

## A Territorial Imperative: The Authority of the State to Reorganize Public Schools and Districts

Craig B. Howley

ERIC Clearinghouse on Rural Education and Small Schools

*In this article, I aim to detail the legal historical influences at work on behalf of the State's authority to establish, revise, and disestablish schools and districts within its jurisdiction. Local outcries against consolidation comprise a large part of the detail recounted here, but the acts of legislatures and the judgments of the courts have clearly tended to legitimate the State's authority. Occasionally, local citizens win procedural reprieves. The historical tendency is not likely to be reversed on legal grounds, but the security of the State's authority in this realm may be in doubt if territoriality should no longer form the basis of schooling in postindustrial society.*

The provision of mass education represents an unparalleled intrusion of the state into a realm of experience once considered private (Lasch, 1991). Citizens have often resisted this intrusion (e.g., Curtis, 1988) and most proposals to close schools or reorganize districts continue to elicit such resistance (DeYoung & Howley, 1992; Stephens, 1991).

The legal history of the state's authority to reorganize schooling, however, has received little attention, despite the existence of an ample case law available to educators for analysis. This article reviews that literature.

In this article, I consider the legal right (i.e., authority) of the state to define and redefine the territory served by administrative units that provide direct services to students (i.e., public schools and districts). My review includes illustrative law (both statutory and case law) that circumscribes the authority of the state acting on behalf of a public good to provide schooling to all children. I speculate, in the concluding section, on the future of territoriality as the basis for mass education, in light of legal battles of the past and present and the postmodern development of educational technology.

The larger context of this history, which includes the mechanisms by which the state and its citizens negotiate the state's authority, should be acknowledged at the outset. The history of case law reported here represents a footnote to a larger history of laws, institutions (e.g., courts, hospi-

tals, prisons, corporations), and disciplines (e.g., psychology, sociology, pedagogy, criminology) that elaborate the nature and establish the legitimacy of the state. The state, in other words, is not a static entity. Its prerogatives and functions change over time, largely as the result of contest between the powers that constitute the state (e.g., Carnoy & Levin, 1985). This article, then, not only assesses the legalities and legalisms of consolidation, it also provides an example of the kind of contests that shape the state itself.

### Historical Origins

Schooling in the United States has evolved from its roots as an informal, albeit quasi-public, social phenomenon. Almost from the beginning, the aim was construction of a "common school" that would serve equally all the affected children from a given neighborhood (Boli, Ramirez, & Meyer, 1985; Meyer, Tyack, Nagel, & Gordon, 1979). The challenge is great because the American Republic has been the "world-class" destination of choice for dispossessed citizens of the world. Schooling, as Counts (1930) observed, is a peculiarly American "road to culture."

Today, schooling is conducted as a highly systematized public institution. Many observers, both right and left, seem to believe the existing system is too tightly linked. Greater autonomy of public schools, if not of teachers within them, is seen as a mechanism by which to cultivate valid differences

to which “consumers” (parents) might variously subscribe on the basis of choice.

Limits to this supposedly desirable autonomy, however, are inherent in the legal circumstances surrounding the very existence of public schools and districts. As the state consolidated its authority to administer schooling within given jurisdictions (i.e., local, regional, state, and federal), the need to compel the establishment and disestablishment of schools and districts was fundamental. Indeed, lacking this power, the authority of the state to administer public schools would become moot. This observation is as true now as it was when originally elaborated in law during the early years of the century. Perhaps the current round of consolidations is necessary to affirm the state’s legitimacy (DeYoung & Howley, 1992) and to protect its authority over schooling (i.e., in the face of proposals to privatize this service of the state).

The legal term that applies to the material manifestation of this power is “consolidation.” The Reporter System, which catalogs, abstracts, and indexes all court decisions in the United States by jurisdiction, classifies relevant cases under this rubric. In considering statutory and case law, I necessarily follow the usage of the Reporter System.

