CHAPTER 4:
THE IDEOLOGY OF LOCAL CONTROL IN LATE TWENTIETH-CENTURY
AMERICAN EDUCATION POLICY

“[L]ocal control of schools is a hallmark of American democracy.”
—The President's Commission for the Observance of Human Rights (1969)¹

In this chapter I provide an interpretation of the role of the ideology of local control in the controversy over busing for school desegregation in the 1960s and 1970s. My most general claim is that the ideology of local control was an important carrier for the phenomenon of white backlash in post-1964 American politics. That is, the conservative reaction to the successes of the civil rights movement—although racially motivated—built its legitimacy (at least in educational matters) on an appeal to the values of local control and neighborhood schools. For in the post-1964 world, explicitly racist rationales were ruled out of bounds. Racially motivated opposition to busing had to be given a facially legitimate justification, and local control fit the bill.

I embark on this analysis of the ideology of local control and its effects in the 1960s and 1970s because the retreat from racial desegregation in the public schools represents a lost moment in the progress toward racial equality in the United States. Sadly, Dr. Martin Luther King, Jr. was wrong when he said, “the arc of the moral universe is long, but it bends toward justice.”² Opposition to busing for desegregation introduced a break in King’s arc of the moral

universe—a break that sent the United States on a different path, a path toward racial segregation by way of a return to “separate but equal.”³

In terms of the project as a whole, in this chapter my aim is to flesh out the relationship between the three forms of localism outlined in the introduction: (1) localism as attachment, (2) localism as activity/process, and (3) localism as theory/ideology.⁴ The controversy over busing for school desegregation in the 1960s and 1970s lends itself to an analysis of this relationship, for white Americans’ attachment to their neighborhoods was the material with which opposition to busing was legitimated. Localism as attachment provided resources for localism as theory/ideology, which enabled success in opposition to school busing, i.e. localism as activity.

The relevance of local control in education policy is widely recognized.⁵ However, much less has been done to examine the ideology of local control.⁶ The controversy over busing, I argue, helps to illuminate how the ideology of local control—an instance of localism as theory—played a causal role in American political development. The way in which the ideology of local control affects political outcomes is neither direct nor straightforward. In the 1960s and 1970s, individuals and groups engaged in localism as activity by protesting (both peacefully and violently) so called “forced busing.”⁷ They argued that local school districts ought to be free from outside influence—usually federal courts and the Department of Justice—in matters related

⁴ See Table 3, p. 21.
⁷ It should be noted that use of the term “forced busing” is a clever rhetorical move by the opponents of busing. Busing was never “forced” in the sense of actually forcing children to ride buses to school. Desegregation orders merely affected student assignment while providing transportation to students assigned to schools distant from their homes. Parents were of course free to arrange alternative transportation. Michael Walzer makes a similar point in Spheres of Justice: A Defense of Pluralism and Equality (New York: Basic Books, 1983), 223-224.
to “racial balance.” They also exhibited a preference for neighborhood schools, i.e. “schooling closer to home.” In these cases, localism as activity took the protective, rather than the dynamic, form. It was not that local school districts wanted to transfer political power from higher to lower-level governments; rather, they wanted to prevent the relocation of authority over student assignment to the federal government (courts or bureaucracy). In order to achieve their goals vis-à-vis localism as activity, opponents of busing invoked the ideology of local control, i.e. localism as theory. The ideology of local control could be used to resist busing because local authorities—under pressure from local electorates—were the least likely to use busing as a tool to desegregate the schools. In turn, that ideology appealed to localism as attachment. The attempt to legitimate localism as activity appealed to beliefs about the value of the attachment of individuals to their localities and their neighborhood schools.

The chapter is broken into three parts. In the first two parts, I argue that the ideology of local control contributed to the dismantling of the policy of school desegregation beginning in the early 1970s. Moreover, I show that local control has had a hand in the resegregation of American schools, which began in the 1990s. In the third part, I provide a normative assessment of the ideology of local control. I ask when and whether the local control argument

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9 See Table 4, p. 21. Also see the literature on defended neighborhoods, e.g. Emmett H. Buell and Richard A. Brisbin, School Desegregation and Defended Neighborhoods: The Boston Controversy (Lexington, MA: Lexington Books, 1982).
can be used permissibly in public debate. I argue that it cannot, except by African-American communities that have, against all odds, fashioned successful school systems.\textsuperscript{11}

In the first part, I analyze elite decision-making. President Nixon, a prophet (along with George Wallace) of white backlash, famously opposed “forced busing” and frequently appealed to the value of “neighborhood schools.”\textsuperscript{12} More importantly, however, the local control argument was the decisive rationale for the Supreme Court’s first step away from the promise of \textit{Brown v. Board of Education}, in \textit{Milliken v. Bradley} (1974).\textsuperscript{13} I show that it was the introduction of the local control argument, in \textit{Wright v. Council of Emporia} (1972), that sent the Court down the path to \textit{Milliken}.\textsuperscript{14} Since \textit{Milliken}, up to and including \textit{Parents Involved v. Seattle} (2007), the Supreme Court has quietly—but unmistakably—abandoned its commitment to school desegregation in the United States.\textsuperscript{15}

In the second part, I analyze anti-busing attitudes in public opinion. I argue that opposition to busing was shaped by racial attitudes filtered through the ideology of local control. Drawing on the political psychology literature on \textit{framing}, I argue that opposition to busing was widespread because the “local control” and “neighborhood schools” frame was stronger (or more powerful)\textsuperscript{16} than the “equal opportunity” or “racial justice” frames. Very little is known about what makes a frame strong or weak, but the little we know suggests that the anxiety produced by


\textsuperscript{13} Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); \textit{Milliken v. Bradley} (Milliken I).


\textsuperscript{16} When I say a frame is \textit{strong}, I mean it has persuasive power, not that the corresponding argument is \textit{strong}. I thank Stephen Macedo for this point.
the busing controversy may have made white Americans especially susceptible to the local control argument. For the local control argument is typically depicted in terms of loss—the loss of neighborhood schools, the loss of high quality public education, the loss of security for one’s children—and loss-framed arguments tend to be more powerful than gain-framed arguments. Furthermore, it would be a mistake to discount the subjective feeling of threat in the busing controversy. Here, longstanding stereotypes of African-Americans as violent, less intelligent, and sexually promiscuous surely contributed to opposition to busing. When reading the accounts of ordinary Americans, the fear of sending one’s children into the black ghetto for school is palpable. However, it should be noted that there is an important distinction between a strong (i.e. powerful) argument and a good one. The local control argument may have been tailor made to convince those exposed to it, but this does not mean that the argument was any good, or in terms of my argument in the third part, normatively compelling.

The second half of the argument in the second part appeals to the theory of aversive racism. According to the theory, many white Americans have ambivalent racial attitudes. More precisely, “even when normative guidelines are clear, aversive racists may unwittingly search for ostensibly nonracial factors that could justify a negative response to blacks.” I argue that a preference for “neighborhood schools” or “local control” provides just such an ostensibly nonracial factor to justify opposition to busing. Some contributors to the literature assume that a

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preference for “neighborhood schools” is straightforwardly non-racial. This is a mistake. Using the 1972 and 1976 American National Election Study, I provide empirical support for the claim that aversive racial attitudes are correlated with support for “neighborhood schools.” This is a significant finding insofar as support for neighborhood schools is itself correlated with increased opposition to busing for desegregation.

In the third part, I explain when and why the ideology of local control is normatively deficient. Local control (i.e. localism as activity) is normatively troubling when it operates as a form of what Charles Tilly has called “opportunity hoarding.”20 When middle class whites invoke “local control” or “neighborhood schools” to exclude African Americans from quality public schools they are unfairly hoarding the benefits of a good education. As such, local control contributes to the systematic inequality between white and black Americans. This is especially troubling in a society that prides itself on its guarantee of “equal opportunity.”21

Also in the third part, I address the structure of arguments for local control in education. One might think that local control is a value that ought to be weighed against other values. It is often supposed that the values of local control and integration are in conflict and have to be weighed against one another.22 If efforts to integrate the schools require the sacrifice of too much local control, it is thought, then those efforts should be curtailed. This is the reasoning employed by the Supreme Court.

Philosophers refer to a consideration that must be weighed against other considerations a pro tanto reason. As Shelly Kagan puts it, “A pro tanto reason has genuine weight, but

nonetheless may be outweighed by other considerations.” That is, *pro tanto* considerations are *dedefeasible* insofar as they can be outweighed, but they always count. I shall argue, however, that the value of local control is not *pro tanto*. Rather, it is *prima facie*: “a prima facie reason appears to be a reason, but may actually not be a reason at all, or may not have weight in all cases it appears to.”23 This is because the value of local control lacks genuine moral weight in some cases. Whether the benefits of local control have any moral weight, to be balanced against other values (e.g. integration), *depends on the circumstances*. It turns out, or so I suggest, that the benefits of local control are not equally distributed among localities. Local control is valuable or beneficial in precisely those communities that have hoarded opportunities by unjustly excluding minorities and the poor.24 Thus, in many cases, local control has no moral weight because its benefits were obtained unjustly and are unjustly maintained.

Before beginning my discussion of the ideology of local control in elite discourse, I clarify what I mean by the *ideology* of local control. Ideology is a contested concept with many meanings. One of the main reasons I consistently refer to the ideology of local control as an ideology is that its proponents rarely deploy evidence on its behalf. By ideology, I mean the phenomenon in which someone claims to “know, just know, something that ain’t so.”25 To put the point more diplomatically, it is the phenomenon in which someone claims to know, just know, something for which there is no good evidence.26 Indeed, it is characteristic of an ideological claim of this sort that the need for evidence is hardly ever contemplated. Eleanor

24 Throughout the chapter, I distinguish between *value* and *moral value*. Local control has *value* for suburban white communities insofar as it provides or facilitates benefits. Nevertheless, it is a further question whether such value has *moral* weight.
Wolf notes that in stark contrast to the use of evidence in arguments for desegregation,27 “not very much use is being made of research materials in the current campaigns for community control of schools.” 28 The belief is so well engrained in the public culture that it is understood to be axiomatic. In this sense, my working conception of ideology has much in common with Clifford Geertz’s cultural conception.29 The arguments in favor of local control of education are easily accessible within the American “collective political imagination.”30 Furthermore, the ideological nature of the local control argument is connected to the distinction between good and strong arguments. The strength of the local control frame renders the argument convincing independent of the evidence.

**Part I. Local Control and Elite Actors**

“If the present Court is unable to profit by this example it must be prepared to see its work fade in time, too, as embodying only the sentiments of a transient majority of nine men.”

—William Rehnquist, “A Random Thought on the Desegregation Cases” (1952)31

As mentioned above, in this part I address the role played by the Supreme Court in dismantling school desegregation policy in the early 1970s. I use the technique of process **tracing** to show that the local control argument played a causal role in the Supreme Court’s

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28 Eleanor P. Wolf, "Community Control of Schools as an Ideology and Social Mechanism," *Social Science Quarterly* 50, no. 3 (1969): 714.

29 Geertz, "Ideology as a Cultural System." Danielle Allen suggests that all Americans “share, and take in as unselfconsciously as we do air, our political institutions and a network of words, names, metaphors, and tropes for describing them and their work.” *Talking to Strangers*, 53.

30 I borrow the phrase from Allen, *Talking to Strangers*, 53.

doctrinal shift between *Swann v. Charlotte-Mecklenburg Board of Education* (1971) and *Milliken v. Bradley* (1974). My claim is one of historical rather than counterfactual causation; it is not as though the increasingly conservative Supreme Court would have—if not for the ideology of local control—continued along the desegregative trajectory marked out by *Brown*, *Green v. County School Board* (1968), and *Swann*. Rather, my claim is that the ideology of local control was the proximate cause of the doctrinal shift away from desegregation. The Burger Court needed a plausible justification for its actions, which the local control argument supplied.

**Desegregation and the Supreme Court: From Brown to Parents Involved**

I begin with a summary of court decisions relevant to school desegregation. I should note that I am less interested in correct legal doctrine than in the reasoning involved in the decisions. I treat Supreme Court decisions as artifacts of elite discourse. More specifically, for the purposes of this chapter, I shall not be bound by the Supreme Court’s evolving interpretation of the equal protection clause. I do, however, note inconsistency between later decisions and the landmark ruling in *Brown*. I contend, based on the understanding of equal protection in *Brown*, that the Court made a grave mistake in *Milliken*.

The summary begins with the case that enshrined the “separate but equal” doctrine in American law, *Plessy v. Ferguson* (1896). *Plessy* cited and confirmed the reasoning of an earlier

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33 Green v. County School Board of New Kent County, 391 U.S. 430 (1968).
35 For a philosophical discussion, see Owen M. Fiss, "Groups and the Equal Protection Clause," *Philosophy & Public Affairs* 5, no. 2 (1976).
ruling by the Supreme Judicial Court of Massachusetts, *Roberts v. City of Boston* (1849). In *Plessy*, the Court argued:

Laws permitting, and even requiring, [separation of the races... do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power[.]*

The *Plessy* Court also argued, using language strikingly similar to the Supreme Court’s more recent school desegregation decisions, “When the government... has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed.”

More than half a century later, in *Brown v. Board of Education of Topeka* (1954), a unanimous Court famously rejected the reasoning of *Roberts v. City of Boston* and *Plessy v. Ferguson*, siding with Justice Harlan’s lone dissent in *Plessy*. The *Brown* Court argued, “Separate education facilities are inherently unequal.” Moreover, students attending schools  

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36 Roberts v. The City of Boston, 59 Mass. 198 (1849). This case is commonly thought to be the origin of the “separate but equal” doctrine, despite the fact that it preceded the passage of the fourteenth amendment in 1868. The parents of a black child brought suit against the City of Boston for unlawfully excluding her from the school nearest her home. She was denied admission to the school on account of her race. Arguing for the plaintiff, Charles Sumner argued that the existence of separate schools for white and black children “inflicts upon [black schoolchildren] the stigma of caste; and although the matters taught in the two schools may be precisely the same, a school exclusively devoted to one class must differ essentially, in its spirit and character, from that public school known to the law, where all classes meet together in equality.” Roberts v. City of Boston, 203. In response, the judge argued that “the power of general superintendence vests a plenary authority in the committee to arrange, classify, and distribute pupils, in such a manner as they think best adapted to their general proficiency and welfare.” Roberts v. The City of Boston, 208. In effect, the judge ruled that schools could be separate as long as they provide equal education.

37 Plessy v. Ferguson, 544.

38 Plessy v. Ferguson, 551. Quoting People Ex Rel. King v Gallagher, 93 N.Y. 438 (Ct. App. 1883) at 448.

39 Plessy v. Ferguson, 163 U.S. 559 (J. Harlan, dissenting).

40 Brown v. Board of Education (Brown I), 495.
separated by race are denied “equal protection of the laws” as guaranteed by the Fourteenth Amendment.

In the following year, in Brown II, the Court ruled that “school authorities have the primary responsibility for elucidating, assessing, and solving these problems,” but federal district courts (acting as courts of equity) may, in fashioning a remedy, “consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.” In essence, Brown II gave federal district courts broad discretion in fashioning remedies for violations of the equal protection clause.

After more than a decade of foot-dragging in the South, the Court in Green v. County School Board (1968) ruled against New Kent County’s “freedom of choice” desegregation plan. Since the “transition to a unitary nonracial system of public education was and is the ultimate end to be brought about,” freedom of choice plans that failed to facilitate this transition were ruled unconstitutional. School boards, the Court argued, must “come forward with a plan that promises realistically to work, and promises realistically to work now.” Green also supplied the standard by which a school system could be declared “unitary” rather than “dual.” Pupil assignment, “faculty, staff, transportation, extracurricular activities, and facilities” all had to be desegregated. Racial discrimination had to be “eliminated root and branch.”

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41 Brown v. Board of Education of Topeka, 349 U.S. 294 (1955) at 299, 300-301, emphasis added.
42 Green v. County School Board, 436.
43 Green v. County School Board, 439, emphasis in original.
44 Green v. County School Board, 435.
45 Green v. County School Board, 438.
At this point in the history of desegregation litigation, the Court was fixated on the South, where state and local governments had permitted or required racially separate schools. Additionally, the Court was not entirely clear about what it meant by “desegregation.” The metaphor “root and branch” suggested that segregation had to be torn up by its roots—mere cosmetic reforms were insufficient. The problem with freedom of choice plans, the subject of *Green*, was that despite wiping racially discriminatory statutes off the books, very little changed. The Court went further, charging schools districts with “dismantling the state-imposed dual system.”

Indicating that desegregation was an affirmative duty, Justice Brennan quoted (approvingly) a lower court decision in which the Judge had argued, “school officials have the continuing duty to take whatever action may be necessary to create a ‘unitary, non-racial system.’” The distinction between *de facto* and *de jure* segregation was not yet an issue, except insofar as the Court demanded more than the mere elimination of racially discriminatory statutes.

Fed up with intransigence, in a *per curiam* decision in *Alexander v. Holmes County Board of Education* (1969), the Court ruled that “the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.”

In the last of a string of unanimous desegregation decisions, the Court in *Swann v. Charlotte-Mecklenburg Board of Education* (1971) recognized that the desegregation “process has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student population, movement of families, and other changes, some of which had marked impact on school planning, sometimes neutralizing or negating remedial

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46 Green v. County School Board, 430, emphasis added.
47 Green v. County School Board, 440. Quoting Bowman v. County School Board, 382 F. 2d 326 (C. A. 4th Cir. 1967) (Sobeloff, Circuit Judge, concurring) at 333.
action before it was fully implemented.”\textsuperscript{49} The Court said that in fashioning remedies in response to these changes, fixed mathematical ratios for student assignment were not required.\textsuperscript{50} Nevertheless, “mathematical ratios” could be used as “a starting point in the process of shaping a remedy.”\textsuperscript{51} Furthermore, in order “to achieve the greatest possible degree of actual segregation,” permissible methods included “gerrymandering of school districts and attendance zones” as well as, of paramount importance for my purposes in this chapter, busing.\textsuperscript{52} “Desegregation plans,” Justice Burger wrote, “cannot be limited to the walk-in school.”\textsuperscript{53} \textit{Swann} therefore outlined an outcome or results-orientated approach to school desegregation.

