ARTICLES

Localism and Segregation

David D. Troutt

Introduction

In the decade before and after the Supreme Court's decision in *Brown v. Board of Education*,[1] de jure segregation, the system of racially identified space, coalesced with formal land use planning to institutionalize de facto segregation in the city and suburbs of New Orleans, notwithstanding some of the most considerable early antisegregation forces in the nation's history. Although the actual geographic fault lines changed over time, the basic color scheme did not. Race-neutral land use regulation reproduced the patterns of racial inequality that slavery, Jim Crow, and segregation inscribed. To the present, whites in the New Orleans metropolitan area have enjoyed unrestricted access to and economic opportunities arising from appreciating markets of higher, less polluted lands. For poor blacks in public housing or increasingly concentrated low-ground, antimarket neighborhoods, life became routinely more isolated from the political mainstream, viable neighborhood institutions, economic opportunity, and stability. It also became significantly more dangerous.[2]

All of this became fatally apparent on August 29, 2005, when Katrina, a Category 3 hurricane, devastated the city and its compromised system of levees and canals, producing flooding that killed over 1,800 people, destroyed 200,000 homes, and inundated almost 80 percent of Orleans Parish.[3] Despite the wide swath of destruction and the inevitability that a great many moderate- and middle-income Orleanians would be affected, Hurricane Katrina's force fell disproportionately on the city's huge population of very poor people.[4] Their lack of resources, as well as their overwhelmingly dark skins, was on international display for several excruciating days of the aftermath as they waited in and outside the city's convention center and Superdome for rescue by the National Guard. In most cases, one single aspect

David D. Troutt is professor of law and the Justice John J. Francis Scholar at the Rutgers University Law School in Newark, New Jersey. *The following piece is primarily an excerpt of an article that will appear in a forthcoming issue of the* Buffalo Law Review. *We extend our sincere gratitude to the Editors of the* Buffalo Law Review *for allowing us to print this excerpt before the original article is published. Citations should be made to 55* Buff. L. Rev. *1109, 1141–71 (2008).*

of their vulnerability made them visible: they lacked access to a car. Beyond that, many lacked the capacity to stay in hotels or to travel by public transportation to friends or families elsewhere. In their race, class status, and addresses, they represented for a city and a nation the unimagined devastation to which people with limited social capital[5] are routinely vulnerable.

The relationship between race and poverty associated with the worst of Katrina's damage brought rare visibility to the country's social landscape. Eighty percent of the households living in flooded areas of the parish were black;[6] the average annual income of those households was $38,000, compared to $55,000 in nonflooded areas.[7] The rate of homeownership in the flooded areas was 53 percent (though some affected areas, such as the Lower Ninth Ward, had even higher rates), compared to 69 percent in nonflooded areas.[8] However, renters, whose losses and voices were hardly discussed in most public conversations about rebuilding or participation in planning, were more than 50 percent of the displaced.[9] The gaping proportion of renters is not merely a constant among persistently poor populations; they tend to have low rates of homeownership. It is also a reflection of the large numbers of public housing residents who were displaced by the storm, every one of whom was black.[10] Those projects, we have seen, were primarily located in "extreme poverty" neighborhoods (i.e., census tracts in which at least 40 percent of the households have below-poverty incomes). In 2000, New Orleans had forty-seven extreme poverty census tracts, and Hurricane Katrina inundated thirty-eight of them.[11]

These statistics depict structurally ingrained economic marginalization, which follows from the legal, historical, and economic antecedents described in the context of slavery, Reconstruction, Jim Crow, and legal segregation. However, the sedimentation of inequality could not have occurred without physical, racial, and economic distance as well as the legal support to sustain it. Localism, as I argue in this article, provided the jurisprudential edifice that succeeded formal segregation. Together with the ghettoizing array of discriminatory policies promulgated by the federal government, innumerable private actors, and transformations in the labor economy, the obvious problems presented by Hurricane Katrina—the problems of persistent, concentrated urban poverty—have grown much bigger than most cities can overcome on their own.[12] Katrina brings necessary attention to this succession from norms of white supremacy to race-neutral rules of local sovereignty because the ascension of localism coincided with a widely held belief in color-blind innocence, which threatens to blame the minority urban poor for the conditions in which they live.

Part I of this article describes the salient elements in the formation of localism as a set of distinct cultural ideas capable of legal identity during a period in which community desire for resegregation after *Brown* demanded it. Part II argues more specifically that several important, and generally race-neutral, opinions of the Burger Court in the 1970s provided the jurisprudential edifice for localism, securing it as the successor doctrine to legal segregation. Part III provides several arguments demonstrating why

localism as a doctrine of racial segregation has sustained appeal across the nation today. These include economic rationalism, decentralization, consumption, political fragmentation, and black middle-class antipathy for integration. Finally, in part IV, I argue that the resulting residential and political arrangements are contrary to broader middle-class interests, and I support instead arguments for greater regionalist, rather than localist, approaches.[13]

I. Resegregation and the Creation of Legal Localism

Why would the development of suburbia have to necessitate a destructive shift in the ability of cities like New Orleans to sustain middle-class norms and outcomes for so many of their residents? To be sure, the answer to this question spans several disciplines and social and economic phenomena. However, local government law has played a key structural role in fashioning a more durable system of racial and economic inequality than de jure racial discrimination could.

Beginning with the power to zone (and, in many regions of the country, to prevent annexation), local governments (creatures of state power) were given the autonomy necessary for an exclusive existence outside of the large cities from which most of their residents originally came. Emanating from race-neutral principles of rational planning and home rule, the network of rules governing the powers of suburban municipalities was developed and reinforced by the courts in ways that defined a lenient role for the state in interlocal conflicts and asserted state power over localities only occasionally and within narrow notions of shared regional responsibilities. The result is legal localism, the norm of local governmental rules today, which closely corresponds to the more general cultural idea of localism, i.e., a spectrum of impulses and attitudes about territorial control of community in the United States.

Much of this formation has been covered by other scholars. Some of it bears review here in the service of a different analytical emphasis: the connection to preserving racial segregation and perpetuating its corresponding economic advantages and disadvantages that fall mainly, but not exclusively, along racial lines. With respect to racial segregation and concentrated poverty, localism has been characterized in a facilitative, rather than a causal, light. It is time that localism, legal and cultural, be recognized as the primary agency behind resegregation, without which it would have been neither accommodated nor sustained.

Legal localism defines the relevant localities it governs in a subtle hierarchy, with suburbs first and cities—especially larger, urban centers—second.[14] This structural tilt represents two foundational aspects of suburban development. First, suburbs were made in opposition to certain aspects of city life as a refuge for the wealthy away from the indignities of the largely immigrant poor and the uncouth.[15] Suburbs were originally designed to sustain an exclusive quality of life. As they opened up after World War II, they were further designed to create an exclusive quality of

life for the emergent middle class. Second, they must be conservative legally and socially in order to preserve status quo stability against the invasion of destabilizing forces.[16] Suburban legal power is sometimes a tool but more often a shield used to defend against outsiders.[17] Local control must mean the power to exclude even more than the power to include; indeed, the attractiveness to employers and residents with high incomes and few public needs (i.e., its capacity to include) has always been premised on the success of a locality's efforts to exclude.[18]

II. The Burger Court and Localism's Jurisprudential Edifice

The character and function of localism took lasting shape under the sanction of courts precisely during the peak period of white flight from cities, the federal passage of civil rights laws aimed at frustrating formal segregation, and intense battles over school busing. Although most legal localism had been developed by state courts, several important Supreme Court decisions demonstrate the way local autonomy would be balanced against the equal protection arguments advanced by twentieth-century civil rights advocates and echoing nineteenth-century radical Creoles of color.

