ to local government.” Briffault, *Part II*, *supra* note 77, at 393–94.

⁹⁹ See generally Frug, *The City as a Legal Concept*, *supra* note 80, at 1062–67 (discussing the powerlessness of cities and how this affects local populations); Frug, *Decentering Decentralization*, *supra* note 71, at 271 (“[S]tates could never engender the kind of democratic participation in public affairs that is possible on a local basis.”).

¹⁰⁰ Reynolds, *supra* note 72, at 106.

¹⁰¹ McConnell, *supra* note 71, at 1493–500 (“[O]ne government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded.” (quoting THE COMPLETE ANTI-FEDERALIST 2.8.13–14 (Herbert J. Storing ed., 1981))).

¹⁰² *Id.* at 1493.

¹⁰³ Schragger, *supra* note 78, at 381 (2001); McConnell, *supra* note 71, at 1493–500 (finding that local governance better reflects individual diversity of interests); Hills, *supra* note 83, at 191 (“[L]ocal governments can more closely match the preferences of persons located within [its] jurisdiction than a single, central governmental service provider.”).

¹⁰⁴ Reynolds, *supra* note 72, at 103. For more on the public choice theory of local government, see Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418 (1956) (“The consumer-voter may be viewed as picking that community which best satisfies his preference pattern for public goods. . . . [T]he consumer-voter moves to that community whose local government best satisfies his set of preferences.”); Clayton P. Gillette,

benefits of allocating authority to local governments include a competition or desire to provide a “mix of services in order to retain their constituents. . . . Competition between and among government units should produce greater efficiency in the provision of public services as well as more variety in the range and level of services offered by different government units.”¹⁰⁵ As Harold Wolman notes “[e]fficiency is defined as the maximization of social welfare.”¹⁰⁶

A final advantage raised as part of the public good rationale is premised on the idea that “decentralization is believed to enhance social capital, improving the health and prosperity of citizens.”¹⁰⁷ Decentralization helps create communities by making factions within a larger territory. These communities gather for “entertainment, social intercourse and personal enjoyment.”¹⁰⁸ Social capital helps individuals create connections that may assist in achieving career or other personal goals.¹⁰⁹ “Where people are trusting and trustworthy, and where they are subject to repeated interaction with fellow citizens, everyday business and social transactions are less costly.”¹¹⁰ People can worry and spend less “making sure others will uphold their end of the arrangement.”¹¹¹ This level of trust may not be as prevalent in larger forms of governance where people are strangers.

Combined, the advantages of decentralization that support the public good concern responsiveness, innovation, and community cohesion—*objective* standards upon which we can analyze local governance and the need for it. In other words, we can ascertain whether local governance is a good idea or whether a particular local government is properly functioning

Regionalization and Interlocal Bargains, 76 N.Y.U. L. REV. 190, 194 (2001) (examining “interlocal arrangements in which multiple localities realize economies of scope or scale through provision of a single public good. These arrangements, such as metropolitan waste disposal agencies or regional ambulance services, constitute the bulk of interlocal contracts”). For a summary of criticisms concerning Tiebout’s arguments, see Reynolds, *supra* note 72, at 104–06 (“Scholars have criticized Tiebout’s theory from two main vantage points. Some question the accuracy of Tiebout’s assumptions about human behavior, while others disagree with the theory’s normative bases and practical results.”).

¹⁰⁵ Reynolds, *supra* note 72, at 103.

¹⁰⁶ Harold Wolman, *Decentralization: What It Is and Why We Should Care*, in DECENTRALIZATION: LOCAL GOVERNMENTS AND MARKETS 29, 30 (Robert J. Bennett ed., 1990).

¹⁰⁷ Rosenbloom, *supra* note 3, at 480; see also L.J. Hanifan, *The Rural School Community Center*, ANNALS AM. ACAD. POL. & SOC. SCI. 130, 130–31 (1916) (discussing “community social capital” and “wellbeing”).

¹⁰⁸ Hanifan, *supra* note 107, at 131; see also Jerry Frug, *The Geography of Community*, 48 STAN. L. REV. 1047, 1048 (1996) (“[T]he role that cities ought to play in American society . . . is community building.”).

