

WHITE CITIES, WHITE SCHOOLS

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Across the country, violent tactics were employed to create and maintain all-white municipalities. The legacy of that violence endures today. An underexamined space in which that violence endures is within school districts. Many school district boundary lines encompass geographic areas that were created as whites-only municipalities through both physical violence and law. Yet principles that inform how school district boundary lines are drawn fail to account for the harms engendered by geographic spaces that are formerly whites-only municipalities. Legal doctrine and public policies also fail to capture the significance of the historical violence in considering the constitutionality and normative propriety of maintaining school district boundary lines around spaces that encompass formerly whites-only municipalities. This Essay sets forth a framework for rethinking the normative, sociocultural, and legal implications of maintaining school district boundary lines around geographic areas that encompass formerly whites-only municipalities.

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*The most desirable neighborhood for the raising of children, according to these Grosse Pointe real estate dealers and brokers . . . is one in which the children shall never see a Negro except in the role of a porter or a shoeshine boy, never encounter any human being who believes in a faith other than Christianity, never hear a foreign accent. . . . Jesus Christ could never qualify for residence in Grosse Pointe.*¹

INTRODUCTION

During the formative years of American suburbanization, various mechanisms—including restrictive covenants, collusion among real estate brokers, and blatant violence—created whites-only suburban enclaves outside of racially diverse cities.² Grosse Pointe, Michigan—a suburb that lies approximately six miles outside of Detroit, Michigan—provides an instructive example. Grosse Pointe contains five subcommunities.³ All five subcommunities were “sundown towns”—towns that historically excluded nonwhite people, most frequently Black people, from remaining in town after sunset by threat of violence.⁴ Grosse Pointe real estate brokers played a significant role in ensuring that Grosse Pointe remained a whites-only suburb. They implemented a race-based point system to determine whether a homebuyer was qualified to purchase a home in Grosse Pointe.⁵

1. Harold Schachern, Klan Standards Prevail in G.P., Rabbi Charges, *Detroit News*, May 14, 1960, at 6A (on file with the *Columbia Law Review*) (internal quotation marks omitted) (quoting Rabbi Leon Fram).

2. See Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 36–37 (1993); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 31–33 (2017).

3. See Emma Maniere, A “Most Conscientious and Considerate Method”: Residential Segregation and Integrationist Activism in Grosse Pointe, Michigan, 1960–1970, *J. Urb. Hist. OnlineFirst*, at 1, 3 (2022).

4. See James W. Loewen, Sundown Towns: A Hidden Dimension of American Racism 116–17 (2005) (defining sundown towns and listing Grosse Pointe subcommunities as sundown towns).

5. Kathy Cosseboom, *Grosse Pointe, Michigan: Race Against Race* 5–6 (1972).

The point system favored classes of Europeans while disfavoring others, excluding Black and Asian buyers altogether.⁶ The point system remained officially in place until 1960.⁷

The residual effects of Grosse Pointe's origins as a whites-only city persist today. As of the 2020 census, 92% of Grosse Pointe residents are categorized as white, while 8% are categorized as nonwhite.⁸ Grosse Pointe is known as one of the most exclusive suburban areas in the country and has well-regarded public schools.⁹ Grosse Pointe's fortunes stand in stark contrast to those of its neighbor Detroit, which is 77% Black¹⁰ and has a well-documented struggle with its schools, infrastructure, and lack of services, due in large part to a diminished tax base after white residents fled Detroit for suburbs like Grosse Pointe.¹¹ A physical wall separates the two cities, and some Detroit residents have suggested that the wall is meant to protect Grosse Pointe from incursions by Detroit residents.¹²

The material dissonance between two cities in such close proximity to one another is not an anomaly. As local government law scholars acknowledge, historic conditions created racially identifiable spaces of haves and have-nots within the same metropolitan areas across the country.¹³ Municipalities with racially exclusionary origins present a paradigmatic problem of spatial inequality. They exist as pockets of white, affluent communities with municipal boundary lines insulating them and

6. Id.

7. Id.

8. See U.S. Census Bureau, QuickFacts: Grosse Pointe City, Michigan, <https://www.census.gov/quickfacts/fact/table/grossepointecitymichigan/PST045221> [<https://perma.cc/4NVK-L6Z2>] [hereinafter U.S. Census Bureau, Grosse Pointe City] (last visited Feb. 8, 2023).

9. See Jessica Strachan, Grosse Pointe School Among Best in State, Says Niche, Patch (Aug. 8, 2019), <https://patch.com/michigan/grossepointe/grosse-pointe-school-among-best-state-says-niche> [<https://perma.cc/33KK-WYP3>].

10. See U.S. Census Bureau, QuickFacts: Comparison Between Detroit City, Michigan, and Grosse Pointe City, Michigan, <https://www.census.gov/quickfacts/fact/table/detroitcitymichigan,grossepointecitymichigan/PST045221> [<https://perma.cc/RA8C-GFXG>] (last visited Feb. 8, 2023).

11. Scott Beyer, Why Has Detroit Continued to Decline?, Forbes (July 31, 2018), <https://www.forbes.com/sites/scottbeyer/2018/07/31/why-has-detroit-continued-to-decline/?sh=26866cc33f8e> (on file with the *Columbia Law Review*) (noting that Detroit's problems with infrastructure and attracting residents stemmed from its "demographic character—which is largely poor and black" resulting from government-engineered "urban renewal, subsidized highways and discriminatory loan policies [that] drove white people to the suburbs, and kept black people inside the core").

12. See Alana Semuels, At Detroit's Border, a Barrier Separates the Haves From Have-Nots, L.A. Times (Oct. 18, 2014), <https://www.latimes.com/nation/la-na-borders-detroit-20141019-story.html> (on file with the *Columbia Law Review*).

13. See Richard Briffault, The Local Government Boundary Problem in Metropolitan Areas, 48 Stan. L. Rev. 1115, 1142 (1996); Sheryll D. Cashin, Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism, 88 Geo. L.J. 1985, 2015–22 (2000); Richard Thompson Ford, The Boundaries of Race: Political Geography in Legal Analysis, 107 Harv. L. Rev. 1841, 1847–52 (1994).

their resources from in-need, and often racially diverse, municipalities within the same metropolitan areas.¹⁴

The spatial inequality problem is extrapolated onto the public schools through the use of school district boundary lines that track municipal boundary lines.¹⁵ Indeed, nearly two-thirds of racial and economic segregation in schools is attributable to school district boundary lines, with students segregated between districts rather than within districts.¹⁶ In some metropolitan areas, patterns of interdistrict school segregation exist whereby predominantly white and affluent school districts are situated in the middle of racially and economically diverse metropolitan areas.¹⁷ In a previous article, this Essay's author used the term "white island districts" to describe such patterns of interdistrict racial segregation.¹⁸ The author theorized that white island school districts are intentionally constructed, a product of what sociologists refer to as "social closure"—a process of subordination whereby an in-group hoards a resource by constructing that resource as scarce and curtailing an out-group's access to it.¹⁹ White students in the island districts are situated as members of the in-group, students of color in the neighboring districts as members of the out-group, and high-quality schools as the resource constructed as scarce.²⁰ Notably, scarcity of high-quality schools is not natural or inevitable.²¹ Instead, high-

14. See Cashin, *supra* note 13, at 2003–12 (describing a "favored quarter" composed of predominantly white and affluent municipalities that garner a disproportionate share of infrastructure and resources within a metropolitan area while hoarding access to the municipality and its resources).

15. See Aaron J. Saiger, *The School District Boundary Problem*, 42 *Urb. Law.* 495, 501 (2010) (describing spatial inequality created by school district boundary lines when "[g]eneral local governments, like school districts, restrict their franchise to their own residents and allow the officials selected by that limited group to tax local resources to pay for local benefits restricted to local citizens").

16. See Tomas Monarrez, Brian Kisida & Matthew Chingos, *Urb. Inst.*, *When Is a School Segregated?: Making Sense of Segregation 65 Years After *Brown v. Board of Education** 2–3 (2019), https://www.urban.org/sites/default/files/publication/101101/when_is_a_school_seggregated_making_sense_of_segregation_65_years_after_brown_v_board_of_education_0.pdf [<https://perma.cc/P5LQ-CVCG>].

17. Erika K. Wilson, *Monopolizing Whiteness*, 134 *Harv. L. Rev.* 2382, 2424–25 (2021) [hereinafter Wilson, *Monopolizing Whiteness*].

18. *Id.* at 2424.

19. *Id.* at 2384–400.

20. *Id.*

21. For example, scholars recognize that many of the disparities in the quality of public education available to students are directly correlated with the connection between school funding, school assignment, and the neighborhood in which one resides. See, e.g., Social Capital Project, *Joint Econ. Comm.—Republicans*, 116th Cong., SCP Rep. No. 6-19, *Zoned Out: How School and Residential Zoning Limit Educational Opportunity* 2–6 (2019), https://www.jec.senate.gov/public/_cache/files/f4880936-8db9-4b77-a632-86e1728f33f0/jec-report-zoned-out.pdf [<https://perma.cc/4T5Y-9BAL>] (chronicling the ways in which housing determines access to educational opportunities and finding that cities with less restrictive residential zoning do a better job delivering access to high-quality public schools).

quality schools are scarce because school district boundary lines are drawn to track state-facilitated, racially segregated housing patterns²² and local property taxes from the property within the district boundary lines are used to fund schools.²³ The net result is that white island school districts are able to monopolize the greatest quality schools in racially diverse metropolitan areas.²⁴

This Essay broadens the lens on patterns of interdistrict school segregation that create white island districts. It contextualizes such patterns within the larger milieu of racialized spatial inequality, examining the connection between white island districts and formerly whites-only municipalities. The term “whites-only cities” or “whites-only municipalities” is used throughout this Essay to mean cities or municipalities that formally and informally excluded Black and some other nonwhite residents.²⁵ This Essay provides a lens through which to question the normative, sociocultural, and legal implications of maintaining school district boundary lines around geographic areas that encompass formerly whites-only cities, particularly when the boundary lines create white island districts. It adds to the body of scholarship making the connection between geographic space and racial inequality.²⁶

The Essay advances two claims. First, it makes the normative claim that principles that inform how school district boundary lines are drawn fail to account for the harms engendered by geographic spaces that are formerly whites-only cities. School district boundary lines are often conceived of as “space,” in the sense of location or physical geography.²⁷ Yet with historical context, a “space” is transformed into a “place”²⁸ with deeper meaning or cultural identity—a concept often underexamined within legal literature.

Disrupting the connection between school funding, school assignment, and residence would help to ameliorate the disparities and allow for the possibility of providing all students with a quality education. *Id.* at 14–15.

22. Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2398–400.

23. *Id.* at 2402–03.

24. *Id.* at 2400–04.

25. Cities may have formally excluded nonwhite residents by passing laws that prohibited nonwhite residents from buying or renting homes in the municipality. They may have informally excluded nonwhite residents by threatening or inflicting violence on nonwhite persons who attempted to reside in the municipality. For a more thorough discussion of the ways in which formal and informal exclusion occurred, see *infra* sections I.B–C.

26. See, e.g., Michelle Adams, *Radical Integration*, 94 *Cal. L. Rev.* 261, 267 (2006); Elise C. Boddie, *Racial Territoriality*, 58 *UCLA L. Rev.* 401, 437 (2010); Ford, *supra* note 13, at 1849; Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 *San Diego L. Rev.* 295, 299 (1999); John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 *N.C. L. Rev.* 791, 812 (2008).

27. See Alisha Butler & Kristin A. Sinclair, *Place Matters: A Critical Review of Place Inquiry and Spatial Methods in Education Research*, 44 *Rev. Rsch. Educ.* 64, 66–67 (2020) (describing research that defines “space” as location or locale).

28. *Id.* at 68 (defining “place as a complex interplay of location, locale, and the meaning people make of a location and also as a key component in understanding systems of power”).

This Essay sheds light on the relevance of “place” to school district boundary lines. It suggests that formerly whites-only cities should be considered what Professor Geoff Ward calls “microclimates of racial meaning,” or environments created by present racial violence and the legacy of past racial violence.²⁹ Cities that are microclimates of racial meaning contain “overlapping mechanisms through which historical racial violence retains environmental influence,”³⁰ particularly for the “place” elements of the present-day municipality. When school district boundary lines encompass formerly whites-only cities, the school district inherits the same environmental influences that infect the present-day municipality.

For example, formerly whites-only cities often contain intergenerational exchanges of advantage, meaning modern residents accrue tangible and intangible benefits that are linked to the cities’ racially exclusionary origins.³¹ School districts that encompass formerly whites-only cities also benefit from intergenerational exchanges of advantage. One such intergenerational exchange of advantage is what this Essay calls a positive reputational property interest.

Parents with means and status select where to live based on the reputation of the school district.³² Because of the material and intangible value associated with whiteness,³³ whether a school district has a reputation as a “good” school district is contoured by race. White parents in particular are more likely to select a school in which their children will be in the racial majority because they associate majority-white schools with greater resources and better educational opportunities.³⁴ Thus, a positive reputation is concomitant with being a majority-white school district.

White island districts that encompass formerly whites-only cities are majority-white districts in large part because of their racially exclusionary origins. These districts not only accrue a positive reputational property interest because of their exclusionary origins, but the interest is also protected by school district boundary lines that both exclude those who

29. Geoff Ward, *Microclimates of Racial Meaning: Historical Racial Violence and Environmental Impacts*, 2016 *Wis. L. Rev.* 575, 603 [hereinafter Ward, *Microclimates of Racial Meaning*].

30. *Id.* at 606–07.

31. *Id.* at 611 (describing examples of intergenerational exchanges of advantage).

32. See Jennifer Jellison Holme, *Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality*, 72 *Harv. Educ. Rev.* 177, 201–03 (2002).

33. See Cheryl I. Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1707, 1726 (1993) [hereinafter Harris, *Whiteness as Property*] (characterizing white identity as a valuable form of property and noting that, historically, white identity has “conferred tangible and economically valuable benefits and was jealously guarded as a valued possession, allowed only to those who met a strict standard of proof”).

34. See Amy Stuart Wells & Allison Roda, *School Choice Policies and Racial Segregation: Where White Parents’ Good Intentions, Anxiety, and Privilege Collide*, 119 *Am. J. Educ.* 261, 278–79 (2013) (“[W]hite parents want a critical mass of other white students in their children’s schools and classrooms. This preference is related to the symbolic meaning of whiteness and the parents’ habitus as it is related to race and class.”).

do not live within the boundaries and serve to recruit white families to move to the districts.³⁵ The exclusion and recruitment functions played by the district boundary lines entrench the district as a white island district, enabling it to capitalize on its racially exclusionary origins.³⁶

The second claim this Essay makes is that legal doctrine and public policies related to school district boundary lines fail to capture the significance of “place” in analyzing the constitutionality and normative propriety of maintaining school district boundary lines around formerly whites-only cities. A municipality’s status as formerly all-white creates what Professor Daria Roithmayr refers to as a racial “path dependence.”³⁷ Racial Path Dependence is the notion that early historical events related to racial segregation and exclusion determine modern outcomes.³⁸ For instance, the property values in formerly whites-only cities are higher precisely because of their racially exclusionary origins, providing the white island districts that encompass them with a more ample local property tax base from which to draw, while lessening the tax base of the neighboring, more racially diverse districts.³⁹ The positive reputational property interest the white island districts accrue also makes it more likely that residents with means and status will flock to these districts, increasing both the actual and social capital within them.⁴⁰

Yet legal doctrine and state public policies conceive of the geographic area encompassed by school district boundary lines as race-neutral spaces. They fail to capture the ways in which Racial Path Dependence impacts school districts that encompass formerly whites-only cities. Indeed, the Supreme Court in *Milliken v. Bradley* failed to consider the history of the suburban municipalities as whites-only municipalities when declining to

35. See Gregory R. Weiher, *The Fractured Metropolis: Political Fragmentation and Metropolitan Segregation* 81–82 (1991) (“Policy decisions in the past which have resulted in the creation of racially polar municipalities will be perpetuated by the tendency of the boundaries to structure the information that is available to persons making locational decisions.”).

36. Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2396–400.

37. Daria Roithmayr, *Locked In Inequality: The Persistence of Discrimination*, 9 *Mich. J. Race & L.* 31, 39–41 (2003) [hereinafter Roithmayr, *Locked In Inequality*]; see also Daria Roithmayr, *Reproducing Racism: How Everyday Choices Lock In White Advantage* 93–99, 116–19 (2014) [hereinafter Roithmayr, *Reproducing Racism*].