More importantly, the five cases discussed here—*Village of Belle Terre v. Boraas,*[19] *Warth v. Seldin,*[20] *Village of Arlington Heights v. Metropolitan Housing Development Corp.,*[21] *San Antonio Independent School District v. Rodriguez,*[22] and *Milliken v. Bradley*[23]—put the Court's imprimatur on the critical aspects of local autonomy.[24] Specifically, they solidified the power to exclude outsiders through zoning ordinances and other land use devices, even where such localized decisions clearly and negatively affected regional housing markets; affirmed the sanctity of jurisdictional borders within which local powers are exercised; and defended localities' presumptive power to retain local control not only of education but of school finances, even if doing so produced gross fiscal disparities among municipalities. Surprisingly, legal scholars have paid too little attention to the significance of these cases decided in the 1970s, a decade that saw not only the suburban resettlement of white middle-class urban dwellers but also the beginnings of significant economic decline in the nation's largest cities.[25] Without them, the twin pillars of local autonomy and land use and school finance would not have been secure in the jurisprudential edifice succeeding racial segregation.[26]

Village of Belle Terre v. Boraas

In *Belle Terre,* the Court resolved a dispute brought by college students in favor of the town and its right under the police power to zone areas exclusively for families of related persons. Race was not directly at issue in the case, but, had it been, the Court indicated the ordinance could not survive constitutional scrutiny.[27] Instead, the homeowner and renters believed the village's ordinance infringed on their constitutional rights to travel and privacy.[28]

In affirming the broad police powers of the suburban locality in the case, the Court referred to precedent from large cities.[29] However, in its

assumptions about the need for such expansive power and the ends to which it would likely be put, *Belle Terre* is clearly a suburban case. Despite the ostensibly locality-neutral language of Douglas's opinion, the City of New York (the closest large city to the Long Island suburb of Belle Terre) could not have exercised power in that way. Like most major cities, it was (and is) too large, too heterogeneous in people and types of neighborhoods; and it has too many kinds of already permissible uses and lifestyles to impose such restrictions.[30] Further, the Court's language locates the (idealized) environment the village was trying to maintain well outside the "city":

> The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds . . . .
> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman* v. *Parker, supra.* The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.[31]

By pitting the village's regulation against "urban problems," the Court situated the localist power to exclude certain types of residents within the suburbs. The decision, therefore, belongs among those that establish legal localism on behalf of suburbs in direct reference to the excluded uses and users common to larger cities. But a racial subtext is also clear. The power to exclude categories of users associated with urban problems unfortunately remains a code for black people to this day. It is an enormous power, made greater by its capacity to preclude strict scrutiny, and allows the proliferation of racial proxies under the guise of rational planning and community self-determination.[32]

Warth v. Seldin

In another zoning case, *Warth,* plaintiffs were fair housing advocates—individuals and organizations representing the affordable housing interests of Rochester, New York's low- and moderate-income tenants—challenging neighboring Penfield's zoning ordinance for excluding people from living in the town on the basis of class status.[33] Again, race was not directly in dispute. Plaintiffs' constitutional claims were dismissed by the district court and the Second Circuit on standing grounds, and the Supreme Court affirmed.

The result demonstrates a less obvious dimension of localism's conservative power. Not only were the claims based on economic discrimination rejected, but the dismissal on standing grounds worked the legal procedural equivalent of the zoning ordinance's purpose: it defined and excluded outsiders and denied any regional responsibility a suburb might have for its housing needs. Specifically, the Court found that nonresidents were entitled to no say in the regional effects, or negative externalities, associated with one town's efforts to bar the entry of others. Plaintiffs had argued, for instance, that Penfield's exclusions necessarily affected the distribution of affordable housing opportunities across the relevant metropolitan area, devaluing

the City of Rochester's housing market and burdening its tax base.[34] The majority found these arguments wholly speculative as to causation and, in sharply dismissive language, considered any economic impact on neighboring localities merely "incidental adverse effects" of the regulation.[35]

Village of Arlington Heights v. Metropolitan Housing Development Corp.

In contrast, *Arlington Heights* actually is a land use case in which race is directly an issue in dispute. There, a low-income housing development corporation was denied a variance that would have allowed it to build a complex of affordable apartments in a suburb outside of Chicago. Hearings were held in which opponents of the rezoning made mixed objections, some based on the "social issue," most based on an expected drop in property values.[36] The village rested its denial on grounds of zoning integrity, given the single-family character of the area and the expectations of resident homeowners.[37]

Plaintiffs sued under the then-existing discriminatory effects standard of the Fair Housing Act[38] but lost before the Court. Using the intent standard it had just announced in *Washington v. Davis,*[39] the Court acknowledged that minorities might be disproportionately affected by the lack of affordable housing in Arlington Heights, but the decision to deny the rezoning request was based on racially neutral land use principles.[40]

Arlington Heights I is important to localism in demonstrating (1) its interaction with contemporary race discrimination standards (specific intent) under equal protection analysis, and (2) the relative immunity enjoyed by land use decisions with segregative effects as long as a rational planning rationale is also apparent.[41] The decision was a test case for both sides of the suburban housing integration conflict. Plaintiffs discovered the tremendous difficulty in mounting a frontal assault on policies with clear racially (and economically) segregative effects. Defendant suburban municipalities learned how insulated their land use decision making could be from constitutional attack as long as a paradigm of categorical land uses (first articulated in *Village of Euclid v. Ambler Realty*)[42] was scrupulously followed.

Thus, these three land use cases provided a localist manual for excluding lower-income residents and black people generally. Joan Williams has argued that, as a jurisprudential matter, the Burger Court's political values followed a Jeffersonian model of local sovereignty and hostility toward cities that fit within the demographic conflicts of the era:

> By 1970, the intertwined issues of racial and economic discrimination had become closely linked with the fight between city and suburb. As cities became poorer and blacker, and suburbs became richer and whiter, housing and school discrimination issues took on a city/suburb dynamic in many metropolitan areas. The Court has used the principle of local autonomy to refuse relief for discrimination in housing or schools whenever such relief requires changes in a city's basic metropolitan structure. The Court's local sovereignty principle enabled it to eviscerate fourteenth amendment equal protection requirements in the large number of cases in which discrimination in housing or schools cannot be remedied without alteration of local boundaries or local duties.[43]

San Antonio Independent School District v. Rodriguez

Two school cases affirmed localism as the nearly exclusive locus of control over educating children within sacrosanct municipal boundaries. In *Rodriguez*, the Court confronted a direct federal equal protection challenge to the way the majority of states allowed local control of school funding. Plaintiffs were a class of Mexican American parents from tax-poor, urban school districts in Texas challenging the state's method of school finance on the ground that its reliance on locally collected property taxes beyond a baseline of uniform state funding worked substantial disparities between property-rich and property-poor districts.[44] The wide differences in per-pupil expenditures helped to support smaller class sizes, higher teacher pay, and more experienced teaching in the wealthier districts.[45]

The district court ruled in plaintiffs' favor, finding that education was a fundamental right under the Constitution, wealth was a suspect classification, and any governmental scheme that discriminated in public education on economic grounds was therefore subject to strict scrutiny.[46] The Court reversed on each ground, finding no fundamental right to education, denying that wealth was suspect, and upholding the importance of local autonomy over school finance on rational basis grounds. Mindful of the federalism concerns implicated in plaintiffs' challenge,[47] the majority characterized the trial evidence as involving murky issues of social and economic policy outside the Court's expertise and producing only an allowable (and expected) amount of fiscal inequality.[48]

Despite the necessary emphasis on state power relative to federally guaranteed rights, *Rodriguez* is squarely a localism decision in its substance and its narrative of local power. The majority dismissed the fiscal inequality between rich and poor districts as a hybrid or compromise between local fiscal control and irreproachable statewide minimum standards. Indeed, the disparities reflected differences in ingenuity and democratic priorities among localities, primarily matters of choice yielding competitive diversity. As Justice Powell stated,

