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## Redemption Localism

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## REDEMPTION LOCALISM\*

DANIEL FARBMAN\*\*

*In the decades after the end of the Civil War, avowed white supremacists across the South sought to “redeem” their state and county governments from the clutches of the hated “radicals” who had taken control during Reconstruction. These Redeemers developed an approach to local power and local control that served their broader political goal of reestablishing white supremacist rule. In their effort to ensure that white citizens were not subjected to “negro rule,” they developed a “Redemption Localism” that consistently sought to limit local power, curtail local democracy, and defund or eliminate local services. This Article tells the story of Redemption Localism as it operated in one state: North Carolina. But I argue that this story has much to teach us about localism across the post-Civil War South and about our localism today. While much of the scholarly conversation about localism focuses on the virtues (and vices) of local control versus centralization, the question for Redeemers was never whether, as an abstract matter, local control was preferable to centralized control. Rather, at decision point after decision point, the question was how the balance between local and state power could be manipulated and adjusted to protect the Redeemers’ political power and further the struggle for white supremacy. This instrumental attitude towards localism remains familiar today as the tools and structures of local power are manipulated to suppress Black voting power, dilute the voices of multiracial local democracies, and maintain existing distributions of power, wealth, and privilege.*

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\*\* Assistant Professor, Boston College Law School. As always, nothing would be possible without Brook Hopkins. I am grateful for the comments and advice of David Barron, Mary Bilder, Niko Bowie, Richard Briffault, Nestor Davidson, Paul Diller, Bob Hageman, Carissa Byrne Hessick, Brian Highsmith, Anthony Michael Kreis, Audrey McFarlane, Erin Scharff, David Schleicher, Rich Schragger, and Rick Su. I am grateful to all who attended and organized this Symposium for gathering us together both in person and here on the page.

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### INTRODUCTION

On November 10, 1898, a mob of murderous white supremacists overthrew the elected local government of Wilmington, North Carolina. Along the way, they destroyed the city’s thriving Black newspaper and killed more than sixty of their neighbors. The Wilmington Insurrection<sup>1</sup> has not been forgotten. It was the inspiration for Charles Chesnutt’s classic novel *The Marrow of Tradition* and has been the subject of many short and longer-form historical treatments.<sup>2</sup> Especially in the wake of the insurrection at the Capitol in Washington, D.C., on January 6, 2021, there has been renewed attention on the Wilmington Insurrection, with observers seeking to draw (or dispute) connections between the two events.<sup>3</sup>

In addition to its contemporary salience, the Wilmington Insurrection has come to represent the violent transition from the struggle *toward* white supremacist dominance in the South (Redemption) and the established legal, social, and political order rooted in that dominance (Jim Crow). The insurrection and its aftermath showed not only the lengths that white supremacists were willing to go to grab power, but, more importantly, how little help or power those who sought to oppose them had. Before the Wilmington Insurrection (and the political and legal violence that it stood for), Black citizens in the South remained a powerful, if oppressed and suppressed, political force. After the insurrection, the smooth surface of Jim Crow emerged as the social

1. In the bad old days of the Dunning School, when history was told through the lens of white supremacy, the event was called the “Wilmington Race Riot.” Recently, it is more often referred to as an uprising, insurrection, or, most pointedly, a coup. I use the word “insurrection” here in part to avoid the fussy, but ultimately unenlightening, dispute over whether and what constitutes a coup. Whether or not it is possible to have a coup for a local government, what is very clear is that there was an attack on the elected government of Wilmington and that the attackers won and took power.

2. Most recently, David Zucchino’s *Wilmington’s Lie: The Murderous Coup of 1898 and the Rise of White Supremacy* won a Pulitzer Prize in 2021. *2021 Pulitzer Prize Winner in General Nonfiction*, PULITZER PRIZES, <https://www.pulitzer.org/winners/david-zucchino-0> [https://perma.cc/64WJ-TZ3C].

3. See, e.g., Bill Morris, *Jan. 6 Riot Was No Fluke and This 1898 Massacre Proves It*, DAILY BEAST (July 25, 2021, 5:04 AM), <https://www.thedailybeast.com/january-6-riot-was-no-fluke-and-this-1898-massacre-proves-it> [https://perma.cc/J3FK-EWRP (dark archive)].

order of the victorious white supremacists across the South—backed by voter suppression, lynch law, economic subordination, and segregation.<sup>4</sup>

For all the weight that the Wilmington Insurrection bears as a historical touchstone and present allegory, it can be easy to lose track of how rooted in local politics and local government it was. The insurrection was sparked by resentment about multiracial, “fusionist,” local elected officials in the city.<sup>5</sup> It was white supremacist anxiety about what they understood as “negro rule” at the local level that sparked the violence—and it was the reclamation of *local* white supremacy that was the violence’s proximate purpose and result.<sup>6</sup>

If the Wilmington Insurrection was the beginning of a national (or at least regional) story of ascendant Jim Crow, it was the *end* of a struggle at the state and local level in North Carolina over local power. As avowed white supremacists sought to “redeem” their state and counties from the clutches of the hated “radicals” who had taken control during Reconstruction, these Redeemers developed an approach to local power and local control that served their broader political project.<sup>7</sup> In their effort to ensure that white citizens were not subjected to “negro rule,” white supremacists in North Carolina developed a “Redemption Localism” that consistently sought to limit local power, curtail local democracy, and defund or eliminate local services.<sup>8</sup>

The story I tell in this Article focuses on Redemption Localism in North Carolina beginning from the promise of reform during Reconstruction, passing through the political struggles of Redemption, and culminating in the victory of white supremacy and the rise of Jim Crow. Although it is a North Carolina story, it is a story whose deep logics radiated throughout the South and beyond. At its core, Redemption Localism describes an approach to localism that seeks to mute and suppress unwanted voices from marginalized communities by ensuring that those voices do not have a local platform. Redemption Localism in North Carolina protected rich, white landowners from being taxed, policed, and governed by their poorer and less-white neighbors. Although the backstories are different, it is not hard to see echoes of the same impulses at work all across our wild patchwork of local jurisdictions today.

4. See LERAE SIKES UMFLEET, *A DAY OF BLOOD: THE 1898 WILMINGTON RACE RIOT* 105 (2009).

5. See *infra* Section II.G.

6. See *infra* Section II.G.

7. See Anthony Michael Kreis, *The New Redeemers*, 55 GA. L. REV. 1483, 1488 (2021). The term “Redeemers” is one that has long been used by historians to describe the avowedly white supremacist Southern Democrats who took power after Reconstruction and who sought to “redeem” the South by purging Black voices from the political process. See *id.* at 1488 n.10 (“It was not the Radicals nor the Confederates but the Redeemers who laid the lasting foundations of race, politics, economics, and law for the modern South.” (quoting C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH 1877–1913*, at 22 (1971))).

8. See *infra* Section II.A.

While much of the scholarly conversation about localism focuses on the virtues (and vices) of local control versus centralization, Redemption Localism operates on a different analytic axis. The question for Redeemers was never whether, as an abstract matter, local control was preferable to centralized control. Rather, at decision point after decision point, the question was how the balance between local and state power could be manipulated and adjusted to protect the Redeemers' political power and further the struggle for white supremacy. This instrumental attitude towards localism was consistent with the struggles over localism under slavery<sup>9</sup> and remains familiar today.

Perhaps the starkest present example of this approach can be seen in Georgia. There, the state legislature has passed an "election integrity" law which threatens to strip local election boards of their power and effectively give the state legislature control over local elections where the state sees fit.<sup>10</sup> Dispiritingly and predictably, the counties that the legislature is targeting are less rich and less white than the counties that are being left alone. As I argue below, this law builds on the foundations of Redemption Localism not only in spirit but in specific tactics. But it would be a mistake to conclude that Georgia has been taken over by proponents of centralization and skeptics of local control. In fact, some of the same people who were strong advocates of the new law have also been advocating for a neighborhood of Atlanta called Buckhead to secede and form a new city. Buckhead is whiter and richer than the rest of Atlanta, and the explicit hope of the seceders is that forming a new city would protect residents from having to pay taxes to provide services to Atlanta as a whole.<sup>11</sup> Unsurprisingly, the rallying cry in favor of secession is "local control." While the movement failed this year, the organizers have pledged to persevere and keep pressing for secession at the local and the state level—indeed, they have recruited former President Trump as a prominent ally, weaponizing the

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9. For a full account of this dynamic from the founding through Reconstruction, see my previous article, *Reconstructing Local Government*. There, I argue that the real struggle over local power in the South was not between centralization and local power, but rather between a proprietary idea of local government (where local control serves the interests of property holders) and a communitarian idea of local government (where local control is a vehicle for expanding participation in local government). See Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 418–19 (2017) [hereinafter Farbman, *Reconstructing Local Government*].

10. Election Integrity Act of 2021, No. 9, 2021 Ga. Laws 14 (codified in Titles 21, 36 & 50 of GA. CODE ANN.); see *Voting Laws Roundup: July 2021*, BRENNAN CTR. FOR JUST. (July 22, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-july-2021> [<https://perma.cc/U7C6-SQ6G>].

11. See *About Us*, BUCKHEAD CITY COMM., <https://www.becnow.com/about> [<https://perma.cc/TEP4-V32J>] ("Buckhead gets very little return on investment for the amount of taxes that we pay to the City of Atlanta. Buckhead accounts for approximately 40% of revenue to the City of Atlanta through property taxes, but we do not see that level of investment in our community. Simple city services are deteriorating such as police, parks, and trash disposal with no plan from Atlanta's leaders to address them.").

local issue in both state and national politics.<sup>12</sup> The two parallel initiatives of centralizing election administration and allowing Buckhead to secede are profoundly inconsistent on the virtues of local power versus centralization. But they are profoundly *consistent* in that both serve the narrow political agenda of the political conservatives who are struggling to preserve Georgia's old political order in the face of demographic and political change.<sup>13</sup> To put a finer point on it, both of these initiatives hope to entrench the political power of richer and whiter Georgians over and against redistribution of power and wealth to poorer and less-white Georgians.<sup>14</sup>

For the purposes of this project, the point is simple: during Redemption and today, fights over localism are often fights about power—which means they are fights about race, wealth, and politics. While local power is the variable to be adjusted, the motivating principle is not one's deep faith in local democracy, but rather one's views on how power should be distributed and how local governments serve or hinder that distribution.