Although not usually included among the “landmark” school desegregation decisions, in 1972 the Court decided \textit{United States v. Scotland Neck Board of Education} and \textit{Wright v. Council of the City of Emporia}, cases in which the cities of Scotland Neck and Emporia had attempted to withdraw their students from their respective county school systems and form separate city school districts. In both cases, the Court ruled that cities could not form new school districts if doing so would impede desegregation efforts in the counties’ dual systems. This much was a relatively straightforward application of the “root and branch” standard from \textit{Green} and the outcome-oriented approach in \textit{Swann}.

However, in \textit{Wright}, Chief Justice Burger and Justices Powell, Blackmun, and Rehnquist \textit{dissented}.\textsuperscript{54} In the dissenting opinion, Chief Justice Burger argued that Emporia’s separation

\textsuperscript{49} Swann v. Charlotte-Mecklenburg Board of Education, 14.
\textsuperscript{50} On the requirements of student assignment, also see Pasadena Board of Education v. Spangler, 427 U.S. 424 (1976).
\textsuperscript{52} Swann v. Charlotte-Mecklenburg Board of Education, 27.
\textsuperscript{53} The sentence immediately preceding this one reads “In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation.” Swann v. Charlotte-Mecklenburg Board of Education, 30.
\textsuperscript{54} On the novelty of the \textit{Wright} dissent, see Philip B. Kurland, "1971 Term: The Year of the Stewart-White Court," \textit{Supreme Court Review} (1972): 195.
would not impede desegregation efforts. However, the dissent disputes the relevant legal standard as well as the majority’s interpretation of the facts. Specifically, Burger disagrees with the majority about what constitutes a “unitary” school system. He argues, “It can no more be said that racial balance is the norm to be sought, than it can be said that mere racial imbalance was the condition requiring a judicial remedy.”\(^5\) That is, Burger was arguing that racial balance was not a necessary feature of a unitary school system. This was the first glimpse of what would become the \textit{de facto/de jure} distinction.\(^6\) Burger also insinuates that the effects of Emporia’s withdrawal from Greenville County would be so negligible so as to “suggest that the racial imbalance itself may be what the Court finds most unacceptable.”\(^7\)

All of the cases discussed thus far (excepting \textit{Roberts v. City of Boston}) addressed the South, where school segregation had been enforced or permitted by law. In \textit{Keyes v. School District No. 1, Denver, Colorado} (1973), the Court noted that the Denver system “has never been operated under a constitutional or statutory provision that mandated or permitted racial segregation in public education.”\(^8\) Accordingly, the Court was forced to tackle the (ambiguous) distinction between \textit{de facto} and \textit{de jure} segregation.\(^9\) The Court found that even without a statute explicitly mandating or permitting segregated schools, the Denver school district had, “by use of various techniques such as the manipulation of student attendance zones, schoolsite

\(^6\) The dissenters in \textit{Wright} concurred in the judgment in \textit{Scotland Neck}, but filed a separate opinion explaining why the two cases were different. See U.S. v. Scotland Neck City Board of Education, 407 U.S. 484 (1972).
\(^7\) Wright v. Council of City of Emporia (Burger, C.J., dissenting) at 474.
\(^9\) On the vulnerability of the \textit{de jure/de facto} distinction (written prior to Keyes), see Alexander M. Bickel, "Untangling the Busing Snarl," \textit{New Republic}, September 23, 1972.
selection and a neighborhood school policy, "practiced de jure segregation. This widened the Court’s definition of de jure segregation.  

In Denver, school officials had demonstrated an intention to segregate the Park Hill schools, a subsection of the city. However, the Court ruled that the intention to segregate in one section of the city justified a presumption of an intention to segregate in the entire system; the “burden of proof” was thereby shifted to the District. Finally, the Court argued that reliance on “some allegedly logical, racially neutral explanation for their actions,” e.g. a “neighborhood school policy,” was not enough to meet that burden. A facially neutral “neighborhood school policy” was considered consistent with an intention to segregate, and therefore might constitute unconstitutional de jure segregation.

The Court’s decision in Milliken v. Bradley (1974) marked the beginning of the end of school desegregation in the United States. The facts of this case require a brief summary. Parents of students in the city of Detroit filed suit accusing the city of operating segregated schools. The District court ruled that the Detroit schools were in fact unconstitutionally segregated. In fashioning a remedy, the judge ordered the submission of several “Detroit only” plans as well as a “metropolitan area” plan. The metropolitan area plan would have included Detroit’s outlying suburban school districts in the Detroit remedy. Because of jurisdictional fragmentation in the

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61 However, that definition was ambiguous. Justice Brennan wrote: “the essential elements of de jure segregation [are] stated simply, a current condition of segregation resulting from intentional state action” (p. 205). But he also wrote: “We emphasize that the differentiating factor between de jure segregation and so-called de facto segregation to which we referred in Swann is purpose or intent to segregate” (p. 208). Brennan disregards the distinction between acting intentionally and acting with an intention to X. As G.E.M. Anscombe notes, “Very often, when a man says ‘I am going to do such-and-such,’ we should say that this was an expression of intention. We also sometimes speak of an action as intentional, and we may also ask with what intention the thing was done. In each case we employ a concept of ‘intention;’ now if we set out to describe this concept, and took only one of these three kinds of statement as containing our whole topic, we might very likely say things about what ‘intention’ means which it would be false to say in one of the other cases.” See Intention, 2nd ed. (Cambridge: Harvard University Press, 2000), 1.
Detroit area, Detroit-only desegregation plans “would make the Detroit school system more identifiably Black” and “would not accomplish desegregation...within the corporate geographical limits of the city.”\textsuperscript{63} In other words, the District court ruled that since a Detroit-only plan would leave Detroit segregated, Detroit’s suburbs could be included in Detroit’s desegregation plan.

On appeal, the Supreme Court overruled the District court’s metropolitan area plan. The majority claimed to be following its standard for remedying unconstitutional segregation articulated in \textit{Swann}: “as with any equity case, the nature of the violation determines the scope of the remedy.”\textsuperscript{64} This means (roughly) that principles of equity require that remedies should track violations. Actually, the Court subtly (but consequentially) altered the language of the standard from \textit{Swann}, adding the words “extent” and “constitutional”: “the scope of the remedy is determined by the nature and extent of the constitutional violation.”\textsuperscript{65}

Since, according to the Court, the nature of the Constitutional violation was Detroit’s intention to segregate, and its extent was the Detroit school district, the scope of the remedy had to be limited to Detroit. In Chief Justice Burger’s words, “Before...imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation.”\textsuperscript{66}

Notice that this claim requires either repudiation of \textit{Keyes} or reification of already existing school districts. \textit{Keyes} said that discriminatory acts in one part of the school district were

\textsuperscript{63} Quoted in Milliken v. Bradley (Milliken I), 732.
\textsuperscript{64} Quoted in Milliken v. Bradley (Milliken I), 738.
\textsuperscript{65} Milliken 744
\textsuperscript{66} Milliken v. Bradley (Milliken I), 716-717.
presumptive evidence of discriminatory acts throughout the district. Yet the discriminatory acts of Michigan, acting through its agent (the Detroit school district) were not considered presumptive evidence of discrimination in the entire Detroit metropolitan area. According to Justice Douglas:

> the Michigan educational system is unitary, maintained and supported by the legislature and under the general supervision of the State Board of Education. The State controls the boundaries of school districts. The State supervises schoolsite selection. […] Education in Michigan is a state project with very little completely local control, except that the schools are financed locally, not on a statewide basis. Indeed […] the school districts by state law are agencies of the State.\(^67\)

Treating Denver (Keyes) and the Detroit metropolitan area (Milliken) differently requires granting the suburban schools a special status. According to Milliken, they are immune from interdistrict busing despite discriminatory acts committed on their behalf. The practical implication was that the rights of Detroit’s black schoolchildren had been violated but they were not entitled to a Constitutional remedy.\(^68\)

Put differently, because metropolitan desegregation was beyond the courts’ remedial authority, Detroit’s schoolchildren were not entitled to a Constitutional remedy tailored to the nature of the violation of their Constitutional rights. Despite the fact that segregation was the nature of the constitutional violation, black school children were left with the “vestiges of state-imposed segregation.”\(^69\) According to Swann, “Segregation was the evil struck down by Brown I

\(^{67}\) Milliken v. Bradley (Milliken I) (Douglas, J., dissenting), 758-759. According to the Michigan Supreme Court, “Education in Michigan belongs to the State. It is no part of the local self-government inherent in the township or municipality, except so far as the legislature may choose to make it such. The Constitution has turned the whole subject over to the legislature. . . .” Quoted in Milliken v. Bradley (Milliken I), 726fn5.

\(^{68}\) For a helpful discussion of the case, see Joyce A. Baugh, The Detroit School Busing Case: Milliken v. Bradley and the Controversy over Desegregation (Lawrence: University Press of Kansas, 2011).

\(^{69}\) Swann v. Charlotte-Mecklenburg Board of Education, 15.
as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of Brown II.”

Instead, victims of segregation were entitled to be restored “as nearly as practicable…to the position they would have enjoyed in terms of education absent constitutional violations by state and local officials.” According to the Court in Milliken II, this meant that Districts courts were within their remedial equity authority in ordering “compensatory or remedial education programs for schoolchildren who have been subjected to past acts of de jure segregation” but not in eliminating of the evils of segregation. This move in Milliken II—ordering educational compensation but not genuine desegregation—illustrates Gary Orfield’s contention that following the dissolution of the “unique alignment of favorable forces” present in the early 1970s, the Court has drifted backwards toward the “separate but equal” doctrine of Plessy v. Ferguson (1896). The only way to square the relevant facts—that both Michigan and Detroit committed constitutional violations, that the victims were entitled to a remedy tailored to the constitutional violation, and that the appropriate remedy was “compensatory or remedial education programs” rather than desegregation—is to deny that segregation was the nature of the constitutional violation, thereby repudiating the Swann interpretation of Brown, if not Brown itself.

One might object that “segregation” in Swann and Brown refers to de jure, not de facto segregation. Since racial segregation between Detroit and the suburban school districts is de facto, the objection continues, Milliken I and Milliken II do not repudiate Brown. Yet the Supreme Court did not contest the lower courts’ conclusion that Michigan and Detroit had

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72 Milliken v. Bradley (Milliken II), 267.
73 Orfield and Eaton, Dismantling Desegregation, 23-51; Plessy v. Ferguson.
committed *de jure* acts of segregation. The State of Michigan, acting on its own, and through its agent, the Detroit School Board, committed *de jure* acts of segregation for which, *per Milliken*, there was no remedy. Only the ideology of local control can bring consistency to the Court’s reasoning.

*Milliken II* also clarified the “controlling principle” of remedial orders first articulated in *Swann* and *Milliken I*. Writing for the majority, Chief Justice Burger mentioned three factors to be considered by lower federal courts. First, Burger again altered the phrasing of the standard from *Swann* and *Milliken I* to read: “the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation” (see Table 7).

### Table 7: Language Used to Describe the Supreme Court’s Remedial Standard in Desegregation Cases

<table>
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<td>“the nature of the violation determines the scope of the remedy”</td>
<td>“the scope of the remedy is determined by the nature and extent of the constitutional violation”</td>
<td>“the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation”</td>
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I dwell on these slight linguistic alterations of the remedial standard because they eventually open the door for the local control argument. Notice how the word “scope,” which has a spatial connotation, appears on the remedy side of the “remedial equation” in *Swann* but drifts into the violation side in *Milliken II*. Similarly, the word “extent,” also with a spatial connotation, appears on the violation side *Milliken I*, but is completely absent in *Swann*. By adding this spatial language to the violation side the remedial standard, the Court could insulate the suburbs from metropolitan desegregation.

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74 Milliken v. Bradley (Milliken I), 736.
Articulating the second factor, Burger said that “the decree must indeed be remedial in nature, that is, it must be designed as nearly as possible ‘to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.’”75 The third factor said: “the federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the constitution.”76

Following additional changes to the membership of the Court,77 three decisions in the 1990s further limited the reach of constitutionally mandated school desegregation. In Board of Education of Oklahoma City Public Schools v. Dowell (1991), a case in which the Oklahoma City schools had previously been declared “unitary” by a lower court, Chief Justice Rehnquist argued, “federal supervision of local school systems was intended as a temporary measure to remedy past discrimination.”78 Moreover, school desegregation orders “are not intended to operate in perpetuity.”79 The need to dissolve desegregation orders upon compliance was justified by reference to the value of local control of education. Local control, according to the Court, “allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs.”80 Furthermore, the Court declared that school districts could be released from court ordered desegregation if they had “complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable.”81 Roots can be stubborn.

76 Milliken v. Bradley (Milliken II), 280-281.
79 Board of Ed. Of Oklahoma City v. Dowell, 248.
80 Board of Ed. Of Oklahoma City v. Dowell, 248.
81 Board of Ed. Of Oklahoma City v. Dowell, 249-250, emphasis added.
In *Freeman v. Pitts* (1992) the Court ruled that school systems could be declared partially unitary. That is, a school district could be released from judicial supervision in areas (the *Green* factors) in which it had complied in good faith with lower court orders. Lower courts would then maintain supervision in those areas in which the district had not yet eliminated the vestiges of discrimination to the extent practicable. The Court also revised its thinking on mathematical ratios: “Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance due to the *de jure* violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors.”\(^{82}\) Finally, “the school district bears the burden of showing that any current imbalance is not traceable, *in a proximate way*, to the prior violation.”\(^{83}\)

In *Missouri v. Jenkins* (1995), the Court considered a situation in which a federal district court judge had used his remedial authority to order extensive improvements to the Kansas City, Missouri school district. His rationale (as reconstructed from Chief Justice Rehnquist’s majority opinion) was that since the Kansas City school system was predominantly black, and since genuine desegregation requires a certain mix of white and black students, improving the quality of the schools could be used to lure suburban whites back into the Kansas City system. Or, in other words, since “white flight” had diminished the district’s prospects for desegregation, the judge, through his orders, hoped to improve the “desegregative attractiveness” of the school system. He also argued that additional expenditures were needed until students’ test scores reached the national average.

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\(^{82}\) *Freeman v. Pitts*, 503 U.S. 467 (1992) at 494.
\(^{83}\) *Freeman v. Pitts*, 494, emphasis added.
The Supreme Court ruled that the district court judge exceeded his remedial authority.\textsuperscript{84} First, since white flight from Kansas City schools was not caused by the constitutional violation, the district court’s attempt to increase the school district’s “desegregative attractiveness” in order to mitigate white flight was not an appropriate remedy. Second, to the extent that below average test scores were not the “result of segregation, they do not figure in the remedial calculus.”\textsuperscript{85} Together, these two points limit the judiciary’s remedial authority to conditions directly traceable to unconstitutional discrimination. Chief Justice Rehnquist closed his opinion for the majority by quoting from \textit{Freeman v. Pitts}: “On remand, the District Court must bear in mind that its end purpose is not only ‘to remedy the violation’ to the extent practicable, but also ‘to restore state and local authorities to the control of a school system that is operating in compliance with the Constitution.’”\textsuperscript{86}

Finally, in \textit{Parents Involved in Community Schools v. Seattle School District No. 1} (2007), the Roberts Court ruled against voluntary desegregation efforts. Seattle had never operated a dual school system, nor had it ever been subject to a desegregation order. This, according to the Court, meant that the school system was barred from using race in its student assignment plan. Chief Justice Roberts, writing for the Court, remarked, the “way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”\textsuperscript{87}

\textbf{Local Control and the Demise of Desegregation}

I now argue for the claim that the ideology of local control played \textit{a causal role} in the demise of school desegregation in the United States. Ordinarily, claims about the causal role of

\textsuperscript{84} Missouri v. Jenkins, 515 U.S. 70 (1995) at 94.
\textsuperscript{85} Missouri v. Jenkins, 102.
\textsuperscript{86} Missouri v. Jenkins, 102. Freeman v. Pitts, 489.
\textsuperscript{87} Parents Involved v. Seattle, 748.
ideas are difficult to evaluate, much less confirm. However, in this case, matters are made easier because it is fairly clear that the federal courts’ intervention was instrumental in reducing segregation in many (especially southern) school districts. As Jennifer Hochschild argues, “were it not for courts, there would have been little reduction in racial isolation, especially in big cities and the North.”

If the court’s commitment to desegregation was instrumental in reducing segregation, it is plausible to assume that a withdrawal of that commitment would contribute to the slowing or even the reversal of desegregation efforts. In a moment I will expand on my previous claim that *Milliken v. Bradley* (1974) was the beginning of the end of school desegregation. However, even if one takes the somewhat less controversial view, that the withdrawal of the Supreme Court’s commitment to school desegregation began in the 1990s with *Dowell*, the hypothesized effect of withdrawal of commitment on reduced desegregation or resegregation remains quite plausible, and is consistent with the evidence. Therefore, in order to eventually make good on the claim that the ideology of local control contributed to the demise of school desegregation, I first show that the Court did indeed withdraw its commitment to school desegregation.

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88 Hochschild, *The New American Dilemma*, 134. Gerald N. Rosenberg suggests a corrective: federal courts were constrained until the passage of the Civil Rights Act of 1964. He argues that “the courts became increasingly more important and effective actors; the political, social, and economic climate changed, allowing the constraints of the Constrained Court view to be overcome.” It seems to me that while the courts may have been more effective under certain enabling conditions, court actions, especially *Brown*, were a necessary condition for desegregation, at least historically. Indeed, Rosenberg argues that a key constraint “was overcome with the victory in *Brown.*” Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?*, 2nd ed. (Chicago: University of Chicago Press, 2008), 94. Moreover, the fact that the biggest strides in desegregation occurred after Richard Nixon took office in 1969 suggests that the courts were critical. Nixon promised to uphold the letter of the law but go no further: “while *Brown* dealt with desegregation and said that we would not have segregation, when you go beyond that and say that it is the responsibility of the Federal Government and the Federal courts to, in effect, act as local school districts in determining how we carry that out, then to use the power of the Federal Treasury to withhold funds in order to carry it out, then I think we are going too far. In my view, that kind of activity should be very scrupulously examined and in many cases should be rescinded.” Quoted in McMahon, *Nixon’s Court*, 58.

