

The Secret History of School Choice: How Progressives Got There First

JAMES FORMAN, JR.*

INTRODUCTION

Along with others who teach or write in constitutional or educational law, I spent much time during the fiftieth anniversary of *Brown v. Board of Education*¹ at conferences or panel discussions commemorating that decision. In each, the discussion of school choice—both charter schools and school vouchers²—has figured prominently. Inevitably, one of the panelists—either a civil rights advocate or a left-identified academic—has said something to the effect of, “given that school choice began as a way for the South to avoid complying with *Brown*, I have the following concerns about today’s choice movement” As somebody who is committed to racial and economic justice,³ yet who sees potential in some school choice proposals, these references to choice’s retrograde historical past both troubled and intrigued me.

So I decided to explore the history of school choice. I found that my conference co-participants were not alone. School choice—especially school

* Associate Professor, Georgetown University Law Center. I presented a version of this paper at the Georgetown University Law Center’s *Bolling v. Sharpe* conference in April 2004, and I would like to thank the conference participants and its convener Alex Aleinikoff. I also received helpful comments from the participants at Georgetown’s Faculty Workshop, and from Sheryll Cashin, Arthur Evenchik, Jerry Kang, David Luban, Paul O’Neill, Ginger Patteson, Diane Ravitch, Jim Ryan, Mike Seidman, Gerry Spann, David Vladeck, Kathy Zeiler, and Todd Zywicki. Thanks also to Nicole Devero, Tanya Messado, Caroline Ngubene, and Margaret Rodgers for research assistance, and to Édeanna Johnson-Chebbi and Anna Selden for help with the manuscript. Finally, I would like to thank David Domenici, whose work at See Forever and the Maya Angelou Public Charter Schools (<http://www.seeforever.org>) inspires me.

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

2. It is important to note that although these are the categories of school choice that receive the most attention today, they are not the only types of choice. Most choice plans involve schools that are run by the school system. For example, some districts offer choice within the district, including magnet schools, specialty schools, and alternative schools run by the school system. Some cities have “controlled choice” plans, in which parents rank their desired school by order of preference. A few districts offer choice across district lines. And the broadest definition of schools of choice would include neighborhood public schools that parents have selected through choice of residence. For a survey of the various categories of choice, see James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2063–85 (2002). For estimates of the number of children who attend the various types of schools of choice, see Jeffrey R. Henig & Stephen D. Sugarman, *The Nature and Extent of School Choice*, in SCHOOL CHOICE AND SOCIAL CONTROVERSY: POLITICS, POLICY, AND LAW 29 (Stephen D. Sugarman & Frank R. Kemerer eds., 1999). For an especially thoughtful discussion of intra-district choice, see DEBORAH MEIER, *THE POWER OF THEIR IDEAS* 91–104 (1995).

3. See, e.g., James Forman, Jr., *Juries and Race in the Nineteenth Century*, 113 YALE L.J. 895 (2004) (exploring role that juries played in adjudicating fugitive slave claims before the Civil War and violence against blacks during Reconstruction); James Forman, Jr., *Children, Cops, and Citizenship: Why Conservatives Should Oppose Racial Profiling*, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 150 (Marc Mauer & Meda Chesney-Lind eds., 2002) (examining the impact of racial profiling and police abuse on the values and attitudes of inner-city teens).

vouchers and, to a lesser extent, charter schools—is generally understood to have a conservative intellectual and political heritage. Typical is Alan Wolfe’s assertion that “school choice emerged from the right end of the political spectrum.”⁴ In this view, choice is associated with free-market economist Milton Friedman,⁵ attempts to defy *Brown*,⁶ wealthy conservative philanthropists,⁷ and the attacks on the public school bureaucracy by Ronald Reagan and George W. Bush.

It turns out that the conventional history is incomplete. This is not to say that it is wrong, however. It is true, for example, that southern states used choice to evade *Brown*. Some adopted “freedom of choice” plans, which purported to give choice to black and white families, but in fact were an attempt to keep black and white students in the same segregated schools they attended before *Brown*.⁸ Others gave tuition grants to white students that allowed them to attend private, segregated white academies.⁹ Though these plans were eventually struck down, they effectively delayed *Brown*’s implementation by at least a decade. So it is correct to conclude, as does Wendy Parker, that “choice has a history of unlawfully segregating students.”¹⁰

But too often missing from the historical account is the left’s substantial—indeed, I would say leading—contribution to the development of school choice. In this Essay, I trace that history, arguing that choice has deep roots in liberal

4. Alan Wolfe, *The Irony of School Choice: Liberals, Conservatives, and the New Politics of Race*, in *SCHOOL CHOICE: THE MORAL DEBATE* 34 (Alan Wolfe ed., 2003). See also *The Voucher Veneer*, PEOPLE FOR THE AM. WAY (July 2003), at 6 (“A network of Religious Right groups, free-market economists, ultraconservative columnists and others are using vouchers as a vehicle to achieve their ultimate goal of privatizing education.”).

5. See *The Voucher Veneer*, *supra* note 4, at 8–10 (characterizing vouchers as part of the “Friedman legacy”). In 1955, Milton Friedman proposed a full-fledged voucher system that would result in public schools being replaced with a private school system supported by tax dollars. Milton Friedman, *The Role of Government in Education*, in *ECONOMICS AND THE PUBLIC INTEREST* 123 (Robert A. Solo ed., 1955). A revised version of this article appears as Chapter 6 in *MILTON FRIEDMAN, CAPITALISM AND FREEDOM* (1962).

6. See Helen Hershkoff & Adam S. Cohen, *School Choice and the Lessons of Choctaw County*, 10 *YALE L. & POL’Y REV.* 1, 2–3 (discussing rise of segregation academies in the South in the late 1960s and early 1970s).

7. JONATHAN SCHORR, *HARD LESSONS: THE PROMISE OF AN INNER-CITY CHARTER SCHOOL* 29–31, 79–80, 111–12 (2002) (describing activity of John Walton and the Walton Foundation); Judith Havemann, *Benefactors Create Their Own School Voucher Programs*, WASH. POST, Feb 21, 1998, at A1 (discussing scholarships given to students by wealthy conservatives in cities throughout the country); Evan Thomas & Lynette Clemetson, *A New War Over Vouchers: Poor Parents Want Them, But Civil Rights Leaders Are Split*, NEWSWEEK, Nov. 22, 1999, at 46 (citing efforts of billionaire Ted Forstmann to promote school choice).

8. See, e.g., *Green v. County Sch. Bd.*, 391 U.S. 430 (1968).

9. See, e.g., *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178 (E.D. Va. 1969); see also Jerome C. Hafter & Peter M. Hoffman, Note, *Segregation Academies and State Action*, 82 *YALE L.J.* 1436 (1972) (discussing tuition grant legislation in Southern states).

10. Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 *TUL. L. REV.* 563, 568 (2001). See also Molly Townes O’Brien, *Private School Tuition Vouchers and the Realities of Racial Politics*, 64 *TENN. L. REV.* 359, 398 (1997) (discussing history of Southern private school tuition voucher programs, and arguing that it is “a movement propelled by racism and fueled by propaganda”).

educational reform movements, the civil rights movement, and black nationalism. While progressives have not focused on choice exclusively, my contention is that the left has, at important junctures, seen a role for choice in promoting educational opportunity for poor and minority children.

My historical project has an agenda, which I am happy to acknowledge at the outset. While some liberals have embraced choice proposals,¹¹ others have rejected them on the grounds of their segregationist heritage.¹² The incomplete view of history has distracted some from the issue that I think matters most, which is how choice is implemented. Accordingly, understanding the history of progressive choice proposals—including even school vouchers—might offer today’s liberals a way to have a more nuanced conversation about school choice.

This conversation is essential fifty years after *Brown*. To see why, we need look no further than the Washington, D.C. school system, the one at issue in *Bolling v. Sharpe*. *Bolling*’s lead plaintiff was a boy named Spottswood Bolling, who wanted to attend the all-white Sousa Middle School, in Southeast Washington, D.C. Bolling won and segregation in D.C. was declared unconstitutional. Today, Sousa Middle School is still open, and the formerly all-white school has zero white students.¹³ In fact, there are only 130 white middle school students in the entire D.C. school system (out of a total of 4,638).¹⁴ This means that if you took every single white child who attends *any* D.C. middle school and put them all together, they could not fill the school that Spottswood Bolling once sued to attend. Others have questioned the extent to which *Brown* or *Bolling* have contemporary *legal* significance, but the white exodus from the Washington, D.C. schools means that as a *practical* matter *Bolling* is no longer relevant to educational opportunity.

While *Bolling* may not matter anymore for the students at Sousa, school choice does. The Sousa students, like other D.C. students, have a variety of

11. As this Essay was going to press, an important contribution to the progressive case for school choice was published. As its title suggests, *THE FUNDAMENTAL PROMISE OF CHARTER SCHOOLS: TOWARD A PROGRESSIVE POLITICS OF SCHOOL CHOICE* (Eric Rofes & Lisa M. Stulberg eds., 2004), is a defense of charter schools by voices on the left.

12. See, e.g., Hershkoff & Cohen, *supra* note 6, at 28 (parental school choice plans have a segregationist history and will lead to further segregation); O’Brien, *supra* note 10, at 400–407; Thomas & Clemetson, *supra* note 7 (according to former NAACP President Kweisi Mfume, “vouchers don’t educate, they segregate”); Ellen Nakashima, *Virginia Legislators Cool to Charter Schools*, WASH. POST, Jan. 30, 1996, at B3 (quoting Paul C. Gillis, president of the Virginia Conference of the NAACP, as stating his group would fight charter schools “at every turn,” and invoking Virginia’s history of segregated and unequal schools).

13. D.C. PUBLIC SCHOOLS, MEMBERSHIP IN THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS BY SCHOOL, GRADE, RACE, AND SEX (Oct. 7, 2003), at 28, available at http://www.k12.dc.us/dcps/frontpagepdfs/membershipOct70_race.pdf.

14. *Id.* at 29. Washington, D.C. operates some middle schools (serving either grades 5–8 or 6–8) and some junior high schools (grades 7–9). The numbers in the text above are for middle schools, but the junior high school numbers tell the same story. There are 5,111 junior high school students in D.C. Public Schools, 286 of whom are white. *Id.* at 31. Of those 286, all but thirteen attend one school—Alice Deal Junior High School in the Northwest quadrant of the city. *Id.* at 30.

charter school options. In Washington, D.C., one out of seven children attending public school attends a public charter school—only Dayton, Ohio and Kansas City, Missouri have a higher proportion of kids in charter schools.¹⁵ Moreover, the recently passed DC School Choice Incentive Act of 2003 gives many D.C. students a chance to receive a voucher to attend a private school.¹⁶ In light of this background, it is worth reflecting on the history of school choice, with an eye to whether choice realizes or undermines *Bolling's* promise of equal educational opportunity.

This Essay proceeds in six parts. In Part I, I outline how sheer necessity forced recently freed slave communities to create schools for themselves and their children during Reconstruction. In Part II, I examine the alternative schools created during the civil rights movement of the 1960s. My emphasis here is on the Mississippi Freedom Summer of 1964, in which civil rights organizations and volunteer teachers from the North responded to the inadequacies of the Mississippi education system by establishing freedom schools for blacks.

Though most of the freedom schools disbanded at the end of the summer of 1964, their legacy would influence the next chapter of the progressive history of school choice—the northern free schools of the late 1960s and early 1970s. Free schools, the subject of Part III, were alternative, independent, and privately funded. They were started by progressive educators, including many former public school teachers and some veterans of Freedom Summer, who had come to believe that they could reform public education only by working outside of the system.

The late 1960s also saw the public school bureaucracy challenged by the community control movement, the topic of Part IV. Community control advocates included civil rights organizations, black nationalists, and some members of the liberal political establishment. They demanded that ghetto residents have more control over their neighborhood schools. While not itself a school choice initiative, the community control movement is an important part of the narrative. Like some choice proposals, it was premised on the notion that the public system was unwilling or unable to meet the needs of poor and working-class black children. Community control supporters also shared choice advocates' belief that taking control from the bureaucracy and giving it to community members was an important part of the solution.