¹⁰⁹ ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 20 (2000).

¹¹⁰ *Id.* at 288.

¹¹¹ *Id.*; McConnell, *supra* note 71, at 1494–95 (noting that another advantage based on public good is more of a caution than an inherent advantage of decentralization because “[t]he unit of decision making must be large enough so that decisions reflect the full costs and benefits, but small enough that destructive competition for the benefits of central government action is minimized. In economic language, this is the problem of ‘externalities’”).

by exploring its standardized level of responsiveness, innovation, and community cohesiveness.

B. What Is in These Rationales?

The rationales described above support the idea of decentralized, local governance based on important values embedded in the American psyche since the founding of the nation. These values embody core ideals concerning representation, democracy, participation, and a commitment to good and efficient governance, among others. Relying on objective, uniformly practiced governance values, the rationales explain some aspects of local governance. As one author stated: “current appeal of decentralisation has been rooted in its potential benefits. Among them, the literature consistently emphasizes the following: political education; training in political leadership; political stability; political equality; accountability; responsiveness; improved decision making and inter-organisational coordination; and the promotion of competition.”¹¹²

In our view, the decentralization theories miss an important point about local governance. Specifically, there is no space reserved for the “here”—no space for the consideration of the manner in which place plays a role in the development of community identity and values.¹¹³ There is no recognition that knowledge pertaining to place is necessary to understand how and why localities govern. In each of the examples described in Part II, we find local self-descriptions of identity that may not be adequately explained by the theories proffered about decentralization. Which of those theories explains why the residents of Medford have struggled so much with developing a coherent commercial or industrial land base, or why the residents are dissatisfied with the tools that the hamlet has used to attract such land uses? Which of the theories provide a basis for limiting development intrusions into the Squassux Landing or the pride in a nickname like the Fire Place? How did Ashe County even conceive of a Christmas in July festival, and how has it become such a focal point of the community?

The place-based knowledge that is exhibited in the examples in Part II is not merely *accessible* to the insiders in the community, but it is the very basis for community. Local knowledge helps define the community and its identity. Without a discussion of the insider’s perspective, the decentralization debate is missing a significant portion of what motivates communities to govern themselves. The types of knowledge that come from being physically embedded in a place, in a community, and in an

¹¹² Fidelx Pius Kulipossa, *Decentralisation and Democracy in Developing Countries: An Overview*, 14 DEV. IN PRAC. 768, 768 (2004) (emphasis omitted).

¹¹³ One aspect of the decentralization debate we find relevant to an insider perspective is that arguments for local power can be found on all parts of the political spectrum. See Briffault, *Part I, supra* note 77, at 1 (1990) (noting that those arguing for local authority include a “striking harmonization of the otherwise divergent values of the free market, civic republicanism and critical legal studies”).

environment arise from observations and interactions not accounted for in the decentralization debate.¹¹⁴

The values championed in the decentralization debate illustrate objective values and knowledge—something important, but conceptual rather than engaged. The offered paradigms invoke important values, but they exclude the critical role that the development of particular communities and successes (and failures) serve in particular local governments. There is no hint of an investigation into whether decentralization is important because community, history, or more generally, how the community is situated in place are important. Whether the formulation of values that distinguish choices are more important “here” than anywhere else or whether that place reflects the history or norms and local values is an insider’s perspective.

The laudable objectives concerning democracy and participation articulated in the decentralization debate embrace an outsider’s perspective on how local governments work or should work. The traditional decentralization debate evaluates the legitimacy and effectiveness of local governments from an outsider’s perspective, based on a uniform set of standards. While we exercise democracy and policies of good governance through constitutions, statutes, and regulations, our day-to-day and moment-to-moment experiences concern the tangible places and things around us. These are the places and people which help define us and participate in a real way in shaping choices—things that are best understood from the insider’s perspective. Little acknowledgment is given to these things that make “us” who we are.