38. Roithmayr, *Locked In Inequality*, *supra* note 37, at 39–41.

39. See Loewen, *supra* note 4, at 369–70 (describing the tax-base advantages for formerly segregated sundown towns and the impact on schooling within the metropolitan area in which the sundown town is located).

40. *Id.* at 362–66 (describing the impact of sundown towns on present residential patterns and noting that they both cause difficulties in fostering integrated neighborhoods and facilitate white flight).

abrogate suburban school district boundary lines for the purpose of desegregating Detroit's public schools.⁴¹ Although thirteen of the fifty-three suburbs included in the *Milliken* trial court desegregation order had roots as formerly whites-only, sundown municipalities,⁴² the Court failed to consider that history and instead focused on the lack of intentionally discriminatory actions taken by the suburban school districts.⁴³ Further, state legislative policies regarding school district boundary lines allow boundary lines that encompass formerly whites-only cities to persist unimpeded, despite the legislatures' plenary authority to enact policies that would further equity.⁴⁴ As a result, the path dependence wrought by formerly whites-only municipalities goes unaddressed as a matter of both law and public policy, helping to lock in racial advantage for white island school districts.

The dual normative and legal claims made by this Essay set forth a framework for rethinking the connection between white island districts and formerly whites-only cities. Using the Grosse Pointe, Michigan, school district as an example, this Essay makes the normative and legal case for altering white island school district boundary lines that encompass formerly whites-only cities.

The Essay proceeds as follows: Part I examines the construction of whites-only suburban municipalities. It highlights the normative and legal machinations of their creation. It then introduces Professor Ward's theory of microclimates of racial meaning. It makes the claim that whites-only suburban municipalities should be considered microclimates of racial meaning that detrimentally influence the "place" elements of a municipality. Part II uses Grosse Pointe, Michigan, as a case study. It situates the geographic areas that comprise Grosse Pointe as a microclimate of racial meaning. It then demonstrates how Grosse Pointe's status as a microclimate of racial meaning impacts the "place" elements of its school district,

41. See 418 U.S. 717, 745 (1974) ("[A]n interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race.").

42. Compare *Bradley v. Milliken*, 345 F. Supp. 914, 918 (E.D. Mich. 1972), *aff'd* in part, *vacated* in part, 484 F.2d 215 (6th Cir. 1973), *rev'd*, 418 U.S. 717 (1974) (listing Allen Park, Birmingham, Dearborn, Dearborn Heights, Fraser, Grosse Pointe, Livonia, Royal Oak, Southgate, Taylor, Troy, Warren, and Wyandotte as part of the fifty-three suburbs to be included in an interdistrict school desegregation order), with Historical Database of Sundown Towns: Michigan, Hist. & Soc. Just., <https://justice.tougaloo.edu/location/michigan/> [<https://perma.cc/7DWJ-VLQW>] (last visited Feb. 8, 2023) (listing Allen Park, Birmingham, Dearborn, Dearborn Heights, Fraser, Grosse Pointe, Livonia, Royal Oak, Southgate, Taylor, Troy, Warren, and Wyandotte, so far, as confirmed former sundown towns).

43. 418 U.S. at 745 ("[I]t 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. . . . [W]ithout an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.").

44. See *infra* section II.B.

enabling it to become a white island district. Part III analyzes general principles of law and public policy related to school district boundary lines. It then introduces Professor Roithmayr's theory of Racial Path Dependence as a lens through which to consider how laws and policies surrounding school district boundary lines fail to account for geographic microclimates of racial meaning that racialize each school district's "place." It proposes a new remedial path forward, making legal and normative arguments for restructuring school district boundary lines that encompass formerly whites-only suburban municipalities, particularly when the boundary lines create white island school districts.

I. THE CONSTRUCTION OF WHITES-ONLY MUNICIPALITIES

Across the United States, municipal boundary lines fragment metropolitan areas.⁴⁵ Metropolitan fragmentation provided a conduit to create municipalities that used legal methods and extralegal violence to exclude Black and some other nonwhite residents.⁴⁶ As a result, the topography in most metropolitan areas today consists of predominantly white municipalities adjacent to racially diverse cities.⁴⁷ Localized responsibility for education results in school district boundary lines transposing the same pattern to school districts. Yet as a matter of law and policy, the sordid history of the creation of all-white spaces is often overlooked in considering the legal and normative propriety of the placement of school district boundary lines. This Part lays the groundwork to examine the connection between formerly all-white municipalities and school district boundary lines, particularly school district boundary lines that create white island districts. It begins by providing an overview of how all-white suburbs were created. It then examines the modern normative implications of such suburbs.

A. *The Mechanics of Whites-Only Municipalities*

1. *Normative Underpinnings of Whites-Only Municipalities.* — To understand how municipalities came to exist as all-white havens, one must first contextualize their existence within the historical arc of race and migration patterns. Outside of the South, many states viewed the presence of Black residents as undesirable or problematic.⁴⁸ Prior to the Civil War, several states passed statutes or included language in their state constitutions

45. See generally Weiher, *supra* note 35 (describing the way in which municipal boundary lines fragment major metropolitan areas in the United States, resulting in segregation by race and class between municipalities).

46. *Id.* at 168.

47. *Id.* at 7–9.

48. See Eric Foner, *Reconstruction: America's Unfinished Revolution* 26 (1988) (“[P]olitical conflict between free and slave societies seemed to deepen racial anxieties

banning migration of Black residents to their states.⁴⁹ After the Civil War, the Reconstruction period ushered in an ideological shift in attitudes about Black people, leading to some easing of Black migration restrictions.⁵⁰

Between 1910 and 1970, during a period known as the Great Migration, millions of Black Americans migrated out of the South for better treatment and opportunities in the North, Midwest, and West.⁵¹ The Black population in many northern and midwestern cities doubled.⁵² There was such a substantial dispersal of Black residents that, in 1910, 90% of Black Americans lived in the South, but by 1960, only 50% of Black Americans lived in the South.⁵³ Many of them settled in major metropolitan cities such as Chicago, Detroit, Los Angeles, New York, and Philadelphia.⁵⁴

The Great Migration also coincided with an influx of southern and eastern European immigrants to major metropolitan cities.⁵⁵ They were considered white, but racially inferior to other groups of Europeans with

within the North.”); Loewen, *supra* note 4, at 37–38 (describing how segregation and exclusion of Black people led white people to demonize Black people and to see them as, by nature, inferior and not worthy of possessing the same rights as white people).

49. See, e.g., Off. Ill. Sec’y of State, Illinois 1953 Black Law, 100 Most Valuable Documents at the Ill. State Archives, https://www.cyberdriveillinois.com/departments/archives/online_exhibits/100_documents/1853-black-law.html [https://perma.cc/646X-GYGT] (last visited Mar. 14, 2021); see also Foner, *supra* note 48, at 26 (noting that Iowa, Illinois, and Oregon closed their borders to Black people for fear of an influx of Black migrants).

50. Loewen, *supra* note 4, at 27–30 (describing efforts by Northern towns to welcome the newly freed, formerly enslaved Black persons).

51. See generally James R. Grossman, *Land of Hope: Chicago, Black Southerners, and the Great Migration* (1989) (describing how the large influx of Black Americans to new areas led to new policies and economic changes); Alferdteen Harrison, *Black Exodus: The Great Migration From the American South* (1991) (discussing “some of the forces that emerged in the segregated lifestyle of the South and encouraged the ‘Great Migration’”); *The Great Migration in Historical Perspective: New Dimensions of Race, Class, and Gender* (Joe William Trotter, Jr. ed., 1991) (providing historical discussions of Black migration to northern and western cities during the first half of the twentieth century).

52. Loewen, *supra* note 4, at 31 (“[T]he new hyphenated Americans immediately learned that it was in their interest to be considered ‘white[] [people],’ differentiated from ‘black[] [people]’ . . .”).

53. See David A. Gerber, *Black Ohio and the Color Line, 1860–1915*, at 470 (1976) (describing the effect of the Great Migration in Cleveland); Grossman, *supra* note 51, at 4 (noting that, as a result of the Great Migration, “New York’s black population grew from 91,709 in 1910 to 152,467 in 1920; Chicago’s, from 44,103 to 109,458; Detroit’s small black community of 5,741 in 1910 mushroomed to 40,838 in a decade”).

54. Christine Leibbrand, Catherine Massey, J. Trent Alexander, Katie R. Genadek & Stewart Tolnay, *The Great Migration and Residential Segregation in American Cities During the Twentieth Century*, 44 *Soc. Sci. Hist.* 19, 20 (2020).

55. Thomas A. Guglielmo, *White on Arrival: Italians, Race, Color, and Power in Chicago, 1890–1945*, at 5–8, 14–15, 44 (2003); Matthew Frye Jacobson, *Special Sorrows: The Diasporic Imagination of Irish, Polish, and Jewish Immigrants in the United States* 222–30 (1995).

Anglo-Saxon roots.⁵⁶ Initially, Black residents were no more segregated within the cities than these newly arriving immigrants.⁵⁷ Yet, as other scholars argue, America's race relations and racial hierarchy are, in part, the product of racial beliefs and ideology constructed to justify maintaining a social order in which treating Black people differently and disparately is justifiable.⁵⁸ To that end, imagery within American popular culture constructed Black people as intellectually inferior, morally lascivious, and fit for only certain kinds of labor.⁵⁹ Whiteness, on the other hand, was constructed as working hard, having restraint, and being a "real" American.⁶⁰ European immigrants looking to be accepted as fully American and white embraced these tropes about racial difference.⁶¹

More critically, "blackness and whiteness assumed a spatial definition."⁶² As the number of Black residents migrating to northern cities increased, the southern and eastern European immigrants sought to distance themselves from Black migrants and to establish themselves as white within the American racial hierarchy.⁶³ Their distancing strategy revolved around performing whiteness,⁶⁴ which included disavowing association

56. Cybelle Fox & Thomas A. Guglielmo, *Defining America's Racial Boundaries: Blacks, Mexicans, and European Immigrants, 1890–1945*, 118 *Am. J. Socio.* 327, 342 (2012).

57. Loewen, *supra* note 4, at 80 ("As a rule, American cities had not been very racially segregated in the nineteenth century."); Massey & Denton, *supra* note 2, at 22 (explaining that during the late 1800s "Black-white segregation scores . . . [were] not terribly different from those observed for European immigrant groups in the same period").

58. See Desmond S. King & Rogers M. Smith, *Racial Orders in American Political Development*, 99 *Am. Pol. Sci. Rev.* 75, 79–80 (2005) (providing an example of Oregon voters in 1857 rejecting slavery but excluding Black people from the state to suggest widespread "beliefs in black inferiority, fear of racial strife, and desires to reserve power for those with whom [white people] identified racially").

59. Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* 8 (1996) ("Discriminatory attitudes and actions were constructed and justified in part by the images of African Americans to which white city-dwellers were exposed. . . . [R]acial identities rested on widely held assumptions about the inferior intelligence of black[] [people], notions that black[] [people] were physiologically better suited for certain . . . work, and [other] stereotypes . . .").

60. *Id.* at 9.

61. *Id.* ("[A]ssumptions about racial difference were nourished by a newly assertive whiteness, born of the ardent desire of the 'not-yet-white ethnics' (many of them Roman Catholic, second- and third-generation southern and eastern European immigrants) to move into the American mainstream.").

62. *Id.*

63. David M.P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* 24 (2007) ("[T]he nation's suburbs embraced and actively welcomed a much broader range of 'white' people. Suburban growth helped confirm the whiteness of the 'new' European immigrants.").

64. As other scholars note, the term "performing whiteness" encapsulates performative and substantive acts required to fit within the white racialization category, including, but not limited to, associating with white people, exercising rights and privileges prescribed only for white people, and conforming one's conduct in accordance with expected social norms regarding one's gender. See Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 *Yale L.J.* 109, 156–76 (1998).

with Black persons, particularly in their private associational preferences such as housing. As such, racial segregation within major metropolitan cities to which Black people had migrated was commonplace.⁶⁵

While racial segregation within cities was the norm in the early- to mid-twentieth century, a post-World War II proliferation of newly created suburbs indelibly changed the political geography of metropolitan areas in the United States. A revolution in the political landscape of municipal land use aided the post-World War II suburb boom.⁶⁶ An exhaustive account of the reasons for the municipal land use political revolution is beyond the scope of this Essay, but some factors include advances in transportation, congested cities, and a desire for private homeownership.⁶⁷ Indeed, residents' attraction and exodus to the suburbs was fueled by a desire for better living and prestige.⁶⁸ Residents believed that suburbs with more space and less congestion were better places to raise children and would provide better amenities and services. Their ability to relocate to the suburbs was also a marker of upward mobility and a heightened social status. Better living begot a higher social status.⁶⁹ Both of these rationales, however, were inextricably connected to race. Prestige and living better came to mean excluding those deemed undesirable, particularly Black residents. Black people were deemed to have low prestige; living in close proximity to them diminished one's status.⁷⁰ Some municipalities applied a similar rationale to Jewish people and disfavored Europeans.⁷¹ For disfavored ethnic white people, however, the ability to enter and exit certain suburbs helped them transition into American whiteness, to shed their disfavored ethnic identity for a piece of American whiteness and all the benefits that came with it.

65. Massey & Denton, *supra* note 2, at 32–34.

66. *Id.* at 186–216 (describing federal government policies that restructured the market for private lending to make it easier for white people to qualify for loans to buy homes); Rothstein, *supra* note 2, at 70–75 (describing how Federal Housing Administration financing policies contributed to creating exclusively white enclaves).

67. Freund, *supra* note 63, at 143–54 (describing how calls for private homeownership shaped federal government policies to stimulate private lending that would lead to private homeownership); Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States 175–76* (1985) (describing the impact of the automobile on suburban growth and government transportation policies).

68. Freund, *supra* note 63, at 330 (“For countless white[] [people], suburban residence had come to represent a sanctuary from the overcrowding and degradation of city life, from outdated forms of urban planning and government, and from black people.”); Loewen, *supra* note 4, at 119 (“Americans saw suburbs as the solution to two problems: having a family and having prestige.”).

69. Loewen, *supra* note 4, at 119.

70. See Freund, *supra* note 63, at 330 (recounting views that Black residents weakened a city's value).

71. Loewen, *supra* note 4, at 125 (“After 1900, most elite suburbs quickly moved beyond barring black[] [people] to bar Jews, and a few banned Catholics, especially if they were from southern or eastern Europe and looked ‘swarthy.’”).

White exodus to the suburbs was thus an important part of the racialization process.⁷² Suburbs became what Professors Robert Chang and Keith Aoki termed “racial microclimes,” or discrete local geographic areas with particular social and political dynamics that aided in the racialization processes.⁷³ Stated differently, local geography became coextensive with both race and the process of racialization. Moving to the suburbs meant more than getting a new home. It meant cementing a place within American whiteness. The geographic exclusion of Black and other disfavored nonwhite residents was thus part of a dynamic process that racialized individuals as white while also entrenching a racial hierarchy that favored white identity.

From this perspective, white exodus to the suburbs can be viewed through the lens of status-based group theory. The theory posits that “people perceive themselves as deriving individual status from the status of the groups to which they belong, and therefore compete to enhance the status of those groups, and to diminish the status of other groups.”⁷⁴ Discriminating against Black and “undesirable” nonwhite people became an act of “consumption, or more precisely, . . . a good that permit[ted] the white consumer to ‘produce’ the commodity of greater status.”⁷⁵ Greater status was inextricably tied to whites-only cities. As the next section details, law and policy both supported and facilitated white people’s efforts to exclude those raced as undesirable racial minorities.

2. *Law and Policy Underpinnings of Whites-Only Municipalities.* — As a matter of law and policy, two interventions by the federal government buttressed the race–status connection in ways that ineradicably shaped metropolitan areas. First, the federal government promoted a restrictive zoning doctrine that encouraged and empowered homeowners to exclude from their communities residents and developments that the government deemed “incompatible.”⁷⁶ Incompatibility was loosely defined but closely tethered to race and maintaining a racial hierarchy.⁷⁷ Second, the federal government created a racialized market for home mortgages that fueled suburban growth. From basic redlining to requiring property owners to incorporate restrictive covenants into their deeds in order to qualify for a

72. This Essay uses the term “racialization” to mean the process through which groups come to be designated as being part of a particular race. See Michael Omi & Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s*, at 111 (1986) (“We define racialization as *the extension of racial meaning to a previously racially unclassified relationship, social practice, or group.*”).