As I will address in Part V, these views found their ultimate expression in the claim that the state should provide vouchers that parents could use to pay for schools of their choice. Despite the voucher movement's current association with conservatives, I will explore how vouchers became part of the political landscape through the advocacy of influential liberal educational advocates in

15. Justin Blum & Jay Mathews, *Quality Uneven, Despite Popularity; No Evidence That Achievement Tops That of Regular Schools*, WASH. POST, June 19, 2003, at A1.

16. Pub. L. No. 108-199 (2003).

the late 1960s. These progressives outlined a vision of school vouchers that was clearly motivated by integrationist and equity concerns—the same impulses that had led to *Brown* and *Bolling*.

Finally, in Part VI, I will sketch out some of the implications of this history. In particular, I will argue that a close attention to the history of school choice suggests that while today's voucher proposals will not likely further a robust version of the *Brown/Bolling* promise of racial justice, it is possible to imagine a progressive vision of vouchers that would.

I. RECONSTRUCTION

To fully understand the scope of the black community's commitment to school choice, it is necessary to begin by discussing a time before the term "school choice" even existed. After the Civil War, there were no schools for blacks in the South. In response, the Freedman's Bureau, along with a variety of northern benevolent associations, organized schools for recently freed slaves in the states of the former Confederacy. However, their school-building efforts did not proceed at the same pace across the South. As this Part will explore, blacks responded to the absence of sustained government support by assuming responsibility for building schools themselves.¹⁷

Before proceeding further I want to offer a word of caution about the extent of my claim. I do not mean to say that the schools built by blacks during Reconstruction were all schools of choice in the way that we think of that term today. Immediately after the Civil War there was no functioning government-run school system for blacks, so unless the black community built schools, there would be none. As we shall see, however, even after the government began to assume the responsibility of building and supporting schools, some blacks continued to prefer the independent black schools outside of the government system. My principal suggestion here is that this effort to construct schools was an important pre-cursor to the school choice movement, because here we see the beginning of what would become a recurrent practice—when the state did not provide schools, or if it provided inadequate ones, some blacks and their white allies would try to build their own.

While the desire for education pre-dated Emancipation,¹⁸ the years following

17. There is a substantial historical literature on the topic of black school-building efforts during Reconstruction. For discussions of the role that northern teachers played in the education of southern blacks after the Civil War, see RONALD BUTCHART, *NORTHERN SCHOOLS, SOUTHERN BLACKS, AND RECONSTRUCTION: FREEDMEN'S EDUCATION, 1862–1875* (1980); JACQUELINE JONES, *SOLDIERS OF LIGHT AND LOVE: NORTHERN TEACHERS AND GEORGIA BLACKS, 1865–1873* 84 (1980); ROBERT C. MORRIS, *READING, 'RITING, AND RECONSTRUCTION: THE EDUCATION OF FREEDMEN IN THE SOUTH, 1861–1870* (1976). For histories emphasizing the efforts by freedpeople themselves to develop schools, see JAMES ANDERSON, *THE EDUCATION OF BLACKS IN THE SOUTH, 1860–1935* (1988) and Herbert Gutman, *Schools for Freedom: The Post-Emancipation Origins of Afro-American Education*, in *POWER AND CULTURE: ESSAYS ON THE AMERICAN WORKING CLASS* 260–97 (Ira Berlin ed., 1987).

18. Gutman, *supra* note 17, at 261–68 (describing secret schools established during slavery and the Civil War).

the Civil War provided the first sustained opportunity for Southern blacks to act on their needs. The results, according to observers at the time, were fairly dramatic. In the fall of 1865, John W. Alvord, superintendent of Education for the Freedman's Bureau, toured the South. He was surprised at what he saw:

A cellar, a shed, a private room, perhaps an old school-house, is the place . . . and in the midst of a group of thirty or forty children, an old negro in spectacles, or two or three young men surrounded by a hundred or more, themselves only in the rudiments of a spelling-book, and yet with a passion to teach what they *do* know; or a colored woman, who as a family servant had some privileges, and with a woman's compassion for her race—*these* are the institutions and agencies.¹⁹

The desire for education that Alvord and others witnessed led to a variety of specific strategies on the part of Southern blacks. Attendees at black state political conventions throughout the South demanded that their states establish a state-financed education system.²⁰ In other cases, black laborers negotiated labor contracts that included "education clauses" requiring their employers to provide schools.²¹ But perhaps the area of greatest sustained initiative came as blacks throughout the South began building schools for themselves and their children.

In state after state, in the absence of a formal education system, blacks began to build schools and hire teachers. Historian Herbert Gutman found that in the fall of 1866, at least half of the schools in Arkansas,²² Florida, Georgia,²³

19. Gutman, *supra* note 17, at 270 (citing *Schools Taught by Freedmen; Correspondence of Rev. Mr. Alvord*, FREEDMAN'S J., Vol. II, No. 2, Feb. 1866); see also *id.* at 270 (quoting unnamed observer of black schools in Virginia: "I never before imagined it possible for an uneducated class to have such zeal of earnestness for schools and books . . ."); W.E.B. DUBOIS, BLACK RECONSTRUCTION IN AMERICA 641–42 (1935) (quoting Booker T. Washington: "Few people who were not right in the midst of the scenes can form any exact idea of the intense desire which the people of my race showed for education. It was a whole race trying to go to school. Few were too young, and none too old, to make the attempt to learn.").

20. See Heather A. D. Williams, *Self Taught: The Role of African Americans in Educating the Freepeople, 1861–1871*. 167–93 (2002) (unpublished dissertation on file with author); see also ANDERSON, *supra* note 17, at 18–19 (describing black efforts to include the right to a free public education in southern state constitutions).

21. ANDERSON, *supra* 17, at 21. See also Williams, *supra* note 20, at 389.

22. Arkansas blacks established the first free schools in Little Rock in 1865. The community paid tuition for a time, then formed an educational association through which teacher salaries were paid and schools were made free. DUBOIS, *supra* note 19, at 658. Even after the Freedmen's Bureau became active in Arkansas, blacks continued to build schoolhouses and furnished as much as thirty-three percent of the cost of instruction. *Id.*

23. In Savannah, Georgia, by the end of 1865, African Americans had opened schools for 500 students and provided \$1000 in funding for teacher salaries. *Id.* at 645. Twenty-eight schools existed in Savannah in 1866, and the black *Loyal Georgian* reported that sixteen of them were "under the control of an Educational Board of Colored Men, taught by colored teachers, and sustained by the freed people." *Id.* Statewide, by 1867, almost 250 schools had opened in Georgia; ninety-six were supported by the freedmen, and freedmen owned fifty-seven of the school buildings. *Id.*

Kentucky, Louisiana,²⁴ Maryland, and Texas²⁵ were sustained by blacks.²⁶ In Alabama, the Carolinas, Tennessee, and Virginia,²⁷ blacks supported twenty-five to forty-nine percent of the schools.²⁸ These efforts initially surprised Freedman's Bureau agents who surveyed the region shortly after the Civil War expecting to find no functioning schools for blacks.²⁹

In this initial era of black school-building we begin to see some of the themes that I will return to throughout this Essay. Among them is the central role that churches played in supporting these early schools. Classes were held wherever space was available, including "abandoned warehouses, billiards rooms, or, in New Orleans and Savannah, former slave markets."³⁰ But independent black churches, themselves emerging as new institutions after the war, played an especially important role in the school-building process, most often by providing space for classes.³¹ In addition, many churches sponsored "Sabbath schools," which "operated mainly in the evenings and on weekends [to provide] basic literacy instruction."³² The schools were common across the South in former slave communities immediately after the war. In 1868, John Alvord described the scope of Sabbath schools in North Carolina: "In all the cities of the State, in most of the smaller towns, and in many of the rural districts, Sabbath schools are established and well conducted."³³ In 1869 Alvord's agents identified "1,512

24. The history of black school development in Louisiana was somewhat unique. Because of its antebellum free black and creole community, New Orleans free blacks had known schools before the Civil War, and built schools at an especially rapid pace after emancipation. Gutman, *supra* note 17, at 280–85. Even after the War, however, a minority of New Orleans schools continued admissions policies that admitted only light-skinned students or those whose families were from a better "social condition." *Id.* at 285. See also Nathan Wiley, *Education of the Colored Population of Louisiana*, 33 HARPER'S NEW MONTHLY MAG. 244, 246–48 (July, 1866) (describing private schools for coloreds in antebellum New Orleans and Baton Rouge).

25. In Texas, by the end of 1866, the National Superintendent of Bureau Schools reported that of the Texas schools in operation, groups of freedmen owned the buildings for nineteen while the Bureau itself provided only five. James M. Smallwood, *Early 'Freedom Schools': Black Self-Help and Education in Reconstruction*, 41 NEGRO HIST. BULL. 790, 790 (1978). This trend would continue—by 1870 there were sixty-six schools that regularly reported to the Freedmen's Bureau. Of those, the black community sustained thirty-four wholly, and twenty-seven in part. *Id.*

26. Gutman, *supra* note 17, at 293–95.

27. In 1861 in Hampton, Virginia, Mary Peake—the daughter of a free black mother and an English father—established the first school for blacks, before the arrival of Northern teachers. ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877* 97 (1988). In Richmond, less than a month after Union troops occupied the city, over 1,000 black children and seventy-five adults attended schools established by Richmond's black churches and the American Missionary Association. *Id.*

28. *Id.*

29. *Id.* (describing Freedmen's Bureau official's surprise at arriving in rural areas of the South and discovering classes organized by blacks already meeting in churches, basements, or private homes); DuBois, *supra* note 19, at 647 ("The Freedmen's Bureau found many schools for freedmen already in existence maintained by tax commissioners, by Negroes, and by the army.").

30. FONER, *supra* note 27, at 97.

31. Smallwood, *supra* note 25, at 791; Gutman, *supra* note 17, at 278, 286.

32. ANDERSON, *supra* note 17, at 12.

33. *Id.* at 13.

Sabbath schools, with 6,146 teachers and 107,109 pupils.”³⁴ Black churches were not alone in supporting education for freed people; northern white missionary organizations, including the American Missionary Association (AMA), were tremendous supporters of Southern black schools.³⁵

Though the support of Northern whites, especially missionaries, would prove essential to maintaining black schools, the white presence sometimes conflicted with the freed people’s desire to sustain schools for themselves and their children. Here too we see a precursor to twentieth century disputes over who would control the education of black children. One source of tension between Southern blacks and northern missionaries arose from the paternalistic and often racist attitudes that were held by even well-meaning whites of the era. For example, S.W. Magill, who led the AMA’s educational work in Savannah, Georgia, thought little of the local association of black clergy. “However good men [they] might be,” said Magill of the ministers, “they know nothing about education”; managing schools required “more head than these colored people yet have.”³⁶

For their part, some Southern blacks who had started schools did not wish to lose control of the institutions they had built. As one white missionary teacher reported from the South,

[Ex-slaves] ‘have a natural praiseworthy pride in keeping their educational institutions in their own hands. There is jealousy of the superintendence of the white man in this matter. What they desire is assistance without control.’ The values of self-help and self-determination underlay the ex-slaves’ educational movement.³⁷

Disputes over who controlled the schools were accompanied by differences of opinion among parents regarding where to educate their children. Over time the Freedman’s Bureau, Northern benevolent associations, and state governments, would eventually fund the majority of schools for blacks in the South.³⁸ Yet, in the clearest example of nineteenth-century black “school choice,” some blacks continued building private schools even after the Freedman’s Bureau

34. *Id.* The *Weekly Freedman’s Press*, a paper published in Austin, Texas by blacks and for blacks, explicitly linked the educative function of schools and churches: “the colored people have just come out of slavery into the full blaze of freedom, and like all free-men who wish to keep their freedom, they must educate themselves; the schoolhouse and the church walk hand in hand” Williams, *supra* note 20, at 160 (quoting WEEKLY FREEDMAN’S PRESS, July 18, 1868, at 1).

35. *Id.* at 196–200.

36. Gutman, *supra* note 17, at 290.

37. ANDERSON, *supra* note 17, at 5. See also JONES, *supra* note 17, at 84 (“[N]orthern teachers in Georgia were ‘taken aback to discover that some blacks preferred to teach in and operate their own schools without the benefit of northern largesse.’”). Even in AMA-run schools black parents sometimes disagreed with school officials about whether black parents or the AMA should decide who taught black children. Williams, *supra* note 20, at 200–04.