This Article proceeds in three parts. Part I begins by backing up and describing what I mean by Redemption and why it matters as a historical and as a present idea. Understanding the role that the struggle, anxiety, and resentment latent in the idea of Redemption play in shaping policy helps makes sense of the history. In turn, a clear sense of the distinction between Redemption and Jim Crow helps to situate the current echoes of Redemption Localism within our own political contexts and crises. Part II then turns to the story of Redemption Localism in North Carolina. Building from my prior work, I tell the story of how white supremacists in North Carolina struggled against and eventually stamped out local power in the state between 1875 and 1900. In this part I lay out the three pillars of Redemption Localism: prioritizing white supremacy over local control, centralizing power at the state legislature, and retrenchment (drastically reducing spending on all government services). Finally, in Part III, I reflect briefly on what the story of Redemption Localism in North Carolina tells us about how we should think about the relationship

12. See Ed Kilgore, *Trump Tries To Get Revenge on Atlanta by Busting It Up*, INTELLIGENCER (Mar. 8, 2022), <https://nymag.com/intelligencer/2022/03/trump-backs-buckhead-secession-to-get-revenge-on-atlanta.html> [<https://perma.cc/2Y6V-YLGQ> (staff-uploaded, dark archive)].

13. Former Senator and close ally of Donald Trump, David Purdue, has staked his campaign for governor on these two pillars. See Greg Bluestein, *AJC Interview: Inside Perdue's Plan To Defeat Kemp in 2022*, ATLANTA J.-CONST. (Dec. 8, 2021), <https://www.ajc.com/politics/politics-blog/ajc-interview-inside-perdues-plan-to-defeat-kemp-in-2022/CYZFLSXL3RGHXG4IZUQIW7HKO/> [<http://perma.cc/9XWD-ZQTU>]. Purdue's reason for running is to oppose Stacey Abrams, who he explicitly identifies as a threat to the state of Georgia. *Id.* ("I can't see the state go down this road that Stacey Abrams wants to go down.").

14. I recently wrote a brief essay framing the contradictions and parallels between these two Georgia initiatives. See Daniel Farbman, *The New Redemption Localism's Threat to Multiracial Democracy in the South*, ST. & LOC. GOV'T L. BLOG (Oct. 5, 2021), <https://www.sloglaw.org/post/the-new-redemption-localism-s-threat-to-multiracial-democracy-in-the-south> [<https://perma.cc/T2TV-4T26>].

between state and local power today. In short, I conclude that the underlying logics of Redemption Localism remain troublingly present in the ways that the mechanics of local government are weaponized in service of preserving the status quo distribution of power.

### I. DISAGGREGATING REDEMPTION AND JIM CROW

In the wake of the 2020 election—and fueled by Donald Trump’s paranoia-laced “big lie”<sup>15</sup>—a wave of new voter suppression laws made their way from state legislatures, to governors’ desks, and into state codes.<sup>16</sup> While the public justification for these laws has been “election integrity,” the barely hidden subtext is the same as it has been for the last 150 years: keeping the “wrong voters” out to preserve the political status quo. To put it more bluntly, these laws are being passed in states where a dwindling conservative (and mostly white) majority is clinging to power and seeking to prevent a growing (and largely Black and Brown) political opposition from gaining power.

While these laws have been passed in many states, it is Georgia’s Election Integrity Act of 2021 that has emerged as the emblematic example.<sup>17</sup> The law reads like a wish list of voter suppression strategies. Among its explicitly targeted outrages, it restricts mail-in voting, punishes voters for mistaking their polling place, makes lines longer, and makes it illegal to give water to people waiting in those long lines.<sup>18</sup> It also gives the state legislature the authority to remove local election officials and replace them with state-appointed officials.<sup>19</sup>

Almost no one disagrees that the practical effect of this new law will be to make it more difficult for Georgians to vote—and disproportionately more difficult for Georgians who are poor and nonwhite.<sup>20</sup> For some, the clear intent and effect of the law to amplify well-off white voters’ voices and reduce the

15. The “big lie” refers to a set of claims advanced by Donald Trump and his supporters alleging that the 2020 presidential election was stolen through voter fraud. See David Byler, Opinion, *Why Do Some Still Deny Biden’s 2020 Victory? Here’s What the Data Says*, WASH. POST (Nov. 10, 2021, 12:04 PM), <https://www.washingtonpost.com/opinions/2021/11/10/why-do-some-still-deny-bidens-2020-victory-heres-what-data-says/> [<https://perma.cc/576R-CXWL> (dark archive)]. While the specific allegations of fraud are myriad and have shifted over time, the central idea animating them is a resentful inability to believe the results of the election. The “big lie” has both been shown to be self-evidently false *and* to have established a troublingly large beachhead in American popular opinion. See *id.*

16. See BRENNAN CTR. FOR JUST., *supra* note 10 (“Between January 1 and July 14, 2021, at least 18 states enacted 30 laws that restrict access to the vote.” (emphasis omitted)).

17. Election Integrity Act of 2021, No. 9, 2021 Ga. Laws 14 (codified in Titles 21, 36 & 50 of GA. CODE ANN.).

18. See *id.* at 38, 51, 60–61 (codified in scattered sections of Title 21 of GA. CODE ANN.).

19. See Peter W. Stevenson, *Expand Access? A Historic Restriction? What the Georgia Voting Law Really Does*, WASH. POST, <https://www.washingtonpost.com/politics/2021/04/03/georgia-voting-law-explained/> [<https://perma.cc/QP4V-DBEF> (dark archive)] (Apr. 5, 2021, 3:33 PM).

20. See Kevin Morris, *Georgia’s Proposed Voting Restrictions Will Harm Black Voters Most*, BRENNAN CTR. FOR JUST. (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most> [<https://perma.cc/F5Q4-N3KG>].

political power of poor, Black, and Brown voters, has triggered comparisons to the Jim Crow era. President Biden called the law “Jim Crow in the 21st Century”<sup>21</sup> and the House Majority Whip (and eminent congressman from South Carolina) Jim Clyburn called the law the “new Jim Crow.”<sup>22</sup> While these comparisons were clearly calculated acts of political rhetoric, they received a dispiriting, predictable response from the other side of the political dodgeball court. The “reasonable conservative” class emerged to say that Jim Crow was about total disfranchisement of Black voters and so these incremental incursions on ballot access were nothing like that moral horror—and thus just partisan jockeying—politics as usual.<sup>23</sup> To which, exhaustingly, responsible observers like Jamelle Bouie had to respond that Jim Crow was not a single regime of disfranchisement, but rather a patchwork of incremental and bad-faith incursions on voting rights that, taken together, resulted in an overlapping social, political, and legal order which essentially excluded Black citizens from public life.<sup>24</sup>

It should be clear from the above that I am in sympathy with Bouie. The comparisons with Jim Crow are politically useful and not historically irresponsible. And yet, stubborn historian that I am, I think these comparisons are targeting the wrong era of white supremacist outrage in our long history of such outrages. These voting restrictions in Georgia have more in common with the volatile period *between* Reconstruction and Jim Crow—known as Redemption.<sup>25</sup>

21. Jamelle Bouie, Opinion, *If It's Not Jim Crow, What Is It?*, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/06/opinion/georgia-voting-law.html> [https://perma.cc/J9AZ-MP MX (dark archive)].

22. Kelly Hooper, *Clyburn: Georgia Election Law Is 'the New Jim Crow'*, POLITICO (Apr. 11, 2021, 1:45 PM), <https://www.politico.com/news/2021/04/11/clyburn-georgia-election-law-new-jim-crow-480861> [https://perma.cc/5E2L-SAEE].

23. See, e.g., Jonah Goldberg, Opinion, *No, Georgia's Election Law Is Not 'Jim Crow 2.0'*, AEI (Apr. 9, 2021), <https://www.aei.org/op-eds/no-georgias-election-law-is-not-jim-crow-2-0/> [https://perma.cc/8BTC-WWJ6 (staff-uploaded archive)].

24. See Bouie, *supra* note 21.

25. I'm hardly the first to make this point, at least in its broadest terms. Many have observed that our “Second Reconstruction,” which lasted (to paint the period generously) from the Court's 1954 *Brown v. Board of Education*, 347 U.S. 483, ruling through the Voting Rights Act, has been followed by a “Second Redemption” in which the promises of the civil rights movement have been blunted and slowly repudiated in favor of a new governmental minimalism, new (and thinly felt) commitment to “states’ rights,” and a mostly covert, but increasingly explicit, commitment to defending white supremacy. See Adam Serwer, *Is This the Second Redemption?*, ATLANTIC (Nov. 10, 2016), <http://www.theatlantic.com/politics/archive/2016/11/welcome-to-the-second-redemption/50731/> [http://perma.cc/TQA9-8SHS (dark archive)]. For a thorough and authoritative comparison between the First and Second Redemptions—focusing in particular on the modern right's desire to restrict democracy—see generally Kreis, *supra* note 7.



During Redemption, self-described white supremacists<sup>26</sup> faced what they saw as a problem created by emancipation and Reconstruction. Across the South, there were millions of new citizens who had, only months previously, been enslaved and held as property. By the terms of the Reconstruction Amendments and the conditions that these states had to meet to be readmitted to the Union, these millions of people were not only citizens, but also had the right to vote.<sup>27</sup> In some places in the South like South Carolina,<sup>28</sup> Mississippi,<sup>29</sup> and Louisiana,<sup>30</sup> these new citizens formed a majority of the new electorate.<sup>31</sup> But even in places like Virginia, Arkansas, and North Carolina, where white voters remained a solid majority statewide,<sup>32</sup> there were counties and cities where these new citizens had, if not a majority, then at least significant power at the ballot box.