73. See Robert S. Chang, Keith Aoki’s Theory of Racial Microclimes, 45 U.C. Davis L. Rev. 1913, 1920 (2012).

74. Richard H. McAdams, *Relative Preferences*, 102 Yale L.J. 1, 96 (1992).

75. *Id.* at 100.

76. Freund, *supra* note 63, at 72–81 (describing the ways in which federal government policies influenced state and local zoning practices).

77. *Id.* at 80 (“The Department of Commerce helped set the stage for decades of exclusionary zoning theory and practice by providing federal sanction to an emerging land-use science that would view black occupancy as a threat to white people.”).

federally subsidized mortgage,⁷⁸ federal government policies ensured that the post–World War II exodus to the suburbs would be available for white people only.

Critically, the racialized market was justified on the grounds that nonwhite, particularly Black, occupancy in an area diminished the value of the property. Federal government policies “created an institutional and fiscal architecture that defined racial minorities, from the outset, as incapable of maintaining private property and thus as ineligible to receive benefits.”⁷⁹ Consequently, the government created a market for all-white municipalities. White residents flocked to these municipalities with the understanding that keeping the area all-white was not just socially desirable but also necessary to protect the value of their property. In line with that rationale, municipalities competed for residents by advertising how white they were.⁸⁰ White people in metropolitan regions believed that “enjoyment of [suburban] growth and the prosperity it embodied was their racial prerogative” tied to their status as homeowners.⁸¹

Violence, including lynch-mob violence, was employed to enforce the municipalities’ status as all-white and justified as ethically necessary to protect homeowners’ property values. After the Supreme Court held that court enforcement of racially restrictive covenants was unconstitutional,⁸² white residents resorted to firebombing, arson attacks, and cross burnings—among other forms of extralegal violence—to keep Black residents out, while reasoning that such actions were necessary to protect their property values.⁸³ The violence employed allowed municipalities to develop a reputation for being overwhelmingly white and inhospitable to Black people. Such a reputation continues to make Black residents wary of locating to these municipalities long after the use of legal and extralegal means to exclude them has ended.⁸⁴ This reputation also, in turn, increases the municipalities’ social status as all-white. White residents were not only

78. *Id.* at 112–14 (describing the ways in which the Home Owners’ Loan Corporation (HOLC) created maps, eventually adopted by private lending institutions, that color-coded neighborhoods based on desirability and were used to refuse loans in areas that were colored red, which were predominantly Black neighborhoods); Ford, *supra* note 13, at 1848 (“Federally subsidized mortgages often *required* that property owners incorporate restrictive covenants into their deeds.”).

79. Freund, *supra* note 63, at 156.

80. Loewen, *supra* note 4, at 48.

81. Freund, *supra* note 63, at 32.

82. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

83. See Loewen, *supra* note 4, at 274–75.

84. See, e.g., Shelia Poole & Adrienne Murchison, *Increasingly Diverse*, Forsyth County Faces Racist Past, Atlanta J.–Const. (Mar. 24, 2022), <https://www.ajc.com/news/increasingly-diverse-forsyth-county-faces-racist-past/LWI6YMTG5FD65ANCFVG5HUPU5A/> (on file with the *Columbia Law Review*) (describing a history of extreme racial violence against Black people in Forsyth County and its lasting impact on current Black residents of Forsyth County).

purchasing homes in suburbs outside of racially diverse metropolitan cities, but also creating a concept of space that defined them as superior.⁸⁵ A symbiotic relationship thus occurs wherein a municipality's origin as all-white becomes self-reinforcing, drawing in more white people while repelling Black and some other nonwhite people. Sorting patterns linked to a municipality's status as formerly all-white have lingering implications for school districts within metropolitan regions.⁸⁶

In sum, laws and government policies created a racially exclusionary mortgage market that enabled suburban expansion for white people only. White residents flocked to suburbs due to a normative desire for social status and better living, which they linked to excluding nonwhite, and particularly Black, people. The net result was the creation of a racial stratification within metropolitan areas, concentrating advantage in suburban municipalities that excluded nonwhite people. The residual effects of formerly whites-only municipalities persist today. The sections that follow provide a framework for understanding the lingering impacts of whites-only municipalities.

B. *Whites-Only Municipalities as Microclimates of Racial Meaning*

Geographic spaces marred by a legacy of racial violence have contemporary implications for the locality.⁸⁷ The term “racial violence” is subject to contestation.⁸⁸ Within the law, the term is often used to mean physical harm inflicted by an individual actor who was motivated by racial animus.⁸⁹ This Essay uses a broader definition. It adopts the definition set forth by sociology professor Mary Jackman to mean “[a]ctions that inflict, threaten, or cause injury, [which actions may be] corporal, written, or verbal [while the] injuries may be corporal, psychological, material, or

85. See Andrew Wiese, *Places of Their Own: African American Suburbanization in the Twentieth Century* 41–43 (2004) (arguing that suburban expansion racialized urban space thereby “evolving racial hierarchy, limiting access, cementing advantage and disadvantage”).

86. See *infra* Part III.

87. See Robert DeFina & Lance Hannon, *The Legacy of Black Lynching and Contemporary Segregation in the South*, 38 *Rev. Black Pol. Econ.* 165, 166 (2011) (finding a connection between lynching in southern states and patterns of housing segregation in the South); Robert L. Reece & Heather A. O’Connell, *How the Legacy of Slavery and Racial Composition Shape Public School Enrollment in the American South*, 2 *Socio. Race & Ethnicity* 42, 43 (2016) (finding that localities within the South that had larger concentrations of enslaved people in 1860 had greater disparities in Black–white public school enrollment).

88. For a review of the literature on defining racial violence and a reconceptualization of the definition of racial violence, see generally Kathleen M. Blee, *Racial Violence in the United States*, 28 *Ethnic & Racial Stud.* 599 (2006).

89. See generally L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 *Ohio St. J. Crim. L.* 115, 118 (2014) (critiquing the ways in which racial violence is defined within the law and arguing that racial violence can occur even in the absence of malicious racial intent on the part of individuals).

social.”⁹⁰ In adopting a broad definition, this Essay jettisons the individual-perpetrator-and-intent paradigm that dominates conceptions of racial violence within the law. It does so because that paradigm not only limits the scope of what is considered racial violence but also limits the conception of who is harmed to individuals only, obscuring the impact of racial violence on marginalized groups, institutions, and societal structures. Finally, the definition adopted by this Essay presupposes that actions are committed against a racially subordinated group by a racially dominant group.

Using that definition, racial violence as defined by this Essay includes, but is not limited to, lynchings, mob violence, exclusion from spaces or opportunities, verbal abuse, threats, and even microaggressions. Racial violence may be committed by the state or by private actors with the sanction of the state, exemplified as state inaction in failing to stop or punish the acts of violence. Indeed, in some whites-only municipalities, state officials tacitly encouraged violence by expressing support for white people’s right to exclude nonwhite, and particularly Black, people.⁹¹ Critically, the broader definition adapts to social norms of the time, capturing actions by a racially dominant group that are not unlawful, but still cause geographically localized injury to a racially subordinated group. For example, while employing acts of physical violence against Black persons as a means of keeping them out of certain municipalities is no longer socially acceptable or legal,⁹² it is socially acceptable and legal for police to identify legitimate but pretextual reasons to stop motorists based on their race, particularly in areas where they do not expect Black motorists to exist.⁹³ Both actions may have the effect of geographically localizing injurious harm against Black persons, such that Black persons may avoid the geographic area.⁹⁴

90. Mary R. Jackman, *Violence in Social Life*, 28 *Ann. Rev. Socio.* 387, 405 (2002).

91. See, e.g., William Serrin, *Mayor Hubbard Gives Dearborn What It Wants—and Then Some*, *N.Y. Times*, Jan. 12, 1969, at SM26 (explaining former Dearborn Mayor Orville Hubbard’s support for segregationist policies as a form of “freedom of association,” while also using derogatory language to describe Black people).

92. Indeed, physical violence and the threat thereof was a major tool in deterring Black and other disfavored nonwhite residents from entering sundown towns. See Loewen, *supra* note 4, at 10–12 (describing the ways violence was socially and legally sanctioned as a method to both drive and keep Black residents out of sundown towns throughout the Midwest).

93. See *United States v. Whren*, 53 F.3d 371, 372 (D.C. Cir. 1995), *aff’d*, 517 U.S. 806 (1996) (finding that an otherwise legitimate search or arrest would not be invalidated even if an officer’s decision to act was based on race).

94. Modern-day Black motorists’ aversion to previous sundown towns or areas where Black motorists are likely to be stopped by police is well documented. See David A. Harris, *Driving While Black: Racial Profiling on Our Nation’s Highways*, ACLU (1999), <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways> [<https://perma.cc/24ZU-NQC4>] (describing Black motorists’ aversion to certain highways as a consequence of rampant racial profiling); Ade Onibada, *Sundown Towns Are Still a Problem for Black Drivers*, *BuzzFeed News* (July 22, 2021), <https://www.buzzfeednews.com/article/adeonibada/sundown-towns-racism-black-drivers-tiktok> [<https://perma.cc/3Q5N-SHKV>] (chronicling Black motorists’ aversion to former sundown towns).

But only the broad definition adopted by this Essay would define both actions as racial violence. The broad definition adopted by this Essay acknowledges that racial violence is a “multifaceted genus of behaviors whose component elements vary on continua.”⁹⁵

Professor Ward offers a helpful analytical framework through which to assess the lasting impact of racial violence on geographic spaces.⁹⁶ He notes that his framework, like the broad definition of racial violence adopted by this Essay, captures “violence directly related to the maintenance of white racial domination.”⁹⁷ His framework analogizes geographic spaces marred by racial violence to microclimates. “Microclimates” is a geological term used to “describe environmental distinctions of small or restricted areas.”⁹⁸ He adds the descriptor “of racial meaning” to describe geographic places where racism was ensconced through racial violence to create and maintain white dominance.⁹⁹ Thus, according to Professor Ward, microclimates of racial meaning are distinct geographic pockets that differ from the areas adjacent to them in significant ways such as demographics, culture, or even environmental sustainability.¹⁰⁰ The distinction of the area is specifically linked to its history of past racial violence.

Critically, if a geographic area fits the definition of a microclimate of racial meaning, one might then start to connect the area’s past racial violence to present conditions. For example, in explaining structural inequality in post-apartheid South Africa, he suggests, “Losses of land, wages, homes, businesses, schools, families, and related material and emotional well-being—and *corresponding benefits among dominant* groups—represent intergenerational exchanges of disadvantage and advantage, respectively, key to enduring structural implications of historical racial violence.”¹⁰¹

The efficacy of the microclimate of racial meaning framework, therefore, is that it helps to identify “spatial variation in the trivialization of black life and to target[] remedial efforts in specific milieus.”¹⁰² Put another way, the framework provides a lens through which to identify

95. Jackman, *supra* note 90, at 405.

96. See Ward, *Microclimates of Racial Meaning*, *supra* note 29, at 585 (describing how racism leads to the formation of “microclimates of racial meaning”). Sociologists and historians have also utilized a racial microclimate framework. See, e.g., Gerald Horne, *Black and Brown, African Americans and the Mexican Revolution, 1910–1920*, at 57–58 (Neil Foley, Kevin Gaines, Martha Hodes & Scott Sandage eds., 2005); Phylis Cancilla Martinelli, *Undermining Race: Ethnic Identities in Arizona Copper Camps, 1880–1920*, at 83 (2009).

97. Ward, *Microclimates of Racial Meaning*, *supra* note 29, at 612.

98. *Id.* at 603.

99. *Id.* at 583.

100. *Id.* at 600–08.

101. *Id.* at 611 (emphasis added).

102. *Id.* at 583.

particular racialized harms in geographic locations that continue to influence the area today. Indeed, it is one thing to acknowledge that the Deep South has a history of lynching that impacts modern race relations, but another to examine a municipality within the Deep South and see how a history of lynching in that municipality impacts residential migration or policing patterns today.¹⁰³

The framework's focus on geographic concentration of racial violence provides a diagnostic tool to better connect past racial violence in a geographic area to specific racialized harms occurring today in that same geographic area. It also illuminates the need to fashion laws and policies that remediate rather than exacerbate the harms of past racial violence. Finally, as the next section describes, the framework also highlights the critical nexus between past racial violence in a geographic area and the geographic area's "place," particularly when the geographic area is encompassed by school district boundary lines.

C. *Microclimates of Racial Meaning and the Meaning of Place*

When a geographic area fits the definition of a microclimate of racial meaning, it impacts the "place" elements of the geographic area. The term "place" is broadly defined in the scholarly literature as a "meaningful location" that is culturally constructed and can be made and remade, depending upon one's social positionality.¹⁰⁴ This Essay defines the term "place" to mean the historical and contemporary social interactions that give meaning to a space or geographic location; the ideological premises that draw residents to a space or geographic location; and, most importantly, the public and private policies that define what kinds of residents can access the space or geographic location.

This definition derives from geography theorists who suggest that place is "the consequence of social processes" and "a social construct."¹⁰⁵ It also derives from geography theorists who situate place as a historically contingent process in which historical interactions within a space influence contemporary social practices and norms, thereby defining the space's identity.¹⁰⁶ Historical interactions influence the space's "place" by affecting the generative rules and power relations in the space, and they continue to do so unless there is some break in the rules or power relations

103. See *id.* at 581–83 (describing the lasting import of lynchings in Marion, Indiana).

104. See Butler & Sinclair, *supra* note 27, at 66–67.

105. Charles W.J. Withers, Place and the "Spatial Turn" in Geography and in History, 70 *J. Hist. Ideas* 637, 641 (2009).

106. See, e.g., Allan Pred, Place as Historically Contingent Process: Structuration and the Time-Geography of Becoming Places, 74 *Annals Ass'n Am. Geographers* 279, 289–91 (1984) (theorizing that place is the result of historically contingent processes and social practices).

that changes the continuum of interactions between individuals who enter or occupy the space.¹⁰⁷

From that perspective, spaces that are microclimates of racial meaning may have a sense of place shaped by the past history of racial violence unless specific affirmative steps are taken to disrupt and reorganize interactions within the space. The geographic area's "place" provides residents with a preview of what human interactions in the space may be like. It also shapes the behavioral norms and expectations within the geographic space. For example, in a geographic area that meets the definition of a microclimate of racial meaning, Black people may expect to be formally or informally excluded from the area, to experience microaggressions, or to be frequently stopped by police.¹⁰⁸ In contrast, white residents in the same geographic space may develop an expectation of not seeing Black residents and may view them as interlopers who need to be monitored or policed.¹⁰⁹ The net result of this place element is to recruit or repel—welcome or dissuade—residents to or from entering the space. A geographic area's place can thus serve as a catalyst for contemporary migration patterns. Consequently, spaces that formerly excluded nonwhite residents by law or threat of violence no longer have to do so in order to maintain their whites-only status. Instead, the geographic area's entrenched sense of place does the same work, though in a manner much less obvious than laws or threats of violence.

Moreover, racialization of a geographic space's place may occur.¹¹⁰ The racialization of a place consists of a process whereby "residential location and community are carried and placed on racial identity."¹¹¹ Plainly stated, this means the space or geographic location itself becomes an integral part of the process of hegemonic racial formation. Similar to the process of racialization that occurred when certain white ethnic groups moved to the suburbs, attraction to a geographic location because it is a racialized place serves as a conduit for lawfully establishing a racial hierarchy. To the extent that the place elements, rather than law or violence, contribute to migration patterns, the geographic space provides an ostensibly race-neutral vehicle through which to organize along racial lines, societal structures, lived experiences, and access to resources. Geographic

107. Id. at 291 ("[T]he historically specific manner in which the establishment, reproduction, and transformation of power relations contributes to the becoming of place is contingent upon the interconnections existing between micro-level, or person-to-person, and macro-level, or inter-institutional, expressions of those relations.").

108. See Elijah Anderson, *The White Space*, 1 *Socio. Race & Ethnicity* 10, 15–16 (2015); Geoff Ward, *Living Histories of White Supremacist Policing: Towards Transformative Justice*, 15 *Du Bois Rev.* 167, 174 (2018).