38. FONER, *supra* note 27, at 97.

opened publicly supported schools.³⁹ In 1867, the *Freedman's Record* complained about blacks who continued to send their children to black-run independent schools rather than the Northern-dominated, white-run schools.⁴⁰

Despite the energy surrounding their establishment, many of the Reconstruction-era schools eventually closed. The schools failed for a variety of reasons, including the difficulty impoverished Southern blacks faced in sustaining the schools themselves, the decline in interest of white philanthropic supporters, and the federal government's reduced enthusiasm for assisting Southern blacks after Reconstruction.⁴¹ Of special importance was the hostility of some elements of the Southern white population to black schooling.⁴² As a result, the percentage of black children who attended school actually declined between 1880 and 1900.⁴³ Nonetheless, the black school-building movement of the Reconstruction era had a significant positive impact on overall black educational attainment. For example, from 1860 to 1880 the southern black illiteracy rate fell from ninety-five percent to seventy percent.⁴⁴

II. FREEDOM SCHOOLS AND FREEDOM SUMMER

Almost eighty years after Reconstruction, the South underwent another racial

39. ANDERSON, *supra* note 17, at 10.

40. *Id.* at 12.

41. Gutman, *supra* note 17, at 297.

42. For descriptions of some of the violent white resistance to black schooling, see *id.* at 274, 281, 287, and Williams, *supra* note 20, at 390, 413–18. For a discussion of some of the non-violent forms of opposition, see Gutman, *supra* note 17, at 274, 281–82. In part, this violence aimed at deterring blacks from building and attending schools (and deterring whites from teaching or supporting those same schools), is a chapter in the larger story of post-Civil War white opposition to Reconstruction and black equality. See Forman, *supra* note 3, at 914–34 (generally discussing the Ku Klux Klan and related violence of this era). Educational historians have cited a variety of reasons to explain violence related to schooling in particular. Notably, some planters relied on black child labor and could not afford to lose the workers to the classroom, see ANDERSON, *supra* note 17, at 23, and education threatened the black labor pool by aiding geographic mobility. See Williams, *supra* note 20, at 390. An especially interesting case occurred in Mississippi, where powerful elements of the population opposed *any* universal education, not just for blacks. *Id.* at 409.

43. ANDERSON, *supra* note 17, at 23. In 1917, the federal government published a two volume survey entitled *Negro Education*. U.S. BUREAU OF EDUC., NEGRO EDUCATION: A STUDY OF THE PRIVATE AND HIGHER SCHOOLS FOR COLORED PEOPLE IN THE UNITED STATES (1917). The survey documented the leading role that black and white churches, foundations and other private organizations continued to play in educating Southern blacks, even fifty years after the end of the Civil War. Most schools were still privately maintained. *Id.* at 115. The report played an important contribution in highlighting the terrible state of black schools. For example, it demonstrated that there were only sixty-four public high schools for blacks in all of the Southern states. *Id.* at 42. Nor was funding equal: in majority black counties, the per capita expenditure for white schools was six to ten times that for black schools. *Id.* at 7. Yet, despite its benefits, the report also did great harm. The report criticized education efforts aimed at preparing blacks for college and argued instead that they should be prepared for their preordained roles as manual laborers, farmers, and craftsmen. See DIANE RAVITCH, LEFT BACK: A CENTURY OF FAILED SCHOOL REFORMS 107–12 (2002) (criticizing this aspect of the federal government report).

44. ANDERSON, *supra* note 17, at 31. Furthermore, despite the fact that many black schools closed after Reconstruction, black school building efforts in the South continued throughout the Jim Crow era. NEIL R. McMILLEN, DARK JOURNEY: BLACK MISSISSIPPIANS IN THE AGE OF JIM CROW 79–80 (1989).

revolution. The civil rights movement, like the Reconstruction governments, sought to overturn a deep-seated system of racial subordination, and as it had during Reconstruction, schooling would figure prominently in the struggle. Of particular importance were the Mississippi freedom schools of 1964. In these schools, civil rights workers from SNCC (Student Non-Violent Coordinating Committee) and CORE (Congress of Racial Equality) worked with volunteers to set up an alternative summer school system. The summer volunteers, many white and from elite northern universities, tried to educate Mississippi blacks about history, civics, politics, and the means by which they could change society. Beyond the freedom schools' well known contribution to the racial justice struggle, I would suggest that they were important in another, less often recognized way. Just as blacks during Reconstruction refused to accept the absence of schools, the freedom schools movement refused to accept the inadequacy of schools. By building separate schools and openly repudiating the establishment system, the freedom schools movement laid a foundation for later progressive school choice proposals.

The Mississippi freedom schools had their roots in other educational protest movements of the era. In the early 1960s, northern civil rights workers organized day- and week-long boycotts against the segregated schools in the north. During the walkouts, the groups set up alternative schools, often housed in churches.⁴⁵ These schools, established in cities including Boston, Chicago, New York, and Cleveland, had multiple aims: (1) to raise academic achievement for black children, (2) to dramatize the inadequacy of the existing public schools, and (3) to develop racial pride by teaching subjects that organizers believed the traditional curriculum ignored. These included black history and literature, and the values embodied by the civil rights movement.⁴⁶ Teachers in these schools were not typically credentialed. They instead saw their work as broader than education; for most it was a part of the larger racial justice struggle.⁴⁷

In addition to these northern precedents, the freedom schools also reflected the legacy of "Nonviolent High," an alternative school that SNCC established in McComb, Mississippi in 1961. Nonviolent High had been SNCC's response to the local high school principal's refusal to allow students to participate in

45. Carleton Mabee, *Freedom Schools, North and South*, THE REPORTER, Sept. 10, 1964, at 30.

46. Mabee, *supra* note 45, at 30. See also Daniel Hinman-Smith, *Does the Word Freedom Have a Meaning?: The Mississippi Freedom Schools, the Berkley Free Speech Movement, and the Search For Freedom Through Education 42-50* (1993) (unpublished Ph.D dissertation, U. N. C. at Chapel Hill, on file with the author) (describing freedom schools in Chicago and Boston); MY SOUL IS A WITNESS: A CHRONOLOGY OF THE CIVIL RIGHTS ERA 1954-1965 185 (1999) (describing freedom schools in New Jersey and Chicago).

47. CLARENCE TAYLOR, *KNOCKING AT OUR OWN DOOR: MILTON A. GALAMISON AND THE STRUGGLE TO INTEGRATE NEW YORK CITY SCHOOLS* 135 (1997) ("Schools were redefined, not as stifling conventional classrooms, operated by an untouchable central body, but as places where children were cared for by dedicated professionals and nonprofessionals willing to sacrifice their time.").

protest activity.⁴⁸

The idea for freedom schools came from Charlie Cobb, a SNCC worker who believed the summer project would improve educational opportunities for Mississippi blacks.⁴⁹ Cobb portrayed black classrooms in Mississippi as autocratic and intellectually stultifying places that emphasized rote memorization and discouraged critical thinking.⁵⁰ Fannie Lou Hamer and other civil rights workers criticized the public school establishment, including black teachers, for not doing enough to challenge black subordination in schools and society.⁵¹ In order to change the state, Cobb said, SNCC must create “our own institutions to replace the old, unjust, decadent ones which make up the existing power structure. Education in Mississippi is an institution which must be reconstructed from the ground up.”⁵²

To make the freedom schools a reality in many parts of Mississippi, local black residents had to build schools themselves, as they had during Reconstruction. In Harmony, Mississippi, for example, a group of forty residents cleaned and refurbished a run-down building and turned it into a usable school.⁵³ As an overt challenge to the state system, it is unsurprising that efforts to establish freedom schools were met with great hostility by many local school officials. Shortly after the Harmony school opened, the sheriff and school superintendent declared the building county property and prohibited its use as a freedom school. Undeterred, local residents and freedom school volunteers worked together to build another school. Volunteer Elizabeth Sutherland described the process:

The men (and some of us when we have time) work on the building up to 10 hours a day with a 100 [degree] sun beating down and the humidity so high one’s clothing becomes soaking wet after only a few minutes work. The building is guarded at night because these people, after having had their homes shot into and having a couple of crosses burned in the middle of their community during the last few months, do not intend to have all their hard work go up in flames right away.⁵⁴

48. Daniel Perlstein, *Teaching Freedom: SNCC and the Creation of the Mississippi Freedom Schools*, 30 *HIST. EDUC. Q.* 297, 300–01 (1990); JAMES FORMAN, *THE MAKING OF BLACK REVOLUTIONARIES* 231–32 (1972). Bob Moses described the classroom at Nonviolent High: “We had about fifty to seventy-five kids in a large room trying to break them down with the elements of algebra and geometry, and even a little French, a little history. I think Dean taught physics and chemistry, and McDew took charge of history, and I did something with math.” HINMAN-SMITH, *supra* note 46, at 22.

49. Charles Payne, *Education for Activism: Mississippi’s Freedom Schools in the 1960s* 4 (1997) (unpublished paper on file with author).

50. *Id.* at 5.

51. Hinman-Smith, *supra* note 46, at 132–33.

52. George W. Chilcoat & Jerry A. Ligon, *We Talk Here. This is a School for Talking. Participatory Democracy from the Classroom out into the Community: How Discussion was Used in the Mississippi Freedom Schools*, 28 *CURRICULUM INQUIRY* 165, 171 (1998).

53. Hinman-Smith, *supra* note 46, at 78.

54. ELIZABETH SUTHERLAND, *LETTERS FROM MISSISSIPPI* 115 (1965). See also LEN HOLT, *THE SUMMER THAT DIDN’T END: THE STORY OF THE MISSISSIPPI CIVIL RIGHTS PROJECT OF 1964* 100–01 (1965)

As could be expected given their origins, the freedom schools differed from the typical Mississippi public school. Cobb thought the theme of the schools should be “the student as a force for social change in Mississippi,” and encouraging the students to ask hard questions was the first step towards that goal.⁵⁵ The organizers made their pedagogical goals explicit in an instructional handout titled “Notes on Teaching in Mississippi” sent to all of the volunteer teachers before the summer. The handout stated:

This is the situation: You will be teaching young people who have lived in Mississippi all their lives. That means that they have been deprived of decent education, from the first grade through high school. It means that they have been denied free expression and free thought. Most of all—it means that they have been denied the right to question. The purpose of the freedom schools is to help them begin to question.⁵⁶

The curriculum had three core components: case studies covering topics such as the Holocaust and the Mississippi judicial system,⁵⁷ a “Guide to Negro History” that covered the nineteenth and twentieth centuries,⁵⁸ and a citizenship curriculum.⁵⁹

The teaching style was designed to sharply contrast with the teacher-centered model familiar in Mississippi. As one volunteer who taught in Jackson ob-

(describing Mississippi legislation making it illegal to teach in a school that had not been licensed by the county superintendent of education); Luke Kabat, *My Friend in Mississippi*, THE NEW REPUBLIC, May 29, 1965, at 18 (describing hostility of black principal of Meridian, Mississippi high school towards the freedom school).

55. Hinman-Smith, *supra* note 46, at 14.

56. Chilcoat & Ligon, *supra* note 52, at 172.

57. Perlstein, *supra* note 48, at 310.

58. *Id.* at 310–11.

59. The citizenship curriculum was divided into seven units:

1. Comparison of the student’s reality with that of others (the way the students live and the way others live).
2. North to Freedom? (The Negro in the North).
3. Examining the apparent reality (the ‘better lives’ that whites live).
4. Introducing the *Power Structure*.
5. The poor Negro and the poor white.
6. Material things versus soul things.
7. The Movement.

Interwoven into these units were six questions that teachers were expected to return to periodically:

1. Why are we (teachers and students) in freedom school?
2. What is the Freedom Movement?
3. What alternatives does the Freedom Movement offer us?
4. What does the majority culture have that we want?
5. What does the majority culture have that we don’t want?
6. What do we have that we want to keep?