White supremacists understood this democratic power to be the primary and existential obstacle to their project of “redeeming” southern society and government and building a new white supremacist social order to approximate, if not replace, slavery. Which is why they waged a thirty-year attritional war to blunt, mute, and ultimately snuff out the power and voice of Black voters across the South. It was only at the turn of the twentieth century, after decades of

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26. Let me be clear that when I refer to “white supremacists” in the context of the last third of the nineteenth century, I am not calling names. The politicians who dismantled Reconstruction, and through Redemption built Jim Crow, proudly referred to themselves as white supremacists. For example, in North Carolina a network of “White Supremacy” clubs formed across the state with the stated platform: “We do hereby declare our determination that white supremacy through white men shall control and rule North Carolina.” Marshall DeLancey Haywood, *Heriot Clarkson*, in 7 BIOGRAPHICAL HISTORY OF NORTH CAROLINA FROM COLONIAL TIMES TO THE PRESENT 77, 80 (Samuel A. Ashe, Stephen B. Weeks & Charles L. Van Noppen eds., 1908).

27. The redistribution of the franchise was, in fact, an ameliorative compromise amongst congressional Republicans. The most radical supporters of Reconstruction wanted to redistribute economic and political power more forcefully by land redistribution and even by redrawing state lines. Suffrage for Black men (women were, of course, still excluded) was a compromise position that tethered all other forms of political power to the power to vote at the ballot box.

28. According to the Census of 1870, 58.9% (415,814) of South Carolina’s population was classified as “colored,” while 41.1% (289,667) was classified as “white.” DEP’T OF THE INTERIOR, THE STATISTICS OF THE POPULATION OF THE UNITED STATES 3–5 tbl.1 (1872).

29. In 1870, 53.7% (444,201) of Mississippi’s population was classified as “colored,” while 46.3% (382,896) was classified as “white.” *Id.*

30. In Louisiana in 1870, the population was nearly evenly split with 50.2% (364,210) classified as “colored” and 49.8% (362,065) classified as “white.” *Id.*

31. See W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 142–60 (1935) (noting the Black majority in South Carolina, Mississippi, and Louisiana from 1868–1876).

32. In Virginia, in 1870, 41.9% of the population was classified as “colored.” DEP’T OF THE INTERIOR, *supra* note 28, at 3–5 tbl.1. In North Carolina it was 36.6%, and in Arkansas it was 25.2%. *Id.* Looking at maps of the demographic distribution of Black residents confirms that they were concentrated in areas of the state that had been dedicated to plantation agriculture before emancipation. See, e.g., MICHELE P. CLAIBOURN, BLACKS IN VIRGINIA: DEMOGRAPHIC TRENDS IN HISTORICAL CONTEXT 3–4 (2012), [https://demographics.coopercenter.org/sites/demographics/files/NC\\_Blacks-in-Virginia\\_4\\_30\\_12\\_r\\_0.pdf](https://demographics.coopercenter.org/sites/demographics/files/NC_Blacks-in-Virginia_4_30_12_r_0.pdf) [<https://perma.cc/K4R2-BTTQ>].

violence and oppression (and after bloody outrages like the Colfax Massacre and the Wilmington Insurrection), that the Redeemers could claim “victory.” It was only then that they drafted new constitutions codifying the results of their struggle and weaving the complicated strands that would uphold and sustain the half-century of apartheid that we have come to know as Jim Crow.

All of this is familiar enough to historians, but it is mostly missing from our flattened public discourse about the ongoing war on democratic participation. When we are thinking about (and critiquing) policy today with reference to the past, it is critical to understand the mechanics of the past policies. The contingent (and often shortsighted) struggles in the past leave a detritus of governance flotsam that impede and inform our policy struggles now. Not only do we need to consider that flotsam carefully to act thoughtfully, but we could (though experience shows we will not) take that flotsam as a warning against the similarly shortsighted and reactive policy-making of the present, which will inevitably leave its own flotsam for our children to encounter.

To make this point specific for the purposes of this Article: one type of flotsam that the Redeemers left us is a regional southern hostility toward local power. As I will outline further below using the specific example of North Carolina, when white supremacists saw the potential (and occasionally the reality) of Black political power being mobilized at the local level, they acted dramatically to curtail and limit local power and centralize control over local affairs at the state level, where the power of white supremacists was stronger. While this retreat from local control and local power was primarily a stratagem to protect elite white political power, it was a structural political choice about how political power and public law would be understood. That structural choice echoes in the present. The Redeemers were, in many ways, the architects of southern public law, and their pragmatic opposition to local power in protection of white supremacy continues to structure the way localism operates in the South today.<sup>33</sup>

To make this point and its consequences even more specific, let me return to Georgia. When Georgia passed a law empowering the legislature to take power away from county voting officials and accrete that power to itself, it was following the old script of Redemption Localism that was laid out in the flotsam of reactive white supremacy during Redemption. The fact that the path leads to the same place—the gradual disfranchisement of poor and nonwhite voters—is not just ironic, it’s structural.

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33. See Richard C. Schragger & C. Alex Retzliff, *The Failure of Home Rule Reform in Virginia: Race, Localism, and the Constitution of 1971*, at 6–9 (Va. Pub. L. & Legal Theory, Research Paper No. 2020-35, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3574765](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3574765) [<https://perma.cc/62JM-SZCR> (staff-uploaded archive)].

## II. NORTH CAROLINA AND REDEMPTION LOCALISM

A. *Antebellum Plantation Localism*

In 1860, on the eve of the cataclysm of the Civil War, local government in North Carolina followed an old and well-worn model. As a matter of public law, the lowest level of local governance was the county. Counties were governed by county courts—magistrates who occupied a quasi-judicial and quasi-executive role.<sup>34</sup> In practice, I have argued, the county court system of local government delegated power to the large landholding elites who owned both the plantations and the human beings who made those plantations profitable.<sup>35</sup> Under this system, the planters' localized despotic power was essential to the legal, economic, and social order of slavery. White elites exercised “democratic” control over counties by excluding all of their enslaved neighbors from the political community (not to mention the many poor white and free Black citizens who were either officially or functionally excluded from the political community).<sup>36</sup>

This plantation localism was the *status quo ante* of the antebellum South. When bitter southerners looked back to the “good old days” before the humiliation of the war, emancipation, and Reconstruction, this was the legal order that they looked to. To be clear, while the county court system was an integral part of the complex sociolegal order of slavery, it would be a mistake to see local government at the county or the plantation level as the linchpin of that order. Rather, the specific calibrations of local power between the county and the plantation were a piece of a web of legal, social, and economic mechanisms that established slavery and the social and racial hierarchy that slavery represented.

Put another way, the primary and dominant political commitment in North Carolina—and indeed across the South between 1820 and secession—was preserving slavery and the social order that it represented. When “local control” was consistent with this project—as it was when planters held the reins of county government—it was unproblematic. But when Jeffersonians from the mountains proposed a more participatory and robust form of local control rooted in Jefferson's utopian “ward republics,” such adjustments were quickly dismissed as a threat to the “southern way of life.”<sup>37</sup>

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34. See Farbman, *Reconstructing Local Government*, *supra* note 9, at 429–30.

35. See *id.* at 426–28.

36. See *id.*

37. See *id.* at 431–33.

B. *Reconstruction and the Township Experiment*

When emancipation finally came at the end of the Civil War, millions of formerly enslaved people were transformed, at least as a matter of law, into citizens. As a result, the polity of North Carolina was transformed—and the entire sociolegal order was upended. This transformation was radical enough at the state level, but its sharp edges were most acutely felt at the local level. Especially in the eastern counties, the planter elites found themselves overrun by neighbors who they had claimed as property, and who now shared a theoretically equal political voice.<sup>38</sup>

It was clear to everyone from the fieriest radical egalitarian to the deepest dyed-in-the-wool white supremacist that a new political order would be needed to accommodate this seismic political shift. With the core logic of plantations gutted by emancipation, North Carolina (and the South more broadly) needed a new conception of localism. As Reconstruction unfolded, it became clear that there were two competing visions of what that new conception should be.

For conservatives and confederates (the coalition that would soon adopt the term “white supremacist”), the goal was to create a new political order that approximated the old order as much as possible. This meant returning to the county court system and establishing a regime that delegated a great deal of control to landowners over tenant workers (who, it was imagined, would mostly be formerly enslaved people). It was this impulse to preserve the existing order that was behind the drafting of North Carolina’s “Black Code” in 1866.<sup>39</sup>

For their radical opponents, the goal, in Thaddeus Stevens’s words, was nothing less than a total overhaul of the “fabric of Southern society.”<sup>40</sup> This required, in the words of Albion Tourgée (who would soon become the chief architect of North Carolina’s Reconstruction Constitution), “a thorough and

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38. While the majority of North Carolina’s population remained white after emancipation (unlike South Carolina or Louisiana), the census of 1870 counted 391,650 Black residents (as compared to 678,470 white residents). See DEP’T OF THE INTERIOR, *supra* note 28, at 3–5 tbl.1. This meant, as a practical matter, that upon emancipation the state’s population grew by more than 50%. See *id.* Nor was this growth uniform across the state. The enslaved population of the state had been concentrated in the eastern counties where large plantations flourished. See Daniel Lunk, *Map of Slave Populations in North Carolina*, CIV. WAR ERA NC, <https://cwnc.omeka.chass.ncsu.edu/items/show/698> [<http://perma.cc/BGL8-7DGF> (staff-uploaded archive)]. In 1870, the distribution of the population remained largely unchanged. *Id.*

39. Black codes were adopted across the South after emancipation by the defeated state governments as an effort to preserve the legal and social hierarchy without the crutch of slavery. These codes wove a web of contract law, vagrancy law, criminal law (and much else) to replicate to as full an extent as possible the prior social order. See DU BOIS, *supra* note 31, at 142–60. While North Carolina was among the states with comparatively lenient Black codes because the white majority in the electorate was more stable, the state’s 1866 Black codes were no less intentional about reinscribing the old social order.