Stephens (1991) prefers to restrict use of the term “consolidation” to actions that affect *schools* within a single district and to apply the term “reorganization” to actions that affect districts. In discussing the contemporary context, this distinction is useful: The differences between schools and districts are critical in the contemporary context. In a longer historical view, however, the distinction is less useful; the closing of individual schools *often* entailed the creation of new, larger districts. At the heart of this centralizing tendency lie the construct of “the state,” the legal right (authority) that is within the province of the state, and territoriality.

The term “consolidation” makes the centralizing tendency of state power evident, but the term “reorganization” reminds us that centralization is *not* the only alternative when change takes place. One may hope that future efforts at reorganization will be more responsive to local circumstance and influence (cf. Monk & Haller, 1993). The basis for such hope, however, is hardly clear. This essay says very little about the critical issue of power, which has been consistently deployed against rural people, maligned as backward primitives (DeYoung & Howley, 1992). Stephens (1991) re-

minds us that rural education is losing legislative power as population continues to decline in rural areas. In 1990, moreover, my own analysis of rural political economies suggested that national business interests operated so as to marginalize rural areas (Howley, 1991).

#### Legal Historical Background

From the earliest days of the Republic, and, indeed, long before, Americans have sought to provide as widely available an education as resources might permit. The Puritans were among the first to provide for the public education of their children, under the terms of the “Old Deluder, Satan” law of 1642. This public schooling was the project of a religious, not a secular, state. This early law, however, established the precedent of American commitment to schooling as an important tool in cultivating the commonweal, at least in the North. Through much of the 17th and 18th centuries, communities (or private individuals) supported various forms of quasi-public schooling. Indeed, the distant colonial powers took little interest in American education. Left to their own devices, colonists began to elaborate a popular—if not yet populist—demand for education.

By the time of the American revolution, the native demand for education—and its prospects for the future—influenced visionary plans for a Republic based on popular rule (Cremin, 1980). The progress of education among the colonial elite, particularly the widely appreciated influence of the ideals of the Enlightenment, enabled this vision. And the colonial elite that framed the national project fervently believed that popular education was the most effective insurance for the survival of the emerging nation. Even prior to the establishment of the Republic, this commitment was reflected in the adoption of the Northwest Ordinance of 1784. The Ordinance provided a mechanism in newly formed states to fund common schools through the application of resources generated by public lands.

During the early years of the Republic, aspirations for a public *system* of schooling continued to grow. Law often referenced such aspirations without, however, effectively implementing action to realize them. The Indiana constitution of 1816 illustrates this circumstance:

It shall be the duty of the general assembly, as soon as circumstances will permit,

to provide by law for a general system of education, ascending in regular gradation from township schools to state university, wherein tuition shall be gratis, and equally open to all. (Cremin, 1980, p. 148)

The aspirations of those who framed the Indiana constitution attest to the rapid spread of educational aspiration within the expanding Republic. Thomas Jefferson, one should remember, called for the sons of a few families of common people to be "raked from the rabble" for the privilege of receiving a university education. In Indiana, the apparent desire in 1819 was for not only the sons, but perhaps the daughters as well, and for not only the few, but quite definitely the many, to attend university (a state-sponsored university, at that!). A century later, Ellwood Cubberley could still be considered progressive for recommending that state systems be "crowned" with a state university. Citizens of the early Republic, by contrast, were visionaries.

Despite the demands, state resources were not sufficient to begin to realize the aspirations of the populace until the middle of the 19th century, particularly after recovery from the Civil War. States like Massachusetts were considered progressive for compelling the establishment of high schools (beginning in 1825), implementing a state superintendency (1838), establishing state-supported teacher training (1839), compelling attendance (1852), and for actually enrolling a large portion of school-age children (Katz, 1968; Stephens, 1991). In fact, however, states in the middle and western parts of the nation equalled or exceeded Massachusetts in actual enrollments and in increasing the proportion of school-age children enrolling (Cremin, 1980). Establishment of the U. S. Bureau of Education in 1868 indicated that the polyglot American system was beginning to coalesce to such an extent that the need for a federal role had become obvious.