109. Anderson, *supra* note 108, at 13–15.

110. See Boddie, *supra* note 26, at 437; John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope From a Mountain of Despair"*, 143 *U. Pa. L. Rev.* 1233, 1235 (1995).

111. Calmore, *supra* note 110, at 1235.

spaces that are racialized places “correlate with and reinforce cultural norms about spatial belonging and power,” or lack thereof.¹¹² A racialized place affirms one’s membership in a particular race via access to the geographic space. When a geographic location can aptly be characterized as a microclimate of racial meaning, racialization of the place is nearly inevitable. As the next Part demonstrates, school districts that encompass formerly whites-only municipalities provide a window into the intersection between microclimates of racial meaning, racialized places, and the educational distributional consequences thereof.

II. GROSSE POINTE, MICHIGAN: A CASE STUDY

Many suburban municipalities throughout the country are aptly characterized as formerly whites-only cities, particularly those in the midwestern parts of the United States.¹¹³ Today many of those suburbs remain predominantly white, creating patterns of racialized spatial inequality in that region.¹¹⁴ The school districts in those areas often replicate the same patterns of racialized spatial inequality.¹¹⁵ Such is the case because school districts in the Midwest tend to be fragmented, meaning the boundary lines of the school districts track municipal boundary lines.¹¹⁶ As a result, the Midwest region not only has high levels of interdistrict racial segregation¹¹⁷ but also egregious examples of white island districts, again defined as predominantly white and affluent school districts that are situated in the middle of racially and economically diverse metropolitan areas.¹¹⁸ Yet the existence of such districts is seen, both normatively and as a matter of law, as a byproduct of individual choices in residential location, as opposed to intentional racial discrimination.

112. Boddie, *supra* note 26, at 438; Ronald Wheeler, 108 *Law Libr. J.* 321, 323 (2016) (describing Black people’s avoidance of Dearborn, Michigan, because of its history of hostility to Black people and citing one nearby resident’s experiences of their father’s harassment by the Dearborn police and fear for his children’s safety if the children even rode their bikes into Dearborn).

113. See Loewen, *supra* note 4, at 59–67 (describing sundown towns in the Midwest and finding that all-white communities were prevalent throughout the Midwest).

114. See *id.* at 410–16 (describing the sundown history of suburbs throughout the Midwest and noting that those suburbs have maintained “almost an iron curtain” dividing municipalities in that region by race).

115. See *infra* section II.A.

116. See Kendra Bischoff, *School District Fragmentation and Racial Residential Segregation: How Do Boundaries Matter?*, 44 *Urb. Affs. Rev.* 182, 197 (2008) (describing the connection between school district fragmentation and racial segregation in schools in the Midwest).

117. See Halley Potter, *School Segregation in U.S. Metro Areas*, Century Found. (May 17, 2022), <https://tcf.org/content/report/school-segregation-in-u-s-metro-areas/> [<https://perma.cc/RBH2-ZHNS>] (examining interdistrict school segregation in U.S. metropolitan areas and finding that 58% of school segregation in the Midwest is caused by interdistrict segregation).

118. Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2433.

The Part that follows provides a general overview of how microclimates of racial meaning intersect with racialized places when enclosed by school district boundary lines. It then applies the microclimates of racial meaning framework to a formerly whites-only municipality—Grosse Pointe, Michigan—to reframe the normative narrative and highlight the consequences of maintaining school district boundary lines around a formerly whites-only municipality. It concludes by demonstrating the ways in which Grosse Pointe’s origins as a whites-only enclave and microclimate of racial meaning have far-reaching implications for Grosse Pointe’s school district.

A. *School Districts as Microclimates of Racial Meaning and Racialized Places*

School districts that encompass formerly whites-only municipalities illustrate the symbiotic relationship between microclimates of racial meaning and racialized places. They do so in two important ways. First, states afford school districts a great deal of power and autonomy.¹¹⁹ Given the autonomy and power afforded a school district, the geographic area encompassed by the district dictates a great deal about the way the district can operate. When a district consists of a geographic area that is a microclimate of racial meaning, the history of that area influences the district’s ability to marshal economic, social, and human capital. In the case of districts that encompass formerly whites-only municipalities, when the municipalities remain white in contemporary times, the school districts become racialized as white places.

Places racialized as white have greater prestige and material resources because of the value associated with whiteness.¹²⁰ Indeed, being characterized as white has tremendous value both as a normative matter and as a matter of accumulating tangible property.¹²¹ The normative and tangible

119. See *infra* section III.A.

120. See Harris, *Whiteness as Property*, *supra* note 33, at 1747–48 (describing the value associated with being characterized as white and noting that “[b]ecause of white supremacy, whiteness was not merely a descriptive or ascriptive characteristic—it was property of overwhelming significance and value”).

121. As a normative matter, people recognize the benefits of existing within American society as a white, rather than a nonwhite, person. A lawsuit in which a woman sued for wrongful birth after a sperm mix-up which led to her giving birth to a Black biracial child instead of a white child illustrates the normative value of being characterized as white. *Cramblett v. Midwest Sperm Bank, LLC*, 230 F. Supp. 3d 865, 868 (N.D. Ill. 2017) (articulating harms of having a nonwhite child, including racial prejudice). As a matter of tangible property, being raced as white can bring substantial material benefits, such as increasing the value of one’s home reappraisal. See, e.g., Debra Kamin, *Widespread Racial Bias Found in Home Appraisals*, *N.Y. Times* (Nov. 2, 2022), <https://www.nytimes.com/2022/11/02/realestate/racial-bias-home-appraisals.html> (on file with the *Columbia Law Review*) (examining neighborhoods where the only discernible differences in the communities was their racial composition and finding that “[w]hite homeowners can expect their homes’ values to increase at twice the rate of homeowners of color”).

value is imbued upon geographic spaces that are predominantly white.¹²² The reasons for this are varied and complex. An important one worth highlighting is the way in which the law legitimizes the accumulation of tangible benefits linked to the racially exclusionary origins of a geographic area.

Stated differently, people historically moved to racially exclusionary municipalities for greater prestige and access to more amenities and resources.¹²³ The whiteness of a geographic area thus simultaneously served as a marker of higher prestige and substantively afforded residents more resources because businesses and people with means moved into those areas.¹²⁴ This in turn created a cyclical relationship between white geographic areas and access to greater material resources. When school district boundary lines encompass areas that originated as whites-only municipalities, this engrained relationship allows residents to realize the expected gains associated with whites-only geographic areas and to capitalize on the violent history of racial exclusion. Such a situation also perversely incentivizes maintaining the racial homogeneity of the geographic area. Thus, as Professor Cheryl Harris notes, the value of whiteness is both constructed and reified by the state insofar as “[l]egality places the power of the state behind particular expectations and legitimates them, notwithstanding their violent racial origins.”¹²⁵

Second, and most critically, when a place is racialized as white, that place may also develop a positive reputation that is concomitant with its white demographics. The term “reputation” is defined in this context to mean enhanced social status and respect of others. The positive reputation may in turn become entrenched as a tangible property interest¹²⁶ for the residents of the municipality such that they are incentivized to maintain

122. Kamin, *supra* note 121 (“The higher the proportion of white residents in each community, the higher the appraised value of individual homes.”); see also Faith Abubey, Study: Walmart Stores in “White” Neighborhoods Are Better, *USA Today* (Sept. 7, 2016), <https://www.usatoday.com/story/money/nation-now/2016/09/07/study-walmart-stores-better-white-neighborhoods/89948300/> [<https://perma.cc/5SYH-37RD>] (chronicling a study showing that Walmart stores in predominantly white neighborhoods were cleaner and better organized and staffed).

123. See *supra* Part I.

124. See Freund, *supra* note 63, at 197 (“Public policies generated comparable market activity, development patterns, and wealth creation in metropolitan regions nationwide.”).

125. Cheryl I. Harris, Reflections on *Whiteness as Property*, 134 *Harv. L. Rev. Forum* 1, 8 (2020).

126. While the law does not formally recognize reputation as a property interest, scholars have made compelling arguments across a variety of contexts that the law should recognize it as such, or at least should recognize it as something valuable that can be traded upon and protected. See, e.g., Joseph Blocher, Reputation as Property in Virtual Economies, 118 *Yale L.J. Forum* 120, 123 (2009) (arguing that status and reputation online are a form of property).

the demographics as a means of protecting their property interest.¹²⁷ White people who exist in these places then “organize to protect racially identified communities and the maldistribution of resources that skews in their favor.”¹²⁸ Belonging within the space such that one feels comfortable and a part of the community is also pegged to being raced as white.¹²⁹ The ideological premises that draw people to the space are very much intertwined with the perceived and actual benefits of the space being predominantly white. The historical interactions that created the all-white space thus are reproduced such that they reify the space as a white place.

Importantly, in places racialized as white, a phenomenon that Professor Elise Boddie calls “racial territoriality” occurs wherein the space is both “claimed [and] defended because of [its] conscious or unconscious racial associations” with whiteness.¹³⁰ People in turn classify the spaces based on “racialized perceptions, attitudes, and cultural norms.”¹³¹ If a space encompassed by a school districts is perceived as a white space and place, intrusions on that space and place by those raced as nonwhite are viewed as “theft.”¹³² Indeed, children of color are disproportionately reported for potential improper enrollment in predominantly white school districts.¹³³

The way in which the state regulates—or fails to regulate—school district boundary lines contributes substantially both to racialization of place and to racial territoriality in school districts that encompass formerly whites-only municipalities. This is especially true in the context of schools because reputation plays a pivotal role in constructing high-quality

127. See, e.g., LaToya Baldwin Clark, *Education as Property*, 105 Va. L. Rev. 397, 410 (2019) (“[O]fficials treat education as *transferrable*, such that a taxpayer, by virtue of his contribution to the school district, assigns his . . . interest in public education to the children in the district. Allowing children who do not live in the district to attend the district’s schools violates this taxpayer right.”).

128. Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. Rev. 1540, 1547 (2012).

129. Cf. Anderson, *supra* note 108, at 16 (“[B]eing white is a fundamental requirement for acceptance and a sense of belonging in the white space.”).

130. Boddie, *supra* note 26, at 446.

131. *Id.* at 443.

132. See LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. Rev. 566, 625 (2021) (arguing that residency laws that equate improper enrollment in a district as theft rely upon “racial stereotypes that brand poor Blackness as inferior [and] justify the hoarding by residence because ‘nonresident’ and ‘Black and poor’ correspond”).

133. See Avi Wolfman-Arent, *Suburban Schools’ Residency Enforcement Mostly Affects Kids of Color*, WHYY (May 1, 2018), <https://whyy.org/segments/suburban-schools-residency-enforcement-disproportionately-affects-kids-of-color/> [<https://perma.cc/7QRD-92A8>] (“[T]he pool of disenrolled students and the pool of students who received residency notifications [in Philadelphia-area school districts] always had a greater percentage of minority students than the districts as a whole.”).

schools, particularly by attracting residents and high-quality teachers.¹³⁴ It becomes a self-fulfilling prophecy: The whiter the schools, the more tangible and intangible resources they have, allowing them to continue producing high-quality educational outputs and being considered high-quality schools.

As the sections that follow demonstrate, applying the microclimates of racial meaning framework to Grosse Pointe, Michigan, elucidates the connections between past racial violence and persistent racial segregation in districts like the Grosse Pointe Public School System (GPPSS). A subsequent examination of GPPSS illustrates the ways in which bounding a geographic space that is a microclimate of racial meaning with school district boundary lines results in racialization of the school district place, allowing the district to become ensconced as a white island district.

B. *Situating Grosse Pointe as a Microclimate of Racial Meaning*

Private action, state action (or lack thereof), and violence all shaped Grosse Pointe's origin story. Indeed, Grosse Pointe began as a sundown town, prohibiting nonwhite groups from living within it or even being within the suburb's borders after sunset.¹³⁵ While some nonwhite domestic staff were tolerated, nonwhite, and particularly Black, residents, were strictly prohibited.¹³⁶

More critically, during the post-World War II suburbanization boom, private action shaped Grosse Pointe's origins as a whites-only city. The National Association of Real Estate Boards adopted a code of ethics that enjoined members from "introducing into a neighborhood . . . members of any race or nationality . . . whose presence will clearly be detrimental to property values."¹³⁷ The Grosse Pointe Realtor's Association fully embraced the national ethical code, developing a scientific method to ensure compliance. In 1945, they adopted a point system to rank the desirability of potential homebuyers. The system used point-based categories to create a community that furthered a specific brand of white, Anglo-Saxon, Protestant Americanness. The categories included an assessment of whether the potential buyer's name and way of living were "typically American"; how "swarthy" their skin tone was; how "pronounced" their

134. See Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2399–400 ("The combination of the political, economic, and social functions of school district boundary lines leads to their conveying critical information that influences residential sorting choices and allows people to fulfill associational preferences.").

135. See *supra* note 4 and accompanying text.

136. Coseboom, *supra* note 5, at 61 ("Although some Grosse Pointe families claimed to be proud of the black domestics who had 'become almost like a member of the family,' . . . [they] balked at the idea of a black[] [people] living in the house next door.").

137. Wiese, *supra* note 85, at 41 (alterations in original) (quoting *The Realtors Code of Ethics*, Nat'l Real Estate J., Apr. 20, 1939, at 40).

accent was; how “slovenly” or “flashy” their dress was; and whether their familial status accorded with a heteronormative ideal.¹³⁸

To be eligible to purchase a home, the prospective homebuyer had to meet a minimum number of points based on their ethnicity: “[P]eople of Polish descent required only 50 to 55 points; Irish 55; Italians, Greeks, Spanish, and Lebanese 75; and Jews 85.”¹³⁹ People of less-favored ethnicities received fewer points for meeting the same criteria. For example, “conservative dress earned a Jewish person three points, as opposed to four for a non-Jewish person.”¹⁴⁰ Asian and Black prospective homebuyers were excluded altogether from the point system, making them ineligible to buy in Grosse Pointe.¹⁴¹ If a prospective homebuyer failed to accumulate the necessary points, their name was circulated among local real estate agents and those agents would not sell them a home in Grosse Pointe.¹⁴² If brokers sold to persons who did not meet the required points, the brokers were required to forfeit the commission or were expelled from the brokers’ association.¹⁴³

The consequence of Grosse Pointe’s point system was to create a particularized notion of elite suburban whiteness that drew on previously entrenched hierarchical categories of race and ethnicity. The point system tethered racial boundaries with geographic boundaries, allowing families with the greatest racial advantage to be concentrated in one geographic location within the metropolitan area. It also tethered racial malleability—or lack thereof—with geography. Eligibility to purchase in Grosse Pointe was synonymous with being admitted into American whiteness; ineligibility meant denial of entry into American whiteness.

The point system remained in place until early 1960 when its existence was made public during the course of a civil lawsuit.¹⁴⁴ Public outcry regarding the discriminatory point system was fierce. Brokers and Grosse Pointe residents defended the point system on the grounds that it protected property values because the presence of nonwhite, particularly Black, residents lowered property values.¹⁴⁵ In response, an administrative rule prohibiting broker discrimination in selling property was enacted—though it was later ruled unconstitutional by the Michigan Supreme Court.¹⁴⁶

After the point system was formally demolished, the spirit of the point system remained. It wasn’t until 1966 that the first Black family purchased

138. Maniere, *supra* note 3, at 3.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 6–8 (recounting specific interviews with residents and brokers).