40. Thaddeus Stevens, Reconstruction: Hon. Thaddeus Stevens on the Great Topic of the Hour, an Address Delivered to the Citizens of Lancaster (Sept. 6, 1865), in N.Y. TIMES, Sept. 10, 1865, at 2.

complete revolution and renovation” of the southern political order.<sup>41</sup> For Tourgée and a few other resolute Yankees coming south to win the peace through reform, this “revolution and renovation” began with local government.<sup>42</sup>

I have described Tourgée’s work in North Carolina in some detail in previous work.<sup>43</sup> What matters most to this Article is that, at root, the goal of Tourgée and his coalition of radicals (carpetbaggers from the north, scalawag native southern radicals, and newly enfranchised Black citizens) was a new and more responsive democratic infrastructure. In the vacuum of local power left by the end of plantation localism, the radicals sought to inject the virtuous serum of the New England town and its famous (or better, apocryphal<sup>44</sup>) participatory democracy.

The idea, in all its utopian brashness, was that forcing former masters and enslaved people into the thick, messy, and local work of participatory self-government would strip away the old racial hierarchies and forge a new, more healthy, interracial polity from the ground up. This aspiration sounds outrageous as a solution for centuries of genocide and enslavement. But it is not so different from the aspirational localism that still motivates many present paeans to local power. It is, for example, one of the primary moral arguments motivating demands for integration of the public schools.<sup>45</sup>

In North Carolina, as I have described previously, this utopian endeavor took the form of a “township experiment,” whereby the 1868 state constitution provided that the entire state should be divided into townships, and that these townships would replace the existing county system as the operative level of local governance in the state.<sup>46</sup> The goal of the township experiment was twofold. First, it would break up the centers of political power that planter elites had dominated at the county level. Second, it would create new, more empowered, more diverse governmental units where neighbors could practice

41. MARK ELLIOTT, *COLOR-BLIND JUSTICE: ALBION TOURGÉE AND THE QUEST FOR RACIAL EQUALITY FROM THE CIVIL WAR TO PLESSY V. FERGUSON* 89 (2006).

42. *Id.* at 73.

43. See Farbman, *Reconstructing Local Government*, *supra* note 9, at 443–48.

44. For a brilliant exposition of the myth and mythmaking around the New England town, see Averill J. Leslie, *The New England Town Meeting as Icon and Ethnographic Object: New Perspectives on Participatory Democracy* (Aug. 2018) (Ph.D. Dissertation, University of Chicago), <https://knowledge.uchicago.edu/record/415?ln=en> [<https://perma.cc/R8MK-R5LL> (staff-uploaded archive)].

45. Some utopians, à la Thomas Dewey, have framed this in romantic terms—the schools as training grounds for multiracial democracy. See generally John Freeman-Moir, *William Morris and John Dewey: Imagining Utopian Education*, 28 *EDUC. & CULTURE* 21 (2012) (describing Dewey’s view on utopian education). Thurgood Marshall’s more cynical view was that “green follows white,” meaning that even if sharing space would not heal all of our social divisions, it would at the least force some degree of distributional equality. See generally Maria L. Marcus, *Learning Together: Justice Marshall’s Desegregation Opinions*, 61 *FORDHAM L. REV.* 69 (1992) (examining Justice Marshall’s school desegregation legacy over the decades).

46. See Farbman, *Reconstructing Local Government*, *supra* note 9, at 446–47.

multiracial democracy with real local power and real local stakes in the balance. As such, the township experiment was not only about reorganizing where local government happened, but about granting the new local governments more authority and power.

As I recount in *Reconstructing Local Government*, the township experiment initially met little resistance.<sup>47</sup> It was seen by the white supremacists as one among many outrages perpetrated by the diabolical radical coalition. But once the experiment began to take hold, those who wanted a return to the “good old days” before the war began to see with alarm that these new local governments actually *did* promise to redistribute political power in ways that threatened the southern “way of life.” Black justices of the peace, Black magistrates, carpetbagger sheriffs—all sorts of unmentionable people began to be elected to positions of considerable local power.<sup>48</sup> Worse still for the white supremacists, the new citizens who had formerly been enslaved *were voting* in these elections.<sup>49</sup> The hope of the radicals was threatening to become realized as new political alignments emerged with the new and engaged multiracial populace.<sup>50</sup> With the emergence of these new localized power realignments, the white supremacists’ focus turned to eliminating the new townships and reinstating the old county court system—but first they had to retake the statehouse.

By 1874, self-described white supremacists had taken control of the North Carolina state government.<sup>51</sup> Having secured power at the state level (and having begun to take steps to ensure and entrench that power), the white supremacists turned their focus to the other pockets of lingering Black political power at the local level. Among the first moves was to dismantle the township experiment. At the constitutional convention that they called in 1875 to roll back the reforms of Reconstruction, the white supremacists tried to erase the townships altogether, but in the face of stronger-than-anticipated Republican pushback, they were forced to compromise by simply giving the state legislature authority to strip townships of their powers.<sup>52</sup>

### C. “Relief for the East!” and the Beginning of Redemption

The legislature had the power to strip townships of their powers, but a larger problem remained for the white supremacist Redeemers. Simply returning to county government would not reinstate the old racial and class

47. *Id.* at 448.

48. *See id.* at 460.

49. *See id.* at 451.

50. *See id.* at 448–50.

51. *See id.* at 459.

52. *See id.* at 461. This story is a helpful reminder that while the white supremacists had regained power at the state level, their majority was not insuperable. In fact, over the last quarter of the nineteenth century, the Republicans (and even some who harbored racial egalitarian views) remained a powerful political voice across the South. *See id.* at 456–57.

hierarchy everywhere in the state. In the west (the Piedmont and Appalachia) where there had been fewer people enslaved before the war, white voters dominated county elections, and the forces of white supremacy were able to regain control of county governments through (mostly) democratic means.<sup>53</sup> But before the war, many of the eastern counties had been dominated by large plantations which meant that there were many more newly free Black citizens living and voting there. And so, even with the return to the county system, white supremacists in the state legislature began to demand that the state protect white residents in the eastern counties from “their lawless negro oppressors.” Their rallying cry was “relief for the east!”<sup>54</sup>

As an initial matter, the eastern white supremacists had been optimistic about the new constitutional amendments of 1875. The conservative *Carolina Watchman* hailed them as “a very considerable measure of relief to the East.”<sup>55</sup> But, although the new constitutional amendments gave the legislature power to take control over county government, how and when that would happen remained an open question—and one that the legislature did not immediately act on.

So it was that in January of 1877 the white supremacist Redeemers were getting anxious. They complained that although the legislature had been in session for a month, “nothing ha[d] been done for the relief of the East.”<sup>56</sup> In this complaint, a fuller view of the problems that eastern white voters despised emerged. Not only were these former elites angry that they were being governed by “negros and scalawags,” but they were especially angry that they were being *taxed* by them.<sup>57</sup> In addition to taxation reflecting what the white supremacists saw as the illegitimate exercise of Black political power, it threatened the old racial and class hierarchies by giving the formerly enslaved the power to tax their former masters and demand a fairer distribution of wealth through government services.

And so, white supremacist anxiety about being governed by their Black neighbors was joined with economic anxiety about redistribution through taxation. With this new burst of outrage, the bill that would give power to the

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53. This elides the fact that there remained many white Republicans, especially in the mountain counties. *Id.* at 462. But these “scalawags” were less deeply committed to racial equality than the multiracial coalitions in the eastern counties. See generally GORDON B. MCKINNEY, SOUTHERN MOUNTAIN REPUBLICANS 1865–1900: POLITICS AND THE APPALACHIAN COMMUNITY (1978) (discussing white Republicans in the western part of the state). Moreover, as time went on, they became increasingly aligned against northern intervention. *See id.*

54. See *Relief for the East*, DAILY NEWS (Raleigh, N.C.), Oct. 9, 1875, at 2. Lest the raw racial animus of this moment get lost in the details, the article described the eastern counties in need of “a convention to relieve them of their lawless negro oppressors.” *Id.*

55. CAROLINA WATCHMAN (Salisbury, N.C.), Oct. 14, 1875, at 1.

56. *Relief for the East*, OBSERVER (Raleigh, N.C.), Jan. 30, 1877, at 2.

57. *See id.*

state legislature moved quickly through the legislature (albeit with “the Radicals fighting it at every step.”)<sup>58</sup> In this way the East was relieved of the “deadly blight and cruel scourge” of the “negro . . . task master” and state control over local government became a foundational element of the “principle that this is a white man’s government.”<sup>59</sup>

#### D. *The Struggle for Redemption*

By 1880, white supremacists in North Carolina had managed to eliminate the township experiment and return power to the weaker and more white-dominated county court system.<sup>60</sup> Where this structural adjustment had not fully facilitated white supremacy, the Redeemers acted to provide “relief for the East” by stripping local voters of democratic control and providing that local officials would be chosen by the “safe” state legislature.<sup>61</sup>

These were the first two prongs of Redemption Localism: weakening local power and limiting local democratic control. And yet, while the project of Redemption was begun, the white supremacists would not “win” the power to establish Jim Crow for another two decades. Between 1880 and 1898, Black voters retained a strong minority voice in state politics—and an even stronger voice in counties where they constituted a political majority.<sup>62</sup> Even having taken control of the state legislature and having acted to radically reduce local power, white supremacists were still struggling to “redeem” local governance from what they saw as the taint of Black political participation. Even without the power to elect local officials, the reality of Black political power on the ground meant that local politics were influenced by the fact of a multiracial polity. Black voters went to the polls, Black families were buying property, and Black politicians retained a strong voice in state politics.<sup>63</sup>

Perhaps most tellingly, Black families were cashing in on the promise of public education. Although radical disparities in funding and quality of public schools existed (and persisted) from the beginning of Reconstruction, Black children were being educated in free public schools paid for by local property taxes.<sup>64</sup> White supremacists were horrified by this. Many shared their

58. *County Government*, OBSERVER (Raleigh, N.C.), Feb. 11, 1877, at 3.