> [L]ocal control means . . . 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 decision making process that determines how those local tax dollars will be spent. Each locality is free to tailor local programs to local needs.[49]

The argument fully ignored the relative incapacity of tax-poor districts to exercise such fiscal choices on behalf of their schoolchildren and the fact that, as Justice Marshall pointed out in a stinging seventy-five-page dissent, the inequality of fiscal resources resulted in denial of an equal opportunity to learn.[50] These concerns, according to the majority's narrative, were irrelevant to both local control and equal protection in the school finance context. The Court even foreshadowed the competition for "good ratables" that currently dictate so many local governmental decisions:

> Nor is local wealth a static quantity. Changes in the level of taxable wealth within any district may result from any number of events, some of which

> local residents can and do influence. For instance, commercial and industrial enterprises may be encouraged to locate within a district by various actions—public and private.[51]

If the blueprint for sprawl and fiscal zoning was not already known to suburban communities across the United States by then, it now bore the Supreme Court's seal.

Milliken v. Bradley

Finally, *Milliken* affirmed the primacy of local control over education policy in rejecting an interdistrict remedy for Detroit's clear record of racial segregation in its schools. Like *Warth, Milliken* is one of the few cases to directly comprehend the regional scope of institutional racism. The district court found that given residential patterns at the time, no intradistrict remedy could achieve desegregated schools within the city; and because any attempt would probably further identify particular schools (i.e., code them) as majority black, it would hasten more white flight to the suburban periphery.[52] As a practical matter, only a regional or metropolitan remedy would work.

The majority per Chief Justice Burger disagreed, concerned less about the probability that serious constitutional violations would go without a meaningful remedy than about the administrative uncertainty caused by crossing admittedly arbitrary boundaries.[53] Yet the narrative of *Milliken* is not as emphatic about local control as its legacy suggests.[54] Instead, it is more meaningful as a pronouncement about community and responsibility,[55] which resonates to this day. After all, Detroit was not always so black; its white population had been streaming out of the city for years up to and beyond 1970 when *Milliken* was first filed.[56] Local control of predominantly white school districts in the suburbs outside of Detroit defined and defended a sense of community for its residents. Many of them had fled Detroit and therefore rejected membership in that community. In doing so, those communities and their school districts could not be asked to assume any of the responsibility for the segregative policies leading up to that point in the Detroit schools nor for the effects of such demographic shifts.[57] What mattered from a somewhat formalist constitutional perspective was that those demographic shifts resulted in nearly all-white districts that did not and could not have engaged in segregation. An interdistrict remedy would force them to accept blame for Detroit's past practices, casting serious doubt on the sanctity of jurisdictional borders.[58] In this sense, the majority's arguments are familiar to many discussions of legal remedies for past racial discrimination: color blindness. The Court's willingness to use color blindness to trump even local control continues in its most recent school desegregation decisions.[59] Regionalism often risks provoking defensive reactions about blame for discriminatory conditions.

Impact of Cases

The doctrines of legal localism illustrated by the previous sample of cases were of critical utility in institutionalizing a variety of transitions oc-

curring around midcentury. On the one hand, the fatal contradictions of de jure segregation and the separate-but-equal doctrine had been exposed to the world after World War II and were jurisprudentially untenable. Here, *Brown* must be seen against the larger context of federal legislative changes; a burgeoning civil rights movement; and, for many whites, unwelcome cultural confrontations.[60] Cities embodied much of the impetus for flight. On the other hand, the suburbs and a strong economy were expanding along with the role of the federal government in providing the financial and infrastructural means to a middle-class ideal for returning veterans.

That the benefits of national policy would accrue on a racially discriminatory basis did not for residents of recipient communities pose a challenge to their validity. Instead, the changing landscape promoted a twentieth-century notion of rugged individualism and the welcome political moderation of color blindness.[61] Yet the powers of local autonomy that made suburbs safe havens from the city, the poor, and blacks were always characterized by defensiveness. They were, in many ways, untried powers, not on behalf of the very affluent, but for the middle-class, blue-collar ascendants to suburbia who were somewhat unaccustomed to wielding exclusionary controls.

By the 1970s, as we have seen, the controls were tested by myriad legal attacks. They held. From these decisions, a jurisprudential edifice was erected that would delineate insiders from outsiders, draw economic meaning from jurisdictional lines, empower suburbs against the cities from which they came, and limit suburbs' responsibilities even to their regional neighbors. For the first time, none of it was on the basis of race. Neutral rules then interacted with markets and quickly increased the value of exclusions. Suburbia's footing has not been questioned since.

Most importantly, the creation of legal localism effectuated a paradigmatic alteration of race relationships by substituting economic proxies for race, which could withstand constitutional challenge. Localism is, therefore, a postwar instrument of economic segregation, and economic segregation is nearly always a post–civil rights proxy for racial segregation. Today, the doctrines that give mechanical support to these proxies are settled law. Very little in more contemporary jurisprudence refutes these principles despite evidence that a great many communities that may have exercised local autonomy for the paramount purpose of maintaining segregation indeed, three decades later, succeeded.

The same appears to be true of attitudes. Expectations have settled. As the analysis in the next section shows, the conjoining of legal localism and localist attitudes regarding the economic right to exclude reflects the mindset of privatization. Like private clubs with unfettered rights to make their own rules and determine their own membership, the sovereignty of local governments to ignore nonresidents, at least where economic membership is concerned, goes mostly unquestioned.[62] Unfortunately, this idea of sovereignty, without more, facilitates continued segregation. Thus, having explored the creation of legal localism, the analysis turns next to localism as the successor instrument to the philosophy of segregation in its current residential forms.

III. Legal Localism as the Instrumental Successor to Segregation Today

It is important to acknowledge two corresponding trends since localism was institutionalized. First, segregation, by race and class, is arguably as pronounced today as it was when whites began fleeing post-*Brown* desegregation orders, though some areas have seen some decrease. For example, the New Orleans metropolitan area ranked as the fourteenth most segregated region in 2000, with a dissimilarity index of 69 (over 60 is considered high); that was the same rate as in 1990 and only three points below the index for the New Orleans metro area in 1980.[63] Relatedly, the isolation index for New Orleans metro-area blacks, which measures the extent to which blacks live in census tracts with only other blacks, ranks seventh highest in the nation and has gone roughly unchanged between 1980 and 2000 at about 70 percent.[64] In general, segregation remains highest where black populations are greatest,[65] among the larger central cities in the country,[66] which also means that the nation's black population is disproportionately concentrated in areas with high indexes of racial segregation and isolation.[67]

Second, the growth of suburban municipalities under localism is tangible evidence of an "American Dream" for what is now a majority of Americans deemed middle-class. The overall economic success of a municipal form based on increasingly valuable homeownership and environmental support for family stability cannot be taken lightly. Not all disdain for large city life, nor attraction to suburban living, reflects structural racism.[68] Interwoven markets responding to common consumer preferences produced a model of sustainable household wealth that is largely efficient, consistent with democratic beliefs, and economically durable.[69] Locally responsive land use regulation and education policies have tangible empowerment effects while also protecting residential communities from dangerous uses and adverse public health risks.[70] It is also a rational system, based largely on equality of opportunity rather than overt prejudice, which has produced substantial social and economic benefits for people of myriad racial and ethnic backgrounds.[71] That the legal edifice on which it stands, localism, and whose dynamics are complicit in the steady decline of most major American cities, systematically justified a constitutive economic segregation of the black poor has not damned it to its beneficiaries. It reflects us, consumes us, and, reflexively, we consume it in a self-sustaining cycle.