HOLT, *supra* note 54, at 112–13. For a further discussion of the citizenship curriculum in action in one classroom, see Florence Howe, *Mississippi’s Freedom Schools: The Politics of Education*, 35 HARV. EDUC. REV. 160, 166–71 (1965).

served, “the teacher is not to be an omnipotent, autocratic dictator, a substitute for the domineering parent or the paternalistic state. He is not to stand before rows of students, simply pouring pre-digested, pre-censored information into their brains.”⁶⁰ Instead, students typically sat in circles and were encouraged to share their opinions.⁶¹ Most of the freedom school teachers welcomed this approach as few were teachers by training and many had been involved in political activities before coming to Mississippi.⁶²

Black schools in Mississippi rarely offered subjects such as drama, art, foreign languages, or college preparatory classes.⁶³ In response, freedom schools stressed these subjects. French was an especially popular choice—an observer in one classroom reported watching students end a lesson by singing “We Shall Overcome” in French.⁶⁴ Freedom schools also emphasized cultural events, such as films, concerts, and performances,⁶⁵ while some published newspapers.⁶⁶ Because educational experience was not meant to be limited to the schoolroom, “teachers and students were ‘agents of change’ in Mississippi. [Teachers] moved from the classroom into the streets and back again to our books. The education of that summer changed lives, revolutionized people.”⁶⁷

By the end of the summer of 1964 more than 2,000 students had attended 41 freedom schools throughout Mississippi.⁶⁸ Though some freedom schools continued to operate, most closed their doors for good once the summer ended.⁶⁹ But despite their short life span, the freedom schools were a “provocative suggestion that an entire school system can be created in any community outside the

60. Howe, *supra* note 59, at 162.

61. *Id.* at 161, 171. Another teacher explained the teaching style in this way: “[I]n Freedom School . . . how we taught was just to ask questions. We didn’t have a political doctrine or ideology that we were trying to impose on the students, but simply asking them why or what is the problem. Then, how are you going to solve it?” Perlstein, *supra* note 48, at 319.

62. Chilcoat & Ligon, *supra* note 52, at 178. “A SNCC report on the volunteer teachers stated, ‘The teachers are young—college students and youthful teachers—and relatively inexperienced, but they are enthusiastic, experimental, and politically sophisticated. Most importantly, there is a sense of purpose.’” *Id.* See also O.P. Walters, *Their Text is a Civil Rights Primer*, N.Y. TIMES MAG., Dec. 20, 1964, at 10 (“The idea is to teach Negro Mississippians to take themselves seriously, to articulate their ambitions, and their discontents—in short, to instill political awareness.”).

63. Payne, *supra* note 49, at 6–7.

64. HOLT, *supra* note 54, at 111. See also Perlstein, *supra* note 48, at 318.

65. Perlstein, *supra* note 48, at 318; Hinman-Smith, *supra* note 46, at 92; Howe, *supra* note 59, at 166–67; George W. Chilcoat & Jerry A. Ligon, *We Will Teach What Democracy Really Means by Living Democratically Within Our Own Schools: Lessons from the Personal Experience of Teachers Who Taught in the Mississippi Freedom Schools*, 11 EDUC. & CULTURE 24, 33 (1995).

66. George W. Chilcoat & Jerry A. Ligon, *Helping to Make Democracy a Living Reality: The Curriculum Conference of the Mississippi Freedom Schools*, 15 J. CURRICULUM & SUPERVISION 43, 61 (1999).

67. Florence Howe, *Mississippi’s Freedom Schools*, in MYTHS OF COEDUCATION; SELECTED ESSAYS 1964–1983 52 (1984). Not every teacher was as satisfied as Howe. Some complained, for example, about the students’ level of enthusiasm for the material. Hinman-Smith, *supra* note 46, at 84.

68. Chilcoat & Ligon, *supra* note 66, at 65.

69. Perlstein, *supra* note 48, at 321–23.

official order, and critical of its suppositions.”⁷⁰ This challenge would next be taken up by the free schools movement.

III. THE FREE SCHOOLS MOVEMENT

While freedom schools were a summer phenomenon, they would help give rise to a group of schools that operated year-round, mostly in the North, and which shared many of their basic assumptions. These were the free schools, which came into being during the late 1960s and early 1970s and constitute the next chapter in the history of progressive school choice. Free schools as an institution had a rapid rise and fall. Beginning in 1967 or thereabouts, somewhere between 400 and 800 such schools opened around the country; most had shut down by the mid-1970s.⁷¹ But during their ascendancy, free schools were a direct challenge by left-leaning reformers and progressive educators to the existing educational establishment. Moreover, although the connection between the two is not typically made, free schools in many respects resemble some of today’s charter schools.

Free schools were grounded in the political and cultural turmoil of the 1960s.⁷² As the name implies, some of the free schools’ founders had spent time in the civil rights movement and the Mississippi freedom schools. There, many were first exposed to the civil rights movement’s critique of the public education system. Freedom Summer also allowed them to institutionalize their desire for change: they saw that starting and working in schools was a way in which they could contribute to racial justice. Finally, Freedom Summer gave them access to a specific pedagogical approach—teaching by encouraging students to ask hard questions—that many would adopt for use in the free schools.⁷³

There were differences among the curricula of free schools, and these sometimes correlated with race. For example, contemporary observers noted that free schools in the black community “are characterized by considerably more structure and more concern with directly teaching traditional skills than are the typical free schools.”⁷⁴ Jonathan Kozol was especially attentive to this issue, attacking “rich white kids” who had benefited from rigorous, sequential instruction of hard skills, but who were “determined that poor kids should make clay

70. Howard Zinn, *Schools in Context: The Mississippi Idea*, *THE NATION*, Nov. 23, 1964, at 371, 374–75. See also Hinman-Smith, *supra* note 46, at 119–20 (other freedom summer teachers “linked the Freedom Schools to a broad indictment of American education”).

71. RON MILLER, *FREE SCHOOLS, FREE PEOPLE: EDUCATION AND DEMOCRACY AFTER THE 1960s* 3–4, 109–10, 121–22 (2002).

72. Because free schools were typically tiny, unaffiliated and decentralized, it is difficult to provide a unifying definition of the movement. Nonetheless, an examination of the various free schools reveals many similarities in their ideologies and programs. One scholar who has drawn the connection between free schools and charter schools is Lisa Stulberg. See Lisa M. Stulberg, *What History Offers Progressive Choice Scholarship*, in *THE FUNDAMENTAL PROMISE OF CHARTER SCHOOLS*, *supra* note 11, at 24–28.

73. MILLER, *supra* note 71, at 20–23, 116.

74. ALLEN GRAUBARD, *FREE THE CHILDREN: RADICAL REFORM AND THE FREE SCHOOL MOVEMENT* 40 (1972).

vases, weave Indian headbands, play with Polaroid cameras, climb over geodesic domes.”⁷⁵ Kozol argued that urban free schools must teach hard skills because that was what poor parents wanted and their children needed.⁷⁶ Other observers noted that race and class sometimes influenced parents’ reasons for seeking alternative schools. While white parents might bring their children to free schools because they “believe in freedom for self-expression or letting the child develop his own interests,” black parents seek free schools “because their children are not learning in the public schools, are turning sullen and rebellious by the age of eight, and are dropping out in droves.”⁷⁷

Despite pedagogical differences, many free schools shared a loosely defined, evolving curriculum that focused on the issues of the day, including race, civil rights, Vietnam, and women’s liberation.⁷⁸ Because many of the teachers were political activists, the schools themselves were often overtly political, and school buildings were frequently used for antiwar and other progressive activities.⁷⁹ The schools in the black community tended to pay special attention to black history, which many teachers felt had been ignored in public schools. For example, New Community School in Oakland had a Black Studies Department, whose chair wrote at the time that “the emphasis on Black Experience is necessitated by the fact . . . [that] the problems that confront Black People are different from problems that confront whites, because of the history of political and social oppression of Blacks.”⁸⁰ As had the freedom schools, the free schools typically emphasized self-expression, including the arts, poetry, music, and drama.⁸¹ And like Reconstruction schools and freedom schools, free schools often were housed in churches.

Free schools also were grounded in the left’s critique of bureaucracy that marked the 1960s. In today’s educational debates, when many members of the progressive and civil rights communities defend the public school system against challenges from the right, it is easy to forget that in the 1960s it was the left that attacked the bureaucracy. When student activists like Berkeley’s Mario Savio proclaimed that “we have come up against what may emerge as the greatest problem of our nation—depersonalized, unresponsive bureaucracy,”⁸²

75. JONATHAN KOZOL, *ALTERNATIVE SCHOOLS: A GUIDE FOR PARENTS AND EDUCATORS* 40–41 (1982) (first published in 1972 under the title *FREE SCHOOLS*).

76. *Id.* at 40. (“It is a bitter pill for many young white people to accept, but in a large number of cases those rewards and skills and areas of expertise many of us consider rotten and corrupt and hopelessly contaminated remain attractive, and in certain situations, irresistible to poor people.”)

77. Bonnie Barrett Stretch, *The Rise of the Free School*, *SATURDAY REV.*, June 20, 1970, at 90.

78. MILLER, *supra* note 71, at 118.

79. See GRAUBARD, *supra* note 74, at 265. In addition, many of the activists saw their participation in the free schools as part of the larger movement. MILLER, *supra* note 71, at 29. See also Charles Lawrence, *The Poor Still Pay More: Charters, Vouchers, EMOs and the Illusion of Choice* 13 (unpublished paper on file with author) (“We were part of a larger movement that included the fight for jobs, a living wage, voting rights, welfare rights, and adequate housing.”).

80. GRAUBARD, *supra* note 74, at 58.

81. MILLER, *supra* note 71, at 118.

82. MILLER, *supra* note 71, at 27.

he captured a sentiment that was at the core of the free school philosophy. Many free schoolers were heavily influenced by educator Paul Goodman, who argued that “corporate and bureaucratic societies, whether ruled by priests, mandarins, generals, or business managers, have always tended to diminish the importance of personal needs and human feeling, in the interest of abstractions and systematic necessities.”⁸³ In this view, the public school bureaucracy was incapable of creating caring, intimate learning environments. The answer, argued educator John Holt, was to create “a society of much smaller scale institutions,” including smaller, decentralized schools.⁸⁴

These free schoolers believed the new small schools had to be outside the public system because the system was damaging children and too often unwilling to reform.⁸⁵ Holt argued that individual teachers who thought otherwise were making a mistake because when a school is “unwilling to change, immovable, a teacher who works there will not only be wasting his time, but in spite of his good intentions, will, as much as anyone else in the school, be doing more harm than good to his students.”⁸⁶ Given the system’s obvious intransigence, said Holt, teachers who continued on the quixotic mission of reforming from within, “seem to me to make a stronger commitment to the system than to the children.”⁸⁷

Other radical educators echoed Holt. For example, Jonathan Kozol, who helped found the New School for Children in Boston, distinguished independent free schools from alternative schools that were closely affiliated with the public system. Kozol argued that “no matter how inventive or passionate,” schools linked to the public school bureaucracy were still “a basic extension of the ideology of public school. They cannot, for reasons of immediate operation, finance, and survival, raise serious doubts about the indoctrinational and custodial function of the public education apparatus.”⁸⁸ The Summerhill Society *Bulletin*, one of the many newsletters connecting free school advocates, agreed: “the existing structure is too unresponsive, the existing structure is too big and unwieldy to allow for widespread *basic* change No, the opening of small antiauthoritarian schools, the maintenance of parallel institutions, still seems the

83. PAUL GOODMAN, *PEOPLE OR PERSONNEL: DECENTRALIZING AND THE MIXED SYSTEM* 264 (1968); Goodman’s other important works include *GROWING UP ABSURD* (1960) and *COMPULSORY MISEDUCATION* (1964).

84. MILLER, *supra* note 71, at 85. *See also* JONATHAN KOZOL, *supra* note 75, at 25 (free schools must be “outside the public education apparatus” and “as small, ‘decentralized,’ and ‘localized’ as we can manage.”). The free schoolers’ appeal for smaller schools remains one of the movement’s most enduring legacies. Leading proponents of small schools today include MEIER, *supra* note 2; ELIOT LEVINE, *ONE KID AT A TIME: BIG LESSONS FROM A SMALL SCHOOL* (2002) (discussing the Met Schools of Providence, Rhode Island); WILLIAM AYERS, ET AL., *A SIMPLE JUSTICE: THE CHALLENGE OF SMALL SCHOOLS* (2000).