As I have already mentioned, the Supreme Court essentially withdrew its commitment to school desegregation in 1974, in *Milliken v. Bradley*. If one believes, following *Brown*, that separate educational institutions are *inherently* unequal, it really does not matter *how* or *why* educational institutions are separated by race. It is the mere fact of separation that makes separate schools unequal. Even if one accepts a weaker claim—that separate educational institutions tend, as a matter of empirical regularity, to be unequal—desegregation is still a requirement of the equal protection clause of the Fourteenth Amendment.

Throughout the remainder of the chapter, when I use the term “desegregation” I follow the most plausible interpretation of the Supreme Court’s understanding of that term in *Green* and *Swann*—removing the vestiges of *de jure* segregation, eliminating segregation “root and branch,” dismantling dual systems, providing the “greatest possible degree of actual desegregation.” Given the Court’s understanding of (1) *de jure* segregation in *Keyes*, “that segregated schooling exists [and] was brought about or maintained by intentional state action,” and (2) the remedial burden once a finding *de jure* segregation has been established, there is little practical difference between integration and desegregation. For integration and desegregation to come apart, one would have to find a school district with no history of *de jure* segregation. For once *de jure* segregation is found, it must be eliminated “root and branch.”

*Milliken* was a crucial turning point in part because of its similarities with *Keyes*. Both *Keyes* and *Milliken* addressed northern (i.e. non-southern) school segregation. School segregation in the North was (and to some extent, still is) critically different than in the South, where segregation was required or permitted by *law*: black children went to black schools and white children went to white schools, regardless of residence. In the North, school segregation was the product of *residential* segregation (itself largely a product of state action) combined with
geographical attendance zones (also a product of state action). Black children went (and go) to predominantly black neighborhoods and white children went (and go) to predominantly white schools because white children tend to live in predominantly white neighborhoods. And in case of slippage, many northern school districts manipulated attendance zones and schoolsite selection to ensure racially separate schools.

The existence of severe, pervasive, and entrenched residential segregation is essential in the following argument. According to Douglas Massey and Nancy Denton, “racial residential segregation is the principal structural feature of American society responsible for the perpetuation of urban poverty and represents a primary cause of racial inequality in the United States.”

While one might think that residential segregation by race is simply the product of private choices, the overwhelming evidence suggests that state activity is (and was) the primary cause. Indeed various state policies discriminated against African-Americans in inner cities by funneling money into white suburbs. Under policies administered by the Federal Housing Administration (FHA) and Veterans Administration (VA), mixed or black neighborhoods were considered bad investments and were therefore unlikely to receive federally subsidized loans. Restrictive covenants (enforced by the courts until 1948) prevented the sale of suburban homes to black families. Similarly, zoning, minimum lot sizes, and setback requirements made it

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90 In fact, the elaborate rituals of Jim Crow in the South permitted whites and blacks to live in close proximity without interacting on equal terms. See C. Vann Woodward, The Strange Career of Jim Crow (New York: Oxford University Press, 1955). Because whites and blacks lived alongside one another, pupil assignment via geographical attendance zones would not have generated one-race schools. Hence segregation had to be a matter of law, if it were to succeed.


difficult for African-Americans to afford suburban homes. The fact that state action played an essential role in residential segregation matters—legally—because the Fourteenth Amendment says, “No State shall…deny to any person within its jurisdiction the equal protection of the laws.”

To fully understand the implications of the Court’s decision in Milliken, one must take urban fragmentation into account. As Gregory Weiher has persuasively argued, “The system of political boundaries in a metropolitan area facilitates the process in which persons who are guided by certain preferences form expectations about those preferences being satisfied in one place or another. In sum, political boundaries provide the structure which is prerequisite to the generation of information that movers need, and then they play a role in conveying that information to them.” The distinction between political and informal boundaries is critical. Informal boundaries provide limited information to potential settlers. This is because informal boundaries are inherently subjective insofar as there is disagreement about where they lie and what they symbolize. Formal, political boundaries provide a clearer signal. Furthermore, “Once eccentricity occurs in a jurisdictional population, culture, demography, and life style begin to interact with geography, the jurisdiction acquires an identity as a place, and the information that is structured and conveyed by political boundaries tends to perpetuate that identity.” In concrete terms, political boundaries make the racial composition of a jurisdiction salient and therefore racially identifiable. Since most whites prefer to live in predominantly white neighborhoods, fragmentation provides a clear signal with which to satisfy their preferences. In

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93 U.S. Constitution, amend. 14, sec. 1.
95 Weiher, The Fractured Metropolis, 55. “The eccentricity of any jurisdictional population is the degree to which that population differs from the metropolitan population overall.” Weiher, The Fractured Metropolis, 70.
practice, this means that once a municipality becomes identifiably black, whites tend to select other, identifiably white, cities and towns, usually in the suburbs. Moreover, because of differentiated preferences among whites as to the degree of racial integration that is tolerable, black entry or white exit can have a cascade effect rendering stably integrated neighborhoods improbable.\textsuperscript{96}

Many states have facilitated fragmentation by making it easy to form new municipalities (with their own school districts). At the time \textit{Milliken} was decided there were eighty-five independent suburban school districts in the Detroit metropolitan area (Wayne, Oakland, and Macomb counties). The suburban school districts were predominantly white and the Detroit school district was predominantly black. It was a classic case of “chocolate cities” and “vanilla suburbs.”\textsuperscript{97}


When the courts were asked to intervene in the Detroit schools, it was clear that the Detroit school district had practiced unconstitutional segregation. The issue for the Supreme Court was not with this uncontroversial fact. It was with the district court’s proposed remedy. The district court judge had considered the Supreme Court’s injunction in *Swann* to “make every effort to achieve the greatest possible degree of actual desegregation.” And since the Detroit system was predominantly black, any Detroit-only desegregation plan “would make the Detroit school system more identifiably Black...thereby increasing the flight of Whites from the city and the system” and would “would not accomplish desegregation...within the corporate geographical limits of the city.”98 Thus, to “achieve the greatest possible degree of actual desegregation,” the district court, quite reasonably, ordered consideration (and eventually implementation) of a metropolitan area remedy in which white children from the suburbs would be assigned to Detroit

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schools and black children from Detroit would be assigned to suburban schools (in some cases, without busing). 99

The Supreme Court’s reasoning in overturning the district court’s metropolitan remedy demonstrates the withdrawal of its commitment to school desegregation. The Court no longer required the greatest possible degree of actual desegregation or the elimination of one-race schools. The Court came to this conclusion (in part) by reinterpreting its remedial standard—“the nature of the violation determines the scope of the remedy”—from *Swann*. In *Swann*, remedial powers were limited “absent a finding of a constitutional violation.” 100 That is, district courts could not impose a remedy if there had been no constitutional violation. 101 One might have thought that this standard had been met in *Milliken*—no one disputed that the Detroit school system had committed a constitutional violation. However, as I have already mentioned, Chief Justice Burger subtly re-worded the standard: “the scope of the remedy is determined by the nature and *extent* of the constitutional violation.” 102 The revised standard could be used to limit the geographical reach of remedial decrees to those areas directly responsible for the violation.

Because it was said that *Detroit* practiced unconstitutional segregation, the extent of the violation, and therefore the scope of the remedy, had to be limited to the Detroit school system. Furthermore, since the suburban school districts had not been found guilty of a constitutional

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100 *Swann* v. Charlotte-Mecklenburg Board of Education, 16.
101 "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis* v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971). Quoted in *Wright* v. Council of City of Emporia, 407 U.S. 451 (1972) at 468.
violation, they could not be included in the remedy. The preceding may appear to be caught up in legalisms, yet the *Milliken* version of the standard (as distinguished from the *Swann* version) was an effective mask for the decisive consideration: the ideology of local control.

I said earlier that in *Keyes* the Court ruled that a finding of *de jure* segregation in one part of the City of Denver was presumptive evidence of *de jure* segregation in the rest of the city. *De jure* segregation of a part could infect the whole. Clearly the Supreme Court thought that *de jure* segregation in one part of the Detroit metropolitan area was not presumptive evidence of *de jure* segregation in the rest of the metro area. What’s going on here? Part of it is that in *Keyes*, unlike *Green* and *Swann*, the Court considered the nature of the constitutional violation to be an intention to segregate. The other part is that the Detroit metropolitan area was not a jurisdictional entity capable of an intention to segregate. Thus, Detroit’s intention to segregate the Detroit schools was not presumptive evidence of the suburban school districts’ intention to segregate; an intention to segregate by one jurisdictional entity (Detroit) cannot be taken as presumptive evidence of an intention to segregate by other jurisdictional entities.

On this narrow construction of the constitutional requirement, absent an intention on the part of the suburban school districts to practice unconstitutional segregation, for the suburban

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103 This line of argument can be understood as an example of the “perpetrator perspective.” According to Alan David Freeman, the “perpetrator perspective sees racial discrimination not as conditions, but as actions, or series of actions, inflicted on the victim by the perpetrator. The focus is more on what particular perpetrators have done or are doing to some victims than it is on the overall life situation of the victim class.” Alan David Freeman, "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Minnesota Law Review* 62(1977): 1053.

104 Justice Marshall picked up on the sleight-of-hand: “Ironically purporting to base its result on the principle that the scope of the remedy in a desegregation case should be determined by the nature and the extent of the constitutional violation, the Court's answer is to provide no remedy at all for the violation proved in this case, thereby guaranteeing that Negro children in Detroit will receive the same separate and inherently unequal education in the future as they have been unconstitutionally afforded in the past.” *Milliken v. Bradley* (*Milliken II*) (Marshall, J., dissenting), 782.

105 But see footnote 61.

schools to be included in Detroit’s remedy, it would have to be shown that Detroit’s segregation
extended to the suburbs. In the words of Chief Justice Burger, it must “be shown that there has
been a constitutional violation within one district that produces a significant segregative effect in
another district.”

The belief that unconstitutional segregation in one part of the Detroit metro area did not
infect the remainder relies heavily on the separability of jurisdictions. The Court dismissed the
claim of the district court “that school district lines are no more than arbitrary lines on a map
drawn ‘for political convenience.’” This is the sense in which the Supreme Court, instead of
repudiating Keyes, chose to reify already existing jurisdictional entities. The reification of
jurisdictions also helps to explain Freeman’s puzzlement as to “why the Court thought district
boundaries were sacrosanct while neighborhood school assignments were not.” District
boundaries separate jurisdictional entities, capable of an intention to segregate, whereas
neighborhoods separate children for the purposes of school assignment within a jurisdictional
entity. This just means that if school district lines were truly arbitrary, Milliken would have been
no different than Keyes. It is this reification of already existing jurisdictions that constitutes the
ideology of local control.

Actually, it is not the mere assertion of jurisdictional limits on the federal courts’
remedial powers that amounts to the ideology of local control. Such limits are simply protective

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107 Milliken v. Bradley (Milliken I), 745.
108 Milliken v. Bradley (Milliken I), 741.
109 Freeman, "Legitimizing Racial Discrimination," 1109. Additionally, the importance of separable
jurisdictions was foreshadowed in Wright: “The discretion of a district court is further limited where, as here, it
deals with totally separate political entities.” Wright v. City of Emporia, 478.
110 Cf. Wright v. City of Emporia, 478 (Burger, C.J., dissenting). “The discretion of a district court is
further limited where, as here, it deals with totally separate political entities. This is a very different case from one
where a school board proposes attendance zones within a single school district or even one where a school district is
newly formed within a county unit. Under Virginia law, Emporia is as independent from Greensville County as one
State is from another.”
localism as activity at work. The ideology itself is identified by the content of the reasons given for according localities protections from remedial orders. In the key passage, Chief Justice Burger wrote:

Boundary lines may be bridged where there has been a constitutional violation calling for interdistrict relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.

That is, the reasons for not interfering with school districts that have not been shown to have been guilty of unconstitutional segregation include (a) that local control is a deep rooted tradition, (b) that local control is necessary for community concern and support, and (c) that local control is essential for quality education. Note that no evidence is marshaled for any of these claims. Nor does Chief Justice Burger explain why “the history of public education” ought to trump “the greatest possible degree of actual desegregation.”¹¹¹ This, I argue, is ideology. Indeed, in his dissent Justice White argued that the Court’s conclusion does not “follow from the talismanic invocation of the desirability of local control over education.”¹¹²

Nevertheless, even if it’s true that local control is the reason the Supreme Court gave in limiting the remedial powers of district courts, this is not enough to show that the ideology of local control played a causal role in the decline of desegregation policy. In the remainder of this section I employ a technique of causal inference—“process tracing”—from qualitative political

¹¹¹ As Stephen Macedo remarks, in his recent commentary on the Supreme Court’s decision in Obergefell v. Hodges (2015), “the mere fact that something has been part of our history or tradition is not a reason for endorsing it.” “But Was the Court’s Ruling on Marriage Democratic?,” American Prospect, June 29, 2015, http://prospect.org/article/was-courts-ruling-marriage-democratic (accessed July 1, 2015).
¹¹² Milliken v. Bradley (Milliken I) (White, J., dissenting), 778, emphasis added.
science to show how the Supreme Court transitioned from a broad understanding of its remedial powers in *Swann* to the constrained understanding in *Milliken*.\(^{113}\)

Process tracing involves “examination of diagnostic pieces of evidence, commonly evaluated in a temporal and/or explanatory sequence, with the goal of supporting or overturning alternative causal hypotheses. These diagnostic pieces of evidence are called causal process observations (CPOs), and process tracing provides criteria for evaluating their contribution to causal inference.”\(^{114}\) In the following, I provide a detailed description of the developments in cases between *Swann* and *Milliken*, with special emphasis on *Wright*.

**Process Tracing: From *Swann* to *Milliken***

I begin by clarifying the endpoints of the process to be traced. To be sure, as I showed in my summary in a previous section, the process might be thought to begin with *Roberts v. City of Boston* (1849) and end with *Parents Involved* (2007). If the process is defined more narrowly it might begin with *Brown* (1954) and end with *Dowell* (1991).\(^{115}\) However, I accept without argument that that part of the process between *Brown* (1954) and *Swann* (1971) was one of steadily increasing commitment to school desegregation. I also accept without further argument that that segment of the process from *Milliken I* (1974) to *Parents Involved* (2007) was one of steadily decreasing commitment to school desegregation. Therefore, the relevant part of the process, the part I focus on here, is bounded by *Swann*, the peak of commitment to school desegregation.

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\(^{115}\) *Dowell* is a turning point because the “Court held that ‘unitary status’ released [the Oklahoma City school district] from its obligation to maintain desegregation.” See Orfield and Eaton, *Dismantling Desegregation*, xxiii.
desegregation, and *Milliken*, which introduced the first serious limitation on the federal courts’ remedial powers.

The phenomenon to be explained is the transition from a full-throttled commitment to school desegregation (“greatest possible degree of actual desegregation”) in *Swann* and *Davis v. Board of School Commissioners of Mobile County* (“the measure of any school desegregation plan is its effectiveness”¹¹⁶) to the weakened commitment (“absent an interdistrict violation, there is no basis for an interdistrict remedy”) in *Milliken*. My hypothesis is that the ideology of local control played a causal role this transition. There are, however, two important rival hypotheses.

The first is simply that between 1971 (*Swann*) and 1974 (*Milliken*) the Court became more conservative, and conservative judges were (and are) less committed to school desegregation. This hypothesis is roughly consistent with the evidence. In 1971, Justice Powell (a moderate conservative) and Justice Rehnquist (an extreme conservative) replaced Justice Black (by 1970 a centrist) and Justice Harlan (also a centrist).¹¹⁷ The Court’s median ideology score shifted in the conservative direction from 0.454 (Justice Harlan) to 0.667 (Justice White).¹¹⁸ But the shift rightward is primarily the result of replacement: each of the remaining justices (with the exception of Justices Burger and White) became more liberal in this period (see Figure 5). And Justice White, the median justice in 1974, dissented in *Milliken*. It appears as though Justice Stewart, who actually became more liberal from 1971 to 1974, was the decisive vote in *Milliken*.

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¹¹⁶ *Davis v. School Commrs of Mobile County*, 37.
¹¹⁷ See the ideology scores associated with Andrew D. Martin and Kevin M. Quinn, "Dynamic Ideal Point Estimation Via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999," *Political Analysis* 10, no. 2 (2002).
¹¹⁸ The scale runs from -1 (most liberal) to 1 (most conservative).
Figure 4: Supreme Court’s Median Ideal Point, 1965-1980

Source: http://mqscores.berkeley.edu/measures.php.

Figure 5: Change in Justices’ Ideal Points From Swann to Milliken

Source: http://mqscores.berkeley.edu/measures.php.
Moreover, the fact that the Court became more conservative from 1971 to 1974 does not rule out the local control hypothesis. It is certainly plausible that the Court became more conservative (in part) by adopting the ideology of local control. This seems especially likely given Richard Nixon’s criteria for Supreme Court nominations. Despite claiming a preference for conservative “strict constructionists,” Nixon’s definition of a conservative jurist was rather narrow: “he must be against busing, and against forced housing discrimination. Beyond that, he can do what he pleases. He can screw around on economics, and et ceteras.”¹¹⁹

In response to *Alexander v. Holmes* (1969), Nixon issued a statement outlining the principles of his administration in helping local school districts comply with desegregation orders. The first two principles read: “1. Desegregation plans should involve minimum possible disruption—whether by busing or otherwise—of the educational routines of children. 2. To the extent possible, the neighborhood school concept should be the rule.”¹²⁰ Nixon “chose these positions [on busing and law and order] because they were popular, owing to urban riots and the rapid increase in crime, and people’s understandable desire for their children to attend neighborhood schools.”¹²¹ It is therefore quite plausible, as I suggested in the introduction, that the local control argument was a carrier for conservative white backlash.

Furthermore, as Owen Fiss argues, in equal protection cases, “the court fixes the state’s purpose by the process of imagination: only legitimate purposes would be imagined, and the judge’s mind would scan the universe of legitimate purposes until he identified the legitimate

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¹¹⁹ Quoted in McMahon, *Nixon's Court*, 81.
state purpose that was best served by the criterion[.].” That is, even if the court chose to limit remedial powers in desegregation cases because doing so would be more conservative, the court still needed to identify a “legitimate state purpose.” Local control stands in as just such a legitimate state purpose. As we shall see, the language of imagination is quite apt; the court seized on the local control argument, which received little attention by litigants and lower courts, and ran with it.