By the turn of the 20th century, most states had followed the administrative lead of Massachusetts in establishing state education agencies, compelling attendance, and training and certifying teachers. High schools, too, were becoming more common following the 1874 Michigan decision (*Stuart et al. v. Kalamazoo*), the landmark case that established the authority of the state to use public funds for secondary schools. The state could compel taxpayers to support secondary education, a necessary condition for compelling students to attend high schools (cf. Cremin, 1980, p. 163).

Because education is a right reserved to states by the federal constitution, education is neither a fundamental right of citizens under federal law, nor need school law reflect principles of law consistent from one state to another, except insofar as federal constitutional rights or laws are implicated. Nonetheless, the body of law about consolidation is remarkably consistent from state to state: Boards of education act properly to open and close schools in accord with the legitimate exercise of the official judgment of members. The basic principle was established by a 1928 U. S. Supreme Court case (*Gong Lum v. Rice*). District reorganization has historically involved legislative action, often in concert with use of the "bully pulpit" with which official roles endow the leaders of state education agencies (Stephens, 1991).

#### *Case Law Literature on Consolidation and Related Issues*

Since 1819, at least 450 cases about consolidation and related issues (e.g., division, annexation, change of organization) have been decided at all levels of the court system, including the U. S. Supreme Court (where most rulings have dealt with consolidations in which racial segregation is also at issue). Of these cases, nearly 400 were decided prior to 1976, and approximately half of these were decided between 1936 and 1976.

*Trends within the case literature.* The courts decided nearly 150 cases between 1936 and 1966, the era of the "big push" to close one-room schools and small high schools (Stephens, 1991). Between 1966 and 1976 most cases entailed school or district territoriality related to racial segregation.

Between 1976 and 1986 approximately 15 relevant cases were decided. More than twice that number have been decided between 1986 and the present. North Carolina implemented an abortive plan to mandate consolidations in 1985, and consolidation has again become an issue in many states in the West and Midwest, where small independent districts predominate (Sher, 1986; Stern, in press). Increased litigation over consolidation reflects new efforts by states to cut costs from education budgets, which dominate the expenditures of many states' governments. The strategy of using consolidation to achieve savings is not very promising, according to recent research, especially where schools are necessarily small (as in rural areas). DeYoung and Howley (1992) suggest that consolidation now serves primarily an ideological, not a financial, purpose.

In West Virginia, a state with a county governance system, the incumbent liberal governor has implemented a tactic often used in the 1936-1966 period to consolidate smaller schools. State government will help support construction only if districts promise to close schools. According to a very recent court decision in this state, moreover, local boards will not be permitted to withdraw their approved plans. Defiance may provoke takeovers by the state (Miller, 1992) to force compliance. The powers that dominate society often renegotiate state authority in ways that distort or attempt to suppress citizens' voices altogether (cf. Best & Kellner, 1991; DeYoung & Howley, 1992; Foucault, 1979).

Among the many cases that might be considered at some length, those that follow illustrate the key concepts of common schooling, state authority and power, and territoriality as they relate to consolidation. The will of the state as it acts through local, state, and federal entities is implicit in these concepts. In addition, some of the cases considered counterpose the will of the people acting as private citizens to the sovereign will of the various entities of the state.

*Establishing state authority.* The earliest case relevant to consolidation was decided in Massachusetts in 1819 (*Commonwealth v. Inhabitants of Deadham*). This case affirmed the responsibility of a town required to provide services to the entire town, not just a part of the town. This earliest precedent establishes the territorial intent upon which the common-school foundation rests. As noted previously, territoriality is a key concept in consolidation cases, in the context of common schooling to cultivate the commonweal.

An Indiana case decided in 1856 (*Quick v. Springfield Township*) illustrates the importance of the concept of state authority. In this case the court ruled that, in establishing a system of common schools, funding could be channeled to unserved portions of a township in order to achieve equal funding throughout the system. The court noted that power to discriminate in this way was an essential function of sovereignty. This early precedent suggests the prerogatives that state authority entails.

An Iowa case of 1860 (*McDonald v. School District No. 1*) was among the first to establish the contractual continuity of consolidated township districts with former independent districts. In general, the burden of the outcome of any action brought against pre-existing districts is to be borne

by the entirety of the consolidated district, and not merely by a portion thereof.