Nevertheless, these conclusions beg two normative questions: Why should specific commitments to segregation (as only one possible model of exclusion) continue to run so deep in legal localism? And why should a system capable of producing so many wealth-enhancing opportunities remain committed to reproducing the kind of staggering inequality witnessed in New Orleans? Several reasons reveal themselves: economic rationalism, decentralization, consumption, political fragmentation, and black middle-class preferences against racial integration.

Economic Rationalism

First, economic segregation appears rational under a system that discriminates on the objective basis of land use categories, wealth-maximizing considerations, and parental preferences about child welfare, rather than immutable characteristics like race. As the history of land use and occupancy within the city of New Orleans shows, racial segregation had always commodified land occupancy according to status categories, for instance, making poorly drained, hazardous areas less valuable to whites and home to blacks. Over time, geographic patterns developed there and in cities across the country where, with occasional exceptions for poorer white and middle-class black sectors, racially and economically disfavored areas became virtually synonymous. The template for a proxy was well established by the time whites left central cities (increasingly a racially identified space) for the suburbs, where the capital structure of development (i.e., the system of government-financed private mortgage lending, infrastructure development, highways, etc.) could ultimately reduce preferences into something as quantifiable and efficient as a test score: property values. By most measures, economic segregation is theoretically good for property values. Thus, patterns originating clearly along racial rules eventually developed into markets after those rules were rejected, a transition the Supreme Court (and many state courts) sanctioned under legal localism.

Today, this conclusion is intrinsic to an economic analysis of localism. For instance, in a recent book, William Fischel propounds a political thesis around the centrality of property values:

> The homevoter hypothesis holds that homeowners, who are the most numerous and politically influential group within most localities, are guided by their concern for the value of their home to make political decisions that are more efficient than those that would be made at a higher level of government. . . . [Homeowners] balance the benefits of local policies against the costs when the policies affect the value of their home.[72]

Furthermore, the history of sprawl teaches that when it comes to local policies, most middle-class homeowners (and their real estate brokers, lenders, and insurers) have traditionally devalued racial integration. And it may never be true that accepting low-income people into a community is "efficient" given the near unanimous association between them and declining property values, higher taxes for public services, crime, and underperforming schools. The point is that economic rationalism supplanted racism as a critical first step in sustaining segregation under law.

If spatial separations among people, however unequal, are rationally and legally justified, the resource imbalance created by those relationships will fulfill certain instrumental cultural prophecies. The first is that in the absence of overt racial discrimination in housing, education, and employment, something must be inherently wrong with the segregated poor. Their alarming statistical shortcomings in educational performance, incarceration rates, unemployment, out-of-wedlock births, welfare recipiency, etc.,

confirm their inadequacies. Conversely, in the absence of overt racism or privilege taking, something must be inherently right about the separated middle class.[73] Its prosperity became emblematic of unequaled American power in the world, especially after the Cold War ended.

This is, of course, a crude contemporary version of the binary capitulation described earlier as the first step toward New Orleans's Americanization. Yet it is a necessary sociological complement to the political and legal developments that created and sustained economic segregation as a fit successor to segregation. When the resource disparities on either side of the binary are compared, it is the basis for self-fulfilling prophecies about the dangerous nature of an undeserving black poor and the pluck and justifiable well-being of a largely white middle class.

Decentralization

A second reason for localism's succession is decentralization, another train that could not be stopped. As more localities developed further beyond urban boundary lines and, resisting annexation,[74] began consolidating their legally protected identities, decentralized government meant localist government. This political fragmentation is in part a measure of sprawl. Yet it also demonstrates the appeal of local autonomy to define who belongs and what goes inside one's borders.

With population declining in central cities, local governments proliferated.[75] David Rusk uses the example of the nation's original 168 metropolitan areas. In 1950, 60 percent of the residents of these areas were governed by just 193 city councils, commissions, and mayors or city managers. Forty years later, the proportion shifted dramatically: 70 percent of the metro-area residents were under the governance of 9,600 suburban municipalities, towns, villages, townships, and counties.[76] No doubt some of this sprawl represents people moving from one suburb to another, usually from older to newer, in a mobility pattern of leapfrogging that has long characterized patterns of suburbanization.[77] Indeed, that pattern illustrates an emerging truth about suburbs: they are far from monolithic or equal. Increasingly, the inner-ring or older suburbs, like Jefferson Parish adjacent to Orleans Parish, have been penetrated by blacks and other residents of color. Many of these suburban cities are in economic decline and have become disfavored by many middle-class homeowners. When those who can move to newer localities do so, racial segregation tends to increase. In this manner, decentralization both reflects and facilitates segregation by encouraging flight.[78]

Consumption

This leads to a third reason for localism's succession: consumption. The emphasis on property values showed the extent to which housing choices are commodified. Decentralization revealed the popular proliferation of those choices in further patterns of segregation. Consumption embodies the idea that the package of a locality's goods and services (e.g., the

quality of its schools, the value of its homes, the amount of its taxes, the appeal of its amenities) has become the primary means by which middle-class people choose where to live. Like Tiebout's consumer-voter,[79] they shop. Stark racial animus may not play a conscious role in their thinking, although there is strong evidence that it still may.[80] Instead, the objective economic categories contained within land use schemes and reflected in real estate marketing subsume segregation. Segregation is simply one of the characteristics of housing commodities in middle-class housing markets. Concealed as an aspect of the market, it becomes the norm and often goes unchallenged.[81] As modes of consumption increasingly condition participation in society, segregation risks becoming, like square footage, an unremarkable aspect of residential value—or worse, it is presumed.

Political Fragmentation

A fourth reason for localism's succession is the role of politics in promoting racial and economic distance (fragmentation) among communities of voters whose interests might otherwise be shared. Decentralization creates a political framework for parochialism. Political interests are easily narrowed.[82] From an interlocal perspective, the demands of localism require that municipalities act defensively against incursions as well as against each other. Interlocal cooperation is often difficult under this arrangement unless dividing lines are clear. Economic segregation, especially as a proxy for race, is just such a line. Thus, Republicans successfully exploited class and race antagonisms following the legislative achievements of the civil rights movement and pitted the political interests of working-class and lower middle-class whites against poor black recipients of welfare.[83] Affirmative action has also served as such a bright-line political wedge issue, encompassing racial and economic fears among white voters. In any event, decentralized governance may preclude opportunities for local coalition building among groups that are routinely separated from each other and are accustomed to viewing their interests as at odds. According to Cashin's analysis, these are the isolation effects of a segregated political culture fueled by localism, which breeds its own cohesive strength.[84]

Black Middle-Class Antipathy

The analysis so far has implicitly assumed the opposition of white middle-class suburbanites, the primary consumers of segregation, to living in racially integrated communities. However, the degree of resegregation today would almost certainly require the cooperation of middle-class black people, at least as far as suburban racial integration is concerned. In conventional analyses, we assume the interplay of two factors in residential segregation, zoning exclusions and lack of economic means among blacks. But zoning is not always a factor in racial segregation (especially in many southern areas where urban planning regulations are less entrenched). Eco-

nomic disparities are not uniformly overwhelming impediments to black middle-class home seekers. Something else is happening.