Finally, the conservative Court hypothesis cannot explain why Justice Burger (who became only slightly more conservative) and Justices Stewart and Blackmun (who became more liberal), switched sides on desegregation between Swann and Milliken. Nor can the conservative Court hypothesis explain the timing of the switch.

A second rival hypothesis, more troubling for my argument in this paper, is that the transition from Swann to Milliken is attributable to the Court’s evolving understanding of the nature of the constitutional violation in desegregation cases. If one accepts that in Brown the nature of the constitutional violation was thought to be segregation itself, and in Green it was intentional state action resulting in segregation, the revised view (first articulated in Keyes) that the nature of the constitutional violation was instead the intention to segregate (or the intention to discriminate) might fully explain the transition under consideration. This is surely plausible.

However, one then has to ask why the Justices changed their view of the nature of the constitutional violation. I doubt that the justices were prepared to repudiate the view in Brown that segregation is wrong. Instead, it seems to me that the worry was that some individual or entity might be “on the hook” for school desegregation despite never having had the intention to

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122 Fiss, "Groups and the Equal Protection Clause," 112.
segregate. It might be thought wrong (or unfair) for the courts to impose a costly remedy on some individual or entity that had never intentionally contributed to school segregation.

But why would this be wrong? This view only makes sense if it is supposed that the individuals or entities in question have some claim worthy of consideration by the courts. Therefore, underlying the Court’s view of the nature of the constitutional violation (the intention to segregate by race) is a view about the kinds of entities that can be interfered with by courts. For the courts’ interference to matter, it must be the case that the entities in question have some morally or constitutionally relevant standing in the courts’ deliberations. This is precisely what the ideology of local control supplies: a reason to care whether jurisdictional entities are inappropriately interfered with. Thus, it turns out that the Supreme Court’s revised understanding of the nature of the constitutional violation in desegregation cases is parasitic on the belief that school district lines are “more than arbitrary lines on the map.” For if they were merely arbitrary, there would be nothing (morally relevant) to limit the “scope of the remedy.”

The question therefore becomes: how did the ideology of local control enter the Supreme Court’s reasoning, and how was it used to limit the scope of school desegregation? To begin this piece of the argument, I note that the phrase “local control” did not enter the Supreme Court’s vocabulary (in education cases) until Chief Justice Burger’s dissent in *Wright v. Council of City of Emporia* (1972). There, Chief Justice Burger made this astonishingly sweeping claim: “This limitation on the discretion of the district courts involves more than polite deference to the role

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123 According to Freeman, “The fault concept gives rise to a complacency about one's own moral status; it creates a class of “innocents,” who need not feel any personal responsibility for the conditions associated with discrimination, and who therefore feel great resentment when called upon to bear any burdens in connection with remedying violations.” Freeman, “Legitimizing Racial Discrimination,” 1055.

124 I am referring to moral not legal standing. According to Martin Schönfeld, “Moral standing is possessed by any entity whose continue existence and well-being or integrity are ethically desirable, and whose interests in them have positive moral weight (provided the entity can meaningfully be said to have interests).” “Who or What Has Moral Standing?,” *American Philosophical Quarterly* 29, no. 4 (1992): 353. Emphasis added in order to preview the argument of Part III.
of local governments. Local control is not only vital to continued public support of the schools, but it is of *overriding* importance from an educational standpoint as well.”\(^\text{125}\)

Of course, in *Brown*, Chief Justice Warren had mentioned “the great variety of local conditions,” but this was in order to justify broad discretion for the district courts. Similarly, in *Brown II*, the Court argued, “Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief.”\(^\text{126}\) That is to say that, prior to *Wright*, the Court was not oblivious to the diversity local conditions; it had not, however, considered matters of local *control*.

In order to adequately trace the origins and development of the ideology of local control, it is necessary to identify the source of Chief Justice Burger’s argument about the *overriding* educational importance of local control, and why the argument emerged when it did. An initial hypothesis is that the lawyers for the plaintiffs, the lawyers for the respondents, or lower court judges (in the *Wright* litigation) made a version of the argument, and Chief Justice Burger merely repeated what he had read or heard.

To assess this hypothesis, it should be noted that the opinion in *Wright* was handed down on the same day as the opinion in *U.S. v. Scotland Neck*. Since it’s clear that the justices considered *Wright* and *Scotland Neck* parallel cases, they should be considered simultaneously.\(^\text{127}\) In *U.S. v. Halifax County Board of Education* (*Scotland Neck*’s predecessor in the district court), representatives of Scotland Neck claimed that “the primary reason for the new district was that the people of Scotland Neck felt they could have a better education system if

\(^{125}\) Wright v. City of Emporia, 477-478, emphasis added.

\(^{126}\) Brown v. Board of Education (Brown II), 298. Also see Green v. County School Board, 436, quoting Brown I.

\(^{127}\) In a memo in Justice Powell’s case files, one of his clerks wrote: “This is the companion carving-out case to *Scotland Neck.*” Lewis F. Powell Jr. Papers, 1921-1998, Lewis F. Powell, Jr. Archives, Washington and Lee University, Lexington, VA, available online: http://law2.wlu.edu/deptimages/powell%20archives/70-188_WrightCouncilEmporia.pdf
they could have a separate school district, levy a supplemental tax upon themselves and exert more local control over the operation of the schools within the corporate limits of the town.”

The other purposes mentioned were (as summarized by the Court of Appeals for the Fourth Circuit) “to increase the expenditures for their schools through local supplementary property taxes” and “to prevent anticipated white fleeing of the public schools.” In contrast, local control was not even mentioned in Wright v. County School Board of Greensville County (Wright’s predecessor in the district court).

In overturning U.S. v. Halifax County Board of Education, the Court of Appeals mentioned the local control argument but focused its attention on the “questionable third purpose,” i.e. “to prevent anticipated white fleeing of the public schools.” In the parallel case, also heard by the Fourth Circuit (Wright v. Council of the City of Emporia), local control was briefly mentioned, but only in the dissent. Local control was mentioned in both the brief for the respondents and the brief for the United States to the Supreme Court in Scotland Neck, but not in the briefs for Wright. Finally, the local control argument is mentioned briefly in Justice Stewart’s majority opinion for the Supreme Court.

The conclusion to be drawn from this detailed investigation of the prior history of each case is that although the local control argument made an appearance, it was not of central concern for either the parties to the cases or lower court judges. The centrality and intensity of

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131 U.S. v. Scotland Neck. This focus on “white flight” is explained by the fact the Supreme Court had ruled that the possibility of white flight could not be used as an excuse not to desegregate.
133 “Direct control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society, and since 1967 the citizens of Emporia have had little of that control.” Wright v. City of Emporia, 451. The fact that this claim comes from the hand of Justice Stewart provides a clue as to why Stewart joined the majority in Milliken.
the local control argument in Chief Justice Burger’s dissent in *Wright* was unprecedented. Additionally, on its face, it’s odd that the local control argument appears in Chief Justice Burger’s dissent in *Wright* rather than in his concurring opinion in *Scotland Neck*, given that the references to local control in the lower courts are found in the *Scotland Neck* litigation. However, this merely confirms that the two cases were indeed parallel, and suggests that the justices may have transferred reasoning from one case to the other.

From the above, one might conclude that Chief Justice Burger, after noticing the local control argument in the materials from *Scotland Neck*, decided to utilize and expand the argument in his dissent in *Wright*. However, Chief Justice Burger’s first draft left out the crucial “overriding importance from an educational standpoint as well” passage. In its place, he wrote, “…although I would not minimize the importance of local control as it affects public support of the schools, a factor alien to judges but crucial to school authorities.”134 Local control is mentioned, but the language is not nearly as powerful as in the final version.

I suspect that this is because the local control argument actually came (to the extent that arguments “come” from any individual in a group setting) from Justice Powell rather than Chief Justice Burger. Chief Justice Burger had been on the court since June 1969 and had never, prior to *Wright*, mentioned local control. Yet the argument appeared in June 1972, roughly six months after Justice Powell joined the Court. Justice Powell has been called “the education justice.”135 Before joining the bench, he had been on the Richmond School Board and the Virginia State

Board of Education. Discussing the jurisprudence of Justice Powell, Paul Kahn suggests that “the most apparent theme is the protection of local government.” Years later, in Board of Education v. Pico (1982), Justice Powell wrote, in language familiar from previous chapters, “School boards are uniquely local and democratic institutions...It is fair to say that no single agency of government at any level is closer to the people whom it serves.”

Even the method of adjudication in Chief Justice Burger’s dissent is characteristic of Justice Powell. According to Kahn, “For Powell, the goal of constitutional adjudication was to find the center, to strike the balance between competing interests.” Chief Justice Burger uses Powell’s balancing method in his dissent. He argues that the district court abused its remedial authority by failing to take Emporia’s interests into account. He claims to give “maximum rational weight to all of the factors mentioned by the Court” but thinks the majority’s “approach gives controlling weight to sociological theories.” He comes to his

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139 Kahn, "The Court, the Community and the Judicial Balance," 2.
140 Wright v. City of Emporia, (Burger, C.J., dissenting), 476, 477.
conclusion by balancing the value of racial balance against that of school board autonomy, but does not explain why school board autonomy has weight in constitutional adjudication. This is, to reiterate, the influence of the ideology of local control at work.

More indirect evidence of Powell’s influence can be found in his amicus brief for *Swann*. Writing as special council for the State of Virginia, Powell argued against a decision requiring busing. He suggested that the “central issue before the Court is whether racial balance is an end in itself, required by the Constitution without regard to other educational considerations or other values.” In language that anticipates Chief Justice Burger’s dissent in *Wright*, Powell argued that the “quality of a community’s education depends ultimately upon the level of public support” and “educational effectiveness also is dependent on the attitude of parents toward their children’s education…to the degree that schools can involve parents with their children’s education as such, or broaden the parents’ own educational horizons, this end is served.” Elsewhere, Powell refers to “the *intrinsic* educational merits of a racially satisfactory neighborhood school system[.]”

Similarly, in “Reflections on the State of Public Education,” a speech delivered at the end of his tenure on the state board of education, Powell said, “The education of the young traditionally has been the responsibility of the home, the church and the state. All of these institutions have been subject, in varying ways, to the ultimate control of the people concerned. To assure this with respect to public education, the autonomy and authority of local school

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141 Also see “Prepared as notes for argument, but oral argument not allowed by the Supreme Court,” Powell Papers, 17. Obtained with assistance from John N. Jacob, Archivist and Special Collections Law Librarian, Washington and Lee School of Law.
142 Brief for the Commonwealth of Virginia as Amicus Curiae, Swann v. Charlotte-Mecklenburg Board of Education.
143 “Prepared as notes for argument,” Powell Papers, 23.
144 “Prepared as notes for argument,” Powell Papers, 25, emphasis added.
boards has always been recognized.”145 In sum, at the very least, the ingredients of Chief Justice Burger’s dissent in *Wright* were easily available in Justice Powell’s previous writings and speeches.

Here is one plausible interpretation of the process in which the local control argument entered Supreme Court jurisprudence: in *Swann*, all nine justices approved school busing for school desegregation, with no mention of “local control” as a limiting consideration. Less than nine months later, Justices Powell and Rehnquist joined the Supreme Court. Another six months later, Justices Powell, Rehnquist, and Blackmun joined Chief Justice Burger in the first dissent in a school desegregation case. The dissent hinged on an argument for local control that been previously (and frequently) articulated by Lewis Powell.

The local control argument had entered the Supreme Court’s vocabulary in *Wright*, but it was not yet decisive. A different version of the argument, emphasizing the value of “neighborhood schools” rather than local school board autonomy, was first articulated in Justice Powell’s opinion in *Keyes* (concurring in part and dissenting in part).146 He wrote:

> Neighborhood school systems, neutrally administered, reflect the deeply felt desire of citizens for a sense of community in their public education. Public schools have been a traditional source of strength to our Nation, and that strength *may* derive in part from the identification of many schools with the personal features of the surrounding neighborhood. Community support, interest, and dedication to public schools *may* well run higher with a neighborhood attendance pattern: distance *may* encourage disinterest. Many citizens sense today a decline in the intimacy of our institutions—home, church, and school—which has caused a concomitant decline in the unity and communal spirit of our people.147

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146 The phrases “‘neighborhood’ school concept” and “‘neighborhood school zoning’” had appeared in previous cases. See Winston-Salem/Forsyth County Board of Education v. Scott, 404 U.S. 1221 (1971); Davis v. School Comm’rs of Mobile County.

147 *Keyes* v. School District No. 1, Denver, Colo., 253n32, emphasis added.
In essence, Powell was arguing that busing for integration would undermine the educational advantages of, and social capital produced, by neighborhood school assignments.

He also believed that busing encouraged white flight. Language along these lines is in marked contrast to Chief Justice Burger’s remark, a little over two years earlier, in *Davis v. School Commissioners of Mobile County* (1971):

> As we have held, “neighborhood school zoning,” whether based strictly on home-to-school distance or on “unified geographic zones,” is not the only constitutionally permissible remedy; nor is it *per se* adequate to meet the remedial responsibilities of local boards. Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation.\(^{148}\)

Before Justice Powell joined the court in 1972, the sitting justices had been willing to disrupt neighborhood schooling if it proved necessary to produce the maximum amount of desegregation. Justice Powell altered the court’s calculus by emphasizing the value of neighborhood schooling. Justice Powell developed a new *consideration*, a new “legitimate state purpose,” which then had to be balanced against the considerations in favor of desegregation.

The local control argument finally appeared in a majority opinion in *San Antonio School District v. Rodriguez* (1973). The case considered local *funding* of schools rather than desegregation. The court held that education was not a fundamental right under the federal constitution, nor were poor citizens residing in underfunded school districts (funding was based on local taxation) a suspect class entitled to strict scrutiny. Justice Powell, joined by Chief Justice Burger and Justices Blackmun, Stewart, and Rehnquist (the Court’s majority in *Milliken*), wrote:

> The persistence of attachment to government at the lowest level where education is concerned reflects the depth of commitment of its supporters. In part, local

\(^{148}\) *Davis v. School Comm'rs of Mobile County*, 33.
control means, as Professor Coleman suggests, the freedom to devote more money to the education of one's children. Equally important, however, is the opportunity it offers for participation in the decisionmaking process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs. Pluralism also affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence. An analogy to the Nation-State relationship in our federal system seems uniquely appropriate. Mr. Justice Brandeis identified as one of the peculiar strengths of our form of government each State's freedom to 'serve as a laboratory; and try novel social and economic experiments.' No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.149

This was the fully developed version of the local control argument. Nothing further was added in Chief Justice Burger’s majority opinion in Milliken. Indeed, that decision, at the crucial moment, cited both Wright and San Antonio to make the case for the autonomy of suburban school districts. In short, the local control argument, by reifying already existing school district boundaries, and by introducing a consideration in favor of neighborhood schooling, blocked the indispensably necessary means with which to desegregate fragmented urban metropolises: interdistrict busing. Only the ideology of local control could distinguish metropolitan Detroit from the City of Denver.150


150 Note: the literature on school desegregation frequently raises the specter of white flight. It is argued that “forced busing” will not achieve its goal of desegregating the schools because it encourages white families to flee. Many researchers have suggested that the white flight concern is overblown. White families, in the period in question, were already fleeing the cities for the suburbs. Furthermore, white flight was most pronounced in the year immediately following a desegregation order, but slowed to a trickle in the following year. Finally, in Milliken, the Court prohibited one of the most successful strategies of mitigating white flight: metropolitan area desegregation. For when an entire metropolitan area is under a desegregation order, white families have nowhere to flee. This argument is bolstered by the experience of desegregation in the South. In many southern states, school districts coterminous with the county—without separate suburban school districts. Even now, the South is the least segregated region in the country. See Siegel-Hawley, "Mitigating Milliken."
Part II. The Ideology of Local Control in Public Opinion

“I think if I’m a bigot there’s a multitude of people who bear the same title all over the country, state and city. If you believe in neighborhood schools it doesn’t mean you’re a bigot. Even the head of CORE believes in neighborhood schools.”

— Louise Day Hicks

Whereas in the first part of the chapter I analyzed the ideology of local control in elite discourse, in the second part I explore the ideology of local control in public opinion. I should note at the outset that much of what I have to say in this part is conjectural rather than definitive. My goal is to use the existing scholarship in (political) psychology and public opinion in order to provide a plausible account of the role of the ideology of local control in popular opposition to busing for desegregation.

I begin by noting that busing for desegregation was extremely unpopular in the American electorate. Participants in the 1972 American National Election Study (ANES) were read the following: “There is much discussion about the best way to deal with racial problems. Some people think achieving racial integration of schools is so important that it justifies busing children to schools out of their own neighborhoods. Others think letting children go to their neighborhood schools is so important that they oppose busing.” The interviewer handed each participant a card depicting a scale from 1 (“Bus to achieve integration”) to 7 (“Keep Children in Neighborhood Schools”). Respondents were then asked, “Where would you place yourself on this scale, or haven’t you thought much about this?” Among those who placed themselves on the scale (1-7), the average placement was 6.27. About 71% of the sample chose the most extreme anti-busing option, “Keep Children in Neighborhood Schools.” Only 2% chose the extreme

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integration position and only 7% were even moderately in favor of integration. A histogram of the responses is depicted below.

**Figure 7: Opposition to Busing**

![Histogram showing opposition to busing](image)

*Source: 1972 ANES*

This picture raises two important questions. First, *why* did so many Americans oppose busing so strongly? Second, did the ideology of local control have anything to do with it? I attempt to answer to the first question by drawing on the public opinion literature on framing. My answer to the second question draws on the public opinion literature on school busing, as well as survey data.

**The Persuasiveness of the Local Control Argument**

As I suggested in the introduction to this chapter, there is an important distinction between *good* and *strong* (powerful) arguments. In the third part of the chapter I argue that the local control argument is actually a bad argument, on empirical and moral grounds. It should be
especially troubling if a bad argument turns out to be strong. This turns out to be the case with the local control argument; it is both bad and strong. But why is it strong?