A Washington state case decided in 1891 (*McGovern v. Fairchild*) illustrates that consolidation efforts began with state statutes providing for (a) creation of single districts in incorporated municipalities and (b) annexation of adjacent territory to districts thus created. In this case, the law that provided for the creation of a single school district in cities of population 10,000 or more also permitted these cities to annex and thereby abolish previously independent districts adjacent to, but outside the limits of, the city. Members of the boards of education of abolished districts, moreover, were not entitled to sit on the boards of the consolidated district.

Subsequent to such action, other states sought to clarify the authority of the legislature to adopt measures to consolidate districts. A 1901 Michigan case (*Attorney General v. Lowrey*) established that the Michigan legislature had the authority to pass Local Act 315. This Act created a consolidated district from one district and *part* of another district. One of the contested points in this case was whether the newly consolidated district acquired the property located in its newly annexed territory. The court ruled in the affirmative.

An unusual 1907 South Dakota Law provided for the creation of consolidated township districts from previously existing common-school districts on petition of a majority of voters in the township. A 1909 case (*Stephens v. Jones*) affirmed that forming a district under such circumstances was incumbent upon, and positively required of, the county commissioners and the county superintendent. Once petitioned, the legislature legitimately required formation of the consolidated township district.

Convenience of access to school is an issue of territoriality addressed in an Illinois case of 1922 (*People v. Graham*). In this case the court was asked to determine if the extent of a newly consolidated district permitted convenient travel to school, given the statutory requirement that the territory of the consolidated district be "compact and contiguous." The court ruled that the district met the requirements of statute, even though some children lived six and one-half miles from the village in which the central school was to be maintained.

A powerful precedent for the emerging authority of county boards of education with respect to consolidation was provided by the U. S. Supreme Court in a 1928 Mississippi case (*Gong Lum*

*v. Rice*). The court ruled that consolidation of common-school districts within a county district is properly within the discretion of county boards of education. Obviously, when states adopt a county district plan of organization, they alter the structure of power between communities and state government.

Similar precedents were established throughout the 1930s in the various states. For example, a 1931 Texas case (*Love v. City of Dallas*) affirmed the discretionary authority of the legislature to enlarge or diminish the territory of school districts in that state. A Kentucky case the same year (*Whalen v. Board of Education of Harrison County*, 1931) determined that authorization of consolidation did not require demonstration of the need for consolidation within each affected subdistrict. The discretionary authority of the state supervenes questions of needs among constituents of only a portion of the affected territory.

The courts in the various states, moreover, are very reluctant to consider the substantive issue of necessity in consolidation cases generally. An Arkansas case of 1940 (*School District No. 3 v. School District No. 47*) held that courts of that state need not consider testimony about the issues of necessity for consolidation among subdistricts. The ruling in this case limited objections to planned consolidation to matters of procedural process with respect to applicable statute (challenges to validity of list of petitioners, challenges to adequate notice). In this case, the court then used points of judicial procedure to dismiss the procedural challenges brought by the (plaintiff) district seeking to overturn the consolidation plan.

*Redress of citizens to abuse of authority.* Having established the clear discretionary authority of the state to alter the territory to which instructional services are provided, the courts acted subsequently to safeguard citizens from the abuse of this authority. One of the earliest such cases, decided in Kentucky in 1945 (*Alford v. Board of Education of Campbell County*) is illustrative. The court affirmed the county boards' "broad powers" and "liberal discretion," but ruled that arbitrary exercise of that power violated the authority of the state.

During the first postwar decade, challenges were also based on the notion that exercise of state power (e.g., in declining to entertain the necessity of consolidation among subdistricts) deprived citizens of representation. Courts in the various states have refused to entertain this argument, ruling that the right of representation is *not* vested in

school districts as it is in counties or municipalities (e.g., *State ex rel. Gray v. Board of Education of City of Chetopa, Lincoln Community High School District No. 404 v. Elkhart Community High School District No. 406*).