85. GRAUBARD, *supra* note 74, at 40, 44–45.

86. JOHN HOLT, *WHAT DO I DO MONDAY?* 299 (1970).

87. *Id.*

88. KOZOL, *supra* note 75, at 23.

best way for Summerhillians.”⁸⁹

Consistent with this vision, most free schools were not only small in size:⁹⁰ they replaced governance by impenetrable bureaucracy with participatory democracy. One free school participant defined the free school as “a place which responds directly to the individual needs of the community which composes it”⁹¹ At the extreme were schools that gave all students, even the youngest child, an equal vote with the adults.⁹² But even the less radical schools sought to involve students, staff, and parents in a consensus-driven, deliberative decision-making process.⁹³ Moreover, many free schools rejected other values and structures that they associated with the bureaucratic public school establishment, including grading, age-grouping, homework, standardized tests, teacher-controlled classroom discussions, and traditional systems of discipline and punishment.⁹⁴

Though all free school activists were self-consciously outside of the public system, some hoped to influence it by example.⁹⁵ Charles Lawrence described his urban free school in Boston as “a vanguard for public education, a model for how public schools might look. Our goal was not to do away with public schools and establish a privately run system for the poor”⁹⁶ In the same vein, a teacher from a mainly black free school in St. Louis explained its founding philosophy:

The school’s controlling board of people from the neighborhood was thought of as the nucleus of a well-organized, confident, and experienced parent group that could demand to influence significantly the schools in our community and who could move from their experience to demand that the public School Board begin to make the kinds of changes necessary to provide high quality education for *all* children in the city.⁹⁷

Other free school founders believed that creating independent schools was an end in itself and objected to using children as instruments of reform. As one free school teacher argued, “the only really relevant political fact is that we have 48 young people who are no longer in the system’s schools—that in itself is the

89. MILLER, *supra* note 71, at 150 (emphasis in original).

90. The average size of a free school was thirty-three students. GRAUBAUD, *supra* note 74, at 41.

91. MILLER, *supra* note 71, at 43. Related to the question of school governance is that of building a sense of community in the school, especially between and among teachers and students. While all free schools viewed such community building as central to their mission, schools took various approaches to achieving it. LEN SOLO, *ALTERNATIVE, INNOVATIVE AND TRADITIONAL SCHOOLS: SOME PERSONAL VIEWS* 195–218 (1980).

92. MILLER, *supra* note 71, at 53.

93. MILLER, *supra* note 71, at 69–70.

94. For a review of how different free schools approached questions of grading and evaluation, see SOLO, *supra* note 91, at 115–64.

95. GRAUBAUD, *supra* note 74, at 130.

96. Lawrence, *supra* note 79, at 13.

97. GRAUBAUD, *supra* note 74, at 275.

most radical revolutionary thing we can do.”⁹⁸

Despite their idealistic beginnings, the free schools disappeared as quickly as they emerged, with many closing only a year or two after opening.⁹⁹ This decline is partly attributable to inadequate resources and a lack of outside support. As one observer noted at the time, free schools “charge little or no tuition, are frequently held together by spit and string, and run mainly on the energy and excitement of people who have set out to do their own thing.”¹⁰⁰ Without public funding, the schools were forced to rely on a few wealthy backers and foundations.¹⁰¹ Meanwhile, teachers and staff worked for paltry sums. Explained one:

How do I survive? I found a nice landlord who doesn't bug me about the rent. I dip into my savings, and get my parents and friends to invite me to dinner—often. Then, there are food stamps, of course. Mostly we rely on each other for moral support and help over the really rough places.¹⁰²

Obviously, neither the teachers nor the schools were likely to long survive using these strategies. To make matters worse, because free schools were perceived as threats by many in the public system, fledgling free schools often faced hostility from various community and public officials.¹⁰³

Some of the free schools' problems were internal. The same ideological impulses that led to the creation of the schools posed challenges to their survival. As one foundation report on Oakland's New Community School noted, “‘institution building’ is often an unwelcome concept to the young and rebellious staff and students who are naturally attracted to an alternative school. There is a strong feeling for the transitory and even the apocalyptic in the youth ethic.”¹⁰⁴ Similarly, in rejecting conventional forms of governance in favor of participatory democracy, some of the schools quickly became unmanageable or fell apart due to staff factionalism.¹⁰⁵

Notwithstanding their short life span, free schools had a significant impact on

98. GRAUBARD, *supra* note 74, at 273.

99. MILLER, *supra* note 71, at 124.

100. Stretch, *supra* note 77, at 76.

101. See KOZOL, *supra* note 75, at 87–88 (outlining strategies by which free schools could obtain foundation support); Stretch, *supra* note 77, at 77 (citing foundation grants and private donations); William Nelson, *The Storefront School: A Vehicle for Change*, 3 J. NEGRO EDUC. 248, 250 (1971) (citing Rockefeller Foundation support).

102. Stretch, *supra* note 77, at 78.

103. GRAUBARD, *supra* note 74, at 125–30, 132. Local officials opposed to free schools often used the municipal building codes as a weapon against free schools. KOZOL, *supra* note 75, at 32 (“The building codes, so blatantly and tragically ignored in cases of old, collapsing, rat-infested tenement houses owned by landlords who have friends within the city's legal apparatus, are viciously and selectively enforced to try and keep the Free School people out of business.”).

104. GRAUBARD, *supra* note 74, at 101.

105. MILLER, *supra* note 71, at 125–26. In addition, some free schools failed because they were simply no good at educating children. Free school advocate Len Solo, for example, called some free schools “positively pernicious places.” SOLO, *supra* note 91, at 53.

the American educational landscape. Before the free schools movement, most educational reform efforts focused on reforming the public education system from within. But the free schools were premised on the notion that the state-run system was too bureaucratic and entrenched to change without outside pressure. Though the free schools themselves only provided that pressure for a few years, they would lay the foundation for the wide variety of alternatives that come under the umbrella of school choice today.

IV. COMMUNITY CONTROL

At the same time that some progressive educators and community activists were starting free schools, others were leading the community control movement. This movement argued that the urban school crisis would only be solved when local residents took control of the schools from the central bureaucracy.

Community control advocates were motivated by some of the same impulses as the urban free schoolers. Foremost was the belief that the traditional public school system was failing black children. As the Ford Foundation's Mario Fantini wrote in 1968, "when 70 per cent of ghetto children are not reading at grade level, their parents have a right to question professional performance since the schools are supposed to educate everyone."¹⁰⁶ Moreover, community control advocates believed that the centralized bureaucracy was too inflexible to acknowledge its failure and change tactics.¹⁰⁷ As Marilyn Gittell argued, "[i]n every large city, an inbred bureaucratic supervisory staff sits at headquarters offices holding a tight rein on educational policy. Their vested interests are clear: Any major shift in educational policy might well challenge their control of the system."¹⁰⁸ Given the system's unwillingness or inability to respond to the documented failure of minority children, "the cry now is: 'we need a new system, one that is responsive to our kids and to us. It is up to us to build this new and relevant system.'"¹⁰⁹

This critique was based in part on a conviction that the bureaucracy's favored solutions—including compensatory education for disadvantaged students—did

106. Mario Fantini, *Community Participation*, 38 HARV. ED. REV. 160 (1968), reprinted in THE POLITICS OF URBAN EDUCATION 324–25 (Marilyn Gittell & Alan Hevesi eds., 1969); see also Henry Levin, *Introduction to COMMUNITY CONTROL OF SCHOOLS* 4–5 (Henry Levin ed., 1970) ("Neither urban educators nor informed laymen dispute that the city schools have failed to help the black American substantially to improve his status."); Leonard J. Fein, *The Limits of Universalism*, in COMMUNITY CONTROL OF SCHOOLS, *id.*, at 76, 80 (1970) ("There is general agreement that no matter what the schools are supposed to be teaching they are not teaching it very well to the poor and the black.").

107. Marilyn Gittell & Alan Hevesi, *Introduction to THE POLITICS OF URBAN EDUCATION*, *supra* note 106, at 11.

108. Marilyn Gittell, *Community Control of Education*, in THE POLITICS OF URBAN EDUCATION, *supra* note 106, at 363, 364–65; see also Mario Fantini, *Participation, Decentralization, Community Control and Quality Education*, in RESTRUCTURING AMERICAN EDUCATION: INNOVATIONS AND ALTERNATIVES 72 (Ray Rist ed., 1972) (contrasting new community controlled systems with "professionally dominated, bureaucratized schools systems which are rigid in their functions and habits and highly resistant to change").

109. Fantini, *supra* note 108, at 52.

not seem to work.¹¹⁰ Community control advocates shared the free schoolers' belief that the public system, as structured, was a large part of the problem. In New York, the site of the most contested community control battles, community members created an Ad Hoc Board of Education of the People of the City of New York (People's Board), which challenged the legitimacy of the existing Board of Education much as the Mississippi Freedom Party had attempted to replace the all-white official delegation at the 1964 Democratic convention.¹¹¹ The People's Board put the blame for the failure of poor, minority children squarely on the public system, arguing that "the very purpose of public education is to reduce the gaps that exist because children . . . have different socio-economic backgrounds, but after five years in a New York City public school it is evident that the disadvantages are compounded by the public schools themselves."¹¹² According to Fantini:

[C]ompensatory education is a prescription that deals with symptoms, with strengthened doses that have been ineffective before—more trips, more remedial reading, etc.—without real differences in kind. It is essentially an additive, or "band-aid" approach . . . The assumption is that the schools need to do somewhat more for disadvantaged pupils but it does not presume that the school itself is in need of wholesale re-examination.¹¹³

Some community control advocates believed that if their approach produced superior results, they could force the system to change through competition. Because "[b]ig-city public school systems are huge bureaucracies," and "[l]arge bureaucratic organizations almost never make major changes in established behavior unless strongly pressured by outside forces," Anthony Downs argued that community control districts could exert an anti-monopolistic influence on city school systems.¹¹⁴

Support for community control also grew out of a sense of fatigue with the integration struggle. Some thought that if white families were so hostile to integrating, black and brown people might as well get on with the business of taking control of and improving their own schools.¹¹⁵ Moreover, many ex-

110. Levin, *supra* note 106, at 7–8.

111. Civil rights organizations and community control advocates often worked together. For example, the Student Non-Violent Coordinating Committee, one of the sponsors of the Freedom Schools, gave space in its Harlem office to the People's Board. TAYLOR, *supra* note 47, at 186.

112. *Id.* at 185; *see also* Fantini, *supra* note 108, at 52 ("the problem is not with the learner; the problem is with the system, with the institution").

113. Fantini, *supra* note 106, at 326–27.

114. Anthony Downs, *Competition and Community Schools*, in COMMUNITY CONTROL OF SCHOOLS, *supra* note 106, at 219, 248.

115. Fantini, *supra* note 106, at 327; *see also* TAYLOR, *supra* note 47, at 177 (support for community control by black nationalists); *id.* at 181 (parents in Brownsville, Brooklyn turned to community control after trauma of having children bused to hostile white schools). Concerns about integration added another twist to the politics behind community control, because, as Diane Ravitch pointed out, some "[c]onservative whites recognized that black control of black schools implied white control of white

pressed frustration at what they saw as desegregation's implicit assumption that minorities could not learn in the absence of white students.¹¹⁶

As demographic minorities in most northern districts, blacks and Hispanics could not gain control of the entire city system. But given the high levels of residential segregation, if the system were broken into smaller autonomous districts, some of those would be controlled by minorities. Community control assumed that these districts would be more responsive to community and local parental pressure. Under community control, the central board and staff would lose power, and locally elected boards would appoint local officials who would run neighborhood schools. In this respect, the community control movement expanded upon the free school commitment to participatory democracy—where free schoolers sought control of the school, community control advocates sought control of the district.¹¹⁷

Put another way, the “community” in free schools was one of shared educational interest, rather than shared geography. Groups of teachers, parents, churches, and community-based nonprofits created schools, and children and families joined the community by choosing to attend. By contrast, the “community” in community control was largely geographic, with the population as a whole voting to decide what sorts of educational offerings to provide. In this respect, of course, community control was not purely a school choice movement in the way that we think about choice today. These schools were not outside of the state system, nor were they chosen by students. But at the same time, the community control movement helped advance a notion forwarded by the free schoolers and later adopted by charter school advocates in inner-cities—namely, that when disenfranchised community groups took control of their own children's schools, they were more likely to create nurturing and successful educational environments.