The unscientific answer lies in some form of pervasive discomfort, if not hostility, among many black middle-class people regarding integration. That is, without the same formal barriers to black middle-class mobility as in decades past, black preferences against integrating predominantly white areas may be cooperating forces. Indeed, the New Orleans scenario suggests that a great many middle-class blacks have been unwilling to sacrifice, exactly *what* is not clear, for racial integration.[85]

IV. What Is Lost: Resistance Against Middle-Class Interests

As the durable successor to segregation, localism has produced unprecedented wealth and community stability for millions of affluent and middle-income American households. Yet the racial proxy on which it stands, economic segregation, necessarily produces stunning inequalities. Persistent ghetto poverty among blacks concentrated in resource-abandoned hulks of once-great cities has preconditioned incalculable social instability and diminished economic opportunities for generations of households. In the disastrous aftermath of Hurricane Katrina, New Orleans's historical march toward this feature of Americanization proved fatal, ruinous, and shameful. The tragedy of New Orleans demonstrates the urgent need for equitable reform of legal localism on behalf of the persistently poor and the cities in which they struggle. Localism's exclusions have obvious spillover effects, but none greater than the costs to cities and their residents.

However, even those costs do not remain entirely within the city and among its residents, particularly when federal assistance to states for programs like affordable housing development, health care, and income assistance decrease and state taxpayers must make up the difference. A growing body of research is showing that the costs of localism, especially on the middle class, are even more direct than that. Specifically, the land grab of suburban sprawl represents a costly waste of natural resources and environmental damage.[86] Cross-border effects may represent a combination of neighbor-to-neighbor externalities or the aggregation of localist policies pursued by municipalities engaged in necessary competition.[87] The leapfrogging of consumer investment into "favored quarters"[88] leaves behind more and more moderate- and middle-income suburban dwellers with increased taxes for fewer services.[89] In many metropolitan areas around the country, cities as well as older suburbs represent the have-nots of state finance, which subsidize the lower taxes and infrastructural improvements of the haves. As Myron Orfield explains

> [a]n area with high social needs and low resources is generally not a nice place to live, with poor services and high taxes. Conversely, an area with high resources and low social needs *is* a nice place to live, with good services and low taxes. This process of polarization fuels itself as high-income individuals with broad residential choices and businesses seek out pleas-

> ant places, good services, and low taxes and avoid unpleasant places, poor services and high taxes. As the favored quarter captures more and more high-income residents, its base increases, taxes go down, and/or services improve. It becomes an even more attractive area. But as individuals and businesses leave areas with high social need and high taxes, the base shrinks and tax rates go up. The incentive to get out grows.[90]

Perhaps the greatest detriment of all is economic: metropolitan areas that continue to embrace localism at the expense of shared regional responsibilities tend to be less competitive in attracting economic development, keeping businesses and jobs, and maintaining a deep and talented labor pool.[91]

At a certain point, of course, constant flight and leapfrogging may reflect market preferences, but this feature of localism, and the legal and political deference to it, permits self-interested, irrational, and inefficient preferences to flourish at the expense of regions, cities, and impoverished minority communities within them.[92]

Meanwhile, we increasingly live our lives in nonlocal terms because most of what we do by necessity crosses jurisdictional lines. We often work in different towns or cities than we live, shop in regional malls and store locations, eat and attend cultural events throughout the metropolitan area, and seek friendships and recreation across the region. That is, as a nation we now tend to sleep locally but live and work regionally. The anomaly is that the myriad regional relationships that make up our actual lives are governed by a contradicting web of local jurisdictional powers.[93] Our tools of democratic decision making, like our laws, take little account of regional realities.

The foregoing suggests that some form of regional governance may be closer to what we want than localism. In theory, regional governance of planning issues critical to the maintenance of middle-class concerns should not be politically hard to sell. Pervasive frustration with the daily effects of sprawl link with traditional middle-class voter concerns about the environment, traffic, and preservation of natural resources.[94] As a result, urban growth boundaries should be more prevalent than they are.[95] Where issues clearly transcend local control and create waste, solutions are expensive and require the fair allocation of tax burdens. Hence, tax base sharing should be more prevalent than it is.[96] Notwithstanding the incomplete state of the evidence, arguments in favor of some form of regional governance appear to support the best interests of a middle-class public.

Of course, if this were true, we would have much more of it. Instead, we have in places like New Orleans and other major U.S. cities an often inefficient, selectively democratic, inequality-producing legal norm of localism. Briffault argues that a major reason localism remains entrenched in places where it is counterproductive is the political power and discretion it provides local elites.

> [T]he resistance to regionalism in the political process is largely a matter of the self-interest of those who benefit from the status quo, such as local elected officials, land developers, corporations that are the subjects of interlocal bid-

> ding, and the businesses and residents located in the high-tax base localities of the metropolitan area.[97]

This is undoubtedly true of many older cities (including New Orleans), but the criticism, I argue, illustrates a problem with even the best legal commentary on localism: it fails to emphasize sufficiently legal localism's succession as the instrument of postwar de facto segregation. The demographic and economic events before, during, and after Hurricane Katrina in the New Orleans metro region help reveal localism's irrational side. The resistance to regionalism inherently reflects structural racism and antiurbanism. However, this resistance now occurs at a time when such a political commitment militates against the economic interests of many of its proponents. The principal remedy is regional governance. The version I espouse can be called *equitable regionalism,* with emphasis on local comprehensive planning with the force of law as a necessary precondition.

Conclusion

The preceding analysis of how the doctrine of legal segregation was replaced by the race-neutral principles of legal localism demonstrates how the racial and economic fault lines in New Orleans were inscribed many years before Hurricane Katrina revealed them to such devastating effect. However, the analysis further shows that New Orleans is hardly exceptional in its segregated residential organization and that localism now threatens the interests of a great many residents across the United States. This is, therefore, an analysis that ultimately argues for more intensive experimentation with regional governance, especially of those equity issues such as affordable housing and tax revenue sharing that have provoked the most interlocal competition and the most destructive disparities among municipalities.

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1. 347 U.S. 483 (1954).

2. One Hurricane Katrina case study examines how "environmental racism-classism" and residential segregation

> produce a greater disaster risk for poor, black Americans. . . . Disasters offer a unique realm of analysis for environmental racism-classism because . . . [they] enable analysis of how individuals are housed in areas with a pre-existing risk. Race is found to be a strong predictor of flood damage, while class is found to be unrelated. . . . These results, if accurate, undermine the notion of a race-class nexus for production of harms.

Brian L. Levy, Bayou Blues: The Social Structure of a Disaster: A Case Study of Hurricane Katrina (May 2007) (unpublished undergraduate paper, Roosevelt Institution, University at Georgia), *available at* www.uga.edu/juro/2006/levy.pdf.

3. *New Orleans After the Storm: Lessons from the Past, a Plan for the Future,* Brookings Inst., Oct. 2005, at 13 [hereinafter *After the Storm*].

4. *Id*. at 17.

5. By "limited social capital," I refer to the condition of being undereducated, physically and socially separated from valuable land and from vital economic

and information relationships, lacking the leverage of political organization, poor, connected to the state mostly through compelled relationships with public institutions, and often at chronic risk of poor health. "'[S]ocial capital' refers to features of social organization, such as networks, norms, and trust, that facilitate coordination and cooperation for mutual benefit. Social capital enhances the benefits of investment in physical and human capital." Robert Putnam, *The Prosperous Community: Social Capital and Public Life,* Am. Prospect, 13, 35 (1993); *see also* Leonardo Vazquez, *A Plan for Democratic and Equitable Planning in New Orleans,* Planetizen, Nov. 7, 2005, www.planetizen.com/node/17769.

> Social capital is the network of ties that people have with one another. It is what makes it possible for people to work together to achieve social change. The social capital effort would focus on neighborhood quality of life. As residents engage in planning for their own neighborhoods, they will be better prepared to think about the future growth of their city. Also, by phasing in growth, the city can better provide services to residents and businesses. This will help attract more people to the city.