Challenges have also involved corporate interests, when annexations of territory were proposed and accomplished in order to augment the tax base of a district. In the early 1960s, oil companies in Wyoming brought suit to enjoin such annexations (e.g., *Forest Oil Corp. v. Davis*, 1964). The courts, building on the precedent that citizens do not have rights vested in particular school districts, disallowed these challenges. The courts ruled that, if educational benefit (e.g., adequacy and equity of funding) ensued, the annexations were permissible.

The relationships among the entities of the state has also engaged the attention of the courts. A 1954 case in Georgia (*Crawford v. Irwin*) confirmed that it was within the power of the legislature to confer upon county boards of education the authority to consolidate schools within the counties.

The process of consolidating districts, when it involves annexation of the territory of portions of small districts, may jeopardize the survival of districts thus fragmented. This circumstance is inevitable, given the piece-meal progress and local idiosyncracies of the process. A South Dakota case of 1964 (*Nelson v. Deuel County Board of Education*) interpreted that state's 1960 reorganization statute to intend the creation of larger units at the expense of smaller units. Survival of fragmented units, noted the court, was "not contemplated."

During the late 1960s and early 1970s, a large majority of consolidation cases entailed attempts, as well as challenges to such attempts, to convert Southern dual-race school systems to unitary systems. Frequently, desegregation efforts involved district mergers, changes in attendance areas, and school closings. Cases were often complex. A 1970 Florida case (*Allen v. Board of Public Instruction of Broward County*, 1970) is illustrative. In this case, the NAACP brought suit against the district, which agreed to convert to a unitary system. The court remained involved in the case, seeking counsel from many intervening parties, in order to oversee the plan devised under the agreement. As a result, attendance areas were rezoned and one school was closed. The court noted explicitly that achievement of a unitary system—not racial balance—was its aim.

Elsewhere in this period, state courts tended to reaffirm the principles illustrated in cases described previously. For instance, a 1968 Kentucky case (*Porter v. Bullitt County Board of Education*), affirmed the discretionary authority of local boards of education (Kentucky has both independent and county districts) to consolidate schools, barring arbitrary action or other abuse of discretion.

During the late 1960s, however, the courts in several states began to rule that the state, in considering consolidations, had an obligation to consider the desires or self-expressed needs of residents of affected districts.

One example is presented by a Minnesota case of 1969 (*Granada Independent School District No. 455 v. Mattheis*). In this case the plaintiff district continued operation following an order to consolidate, under threat of loss of state aid and services. The court ruled that the Commissioner of Education had the responsibility to reconsider the case on the basis of community needs, as opposed to "implementation of some theoretical ideal which the community may not be ready to accept" (*Granada v. Mattheis*, p. 89). This sort of injunction was beginning to be written to law. A 1968 Ohio case (*Davis v. State Board of Education*) interpreting such a statute noted that the discretion of boards of education included not only selection of the methods of determining residents' desires, but determination of the extent to which the desires thus measured ought to affect the boards' judgments. These sorts of rulings and laws provide residents the opportunity to be heard, extending procedural due process protection to residents who nonetheless lack any rights vested in the territory of school districts.

By the end of the 1970s most of the key legal issues surrounding consolidation had been settled. The passage of new laws, however, requires that courts continually refine existing interpretations, as a 1978 Ohio case illustrates (*Swanton Local School District Library v. Budget Commission of Lucas County*). A 1959 consolidation statute made the boundaries of public library districts coterminous with school districts. The court in this instance was called on to affirm the fact that *school* consolidations also had the effect of increasing the territory of the "local school district library."

As states seek to cut expenditures in light of economic stress, legal challenges to consolidation continue in many states. The legal grounds for challenges now appear to be quite narrow, limited for the most part to issues of procedure, interpretations of statutory intent, or, in rare cases, de-

monstrable abuse of authority ("arbitrary and capricious" action by state entities).