Community control advocates wanted power, not simply participation, and they typically sought authority over four key areas: personnel, budget, curricu-

schools, which they could comfortably support, for it guaranteed that black problems, black dissidence, and black pupils would be safely confined within the ghetto.” DIANE RAVITCH, *THE GREAT SCHOOL WARS: NEW YORK CITY, 1805–1973* 305 (1974).

116. Fantini, *supra* note 106, at 328; *see also* Levin, *supra* note 106, at 7 (“[a]s Floyd McKissick has suggested, the view that quality education can only take place in an integrated setting seems to be based upon the degrading proposition: ‘mix Negroes with Negroes and you get stupidity.’”). Malcolm X had long taken the position that “what the integrationists, in my opinion, are saying, when they say that whites and blacks must go to school together, is that the whites are so much superior that just their presence in a black classroom balances it out. I can’t go along with that.” MALCOLM X: *BY ANY MEANS NECESSARY: SPEECHES, INTERVIEWS AND A LETTER* 16–17 (George Breitman ed., 1970). For a discussion of the relationship between black nationalist thought and the community control movement, see Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 799–802 (1990).

117. For a further discussion of this point, see JOHN E. COONS & STEPHEN D. SUGARMAN, *EDUCATION BY CHOICE: THE CASE FOR FAMILY CONTROL* 30 (1978). For a critique of delegating so much control to local communities, see AMY GUTMAN, *DEMOCRATIC EDUCATION* 71–94 (1987).

lum, and pupil placement policy.¹¹⁸ Personnel would prove especially important, and divisive. Like many free schools advocates, those in the community control movement felt that a bureaucracy dominated by white middle-class professionals did not understand or care about the black child.¹¹⁹ In response, community control advocates wanted control over who would teach in schools.¹²⁰ They also wanted teachers who were themselves black and Hispanic and were familiar with those communities. As Floyd McKissick, director of CORE, argued, “black children must daily see black people in positions of authority and power: Black educators, fully knowledgeable of their own history and values, must be visible and in close contact with black children.”¹²¹

Like the free schools, the community control movement was intense but short-lived. In New York, for example, the Board of Education, with financial assistance from the Ford Foundation, established demonstration districts in Harlem, lower Manhattan, and Ocean Hill-Brownsville, Brooklyn.¹²² This led to a series of battles between community organizations, community-elected boards, and the unions, with the unions eventually prevailing and rebuffing the efforts of community boards to control key personnel decisions.¹²³ Although communities in New York and elsewhere now have various degrees of input in school matters, the dream of radical decentralization that marked the commu-

118. Gittell, *supra* note 108, at 366; *see also* RAVITCH, *supra* note 115, at 342 (documenting powers community-controlled districts in New York thought they needed); TAYLOR, *supra* note 47, at 181 (New York community control activists “demanded the right to hire teachers, make decisions on the school’s curriculum, control fiscal and capital budgets, and negotiate union contracts.”).

119. *See, e.g.*, STOKELY CARMICHAEL & CHARLES HAMILTON, *BLACK POWER* 166–67 (1967) (“Control of the ghetto schools must be taken out of the hands of the ‘professionals,’ most of whom have long since demonstrated their insensitivity to the needs and problems of black children. These ‘experts’ bring with them middle class biases, unsuitable techniques and materials . . .”); *see also* Theodore R. Sizer, *The Case for a Free Market*, *SATURDAY REV.*, Jan. 11, 1969, at 34 (“The Ocean Hill Brownsville community in New York City wants more control over its schools because its leaders believe that their children are getting not only an inferior education but also one dominated primarily by white rather than black values.”); Levin, *supra* note 106, at 5 (“materials, curriculum, and teaching methods were developed for the white middle-class child and they have been largely irrelevant to the experiences and special educational requirements of the black child.”); Rhody McCoy, *Formation of a Community-Controlled School District*, in *COMMUNITY CONTROL OF SCHOOLS*, *supra* note 106, at 169, 170 (complaining that “in the ghetto areas . . . the policy implementers are neither community people nor ethnically representative of the community”).

120. Floyd McKissick, *Negro Voices: The Failure to Educate Children*, *N.Y. TIMES*, Nov. 13, 1967, at 46 (arguing that “teachers must be accountable to the black community in which they serve, not to their union or the Board of Education”).

121. *Id.*; *accord* TAYLOR, *supra* note 47, at 186. This is not to suggest that community control advocates sought exclusively minority teachers. *See* Mario Fantini, *Community Control and Quality Education in Urban School Systems*, in *COMMUNITY CONTROL OF SCHOOLS*, *supra* note 106, at 40, 68–69 (noting that community-controlled Ocean Hill-Brownsville district hired white teachers and administrators).

122. N.Y. Civil Liberties Union, *The Burden of Blame: A Report on the Ocean Hill-Brownsville School Controversy*, in *THE POLITICS OF URBAN EDUCATION*, *supra* note 106, at 340. A detailed history of the conflict is presented in RAVITCH, *supra* note 115, at 292–404.

123. RAVITCH, *supra* note 115, at 376–78.

nity control movement of the late 1960s has not been realized in urban school districts.

V. PROGRESSIVE VOUCHERS

If the progressive contribution to school choice generally has been too often overlooked, nowhere is this more true than in the debate over school vouchers. Missing from many accounts is the fact that, during the late 1960s, some leading progressives outlined voucher plans.¹²⁴ Indeed, though proposed by Milton Friedman in 1955 (and mentioned by Adam Smith centuries before that), vouchers—the idea that the state would give families a sum of money that they could use to enroll their child at the public or private school of their choice—had been largely ignored until its revival by 1960s liberals.

Those progressives who endorsed vouchers did so for many of the same reasons that had led others to advocate for freedom schools, free schools, and community control. Principal among them was anger at how inner-city schools had failed black children. Writing in the *New York Times Magazine* in 1968, during the height of the community control debates, Christopher Jencks argued: “The origin of the crisis is simple. The public schools have not been able to teach most black children to read and write or to add and subtract competently. This is not the children’s fault.”¹²⁵ For Jencks, “[g]hetto schools have therefore become little more than custodial institutions for keeping the children off the street.”¹²⁶ As had some of the free schoolers, voucher advocates argued that the system was not just inept but actually harmful and that liberals should no longer support it. Ted Sizer and Phillip Whitten, in defending their voucher proposal, wrote, “[t]hose who would argue that our proposal would destroy the public schools raise a false issue. A system of public schools which destroys rather than develops human potential now exists. It is not in the public interest [I]t does not deserve to survive.”¹²⁷

Progressive voucher proponents were aware of, and largely sympathetic to, movements such as community control and free schools. Jencks and Sizer, for example, saw vouchers as a way to achieve some of the same goals. Like community control, vouchers would “distribute power, and give parents some options, some clear leverage on their neighborhood school.”¹²⁸ Indeed, Jencks

124. Important exceptions include Lisa M. Stulberg, *What History Offers Progressive Choice Scholarship*, in *THE FUNDAMENTAL PROMISE OF CHARTER SCHOOLS*, *supra* note 11, at 24–28; JOSEPH VITTERITTI, *CHOOSING EQUALITY: SCHOOL CHOICE, THE CONSTITUTION, AND CIVIL SOCIETY* 53–58 (1999); and JEFFREY R. HENIG, *RETHINKING SCHOOL CHOICE: LIMITS OF THE MARKET METAPHOR* 64–66 (1994).

125. Christopher Jencks, *Private Schools for Black Children*, *N.Y. TIMES*, Nov. 3, 1968, § 6 (Magazine), at 30, *reprinted in* *RESTRUCTURING AMERICAN EDUCATION: INNOVATIONS AND ALTERNATIVES*, *supra* note 108, at 168.

126. *Id.* at 169.

127. Theodore Sizer & Phillip Whitten, *A Proposal for a Poor Children’s Bill of Rights*, *PSYCHOL. TODAY*, August 1968, at 62.

128. Sizer, *supra* note 119, at 42; *see also* Jencks, *supra* note 125, at 180–81 (vouchers are more effective way of achieving goals of community control movement).

suggested that the “community solidarity and pride in the ghetto” that would come from independent black schools were among the strongest arguments for vouchers.¹²⁹ Moreover, vouchers would be a way to provide a revenue stream for some of the free schools, which, as I have mentioned, often closed for lack of funding.¹³⁰ As Sizer envisioned it, vouchers would allow an area to have, “cheek by jowl, several public schools—for example, one run by the city (PS 121), one by the Catholic Church (St. Mary’s School), and one by the black community (the Martin Luther King Freedom School).”¹³¹

These early voucher plans were self-consciously designed to maximize equity and racial justice. The advocates placed faith in the market as against the alternatives, but they acknowledged (unlike Friedman and many of today’s voucher proponents) that the private market often did not serve the poor especially well.¹³² Their programs were designed to maximize the likelihood that poor children and families would succeed in the market. Because “a child from a severely restricted background will require more expensive services than one from a wealthier family,” Sizer offered a plan in which “the poorer the child, the more valuable the voucher.”¹³³ Recognizing the importance of giving inner-city children the chance to attend suburban schools, Sizer argued that the voucher amounts must be great enough that suburban districts would “be bribed into taking many poor youngsters.”¹³⁴ Moreover, Sizer and Whitten insisted that education reform in and of itself would not be enough to achieve genuine

129. Jencks, *supra* note 125, at 185. Indeed, Jencks thought the community pride argument more powerful than any notion that black-run voucher schools would do a better job academically. *Id.* (“I doubt, for example, that many black private schools could teach their children to read appreciably better than white-controlled public schools do now.”). Jencks’ point raises a broader question about the extent to which school choice movements, then or today, are principally about creating schools that teach better or creating schools that are more consistent with the values of the parents and/or local community. It is worth noting that although I have here emphasized choice as a way of creating higher quality schools as measured by academic achievement, there is another story to be told about choice as a mechanism to create schools consonant with parents’ values.

130. Jencks, *supra* note 125, at 181.

131. Sizer, *supra* note 119, at 35; *see also* GRAUBARD, *supra* note 74, at 287–88 (early voucher proposals might benefit free schools).

132. Economist Henry Levin, for example, supported plans like those proposed by Sizer and the Jencks team, but recognized the limits of the market. Citing a Federal Trade Commission finding that goods purchased wholesale for \$1 sold for an average of \$1.65 on the general market and \$2.65 in stores in poor neighborhoods, Levin argued that “the failure of the market to give rich and poor equal access to privately produced goods and services should, in itself, make us skeptical about applying it to education.” Henry M. Levin, *The Failure of the Public Schools and the Free Market Remedy*, 2 URB. REV. 32, 34 (1968). Among Levin’s concerns was that fewer sellers of quality educational services would appeal to children of the poor than to those of the middle class. “[I]f the previous experience of the slums can be used for prediction, few if any sellers of high quality educational services at competitive rates will locate in the ghetto. Not only is there no Saks Fifth Avenue in Harlem; there is no Macys, Gimbels, Korvettes, or Kleins.” *Id.*

133. Sizer, *supra* note 119, at 38. *See also* Levin, *supra* note 132, at 35 (supporting plans in which “disadvantaged children might be given vouchers which are worth two or three times the value of the maximum grants given children of the well-to-do,” as well as plans in which only poor children would receive vouchers).

134. Sizer, *supra* note 119, at 42.

equality. They proposed a “Poor Children’s Bill of Rights,” and suggested that vouchers “must be part of a package, one which surely must include some form of guaranteed annual income and the provision of health and welfare services at a level of accommodation far higher than at present.”¹³⁵

With these equity goals in mind, the Johnson administration’s Office of Economic Opportunity gave a grant to Jencks and his colleagues at Harvard’s Center for the Study of Public Policy to design an equity-oriented voucher system. The Jencks plan was explicit in its motivation: “a program which seems to improve education must therefore focus on inequality, attempting to close the gap between the advantaged and disadvantaged.”¹³⁶ Closing this gap required disadvantaged children to get *more than* equal educational resources—they needed the smallest classes and the best teachers.¹³⁷ Moreover, because a student’s classmates are among her greatest resources, enrollment patterns should be altered so that disadvantaged children would have the chance to attend school with more advantaged classmates.¹³⁸ Accordingly, the Jencks plan envisioned that both public and private schools would participate in the plan.¹³⁹ Like Sizer, Jencks’s team hoped that race and class integration could be achieved by bonus vouchers—up to double the basic voucher—that would make poor children attractive to successful schools.¹⁴⁰

Of special concern to the Jencks team was the prospect that schools could selectively admit students. They pointed out that a means-tested voucher program did not by itself ensure that schools would not discriminate against certain categories of low-income students.