Vazquez, *supra.*

6. *After the Storm, supra* note 3, at 15–17.
7. *Id*.
8. *Id*.
9. *See id*. at 16; Shaila Dewan, *Road to New Life After Katrina Is Closed to Many,* N.Y. Times, July 12, 2007, at A1.
10. Brookings Inst., Metro. Policy Program, *Key Indicators of Entrenched Poverty, in* Brookings Metropolitan Policy Program (2005) (using U.S. Census Bureau and U.S. Department of Housing and Urban Development data), *available at* www.brookings.edu/metro/20050920_povertynumbers.pdf.
11. *After the Storm, supra* note 3, at 6.
12. Though it is a discussion worthy of a companion article, there is a great deal more that the city and parish of New Orleans could do on behalf of its poorest citizens, and it should. Beyond the many social capital and in-place community-building strategies that have shown promise in other places, this analysis argues that a more equitable use of regional planning tools is a condition of sustained social and economic development outcomes. However, as I argue in part IV, a precondition of effective equitable regionalism is public participation in comprehensive planning among city residents.
13. For a fuller discussion of how these arguments promote regionalist perspectives, see my version of "equitable regionalism" in David D. Troutt, *Katrina's Window: Localism, Resegregation and Equitable Regionalism,* 55 Buff. L. Rev. (forthcoming 2008).
14. *See* Richard Briffault, *Our Localism: Part II—Localism and Legal Theory,* 90 Colum. L. Rev. 346, 373–74 (1990); Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law,* 1986 Wis. L. Rev. 83, 119, n.190 (1986) ("Note that the Supreme Court, like Jefferson himself, has not used the Jeffersonian rhetoric of local control to argue for local control of cities.").
15. *See* Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States 150–51 (1985).
16. Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law,* 90 Colum. L. Rev. 1, 70–71 (1990).
17. *See, e.g.,* Briffault, *supra* note 14, at 355 ("The core of local legal autonomy is defensive and preservative.").

18. *See* Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism,* 88 Geo. L.J. 1985, 1993 (2000).

19. 416 U.S. 1 (1974).

20. 422 U.S. 490 (1975).

21. 429 U.S. 252 (1977).

22. 411 U.S. 1 (1973).

23. 418 U.S. 717 (1974).

24. Arbitrarily limiting consideration to the 1970s, there were others from the Burger Court. *See* City of Eastlake v. Forest City Enters., Inc., 426 U.S. 668 (1976); Rizzo v. Goode, 423 U.S. 362 (1976); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973). *But see* Moore v. City of E. Cleveland, 431 U.S. 494 (1977); Hills v.Gautreaux, 425 U.S. 284 (1976).

25. *But see* Joan C. Williams, *The Constitutional Vulnerability of Local Government: The Politics of City Status in American Law,* 1986 Wis. L. Rev. 83 (1986). Williams looked at many of the same Burger Court cases analyzed here and found a strong Jeffersonian notion underlying the decisions' sometimes contradictory support for local sovereignty, especially in upholding exclusionary zoning and local control over schools. *See id*. at 111–13.

26. This analysis differs from an earlier one in which I explore the specific reproduction of middle-class ideals in Court opinions of that era. *See generally* David Dante Troutt, *Ghettoes Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development,* 35 Harv. C.R.-C.L. L. Rev. 427 (2000). The analyses are complementary because both go to the formation of an armored suburbia and the Court's methods of sanction. However, the analysis here demonstrates how these opinions form a bulwark of legal localism, which could supplant formal segregation.

27.

> If the ordinance segregated one area only for one race, it would immediately be suspect under the reasoning of *Buchanan* v. *Warley,* 245 U.S. 60, where the Court invalidated a city ordinance barring a black from acquiring real property in a white residential area by reason of an 1866 Act of Congress, 14 Stat. 27, now 42 U.S.C. § 1982, and an 1870 Act, § 17, 16 Stat. 144, now 42 U.S.C. § 1981, both enforcing the Fourteenth Amendment. 245 U.S., at 78–82.

416 U.S. 1, 6 (1974) (citation omitted). The issue had begun to receive some attention from legal commentators, too. *See* Lawrence Gene Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent,* 21 Stan. L. Rev. 767 (1969); Note, *Exclusionary Zoning and Equal Protection,* 84 Harv. L. Rev. 1645 (1971); Note, *The Responsibility of Local Zoning Authorities to Nonresident Indigents,* 23 Stan. L. Rev. 774 (1971).

28. *Belle Terre,* 416 U.S. at 7.

29. *See, e.g.,* Berman v. Parker, 348 U.S. 26 (1954) (an urban slum removal case from Washington, D.C.). The *Belle Terre* Court quoted *Berman* as follows:

> The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

Belle Terre, 416 U.S. at 33 (citation omitted).

30. Briffault points out that timing also prevents cities from engaging in such regulation in that their spatial and demographic diversity developed well before the rise of localist legal principles in defining a municipality's police powers. Zoning protects parochial interests against future incursions. Briffault, s*upra* note 14, at 373–74.

31. *Belle Terre,* 416 U.S. at 9.

32. Justice Douglas's rather famous quote could be modified with the benefit of hindsight to read "a sanctuary for [white] people." *Id*. at 9. Interestingly, this outcome was explicitly rejected by the Court's greatest champion of civil rights, Justice Thurgood Marshall, and utterly ignored by Justice Brennan, both of whom dissented in *Belle Terre.*

> This is not a case where the Court is being asked to nullify a township's sincere efforts to maintain its residential character by preventing the operation of rooming houses, fraternity houses, or other commercial or high-density residental uses. Unquestionably, a town is free to restrict such uses. Moreover, as a general proposition, I see no constitutional infirmity in a town's limiting the density of use in residential areas by zoning regulations which do not discriminate on the basis of constitutionally suspect criteria.

Belle Terre, 416 U.S. at 17 (Marshall, J., dissenting).

33. The ordinance maintained 98 percent of the town for single-family detached residences only. Warth v. Seldin, 422 U.S. 490, 490, 495 (1975).

34. *See id*. at 493, 496.

35. *Id*. at 509. Quoting precedent, the majority began by saying,

> "Of course, pleadings must be something more than an ingenious academic exercise in the conceivable." We think the complaint of the taxpayer-petitioners is little more than such an exercise. Apart from the conjectural nature of the asserted injury, the line of causation between Penfield's actions and such injury is not apparent from the complaint. Whatever may occur in Penfield, the injury complained of—increases in taxation—results only from decisions made by the appropriate Rochester authorities, who are not parties to this case.

Id. (citation omitted). *But see, e.g.,* NAACP v. City of Kyle, No. A-05-CA-979, 2006 WL 1751767, at *1, 5 (W.D. Tex. June 16, 2006) (The NAACP, the Home Builders Association of Greater Austin, Inc. (HBA), and the National Association of Home Builders, Inc. (NAHB) brought a claim after the City of Kyle adopted changes to its zoning ordinances. Plaintiffs argued that the changes, which required a minimum garage size, an increase in the minimum home size, and an increase in the minimum lot size, would cause the average price of a single-family residence to increase by about $38,000. This increase would thus have a disparate impact on African Americans and Hispanics and would "have a segregative effect on the community." The Court held that the disparate impact on minority communities was a viable injury. The Court also held that such injury could be traced to the zoning ordinances because, generally, "more stringent zoning and subdivision ordinances . . . cause[ ] the price of entry level homes to increase and that . . . price increase has . . . a disproportionate negative effect on the ability of minorities to purchase starter homes in the City's jurisdiction.")

36. *See* Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 257 (1977).

37. *See id*. at 258.

38. Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq. (2003).
39. 426 U.S. 229 (1976).
40. 429 U.S. at 270–71.
41. It must be noted that plaintiffs fared better when their Fair Housing Act claims were fully adjudicated on remand and the Seventh Circuit affirmed disparate impact analysis applicable to Title VIII. *See* Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights (*Arlington Heights* II), 558 F.2d 1283 (7th Cir. 1977), *cert. denied,* 434 U.S. 1025 (1978).
42. 272 U.S. 365 (1926). For instance, Euclid's language with respect to the "parasitic" effect of apartment houses resonates today.