59. NEWS & OBSERVER (Raleigh, N.C.), Feb. 24, 1882, at 2.

60. See Farbman, *Reconstructing Local Government*, *supra* note 9, at 462–64 (discussing the erasure of townships by the North Carolina legislature which resulted in “the old elite political class reclaim[ing] authority”).

61. See *id.* at 463.

62. Overall, the Republican Party remained a powerful force in state politics until the turn of the twentieth century. While the influence of northerners waned after 1875, the coalition of white unionists (“scalawags”) and formerly enslaved Black citizens was not easily dismissed. HELEN G. EDMONDS, *THE NEGRO AND FUSION POLITICS IN NORTH CAROLINA 1894–1901*, at 15–16 (1951).

63. See ERIC ANDERSON, *RACE AND POLITICS IN NORTH CAROLINA, 1872–1901: THE BLACK SECOND* 331 (1981).

64. See *id.* at 326–27.



slaveholding parents' view that it was dangerous to educate the oppressed and subordinate class in a racial hierarchy.<sup>65</sup> Even where they grudgingly acknowledged that Black children should receive some education, they argued that white families should not be taxed to support that education. In 1880, the state legislature passed a law that allowed towns to establish two separate streams of school funding.<sup>66</sup> Taxes from white citizens would be collected to fund schools for white children, while taxes from Black citizens would be used to fund schools for Black children.<sup>67</sup>

This bifurcated funding stream was quickly adopted by towns across the state, but in a sign of the Redeemers political vulnerability, it was quickly challenged by Republican opponents.<sup>68</sup> When the question came before the Supreme Court of North Carolina, the court ruled that the law was unconstitutional as a violation of the state constitution's prohibition against overt racial discrimination.<sup>69</sup>

While this fight over local funding for public education shares familiar features with the fight over local power, the story reveals the extent to which white supremacist Redeemers had not yet achieved political control over the state, even in the mid-1880s. They saw themselves (and they were) engaged in a struggle for supremacy amidst a complex political landscape, where the Republican Party was not yet vanquished and where Black citizens remained active and powerful members of the political community. These observations highlight a critical distinction between Redemption and Jim Crow. Reconstruction established a fragile but revolutionary new multiracial democratic order across the South. The Redeemers were struggling against this new order to return to white supremacy and the "southern way of life."<sup>70</sup> But while we know the end of the story, during the period between 1880 and 1898, that struggle was active and its outcome uncertain. It was not until 1898, and the subsequent Jim Crow Constitution of 1900, that Redemption in North Carolina (and across the South) was achieved. Jim Crow's comparatively stable order of racial hierarchy, oppression, apartheid, and white supremacy was thus the result of the Redeemer's struggle.

And so, when the white supremacists struggling toward redemption encountered the persistence of Black political power, they resorted to another,

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65. For just one among many examples of this sentiment, in 1881, *The Charlotte Democrat* printed the following three line "article": "Advocating negro schools to spoil good laborers—the last resort of the demagogue and office-seeker." CHARLOTTE DEMOCRAT, Sept. 2, 1881, at 2.

66. See ANDERSON, *supra* note 63, at 329–30.

67. See *id.*

68. See H. LEON PRATHER, SR., RESURGENT POLITICS AND EDUCATIONAL PROGRESSIVISM IN THE NEW SOUTH: NORTH CAROLINA, 1890–1913, at 76 (1979) [hereinafter PRATHER, RESURGENT POLITICS].

69. See *Puitt v. Comm'rs of Gaston Cnty.*, 94 N.C. 709, 713–15 (1886).

70. See Farberman, *Reconstructing Local Government*, *supra* note 9, at 480.

far-reaching tactic to smother that power: retrenchment. Retrenchment was a radical plan to defund state and local government. The idea was that as long as government was even partially subject to multiracial control—and even partially being used to redistribute wealth, power, and privilege—the Redeemers could limit that capacity by starving state and local governments of the funds they needed.<sup>71</sup> Retrenchment became the third leg of the stool of Redemption Localism. It facilitated a return to the “good old days” of plantation localism where the weak county governments largely delegated power to planter elites in their private fiefdoms. The end goal of retrenchment was to gut the capacity of government to upend the southern way of life and, functionally, to vest authority in private actors to govern, provide services, and maintain racial hierarchies as they saw fit. Little surprise, then, that in the words of historian C. Vann Woodward, “retrenchment’ . . . became the watchword of the Redeemers in their state and local governments.”<sup>72</sup>

The next chapter in the school funding saga was a perfect example of retrenchment in action. When the white supremacists who had pressed for separate funding streams for white and Black schools were rebuffed by the courts, they had to choose between funding all schools equally or abandoning school funding altogether. By now, it should not be hard to guess what they chose. The immediate reaction in most of the districts that had set up the bifurcated funding streams was simply to reduce or eliminate funding for all schools—both Black and white.<sup>73</sup> The core logic at work was the core logic of Redemption: the only legitimate government (and government services) were those that obeyed the orthodoxy of white supremacy. The corollary logic that animated retrenchment was that no government (and no government services)

71. Note here the parallels between retrenchment and modern libertarian opposition to government. Grover Norquist famously proclaimed: “I don’t want to abolish government . . . I simply want to reduce it to the size where I could drag it into the bathroom and drown it in the bathtub.” Joseph Thorndike, *Americans Are Getting a Hard Lesson in Why Government—and Taxes—Actually Matter*, FORBES MAG. (Mar. 20, 2020, 1:20 PM), <https://www.forbes.com/sites/taxnotes/2020/03/20/americans-are-getting-a-hard-lesson-in-why-government---and-taxes---actually-matter/?sh=528485087904> [<https://perma.cc/73PP-MAJA> (staff-uploaded, dark archive)]. In both cases, the functional result of shrinking government is to delegate much more power and “governance” control to private entities and private landowners.

72. C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH 1877–1913*, at 58 (Wendell Holmes Stephenson & E. Merton Coulter eds., 1951).

73. See PRATHER, *RESURGENT POLITICS*, *supra* note 68, at 76. Here again, the analogy to the South’s Massive Resistance to *Brown* is too clear to miss. Perhaps the sharpest comparison is with *Palmer v. Thompson*, where the city of Jackson, Mississippi, closed its swimming pool rather than opening it as an integrated facility. 403 U.S. 217, 219 (1971). The Supreme Court approved Jackson’s action, functionally giving the Court’s blessing to the retrenchment principle, that if you did not want to provide a service equally to white citizens and formerly enslaved Black citizens, it was entirely fine to simply remove the service altogether. *Id.* at 218–19.

was preferable to a multiracial government and the redistribution that it threatened or promised.<sup>74</sup>

E. *The Tradition of Black Power and Fusion Politics*

The Redeemers' struggle to establish and protect white political power was explicit and evident in their manipulations of state and local legal structures. It would be easy, in the face of the visible victories of white supremacy, to miss the strong undercurrent of Republican political strength at the state and local level. It would be easy, as well, to overlook the fact that this strength was fueled by Black political power. Between 1875 and 1890, Republicans—and in particular Black Republicans—consistently turned out to vote, and consistently threatened the Redeemers' hold on state power.<sup>75</sup> While Republicans failed to regain power at the state level, they consistently represented just a little less than half of the voting population.<sup>76</sup>

The persistence of this powerful opposition party fueled the urgency of the Redeemers. Even if they had a hold on power now, they understood that their hold was tenuous as long as Black voters remained a powerful voice in state politics. This explains why their machinations with the structures and nature of local government were so draconian. They were tactics in an ongoing

74. The connection between retrenchment and the explicit goal of shrinking government during Reconstruction has been well documented. In a recent paper, political scientists Pavithra Suryanarayan and Steven White demonstrated that once white elites retook power in the South after Reconstruction, they systematically lowered tax rates and undermined government capacity to protect white supremacy. See Pavithra Suryanarayan & Steven White, *Slavery, Reconstruction, and Bureaucratic Capacity in the American South*, 115 AM. POL. SCI. REV. 568, 582 (2021). Another recent report focusing on Redemption in Alabama emphasized that Redeemers there constitutionalized harsh limits on property tax rates to ensure that even if they lost power, Republicans (and Black office holders) would not be able to raise money to fund redistributive government services. See MICHAEL LEACHMAN, MICHAEL MITCHELL, NICHOLAS JOHNSON & ERICA WILLIAMS, CTR. ON BUDGET & POL'Y PRIORITIES, ADVANCING RACIAL EQUITY WITH STATE TAX POLICY 2 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/11-15-18sfp.pdf> [<https://perma.cc/JQ6F-E35Z>].

75. See EDMONDS, *supra* note 62, at 15 (discussing the opposition strength of the Republicans to the Democratic Party from 1876–1896). Although it is difficult to ascertain what percentage of Republican voters were Black, “[i]t is reasonable to assume that Negroes formed a large element in the Republican party.” *Id.* at 15–18.