135. Sizer & Whitten, *supra* note 127, at 63.

136. CTR. FOR THE STUDY ON PUB. POL., *EDUCATION VOUCHERS: A REPORT ON FINANCING ELEMENTARY EDUCATION BY GRANTS TO PARENTS 10* (1970) [hereinafter *EDUCATION VOUCHERS*].

137. *Id.*

138. *Id.*

139. *Id.* at 13–14; see also Judith Areen & Christopher Jencks, *Education Vouchers: A Proposal for Diversity and Choice*, in *EDUCATIONAL VOUCHERS: CONCEPTS AND CONTROVERSIES* 48, 51 (George R. La Noue ed., 1972) (“We believe that one of the most important advantages of a voucher system is that it would encourage diversity and choice *within the public system.*”) Indeed, one of the central insights of the Jencks team was to challenge existing definitions of public and private. Areen and Jencks pointed out that “since the nineteenth century, we have classified schools as ‘public’ if they are owned and operated by a government body.” *Id.* at 51. While who governs a school is an important part of categorizing it as public or private, they argued, using it as the only criteria produces anomalous results. Among them is the fact that,

[w]e go right on calling colleges “public,” even when they charge tuition that many people cannot afford. We also call academically exclusive high schools “public,” even if they have admissions requirements that only a handful of students can meet. We call neighborhood schools “public,” despite the fact that nobody outside the neighborhood can attend them, and nobody can move into the neighborhood unless he has white skin and a down payment on a \$30,000 home.

Id.

140. See *Id.* at 14.

Incentives which reward the admission of low-income applicants will initially result in schools' seeking out families which are short on cash but long on other "desirable" characteristics, such as literacy, initiative, and self-discipline. Unless some machinery is established for preventing discrimination on the basis of IQ and behavior patterns, overapplied schools will get big bonuses for taking the most easily educated children of poor families, while leaving the others to underapplied schools.¹⁴¹

In response, the Jencks team proposed that participating schools could use traditional admissions criteria for up to half the entering class, but the other half had to be accepted by lottery.¹⁴²

Like the other reforms I have discussed, the progressive voucher movement was relatively short-lived. A modified version of the Jencks plan was ultimately tested in Alum Rock, California, a mixed-race, mixed-income district within the city limits of San Jose. The Alum Rock experiment went forward for five years, with inconclusive results, and the Nixon administration did not continue the grant. The political constituency for the project didn't materialize, as many liberals did not support Jencks' proposal, despite its progressive heritage.¹⁴³ Even some who may have been sympathetic to the Jencks plan as crafted ended up opposing it. They believed it would never be enacted without substantial modifications that would make it less palatable. For example, according to American Federation of Teachers president Albert Shanker:

There is no legislature in the nation that will enact a voucher plan that will give substantially more money to each poor child and bar private schools from freely selecting the students they want and rejecting those they don't want. By the time Jencks' model goes through the political-legislative wringer, it will become the conservative model that its author himself opposes.¹⁴⁴

Nor did conservatives back the plan, for they wanted an even purer free-market approach with fewer regulations than accompanied the Jencks model.¹⁴⁵ Without support from any constituency, the Jencks voucher plan died.

VI. REFLECTIONS ON TODAY'S SCHOOL CHOICE DEBATES

In this Essay I have tried to suggest that the history of school choice is substantially more complicated than we have traditionally understood. Progressives have proposed a variety of school choice schemes, and this lesser-known

141. *Id.* at 70.

142. *Id.* at 15.

143. See Denis P. Doyle, *The Politics of Choice: A View from the Bridge*, in PARENTS TEACHERS AND CHILDREN: PROSPECTS FOR CHOICE IN AMERICAN EDUCATION 232 (James S. Coleman et al. eds., 1977).

144. Robert C. Bulman & David L. Kirp, *The Shifting Politics of School Choice*, in SCHOOL CHOICE AND SOCIAL CONTROVERSY: POLITICS, POLICY AND LAW 42 (Stephen D. Sugarman & Frank R. Kemerer eds., 1999).

145. See Doyle, *supra* note 143, at 232.

heritage is at least as important as the Friedman-inspired deregulation impulses or the conservative anti-desegregation movement. In this final Part, I would like to offer some thoughts about how thinking about these progressive school choice movements might influence today's conversation about school choice.

One of the most remarkable features of current choice debates is the faith that progressive educational reformers place in the existing public school system. Today, it is common to hear arguments that school choice proposals should be rejected because they do not "do anything for the public school system, and that's where our folks are being educated."¹⁴⁶ Before experimenting with choice, it is argued, we must "fix the public schools."¹⁴⁷ My review of the history of school choice reveals the novelty of this position. That doesn't mean it is wrong, of course. Yet it is noteworthy that, in contrast to today's faith in reform from within, many liberals in the 1960s believed that only developing progressive alternatives *outside* the public system would reform it.

What explains this reversal—how did advocates for racial justice come to defend the school bureaucracy they once attacked? I suspect that it is part of a larger trend in which the left has abandoned some of the anti-bureaucratic ideology that marked its politics during the 1960s. Moreover, the politics of race is likely at play here as well. Many of the urban public school administrations that the left once attacked as white, middle-class enclaves¹⁴⁸ now are the

146. Nakashima, *supra* note 12; see also Larry Cuban, *Part Four: 1980–2000, The Bottom Line*, in *SCHOOL: THE STORY OF AMERICAN PUBLIC EDUCATION* (Sarah Mondale & Sarah B. Patton eds., 2001) (quoting Jonathan Kozol's criticism that many choice proposals are based on a "lifboat mentality" that offers salvation to some children while neglecting others); Karla Scoon Reid, *Minority Parents Quietly Embrace School Choice*, *EDUC. WEEK*, Dec. 5, 2001, at 1 (discussing the debate between older civil rights organizations that reject choice in favor of "high-quality schools in their neighborhoods" and younger activists who argue that school choice will lead to increased educational achievement for minority students); see also *ACLU Urges Congress To Reject Voucher Scheme in District of Columbia; Says Plan Hurts Already Disadvantaged Kids*, June 24, 2003, available at <http://www.aclu.org/ReligiousLiberty/ReligiousLiberty.cfm?ID=12593&c=140> (last visited Feb. 4, 2005) (quoting Terri Schroeder, an ACLU Legislative Representative, arguing that "if Congress really wants to help our children, it should seek to adequately fund the public school system, not disadvantage the vast majority of kids for the benefit of a select and privileged few"). See also "Supreme Court Decision On School Vouchers Harmful To Future Of Public School Education," (June 27, 2002) available at <http://www.naacp.org/news/2002/2002-06-27.html> (last visited, Feb. 4, 2005) ("The NAACP opposes the use of taxpayer dollars to pay for school vouchers because it will mean fewer dollars for public schools where most Americans are educated. School voucher programs siphon scarce tax money away from struggling public schools. Education must be a fundamental guarantee for each child.").

147. Lynn Olson, *Minority Communities Divided Over Charters, Vouchers*, *EDUC. WEEK*, April 26, 2000; see also *School Choice Won't Solve Students' Biggest Problems*, *THE ATLANTA JOURNAL-CONSTITUTION*, Aug. 8, 2002, at A26 ("Neither school choice nor vouchers is sufficient to fix what's wrong with America's failing schools . . . Plucking a handful of kids out of a terrible school won't help the hundreds left behind."); *School Choice: Doing it the Right Way Makes a Difference*, A REPORT FROM THE NATIONAL WORKING COMMISSION ON CHOICE IN K-12 EDUCATION (The Brown Center on Education Policy, 2003), at 16–17 (noting that some opponents of choice believe "the solution lies in equalizing funding and upgrading existing schools so that all students have equal opportunities to learn.").

148. See *infra* Part IV. In fact, "white" and "middle-class" were often connected in such a way that suggested that all whites were middle-class and that blacks did not have a class. Charles Hamilton, for example, argued that teachers who shared a "predominately white, middle-class ethos" could not instill

province of middle-class black managers.¹⁴⁹ In his study of urban school systems, Jeffrey Henig found that in Baltimore, Detroit and Washington, D.C., the public school systems are the city's largest single employer.¹⁵⁰ Many in the black community, including much of the civil rights leadership, have been less likely to criticize the under-performance of these black-run systems.¹⁵¹

But the most interesting implications of this look back at the history of progressive choice proposals concerns the conversation about school vouchers, the most controversial of today's choice proposals. Today, many conservatives not only enthusiastically push vouchers, they wrap their initiatives in the mantle of civil rights. A few days after the Supreme Court upheld Cleveland, Ohio's voucher plan,¹⁵² President Bush hailed the decision at a "Rally on Inner City Compassion" in downtown Cleveland.¹⁵³ In *Brown v. Board of Education*, said Bush, the Court "declared that our nation cannot have two educational systems, and that was the right decision." The voucher ruling was similar, he said. "Last week, what's notable and important is that the court declared that our nation will not accept one education system for those who can afford to send their

black "group solidarity and pride." Charles V. Hamilton, *Race and Education: A Search For Legitimacy*, 38 HARV. ED. REV. 47, 56 (1968). Therefore, he said, "many black people are demanding more black principals in predominately black schools, if only because they serve as positive role models for the children." *Id.* Note how in Hamilton's formulation, only the white teachers have a class, and it is middle-class. So framed, Hamilton does not need to confront the possibility that the black principals and teachers might have a "black middle-class ethos" that would have implications for how they taught black poor and working-class children.

149. JEFFREY R. HENIG, ET AL., *THE COLOR OF SCHOOL REFORM: RACE, POLITICS, AND THE CHALLENGE OF URBAN EDUCATION* 121 (1999) (in the early 1990s, "African Americans comprised more than 70 percent of central office administrators" in Atlanta, Baltimore, Detroit and Washington, D.C.).

150. *Id.* at 119.

151. In his study of school politics in three cities, Wilber Rich argues that the continued under-performance of black districts under black leadership is partially due to "a cartel-like governing entity," which includes administrators, activists, and union leaders. WILBER C. RICH, *BLACK MAYORS AND SCHOOL POLITICS: THE FAILURE OF REFORM IN DETROIT, GARY, AND NEWARK* 5 (1996). Jeffrey Henig and his colleagues, while somewhat more sympathetic to school officials than Rich, demonstrate how school leaders in majority black cities "were joined by a broad network of organizations, ministers, and politicians throughout the city to delay, derail or diminish initiatives perceived to destabilize the historic economic role the school systems have played—and continue to play—in the black community." HENIG, *supra* note 149, at 120; see also CLARENCE N. STONE, ET AL., *BUILDING CIVIC CAPACITY: THE POLITICS OF REFORMING URBAN SCHOOLS* 21–22 (2001); MARION ORR, *BLACK SOCIAL CAPITAL: THE POLITICS OF SCHOOL REFORM IN BALTIMORE, 1986–1998* 42–62, 144–47 (1999).

A similar point can be made about police abuse under black managed forces. See James Forman, Jr., *Diversity Alone Won't Stop Police Violence*, THE WASH. POST, July 15, 2001, at B7:

It appears that after having fought for so long to gain a foothold in the political system, African Americans are afraid to jeopardize it by calling to task black officials. But this reaction is shortsighted: Gaining elected office is a means to an end, not an end itself. If black elected officials are unwilling to reform the police forces they inherit, then, like rogue officers of whatever color, they too must go. And the African American community must be willing to say so.

152. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

153. Dana Milbank, *Bush Urges Wide Use of School Vouchers*, WASH. POST, July 2, 2002, at A1.

children to a school of their choice and for those who can't, and that's just as historic."¹⁵⁴ Nor was Bush alone in comparing *Brown* and *Zelman*. Secretary of Education Rod Paige, for example, argued:

Brown v. Board of Education changed American education forever. I know because I grew up in the South when schools were segregated. With *Brown*, education became a civil rights issue, and the decision introduced a civil rights revolution that continues to this day. *Zelman v. Simmons-Harris* holds the same potential. It recasts the education debates in this country, encouraging a new civil rights revolution and ushering in a "new birth of freedom" for parents and their children everywhere in America.¹⁵⁵

Despite such rhetoric, an examination of the Jencks and Sizer proposals reveal the limitations of today's voucher plans. Consider first the voucher amount. Whereas the Jencks plan envisioned a base voucher that was equal to the amount spent per pupil by the public schools in the region,¹⁵⁶ today's voucher plans typically are much stingier. The Cleveland plan, for example, provides vouchers of \$2,250—by contrast, school districts receive over \$7,000 per pupil.¹⁵⁷ Moreover, because the purpose of the Jencks plan was to reallocate resources toward the poor, low-income students would qualify for bonus vouchers up to double the base voucher. To again use Cleveland, depending on her level of disadvantage, a poor student under the Jencks plan today might qualify for up to a \$14,000 voucher, rather than the \$2,250 voucher in effect in Cleveland today.¹⁵⁸

This raises the question of the participation of suburban schools in voucher plans. Race and class integration were central to Sizer's and Jencks' vision. They believed that their equity-oriented voucher plans could achieve integration by making disadvantaged students attractive to middle-class schools. Today's voucher plans, by contrast, largely abandon this goal. Instead, they assume that inner-city students will continue to go to school with others of their same race and class background. The only change is to the type of school, not the composition of the student body.

In this respect, today's voucher plans have less in common with *Brown* or *Bolling* than they do with the compromise President Richard Nixon proposed as

154. *Id.*

155. Rod Paige, *A Win for America's Children*, WASH. POST, June 28, 2002, at A29. Other conservatives made similar claims. Clint Bolick, for example, argued that "[t]his is the most important education case to come out of the Supreme Court since *Brown v. Board of Education*." Michael A. Fletcher, *Voucher Ruling May Boost Choice Movement*, WASH. POST, June 30, 2002, at A7. George Will said that with *Zelman*, "socially disadvantaged children had their best day in court since *Brown v. Board of Education* in 1954." George Will, *Implacable Enemies of Choice*, WASH. POST, June 28, 2002, at A29.

156. EDUCATION VOUCHERS, *supra* note 136, at 14.

157. *Zelman*, 536 U.S. at 645, 649.

158. A slightly less ambitious form of this approach has been suggested by Matthew Miller. Matthew Miller, *The Liberal Voucher Opportunity*, WALL ST. J., July 2, 2002, at A18.

part of his opposition to busing. Nixon argued that rather than bus students to integrated schools, inner-city children should instead get extra resources and stay in their own schools.¹⁵⁹ Nixon was explicit about this in his nationally televised address explaining that he would oppose busing but support additional funding for inner-city schools. Nixon said, “[i]t is time for us to make a national commitment to see that the schools in the central cities are upgraded so that the children who go there will have just as good a chance to get quality education as do the children who go to school in the suburbs.”¹⁶⁰ The Supreme Court reached a similar conclusion when it struck down a metropolitan-wide busing plan in Detroit, and upheld a remedy that included compensatory education programs for inner-city students (including remedial reading, improved teacher training, bias-free testing, and guidance and counseling programs.)¹⁶¹

Substitute “private schools” for “extra resources” and the link between school vouchers and Nixon/*Milliken* becomes apparent. Without the participation of suburban schools, inner-city private schools become simply another attempt to fix the urban school crisis without altering the race and class segregation levels of those schools. As Robert Vischer has written: “[E]specially in lower-income, minority neighborhoods, the only non-public school options [available to voucher recipients] may very well be church-affiliated schools, which will likely reflect the skewed racial compositions of their congregations and neighborhoods.”¹⁶² The limited existing data suggests that current voucher programs either have no impact on integration or only a slightly positive integrative effect.¹⁶³ Given the overwhelming evidence that the socioeconomic background of a student’s peer group is among the most important determinants of his academic achievement, one cannot be too optimistic about the likelihood of systemic success for a reform that ignores class integration.¹⁶⁴

Indeed, there is an important aspect in which today’s voucher plans may serve to reinforce segregated school patterns in much the same way as did the South’s post-*Brown* tuition grant programs. Those programs, it is worth recalling, were not explicitly racially discriminatory. Typical was Virginia, which made tuition grants available to “[e]very child in the Commonwealth . . . who desires to attend a nonsectarian private school.”¹⁶⁵ Despite their facial neutrality, the programs had the effect of furthering segregation, because the private schools that were available to voucher recipients were all-white and had the

159. Ryan & Heise, *supra* note 2, at 2052–55.

160. *Transcript of Nixon’s Statement on School Busing*, N.Y. TIMES, March 17, 1972, at 22.

161. See *Milliken v. Bradley*, 418 U.S. 717, 744–45 (1974); *Milliken v. Bradley*, 433 U.S. 267, 275–76, 286–88 (1977).

162. Robert K. Vischer, *Racial Segregation in American Churches and Its Implications for School Vouchers*, 53 FLA. L. REV. 193, 228–29 (2001).

163. See BRIAN GILL, ET AL., RAND, RHETORIC V. REALITY: WHAT WE KNOW AND WHAT WE NEED TO KNOW ABOUT VOUCHERS AND CHARTER SCHOOLS 164–68 (2001).

164. See RICHARD D. KAHLBERG, ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE *passim* and especially 23–46 (2001); Ryan & Heise, *supra* note 2, at 2102–08.

165. *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178, 1180 (E.D. Va. 1969).

freedom to discriminate in admissions.¹⁶⁶ Against this background, what effect will today's voucher programs have on patterns of school segregation? While current voucher programs prohibit schools from using racially discriminatory admissions criteria,¹⁶⁷ existing patterns of racial segregation will leave most parents with private schooling options that are *de facto* one race schools.

Of course, one response is that the private schools are no more racially segregated than the public schools to which a neighborhood's children already had access. In that sense, the voucher plans do not make segregation any worse than it already is. There is some truth here—when opponents claim that vouchers are a scheme to re-segregate the schools they seem to overlook the extraordinarily high segregation levels already existing in public schools. Moreover, it is beyond question that segregation cannot be the only benchmark. Some schools are able to achieve success against the odds, and whether those schools are voucher schools, charter schools, or other alternatives, we need more of them, even if they remain segregated by race or class.¹⁶⁸ At the same time, the response that vouchers (or any other reform) will not increase segregation levels hardly settles the matter. Instead it invites us to ask: Why should we settle for voucher initiatives that fall so short of the ambitious equity and integrationist goals of Sizer and Jencks?

While conservatives have pushed voucher programs that fall short, progressives—especially leading liberal advocacy groups—generally have denounced the very idea of vouchers.¹⁶⁹ I believe this has been the greatest cost of overlooking the history of progressive voucher efforts. Because progressives have by and large focused on the evils of vouchers, insufficient thought has gone into whether a modern-day progressive vision of vouchers is possible.¹⁷⁰ Instead of asking whether vouchers are good or bad, progressives might do well to consider that vouchers are neither and both—it all depends on how the plan is constructed.

What if voucher plans today were designed to both re-allocate additional educational resources to disadvantaged students and to increase class integration? What if they were animated by the integrationist impulses of *Brown* and

166. *See Id.* at 1181.

167. Ohio is typical: participating private schools may neither discriminate on the basis of race, religion or ethnic background nor teach hatred of another on those grounds. OHIO REV. CODE ANN. SEC. 3313.976(A)(6).

168. Both liberals and conservatives have found examples of highly successful charter schools that serve largely minority student populations. *See, e.g.,* JOYCE LADNER, *THE NEW URBAN LEADERS* 106–14, 130–34 (2001); ABIGAIL THERNSTROM & STEPHAN THERNSTROM, *NO EXCUSES: CLOSING THE RACIAL GAP IN LEARNING* 43–64 (2003).

169. Of course, some progressives have supported vouchers in one form or another. *See* Richard Kahlenberg and Bernard Wasow, *What Makes Schools Work?*, *THE BOSTON REV.*, October/November 2003, at 6 (listing progressive voucher advocates, but arguing that controlled choice is a better way to achieve class integration).

170. Jim Ryan is an important exception, as are John Coons and Stephen Sugarman. *See* James E. Ryan, *Schools, Race and Money*, 109 *YALE L.J.* 249, 311–13 (1999); JOHN E. COONS & STEPHEN D. SUGARMAN, *MAKING CHOICE WORK FOR ALL FAMILIES* 66–69 (1999).

Bolling? They would look more like those proposed by Sizer and Jencks. They would need to be more generous than today's plans and designed with the goal that some low-income students would have access to economically integrated schools. Given the extent of residential segregation in our nation's metropolitan areas, in many regions this would require the participation of some suburban school districts.

There is a moral claim that progressives might make on behalf of economically integrated schools. One of the ironies of today's voucher debate is that the moral passion that once animated advocates of free schools, community control, and progressive vouchers is now marshaled on behalf of voucher plans that modern progressives largely oppose.¹⁷¹ Joseph Viteritti, for example, argues that vouchers for private schools "could help level the playing field by offering poor children opportunities more akin to those enjoyed by the middle class."¹⁷² Viteritti's point is a powerful one, but its implications are more profound than he acknowledges. After all, for most middle-class parents in urban areas, choice means quality suburban schools, not private schools. So if the point is to offer poor children "opportunities more akin to those enjoyed by the middle class," access to middle-class suburban schools would seem more important than access to inner-city parochial schools. Returning to the moral dimension, if it is unjust and unfair to deny a poor child in Washington, D.C. the chance to attend a private school because his parents cannot afford the tuition, why isn't it equally so to deny him the chance to attend a suburban school because his parents can't afford to buy a house there? That question was central to the thinking of the progressive voucher movement of the late 1960s and early 1970s, but is largely ignored today.

While some have pointed out the importance of broadening voucher initiatives along these lines,¹⁷³ too many progressives have ignored the issue. That is

171. An especially compelling example of the moral claim for vouchers is offered by Diane Ravitch, *Somebody's Children: Educational Opportunity for All American Children*, in *NEW SCHOOLS FOR A NEW CENTURY: THE REDESIGN OF URBAN EDUCATION* (Diane Ravitch & Joseph Viteritti eds., 1999).

172. Joseph P. Viteritti, *Schoolyard Revolutions: How Research on Urban School Reform Undermines Reform*, 118 *POL. SCI. Q.* 233, 236 (2003); see also *id.* at 256–57 ("Giving people similar opportunities to decide where their children attend school is essential in a democracy. A system that provides choice to some and withholds it from others is unfair, especially when the opportunity is determined by income."); Joseph P. Viteritti, *Empower the Power*, *THE BOSTON REV.*, Oct./Nov. 2003, at 14 ("[W]hy should poor people have to send their children to schools that most middle-class people would never contemplate for their own? That is the underlying moral question of the debate."). George Will has put the point even more strongly, arguing that "[t]he opposition to school choice for the poor is the starkest immorality in contemporary politics." Will, *supra* note 155, at A29.

173. Jim Ryan has taken a leading role in arguing that school choice should be extended to include suburban schools, going so far as to imagine what would happen if "next fall, all across the country, children forced to attend poorly equipped and failing schools showed up at the doors of good suburban schools and simply sat down." James Ryan, *Sit in for School Equality*, *WASH. POST*, May 19, 2003, at A19; see also James E. Ryan & Michael Heise, *Taking School Choice to the Suburbs*, *WASH. POST*, July 3, 2002, at A23 (arguing that choice should be extended to include suburban schools); James Forman, Jr., *Great Expectations*, *AM. ENTERPRISE*, September, 2002, at 5 (same); Goodwin Liu, *Real Options for School Choice*, *N.Y. TIMES*, Dec. 4, 2002, at A31 (same).

a mistake. Given the success of voucher advocates at keeping vouchers at the center of the national education policy debate, the absence of a progressive vision of vouchers has consequences. But, while some voucher plans can be dangerous, as Jencks and Sizer showed thirty years ago, a properly constructed one has the potential to increase educational opportunities for disadvantaged children in a way that should appeal to all—including progressives.