> With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities—until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances.

Id. at 394–95.
43. Williams, *supra* note 25, at 118 (footnotes omitted); *see also* Briffault, *supra* note 16, at 30–31, 37–38.
44. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 4–6 (1973).
45. *See id*. at 14 n.35.
46. *See id*. at 17–18.
47. *See id*. at 44. "[I]t would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State." *Id*.
48. *See id*. at 50–51.
49. *Id*. at 49–50.
50. *See id*. at 84 (Marshall, J., dissenting). The Court, he argued, ignored its own education precedent when, in the desegregation context, it had ruled that unequal resources for black law students amounted to a denial of equal protection notwithstanding a baseline of law school curricula. *See id*. (citing Sweatt v. Painter, 339 U.S. 629, 633–34 (1950)). Justice Marshall's voluminous dissent suggests disagreement among the Justices so bitter as to imply genuine animus as to the meaning of the case. For example, Marshall asserts that the majority violated basic rules of appellate procedure by allowing the appellants for the first time at oral argument before the Court to argue against facts that had gone

unchallenged at trial. *See id*. at 95 n.56. Further, he argued that the majority's indifference to fiscal disparities was blind to the lineup of wealthy school districts which filed amicus curiae briefs on behalf of Texas. *See id*. at 85, n.42.

51. *Id*. at 54.

52. Milliken v. Bradley, 418 U.S. 717, 738–39 (1974). Specifically, the trial judge wrote that "while [they] would provide a racial mix more in keeping with the Black-White proportions of the student population [they] would accentuate the racial identifiability of the [Detroit] district as a Black school system and would not accomplish desegregation." *Id*.

53. *See id*. at 741–42.

54. The oft-quoted language is the following: "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." *Id*.

55. Indeed, the decision supported others denying affordable housing for nonresidents. For example, that question arose in an equal protection challenge where a developer and an association of Mexican American organizations sought declaratory relief on the issue of whether they could build public housing despite Los Altos Hills, California's minimum-one-acre-lot-size zoning ordinance. Ybarra v. Town of Los Altos Hills, 503 F.2d 250 (1974). The Ninth Circuit ruled against strict scrutiny and found the cited reason for the ordinance, i.e., maintenance of the community's rural character, to be rational. Interestingly, the court also narrowly construed plaintiffs' state law claim. Under § 65302 of the California Government Code, a town must "make adequate provision for the housing needs of all economic segments of the community." However, the court read the law to apply only to current residents; the town of Los Altos Hills at the time had no poor residents.

56. *See generally* Thomas J. Sugrue, The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit 209–29 (Princeton Univ. Press 1996). Detroit, like New Orleans, has a history as one of the most segregated cities in the United States. *See id*. app. A, at 273.

57. Joan Williams makes a related point about community in the context of Burger Court land use decisions such as *Belle Terre:*

> The Court's use of Jeffersonian rhetoric serves to blur the underlying issue of how to define the "community" entitled to self-determination. Of the myriad possible "communities" available—from the neighborhood to the nation—the Court chose to focus its solicitude upon predominantly white, relatively affluent suburbs that were opposing the introduction of low- and moderate-income housing or other "undesirable" uses.

Williams, *supra* note 25, at 112.

58. The use of economic proxies for racial struggles is relevant in another important respect here: it obscured the extent to which affluent whites benefited from localist rules far more than middle- and lower middle-class whites. The latter could be vociferous antibusing segregationists in part because they were the whites whose lives were altered by desegregation orders. However, in Charlotte, North Carolina, where "busing equalization" took hold across the metropolitan area, a coalition of whites and blacks worked successfully to spread the effects of school desegregation across classes. According to Matthew Lassiter, "The Charlotte case reveals that the long-term viability of urban school

systems undergoing court-ordered desegregation depended upon spatial and socioeconomic remedies that encompassed the entire metropolitan region and pursued racial stability through policies sensitive to the demands of class fairness." Matthew Lassiter, *Socioeconomic Integration in the Suburbs, in* The New Suburban History 140 (Kevin Kruse & Thomas Sugrue eds., 2006).

59. *See* Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, No. 05–908, slip op. at 1–2, 11–17 (June 28, 2007). In *Parents Involved,* the Court struck down two voluntary school assignment plans in Seattle, Washington, and Jefferson County, Kentucky, on the grounds that their binary classification schemes sought racial balance in violation of the Equal Protection Clause and the nonracial desegregation dictates of the *Brown* case. Although the school districts' explicit use of race in making assignment decisions compelled heightened scrutiny, the plurality gave little deference suggested by earlier cases to the educational policy decisions made by elected local school officials acting on behalf of the affected local communities.

60. This was especially true for southern whites. *See* Jason Sokol, There Goes My Everything: White Southerners in the Age of Civil Rights, 1945–1975, at 6–8 (Knopf 2006).

61. Matthew Lassiter describes these sentiments within the terms Richard M. Nixon used to great effect with voters he called the "silent majority":

> The ascendance of color-blind ideology in the metropolitan South, as in the rest of the nation, depended upon the establishment of structural mechanisms of exclusion that did not require individual racism by suburban beneficiaries in order to sustain white class privilege and maintain barriers of disadvantage facing urban minority communities.

Mathew D. Lassiter, The Silent Majority: Suburban Politics in the Sunbelt South 4 (2006).

62. Briffault makes a similar observation, *supra* note 14, at 373 n.122.

63. Lewis Mumford Ctr. for Comparative Urban & Reg'l Research, Ethnic Diversity Grows, Neighborhood Integration Lags Behind 7 (2001), http://mumford.albany.edu/census/WholePop/WPreport/MumfordReport.pdf.

64. *Id*. at 9.

65. Black-white segregation remains very high except in the metropolitan areas with the smallest black populations. Over twenty years, segregation declined by more than twelve points in metro areas with a less than 5 percent black population, and by nearly ten points in areas that are 10–20 percent black. But in those areas with 20 percent or more blacks, the decline was only half that (about six points). The total black population of this latter set of metro areas (20 percent or more black) is nearly 15 million, about half the national total. This means that the African American population in the United States is about equally divided between regions where there has been moderate progress since 1980 and regions where progress has been very slender. *Id*. at 4.

66. The dissimilarity indexes for Detroit (85), New York (82), Chicago (81), Newark (80), Miami (74), Philadelphia (72), and Los Angeles (68) show how large population centers are ranked among the twenty most segregated cities in 2000. *Id*. at 7.

67. *Id*. at 11. Blacks are not significantly moving away from segregated areas either. "In 1980 a majority (53.9%) lived in metro areas where segregation was 75 or above. Those same metro areas still held 51.9% of African Americans in 1990,

and 50.6% in 2000. Thus there was very little net shift away from these highly segregated areas." *Id.; see also* Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 81–82 (1993).

68. *See generally* Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States 73–86 (1985) (discussing the cultural attraction to suburbs historically).

69. *See* Melvin L. Oliver & Thomas M. Shapiro, Black Wealth/White Wealth: A New Perspective on Racial Inequality 2 (1995).

70. Indeed, it is this function of "protective zoning" that some have argued is missing in low-income urban neighborhoods, also disproportionately populated by families with school-age children yet subject to incompatible uses that undermine consumer infrastructures of basic goods and services, discourage economic investment, and increase poor health outcomes. *See* Jon C. Dubin, *From Junkyards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color,* 77 Minn. L. Rev. 739, 757–73 (1993); Troutt, *supra* note 26, at 496–504.