76. One imperfect but suggestive way to see this is to look at the results of the gubernatorial elections during this period. In 1876, the Democrat Zebulon Vance beat the Republican Thomas Settle by a margin of 5.6% (52.8% to 47.2%). GUIDE TO U.S. ELECTIONS 1718 (Deborah Kalb ed., 2016). In 1880, the Democrat Thomas Jarvis beat the Republican Ralph Buxton by a margin of 2.6% (51.3% to 48.7%). *Id.* In 1884, the Democrat Alfred Scales beat the Republican Tyre York by a margin of 7.7% (53.8%–46.1%). *Id.* In 1888, the Democrat Daniel Fowle beat the Republican Oliver Dockery by a margin of 5.1% (52% to 46.9%). *Id.* In each of these elections, more than a hundred thousand Republican voters turned out to vote and the margins were, if not thin, then at least relatively tight. We do not have reliable data on how many of these Republican voters were Black, but even conservative estimates would suggest that at least 50% of these voters (i.e., more than fifty thousand) were Black. See EDMONDS, *supra* note 62, at 17–18.

struggle to use existing political power to protect against the eventuality of losing that power.<sup>77</sup>

And they were right to be worried! Beginning in 1890 and lasting for nearly a decade, a movement began in North Carolina and across the South to align the interests of the nascent Populist party with the interests of Black voters and Republicans. This movement was called “Fusion.”<sup>78</sup> The politics behind Fusion were complex, but the general framework was relatively simple. The Populists emerged in the 1880s as small farmers (in North Carolina, mostly from the west, which had always been less pro-slavery and more Republican) became increasingly dissatisfied with the elite eastern “Bourbons” who controlled state economic and political affairs. As the electoral power of the Populists grew, it became clear that if they joined with the Republicans, they could break the Redeemer Democrats’ grip on power at the state level.<sup>79</sup> In the mid-1890s, leaders of the two parties decided to make common cause and run candidates on a “fusion” slate in the hopes of taking power at the state and local levels. In the election of 1894, the Fusionists swept to power in the state legislature, and in 1896, the fusion platform elected the state’s first Republican governor since Reconstruction.<sup>80</sup>

The moment of Fusion politics burned bright for the opponents of Redemption and the opponents of white supremacy, as a beacon of hope for a thriving multiracial politics. Given the centrality of local power to the Redeemers, it should not be surprising that Fusionists focused on obtaining local power for themselves in their effort to battle against the Redeemers. The most optimistic Republican members of the Fusion coalition hoped to turn back the clock to 1868 by both restoring democratic control over county governments *and* reinstating the township experiment.<sup>81</sup> The Populists, on the other hand, were predominantly white and their base of power was in the same western part of the state that had acceded to demands for “relief for the east” two decades

77. Most casual readers of the headlines today will recognize this dynamic as it plays out through voter suppression, gerrymandering, and other present tactics employed by political elites who hold political power against a strong minority (or sometimes majority) opposition.

78. *See generally* EDMONDS, *supra* note 62 (explaining that the Fusion movement refers to the “fusion” of the Populist party and the Republican party, along with Black Republican voters and officeholders, to briefly gain control over the dominant Democratic Party in North Carolina from 1895–1901).

79. In the 1892 gubernatorial election, the Democrat Elias Carr received only 48.3% of the vote while the Republican candidate David Furches received 33.8% and the Populist candidate Wyatt Exum received 17%. GUIDE TO U.S. ELECTIONS, *supra* note 76, at 1718. Together, the Republicans and Populists got 50.8% of the vote. *See id.*

80. Daniel Russell was not only the first Republican governor since 1876, but he would also be the last Republican governor until the party realignment of the late twentieth century. *See id.* at 1718–19.

81. *See As Things Look at Raleigh*, DAILY CHARLOTTE OBSERVER, Feb. 6, 1895, at 2 (noting the disagreement between Republicans and Populists over the township system).

earlier.<sup>82</sup> While they were eager to regain control over their own, safely white county governments, they were also worried about returning local power to Black voters in the East.<sup>83</sup>

After a furious and acrimonious debate in the legislature, the tenuous Fusion coalition passed a bill that returned a large measure of democratic control over county government to the state's voters.<sup>84</sup> The bill was a far cry from returning to the democratic promise of 1868, as it did not revive the townships and, to appease anxious white Populists, it contained provisions allowing white minorities to retake local control if they presented evidence of "financial . . . mismanage[ment]."<sup>85</sup> Still, the bill was a seismic shift away from Redemption Localism. Unsurprisingly, it sparked a furious backlash.

#### F. *Redemption Achieved*

Two things happened almost immediately after the Fusionists returned democratic control to the counties. First, in the 1896 elections that followed the new bill, a wave of Black officeholders were elected across the eastern portion of the state.<sup>86</sup> Seven Black representatives were elected to the state legislature, and many eastern counties elected large slates of Black magistrates, justices of the peace, and other local officials.<sup>87</sup> For the first time since 1868, Black voters in the Fusion coalition were able to elect candidates that represented them. For the first time since Reconstruction, Black sheriffs were entrusted to police their fellow citizens, Black judges presided over county courts, and the seemingly moribund promise of multiracial democracy found new life at the local level.

The city of Wilmington, located on the southeast coast of the state, was a prime example. In the elections of 1896, fully three-quarters of the newly elected magistrates were Black.<sup>88</sup> Needless to say, the Redeemers who had struggled to gain and cling to power for the previous two decades were not pleased. In Wilmington and across the state, a steady drumbeat of outrage from the white supremacists attacked the Fusion coalition for ushering in a new era of "negro domination."<sup>89</sup> The Redeemers and white supremacists who had been shoved out of power by the Fusionists accused white Populists and Republicans

82. Though historians have (rightly) understood Populism as a "white-based and white-led movement," Omar Ali has documented the extent to which Black populism was also an important force in Southern politics at the end of the nineteenth century. See OMAR H. ALI, *IN THE LION'S MOUTH: BLACK POPULISM IN THE NEW SOUTH, 1886–1900*, at 4 (2010).

83. See *As Things Look at Raleigh*, *supra* note 81, at 2.

84. See *The County Government Bill—Some Inside History*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 1, 1895, at 4.

85. See *County Government Bill*, GREENSBORO PATRIOT, Feb. 27, 1895, at 1.

86. See ANDERSON, *supra* note 63, at 238–39.

87. See *id.* In some places, the Black electoral surge was huge. For example, every single justice of the peace in Edgecombe County was Black. *Id.* at 238.

88. *Negro Magistrates*, MORNING STAR (Wilmington, N.C.), Nov. 7, 1896, at 1.

89. See *The Same Fight Over Again*, MORNING STAR (Wilmington, N.C.), Oct. 25, 1898, at 2.

of “waging war on the white people, the respectability and the intelligence of North Carolina.”<sup>90</sup>

The shift in local power and the white supremacist rage against it became central to the Redeemers’ push to retake the legislature from the Fusionists in 1898. For the first time in two decades, calls for “relief for the east” began to ring out again.<sup>91</sup> Having lost many working-class white votes through their Bourbon rule, the Redeemers seized on white supremacy and racial anxiety to motivate white voters to return to the Democratic Party and defeat the Fusionists.<sup>92</sup> While this anxiety had nothing to do specifically with any fixed theory of local power, it drew energy from the gut-level fears of white voters at the local level. Once again, while the idea of a Black state legislator was unpleasant to many white voters, it was the horror of the Black magistrate or Black sheriff governing at the local level that really set fire to white anxiety.<sup>93</sup>

Just before the election of 1898, a group of white supremacists from across the eastern counties of North Carolina gathered in Goldsboro at “The Great White Men’s Convention.”<sup>94</sup> In framing their complaints, these Redeemers were resolutely focused on what they saw as the injustice of Black political power at the local level. After cataloguing the prevalence of Black local officials across the eastern counties following the Fusionist victory,<sup>95</sup> the Redeemers argued that “as a consequence of turning these local offices over to the negroes, bad government has followed.”<sup>96</sup> And what they meant by “bad government” was extreme: “[H]omes have been invaded, and the sanctity of woman

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90. *Id.*

91. See *Relief for the East and the West*, N. CAROLINIAN (Raleigh, N.C.), Sept. 8, 1898, at 7.

92. In a typical exhortation, *The North Carolinian* advocated for returning the eastern counties to state control and for white solidarity: “Let [the white people of the west] remember that blood is thicker than water, and give relief to the Eastern whites, while having county government to their liking at home.” *Id.*

93. A representative example of the rhetoric driving these politics comes from a Wilmington newspaper: “In many counties negroes have a voice in the management and control of white schools; negro constables arrest and negro deputy sheriffs try white men and negro deputy sheriffs perform their official functions in the most offensive manner.” *State Press*, WILMINGTON MESSENGER, Feb. 16, 1898, at 2.

94. See RESOLUTIONS ADOPTED BY EIGHT THOUSAND VOTERS AT THE GREAT WHITE MEN’S CONVENTION IN GOLDSBORO, N.C., OCTOBER 28 (1898).

95. The resolutions claimed that

in many of the counties, cities and towns of Eastern North Carolina the local governments have been turned over wholly, or in part, to the negroes. . . . In these counties, cities and towns negroes may be found holding the offices of Register of Deeds, Deputy Sheriffs, Constables, Justices of the Peace, School Committeemen, Town Commissioners, Policemen, and the like.

*Id.* All in all, the resolutions complained that “there are now in office . . . nearly one thousand negroes, there being nearly three hundred negro magistrates alone.” *Id.*

96. *Id.*

endangered. Business has been paralyzed and property rendered less valuable.”<sup>97</sup> The result of this “negro domination” was, they argued, a creeping anarchy that could only be solved by reclaiming white supremacist control over local government.<sup>98</sup>

What this document makes clear is the extent to which the Redeemers’ newfound movement energy (or perhaps more accurately, rage) was rooted in local complaints. When counties were returned to local democratic control by the Fusionists, the white supremacists reacted just as they had in 1874 by raging against “negro domination” at the local level. Their complaints had almost nothing to do with state or national politics—they were rooted in the growing number of Black magistrates and Black deputy sheriffs.