146. *McKibbin v. Mich. Corp. & Sec. Comm’n*, 119 N.W.2d 557, 566 (1963).

a home in Grosse Pointe.¹⁴⁷ Even then, the family had to use a white man as a straw buyer to purchase the home for them.¹⁴⁸ When it was discovered the house would be occupied by a Black family, the Michigan Civil Rights Commission collaborated to impress upon residents the Black family's middle class status and elite credentials.¹⁴⁹ They also emphasized that the family purchased the home because it was a great place to raise a family and because of the city's great recreational facilities, not because they sought to make any kind of political statement.¹⁵⁰ By emphasizing the family's socioeconomic status and shared sensibilities, the Commission hoped to allay white residents' fears that the presence of a Black family would diminish the municipality's elite status and to preempt violence.¹⁵¹ Residents of Grosse Pointe nonetheless protested their presence with violence. Men, women, and teenagers drove by the home in rotating shifts shouting racial slurs, made menacing phone calls to the Black family, and attempted to firebomb the house.¹⁵² The family moved after residing in the house for only four months.¹⁵³ It took six years for another Black family to purchase a home in Grosse Pointe in 1972.¹⁵⁴ Though they did not experience the same violence as the prior family, the Grosse Pointe mayor agreed to deploy city resources to protect them on their move-in day.¹⁵⁵

While the point system and citizen violence played an instrumental role in constructing Grosse Pointe as a whites-only suburb, inaction by the state of Michigan and the Grosse Pointe local government ensured that the municipality would remain predominantly white. The Michigan state legislature failed to pass several proposed bills to limit discrimination in housing, including a bill that would have prohibited brokers from engaging in the blatant race-based discrimination that occurred with the Grosse Pointe point system.¹⁵⁶ Incentivized by the Detroit rebellions in the summer of 1967 and a desire to preempt further violence, Michigan finally passed a fair housing bill prohibiting discrimination in the sale and rental of housing in 1968.¹⁵⁷ Yet the passage of a prohibitory fair housing law

147. Cosseboom, *supra* note 5, at 48.

148. *Id.* at 51.

149. Maniere, *supra* note 3, at 9–10.

150. *Id.*

151. *Id.*

152. See Cosseboom, *supra* note 5, at 52–56 (describing racial harassment levied against the family, as well as police response and the lack thereof); Sidney Fine, *Michigan and Housing Discrimination*, 23 *Mich. Hist. Rev.* 81, 106 (1997) (“The family was welcomed by some but opposed by others, including motorists who paraded in front of the house shouting [racial slurs].”).

153. Maniere, *supra* note 3, at 11 (noting that the family moved because of a change in jobs).

154. *Id.* at 13.

155. *Id.*

156. Fine, *supra* note 152, at 86–87 (describing proposed housing antidiscrimination legislation rejected by the Michigan state legislature).

157. *Id.* at 109.

merely opened up housing markets and was arguably never intended to facilitate meaningful integration.¹⁵⁸ Indeed, few Black residents had the financial means to purchase a home in a suburb like Grosse Pointe. Legislators passing prohibitory fair housing laws were aware of that reality.¹⁵⁹

Fair housing laws at the state level thus masked a significant structural lever of racial exclusion: socioeconomic status. At the local level, Grosse Pointe further compounded the problem by refusing to pass a local fair housing ordinance in four out of its five subcommunities.¹⁶⁰ If all five subcommunities had passed a local fair housing ordinance, it would have conveyed an important symbolic message that all were welcome. More substantively, it would have also subjected realtors who violated the ordinance to criminal rather than civil penalties.¹⁶¹ The failure to unanimously pass such an ordinance reified Grosse Pointe's reputation as an exclusive haven for white people only.

The point system, verbal and physical threats, and most importantly limited state and local government action should be considered forms of racial violence that operated to construct Grosse Pointe as a whites-only municipality. The geographic concentration of that racial violence may have attracted white residents with means while repelling Black and some other nonwhite groups.¹⁶² While the exact environmental influence of the racial violence cannot be precisely quantified, Grosse Pointe's reputation was and remains contoured by race.¹⁶³ Indeed, Grosse Pointe's origin story as a whites-only sundown town continues to impact the municipality today. The five subcommunities that compose Grosse Pointe remain overwhelmingly white.¹⁶⁴ Racial violence aimed at the small number of Black residents

158. Cf. Audrey G. McFarlane, *The Properties of Integration: Mixed-Income Housing as Discrimination Management*, 66 *UCLA L. Rev.* 1140, 1180 (2019) (critiquing the Fair Housing Act because it "utilized a limited prohibitory approach and promoted a very limited form of integration when it advanced housing laws that, in theory, opened up housing markets to everyone regardless of race").

159. Evidence from the Congressional Record shows that legislators at the federal level were aware that structural racial disparities would keep all but a small number of Black residents from accessing white suburbs. See 114 *Cong. Rec.* 2279 (1968) (statement of Sen. Brooke) ("Fair housing does not promise to end the ghetto; . . . but it will make it possible for those *who have the resources* to escape the stranglehold now suffocating the inner cities of America." (emphasis added)).

160. Maniere, *supra* note 3, at 14.

161. *Id.* at 15.

162. See Cosseboom, *supra* note 5, at 94 (quoting a Black teacher who explained that "[t]he houses in Grosse Pointe are priced so you won't find black[] [people] running out even if it were open, and since it has been 'closed' the black[] [people] with enough money have gone elsewhere and had their beautiful homes" (internal quotation marks omitted)).

163. See Alana Semuels & Nat'l J., *This Is Where White People Live*, *Atlantic* (Apr. 17, 2015), <https://www.theatlantic.com/business/archive/2015/04/this-is-where-white-people-live/425220/> (on file with the *Columbia Law Review*).

164. U.S. Census Bureau, *Grosse Pointe City*, *supra* note 8.

who live there still occasionally occurs.¹⁶⁵ Owing to the racial wealth gap, financial barriers continue to preclude meaningful numbers of nonwhite residents from locating in Grosse Pointe. From this perspective, Grosse Pointe could be considered a microclimate of racial meaning.

Conversely, the actions and inaction of the state created the modern-day predominantly Black and economically struggling city of Detroit. During the Great Migration, Black migrants flocked to Detroit.¹⁶⁶ Owing to racial discrimination, they were locked out of the higher-paying jobs that would enable them to access better housing; even those who could afford better housing were stymied by restrictive covenants, discriminatory real estate brokers, and banks.¹⁶⁷ Black people in Detroit were confined to the worst housing stock in the city and could not obtain loans to improve their properties, causing city officials to condemn many areas as blighted.¹⁶⁸ The net result offered convincing evidence to white homeowners that Black people would ruin a white neighborhood, thereby incentivizing white flight and violence to maintain predominantly white suburbs like Grosse Pointe.¹⁶⁹ Consequently, this process of housing segregation in both Detroit *and* Grosse Pointe “set into motion a chain reaction that reinforced patterns of racial inequality”¹⁷⁰ still felt today.

C. *Grosse Pointe Public School District as a Racialized Place*

The geographic boundary lines of GPPSS were established in 1921.¹⁷¹ The boundary lines encompass the five subcommunities within Grosse Pointe—Grosse Pointe Park, Grosse Pointe City, Grosse Pointe Shores, Grosse Pointe Farms, Grosse Pointe Woods—and portions of the city of Harper Woods.¹⁷² All six municipalities began as whites-only municipalities

165. See, e.g., Ingrid Kelley & Fox 2 Staff, *Grosse Pointe Police Say 15-Year-Old Made Makeshift Noose in Panera Bathroom*, Fox 2 Detroit (Jan. 5, 2023), <https://www.fox2detroit.com/news/grosse-pointe-police-say-15-year-old-made-makeshift-noose-in-panera-bathroom> [<https://perma.cc/L9CH-HXT2>] (describing how a fifteen-year-old made a makeshift noose and left it in a restaurant bathroom as a message to the establishment’s majority-Black workforce); Randy Wimbley & David Komer, *Grosse Pointe Park Man Hangs KKK Flag in Window Facing Black Neighbor Sparking Outrage*, Fox 2 Detroit (Feb. 17, 2021), <https://www.fox2detroit.com/news/grosse-pointe-park-man-hangs-kkk-flag-in-window-facing-black-neighbor-sparks-outrage> [<https://perma.cc/F8XZ-GU4W>] (last updated Feb. 27, 2021).

166. Sugrue, *supra* note 59, at 23–24 (describing the influx of Black migrants as part of the Great Migration, noting that “the majority of Detroit’s black population was confined to a densely populated, sixty-square-block section of the city’s Lower East Side which the migrants named . . . Paradise Valley”).

167. *Id.* at 34.

168. *Id.* at 36.

169. *Id.*

170. *Id.* at 34.

171. Brief for Petitioner the Grosse Pointe Public School System at 14, *Milliken v. Bradley*, 418 U.S. 717 (1974) (No. 73-436), 1974 WL 185673.

172. *Strehlke v. Grosse Pointe Pub. Schs. Sys.*, No. 14-11183, 2014 WL 4603482, at *1 (E.D. Mich. Sept. 15, 2014).

and sundown towns.¹⁷³ As such, the GPPSS boundaries encompassed municipalities that, by law and through violence, excluded nonwhite people. The territorial base encompassed by GPPSS thus fit the description of a microclimate of racial meaning.¹⁷⁴ For those reasons, GPPSS's place origins were racialized as white.

Despite fair housing laws that make it possible for all persons to move into the GPPSS boundary lines, GPPSS's place status remains racialized as white. For starters, the demographics of the five Grosse Pointe subcommunities are 80% or more white.¹⁷⁵ In Harper Woods, white flight led to an infusion of Black residents to the point that white people are no longer the majority.¹⁷⁶ But only a small portion of Harper Woods's more racially diverse population lives within the GPPSS boundary lines. Even then, predominantly Black Harper Woods residents report being culturally constructed as outsiders, viewed as gratuitously gifted a GPPSS education for their children, rather than as citizens who live and pay taxes within the GPPSS boundary lines.¹⁷⁷ To be sure, the racial demographics of the district—in which 83% of GPPSS students are white, and much of the nonwhite enrollment consists of students who live in Harper Woods—contribute to the outsider cultural construction.¹⁷⁸

Further, GPPSS is considered one of the best school districts both in the state of Michigan and nationally. People may move to Grosse Pointe

173. See Loewen, *supra* note 4, at 117.

174. See *supra* section II.B.

175. Compare U.S. Census Bureau, Grosse Pointe City, *supra* note 8 (90.5% white residents), U.S. Census Bureau, QuickFacts: Grosse Pointe Farms City, Michigan, <https://www.census.gov/quickfacts/fact/table/grossepointefarmscitymichigan/SBO010217> [<https://perma.cc/RHG4-9JPV>] (last visited Feb. 9, 2023) (92.2% white residents), U.S. Census Bureau, QuickFacts: Grosse Pointe Park City, Michigan, <https://www.census.gov/quickfacts/grossepointeparkcitymichigan> [<https://perma.cc/R2JF-84SW>] (last visited Feb. 28, 2023) (84.3% white residents), and U.S. Census Bureau, QuickFacts: Grosse Pointe Woods City, Michigan, <https://www.census.gov/quickfacts/grossepointewoodscitymichigan> [<https://perma.cc/D6HN-4Z6L>] (last visited Feb. 9, 2023) (90.4% white residents), with U.S. Census Bureau, QuickFacts: Harper Woods City, Michigan, <https://www.census.gov/quickfacts/harperwoodscitymichigan> [<https://perma.cc/QT6E-P8JX>] (last visited Feb. 9, 2023) (30.1% white residents).

176. Nicquel Terry, Black Influx Changes Face of Some Metro Area Suburbs, *Detroit News* (Nov. 15, 2016), <https://www.detroitnews.com/story/news/local/macomb-county/2016/11/15/black-influx-changes-face-metro-area-suburbs/93940394/> [<https://perma.cc/3PNP-EERD>] (reporting that the City of Harper Woods experienced a 383% increase in Black residents over a fourteen-year span beginning in the 1990s).

177. See, e.g., Alex Haring, As Grosse Pointe Weighs School Closures, Tensions Rise in the Community, *Detroit Metro Times* (June 19, 2019), <https://www.metrotimes.com/news/as-grosse-pointe-weighs-school-closures-tensions-rise-in-the-community-21931693> [<https://perma.cc/RRF9-5HH2>] (describing tensions between Harper Woods and Grosse Pointe residents contoured by race and class and quoting a school board trustee as saying that “Harper Woods residents are ‘given the gift of a Grosse Pointe education’”).

178. Grosse Pointe Public Schools, Michigan, MI, Nat'l Ctr. for Educ. Stat., <https://nces.ed.gov/Programs/Edge/ACSDashboard/2625740> [<https://perma.cc/F2X4-AHGL>] (last visited Feb. 9, 2023).

communities specifically to access the public schools. In this context, GPPSS may be capitalizing on a positive reputational property interest linked to GPPSS's territorial base consisting of formerly whites-only municipalities. Stated differently, residents may be flocking to GPPSS schools because of the racially exclusionary origins upon which the district continues to capitalize.¹⁷⁹ This claim is supported by the research showing that "good" school districts are socially constructed to mean districts with more white students and fewer nonwhite, particularly Black, students.¹⁸⁰ Further, the reputation of a school district as a "good district" is more important than test scores or any tangible measure of school quality in some parents' enrollment decisions.¹⁸¹ Given that the territorial base that encompasses GPPSS is a microclimate of racial meaning, the school district's reputation is undoubtedly colored by that history and further influences migration patterns. Compounding the race-based social construction problem is the symbiotic relationship between school district demographics and home values: the whiter the school district, the higher the home prices in the district.¹⁸² These realities all aid in GPPSS being racialized as a white place.

In addition, GPPSS's place is also racialized as white due to ostensibly race-neutral laws and policies that entrench prior white advantage. For example, financial limitations linked to the racial wealth gap and racialized income gaps keep nonwhite, particularly Black, residents from being able to purchase or rent homes within the GPPSS boundary lines.¹⁸³ Moreover, high home prices in Grosse Pointe arguably reflect the spatial effects of racial exclusion. Stated differently, high property values in Grosse Pointe were shorn through constructing a suburb modeled on exclusivity. The

179. See, e.g., Nancy Derringer, *Fortress Grosse Pointe: In World of School Choice, Community Says 'Stay Out'*, *Bridge Mich.* (June 16, 2013), <https://www.bridgemi.com/talent-education/fortress-grosse-pointe-world-school-choice-community-says-stay-out> [<https://perma.cc/Y89Z-C5TQ>] (describing citizen opposition to Detroit students joining GPPSS and quoting one resident as saying, "I moved from Detroit to get away from those thugs, and I don't want them in my schools" (internal quotation marks omitted)).

180. See Holme, *supra* note 32, at 194 ("The parents in this study surmised a great deal about a school's quality by the status of its students: [T]hose schools serving higher-status (Whiter and/or wealthier) students were presumed to be good, while those serving lower-status students (lower income and/or students of color) were presumed to be unsatisfactory.").

181. *Id.* at 190.

182. See, e.g., Amy Stuart Wells, Douglas Ready, Lauren Fox, Miya Warner, Allison Roda, Tameka Spence, Elizabeth Williams & Allen Wright, *Ctr. for Understanding Race & Educ., Divided We Fall: The Story of Separate and Unequal Suburban Schools 60 Years After *Brown v. Board of Education* 14* (2014) (examining home values in Nassau County, New York, and finding the same house in a high minority enrollment district was worth half as much as the home in a low minority enrollment district).

183. See William "Sandy" Darity & Kirsten Mullen, *Black Reparations and the Racial Wealth Gap*, *Brookings Inst.* (June 15, 2020), <https://www.brookings.edu/blog/up-front/2020/06/15/black-reparations-and-the-racial-wealth-gap/> [<https://perma.cc/7YRK-LSFX>] ("The average Black household has a net worth \$800,000 lower than the average white household. This, in turn, corresponds to a vast chasm in capabilities and opportunities between Black[] [people] and White[] [people].").

exclusivity of the suburb was arguably forged by intentionally excluding nonwhite residents.¹⁸⁴ Historic exclusion of nonwhite residents from a municipality or neighborhood can have modern consequences for home values in that municipality or neighborhood. For example, recent empirical research demonstrates that race continues to impact home values, with homes in predominantly white areas valued higher.¹⁸⁵ Researchers suggest this occurs in part because “appraisers continue to use neighborhood racial composition to help determine which homes are comparable . . . [thereby] constructing a racialized housing market” that favors historically white neighborhoods.¹⁸⁶ Thus, the modern-day high property values in Grosse Pointe that serve as a barrier to nonwhite people accessing the neighborhood arguably reflect the suburbs’ racial homogeneity. Price is racialized because the space is racialized.

State laws that limit school attendance to those who live within the boundary lines of the district compound the racial inequality problem. Further, heavy reliance on local property taxes to finance schools ensures that GPPSS schools remain predominantly white and well resourced.¹⁸⁷

GPPSS also enacts policies to police its borders in ways that ensure the district remains predominantly white. Although the district is facing declining and low enrollment, it refuses to participate in a statewide interdistrict school choice program¹⁸⁸ that would allow students from Detroit to enroll in GPPSS schools.¹⁸⁹ It also invests in a substantial infrastructure to catch and expel non-GPPSS residents who attend GPPSS

184. See William K. Stevens, *Newcomers Alter Face of Exclusive Grosse Pointe*, *N.Y. Times*, Nov. 5, 1974, at 37 (on file with the *Columbia Law Review*) (describing Grosse Pointe as synonymous with money, influence, and “a particular brand of snobbish racism and spectacular consumption”).