IV. INSIDER PERSPECTIVE AND INSIDER ENVIRONMENTAL GOVERNANCE

Plunging into the insider perspective may provide some insights into disparities in the protections offered for farming, gambling, big box stores, or Main Street development. It may explain investments in or divestments from education, recreational opportunities, historic preservation, gentrification, transportation and other infrastructure investments, or even local celebrations such as festivals and block parties. It may result in an understanding of the historical and persistent relationships between local icons and natural resource dependencies, such as those found in logging, port, and mining towns. It may also explain why some local governments endorse sustainability measures, and some do not.

Of course, place is complicated¹¹⁵ by the ever-changing character of culture and society. “Because place is many things and speaks in many

¹¹⁴ Su, *supra* note 4, at 1646–47.

¹¹⁵ The premise that place-based values and perspective are initiated in personal and physical experiences with landscapes and interactions with the local environment might suggest too much of a relativistic approach, or in the alternative, a general inaccessibility of the values at issue. Self-reflection, inspiring thoughts and memories seem to present a significant challenge in objective thinking about governance. Basso, *supra* note 13, at 55 (“When places are

voices—individual biography, shared history, meaningful memory, and moral lesson, as well as euphemism—it is constantly shifting, emerging or receding, being accentuated or veiled.”¹¹⁶ But place is revealing. As Keith Basso states, “places possess a marked capacity for triggering acts of self-reflection, inspiring thoughts about who one presently is, or memories of who one used to be, or musings on who one might become.”¹¹⁷ “[I]t is simply not the case . . . that relationships to places are lived exclusively or predominantly in contemplative moments of isolation. On the contrary, relationships to places are lived most often in the company of other people.”¹¹⁸ The project in viewing place is to identify and observe the ways that place-based values are represented as an insider. Basso explains:

[A]s any seasoned traveler can readily attest, locally significant places get depicted and appraised by established local citizens almost as often as suspicious marital upheavals, bad weather, and the shortcomings of other people’s children. Surrounded by places, and always in one place or another, men and women talk about them constantly . . . [I]t is from listening in on such exchanges and then trying to ascertain what has been said that interested outsiders can begin to appreciate what the encompassing landscape is really all about.¹¹⁹

Not surprisingly, place-based values can be found in more than just rumors and loose talk about neighbors. The landscape itself can be read: “Details—rocks, sandy shoals, kelp beds—unmappable in their tininess, inconsistency, and fluidity, can, nevertheless, become matters of life and death.”¹²⁰ The landscape is the context for experience and for joy. Humans incorporate such challenges and advantages into the daily lives and rituals: “struggles arising from loss and desires for control are always placed.”¹²¹ Accounts of sense of place involve how contingencies attributable to location have become the stuff of local narrative, including “moments of tension, displacement, and deferral. . . . It is made up of narrativized moments of encounter, shock, description, digression, and lyrical, ruminative aporias that give pause.”¹²² Reading into place helps detail the

actively sensed, the physical landscape becomes wedded to the landscape of the mind, to the roving imagination, and where the mind may lead is anybody’s guess.”).

¹¹⁶ Miriam Kahn, *Your Place and Mine: Sharing Emotional Landscapes in Wamira, Papua New Guinea*, in SENSES OF PLACE 167, 168 (Keith H. Basso & Steven Feld eds., 1996).

¹¹⁷ Basso, *supra* note 13, at 55; *see also* Steven Feld, *Waterfalls of Song: An Acoustemology of Place Resounding in Bosavi, Papua New Guinea*, in SENSES OF PLACE 91, 134 (Keith H. Basso & Steven Feld eds., 1996) (“Places may come into presence through the experience of bodily sensation, but it is through expression that they reach heightened emotional and aesthetic dimensions of sensual inspiration.”).

¹¹⁸ Basso, *supra* note 13, at 56–57.

¹¹⁹ *Id.* at 56.

¹²⁰ Charles O. Frake, *Pleasant Places, Past Times, and Sheltered Identity in Rural East Anglia*, in SENSES OF PLACE 229, 246 (Keith H. Basso & Steven Feld eds., 1996).

¹²¹ Basso & Feld, *supra* note 14, at 11.