In Wilmington, white supremacist delegates returned from the convention in Goldsboro energized to reclaim control over what they saw as their city and their county government. At a “Mass Meeting of [white] Citizens” in the city, they declared “that we will no longer be ruled, and will never again be ruled by men of African origin.”<sup>99</sup> This proclamation was more than an encouragement for white voters to go to the polls—it was a call to “act now or leave our descendants to a fate too gloomy to be borne.”<sup>100</sup> The white supremacists also demanded that the publisher of a Black newspaper be expelled from the city, and that the Fusionist mayor and chief of police resign.<sup>101</sup>

This demand was happening in a charged atmosphere where insurrection was in the air. In the words of a local Republican leader, there was “a greater feeling of unrest and uncertainty about the maintenance of order than I have ever seen, and many, even the most conservative, feel that a race conflict is imminent.”<sup>102</sup> In the face of a “settled determination” from the white supremacists that they would “administer city and county government,” he advised that the Fusionists abandon their local offices to defuse the crisis.<sup>103</sup>

What transpired after these threats and warnings is all-too-well-known. On November 10, 1898, an armed mob of white supremacists rampaged through

97. *Id.* With these two complaints, the Redeemers gestured toward the classic white supremacist anxieties: the invented fear of the “brutish” Black man stealing the virtue of the “pure” white woman and the anxiety of redistribution and disruption of the class hierarchy. *See id.*

98. Their argument reads like a license for lynch law: “In many localities men no longer rely upon the officers of the law for protection, for they are known to be incompetent or corrupt. Conditions have become so intolerable in these communities that they can no longer be tolerated or endured.” *Id.*

99. *The Defamer Must Go*, GREENSBORO EVENING TELEGRAM, Nov. 10, 1898, at 2.

100. *Id.*

101. While the mayor and police chief were both white, their involvement with the multiracial city government indicated their “utter incapacity to give the city a decent government and keep order therein [making] their continuance in office . . . a constant menace to the peace of this community.” *Id.*

102. *Chadborn Again; Tells the Truth*, W. VINDICATOR (Rutherfordton, N.C.), Oct. 20, 1898, at 1.

103. *Id.*

the streets of Wilmington, destroying property and taking lives.<sup>104</sup> It was one of the most violent white supremacist uprisings in American history and nothing less than a violent insurrection to overthrow the local government. The white supremacists forced the mayor and police chief to resign and then, by turns, forced the resignations of the aldermen and the entire police department. The leaders of the mob replaced all these officials with white supremacist Democrats. At the end of the day, the newly appointed aldermen elected the figurehead of the insurrection, Alfred Waddell, to be the new mayor of the city.<sup>105</sup>

Wilmington began November of 1898 as a troubled bastion of multiracial democracy led by a fragile coalition of Fusionists empowered by local political control. By the end of the month, it was a symbol of the Redeemers' violent disregard for local democratic control in a multiracial society. Critically, the insurrection had been driven by racialized anxieties about local power and local visions of "negro domination." For the white supremacists and Redeemers, its "successful" conclusion came when local power had been reclaimed *against* the will of the local community and by means of violence, massacre, and displacement.

#### G. *Disfranchisement and Jim Crow*

The Wilmington Insurrection has come to stand for a turning point in North Carolina and across the South. With the violent extinguishment of the fragile multiracial politics of Fusion, white supremacist Redeemers retook power and sought to ensure that nothing like what had happened in 1896 could happen again. In North Carolina, these white supremacists gathered in 1900 to draft a new set of constitutional amendments that would stamp out Black political power.<sup>106</sup> Unsurprisingly, yet another adjustment of the rules of local government and local power was at the center of their conversation.

After 1898, the newly resurgent Democrats were intent on building a more permanent basis upon which to establish white supremacy, racial hierarchy, and the "southern way of life." In other words, having been chastened by the flicker of Fusionism, they framed out the legal foundation of what would become Jim

104. See H. Leon Prather, Sr., *We Have Taken a City*, in *DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY* 15, 31–35 (David S. Cecelski & Timothy B. Tyson eds., 1998) [hereinafter *DEMOCRACY BETRAYED*]. Estimates about how many people were killed vary greatly—from fourteen to more than one hundred. *Id.* at 35.

105. See *id.* at 36–37.

106. See Michael Kent Curtis, *Race as a Tool in the Struggle for Political Mastery: North Carolina's "Redemption" Revisited 1870–1905 and 2011–2013*, 33 *LAW & INEQUALITY* 53, 87 (2015) (citing Act of Jan. 4, 1899, § 4, ch. 218, 1899 N.C. Sess. Laws 341, 341–42 (amending N.C. CONST. art. VI, § 4 to impose a poll tax and literacy test)). The so-called "suffrage amendment" disenfranchised Black men by imposing a poll tax and literacy test on voters, but white men were exempted from the requirements by virtue of a "grandfather clause." *Id.* at 76 n.115, 87.



Crow. The first pillar of their project was ensuring that Black voters would no longer be a part of any potential political coalition. To put it bluntly, as one of the leaders of the Wilmington Insurrection framed it, “White Supremacy cannot be made permanent until the irresponsible negro vote is removed.”<sup>107</sup> The reason for this was partly pure racial animus, but more importantly a recognition that the promise that Tourgée had seen with the township experiment persisted. As long as Black voters had even a minority share of the votes, they were a powerful political bloc who could make common cause with working class white voters against the old hierarchy.

The primary mechanism for disfranchising Black voters was a constitutional amendment adding a poll tax and a literacy test for voting.<sup>108</sup> The focus on disfranchisement has tended to be general, but the story of Redemption Localism reveals the extent to which the focus on limiting Black political power was a focus on white supremacy in local politics. In 1899, the legislature made this local focus explicit by enacting a targeted repeal of the 1896 county elections law. The new law preserved the power of most counties in the state to elect their local officials, but it targeted thirteen eastern counties to be put back under state control.<sup>109</sup> The explicit goal was to target these “negro-ridden” counties and to ensure that white supremacy would prevail at the local level even there.<sup>110</sup>

After 1900 and the “suffrage amendments,” Black participation in elections plummeted in North Carolina, just as the white supremacists had intended.<sup>111</sup> Alongside disfranchisement came a raft of new laws establishing the apartheid system that we have come to associate with Jim Crow. Public institutions were segregated by state law, and private actors from employers to restaurant owners were encouraged to segregate their operations.<sup>112</sup> Over the first decade of the twentieth century, the struggle for Redemption resolved itself into the establishment and maintenance of Jim Crow.

With the stability of white supremacy assured, anxiety over local power and local control dropped out of view. In fact, with white voters firmly in control of local politics, the state legislature began to slowly vest cities and

107. Michael Honey, *Class, Race, and Power in the New South*, in *DEMOCRACY BETRAYED*, *supra* note 104, at 163, 178.

108. See *The Suffrage Amendment*, GRAPHIC (Nashville, N.C.), Jan. 11, 1900, at 4.

109. These counties were Bertie, Caswell, Craven, Edgecombe, Franklin, Granville, Montgomery, New Hanover, Pasquotank, Perquimans, Vance, Washington, and Warren. See *CHATHAM REC.*, Apr. 20, 1899, at 2.

110. See *id.*

111. In fact, the effect of the literacy requirement and poll tax also radically lowered turnout amongst poor whites—a result that the elite Redeemers were not upset about, since the poor whites had been the base of the Populist party.

112. See Raymond Gavins, *Fear, Hope, and Struggle: Recasting Black North Carolina in the Age of Jim Crow*, in *DEMOCRACY BETRAYED*, *supra* note 104, at 185, 190–91.

counties with more autonomy. By 1917, the legislature began expanding the power and autonomy of cities and, as the years went by, local governments were granted increasing authority over land use, public health, and public safety.<sup>113</sup> Slowly but surely, local governments came to look, superficially, like the local governments we expect today: imperfect local democracies with control (albeit limited control) over local issues, like zoning, schools, and policing.

Redemption Localism shaped the structural contours of North Carolina's local government, but over time, absent the motivating pressures of white supremacy and class and racial anxiety, those contours softened into what appeared to be a "natural" landscape of local rules and governance norms. But, as the history of Redemption Localism makes clear, the fights over these contours were anything but soft. What remains to be asked is whether there is anything to learn about the present from this history.

### III. LOCALISM, FLOTSAM, AND THE NEW REDEEMERS

Local governments everywhere in the United States are built upon, around, and between the flotsam left behind by struggles over local power that were aimed less at grand theories of localism and more at specific political struggles. In New England, for example, you can't make sense of why the boundary between two towns is where it is without knowing about what kinds of sectarian conflicts were driving members of the congregation to split apart in the seventeenth century. Those boundaries were drawn for specific reasons that are mostly forgotten, and they become naturalized over time and custom—but they remain weaponized and significant to the realities of local government. It matters a great deal for taxes, schools, services, etc. whether you live in Medford, Massachusetts (a well-off, but not super-rich suburb), or whether you live in Winchester (Medford's very rich and very white neighbor to the northwest), or Everett (Medford's much poorer and much less-white neighbor to the southeast).

In a sense, then, the specific flotsam amidst which North Carolina's local government regime is situated is not markedly different from other kinds of flotsam. As is true in other places, North Carolina's county system of governance, and the places and place identities that are defined by it, have become naturalized over time such that they are dissociated from the past struggles over the township experiment and Redemption Localism.<sup>114</sup>

113. See David W. Owens, *Local Government Authority To Implement Smart Growth Programs: Dillon's Rule, Legislative Reform, and the Current State of Affairs in North Carolina*, 35 WAKE FOREST L. REV. 671, 676–78 (2000).

114. See Farbman, *Reconstructing Local Government*, *supra* note 9, at 462. In the case of North Carolina, there really are vestigial elements to the flotsam as, to this day, neither the constitution nor the legislature has erased the townships from the state map. They persist as zombie jurisdictions—

Still, understanding the flotsam that has defined the shape and structure of local government law in North Carolina (and everywhere) does more than tell an origin story lost in the fog of the past. In the first place, excavating the story of how the structures of local government have developed reminds us that these structures are *not* natural, but rather are products of political contestation—and frequently contestation over matters that we would find it anathema to contest today (that is, the humanity of Black citizens). This reminder that the structures, boundaries, and powers of local government are products of contestation—and are still subject to change in the present—changes the way we see present contestation over these local structures. In other words, when we see familiar patterns from the past manifest themselves in contemporary conversations about local power, those echoes are more than rhetoric or coincidence—they are structural consequences of the flotsam left by Redemption Localism. While there is far more to say about this than I have space for here, let me offer three examples to illustrate the point: voter suppression, state preemption, and the persistence of Redemption ideology.