185. See Junia Howell & Elizabeth Korver-Glenn, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980–2015*, 68 *Soc. Probs.* 1051, 1068–69 (2021) (detailing the impact of racial composition on housing values and noting that “since 1980, homes in White neighborhoods appreciated \$194,000 more than comparable homes in otherwise comparable communities of color”).

186. *Id.*

187. See Mich. Comp. Laws Ann. § 211.1 (West 2023) (“[A]ll property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.”); Mich. Comp. Laws Ann. § 380.1218 (West 2023) (“School taxes shall be assessed, levied, and collected in the manner provided in Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Michigan Compiled Laws.”).

188. See Mich. Comp. Laws Ann. § 388.1705c (West 2023) (“[A] district shall determine whether or not it will accept applications for enrollment by nonresident applicants residing in a district located in a contiguous intermediate district for the next school year.”).

189. Kevin Mahnken, *Falling Birth Rates Spur Clash Over Race and School Choice in Michigan*, *The74* (June 24, 2021), <https://www.the74million.org/article/falling-birth-rates-spur-clash-over-race-and-school-choice-in-michigan/> [<https://perma.cc/9A2R-RX55>] (chronicling GPPSS’s refusal to participate in the state school choice program and noting that they are “in clear need of more children to educate, but unwilling to accept the predominantly nonwhite and low-income pupils nearest to them”).

schools by, among other things, establishing an anonymous tip line to report nonresidents and paying private investigators to tail students suspected of living outside the GPPSS borders.¹⁹⁰ Such policies have the effect of stridently policing the GPPSS boundary lines in ways that ensure GPPSS continues to be racialized as a white place. It also sends a message regarding who is or is not welcome in the district.

Finally, a critical component of an area being a racialized place is that it is significantly different from the surrounding area. One can see such a difference with GPPSS, a clear example of a white island school district.¹⁹¹ It is situated next to the predominantly Black Detroit public school district, which, in stark contrast to GPPSS, suffers from a lack of funding, lack of high-quality and fully certified teachers, and dilapidated facilities.¹⁹² GPPSS's status as a predominantly white district is arguably the product of a social closure process that enables it to monopolize the highest quality schools in the metropolitan area.¹⁹³ GPPSS's territorial base encompassing a microclimate of racial meaning that influences the district's "place" may aid in the social closure process.

Yet neither law nor public policy recognizes the relevance of a district encompassing a space that is a microclimate of racial meaning, or the impact such a situation has on the district's place. The white racialization of the place elements of GPPSS (or any school district that encompasses formerly whites-only municipalities) has important normative and legal implications that are not captured by legal doctrine or public policies related to school district boundary lines. The problem is especially acute for white island districts like GPPSS. Part III considers the doctrinal and policy payoff of acknowledging the existence of a racial microclimate of meaning and its effect on a school district's place. It provides a framework through which to situate the significance of microclimates of racial meaning and place within legal doctrine and public policies related to school district boundary lines.

III. WHITE MUNICIPALITIES, WHITE SCHOOL DISTRICTS: RACIAL PATH DEPENDENCE

The prior Part identified formerly whites-only municipalities as microclimates of racial meaning and analyzed the impact on school districts that encompass formerly whites-only municipalities as their primary territorial base. The microclimates of racial meaning framework helps one identify the nexus between racial violence ensconced within localized geography

190. Rebecca Golden, *Public Schools Use Anonymous Tips, Detectives to Eject Children*, Patch (Dec. 15, 2017), <https://patch.com/michigan/grossepointe/public-schools-use-anonymous-tips-detectives-eject-children> [<https://perma.cc/RW6S-K4K9>] (describing tactics used by GPPSS to detect and expel suspected non-residents).

191. Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2426–28.

192. *Id.*

193. *Id.*

and present-day racial advantage within that same localized geography. While identification is important, the next step is to prescribe points of intervention to alter the connection between geography and present-day racial advantage. Two immediate points of intervention warrant consideration: the Fourteenth Amendment doctrine on school district boundary lines and public policy shaping school district boundary lines.

Before one can see what the interventions might look like, one must first understand the current Fourteenth Amendment and public policy landscape regarding school district boundary lines. The section that follows does that work. It then applies a theoretical lens that helps elucidate what Equal Protection doctrine and state public policies miss, laying the groundwork for proposing new legal and policy frameworks.

A. *School District Boundary Lines Laws and Policies*

A school district is a “territorial unit within a state that has responsibility for the provision of public education within its borders.”¹⁹⁴ As a matter of law, it is a creature of the state and possesses only the powers the state affords it.¹⁹⁵ Yet laws and policies related to school district boundary lines treat the geographic areas that encompass the districts as race-neutral spaces, ignoring the mutually constitutive relationship between race and geography. They fail to account for the ways in which geographic areas bound by school district boundary lines can be microclimates of racial meaning that racialize the school district’s place.¹⁹⁶ Consequently, school district boundary lines effectuate spatialized containment of racialized advantage (or disadvantage) that is codified through law and policy and insulated from constitutional scrutiny. Stated differently, ostensibly race-neutral geographic boundary lines are legally permitted to institutionalize white advantage while also perpetuating racial exclusion and subordination. They do so in the following ways.

194. Richard Briffault, *The Local School District in American Law*, in *Besieged: School Boards and the Future of Education Politics* 24, 25 (William G. Howell ed., 2005) [hereinafter Briffault, *The Local School District*].

195. See, e.g., *Perritt Ltd. v. Kenosha Unified Sch. Dist. No. 1*, 153 F.3d 489, 493 (7th Cir. 1998) (“[I]n Wisconsin, school districts are creatures of state law with express powers granted by statute and implied powers as necessary to execute the powers expressly given.”); *Boyd v. Gulfport Mun. Separate Sch. Dist.*, 821 F.2d 308, 310 (5th Cir. 1987) (“[S]chool districts are considered agencies of the state in Mississippi. Municipal Separate School Districts are creatures of the state just as all other school districts and the boards of trustees have the same powers.”); *Tecumseh Sch. Dist. No. 7 v. Throckmorton*, 403 P.2d 102, 103–04 (Kan. 1965) (“[S]chool districts are purely creatures of the legislature and subject not only to its power to create but its power to modify or dissolve.”); *Silver v. Halifax Cnty. Bd. of Comm’rs*, 805 S.E.2d 320, 341 (N.C. Ct. App. 2017) (“Our [state’s] Supreme Court has long recognized the plenary power of the General Assembly over counties and over the creation and organization of school districts . . .”).

196. See *supra* section I.C.

First, most laws and policies governing school district boundary lines are ideologically committed to local district sovereignty. Every state constitution articulates a right to a free public education, but almost every state delegates the responsibility for providing that education to local school districts.¹⁹⁷ The practical effect of such delegation is that, although school districts are creatures of the state, in practice they have a great deal of power and autonomy to give meaning to the place¹⁹⁸ elements of the district.¹⁹⁹ For example, districts are given the power to decide which students they will allow to receive an education and which students they will generally restrict access to—even if those students reside within the district’s borders.²⁰⁰ The districts are also permitted to raise and spend money solely for the students who reside within the district, with local revenue for schools generated by the property taxes collected from within the school district.²⁰¹ Indeed, almost every state affords local districts the ability to tax, spend, budget, hire, fire, and set curriculum.²⁰²

Yet for school districts that encompass formerly whites-only municipalities, the territorial base upon which the district relies—to generate revenue, furnish a pool of students, enact curricular programing to meet the needs of those students, and hire teachers and staff to serve those students—is contoured by race. This means that, owing to the correlation between race and wealth (or lack thereof), white and affluent districts are able to tax themselves at a lower rate but spend more local money per pupil.²⁰³ The municipality’s historical origins as exclusively white may

197. Briffault, *The Local School District*, *supra* note 194, at 29.

198. Recall the term “place” as used in this Essay means the historical and contemporary social interactions that give meaning to a space or geographic location; the ideological premises that draw residents to a space or geographic location; and, most importantly, the public and private policies that define what kinds of residents can access the space or geographic location. See *supra* section I.C.

199. See Briffault, *The Local School District*, *supra* note 194, at 39–40 (describing the ideological commitment to local control and the ways in which it results in school districts enjoying more autonomy than their formal status as creatures of the state suggests they should).

200. See, e.g., *Martinez v. Bynum*, 461 U.S. 321, 328 (1983) (finding that a Texas bona fide resident statute that allowed the state to only educate students who resided within the school district’s borders, with a bona fide intent to remain living there, did not violate the Fourteenth Amendment’s Equal Protection Clause).

201. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 45–56 (1973) (upholding as constitutional a school-financing scheme that allowed schools to be funded based on taxes collected from the property within the school district).

202. See Aaron Jay Saiger, *The Last Wave: The Rise of the Contingent School District*, 84 N.C. L. Rev. 857, 864 (2006) (“States’ sweeping grants of authority to districts generally include power to tax (a power primarily exercised through the property tax); to budget and to spend; to hire and to fire . . . ; to set curricula; and to establish general policies for the conduct of all aspects of the educational program.”).

203. See, e.g., EdBuild, *Building Equity: Fairness in Property Tax Effort for Education* 21–22 (2017), <https://edbuild.org/content/building-equity/report.pdf> [<https://perma.cc/>

mean that the property values are higher than those in surrounding areas.²⁰⁴ They are able to hire and attract the most-qualified teachers, as high-quality teachers are attracted to whiter and wealthier districts.²⁰⁵ They are able to offer more advanced curricular offerings that attract residents with means.²⁰⁶ Thus, the racial history of the geography upon which the district is based means that district sovereignty creates a self-fulfilling cycle: White districts get more resources and generate higher-quality outputs, creating a place that attracts white and affluent residents. The legal and policy framework that prioritizes district sovereignty appears neutral, but when contextualized within the substantive realities of race, class, and geography, it entrenches formerly whites-only municipalities as white places.

Moreover, federal constitutional challenges seeking to dismantle the boundary lines of school districts racialized as white places have failed. In *Milliken v. Bradley*, after finding that Detroit's public schools were intentionally segregated as a result of state action, the Court struck down as unconstitutional an interdistrict desegregation plan that would have included formerly whites-only suburban districts, including GPPSS.²⁰⁷ The Court reasoned that an interdistrict remedy would only be appropriate if it could be shown that "there [was] a constitutional violation within one district that produces significant segregative effect in another district."²⁰⁸

Y3WD-85WQ] (describing regressive taxation schema in which "[d]istricts in the top quartile of property valuation per household paid taxes for education at average effective rates at least 10% lower than those paid in bottom-quartile districts"); Pub. Sch. F. of N.C., 2020 Local School Finance Study 3–4 (2020), <https://www.ncforum.org/wp-content/uploads/2020/02/2020-Local-School-Finance-Study3.pdf> [<https://perma.cc/LY29-RDW3>] (examining school financing in North Carolina and finding that "because wealthier counties have more taxable resources, they are able to keep tax rates low while still generating significant revenue").

204. See, e.g., Bruce Mitchell & Juan Franco, NCRC Rsch., *HOLC Redlining Maps: The Persistent Structure of Segregation and Economic Inequality* 11 (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [<https://perma.cc/AHB9-H2M9>] ("High percentages of the HOLC-graded 'Best' and 'Desirable' areas are majority non-Hispanic white, with the highest percentage of 'Best' being in the West.").

205. See C. Kirabo Jackson, *Student Demographics, Teacher Sorting, and Teacher Quality: Evidence From the End of School Desegregation*, 27 *J. Labor Econ.* 213, 248 (2009) ("Researchers have found that teachers, particularly those with more experience, in schools with low-achieving students move to higher-achieving schools—leaving districts that have high shares of low-income ethnic minority students with vacancies and unqualified instructors."); Benjamin Scafidi, David L. Sjoquist & Todd R. Stinebrickner, *Race, Poverty, and Teacher Mobility*, 26 *Econ. Educ. Rev.* 145, 145 (2007) (finding that "teachers are much more likely to exit schools with large proportions of minority students").

206. Kayla Patrick, Allison Socol & Ivy Morgan, *Educ. Tr., Inequities in Advanced Coursework: What Is Driving Them and What Can Leaders Do* 11 (2019), <https://edtrust.org/wp-content/uploads/2014/09/Inequities-in-Advanced-Coursework-Whats-Driving-Them-and-What-Leaders-Can-Do-January-2019.pdf> [<https://perma.cc/G6P9-Q6K7>] (finding schools that serve mostly Black and Latinx students do not have as many seats in advanced classes as schools that serve fewer Black and Latinx students).

207. 418 U.S. 717, 745 (1974).

208. *Id.* at 744–45.

Such a showing could be made by demonstrating “racially discriminatory acts of the state or local school districts, or of a single school district [were] a substantial cause of interdistrict segregation.”²⁰⁹ The Court found that no such showing was made by the state.²¹⁰

Significantly, the Court’s reasoning was buttressed by its normative belief in the importance of local district sovereignty as indispensable to the health of public education.²¹¹ The Court, however, failed to consider the ways in which the local geography over which the district retained sovereignty was forged through state-endorsed racial violence that ensured whites-only suburbs, like Grosse Pointe, were closed to Black and some other nonwhite residents. Instead, the Court acknowledged that Detroit was all Black, but determined that the reasons for its all Black demographics were “caused by *unknown and perhaps unknowable* factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears.”²¹²

The factors leading to Detroit’s demographic make-up, however, are quite known and identifiable, including state action that perpetuated racial violence and ensured suburban school districts like GPPSS would be racialized as white places. The lower court acknowledged as much.²¹³ Yet the Supreme Court refused to consider such evidence in declining to abrogate school district boundary lines that encompassed formerly all-white municipalities.²¹⁴ *Milliken’s* holding ensures that school district boundary lines drawn around formerly whites-only municipalities are impervious to federal Equal Protection challenges.²¹⁵ Indeed, to date, only a small number of plaintiffs have been able to prevail in meeting the arduous legal standard set forth by *Milliken*.²¹⁶ State constitutional challenges seeking to

209. *Id.* at 745.

210. *Id.* at 746.

211. *Id.* at 741–42 (“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.”).

212. *Id.* at 756 n.2 (Stewart, J., concurring) (emphasis added).

213. See *Bradley v. Milliken*, 338 F. Supp. 582, 587 (E.D. Mich. 1971), *aff’d*, 484 F.2d 215 (6th Cir. 1973), *rev’d*, 418 U.S. 717 (1974) (finding that governmental action and inaction established and maintained racial segregation in Detroit, which all have continuing effects on the community and corresponding effects on the racial composition of residents and students).

214. *Milliken*, 418 U.S. at 717.

215. See *id.* at 746–47 (“Unless petitioners drew the district lines in a discriminatory fashion, or arranged for white students residing in the Detroit District to attend schools in Oakland and Macomb Counties, they were under no constitutional duty to make provisions for Negro students to do so.”).

216. See, e.g., *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 778 F.2d 404, 407–08 (8th Cir. 1985); *United States v. Bd. of Sch. Comm’rs*, 637 F.2d 1101, 1116–17 (7th Cir. 1980); *Evans v. Buchanan*, 582 F.2d 750, 756 (3d Cir. 1978); *Newburg Area Council, Inc. v. Bd. of Educ.*, 510 F.2d 1358, 1359–61 (6th Cir. 1974).

disrupt the connection between school district boundary lines and racialized places on state constitutional equal protection grounds have also been unsuccessful.²¹⁷

State and federal court emphasis on district sovereignty over geographic spaces contoured by racial violence has not only legal implications but sociocultural implications as well. As legal scholar Richard Briffault suggests, situating school districts as legally sovereign creates a cultural context wherein school district boundary lines are viewed as “organically connected to local parents and not as state-created boundaries dividing the larger metropolitan community.”²¹⁸ In simpler terms, this means that the prerogative of local parents, rather than a state’s obligation to ensure equity, predominates in policymaking decisions regarding district boundary lines. Local parents’ desire to exclude nonresidents who are culturally constructed as outsiders due to their race or socioeconomic status makes state legislators reluctant to require districts to enact policies that would mitigate the impact of residential segregation by making school boundary lines more permeable.