71. *See, e.g.,* Oliver & Shapiro, *supra* note 69, at 136–47 (discussing specific housing factors in wealth acquisition by race as well as factors contributing to racial disparities in homeownership rates such as interest rate differentials by race); Nat'l Urban League, The State of Black America 2006, at 16–17 (2006) (chronicling homeownership rates). However, racial disparities will only increase as a result of the current crisis in subprime loans, which disproportionately affects black homeowners.

72. William A. Fischel, The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land Use Policies 4 (2005).

73. As some commentators have recently described post–civil rights attitudes about race,

> [t]he persistence of racial disparities . . . had nothing to do with racism and everything to do with the failure of the racial other to take full advantage of the unlimited opportunities that were available to all. Whites who benefited from these structures were not privileged, but innocent people who had earned what they had acquired and, unlike racial minorities, were deserving of national respect.

john a. powell et al., *Towards a Transformative View of Race: The Crisis and Opportunity of Hurricane Katrina, in* There Is No Such Thing As a National Disaster: Race, Class, and Hurricane Katrina 59, 66 (Chester Hartman & Gregory D. Squires eds., 2006).

74. This development was crucial to local government power. *See* Briffault, *supra* note 16, at 77; David Rusk, Inside Game/Outside Game: Winning Strategies for Saving Urban America 9 (1999).

75. Rusk, *supra* note 74, at 9.

76. *Id*.

77. *See also* Myron Orfield, Metropolitics 2 (1997); Cashin, *supra* note 18, at 2003 n.99; Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas,* 48 Stan. L. Rev. 1115, 1135–36 (1996).

78. Cashin, *supra* note 18, at 1993.

79. Charles M. Tiebout, *A Pure Theory of Local Expenditures,* 64 J. Pol. Econ. 416, 417–24 (1956) (theorizing the compulsion dynamic of preferences among middle-class "consumer-voters").

80. *See, e.g.*, Rusk, *supra* note 74, at 318–24 (discussing evidence of white racist attitudes on housing choice).

81. *See* David Dante Troutt, *Ghettoes Revisited: Antimarkets, Consumption, and Empowerment*, 66 Brook. L. Rev. 1, 19–24 (2000). For many people in the U.S. housing market, finding economically and/or racially integrated communities is increasingly difficult. *See generally* Nat'l Fair Hous. Alliance, Unequal Opportunity—Perpetuating Housing Segregation in America: 2006 Fair Housing Trends Report (2006), www.nationalfairhousing.org/resources/newsArchive/resource_24256802754560627686.pdf.

82. Cashin, *supra* note 18, at 2027–33.

83. *See, e.g.*, Orfield, *supra* note 77, at 35–36 (describing political alignments in the Minneapolis–St. Paul area); Lassiter, *supra* note 61, at 17 (arguing that historical misconceptions about Richard Nixon's "Southern strategy" ignore the persuasiveness of appeals to a "silent majority" of suburban whites whose themes would appeal to suburban voters for decades).

84. Sheryll Cashin analyzes these tendencies in the context of parochialism and institutionalization. Parochialism results from homogenous political identities based narrowly on boundary lines, which blind voters to natural allies beyond them. The more identity is connected to boundaries, the easier it is for voters to choose their allies. The more homogeneity is chosen, the stronger and more cohesive those communities' exercise of local power. Localism, therefore, breeds its own strength, in part because it fosters homogeneity as a uniting political interest against outsiders. This dynamic contributes to regular "mobilizations of bias," a feature of what I call localism generally. Institutionalization, in Cashin's terms, describes the normalization of those parochial attitudes into the political status quo. Cashin, *supra* note 18, at 2015–23.

85. They have enclaves in older suburbs such as Jefferson Parish or the subdivisions of New Orleans East instead. Unfortunately, these areas were devastated by Hurricane Katrina. For a stimulating discussion of the dimensions of black middle-class suburbanization and the various costs associated with living in or outside predominantly white areas, see Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 Cornell L. Rev. 729 (2001).

86.

> Suburban sprawl is fueled by the "iron triangle" of finance, land use planning, and transportation service delivery. Sprawl-fueled growth is widening the gap between the "haves" and "have-nots." Suburban sprawl has clear social and environmental effects. The social effects of suburban sprawl include concentration of urban core poverty, closed opportunity, limited mobility, economic disinvestment, social isolation, and urban/suburban disparities that closely mirror racial inequities. The environmental effects of suburban sprawl include urban infrastructure decline, increased energy consumption, automobile dependency, threats to public health and the environment, including air pollution, flooding, and climate change, and threats to farm land and wildlife habitat. Many jobs have shifted to the suburbs and communities where public transportation is inadequate or nonexistent. The exodus of low-skilled jobs to the suburbs disproportionately affects central-city residents, particularly people of color, who often face more limited choice of housing location and transportation in growing areas.

Robert D. Bullard, *Addressing Urban Transportation Equity in the United States,* 31 Fordham Urb. L.J. 1183, 1201 (2004). The biggest problem is that "the decision of who lives where, particularly given entrenched housing segregation, is not simply driven by choice." Manuel Pastor et al., In the Wake of the Storm: Environment, Disaster, and Race After Katrina 8 (2006). In his case study of Hurricane Katrina, Brian L. Levy discusses the concept of "environmental racism" and suggests that residential segregation is responsible for it. He outlines "place stratification," the concept that certain places are more desirable to live in than others, as "[a]n important factor of residential inequality." He also highlights the significant role certain "institutional mechanisms" play in allowing the dominant group to retain control over the more desirable areas. Some of these mechanisms include redlining, exclusionary zoning, and the strategic placement of affordable housing units. Thus, the only way to ensure equitable development is to recognize the harm caused by these exclusionary mechanisms and plan preventatively. Levy, *supra* note 2.

87. Briffault, *supra* note 77, at 1133.

88. *See supra* note 77 and accompanying text; *see also* Orfield, *supra* note 77, at 5–7 (for a discussion of real estate consultant Christopher Leinberger and Robert Charles Lesser & Co.'s use of the term to describe exclusive areas of high services, low taxes, and multiple barriers to housing affordable enough to support the many low-wage workers needed for their job base).

89. *See, e.g.,* Ken Belson, *In Success of "Smart Growth," New Jersey Town Feels Strain,* N.Y. Times, Apr. 5, 2007, at B1.

90. *See* Orfield, *supra* note 77, at 9. The most unstable suburbs are older, working-class localities without a dynamic tax base, even less stable than central cities. They are more easily overwhelmed by economic decline than central cities because the latter are better equipped institutionally and have more diverse resources. *Id*. at 31.

91. *See generally* Manuel Pastor Jr. et al., Regions That Work (2000); *see also* Briffault, *supra* note 77, at 1139–41.

> [I]nterlocal competition, interlocal wealth disparities, and the resulting inferior services and infrastructure in central cities can bring down the economic base of the region as a whole, making affluent areas as well as poorer ones less well-off than they might have been had the region as a whole invested more in localities.

Briffault, *supra* note 77, at 1140.

92. *See* Cashin, *supra* note 18, at 2012–13.

93. *See* Briffault, *supra* note 77, at 1142–43.

94. *See* Rusk, *supra* note 74, at 331–32; Cashin, *supra* note 18, at 2013 n.145 (citing Robert W. Burchell et al., The Costs of Sprawl—Revisited 62–63, 65–66, 73–75, 78–79 (1998)).

95. *See, e.g.,* Rusk, *supra* note 74, at 159–61 (discussing the process by which Portland, Oregon's growth boundaries were established). *But see* Briffault, *supra* note 16, at 46 (arguing against urban growth boundaries as having exclusionary effects in tightening housing markets).

96. *See* Rusk, *supra* note 74, at 329.

97. Richard Briffault, *Localism and Regionalism,* 48 Buff. L. Rev. 1, 27 (2000).