Preliminarily, I should note that saying that an argument is strong is not the same as saying a lot of people accept it. For there may be reasons that many people accept an argument regardless of its strength. John Zaller’s theory of survey response is of some use here. Zaller argues that when individuals respond to a survey question, they sample from the set of “considerations” available to them. For a consideration to be available, an individual needs to receive and accept the message associated with the consideration. Individuals with low “cognitive engagement” are less likely to receive a message. Similarly, individuals without “contextual information” are more likely to accept a message. This is because individuals without the relevant contextual information lack the resources to reject a message “inconsistent with their political predispositions.” Finally, the more recently a consideration is “called to mind,” the more accessible it is.152 Thus, whether an individual accepts a particular argument, by responding consistently with the argument in a survey, is not entirely dependent on the argument’s strength. For example, individuals with high cognitive engagement, but with little contextual information, may appear to accept a “weak” but oft-repeated argument.

This possibility has special relevance to the busing case. Opposition to busing may have been as extreme as it was because of “contextual effects.” According to M. Stephen Weatherford, “The inevitable social interaction over this highly politicized issue induces some movement away from the position the individual might have taken alone, and toward the position

shared by the bulk of the people in his social environment."

Extrapolating from Zaller’s account, individuals with high cognitive engagement and little contextual knowledge, but with intense exposure to the local control argument in their social environment, might come to accept the argument regardless of its strength. In short, some individuals may have accepted the local control argument, not because it was strong, but because it was made repeatedly.

Nevertheless, survey research suggests that most Americans accept the ideal of desegregated schools. This could be interpreted as suggesting that some Americans have a political predisposition in favor of desegregation. What then could convince individuals to accept the local control argument despite its inconsistency with the ideal of desegregation? One answer, from within Zaller’s account, is that many individuals don’t actually have the relevant contextual information. This is because the inconsistency between desegregation and local control is actually quite complex. Individuals may accept the local control argument because they don’t realize that it is in fact incompatible with desegregation.

If the above is correct, it is inappropriate to suggest that individuals are being “convinced” by the local control argument. Rather, they accept it without deliberating. As Zaller suggests, “The psychological literature on opinion change lends great support to the notion that individuals typically fail to reason for themselves about the persuasive communications they encounter.” Nevertheless, Zaller admits that “people rely on cues about the ‘source’ of a message in deciding what to think of it.” Thus, Zaller leaves the door open for so-called “framing effects,”

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insofar as “perceived source credibility appears to be a prerequisite for successful framing.”\textsuperscript{154} In other words, a frame can be strong or successful if its source is considered credible.

Even if framing effects do not constitute genuine persuasion, we can still ask whether frames affect the opinions of cognitively engaged and contextually informed individuals. Dennis Chong argues, “A common frame of reference is an interpretation of an issue that has been popularized through discussion. When an issue has a common frame of reference, people learn to base their opinion on certain considerations rather than others.”\textsuperscript{155} In the busing debate, at least two different frames were potential common frames of reference. The issue could have been framed as a question of equal opportunity or racial equality. On the other hand, (as turned out to be the case) the issue could have been framed as a matter of local control and neighborhood schools. Both frames existed simultaneously, but one clearly dominated the other.

As the literature on framing has developed, scholars have found that strong frames typically dominate weaker frames.\textsuperscript{156} This would be good news if not for the distinction between strong and good arguments. According to Chong and Druckman, “the strong frames that emerge from debate will reflect a political process in which the persuasiveness of a claim depends on more than its validity or relation to evidence. The elements of an argument that make it plausible or compelling seem to reside as much in its source and the cultural values and symbols it invokes as in its causal logic.”\textsuperscript{157}


\textsuperscript{156} Dennis Chong and James N. Druckman, "Framing Public Opinion in Competitive Democracies," \textit{American Political Science Review} 101, no. 4 (2007).

\textsuperscript{157} Chong and Druckman, "Framing Public Opinion," 652.
The connection between strong frames and the folk conception ideology introduced earlier should now be obvious. Strong frames are ideological insofar as they are persuasive because they are accessible within the American “collective political imagination,” sometimes in spite of the evidence. Indeed, Chong and Druckman argue that a frame is perceived as strong “to the extent to which [it] emphasizes available and applicable considerations.” The “tradition of localism” in the United States contributes to the availability and applicability of considerations associated with the local control argument.

What I am suggesting is that opposition to busing for desegregation was widespread because an important frame of reference in which the issue was discussed—local control and neighborhood schools—was particularly strong. More can be said, however, than that the local control frame was strong because it appealed to “available and applicable considerations.” This is far too vague.

In their general account of white backlash in the 1960s and 1970s, Thomas and Mary Edsall argue, “Race and taxes—with their ‘values, ‘rights’ and redistributive dimensions—functioned to force the attention of the public on the costs of federal policies and programs. Those costs were often first experienced in terms of loss—the loss of control over school selections, union apprenticeship programs, hiring, promotions, neighborhoods, public safety, and even over sexual morals and a stable social order.” Louise Day Hicks argued, “the last bastion of the nuclear family, the city neighborhood, has been turned into a battleground where parents have decided to make their last stand in defense of their God-given responsibility to control the destinies of their children until they are mature enough to assume the same role for their

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158 Chong and Druckman, "Framing Public Opinion," 640.
children.” John J. McDonough, a candidate for mayor of Boston, remarked, “the people feel busing could lead to the dissolution of the neighborhood school, and I don't think it has anything to do with the racial problem. The neighborhood school concept has its own merits.” These are just a few examples of statements expressing concern over perceived costs or losses associated with busing.

For upwardly mobile working and middle-class white Americans, many of whom had worked hard in order to afford a home in their desired neighborhood, busing was indeed interpreted as a loss. Just when these families had finally transitioned from renters to homeowners, they were being asked to send their children to schools outside their neighborhoods. Moreover, even if it wasn’t true, these families fretted over the prospects of sending their children to unsafe ghetto schools. Loss of prestige, status, and home value were combined with (perceived) loss of security for their children. The nature of the loss was undoubtedly racially tinged. This is why I argue it is a mistake to attempt to separate the “self-interest” and “racial” motivations for opposition to busing. Surely there is some value in having one’s children attend schools close to home, but any loss associated with busing would be significantly mitigated if the school to which one’s children are to be bused is as same as the neighborhood school. This is why most citizens are opposed to busing for desegregation, not busing per se. A significant proportion of American children are bused to school independently of desegregation. Given these facts, it seems likely that so-called self-interest is heavily influenced by racial attitudes.

162 Park Forest School Superintendent Ivan Baker remarked, “Even if the other school is just a short distance away, parents think that it isn’t the school they moved into the neighborhood for.” Quoted in Connie Lauerman, "Reluctant Death for an Old Concept," Chicago Tribune, February 1, 1976.
It also seems likely that the busing controversy generated a great deal of anxiety for families of school age children. Even if a family’s school district was not currently under a desegregation order, if the surrounding geographical area had a significant proportion of black children, it might become subject to one later. And if the geographical area did not have a significant proportion of black children, there was simply no reason for racially motivated anxiety.

These points about anxiety are important because as Kevin Arceneaux notes, “Anxiety is an important focusing emotion. It alerts individuals to potential threats to desired outcomes, interrupting habitual routines and activating cognition directed at finding alternative solutions.”¹⁶³ Anxiety may increase the likelihood that an individual will “rely on contextually appropriate cognitive biases.” Cognitive biases affect the strength of arguments because they predispose individuals toward arguments that are consistent with their biases. Linking back to my discussion of Chong and Druckman, “considerations that are consistent with [cognitive biases] are likely to be both available and accessible.”¹⁶⁴

Daniel Kahneman and Amos Tversky famously argued that under conditions of uncertainty, losses “loom larger than gains.”¹⁶⁵ This is the relevant cognitive bias that is triggered by anxiety. Thus, if the busing controversy generated feelings of anxiety, it may have made some individuals particularly susceptible to the loss-framed argument, i.e. local control and neighborhood schools. Arceneaux suggests that “if one political faction is able to activate cognitive biases when positioning their preferred alternative, it may gain an advantage in

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Again, conjecturally rather than definitively, anxiety activated cognitive biases favoring losses over gains may be one of the mechanisms explaining “contextual effects.” Insofar as otherwise uninterested and uninformed citizens encounter anxiety producing events and arguments in their environment, they may become susceptible to the loss-framed local control argument.

If the above argument is correct, opposition to busing is partially explained by how the issue was framed in public debate. The “equality of opportunity” or “racial equality” frame is abstract, distant, and focused on gains for a minority. In contrast, the “local control” or “neighborhood schools” frame is concrete, immediate, and focused on losses. Despite being framed as a loss, however, the nature of the loss is racially tinged. For it is not entirely clear what is being lost without factoring in racial assumptions. Perhaps local control is a good independently of racial considerations. Yet without racial assumptions, the local control frame is arguably no less abstract than the “equality of opportunity” frame. I take up the relationship between racial attitudes and support for neighborhood schools in the following section.

Racial Attitudes and Neighborhood Schools

In this subsection I exploit an extremely valuable open-ended question in the 1976 ANES: “Let’s start with the issue of busing. The courts have ordered busing for some school children in several cities in the United States. What do you think of busing as a way to integrate the schools? (PROBE: Can you tell me why you feel that way?)”

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166 Kahneman and Tversky, "Prospect Theory."
The respondents’ first three answers were coded and grouped into “pro-busing,” “neutral,” “anti-busing,” and “prefer alternative solution” mentions. One of the coded responses (in the “prefer alternative solution” category) was the following: “PROXIMITY/PREFER NEIGHBORHOOD SCHOOL, NA WHY: WE LIVE NEAR A SCHOOL AND WANT OUR CHILD TO GO HERE; WANT SCHOOL CLOSE TO HOME; DON'T WANT CHILD GOING AWAY ACROSS TOWN.” I interpret this as the “local control” or “neighborhood schools” response. Of 2,743 white respondents, 555 (19.43%) gave the neighborhood schools response on the first mention. Summed across all three mentions, 835 (30.44%) mentioned neighborhood schools at least once. For the sake of comparison, the second most common response (749 participants), summed across all three mentions, was “I JUST HATE IT, NA WHY; IT'S JUST NOT A GOOD THING/DON'T LIKE IT.” Only 169 participants mentioned the “PRO-INTEGRATION; ONLY WAY TO ACHIEVE INTEGRATION” response.

As far as I can tell, only Buell and Brisbin have made any use of this question, and they only report summary statistics. I can add that 38% of those respondents opposing busing (scoring 5, 6, or 7 on the busing scale) mentioned neighborhood schools whereas only 9% of those supporting busing (scoring 1, 2, or 3 on the busing scale) mentioned neighborhood schools. On the other hand, 98% of respondents who mentioned neighborhood schools opposed busing, whereas 90% of respondents who did not mention neighborhood schools opposed busing.

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Note the above claim that anxiety prompts “cognition directed at finding alternative solutions.” See above, footnote 163.

“It is a pervading concept. In interviews about school closing or desegregation, most parents mention the neighborhood school.” Lauerman, "Reluctant Death for an Old Concept."

My attention to white respondents will be clarified below.

See Buell and Brisbin, School Desegregation and Defended Neighborhoods, 22-23.

A t-test yields a t-value of -6.6255.
confirms what we already know: support for neighborhood schools is associated with opposition to busing.\footnote{\textsuperscript{173}}

\begin{table}
\centering
\caption{Support for Busing Given Neighborhood Schools Mention}
\begin{tabular}{lrr}
\hline
Did not mention “neighborhood schools” & Support Busing & Oppose Busing \\
\hline
 & 79 & 726 \\
 & (9.81\%) & (90.19\%) \\
\hline
Mentioned “neighborhood schools” & 8 & 448 \\
 & (1.75\%) & (98.25\%) \\
\hline
Total & 87 & 1,174 \\
 & (6.90\%) & (93.10\%) \\
\hline
\end{tabular}
\end{table}

Whether support for neighborhood schools \textit{caused or contributed to} opposition to busing is a further question. My hunch is that in many cases support for neighborhood schools simply mediates, or carries the justificatory weight for, opposition to busing for other reasons. In other words, what a respondent \textit{says} is her reason for opposing busing might not be her \textit{actual} reason.

At the outset of the chapter I mentioned the theory of aversive racism developed in psychology. Students of public opinion have observed that evidence of explicitly racist attitudes in surveys has declined precipitously in the late twentieth century. Simply put, barely anyone gives blatantly racist answers to survey interviewers anymore. Moreover, explicitly racist attitudes are no longer tolerated in American society; Americans endorse what Mendelberg calls a “norm of equality.”\footnote{\textsuperscript{174}}

By no means does this mean that racism is dead; it has simply gone underground. Numerous theories—aversive, symbolic, modern—have been offered to explain how racial attitudes continue to affect social behavior. In the literature on school busing, “symbolic” racism

\footnote{\textsuperscript{173} Also see McKee J. McClendon and Fred P. Pestello, "White Opposition: To Busing or to Desegregation?," \textit{Social Science Quarterly} 63, no. 1 (1982): 76.}

has been the dominant theory. A number of articles from the late 1970s through the early 1990s asked whether opposition to busing was primarily based on self-interest or ideology. These scholars wondered whether Americans were opposed to busing because they believed it would adversely affect them or their families, or whether their opposition was rooted in symbolic racial attitudes. In two separate articles, John McConahay and David Sears, Carl Hensler, and Leslie Speer conclude that symbolic racial attitudes did the work. According to Sears et al., “it is apparently the symbolism evoked by the prospect of any white children’s forced intimate contact with blacks, rather than the reality of one’s own children’s contact, that triggers opposition to busing.”

Lawrence Bobo has criticized the findings of McConahay and Sears et al., but not in a way that is damaging to my argument. Bobo contends that McConahay and Sears et al.’s conception of self-interest is too narrow because it “focuses on objective susceptibility to potentially unwanted contact with blacks.” Instead, Bobo argues, “subjective assessment of a threat posed by out-group members” should count as “self-interest.” But this is merely to move racially motivated opposition to busing from the symbolic to the self-interest column; it does not eliminate racial motivation as a determinant of opposition to busing.


176 Sears, Hensler, and Speer, "Whites' Opposition to 'Busing'; McConahay, "Correlates of Anti-Busing Attitudes."

177 Sears, Hensler, and Speer, "Whites' Opposition to 'Busing", 382.

The theory of aversive racism is helpful in this regard because it specifies a pathway through which implicit racial attitudes can generate discriminatory behavior. The theory of symbolic racism says, in rough outline, that underlying prejudices affect social behavior. But the theory of aversive racism gives an account of how underlying prejudices affect behavior. Researchers have discovered that individuals with implicitly racist attitudes get the “right” answer (i.e. the nondiscriminatory response) in situations in which the normative guidelines are clear. For example, in experiments involving job applications, white participants accept black candidates who are clearly qualified, reject black candidates who are clearly unqualified, but reject black candidates who are ambiguously qualified more often than identically qualified white candidates.\textsuperscript{179} One could interpret this result as suggesting that many white Americans have not yet fully internalized Mendelberg’s “norm of equality.”

Yet Dovidio and Gaertner note that “even when normative guidelines are clear, aversive racists may unwittingly search for ostensibly nonracial factors that could justify a negative response to blacks.”\textsuperscript{180} White Americans know they are prohibited from using racial considerations in order to justify poor treatment of African-Americans. However, those with a subconscious aversion to blacks do not refrain from poor treatment of blacks; rather, they (subconsciously) seek some non-racial justification for their discriminatory behavior.\textsuperscript{181} In the example above, it is not as though the white participants said to themselves: “this black person with ambiguous qualifications makes me uncomfortable, therefore he or she shouldn’t get the job.” Instead, their discomfort makes the ambiguous nature of the candidate’s qualifications

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\textsuperscript{179} Dovidio and Gaertner, "Aversive Racism and Selection Decisions."
\textsuperscript{180} Gaertner and Dovidio, "The Aversive Form of Racism," 73.
\textsuperscript{181} “The negative affect that aversive racists have for blacks is not hostility or hate. Instead, this negativity involves discomfort, uneasiness, disgust, and sometimes fear, which tend to motivate avoidance rather than intentionally destructive behaviors.” Gaertner and Dovidio, "The Aversive Form of Racism."
more salient, and they know that denying someone a job based on their qualifications is perfectly legitimate in our ‘meritocratic’ society.

It just so happens that “local control” and “neighborhood schools” are precisely the kinds of non-racial factors that aversive racists may use to rationalize unequal treatment of African-American children. Defenders of local control rarely justify their position on purely racial grounds. They do not usually say, “we want local control in order to keep black kids out of our children’s schools.” Instead, they appeal to one of the many purported benefits or advantages of local control, discussed at greater length in the third part. This way, white Americans can avoid contact with African-Americans without carrying the psychological burden of saying so. \textsuperscript{182}

To test this hypothesis I have constructed, following Sears et al., a symbolic racial attitude scale from questions asked in the 1972 ANES. The 1972 and 1976 surveys were part of a three-wave panel, so some of the respondents for whom I can construct a symbolic racial attitudes score also answered the open-ended busing question in 1976. Sears et al. used the following eight questions to construct their racial attitude scale.

\begin{table}
\centering
\begin{tabular}{|l|}
\hline
\textbf{Table 9: Racial Attitudes Questions} \\
\hline
1. \textit{Less intelligent.} Which of these statements (about the relative intelligence of black and white people) would you agree with: \begin{enumerate}
    \item (a) On the average, black people are born with more intelligence than white people, \textbf{[scored 0]} \\
    \item (b) On the average, white people and black people are born with equal intelligence, \textbf{[scored 0]} \\
    \item (c) On the average, white people are born with more intelligence than black people, \textbf{[scored 4]} \textit{Don’t know} and \textit{depends} scored 2.
\end{enumerate} \\
2. \textit{Segregation} Are you in favor of desegregation \textbf{[scored 0]}, strict segregation \textbf{[scored 4]}, or something in between \textbf{[scored 2]}? \textit{Don’t know} scored 2. \\
3. \textit{Keep out} Which of these statements would you agree with: \begin{enumerate}
    \item (a) White people have a right to keep black people out of their neighborhoods if they want to. \textbf{[scored 4]} \textit{Don’t know} and \textit{depends} scored 2.
\end{enumerate}
\hline
\end{tabular}
\end{table}

4. Civil rights push. Some say that the civil rights people have been trying to push too fast. Others feel they haven’t pushed fast enough. How about you: Do you think that civil rights leaders are trying to push too fast [scored 4]; are going too slowly [scored 0], or are they moving about the right speed [scored 2]? Don’t know scored 2.