The reluctance is evident in discourse regarding state policies related to interdistrict choice programs and laws regarding school district consolidation, mergers, and annexation. For example, throughout the country many low-wealth school districts with majority student-of-color populations are situated in close proximity to affluent, predominantly white school districts.²¹⁹ The boundary lines serve as barriers to sharing resources. State legislatures have plenary legal authority to change boundary lines through consolidations, mergers, or annexations—or at least allow for permeability in the form of interdistrict transfer policies—to increase equity.²²⁰ Yet legislators often make interdistrict choice programs voluntary to mitigate parental concerns about state intrusion on what they perceive to be their

217. See, e.g., *Silver v. Halifax Cnty. Bd. of Comm’rs*, 821 S.E.2d 755, 756 (N.C. 2018) (rejecting plaintiff’s claim that a three-school-district configuration in which the district boundary lines encompassed two majority Black areas and one historically whites-only municipality violated the state right-to-education clause).

218. Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 *Colum. L. Rev.* 346, 386 (1990).

219. Empirical researchers found that, across the United States, there are “969 school district borders that create both revenue gaps of at least 10% and differences in racial makeup of 25 percentage points or more” and that have substantial differences in funding and resources for the predominantly low-income and minority districts. EdBuild, *Dismissed 1–3* (2019), <https://edbuild.org/content/dismissed/edbuild-dismissed-full-report-2019.pdf> [<https://perma.cc/CL4F-P2S6>].

220. School districts as local governments are creatures of the state, and the state can exercise against the local school district the same powers as it can exercise against other local governments, including authority over boundary lines. Cf. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178–79 (1907) (“The state . . . may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation.”).

school districts.²²¹ They also require consolidations, annexations, and mergers to be approved by both the geographic area to be joined and the geographic area to be merged or consolidated.²²² Fierce parental opposition to school district boundary-line changes often colors legislative attempts to make changes.²²³ The nature of policymakers' legislative choices in making district boundary changes voluntary or requiring voter approval suggests a deference to perceived parental ownership over school district boundary lines and an abdication of the state's power and responsibilities.

In sum, laws and policies surrounding school district boundary lines reify, reproduce, and protect racial segregation and exclusion incumbent to formerly whites-only cities. Equal protection jurisprudence is ineffective at addressing the problem because it prioritizes local district sovereignty, failing to capture or curtail the harms wrought by school districts encompassing geographic areas that are microclimates of racial meaning and racialized places. State-level public policies are undergirded by sociocultural norms of parental rather than state ownership over school district boundary lines. Consequently, new legal and policy frameworks that can account for formerly whites-only municipalities being microclimates of racial meaning and racialized places are needed.

221. See, e.g., Educ. Comm'n of the States, *50-State Comparisons: Open Enrollment Policies* (2022), <https://www.ecs.org/50-state-comparison-open-enrollment-policies/> [<https://perma.cc/AQF4-6XWR>] (noting that twenty-seven of the fifty states (plus D.C. and Puerto Rico) have policies permitting intradistrict open enrollment, but of that twenty-nine, nine make the programs voluntary while seventeen make them mandatory, and three have variations of both); Nancy Kaffer, *Opinion, School Choice Not the Right Choice for Our Kids*, *Detroit Free Press* (Oct. 2, 2016), <https://www.freep.com/story/opinion/columnists/nancy-kaffer/2016/10/02/choice-schools-michigan/91240656/> [<https://perma.cc/ZP4Y-7WU6>] (explaining Grosse Pointe opposition to participating in interdistrict transfer program because educating nonresident students "would require the schools to adopt lower curriculum standards to maintain the district's graduation rate [and] negatively impact both the city's property values and quality of life").

222. See EdBuild, *Stranded: How States Maroon Districts in Financial Distress 3* (2018), <https://edbuild.org/content/stranded/full-report.pdf> [<https://perma.cc/CNT2-M3WA>] ("In thirty-nine states, consolidation may generally only happen if both districts agree to the merger. In some cases, this takes the form of voter approval, while in others, the decision is left to the school boards of each district.").

223. See, e.g., Koby Levin, *Michigan School Districts Resist Consolidation. Will \$237M Change Minds?*, *Bridge Mich.* (July 19, 2022), <https://www.bridgemi.com/talent-education/michigan-school-districts-resist-consolidation-will-237m-change-minds> [<https://perma.cc/L3KW-FQFS>] (describing opposition to school district consolidation throughout Michigan and noting that "history has shown consolidation efforts to be unpopular with voters in many communities"); *School District Consolidation Bill Shot Down by House Panel*, *Midland Daily News* (Feb. 15, 2016), <https://www.ourmidland.com/news/article/School-district-consolidation-bill-shot-down-by-6904390.php> [<https://perma.cc/3BK9-AQZG>] ("A push by Republican leaders to consolidate some of Oklahoma's more than 500 school districts has been derailed in the House after hundreds of students and parents crowded into a committee room urging the bill's defeat.").

B. *Whites-Only Municipalities and Racial Path Dependence*

Evolutionary theory advances a concept called Path Dependence Theory. Path Dependence Theory suggests that early historical events can impact the path of subsequent conditions for a long period of time.²²⁴ It specifically describes “historical sequences in which contingent events set into motion institutional patterns . . . that have deterministic properties.”²²⁵ A historic event is path dependent if one can trace a particular outcome to the historical event and demonstrate that the outcome could not be explained by other factors or events.²²⁶ Some path-dependent historical sequences are self-reinforcing and exhibit increasing returns.²²⁷ Plainly stated, this means that a historical event leads to the formation of an “institutional pattern [that] delivers increasing benefits with its continued adoption, and . . . over time it becomes more and more difficult to transform the pattern or select previously available options, even if these alternative options would have been more ‘efficient.’”²²⁸

In Professor Roithmayr’s seminal model of locked-in racial inequality, she applies Path Dependence Theory to racial discrimination and segregation in the legal profession, post-apartheid public education financing in South Africa, and modern-day residential segregation.²²⁹ She argues that racial discrimination or segregation in those domains are path-dependent events that established initial conditions that create today’s racial arrangements favoring white people in those domains. This Essay refers to Professor Roithmayr’s theory as “Racial Path Dependence.” She analogizes Racial Path Dependence to a flood that reshapes a river such that “subsequent evolution proceeds from that point forward.”²³⁰ She theorizes that Racial Path Dependence impacts today’s racialized inequality because white people established racially discriminatory and subjugating

224. See S.J. Liebowitz & Stephen E. Margolis, Path Dependence, Lock-In, and History, 11 *J.L. Econ. & Org.* 205, 205 (1995); James Mahoney, Path Dependence in Historical Sociology, 29 *Theory & Soc’y* 507, 507 (2000).

225. Mahoney, *supra* note 224, at 507.

226. *Id.* at 507–08.

227. *Id.* at 508.

228. *Id.*

229. See Roithmayr, *Reproducing Racism*, *supra* note 37, at 93–99, 116–19; Daria Roithmayr, *Barriers to Entry: A Market Lock-In Model of Discrimination*, 86 *Va. L. Rev.* 727, 742 (2000) (“Borrowed in part from evolutionary theory, path dependence suggests that even small historical events, particularly those that occur early in the formation of an industry, can have unexpectedly long-lasting effects on market outcome.”); Roithmayr, *Locked In Inequality*, *supra* note 37, at 41 (finding that the “market lock-in model of discrimination” illustrates that existing racial disparities stem from one group’s manipulation of institutions to gain an advantage and that these disparities “can become self-reinforcing” even without continuing intentional discrimination); Daria Roithmayr, *Locked In Segregation*, 12 *Va. J. Soc. Pol’y & L.* 197, 213 (2004) [hereinafter Roithmayr, *Locked In Segregation*] (arguing residential segregation is path dependent and can be traced back to enslavement of Africans and to the Jim Crow era).

230. Roithmayr, *Reproducing Racism*, *supra* note 37, at 126.

institutions (e.g., enslavement, Jim Crow segregation, standardized admissions tests) that enabled them to monopolize access to resources.²³¹ As a result, they gained an unfair competitive advantage akin to a monopoly.²³² In line with Path Dependence Theory, she argues the monopoly is self-reinforcing, exhibits increasing gains, and has “now become locked into institutional structures and processes”²³³ because switching costs are too high. She uses the term “switching costs” to mean both the tangible and intangible costs of switching to a system that reduces racial inequality.²³⁴

A concrete example from Professor Roithmayr’s model is modern-day residential segregation. She situates racial discrimination by lending institutions, real estate boards, and homeowners’ associations as path-dependent historical events.²³⁵ Racial discrimination by these entities, along with state, federal, and local government action and complicity, allowed white people to monopolize the best neighborhoods, as nonwhite people were denied loans to purchase in those neighborhoods or threatened with violence if they attempted entry.²³⁶ Consequently, white people are now locked into neighborhoods that have high property values, an ample tax base through which to fund high-quality public schools, and social networks within the neighborhoods that can provide access to good jobs.²³⁷ Owing to Racial Path Dependence, the advantages to white people of living in these neighborhoods are locked in because (i) nonwhite people, especially Black people, face barriers to entry that include having to pay higher costs to move in than white people and (ii) switching costs would include structural changes, such as upsetting property-value expectations, that are deemed too costly to bear.²³⁸ As a result, “historical racism created a readily observed pattern out of which people move, even in the absence of significant racial discrimination, and therefore created a path dependence for the evolution of [residential] racial segregation.”²³⁹

Just as Racial Path Dependence locks in residential segregation in housing, it has the same effect on school districts, particularly when school district boundary lines are drawn around formerly whites-only municipalities. Indeed, the tether between geography and public schooling—particularly school assignment and school finance—creates “institutionally self-reinforcing processes”²⁴⁰ that can racialize the place elements of school districts. In particular, the modern ideological premises that may

231. *Id.* at 128–29.

232. *Id.*

233. Roithmayr, *Locked In Inequality*, *supra* note 37, at 40.

234. Roithmayr, *Reproducing Racism*, *supra* note 37, at 129.

235. Roithmayr, *Locked In Segregation*, *supra* note 229, at 216–21.

236. *Id.* at 220–21; see also *supra* section I.A.

237. Roithmayr, *Locked In Segregation*, *supra* note 229, at 226–31.

238. *Id.* at 231–36.

239. Stephen Menendian & Richard Rothstein, *Putting Integration on the Agenda*, 28 *J. Affordable Hous. & Cmty. Dev. L.* 147, 161 (2019) (book review).

240. Roithmayr, *Locked In Segregation*, *supra* note 229, at 208.

draw residents to a school district and the public policies that determine who has access to the school district are mutually constitutive with race due in large part to the history of racial exclusion within the territorial base that encompasses the district.

GPPSS again provides an instructive example. One of the ideological premises that may have initially drawn residents to the geographic space that now comprises GPPSS was a racialization process that marked those who could purchase or rent a home there as white. That ideological premise was reinforced by public policies at the federal, state, and local level that excluded nonwhite residents. The ideological premise also colored social interactions as white residents went to extremes—including violence—to maintain the geographic space as white. Being racialized as white vis-à-vis entry into the GPPSS space came with status rewards and economic benefits in the form of higher property values and higher social standing associated with saying that one resided in Grosse Pointe.

Critically, the geographic space derived much of its substantive value from the negation of those racialized as nonwhite. Put another way, the value was established due to the absence of certain nonwhite people in that geographic space and the spatialized preservation of a whites-only space. It was situated as valuable in relation to the neighboring areas that did not (or could not) exclude nonwhite people. As a result, the geography within the Detroit metropolitan area was imbued with relational patterns that carried significant consequences. The relational patterns were never affirmatively disrupted; instead, laws merely prohibited race-based denial of entry into Grosse Pointe without addressing structural barriers (e.g., finances, social interactions, or limited housing variety and stock) that make entry difficult for nonwhite people in modern times.

Creating Grosse Pointe as a whites-only municipality and maintaining school district boundary lines around that same geographic space was therefore a path-dependent event. The continued tie between geography and public schooling creates a self-reinforcing model. The same geography used to create the initial conditions of racialization and racial hierarchy facilitates increasing returns that allow white people to maintain advantages: Higher property values attached to all-white municipalities give them a more ample tax base from which to draw local funding for their schools; bounding all-white municipalities with school district boundary lines serves a recruitment function that draws more white people and others with means and status; and that recruitment in turn generates a positive reputational property interest that also draws white families and nonwhite families with means and status. The place elements of the district therefore remain racialized as white due to Racial Path Dependence.

Yet as Professor Roithmayr notes, Equal Protection doctrine fails to identify, let alone remedy, racial inequality linked to Racial Path Dependence. It fails to do so for the following reasons. First, the doctrine's requirement that discriminatory intent be established before a violation is found fails to "recognize the importance of membership in racial groups,

even though [Racial Path Dependence] distribute[s] opportunity or entitlements on the basis of membership in other socially relevant groups.”²⁴¹ For example, Equal Protection doctrine allows for the distribution of benefits based on being a member of a particular neighborhood.²⁴² The doctrine portends that local membership in a neighborhood is so inviolable the Constitution cannot stop the government from making distinctions in the quality of state-provided education a student receives based on the neighborhood in which they live. The doctrine does not, however, allow school districts to voluntarily consider race in restructuring neighborhood-based school assignment plans to prevent racial segregation in schools, since the Supreme Court reasoned that doing so requires the government to intentionally treat people differently based on race.²⁴³

This Supreme Court doctrine is an odd tautology. In the context of school districts that track municipal boundary lines, historical acts of racial exclusion in residential locations are “locked in,” creating path dependencies that extend to schools, even if no one expressly intends for them to do so.²⁴⁴ The intent requirement doesn’t allow schools to voluntarily consider race in crafting school assignment plans to address the racial path dependency inherent in neighborhood-based school assignment; but it conversely requires a plaintiff trying to upend the Racial Path Dependence inherent in neighborhood-based school assignment to demonstrate that the assignment plan was adopted because of an express intent to racially discriminate.²⁴⁵

Second, Equal Protection doctrine falls short in curtailing Racial Path Dependence because, as of late, it eschews frameworks that would allow it to recognize racial balkanization as a cognizable injury. The term “racial balkanization” is used to mean the creation of smaller, often disparate, political units—in this case school districts—that are racially homogenous. Racial balkanization in the context of public schools is dangerous because

241. *Id.* at 241.

242. *Bd. of Educ. v. Dowell*, 498 U.S. 237 (1991) (finding that a school-assignment plan that would rely on neighborhood-based assignment, but create racially segregated schools, did not violate the Equal Protection Clause).

243. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (finding a school assignment plan that considered race when assigning students to schools and granting transfer requests unconstitutional, reasoning that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race”).

244. See *supra* notes 229–243 and accompanying text.

245. See, e.g., *Thomas Cnty. Branch of NAACP v. City of Thomasville Sch. Dist.*, 299 F. Supp. 2d 1340, 1351 (M.D. Ga. 2004), *aff’d in part, vacated in part, rev’d in part sub nom. Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325 (11th Cir. 2005) (finding racial imbalances existing in the school district were not traceable to a prior *de jure* segregated system and did not stem from intentional discrimination).

it undermines public schools' ability to educate and prepare a racially diverse citizenry to live and work together.²⁴⁶ As noted by Professor Reva Siegel, an Equal Protection framework geared toward stopping racial balkanization would “assess[] the constitutionality of government action by asking about the kind of polity it creates . . . [and] emphasize[] the importance of cultivating social bonds that enable groups to relate and identify across difference.”²⁴⁷ Racial Path Dependence fosters racial balkanization by using geography to assign students to schools and to fund schools—linking school assignment with residential addresses that are bound by boundary lines that historically excluded nonwhite people. The inevitable result is not only to silo students based on race, but to provide better resources and educational opportunities for those who reside in predominantly white areas, while those who live in historically nonwhite areas receive fewer resources and educational opportunities.

While moderate interpretations of the Equal Protection doctrine were arguably previously undergirded by concerns about racial balkanization,²⁴⁸ a more conservative interpretation has taken hold that seemingly does not recognize racial balkanization as a harm worth preventing and seeks to remove any and all consideration of race from legislative decisionmaking.²⁴⁹ Critically, racial balkanization is arguably linked to racially disparate impacts in policies such as school assignment. Nonetheless, disparate impact equal protection jurisprudence has been adulterated in ways that also make it unlikely to capture racial inequality caused by Racial Path Dependence that leads to racial balkanization.²⁵⁰

Further, other scholars have argued that the Equal Protection Clause should be interpreted to mean that a state's action violates Equal Protection if its meaning conflicts with the government's obligation to

246. See Erika K. Wilson, *Racialized Religious School Segregation*, 132 *Yale L.J. Forum* 598, 629 (2022) (arguing that increased school segregation results in balkanization that leads to “students being siloed, unexposed to the diverse array of persons that inhabit America . . . [and] [t]he net result will be a decrease in social solidarity and cohesion, elevating risks of internal upheaval and violence”).