Two 1989 cases illustrate recent challenges. In a South Dakota case (*Kaberna et al. v. School Board of Lead-Deadwood School District 40-1*), the South Dakota Supreme Court interpreted statutory language that permitted school closure without the normally required majority vote of residents under certain circumstances specified in statute. In this case, the court ruled that the defendant district had misconstrued the statutory language when it ordered the closure of a six-student school without a vote. A West Virginia case of the same year (*Haynes v. Board of Education of Kanawha County*) challenged plans to close a rural school within a largely urbanized county on a variety of procedural grounds. The main challenge rested on the allegation that, because an election intervened between the closure *hearing* and the actual decision to close the school, a quorum of members who conducted the hearing could not be convened to take the closure vote; the intervening election had changed the board membership. The court ruled that boards of education act as entities whose existence continues regardless of changing membership. The procedural challenge was without substance in the eyes of the court.

In the next section of this article, I summarize the major legal points inherent in the analysis of case law. In the final section I speculate about the future of the state's territorial imperative in an electronic age, when the proximate basis of territoriality may change.

#### *Summary of Legal Basis for Consolidation*

The history of statutory and case law pertinent to school reorganization reflects the elaboration of state authority over education during the development of the American Republic. The history of this development necessarily determined the territory not only of school attendance zones, but of municipalities, townships, counties, states, and, in fact, the Republic. Changes in territorial definitions were contingent, in part, on population growth (from three million to nearly 250 million). But the changes also reflect (as noted in the introduction) the processes and forces that determine the nature, function, and legitimacy of the state itself.

Stephens (1991) notes that school districts are governmental entities, but they are peculiar sorts of instruments of governance. The chief principle illustrated by the legal history of reorganization—

and the one that distinguishes school districts from other entities of the state—is that citizens' rights are *not* vested in the territory of school districts. In most cases, however, citizens residing within a district mistakenly assume that they do have such rights. Discovering the truth is painful.

When the authority of the state determines consolidation to be in the best educational interests of the system of schools under its particular (legislative or administrative) jurisdiction, its judgment is final, absent constitutional trespass, gross procedural violations, statutory ambiguity, or demonstrably arbitrary or capricious exercise of authority. Courts will not generally intervene on behalf of residents of a school district who take a view of educational need other than that taken by duly constituted state authority.

Occasionally the courts have directed authorities of the state to "reconsider" decisions, but they have not seen fit to render decisions themselves, except where constitutional issues (as in desegregation cases) are so clearly at stake. Even here, however, the courts act with *restraint* to fashion solutions that demonstrate the constitutional requirements of authoritative action, while simultaneously preserving the administrative integrity of the state's authority.

### *Interpretation*

When issues of territoriality are at stake, the state clearly has the responsibility to preserve its authority and exercise its power in defining and redefining territorial boundaries. Territory is the material manifestation of sovereignty and legitimate jurisdiction. With respect to schooling, the continual need to readjust territorial boundaries would threaten the legitimacy of the state, absent the unusual governance arrangements bequeathed by the law. Order and stability require the state to vest its authority in such entities as school boards, whose members are most often (but not always) elected officials. Their roles as elected officials are inherently ambiguous. Officially, they *are* agents of the state, whatever course of action they follow, in consideration of the limits to the authority they exercise. They may voice certain objections to state-level officials as individuals or as a group. In the long run, however, the actions of both local and state-level officials constitute the abstract entity, "the state" considered in this article. In this dialog of local- and state-level "agents of the state," it is the state-level officials who increas-

ingly deploy preponderant power (cf. DeYoung & Howley, 1992; Newmann, 1992; Stephens, 1991).

*Questionable presumptions.* The historical presumption here is twofold. First, elected school boards are presumed to represent the constituents who elect them. Second, both constituents and the state presume that school board members, acting in their official capacities, freely exercise the authority vested in them. Substantial literatures on boards, superintendents, and communities, however, contest both these assumptions. Lasch (1991) and Katz (1992), for instance, maintain that school boards were "captured" by elite groups, largely business interests, at least by the early 1920s. Effective superintendents, on the other hand, often dominate their boards, thereby compromising board authority to engage in substantive action in their official capacities (e.g., Schmuck & Schmuck, 1989, 1990).