¹²² Kathleen C. Stewart, *An Occupied Place*, in SENSES OF PLACE 137, 139 (Keith H. Basso & Steven Feld eds., 1996).

manner in which local residents have incorporated the local environment into their voices, interactions, norms, laws and even imagination.¹²³ Investigation into sense of place is therefore particularized: “[w]hat looks like a river, a hill, or a group of stones may, in fact, resonate meaningfully . . . as a type of moral landscape conveying messages about human frailties, foibles, and responsibilities.”¹²⁴ In the process of making such observations, values are illuminated for the outsider. The task of the outsider is to look closely at the circumstances so that the “there” description is overcome by the priority and meaning of “here.”¹²⁵

Having come to this point, it might be apparent that the decentralization approaches disregard or even discredit sense of place in favor of sameness. There are at least two driving forces behind the push toward sameness in local governance. First, decentralization theories largely attempted to answer the question of how *every* local government should operate.¹²⁶ We are not suggesting that this is a wasted effort. Extracting the foundations of local governance in the precepts of good governance from a review of all local governments can provide a basis for comparison and criteria for legitimacy.

In an important sense, citizens of Chicago, Eugene, Anchorage, Schwenksville, King of Prussia, Charleston, Boulder, and Miami are entitled to fundamental ideals of good governance discussed in the decentralization debate. For some questions of legitimacy, there is relevancy to assessing compliance with state law, inclusion of the public in public administration, and other foci that relate to how local governments should work. If the City of Chicago fails to provide access to the Chicago Riverwalk or Oak Street Beach or fails to disclose public records pertaining to the Riverwalk or Beach or fails to provide public notice of a hearing, the legitimacy of the action could be judged on standards that are used to confirm or overturn a similar decision in another city or town. Law works well when it neutralizes difference and provides a basis to judge actions against an objective standard. Locales may be understood by reference to the similarities—the “sameness”—in the ways that local governments work and the extent to which one local government might diverge.

¹²³ Sense of place “includes the relation of sensation to emplacement; the experiential and expressive ways places are known, imagined, yearned for, held, remembered, voiced, lived, contested, and struggled over; and the multiple ways places are metonymically and metaphorically tied to identities.” Basso & Feld, *supra* note 14, at 11. Hence, “[m]eaning attached to the landscape unfolds in language, names, stories, myths, and rituals. These meanings crystalize into shared symbols and ultimately link people to a sense of common history and individual identity.” Kahn, *supra* note 116, at 168.

¹²⁴ Kahn, *supra* note 116, at 167–68.

¹²⁵ Basso, *supra* note 13, at 56 (“[T]he outsider must attempt to come to grips with the indigenous cultural forms with which the landscape is experienced, the shared symbolic vehicles that give shape to geographical experience and facilitate its communication—its recreation and re-presentation—in interpersonal settings.”).

¹²⁶ See, e.g., Briffault, *Part I*, *supra* note 77, at 1–2 (discussing the structure of local government law and decentralization concepts with respect to “most local governments”).

Second, the effort in decentralization theories to neutralize difference allows a way to place local governments in a federalist scheme that accounts for boundaries between different levels of government. By identifying the limits of governmental capacity to coincide with jurisdictional boundaries, local government can be situated in a system that demarcates governmental authority without interference—or the authority to interfere—in an entity that exercises broader geographical concerns.

The result of these two observations is that, in a decentralization framework, local governance is not valued for its connection to place and community. Local knowledge, local concern, and sense of place are not accounted for in weighing the benefits or understanding of local governance. As a result, we often see sense of place and the insider's perspective relegated to the category of "parochial," which is taken to mean counterproductive.¹²⁷ Yet sense of place is only problematic when situated in a placeless context. Indeed, the fallacy in the decentralization exercise is thinking that objective criteria might apply to the actions or intentions of *any* local government action. As noted in the Millennium Assessment, the effort to understand place in a more rational, objective manner operates to "separate people from their environments, freezing and stereotyping both culture and ecosystems. Such systems and strategies are less effective in addressing linkages between ecosystem functioning, development, and human well-being."¹²⁸ Decentralization theories have done little to sharpen the distinctions between different communities and their local governments, and indeed are predisposed to do the opposite.