5. Actions hurtful. Do you think the actions black people have taken have, on the whole, helped their cause [scored 0] or, on the whole, hurt their cause [scored 4]? Don’t know and pro-con/helped, hurt some scored 2.

6. Actions violent. During the past year or so, would you say that most of the actions black people have taken to get the things they want have been violent [scored 4], or have most of these actions been peaceful [scored 0]? Don’t know and pro-con/some violent, some peaceful scored 2.

7. Access to accommodations. As you may know, Congress passed a bill that says that black people should have the right to go to any hotel or restaurant they can afford, just like anybody else. Some people feel that this is something the government should support. Others feel that the government should stay out of this matter. Have you been interested enough in this to favor one side over another [no scored 2]? (If yes) Should the government support the right of black people to go to any hotel or restaurant they can afford [scored 0], or should it stay out of this matter [scored 4]? Don’t know and depends scored 2.

8. Fair job treatment. Some people feel that if black people are not getting fair treatment in jobs, the government in Washington ought to see to it that they do. Others feel that this is not the federal government's business. Have you had enough interest in this question to favor one side over the other [no scored 2]? (If yes) Should the government in Washington see to it that black people get fair treatment in jobs [scored 0] or leave these matters to the states and local communities [scored 4]? Don’t know and depends scored 2.


I have eliminated questions 1, 2, and 8 in order to construct a slightly different, five-question racial attitude scale. Questions 1 and 2 strike me as measures of *explicit* racial attitudes. It stands to reason that individuals with explicit racist attitudes feel no need to find a non-racial justification of poor treatment toward African-Americans; they are comfortable with the racial justification. They are therefore less likely to adopt the local control or “neighborhood school” argument. I also eliminated question 8 because it is inconsistent with the norm of equality. It strikes me that implicit racial attitudes are unlikely to affect one’s opinion about fair employment in the abstract. The following is a histogram of the reconstructed racial attitude scale. Note that although the most prevalent score is “2,” near the bottom of the scale, every possible score is well represented in the sample.
This symbolic racial attitudes scale allows me to test whether racial attitudes have an effect on the likelihood of mentioning “neighborhoods schools” in response to the 1976 open-ended question already mentioned. Since we already know that those respondents who mentioned neighborhood schools were more likely to oppose busing, if aversive racial attitudes make someone more likely to mention neighborhood schools, it seems plausible that “neighborhood schools” mediates between racial attitudes and opposition to busing. Moreover, as David O. Sears, Carl. P. Hensler, and Leslie K. Speer argue, “Apparently ‘busing’ was the primary issue vehicle for the influence of racial prejudice in 1972 presidential voting.”

But before testing the impact of racial attitudes on the likelihood of mentioning neighborhood schools, for the sake of comparison I show that partisanship (party ID) has a statistically significant relationship with the likelihood of mentioning neighborhood schools. I

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recoded the data so that if a respondent mentioned neighborhood schools at any point she is coded as a “1.” If she did not mention neighborhood schools at all, she is coded as a “0.” Respondents’ partisanship is measured on a 1-7 scale with 1 being a strong Democrat and 7 being a strong Republican. What one finds, using logistic regression, is that a strong Republican is approximately 8.4 percentage points more likely to mention neighborhood schools than a strong Democrat (38.2% vs. 29.8%). Since I will be comparing this result to the racial attitudes result, African-Americans are removed from the sample (as assumed by the theory, African-Americans do not have aversive racial attitudes toward other African-Americans).

**Figure 9: Effect of Party ID on Probability of Mentioning Neighborhood Schools**

![Graph showing the effect of party ID on the probability of mentioning neighborhood schools.](image)

*Source: 1972, 1976 ANES*

After adding racial attitudes to the model, and controlling for party ID, the effect of racial attitudes is such that someone with the highest racial attitude score (20) is approximately 12.2 percentage points more likely than someone with the lowest racial attitude score (0) to mention neighborhood schools. Racial attitudes have a significant effect on the likelihood of mentioning
neighborhood schools even controlling for party ID. This is an interesting result insofar as the Democratic Party was (and is), since 1964, the more racially liberal party. One might have thought that the party ID measure would capture much of the influence of racial attitudes. Instead, the results of the logistic regression with both party ID and racial attitudes imply that a Republican with the highest racial attitude score is approximately 20.6 percentage points more likely than a Democrat with the lowest racial attitude score to mention neighborhood schools.

Furthermore, the fact that someone with the lowest possible racial attitude score (and average party ID) still had a 30.3% chance of mentioning neighborhood schools suggests that racial attitudes were not the only driver of support for neighborhood schools. It is revealing, nevertheless, that holding party ID at its mean, someone with the highest racial attitude score has a 42.4% probability of mentioning neighborhood schools.

Table 10: Effect of Party ID and Racial Attitudes on Probability of Mentioning Neighborhood Schools

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>localsum</td>
<td>localsum</td>
<td>localsum</td>
</tr>
<tr>
<td>Party ID</td>
<td>0.0629*</td>
<td>0.0624*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2.24)</td>
<td>(2.01)</td>
<td></td>
</tr>
<tr>
<td>Racial Attitudes</td>
<td>0.0267*</td>
<td>0.0264*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2.39)</td>
<td>(2.30)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-0.846***</td>
<td>-0.858***</td>
<td>-1.004***</td>
</tr>
<tr>
<td></td>
<td>(-7.22)</td>
<td>(-8.98)</td>
<td>(-6.72)</td>
</tr>
<tr>
<td>N</td>
<td>1165</td>
<td>1434</td>
<td>1121</td>
</tr>
</tbody>
</table>

*t statistics in parentheses
*p < 0.05, **p < 0.01, ***p < 0.001

In many accounts in the literature (especially of Boston), it is argued that working class whites are the vanguard of opposition to busing for desegregation. However, at least in the ANES sample, income is not a statistically significant predictor of busing opinion.
Adding symbolic racial attitudes to the equation does not change this result. Controlling for racial attitudes reveals that racial attitudes, but not income, are a significant predictor of busing attitudes.
Treated on its own, education has a negative impact on opposition to school busing. One might think that education generates greater tolerance and/or understanding of the relationship between busing and racial equality. However, controlling for racial attitudes, the effect of education is significantly reduced and the effect of racial attitudes is highly significant. The effects of racial attitudes on opposition to busing dwarf the effects of education on support for busing.

Table 11: Effect of Education, Income, and Racial Attitudes on Busing Opinion

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>-0.0467***</td>
<td>-0.0189*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(-6.29)</td>
<td>(-2.46)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td>-0.0127</td>
<td>0.00430</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(-1.50)</td>
<td>(0.52)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Racial Attitudes</td>
<td>0.0730***</td>
<td></td>
<td>0.0666***</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(11.50)</td>
<td></td>
<td>(10.01)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>6.481***</td>
<td>5.651***</td>
<td>7.115***</td>
<td>6.064***</td>
</tr>
<tr>
<td></td>
<td>(65.09)</td>
<td>(47.53)</td>
<td>(55.26)</td>
<td>(37.30)</td>
</tr>
<tr>
<td>N</td>
<td>1283</td>
<td>1263</td>
<td>1306</td>
<td>1286</td>
</tr>
</tbody>
</table>

$t$ statistics in parentheses

* $p < 0.05$,  ** $p < 0.01$,  *** $p < 0.001$

Similarly, income is not a significant predictor of the likelihood of mentioning neighborhood schools, but racial attitudes are. These results provide provisional evidence for the claim that racial attitudes influence support for local schools, which in turn influences attitudes toward busing. “Local control” and “neighborhood schools” are an important mediator between racial attitudes and opposition to busing.
Table 9: Effect of Income, Education, and Racial Attitudes on Probability of Mentioning Neighborhood Schools

<table>
<thead>
<tr>
<th></th>
<th>(1) localsum</th>
<th>(2) localsum</th>
<th>(3) localsum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income</td>
<td>0.00775</td>
<td>0.0137</td>
<td>0.0216</td>
</tr>
<tr>
<td></td>
<td>(0.53)</td>
<td>(0.91)</td>
<td>(1.33)</td>
</tr>
<tr>
<td>Racial Attitudes</td>
<td>0.0284*</td>
<td>0.0236</td>
<td>(1.96)*</td>
</tr>
<tr>
<td></td>
<td>(2.48)</td>
<td>(1.96)</td>
<td>(1.33)</td>
</tr>
<tr>
<td>Education</td>
<td>-0.0190</td>
<td>-0.0190</td>
<td>-0.0190</td>
</tr>
<tr>
<td></td>
<td>(-1.28)</td>
<td>(-1.28)</td>
<td>(-1.28)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.690***</td>
<td>-0.999***</td>
<td>-0.730</td>
</tr>
<tr>
<td></td>
<td>(-4.00)</td>
<td>(-4.55)</td>
<td>(-2.41)</td>
</tr>
<tr>
<td>N</td>
<td>1163</td>
<td>1144</td>
<td>1144</td>
</tr>
</tbody>
</table>

t statistics in parentheses
* p < 0.05, ** p < 0.01, *** p < 0.001

Figure 13: Effect of Income, Education, and Racial Attitudes on Probability of Mentioning Neighborhood Schools

185 Borders on statistical significance.
Part III. The Ideology of Local Control: A Normative Assessment

“Under local government we can absolutely control every objectionable thing that may try to enter our limits—but once annexed we are at the mercy of the city hall.”

—Morgan Park Post, March 9, 1907

The aim of the third part of the chapter is to provide a normative assessment of the ideology of local control. My main claim is that, contrary to the reasoning of the United States Supreme Court, as well as commonly held beliefs, the moral value of local control is *prima facie*, not *pro tanto*. I introduce this technical terminology from moral philosophy in order to clarify an important point.

Many ordinary Americans, and some political theorists and philosophers, believe that local control is valuable or beneficial, and therefore ought to *count* in moral and political decision-making. The thought is that since local control is valuable, it ought to be weighed against other values (e.g. racial equality) in such a way that the value of local control might outweigh or constrain the pursuit of other values. For example, if a particular path toward racial equality would undermine local control, we might have reason to choose a different (and perhaps less effective) path. Or if local control turns out to be more important than racial equality, in a conflict between local control and racial equality, local control would win out. Call this first interpretation of the moral terrain the *balancing* approach.

Alternatively, the value of racial equality might be *overriding*. Under this interpretation, even if local control were deemed valuable, it would be ruled out if local control conflicts with the pursuit of racial equality. Even under this interpretation of the moral calculus, despite being overridden, the value of local control would remain on the books. This would mean that among local residents, public parks, and even urban planners, local control remains a critical component of a well-functioning, desirable community. Thus, the end product of this normative assessment of local control is the profound recognition that, contrary to the Court’s and popular belief’s reasoning, an ethic of local control is not only present, but also highly valuable, necessary, and meaningful.
equally effective means of achieving racial equality, we ought to choose the method that does the
least damage to local control. Call this second interpretation of the moral terrain (following
Ronald Dworkin) the *trumping* approach.\textsuperscript{187}

I believe each of the first two interpretations is misguided. Both assume that the value of
local control remains on the books even if it is outweighed or overridden. Of the first two
approaches, the second is better because it recognizes that one value can trump another. This
interpretation tracks the intuition that we might have to *sacrifice* the value of local control in
order to achieve racial equality. Even though we would admit that racial equality is more
important than local control, there is still a sense of *loss* associated with the sacrifice. We’re
saddened by the fact that the two values conflict, and that we must choose one over the other.

This intuitive sense of sadness or loss is deeply misleading. Although I admit that many
people may *feel* a sense of loss when local control is sacrificed for racial equality, I deny that any
such feelings are morally weighty. For feelings of loss to be morally weighty, the value lost must
also be morally important. I contend that the value associated with local control rarely has *moral*
value. For the value or benefits of local control to count, morally, they must have been obtained
justly.

The latter half of this part of the chapter contains an extended argument to the effect that
in most American communities, the value or benefits associated with local control were unjustly
obtained. What this means is that in most cases, the value of local control *ought not count at all.*
In contrast with the *trumping* approach, under my preferred interpretation of the moral calculus,
the value of local control is wiped off the books completely. In practice, this means that (in many

University Press, 1984). The analogy is not perfect, however. Dworkin’s concern is with individual rights whereas I
am speaking of political and moral values.
cases) local control ought not constrain the pursuit of racial equality, not even to choose among equally effective means of achieving racial equality.

For the rest of the chapter, I use the distinction between pro tanto and prima facie values to track these concerns. As Shelly Kagan puts it, “A pro tanto reason has genuine weight, but nonetheless may be outweighed by other considerations” whereas “a prima facie reason appears to be a reason, but may actually not be a reason at all, or may not have weight in all cases it appears to.” A prima facie reason has an “epistemological qualification;” in order to determine whether a prima facie reason has some moral weight, one has to do some digging. I now transition from the language of reasons to the language of values.

If the value of local control is pro tanto, as is commonly believed, it always has moral weight, and therefore must be weighed against other values (as under the balancing approach), or at least remain on the moral books (as under the trumping approach). In the school busing controversy, under the pro tanto understanding of the value of local control, the task is to determine the moral weight of local control as well as the moral weight of racial equality, and to strike a balance between the two values.

If the value of local control is instead prima facie, as I argue, it is not the case that the value of local control always has moral weight. In the school busing controversy, under the prima facie understanding of the value of local control, the task is to determine whether the value of local control, which appears to have moral weight, is actually valuable, and in which circumstances. Moreover, as suggested above, even if it can be shown that local control is valuable in a particular set of circumstances, it is a further question whether its value, in those circumstances.

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circumstances, has moral weight, such that it ought to count in moral and political decision-making.

Although I argue that the value of local control is prima facie rather than pro tanto, I am not claiming that local control is never valuable, or that the ideology of local control is necessarily normatively problematic. Rather, the effects of the ideology of local control have been so pernicious in the United States because the value of local control is so plausible and so intuitive. The tendency seems to be an overgeneralization from the circumstances of white, middle-class communities. But this is to jump ahead. Before proceeding to a discussion of why, and in what circumstances, the ideology of local control is normatively problematic, I briefly explain what I take to be the attraction of local control.

The Attraction of Local Control

In the American (and Western) political traditions there are at least seven recurring arguments in favor of local control and local government. The arguments are not mutually exclusive, and most thinkers appeal to some, but not all, of the seven arguments. Furthermore, some commentators treat some of the arguments as components or elaborations of other arguments. I label the seven arguments participation, accountability, knowledge, education, diversity, experimentation, and efficiency. Each argument offers a reason or reasons to value local government or local control. Since these arguments are so pervasive, it is impossible to provide a comprehensive account of the nuances and history of each. Instead I offer an impressionistic and selective overview.\(^\text{189}\)

\(^{189}\) For a comprehensive, although uncritical, argument for localism, see Moore, *Localism: A Philosophy of Government*. 
Participation. For Alexis de Tocqueville, a particularly reliable source in this regard, the township is the site of local democracy: “In the heart of the township one sees real, active, altogether democratic and republican political life reigning. […] Affairs that touch the interest of all are treated in the public square and within the general assembly of citizens, as in Athens.”\footnote{Tocqueville, Democracy in America, 40. Tocqueville’s word, translated as township, is commune. See Tocqueville, De la Démocratie en Amérique.} Similarly, Amy Guttmann argues, “local control facilitates the participation of citizens in political activities beyond the simple act of voting.”\footnote{Amy Gutmann, Democratic Education (Princeton: Princeton University Press, 1987), 74.} Justice Powell, in his majority opinion in San Antonio School District v. Rodriguez (1973), argues that local control provides the opportunity “for participation in the decisionmaking process that determines how…local tax dollars will be spent.”\footnote{San Antonio School District v. Rodriguez, 50.} Archon Fung argues, “Participatory devolution in Chicago created opportunities for citizens to exert real influence on two important public agencies. Potentially, this influence can improve very tangible aspects of local public life: safety in the streets and the quality of children’s education.”\footnote{Fung, Empowered Participation, 71.}

Accountability. Again, according to Amy Gutmann, “Preserving a realm of local democratic control over schools…makes control more effective…. The more effective the control that citizens have over school policies, moreover, the more likely they are to support them.”\footnote{Gutmann, Democratic Education, 74.} Government officials are thought to be more accountable at the local level because they are “closer” to their constituents.\footnote{For the Anti-Federalists’ version of this argument, see chapter 2.} According to John Courtney, “it is not unfair to say that this concept of ‘closeness’ is in the mainstream of American democracy from Jefferson through to
the Saturday Evening Post.”¹⁹⁶ These claims are made despite the fact that it is well known that participation rates in local elections are abysmally low.¹⁹⁷

Knowledge. Advocates of local control frequently note that local governments have unique epistemic advantages compared to distant governments. Echoing a common claim of the American Anti-Federalists, Tocqueville argues, “A central power, however enlightened, however learned one imagines it, cannot gather to itself alone all the details of the life of a great people. It cannot do it because such work exceeds human strength.”¹⁹⁸ Montesquieu, who was extremely influential in American political thought, especially in the eighteenth century, remarks that “One knows the needs of one’s own neighbors better than those of other towns, and one judges the ability of one’s neighbors better than that of one’s other compatriots.”¹⁹⁹ This argument was voiced throughout the busing controversy. Local residents believed, perhaps with good reason, that they had access to crucial knowledge unavailable to federal judges. Richard Nixon claimed, “Parents know the education of their children can most effectively be carried out in neighborhood schools […] They are naturally concerned when the courts, acting on the basis of complicated plans drawn up by bureaucrats far away in Washington, D.C., order children bused out of their neighborhoods.”²⁰⁰ With one additional step, epistemic advantages are translated into an argument for local control, e.g. those who understand the neighborhood ought to control it.