Others maintain that the massive territorial reorganizations that occurred in the 20th century were orchestrated professionally, in league with interests that placed a premium on efficiency, to the detriment of thoughtful education (e.g., Callahan, 1962; Silver & DeYoung, 1986; Webb, 1992). Observers have argued that reorganizations were abetted, under color of law, as professional educators (particularly administrators) effectively influenced the authority of the state. The combination of professional expertise, state authority, and business influence (the "cult of efficiency," in Callahan's phrase) has proven sufficient to overcome widespread local resistance to reorganization.

The conventional wisdom that bigger is better has, however, been challenged in many quarters in recent decades (e.g., Bryk, Holland, Lee, & Carriedo, 1984; Friedkin & Necochea, 1988; Goodlad, 1984; Sher, 1977). Moreover, the evidence that larger schools and districts achieve cost savings is remarkably scant (Streifel, Foldsey, & Holman, 1989; Valencia, 1984).

*Territoriality and education.* The state's need to define and redefine territories subject to its authority is absolute. Without this authority there can, in fact, be no state. Yet exercise of legitimate authority does not necessarily imply the *consolidation* (i.e., enlargement by combination) of territory—either in schooling or in other governmental units. Indeed, as states evolved historically, initially large counties tended to subdivide into smaller counties.

State control of education has nonetheless involved construction of a "consolidated" monopoly on a territorial basis. Statutory and case law on

consolidation documents the elaboration of the relationships among state entities and the development of the authority and power of the state—largely on the basis of professional influence—to enforce consolidations. The system thus consolidated represents a good deal more than territorial consolidation, of course. Administration, curriculum, pedagogy, and professional induction have also been “consolidated” in the process of territorial reorganization.

State laws in the mid-1800s often sought to establish a school within *walking distance* of every student. Extant state compulsory education laws that exempt students living a specified distance from bus stops have their origin in such prior laws. In the 19th century, access to schooling implied proximity, and proximity entailed an intimate relationship (for both better and worse) between home and school. Twentieth-century territorial reorganization has effectively eliminated the intimacy that schooling once entailed.

At present, territoriality is limited by the distance thought feasible to transport students—longer at the secondary level and shorter at the elementary level. This issue is frequently raised by opponents of consolidation at school closure hearings, and some state boards of education have recommended what these limits might be.

The need of the state to define and redefine its authority over schooling on a territorial basis has generated much rancor among the very people schooling is presumed to benefit. What might schooling *not* based on territoriality be like? Perhaps the 21st century version of schooling will constitute a different sort of educational history.

Speculation is not so entirely far-fetched as it might seem. Monk (1989) distinguishes between “proximate” and telecommunicated instruction. Territorially-based schooling presumes the need for proximate instruction. It also presumes the virtual isolation of schools within districts and of districts from one another. As a result, professionals typically assume that they must actually develop and deliver all instructional activities locally (Stephens, 1991).

In the future, telecommunications may undermine such presumptions and the territorial basis on which they rest. Quite small schools (both elementary and secondary) may provide instructionally rich environments for students, as the sophistication and flexibility of the telecommunications infrastructure evolves. At present, data transfer is quite slow, but as fiber-optic cable replaces existing phone lines, and as other emer-

gent technologies proliferate, opportunities for conducting schooling with little regard to territoriality will inevitably emerge. All sorts of utopian scenarios (good and ill) are imaginable, but each would seem to undercut the need to conduct schooling on a territorial basis.

Much of what schooling has become (cf. Lasch, 1991) seems to depend on devotion to the sorts of practices now associated with a particular location in which to gather all the children of a given territory (that is, schools as we know them). If geographic (or proximate) territory were no longer the necessary basis of schooling, some of the impediments to a conversation about the nature of a true education (Lasch, 1991) might disappear, though this disappearance could well bring other impediments into being (Selfe, 1992).

Postmodern critics claim that simulations are becoming the standard by which to judge reality, that virtual reality is “more real” than the phenomena presented by nature (Best & Kellner, 1991). Developments like distance learning, electronic communications networks, and so forth may constitute a “virtual” (or simulated) territory. Negotiation of the state’s authority over this territory has barely begun. Selfe (1992) reminds us that

[a]ll the while . . . we need to recognize that we ourselves are the State; we are our own best enemies. (p. 2)

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