The normative point that *could* be made by decentralization theories is that local government legitimacy and effectiveness might not be so much a product of deciding which objective democratic premises are true, but by which theory identifies or acknowledges *here*. Cities and towns are more special than such an objective analysis might allow. Residents of these locales would not mistake their residencies for another. We often hear, "I am from Chicago," or "I am from Eugene," but we are less likely to hear, "I am from a city devoted to participation," or "I am from a town with a close connection to councilmembers." Chicago and Eugene share few climatic and other environmental influences, economies, social norms, and histories that matter to understanding place. Hence, it is not helpful to point out what governance mechanisms work well in Chicago unless the observation is made that the mechanism would work well *here*. Outsider environmental law provides little insight into how or why local environments are governed as they are.

This, we take it, is the driving force behind the many disciplines and thinkers suggesting that context helps find meaning for social practices and norms, artifacts, expressions, and actions. Richard Rorty, for example, derides objective criteria and replaces them with context and coherence.¹²⁹

¹²⁷ Basso, *supra* note 13, at 84.

¹²⁸ MILLENNIUM ECOSYSTEM ASSESSMENT, *supra* note 12, at 417–18.

¹²⁹ Richard Rorty, *Solidarity or Objectivity?*, in OBJECTIVITY, RELATIVISM, AND TRUTH 21, 26 (1991).

As Rorty notes, when we relieve our inquiry from such high standards of objectivity by replacing criteria with context, “the notion of ‘local cultural norms’ will lose its offensively parochial overtones.”¹³⁰ We might also take seriously the observation about placelessness made by geographer Edward Relph, who notes that intentional, otherwise rational changes in landscapes have the effect of disconnection, displacement, and confusion about one’s surroundings.¹³¹ The offensiveness of “parochialism” melts away not because such local norms become less parochial, but instead because parochialism itself can be freed from its offensive overtones.

Given the foregoing, we believe that it is a complicated thing to criticize local government for governing locally and avoid the role played by sense of place simply because parochialism is *one* way of realizing local needs. We have to recognize that sense of place in specific communities is seldom an incentive for local governments to act contrary to the interests of neighboring communities, even if it is easy to identify and demonize those instances in where parochial concerns result in protectionism. Sense of place is a cultural construct, a social fabric, one that is expressive and grounded and situated. To criticize local government for acting according to sense of place is like saying that local government is behaving badly for doing what it is supposed to do.

V. CONCLUSION

Local governance is a special and unique kind of public administration. There is no other government structure or process that quite captures the deep and heartfelt values at stake and the connectedness that those governed have with their local government, the community, local history, and the environment. What makes local governance special and unique? Literature is inundated with theories of access to government, the benefits of diversity and participation, proper allocation of authority, and check-and-balance approaches to governance.¹³² Scholars have lauded local governance as promoting lofty values and goals, such as democracy, efficiency, and accountability. While local governance may promote all of these, we believe this literature and, more generally, the debate concerning decentralization and local authority, is missing a fundamental and critical rationale that truly captures what it means to regulate and be regulated at the local level. The literature is devoid of sense of place, perhaps the thing that deeply explains local governance and conveys the idea of community, both as that term

¹³⁰ *Id.*

¹³¹ “A rational landscape, created from the perspective of intentional rationality, can nevertheless be experienced as absurd, as alien and impenetrable, and yet it can also be taken for granted as the setting for everyday life. . . . We find increasingly that we are confronted and confused by landscapes that lack clear centres and boundaries and which are constantly changing identity.” E. RELPH, PLACE AND PLACELESSNESS 133 (1976).

¹³² See, e.g., *supra* Part II (discussing the degree to which theories of local governance address this sense of place).

refers to shared values in general, but also to particular, situated communities.