247. Reva B. Siegel, *From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases*, 120 *Yale L.J.* 1278, 1301 (2011).

248. See, e.g., *Parents Involved*, 551 U.S. at 787 (Kennedy, J., concurring) (espousing a moderate view of reading the Equal Protection Clause for purposes of fostering racial integration in schools and noting that “[t]he enduring hope is that race should not matter; the reality is that too often it does”).

249. See, e.g., *Shelby County v. Holder*, 570 U.S. 529, 547–48 (2013) (explaining the “significant progress” made by racial minorities in access to voting).

250. Cf. Roithmayr, *Locked In Segregation*, *supra* note 229, at 242–44 (noting the use of disparate impact as an evidentiary tool to prove intentional discrimination and the ability of a defendant, under some antidiscrimination laws, to claim a business necessity rationale to justify a racially disparate impact).

treat each person with equal concern.²⁵¹ Such an interpretation of the doctrine would enable courts to recognize Racial Path Dependence that leads to the state—through both action and inaction—reifying boundary lines forged by racial violence, conveying a message that Black and other nonwhite students are inferior and unequal. The Equal Protection doctrine as currently situated does not. It is instead firmly committed to an arduous intent requirement incapable of capturing or curtailing the harms of Racial Path Dependence.

Most significantly, the injury caused by Racial Path Dependence in the context of school district boundary lines encompassing formerly whites-only municipalities is an uneven distribution of advantage. Yet Equal Protection doctrine does not capture the distorting effects of privilege or advantage.²⁵² Instead, modern Equal Protection doctrine situates the residential segregation codified by school district boundary lines as the race-neutral result of individual preference in residential location outside of the remedial purview of courts.²⁵³ This position represents a stark shift away from courts' prior application of Equal Protection doctrine in which they acknowledged the link between historical intentional residential segregation and patterns of racial segregation in schools.²⁵⁴ Modern courts, however, fail to engage with the ways in which choices in residential location are not unfettered. Instead, residential location choices often reflect exclusionary zoning laws that shape the housing stock available in a community; constraints related to finances; and a sense of community and

251. See Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions*, 69 *Yale L.J.* 421, 421–22 (1960) (outlining that the Equal Protection Clause should be interpreted as saying that Black Americans should not be significantly disadvantaged by state laws); Deborah Hellman, *The Expressive Dimension of Equal Protection*, 85 *Minn. L. Rev.* 1, 10 (2000) (“The state may not adopt policies that express a message of unequal worth; this is what the Equal Protection Clause prohibits.”).

252. See Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2409–14.

253. See *Missouri v. Jenkins*, 515 U.S. 70, 121 (1995) (Thomas, J., concurring) (“The Constitution does not prevent individuals from choosing to live together, to work together, or to send their children to school together, so long as the State does not interfere with their choices on the basis of race.”); *Freeman v. Pitts*, 503 U.S. 467, 495 (1992) (“Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies.”); *NAACP, Jacksonville Branch v. Duval Cnty. Sch.*, 273 F.3d 960, 972 (11th Cir. 2001) (finding that although a number of schools were racially segregated, school officials desegregated schools to the extent practicable and that “voluntary residential patterns have re-segregated a number of the core city’s schools”).

254. See, e.g., *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 202 (1973) (“The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.”); *Hart v. Cmty. Sch. Bd. of Brooklyn*, 383 F. Supp. 699, 755 (E.D.N.Y. 1974) (“We cannot ignore the fact that ‘the system of geographic school attendance, imposed upon segregated housing patterns, provides the broad base for racial isolation in Northern Schools.’” (quoting 1 U.S. Comm’n on C.R., *Racial Isolation in the Public Schools* 73 (1967))).

belonging (or lack thereof) tethered to race.²⁵⁵ Each of these factors creates forms of Racial Path Dependence. As a result, “the choice to move to a particular municipality is not voluntary for everyone”²⁵⁶ but is instead driven by Racial Path Dependence. Nonetheless, Equal Protection doctrine does not capture or acknowledge this reality, instead situating residential location choice at a race-neutral individual level rather than a race-conscious systemic one.

Finally, state public policies surrounding school district boundary lines also fail to recognize or mitigate the effect of Racial Path Dependence. States continue to maintain boundary lines around formerly whites-only municipalities like Grosse Pointe. States also enact policies regarding boundary line changes that are voluntary rather than mandatory, allowing districts that benefit from Racial Path Dependence to decline to participate.²⁵⁷ State policies regarding school district boundary lines also foment racial balkanization within metropolitan areas.²⁵⁸ They do so by encouraging residents to sort across municipal boundary lines tethered to school district boundary lines, as sociocultural norms (and Supreme Court precedent) suggest that school district boundary lines won’t be abrogated and residents won’t have to share resources or schools with those outside of these boundary lines.²⁵⁹ As the final section discusses, new legal and policy frameworks are needed in order to capture and mitigate the impact that Racial Path Dependence has on the place elements of school districts that encompass geographic spaces that are microclimates of racial meaning.

255. Cecilia Rouse, Jared Bernstein, Helen Knudsen & Jeffery Zhang, *Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market*, White House (June 17, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market/> [<https://perma.cc/5KEU-RD95>] (“Because exclusionary zoning rules drive up housing prices, poorer families are kept out of wealthier, high-opportunity neighborhoods.”); see also Anderson, *supra* note 108, at 10 (describing the tether between race, geography, and belonging in a community); Wilson, *Monopolizing Whiteness*, *supra* note 17, at 2444 (describing the role of the racial wealth gap in keeping Black families out of high-performing predominantly white school districts).

256. Erika K. Wilson, *The New School Segregation*, 102 *Cornell L. Rev.* 139, 193 (2016).

257. See *supra* notes 219–223 and accompanying text.

258. See Stephen Menendian, Samir Gambhir & Arthur Gailes, *The Roots of Structural Racism Project: Twenty-First Century Residential Segregation in the United States, Othering & Belonging Inst.* (June 21, 2021), <https://belonging.berkeley.edu/roots-structural-racism> [<https://perma.cc/VS78-C4ZX>] (last updated June 30, 2021) (describing balkanization between residential neighborhoods that is mirrored in schools).

259. See, e.g., Dana Goldstein, *Where Civility Is a Motto, a School Integration Fight Turns Bitter*, *N.Y. Times* (Nov. 12, 2019), <https://www.nytimes.com/2019/11/12/us/howard-county-school-redistricting.html> (on file with the *Columbia Law Review*) (describing parental tensions and concerns regarding a redistricting plan).

C. *School Districts as Microclimates of Racial Meaning: Adopting New Legal and Policy Frameworks*

The microclimates of racial meaning framework, as a descriptive matter, elucidates how race, absent intervention, is baked into geography in ways that create localized geographic advantage (or disadvantage). A self-reinforcing process of Racial Path Dependence then occurs and impacts the geographic area encompassed by school district boundary lines, such that the place elements of the school district are racialized. Yet as the prior section showed, neither Equal Protection doctrine nor state public policies recognize or address racialization of a school district's place as a cognizable legal injury that can or should be remedied.

This final section makes the case for a more nuanced approach to Equal Protection doctrine and state public policies regarding school district boundary lines, particularly when the boundary lines create patterns of stark interdistrict racial segregation. The law and policy frameworks should be modified to allow for an acknowledgment that racial orderings and formation have historically been tied to geography. Instead of affording deference to local district sovereignty, particular focus should be given to the historic social conditions that constructed a locality encompassed by school district boundary lines, including any past racial violence that makes the locality a microclimate of racial meaning. The frameworks should also acknowledge that there are contemporary implications of structures that were used to create and reinforce a racial ordering, particularly when no affirmative interventions—except prohibitory fair housing laws—are put in place to address the past history. The frameworks could be reworked to achieve those goals in the following ways.

1. *Adopting a New Legal Framework.* — First, when considering whether patterns of interdistrict racial segregation violate the Fourteenth Amendment, courts should consider whether a geographic location encompassed by a school district is a microclimate of racial meaning. The plaintiff should bear the burden of making such a showing. Demonstrating that a geographic location is a microclimate of racial meaning is an art, not a science.²⁶⁰ Nonetheless, just as the Equal Protection doctrine looks at numerous factors when assessing whether there is an intent to discriminate,²⁶¹ courts could also look at numerous factors in assessing whether the geographic location should be considered a microclimate of racial meaning. Such a factor-based analysis could be similar to that used under section

260. See Ward, *Microclimates of Racial Meaning*, supra note 29, at 603 (“Understanding and interrupting centuries of racial violence requires careful examination of the specific places where it occurs, forms it takes, and underlying its generative frameworks.”).

261. See, e.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (noting that “whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available” and articulating several factors a court can consider in making the determination).

2 of the Voting Rights Act, which also examines the intersection between racial subordination and geography.²⁶²

The factors a court might consider include, but are not limited to, (i) whether the geographic location has a history of being a sundown town—by either law or informal policy; (ii) whether the geographic location has a history of extreme race-related violence, such as lynchings or race riots; (iii) the racial demographics of the area over the past thirty years—changes in racial demographics could weigh against the location being considered a microclimate of racial meaning, while static demographics could weigh in favor of it being considered one; (iv) any history of institutionalized racial discrimination within the geographic area such as discriminatory policies enacted by real estate boards or homeowners' associations; (v) any history of “redlining” or “greenlining” of the geographic area based on the HOLC maps; and (vi) the reputation of the geographic area.²⁶³

The suggested factors are not dispositive but provide a basic set of criteria a court could use to decide whether the school district boundary lines encompass a geographic location that is a microclimate of racial meaning. Moreover, in assessing the factors, the court could consider the state and local government's role in facilitating or condoning any of the factors. For example, if a plaintiff showed that there was an extreme history of racial violence and the state or local government aided in perpetuating the violence or failed to act to stop the violence, the court could consider the racial violence to be a product of state action. Finally, if, like GPPSS, a district had a history of being a formerly whites-only municipality and is currently a white island district, a court could automatically presume that the geographic location encompassing the school district boundary lines is a microclimate of racial meaning.

If a plaintiff successfully established that the geographic area was a microclimate of racial meaning, the evidence could be used for purposes of establishing an interdistrict constitutional violation that warrants broaching or rearranging the school district boundary lines. Bear in mind, under *Milliken*, a court will only abrogate school district boundary lines for desegregative purposes if a plaintiff can show “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.”²⁶⁴ Demonstrating that

262. See, e.g., S. Rep. No. 97-417, § VI.D (1982) (confirming that section 2 of the Voting Rights Act creates a results-based test and enumerating factors typically indicative of a lack of equal voting opportunities based on an area's history of racial subordination).

263. As other scholars have noted, geographic areas can obtain reputations for being predominated by one race. See, e.g., Boddie, *supra* note 26, at 449 (“Spaces become racialized when they are inhabited, occupied, or frequented principally by one race and are claimed or treated as spaces that are only for individuals from that racial group.”). Evidence of reputation could be gathered by reference to popular media, expert witnesses, and even media sites that rate amenities such as schools or housing.

264. *Milliken v. Bradley*, 418 U.S. 717, 745 (1974) (emphasis added).

a district like GPPSS was a microclimate of racial meaning could raise a rebuttable presumption that racially discriminatory acts by state and local officials within the district that is a microclimate of racial meaning was a substantial cause of current patterns of interdistrict segregation.

The district could rebut the presumption by showing that the state took intervening actions that substantially altered the environment within the geographic area such that it broke the Racial Path Dependence, and therefore that the geographic area should no longer be considered a microclimate of racial meaning. Examples of intervening actions might include, but are not limited to, redrawing school district boundary lines to include new geographic spaces or enacting inclusive zoning ordinances within the geographic area.²⁶⁵ The evidence put forth by the district to rebut the presumption of being a microclimate of racial meaning would have to be greater than the past history of racial violence. Thus, if the past history that made a geographic area a microclimate of racial meaning included sustained acts of physical violence and a status as a sundown town, the district would have to put forth substantial evidence to show that the intervening acts broke the Racial Path Dependence. If the district were unable to do so, the court could find that the plaintiff met its burden of demonstrating an interdistrict violation. Modifying the current Equal Protection framework to include such a burden-shifting standard would do two important things. First, it would allow a plaintiff to make clear the tie between state-perpetuated racial discrimination and geography, dispelling the notion that geography is somehow race-neutral. Second, and most importantly, it would allow a plaintiff to show that current residential patterns are not the product of individual residential choice but are instead a product of state-facilitated patterns of racial segregation and exclusion. It would make it more difficult for geography to continue serving as a race-neutral mechanism for reifying racial advantage (or disadvantage). The proposed modified Equal Protection framework could be used for a federal or state constitutional claim.

2. *Adopting a New Policy Framework.* — Although revamping the Equal Protection framework around interdistrict violations could be useful, changing the ideology undergirding state public policies regarding school district boundary lines could have a more direct impact. Currently, like the courts, most state policies regarding boundary line changes are grounded

265. Inclusive zoning ordinances might include allowing multi-family homes, removing lot size restrictions, or requiring new developments to set aside some portion of new housing and sell (or rent) them below market value. For an example of inclusive zoning policies that helped an affluent, predominantly white school system become more diverse and equitable, see Heather Schwartz, *Integrating Schools Is a Matter of Housing Policy*, in *Poverty & Race Rsch. Action Council, Finding Common Ground: Coordinating Housing and Education Policy to Promote Integration* 15 (Philip Tegeler ed., 2011), <https://files.eric.ed.gov/fulltext/ED538400.pdf> [<https://perma.cc/W5ZZ-ABH7>].

in a commitment to local control or local district sovereignty.²⁶⁶ State legislators should balance the legitimate benefits of local control, such as citizen participation, efficiency, and capitalizing on interlocal diversity,²⁶⁷ with the need for racial equity. They can do so by using policy tools that require deliberation regarding the racialized history of the geography encompassed by school district boundary lines when deciding whether to allow or require a school district to open up its borders or participate in a boundary line change.

For starters, when deciding whether to require a consolidation, a merger, an annexation, or participation in an interdistrict transfer program, state legislators could adopt the same factors as courts. They could use those factors to make an assessment as to whether the geographic space encompassed by school district boundary lines is a microclimate of racial meaning. If it is, then a district should not be permitted to voluntarily opt out or to have a voter referendum regarding a boundary line change. More critically, in the case of districts that are encompassed by microclimates of racial meaning and are also white island districts, like GPPSS, the state could require the district to undergo periodic redistricting as a method of breaking Racial Path Dependence. While these policy prescriptions are not a panacea, they would offer an important starting point in undoing the legacy of racial violence that infects school districts, particularly formerly whites-only municipalities that encompass white island school districts in racially diverse metropolitan areas.

CONCLUSION

United States metropolitan areas have a sordid history of creating racialized places through racial violence, discrimination, and exclusion. The racialization of place is imbued upon school districts as well, particularly when school districts encompass formerly whites-only municipalities. Yet legal and policy frameworks surrounding school district boundary lines fail to recognize, let alone remedy, the harms caused by such racialized places. As a result, patterns of stark interdistrict racial segregation exist throughout the United States, including white island districts—pockets of predominantly white, affluent, and thriving school districts situated within racially diverse metropolitan areas, in close proximity to predominantly low-income districts populated by students of color. This Essay sets forth a legal and policy framework for identifying and remedying such patterns of interdistrict racial segregation. It offers important conceptual frameworks

266. See *supra* Part II.

267. For a discussion about the purported benefits of local control in education and the critiques thereof, see Kimberly Jenkins Robinson, *Disrupting Education Federalism*, 92 *Wash. U. L. Rev.* 959, 962–98 (2015) (contending that “both the executive branch and Congress can significantly restructure and expand their authority over education under the Spending Clause”).

for resituating the connection between race, racial inequality, and geography in the context of school districts. It also offers a path forward to disrupt the use of geography as a race-neutral mechanism for facilitating racial subordination and exclusion through school district boundary lines.