¹⁹⁶ In Bowers, Housego, and Dyke, Education and Social Policy: Local Control of Education, 47, 48.
Education. John Stuart Mill, often with the United States in mind, points to the educative effect of participation in local government: “in the case of local bodies…many citizens in turn have the chance of being elected, and many, either by selection or by rotation, fill one or other of the numerous local executive offices. […] It may be added, that these local functions, not being in general sought by the higher ranks, carry down the important political education which they are the means of conferring to a much lower grade in society.” Similarly, according to Sheldon Wolin, “Not only do [local institutions] provide the means of effecting the aims of the demos and translating them into laws and policies, but they are ‘the schools of democracy’ (Tocqueville) where ordinary citizens learn the practices and values of being political.”

Diversity. According to Amy Gutmann, “Preserving a realm of local democratic control over schools…permits the content of education to vary, as it should, with local circumstances and local democratic preferences.” According to Justice Powell, with local control, “Each locality is free to tailor local programs to local needs.” In the 1976 presidential campaign, Ronald Reagan argued, “…The strength of our educational system has always been its diversity; a diversity achieved because people have controlled their schools and the schools’ educational

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201 Mill, Considerations on Representative Government, 413. Also see Pateman, Participation and Democratic Theory, 31; Daniels, ed. Town and County: Essays on the Structure of Local Government in the American Colonies.
202 Wolin, Politics and Vision, 603. Nevertheless, the opposite argument, that busing has educational benefits (and not just for the students), is also plausible. According to Franklin F. Banks, in a letter to the editor, “It has been a very rough ride, not all aspects of the plan have worked, and much work remains to be done. However, there have been some positive changes: Parental involvement, particularly among blacks and other minorities, has increased; educational options for all students have been expanded; more teachers and administrators have been sensitized to the educational needs of the urban poor (both black and white).” Franklin Banks, Boston Globe, November 7, 1979.
203 Gutmann, Democratic Education, 74.
content at the local level. Today the Federal government and the Federal courts seem determined
to standardize education….”205

Experimentation. Again, according to Justice Powell, “Pluralism also affords some opportunity
for experimentation, innovation, and a healthy competition for educational excellence. […] No
area of social concern stands to profit more from a multiplicity of viewpoints and from a
diversity of approaches than does public education.”206 In an address to the National Education
Association, two time Democratic candidate for president Adlai Stevenson maintained that a

principle underlying our national educational policy is that whatever control of public education is required should be exercised by local authorities. […] Local control keeps alive continuous debate and the freedom to experiment. It ensures a wholesome diversity in educational plans and practices. It helps keep public education from becoming an instrument of stifling conformity and uniformity. Not sentimental attachment to tradition, but hard-headed good sense demands that by keeping control of education in the local community we keep the spreading branches of an ever-enlarging democracy always close to its roots.207

Efficiency. The efficiency argument, closely related to the experimentation argument, is possibly
the only “new” argument in the localist repertoire to emerge in the twentieth century. Each of the
arguments above, participation, accountability, knowledge, education, diversity, and
experimentation, has appeared time and time again in the American political tradition. Indeed, as
I have shown in a previous chapter, the Anti-Federalists articulated versions of each of these
arguments during the ratification debates in the 1780s.

The efficiency argument has its origins in the so-called “Tiebout hypothesis,” first introduced in the 1950s. Charles Tiebout argued that municipalities would provide efficient bundles of services if they were granted control over local expenditures, and if potential residents could “vote with their feet” by choosing municipalities based on the bundle of services offered. Those who desired extensive services could simply choose a municipality that provided them, with the accompanying taxes. Those who preferred low taxes could choose a municipality offering fewer services.

The Tiebout hypothesis generates an argument for local control because the efficiency it claims depends on municipalities’ freedom to decide which services to offer, and how much to tax their residents. Furthermore, the freedom to experiment is thought to improve the quality of services offered to residents, as well as to encourage the most efficient use of tax dollars. For example, in the run-up to the 1976 Republican primary, Ronald Reagan’s nascent campaign referenced “the improved efficiency of local control” in order to defend $90 billion in proposed cuts to housing, education, and welfare.

The Moral Permissibility of the Ideology of Local Control

Building on the aforementioned distinction between pro tanto and prima facie values, the normative assessment of the ideology of local control can be decomposed into three questions. First, is local control actually valuable or beneficial, as the arguments in the previous section suggest? Second, if local control is actually valuable or beneficial, do its value/benefits have


moral weight? Third, if local control is valuable, and has moral weight, does it outweigh the moral (and educational) value of racial integration? I argue that each of these questions must be answered in the affirmative for use of the ideology of local control to be morally acceptable. To argue that local control is pro tanto morally valuable—in contrast—is to assume that it is always valuable (in the sense that its value remains on the books), and that its value always has moral weight. These assumptions cannot be sustained.

I begin by asking whether local control is actually valuable or beneficial. Consistent with the ideological nature of arguments for local control, evidence is rarely deployed. Nor is it clear that the seven arguments discussed above are susceptible to empirical scrutiny. Some versions of the participation argument, for example, appeal to the value of participation for its own sake. Other versions suggest that participation is valuable because greater parental and community involvement leads to better educational outcomes. These versions of the participation argument can be assessed empirically; the former cannot. In the context of education policy, it is usually the latter versions that are advanced in favor of local control. Nevertheless, the partisans of local control are perfectly willing to accept emanations from the former. Put differently, the two versions of the argument—empirical and constitutive/intrinsic—are separable analytically, but often go hand in hand in practice. And insofar as the supposed value of participation for its own sake—impervious to empirical confirmation—strengthens the political argument for local control, it has real world effects.

The most compelling version of the participation argument appeals to the positive educational effects of parental involvement in the schools.\footnote{The literature on “citizen participation in education” is massive. A 1974 selective annotated bibliography covers about 150 books and 250 periodical entries. See Don Davies, Citizen Participation in Education Annotated Bibliography (New Haven: Institution for Responsive Education, 1974).} Insofar as it is true that local
control of the schools encourages parental involvement, there are benefits beyond those expected from ordinary resource inputs, e.g. physical and human capital. As James Coleman has argued, parental involvement is a source of social capital.\textsuperscript{211} Social capital, unlike other forms of capital, often has positive externalities: a parent who helps in her child’s school benefits her own child as well as her child’s classmates. As summarized by Richard Kahlenberg, Coleman and his co-author, Thomas Hopper, “concluded that the approach of Catholic schools—the emphasis on high standards, better discipline, and greater parental involvement—better served the goal of raising the achievement of low-income children.”\textsuperscript{212} Crucially, however, the educational benefits of greater parental involvement—benefits from social capital—depend on mechanisms of social closure.\textsuperscript{213} I will return to the significance of social closure later in the chapter (p. 234).

Unfortunately, the argument for local control from greater parental involvement proves too little. All it shows is that children do better in school when they are exposed to greater parental involvement and community support. It does not show that social or community capital is equally or fairly distributed, or even adequately provisioned. Lora Cohen-Vogel, Ellen Goldring, and Claire Smrekar have explored this issue by assessing the school-community relationship in terms of a neighborhood’s assets and liabilities. Neighborhood assets include, for example, community centers and child-care programs; neighborhood liabilities include, for example, rates of teen pregnancy and domestic violence arrests. One of the authors’ many findings is that principals of schools in high liability neighborhood spend a great deal of time


\textsuperscript{213} “Norms arise as attempts to limit negative external effects or encourage positive ones. But, in many social structures where these conditions exist, norms do not come into existence. The reason is what can be described as lack of closure of the social structure.” Coleman, ”Social Capital,” S105.
fundraising to meet basic school needs. In contrast, principals in low liability neighborhoods raise funds with little effort, and use such funds “not for children’s basic care but for enrichment activities and capital projects.”\textsuperscript{214} The authors have also shown that “Racially isolated black and predominantly black schools are significantly more likely to be situated in high-risk neighborhoods with limited financial and human capital, few key institutional assets, and high liabilities in terms of crime.”\textsuperscript{215} This is just to say that the participatory argument for local control fails to show that local control is uniformly valuable or beneficial; it is valuable for some communities (middle-class), but less valuable for other communities (poor).

Similar to the participatory arguments, there are versions of the accountability argument that are empirically verifiable and well as versions that are not. The unverifiable versions are more commonly advanced. Most often, they assert the connection between local control and greater accountability as some sort of analytical truth. Because local school officials are “closer” than state officials and federal judges, it is argued, they are more accountable to their constituents. In a comparison between an elected school board and the federal courts, it is indeed plausible that the school board is more accountable because the local population elects members of the school board whereas the national executive appoints federal judges. But in a comparison between a local school board and, for example, an elected state school board, the electoral mechanism is held constant.\textsuperscript{216} In this case the local accountability mechanism is opaque. Perhaps it’s easier to monitor local officials than state officials because they are closer geographically. Local citizens can easily attend local school board meetings, but state board

meetings are much less accessible. Yet, even in this period (before the Internet), newspapers and television provided information about the activities of state officials to local citizens, and the telephone provides a means of communication for local citizens to voice concerns. Moreover, accountability is only more effective at the local level if citizens make an effort to hold their officials to account. Finally, not all school boards are elected. It’s hard to see how an unelected school board is any more accountable than a federal judge, especially if the federal judge is assigned to a court nearby—in the locality, for instance (in this case, geographical factors are held constant). What gets lost in this discussion is some consideration of why it’s valuable to have local school districts accountable to their constituents. This might be true in many cases, but surely local accountability was part of the problem in some southern school districts in the wake of Brown (e.g. Massive Resistance).217

The knowledge argument suggests that local control is valuable because local communities have epistemic advantages over more distant officials. Perhaps more detailed knowledge of the local community allows local actors to improve educational opportunities. However, it’s not clear why local control is necessary for the use of local knowledge. Presumably, local officials could be in dialogue with, for instance, federal judges. The best example of a failure of federal judges to take local conditions into account is Judge Garrity’s

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infamous pairing of Roxbury and South Boston High School. Roxbury High was heavily black whereas South Boston High was predominantly white, working class, and Irish. Resistance to busing in Boston might have been mitigated had Judge Garrity consulted members of these communities. Nevertheless, failures of this sort do not demonstrate the need for local autonomy. Instead, they simply suggest that federal judges should take advantage of local knowledge—perhaps utilizing formal consultation mechanisms.

The education argument for local control says that by participating in local affairs, citizens gain political knowledge. This seems especially plausible in school affairs. Parents with school age children have an extra incentive to become involved in local school politics. And knowledge gained by parents through participation then helps to improve educational outcomes for their own children and their children’s classmates. Unlike some of the other arguments discussed in this section, the educative benefits of local participation conceivably depend on local control. Parents may only benefit by participating in decision-making that matters. Without granting local school districts some autonomy, their functions will be administrative rather than political. Despite the plausibility of this line of argument, it’s not clear that everyone will obtain the benefits of local participation. Only those who actually participate in the first place will receive the educative benefits. And we know that the poor—precisely those who stand to benefit most—are least likely to participate in the first place.

The diversity argument says that local control allows school districts to adapt to the educational needs of local children. This of course sounds reasonable. But one might wonder why educating a child in one locality is significantly different from educating a child in another.

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218 Buell and Brisbin, School Desegregation and Defended Neighborhoods, 105-124.  
Perhaps certain areas of the country, e.g. the Southwest, face a language barrier. Of course, there will be significant variation of needs within each school district. Nevertheless, it is not clear why the range of needs would differ substantially from locality to locality, absent a history of injustice. After all, the French have been educating children tolerably well since Napoleon.\(^{220}\) Low-income children provide a special challenge for educators, and districts charged with educating a large population of low-income children require extra resources, but this kind of diversity is hardly an argument for local control. There is no reason that states, judges, and the federal government cannot take local needs into account.\(^{221}\)

The \textit{experimentation} argument tracks some of the same concerns as the \textit{diversity} argument. The suggestion here is that local school districts need autonomy in order to experiment with new programs.\(^{222}\) But the move from experimentation to local control goes too quickly. Gordon Clark has advanced a theory of local autonomy that distinguishes between \textit{initiative} and \textit{immunity}: the “former refers to the power of local governments to regulate and legislate in their own interests. The second principle refers to the immunity of local governments from the authority of higher tiers of the state.”\(^{223}\) Separating these two dimensions of autonomy yields four ideal types: (1) initiative and immunity, (2) initiative and no immunity, (3) no initiative and immunity, and (4) no initiative and no immunity.\(^{224}\) Proponents of local control

\(^{220}\) “Sometimes forgotten when all eyes turn toward the latest altercation in the schools of Ocean Hill-Brownsville is that its problem—while retaining some uniqueness—are now much the same as the problems of 30 other New York City communities of about a quarter-of-a-million people each.” Gene Maioff, “They Never Promised a Rose Garden,” \textit{New York Times}, August 15, 1971.

\(^{221}\) In fact, after denying an interdistrict remedy in \textit{Milliken v. Bradley} (1974), the same court ruled that the state of Michigan could be forced to pay some of the costs of compensatory programs in the Detroit schools. See \textit{Milliken v. Bradley} (\textit{Milliken II}).

\(^{222}\) Cf. the following remark from John Dewey: “It would be easier for the state than for a particular community to achieve a broad intellectual outlook, to free educational endeavor from the ruts and prejudices of local custom, to undertake well-planned experiments, and to secure a progressively developing educational tradition.” John Dewey, "State or City Control of Schools?,” \textit{New Republic}, March 20, 1915, 179.

\(^{223}\) Clark, "A Theory of Local Autonomy," 205.

\(^{224}\) Clark, "A Theory of Local Autonomy," 199.
appear to demand autonomy of the first type, when the *experimentation* argument requires only the second. Localities can be granted a wide range of discretion while remaining accountable to higher levels of government. This seems especially important when the higher tiers are charged with ensuring the equal protection of the laws.\(^{225}\)

Finally, the *efficiency* argument says that for local governments to be able to offer an optimal package of local services, they must be left free to decide which services to offer and what taxes to charge. Unfortunately, the efficiency argument depends on the truth of the assumption that residents “vote with their feet.” The efficiency of markets for goods depends on consumers’ purchasing decisions. However, it is not at all obvious that the decision to buy a Dodge Dart is the same as the decision to “purchase” the bundle of services offered by Beverly Hills. Residents of Compton might prefer the package of services provided by Beverly Hills, at the Beverly Hills tax rate, yet remain unable to purchase or rent property in Beverly Hills.\(^{226}\) Individuals cannot actually “vote with their feet” because residency is a precondition of purchasing the package. Furthermore, Christopher Berry has shown that the proliferation of “special purpose governments” in the United States is actually inefficient.\(^{227}\) Jurisdictional fragmentation as well as the presence of local activists results in the inefficient oversupply of local services. In short, although in theory local control is a requirement of the efficient supply of local services, the theory fails to correspond to reality. It is an especially troubling example of economics run amok.

\(^{225}\) Furthermore, if experimentation entails *incrementalism*, experimentation may act as a barrier to successful desegregation. See Hochschild, *The New American Dilemma*.


\(^{227}\) Berry, *Imperfect Union*. 

\(^{226}\)
To this point I have been assessing the extent to which local control actually produces the value or benefits its proponents claim on its behalf. In some cases, as the in *education* argument, local control really does generate value for the residents of the locality. In other cases, as in the participatory argument from parental involvement, local control produces value for some localities but not others. In still other cases, as in the *knowledge* argument, the value supposedly produced by local control can be had without local *control*. I should repeat that in the above I am referring to value in a non-moral sense: something might be good for a locality without having *moral* value.

I now turn to the question of whether the value produced by local control has *moral* weight. My underlying assumption is that the value produced by local control cannot have *moral* weight if it was produced and/or maintained by unjust practices. The thought is that the beneficiaries of local control cannot appeal to its (non-moral) value in moral argument if they have no just claim to its benefits. The argument to support the claim that the value produced by local control has no (or very little) moral weight is primarily historical.

Although a form of suburbanization began in the early nineteenth century, with the introduction of ferry service across the East River between Manhattan and Brooklyn Heights, the preconditions for the modern form of racially segregated suburbanization were laid in the Great Migration of African-Americans from the rural South to the urban North. Absent the presence of a significant number of blacks in urban areas, suburbanization might have occurred without a

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problematic racial pattern. The resultant racial segregation would have been impossible without a significant number of African-Americans residing in the urban North.

Prior to the Second World War, suburbanization was aided by the existence of cheap land on the urban fringes, as well as a lax attitude toward land speculation. Often developers of transportation systems, e.g. commuter railroads, purchased land in advance of settlement. This created an incentive for outward, rather than inward, development. Before the popularization of the automobile, suburbs were tightly clustered near stations along transportation routes.

Until at least 1865, American suburbs were considered slums. The affluent remained in the central city, whereas the poor occupied outlying areas. During this period, the dominant approaches to population growth taken by cities were annexation\textsuperscript{229} and consolidation. Cities simply absorbed neighboring communities. New York acquired Brooklyn, Queens, Staten Island, and the Bronx in 1898. In 1854, motivated by concerns with lawlessness outside the city limits, Philadelphia acquired so much land that the city contained “agricultural areas that remained working farmland for two generations.”\textsuperscript{230} Detroit “annexed almost constantly between 1880 and 1918, absorbing large portions of the townships of Greenfield, Springwells, Hamtramck, Gratiot, and Grosse Pointe, and of whole villages like Fairview, Delray, and Woodmere.”\textsuperscript{231}

This pattern began to change in the latter half of the nineteenth century, when the suburbs became respectable for the middle class. As Kenneth Jackson argues, new affluent residents of suburbs developed a suburban self-consciousness, with the accompanying desire for local

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\textsuperscript{230} Jackson, \textit{Crabgrass Frontier}, 146.
\textsuperscript{231} Jackson, \textit{Crabgrass Frontier}, 143.
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By the twentieth century, driven by opposition from middle-class and affluent suburbanites, annexation and consolidation became much less common. The most important institutional development in this period was a nationwide loosening of incorporation laws. Villages could now easily incorporate in order to fend off annexation from neighboring cities. Under pressure from suburban constituents, many states eliminated forcible annexation and instead required popular referenda. These developments account for the familiar pattern in many American urban centers: a central city surrounded by politically independent suburbs.

The account to this point only explains the formal jurisdictional patterns of American urban centers, especially in the Northeast. A different (but related) set of factors explains the differential racial composition of the suburbs and the cities. Federal housing policy was (arguably) the most consequential. After World War II, the Federal Housing Administration (FHA) and Veterans Administration (VA) significantly altered the housing market by offering federally funded mortgage insurance. Government backed loans carried a lower interest rate and a longer term of repayment. The FHA created a colored rating system with which to distribute mortgage insurance. New homes in neighborhoods expected to be racially homogenous received the highest rating. Older housing stock in mixed neighborhoods received the lowest rating.