Constructing a theory of local governance that is viewed from the outside only captures whether local governments are valid *there*. Yet, “it is still the case that no one lives in the world in general. Everybody, even the exiled, the drifting, the diasporic, or the perpetually moving, lives in some confined and limited stretch of it—the world around here.”¹³³ The very location of local governance must be respected.¹³⁴ Even where we find commonalities between communities, there are few meaningful ahistorical or acontextual truths about local governance. Studying, analyzing, and assessing local government is an exercise in understanding why something happened *here*. If local government theories were more resolved to understanding what constitutes “local,” we might be less vain about the distractions that drag us into outsider discussions about governance and less apt to construct a break between local government and its local traditions, cultures, and insights.¹³⁵

Revered anthropologist Clifford Geertz has noted that sense of place remains the defining characteristic that distinguishes here from there.¹³⁶ Accounting for sense of place provides “what it means to be here rather than there, now rather than then, without which our understanding will be thin, general, surface, and incomplete.”¹³⁷ Sense of place is only *one* way of understanding the relationship that communities have with their local environment,¹³⁸ but it has traditionally been overlooked in decentralization

¹³³ Clifford Geertz, *Afterword to SENSES OF PLACE* 259, 262 (Keith H. Basso & Steven Feld eds. 1996).

¹³⁴ Edward S. Casey, *How to Get from Space to Place in a Fairly Short Stretch of Time: Phenomenological Prolegomena*, in *SENSES OF PLACE* 13, 33 (Keith H. Basso & Steven Feld eds., 1996); see also Whitney G. Stohr, *The Local Identity of Smart Growth: How Species Preservation Efforts Promote Culturally Relevant Comprehensive Planning*, 43 *Envtl. L. Rep. (Envtl. L. Inst.)* 10,024, 10,024–25 (2013) (“Traditional strategies designed to promote city livability, for example, reduce suburban sprawl, improve public transportation options, enhance the aesthetic appearance of the city, and increase social interaction among residents by providing, *inter alia*, walkable downtowns, urban parks and green space, and civic institutions. While certainly vital to the planning process, such strategies alone fail to capture the inherent identity of the local people and the culture unique to the region. Stated another way, by promoting urban livability in an isolated manner, divorced from cultural relevancy, city planners fail to create a desired sense of place.”).

¹³⁵ Understanding place is not an easy task. See Geertz, *supra* note 133, at 259 (“It is difficult to see what is always there. Whoever discovered water, it was not a fish.”). The ubiquity of place makes it difficult to define, judge, or even choose—place is everywhere.

¹³⁶ *Id.* at 262.

¹³⁷ *Id.* at 261–62 (“For all of the uprooting, the homelessness, the migrations, forced and voluntary, the dislocations of traditional relationships, the struggles over homelands, borders, and rights of recognition, for all of the destructions of familiar landscapes and the manufacturings of new ones, and for all of the loss of local stabilities and local originalities, the sense of place, seems, however tense and darkened, barely diminished in the modern world.”).

¹³⁸ That insider environmental law might be “bad,” against public policy, or even offensive does not negate its importance to understanding how communities regulate. After we recognize this critical aspect of governing locally, we can begin the empirical process exploring instances in which insider environmental law is a “good” thing, results in successful public policy, and creates supportive and inclusive community regulations.

scholarship, and more generally in federal and state environmental law, and should be addressed.¹³⁹

If place has so much to offer in terms of understanding how community values are formed, why are we so scared of the concept of place? And why is it missing from our discourse on regulating locally? Why is it that we so often try to neutralize locationally dependent values and priorities by referring to them as “parochial” and undermining the relevance to an otherwise legitimate decision-making process? It might be the false sense of certainty resulting from a reductionist understanding of governance legitimacy—an exercise in formulating uniform and objective standards and criteria that might be used to determine validity in the exercise of governmental authority. When we have a basis to compare performance across the span of governments, we may feel we have come closer to validating governance itself. But that notion might not work when we try to grasp the relationship between environment and surroundings in a particular community. Local has no counterparts, and perhaps local has no equal. Place does matter.

¹³⁹ Geertz, *supra* note 133, at 261–62 (“The disaggregation of the worn, prefabricated units in terms of which we are used to thinking about the contemporary world . . . into configurations of particular places, particularly inhabited, is at least one of the ways—it is hardly the only one—in which the received procedures of small-scale ethnography can be brought in bear on the grand complexities that plague that world.”).