A. “*Election Integrity*”

First let’s return to Georgia’s new election law and, specifically, its threat to divest local election boards of their power. Boiled down and stripped of the disingenuous trappings of “voter fraud” and “election integrity,” the law’s clear purpose is to police local power *where* that power threatens the political or democratic prerogatives of the party controlling the state legislature. The threat to Fulton County has very little to do with broad theories of local power or intrastate federalism; rather, it has everything to do with a heavily contested struggle over who should have access to the ballot box. By now, the ways in which the contours of that struggle are reminiscent of the dynamics during Redemption should be easy to see. The Georgia law attacks local power in defense of white power and at the expense of Black voters’ access to the franchise.

Whether or not the drafters of the Georgia law (or the politicians in North Carolina who would like to draft a similar law<sup>115</sup>) are “white supremacists” in the sense that the first Redeemers were, they share the same Redemption Localist approach of manipulating (and limiting) local authority to achieve their broader political ends of retaining political power in the face of a democratic threat. More specifically, these “New Redeemers” are seeking to protect a

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borders without any legal or governance significance. *See id.* (“All that remained of the townships of 1868 were their borders, which outlined little more than administrative memories.”).

115. Unsurprisingly, a set of laws similar to those in Georgia have been proposed and advanced in North Carolina. *See Democracy NC Urges Lawmakers To Reject Revived Anti-Voter Bills*, DEMOCRACY N.C. (Nov. 17, 2021), <https://democracync.org/news/democracy-north-carolina-urges-lawmakers-to-reject-revived-anti-voter-legislation/> [<https://perma.cc/D2M9-UQ7E>].

political order that is challenged by the fact of demographic change in a multiracial democracy.<sup>116</sup>

But the parallels are more than coincidence or echo—they are structural. What is striking is how the New Redeemers' resort to centralization so closely mirrors the old Redeemers' strategy. It does not really matter whether the New Redeemers are explicitly drawing from the old playbook that supported white supremacy and built the foundation for Jim Crow. The old pathways for manipulating local power have been inscribed in the public law since Redemption. In a sense, the modern-day reenactment that we are seeing is *worse* if it is unintentional. Rather than a draconian or explicitly white supremacist plot, it represents a more insidious reflex toward power-hoarding and self-interested disfranchisement.

The history of Redemption Localism is ugly in its racial violence and explicit embrace of racial hierarchy and white supremacy. It should alarm us all to see it being reenacted in the present—especially by those who proclaim to be acting “in good faith” and without racial animus. The old legal strategies are still there, and they have not been scrubbed clean of their old bloodstains. Those who pick them up in the present remain Redemption Localists, whether or not they are aware of the connections to white supremacy that lie latent in their struggle. In this instance, with our democracy in the balance, ignorance of history should be no excuse to repeat it.

#### B. *Finding Local Power*

Another way of seeing the echoes of Redemption Localism in the present is to look more directly at the question of how local power is managed, limited, and negotiated at the state level. In every state in the country, there is a balance of power between local governments and state government that structures what powers local governments may exercise. As a general rule, states may “preempt” local legislation and regulation wherever the state legislature chooses. How states choose to navigate this balance is a complex and nuanced question—one that is far too broad to canvas fully here.<sup>117</sup>

116. While the change is nowhere near as stark as it was after emancipation, Georgia and other southern states are experiencing rapid demographic change. In 1990 Georgia was 70% white and 27% Black. See Saurabh Datar, *Map: Demographic Patterns in Every Georgia County, 1990–2050*, ATLANTA J.-CONST., <https://www.ajc.com/news/state--regional/map-when-each-georgia-county-white-residents-become-the-minority/UWVTVqmkLK9wU9DC6jv6KL/> [https://perma.cc/E85E-UMWE]. Today, whites make up only 53% of the population, with the Black population growing to 31% and the Hispanic population growing to 10%. *Id.* Projections suggest that by 2040, whites will be a minority in the state. *Id.*

117. The growth of what Richard Briffault has called the “new preemption” has been well documented in recent scholarship. See generally Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995 (2018) (describing the spread of a “new and aggressive form” of state governments preempting local power). As political polarization has grown and the divide between urban and rural politics has widened, state legislatures have increasingly resorted to preemption to

What can be fairly said, however, is that North Carolina remains, along with a number of other southern states, broadly skeptical of giving local governments too much freedom and power. While a full canvas of North Carolina's preemption landscape is beyond the scope of this Article,<sup>118</sup> it is worth highlighting one area where the old impulses of Redemption Localism appear to flicker through to the present: Confederate memorials.

Like many southern states, North Carolina has strong laws on the books preventing local governments from removing or altering Confederate monuments. North Carolina's law protects "objects of remembrance" from being "removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission."<sup>119</sup> While the law technically includes all monuments, it was passed in 2015 as an explicit bar against the growing movement to remove Confederate monuments, and it has been weaponized for this purpose to prevent local governments from having any control over the monuments.<sup>120</sup>

It might seem as though this is a small matter. While the monuments are records of a violent and racist history, their existence and placement are not necessarily central areas of local concern. But a closer look reveals that these monuments were erected by Redeemers and white supremacists as aggressive claims on public memory.<sup>121</sup> The monuments represent the victory of the politics and project of Redemption—a gauzy paean to the same "old South" and

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prevent local officials from enacting policies that they disagree with (from sanctuary policies to sick leave). See Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1480–84 (2018).

118. North Carolina's most prominent and infamous example of politically motivated preemption was the "Bathroom Bill," which banned local governments from passing laws that would allow transgender people to choose which bathroom to use. See Chris Marr, *North Carolina Anti-Bias Laws Sprout as 'Bathroom Bill' Era Ends*, BLOOMBERG L. (Nov. 22, 2021, 5:30 AM), <https://news.bloomberglaw.com/daily-labor-report/north-carolina-anti-bias-laws-sprout-as-bathroom-bill-era-ends> [<https://perma.cc/LJ62-8NQU> (dark archive)]. Although the law in its harshest form was repealed in 2017, the new compromise still preempted local governments from passing nondiscrimination ordinances. *Id.* This preemptive law expired on December 30, 2020. *Id.*

119. N.C. GEN. STAT. § 100-2.1 (LEXIS through Sess. Laws 2021-192 (end) of the 2021 Reg. Sess. of the Gen. Assemb.).

120. See RICHARD SCHRAGGER & C. ALEX RETZLOFF, LOC. SOLS. SUPPORT CTR., CONFEDERATE MONUMENTS AND PUNITIVE PREEMPTION: THE LATEST ASSAULT ON LOCAL DEMOCRACY 6–7 (2019), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/600501807fec5e68f58c312d/1610940801206/Confederate+Monuments+Punitive+Preemption+White+Paper+Schragger+Final+June+19+%281%29.pdf> [<https://perma.cc/VPT4-M2AK>].

121. Most Confederate monuments were erected between 1890 and 1920 as Redeemers celebrated the victory of white supremacy and Jim Crow. See Ryan Best, *Confederate Statues Were Never Really About Preserving History*, FIVETHIRTYEIGHT (July 8, 2020, 7:00 AM), <https://projects.fivethirtyeight.com/confederate-statues/> [<https://perma.cc/WV4X-Z6GE>]. There was another spike in monument construction in the 1950s as white supremacists sought to broadcast their resistance to integration during the Massive Resistance movement that followed the Supreme Court's decision in *Brown v. Board of Education*. See *id.*

the “southern way of life” that the Redeemers rallied around in the 1870s. The local governments that want to remove or move these monuments are advancing a different public narrative. They are questioning the virtues of the Redemption ideology that these monuments represent, and they are hoping to create a public square that is more conducive to the kind of multiracial, participatory democracy that the Redeemers so abhorred.

And so, when the North Carolina legislature bans local governments from moving or removing these monuments, it does more than “preserve history.” It chooses a side in an old battle—the wrong side. Redemption Localism’s consistent aim has been to protect the old distributions of power against the threat of redistribution and multiracial democracy. Protecting Confederate monuments against local political movements not only feels consistent with the bad old days—it follows the same bad old script.

### C. *Our Localism and Our Past*

Whatever lessons the story of Redemption Localism helps us learn for our problems today, the most fundamental takeaway is that our local governments—and our ideas of local power—are products of a contested history. Unfortunately, race and racial anxiety have stalked the political history of the United States since the arrival of European colonizers. As alarming as the explicit white supremacy and violence of the Redeemers appears to us today, their story is less an outlier than dispiritingly representative of the messy way laws and legal order were made.

Looking around at our localism today, it is not hard to find examples of how the structural facts of localism continue to maintain and exacerbate inequalities around race, class, and power. Housing segregation, school segregation, resource disparities, and myriad other problems are articulated around the imaginary but immovable borderlines between towns, counties, and school districts. It is all too common for observers and policymakers to see these borders as fixed, and to see the injustices that they exacerbate as unfortunate consequences of a kind of force of nature. But the story of Redemption Localism helps to show that the structural realities of local government are themselves situated in a history of contestation.

Armed with this knowledge, when we look around at fights over local power and local authority, I hope that we can be less fatalistic and more engaged. The flotsam of white supremacy need not be a “fact of life” or the “rule of the road.” Our localism is a reflection of our past—and our mistakes. If we want a localism worthy of the best capacities of our democracy, we need to grapple with that past, think deeply about our mistakes, and try to navigate the questions that we encounter with less fatalism and more clear-eyed resolve. I remain drawn to the optimism of Tourgée, who saw the potential to foster a sustained and sustaining multiracial democracy by building from the local. To

hold onto that vision requires us optimists to be realists about the past, and pragmatists about the problems that we face. In this sense, the brutal truth that we are still living with Redemption Localism is also a promise: Redemption Localism exists as a figment of struggle against Reconstruction. To end where I began: the persistence of Redemption Localism reminds us that we can and must summon a Reconstruction Localism.