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233 “Neither local officials or [sic] suburban newcomes really opted for annexation or consolidation. We continued to believe that the best American family was between four and six children, living in a suburban home. We continued to believe that the smallest government was the best. We preferred the grass roots rather than the city hall, and we continued to honor the ideology of the New England town even when it could not be applied.” Robert Wood, "Suburban Politics and Policies: Retrospect and Prospect," *Publius* 5, no. 1 (1975): 49.

234 I grew up in one of these independent suburbs: Fremont, California. Interestingly, Fremont is more of a suburb of a suburb. Initially, San Jose and Oakland were suburbs of San Francisco. Now they are cities in their own right, and Fremont is arguably a suburb of both.
(colored red). In essence, the federal government was subsidizing (middle-class and affluent) white flight.\textsuperscript{235}

Since, following the decline of annexation and consolidation, many suburbs were legally independent from their neighboring cities, they held the power to zone, to set minimum lot sizes, and to require homes to be built a certain distance from the street.\textsuperscript{236} They could also form their own independent school districts. Large lot sizes meant more expensive real estate. Setback requirements made building apartments difficult. Together these suburban powers served to exclude the poor (and black).\textsuperscript{237} Until 1948, U.S. courts enforced racially restrictive covenants, which were provisions in deeds preventing white families from selling their homes to black families. Finally, the popularization of the automobile and the federally funded highway system opened vast tracts of land to settlement. Many more people could now live in the suburbs and work in the cities.

Larger lot sizes and zoning powers also allowed suburban jurisdictions to attract wealthier residents. In the United States, a significant portion of the funding for public schools comes from local property taxes. Local tax revenue for schools is a function of the local tax rate and the value of assessed property in the jurisdiction. For the same total revenue, a jurisdiction with more valuable property can set a lower rate. Often, there is a statutory upper limit on the rate charged. Thus, the funds available to a school district are limited by the value of real

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\textsuperscript{235} According to Massey and Denton, “Through this discriminatory ratings system, HOLC [Home Owners’ Loan Corporation] mortgage funds were invariably channeled away from established black areas and were usually redirected away from neighborhoods that looked as though they might contain blacks in the future. But funds distributed through the HOLC program itself were modest, and the major role that the agency played lay in serving as a model for other credit institutions, both private and public.” \textit{American Apartheid}, 52.
\textsuperscript{236} Macedo, "Property Owning Plutocracy: Inequality and American Localism; Cohen, \textit{A Consumer's Republic}.
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property within its jurisdiction. Here, the suburbs’ authority to zone and to limit lot sizes doubles as the power to maintain a wealthy tax base. The same methods that serve to exclude low-income residents ensure ample funding for the children of affluent and middle-class residents. Moreover, when middle class residents of central cities pick up and move to the suburbs, urban school districts suffer from a diminished tax base. Again the same methods used to exclude the poor also limit the financial resources of schools charged with educating lower-income students in the city. As the urban tax base diminishes, tax rates must increase, and lower-income inner city residents end up paying (proportionately) more to educate their children than their wealthier suburban counterparts.238

A further complication is the way in which metropolitan fragmentation provides unjustified epistemic advantages to affluent and middle-class families. As Gregory Weiher has persuasively argued, “The system of political boundaries in a metropolitan area facilitates the process in which persons who are guided by certain preferences form expectations about those preferences being satisfied in one place or another. In sum, political boundaries provide the structure which is prerequisite to the generation of information that movers need, and they play a role in conveying that information to them.”239 The distinction between political and informal boundaries is critical. Informal boundaries provide limited information to potential settlers. This is because informal boundaries are subjective insofar as there is disagreement about where they lie and what they symbolize. Formal, political boundaries provide a clearer signal. Furthermore, once a jurisdictional population becomes distinctive on some dimension “population, culture, demography, and life style begin to interact with geography, the jurisdiction acquires an identity

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238 See, for example, Cohen, A Consumer’s Republic; Briffault, “The Role of Local Control in School Finance Reform; McDermott, Controlling Public Education: Localism Versus Equity; Briffault, "Our Localism: Part I—the Structure of Local Government Law; Briffault, "Our Localism: Part II—Localism and Legal Theory."

239 Weiher, The Fractured Metropolis, 41.
as a place, and the information that is structured and conveyed by political boundaries tends to perpetuate that identity.  

In concrete terms, political boundaries make the racial composition of a jurisdiction salient and therefore racially identifiable. Since most whites prefer to live in predominantly white neighborhoods, fragmentation provides a clear signal with which to satisfy their preferences. In practice, this means that once a municipality becomes identifiably black, whites tend to select other, identifiably white, cities and towns, usually in the suburbs. Moreover, because of differentiated preferences among whites as to the degree of racial integration that is tolerable, black entry or white exit can have a cascade effect rendering stably integrated neighborhoods improbable.

Residential segregation in the United States is therefore a product of suburbanization, racial preferences in housing, and racist government policies (redlining, restrictive covenants, etc.). The fact that racial preferences and racist government policies played a critical role in differentiating jurisdictions by race should raise a (moral) red flag. Nevertheless, the task at hand is a normative assessment of local control of education. What are the consequences of residential segregation for school segregation? In strictly numerical terms, the vast majority of school segregation is attributable to jurisdictional fragmentation. Racial disparities exist largely between school districts, not between schools within a school district.

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241 In a 1976 study, Reynolds Farley, Suzanne Bianchi, and Diane Colasanto found that only 76% of whites in Detroit would feel “very comfortable” or “somewhat comfortable” living in a neighborhood with one black family and thirteen white families. Only 44% would feel comfortable in a neighborhood with five black and nine white families. In a neighborhood with eight black families and six white families (rough parity) 48% would feel “very uncomfortable.” In contrast, 63% of black respondents’ most preferred neighborhood included seven white and seven black families. "Barriers to the Racial Integration of Neighborhoods: The Detroit Case," *Annals of the American Academy of Political and Social Science* 441(1979).
242 Farley et al., "Chocolate City, Vanilla Suburbs." Schelling, "Dynamic Models of Segregation."
Because race and class are so closely linked, racial disparities generate class disparities. Suburban white schools tend to serve middle-class students; urban black schools tend to serve poor students. One might think, absent a history of injustice, there would be no problem with class disparities between school districts if both middle-class and lower-class schools provide an equally good education. But they do not. For purely anecdotal evidence, one might visit a school in south Philadelphia.244

The overwhelming evidence is that educational opportunities are not evenly distributed. Schools in jurisdictions with a high proportion of (usually white) middle-class families are simply better than schools in jurisdictions with a high proportion of poor (usually black and Latino) families.245 Schools with a high proportion of middle-class students are better (in terms of achievement measures) because they have a high proportion of middle-class students. According to the famous Coleman Report, “it appears that a pupil’s achievement is strongly related to the educational backgrounds and aspirations of the other students in the school.”246 Middle-class students do better because they go to school with other middle-class children. As I mentioned earlier in my discussion of participatory arguments for local control, the presence of middle-class children (with their better educated parents) above a certain threshold constitutes a ‘public good.’

Unfortunately, the presence of middle-class students in a school is only a public good for a certain segment of the public, namely the other children at the school. Poor children who do not attend the same schools as middle-class children do not benefit from the positive externalities

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244 Actually, one can’t visit the Philadelphia school with which I am familiar. During the 2011-2012 school year, my wife worked at Walter G. Smith in the Point Breeze neighborhood. I spent a wonderful evening around Halloween face painting young (black) faces. Due to budget cuts in the Philadelphia school system, Smith is now closed.

245 There are, of course, exceptions.

246 Coleman et al., Equality of Educational Opportunity, 22.
produced by middle-class children and their parents. If one follows the causal chain ending in
class segregation in American schools, one finds that American schools are segregated by class
because they are segregated by race, they are segregated by race because American
neighborhoods are segregated by race, and American neighborhoods are segregated by race
because of the interaction between the history of suburbanization, morally dubious racial
preferences in housing, and morally questionable state policies.

Local control of education, insofar as it restricts the “public” exposed to positive
externalities from middle-class children and parents, is a form of social closure. Social closure
theory has been advanced as a general account of group domination and exploitation. According
to the theory, inequality between social groups is produced and maintained by practices of
exclusion. Social closure is “an ever-recurring process”\textsuperscript{247} by which groups with monopolistic
control over economic opportunities exclude non-members. A boundary between members and
non-members is required for successful closure. Although monopoly control over economic and
cultural opportunities is the end, exclusion is a necessary means.

It just so happens that under local control the boundary between members and
non-members is literally the boundary line between school districts. Families in white suburban
schools have a (near) monopoly on the educational opportunities attributable to so called “peer
effects.”\textsuperscript{248} Local control is the means of exclusion. And the ideology of local control is means
by which exclusion is legitimated. But this is, once again, to jump ahead.

\textsuperscript{247} Max Weber, Economy and Society: An Outline of Interpretive Sociology, ed. Guenther Roth and Claus
\textsuperscript{248} “For given educational resources provided to student A, if having student B as a classmate or
schoolmate affects the educational outcome of A, then we regard this as a peer effect.” Dennis Epple and Richard E.
Benhabib, Alberto Bisin, and Matthew O. Jackson (Amsterdam: Elsevier, 2011), 1B: 1054. Epple and Romano
conclude that “the body of evidence that has emerged leaves little doubt that peer effects operate both within and
outside the classroom” (p. 1157). Some empirical results are mixed. See, for example, Joshua D. Angrist and Kevin
Social closure’s mechanisms of exclusion often appeal to *categorical* differences between social groups. According to Weber, “Usually one group of competitors takes some externally identifiable characteristic of another group of (actual or potential) competitors—race, language, religion, local or social origin, descent, residence, etc.—as a pretext for attempting their exclusion.” That is, the task of exclusion is aided by readily perceptible differences between social groups. Categorical distinctions between insiders and outsiders make the boundary between advantaged insiders and disadvantaged outsiders both salient and effective.

One advantage of social closure theory, given my concern with ideology, is that it “provides a conceptual framework which recognizes exclusion for what it is, rather than camouflaging it with euphemisms.” In other words, social closure theory isolates the mechanism of domination—exclusion—while at the same time recognizing the work done by pretext, euphemism, and ideology.

Categorical (racial) differences between school districts add insult to injury. Literal boundary lines separate the included from the excluded. The fact that metropolitan jurisdictions are often racially identifiable just makes policing this (literal) boundary that much easier. Elijah Anderson has recently elucidated the distinction between “the white space” and “the black space.”

When present in the white space, blacks reflexively note the proportion of whites to blacks, or may look around for other blacks with whom to commune if not bond, and then may adjust their comfort level accordingly; when judging a setting as too white, they can feel uneasy and consider it to be informally “off limits.”

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For whites, however, the same settings are generally regarded as unremarkable, or as normal, taken-for-granted reflections of civil society.\textsuperscript{251}

Furthermore, boundaries between racially identifiable jurisdictions generate epistemic advantages for the already advantaged. The very processes that serve to exclude African-American children from high quality public schools help middle-class families find high quality public schools, and pay less for them. Worst of all, total exclusion isn’t strictly necessary for middle-class schools to retain the benefits of a middle-class student body. Research has suggested that middle-class children do just as well, and lower-class children do better, as long as the proportion of middle-class children stays above a certain threshold.\textsuperscript{252}

In essence, local control is a spatial form of opportunity hoarding. \textit{Conceptualizations of space} help the advantaged hoard opportunities, thereby reinforcing the categorical distinctions on which group inequality is based. According to Charles Tilly, opportunity hoarding has the following four features: (1) “A distinctive network,” (2) “Valuable resources that are renewable, subject to monopoly, supportive of network activities, and enhanced by the network’s modus operandi,” (3) “Sequestering of those resources by network members,” and (4) “Creation of beliefs and practices that sustain network control of the resources.”\textsuperscript{253} Local school districts form a distinctive network of teachers, parents, and students. Peer effects, parental involvement, and a wealthy tax base are renewable, subject to monopoly control (via jurisdictional boundaries), and certainly supportive of network activities, namely educating children. Those resources are

\textsuperscript{251} Elijah Anderson, “‘The White Space’,” \textit{Sociology of Race and Ethnicity} 1, no. 1 (2015): 10. The experience of navigating white spaces is depicted in ABC’s \textit{Blackish}.

\textsuperscript{252} “Researchers find that schools tend to establish cultures and that the successful schools are those in which a majority of the students are middle class. In terms of academic achievement, a number of researchers have put the dividing line at 50 percent black or low income.” Richard D. Kahlenberg, \textit{All Together Now: Creating Middle-Class Schools through Public School Choice} (Washington, D.C.: Brookings Institution Press, 2001), 39.

\textsuperscript{253} Tilly, \textit{Durable Inequality}, 155. Also see Anderson, \textit{The Imperative of Integration}, ch. 1.
sequestered via the practices of zoning, minimum lot sizes, etc. Finally, the ideology of local control is the set of beliefs and practices that sustain network control of resources.

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I now turn to the way in which the ideology of local control, over and above local control itself, is morally problematic. Use of the ideology of local control is morally problematic because it (a) legitimates opportunity hoarding and therefore perpetuates categorical inequality, and (b) portrays local control as pro tanto valuable when, in fact, it is valuable only in communities which have successfully hoarded opportunities in the past. Because the (non-moral) value of local control depends on unjust background conditions generated, in part, by local control, arguments that appeal to the value of local control in order to perpetuate exclusion are morally tainted. Put differently, the ideology of local control either (a) provides a facially non-exclusionary justification of boundaries, or (b) admits exclusion but justifies it on other grounds. The ideology of local control frames exclusion as a matter of geography rather than race. Moreover, the ideology of local control misleadingly reframes exclusion as a virtue or advantage worthy of respect.254

When Chief Justice Burger, in Milliken v. Bradley (1974), wrote that “Local control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well” he was reifying the status quo structure of urban school jurisdictions. In an earlier case, Keyes v. School District No. 1 (1973), the same court ruled that de jure segregation in one section of the Denver school district was presumptive evidence of de jure segregation in the district as a whole. The Court therefore denied that segregation in one part of the district could be walled off from segregation in the other parts.

254 On the impact of framing see, for example, Chong and Druckman, "Framing Public Opinion."
When it came to *Milliken*, however, the mere existence of legally separate school districts was used to block the only feasible strategy of desegregation in the Detroit schools. Chief Justice Burger did more than simply confirm the legal status of suburban school districts. He invoked the ideology of local control by advancing the (absurd) claim that local control is of “*overriding importance from an educational standpoint*.” What I hope to have shown in this section is that local control is not even always valuable from an educational standpoint, and it is certainly not of “overriding importance” from an educational or any other morally legitimate standpoint.

In a sense, the above argument is unsurprising because it was made from the very beginning. In his dissent in *Milliken*, Justice White referred to the “the talismanic invocation of the desirability of local control over education.” Justice Thurgood Marshall, given his role in the history of desegregation litigation, was fully justified in calling the decision a “solemn mockery” of *Brown*. Yet in the same breath, Justice White suggested that “Local autonomy…is, of course, an important interest.” Surely, given that equal protection hung in the balance, Justice White was on better footing when he claimed that “If restructuring is required to meet constitutional requirements, local authority may simply be redefined in terms of whatever configuration is adopted, with the parents of the children attending schools in the newly demarcated district or attendance zone continuing their participation in the policy management of the schools with which they are concerned most directly.”

In the argument of the third part of this chapter, I have attempted to cast doubt on the very idea that local control is valuable. In many cases its purported value rests on the weakest of

255 Emphasis added.
256 Milliken v. Bradley, (White J., dissenting) at 778.
258 Milliken v. Bradley, (White J., dissenting) at 778.
intuitions. In other cases, local control has genuine value only for those fortunate enough to capture its benefits. However, since the benefits of local control were, in many cases, unjustly obtained, they ought not count at all in political or moral decision-making. Finally, even if it could be shown that local control has genuine value, and that such value has moral weight, it is far from clear that the advantages gleaned from local control outweigh the requirements of racial equality enshrined in ordinary public morality and the U.S. Constitution.

**Conclusion**

The argument of this chapter has now returned to where it began. I conclude by suggesting that recent Supreme Court decisions have codified aversive racism as a legal principle. In *Crawford v. Board of Education of City of Los Angeles* (1982), the Court argued, “the purposes of [a proposition amending the California constitution to prohibit busing for desegregation]—chief among them the educational benefits of neighborhood schooling—are legitimate, nondiscriminatory objectives.” Furthermore, the Court “has held that even when a neutral law has a disproportionately adverse effect on a racial minority, the Fourteenth Amendment is violated only if a discriminatory purpose can be shown.” Neighborhood schooling is considered a legitimate state interest that can justify segregation absent a discriminatory purpose. In other words, the Court allows “an ostensibly non-racial factor,” i.e. neighborhood schooling, to block busing for desegregation, a requirement of justice and the Fourteenth Amendment.

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259 A caveat: my account of the moral value of local control is actually asymmetric. In cases in which African-American communities have, despite centuries of slavery and discrimination, developed vibrant communities with quality middle-class schools, I believe local control does have genuine value with moral weight. African-American communities with successful schools are probably justified in appealing to the ideology of local control.


261 *Freeman v. Pitts*, 501.
In effect, the Supreme Court accepts arguments for segregation from the doctrine of double effect. If a school district adopts a school assignment plan that contributes to racial segregation, it acceptable as long its purpose is to apply the “neighborhood school concept.” For according to Justice White, the Court has “never held that as a general proposition the foreseeability of segregative consequences makes out a prima facie case of purposeful racial discrimination and shifts the burden of producing evidence to the defendants if they are to escape judgment; and even more clearly there is no warrant in our cases for holding that such foreseeability routinely shifts the burden of persuasion to the defendants.”262 Thus, the victims of racial segregation must prove to the (now hostile) courts that defendant school districts had segregative intent in instituting a neighborhood school policy, despite the policy’s foreseeable “segregative consequences.” The arc of the moral universe does not bend in one direction or another: “Beware of those who speak of the spiral of history; they are preparing a boomerang. Keep a steel helmet handy.”263