UCLA
National Black Law Journal

Title
Stealing Education

Permalink
https://escholarship.org/uc/item/8135f9nt

Journal
National Black Law Journal, 30(1)

Author
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Publication Date
2025

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STEALING EDUCATION

LaToya Baldwin Clark

This article was originally published in the UCLA Law Review (68 UCLA L. Rev. 566 (2021)).

Abstract

While most state constitutions include provisions that indicate a commitment to equal access to education within one state, that commitment remains unfulfilled. This Article shines a light on a practice that has been overlooked by those concerned about school district inequality, but that contributes to this incongruity: a phenomenon I call "stealing education." A parent "steals" education when he falsifies a child's residence to take advantage of a school district's schools. Stealing education also refers to the legal infrastructure that allows for criminal or civil punishment.

In this Article, I argue that stealing education laws contribute to the apparatus of race-class opportunity hoarding, where a race-class-privileged community sequesters valuable resources to the exclusion of another race-class-subordinated community. I show how stealing education laws structure and perpetuate stratified school districts between residents and nonresidents and describe how many supporters of the laws use racist master narratives to justify the unequal distribution of rewards. The task of rationalizing the legal apparatus that denies equal educational opportunity to nonresidents is easier when supporters can appeal to "common sense" explicit racist narratives and dog whistles of inferior and undeserving Black people and Black children.

This Article focuses on one suburban-urban school district boundary that separates a majority-White school from a majority-Black school to highlight how some supporters of this structure justify this unequal system. I show how the subordinating effects of the stealing education apparatus mirror *Brown*-era race and class segregation. Stealing education is a perfectly legal mechanism by which to subordinate poor Black children, their families, and their communities.

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Kirk Stark, Franita Tolson, and the participants at the Law and Humanities Junior Scholar Workshop, the University of California, Berkeley Junior Faculty Workshop, and the Racial Capitalism Workshop. I am also grateful for feedback garnered from workshops at Northwestern Pritzker Law School, St. John's University School of Law, and Vanderbilt University Law School. I am indebted to Elizabeth Anastasi, Kendall Langs, Joshua Lin, Sofia Pedroza, and Xuchen Zhang for their superb research assistance, and the editors of the *UCLA Law Review* for their excellent work. William, Ahmir, Amina, and Ahmad, thank you for giving me the time, space, and love to write about these issues I care deeply about. All mistakes are mine.

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Introduction

Oak Park and River Forest High School District (OPRF) in suburban Chicago is a majority White[1] and middle to upper-middle class one-school

[1] While other authors may choose not to capitalize "White" in their writing, I disagree with that convention. I believe that capitalizing "Black," as I do throughout this Article, without also capitalizing "White" normalizes Whiteness, while the proper noun usage of the word forces an understanding of "White" as a social and political construct and social identity in line with the social and political construct and social identity of "Black." I believe that a lowercase "white" signifies a color, not a social group. While White Supremacist groups also capitalize White as a term of racial superiority, I am not of the view that how one group uses a word should dictate how I, as a scholar, use that word. To be sure, this is an area of disagreement within the scholarly community and there is no right or wrong answer. I find myself agreeing with some Black authors who, during the summer 2020 racial reckoning, grappled with the term. *See, e.g.*, Kwame Anthony Appiah, *The Case for Capitalizing the B in Black*, Atlantic (June 18, 2020) https://www.theatlantic.com/ideas/archive/2020/06/time-to-capitalize-blackand-white/613159/ [https://perma.

district.[2] A large school of about 3400 students, OPRF boasts a 91 percent four-year graduation rate,[3] and approximately 82 percent of its students test proficient

cc/E8J5-S2F3] (arguing for capitalizing White as well as Black because White is a social category, not a naturalized state of being: "Words are public property; so are capital letters. As those deliberations continue, though, let's try to remember that black and white are both historically created racial identities—and avoid conventions that encourage us to forget this."); Eve L. Ewing, *I'm a Black Scholar Who Studies Race. Here's Why I Capitalize "White,"* Medium: Zora (July 1, 2020), https://zora.medium.com/im-a-black-scholar-who-studies-race-here-s-why-i-capitalize-white-f94883aa2dd3 [https://perma.cc/8NMG-A3X4] (discussing capitalizing White when referring to the social identity: "Whiteness is not only an absence. It's not a hole in the map of America's racial landscape. Rather, it is a specific social category that confers identifiable and measurable social benefits . . . . When we ignore the specificity and significance of Whiteness—the things that it is, the things that it does—we contribute to its seeming neutrality and thereby grant it power to maintain its invisibility."); Nell Irving Painter, Opinion, *Why "White" Should be Capitalized Too*, Wash. Post (July 22, 2020) https://www.washingtonpost.com/opinions/2020/07/22/why-white-should-be-capitalized/ [https://perma.cc/L6CC-AERB] (arguing for capitalizing White to challenge the invisibility and naturalization of Whiteness: "In terms of racial identity, white Americans have had the choice of being something vague, something unraced and separate from race. A capitalized "White" challenges that freedom, by unmasking "Whiteness" as an American racial identity as historically important as "Blackness"—which it certainly is. No longer should white people be allowed the comfort of this racial invisibility; they should have to see themselves as raced. Being racialized makes white people squirm, so let's racialize them with that capital W"); Nat'l Ass'n of Black Journalists, NABJ Statement on Capitalizing Black and Other Racial Identifiers (June 2020), https://www.nabj.org/page/styleguide [https://perma.cc/HP87-SK4C], ("The organization believes it is important to capitalize "Black" when referring to (and out of respect for) the Black diaspora. NABJ also recommends that whenever a color is used to appropriately describe race then it should be capitalized, including White and Brown."); Kristen Mack & John Palfrey, *Capitalizing Black and White: Grammatical Justice and Equity*, MacArthur Found. (Aug. 26, 2020), https://www.macfound.org/press/perspectives/capitalizing-black-and-white-grammatical-justice-and-equity [https://perma.cc/8GNJ-KYQB] ("We will also begin capitalizing White in reference to race. Choosing to not capitalize White while capitalizing other racial and ethnic identifiers would implicitly affirm Whiteness as the standard and norm. Keeping White lowercase ignores the way Whiteness functions in institutions and communities.").

[2] *See Illinois At-A-Glance Report Card 2018–2019: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/District.aspx?districtId=06016200013 [https://perma.cc/

KK52-BJRD] (last visited Sept. 29, 2021) (click "View At-a-Glance PDF" and select "2019"). OPRF is 56.9 percent white; 18.2 percent Black; 12.6 percent Latinx; 3.8 percent Asian; and 8.5 percent two or more races/other. *Racial/Ethnic Diversity: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?source=studentcharacteristics&source2=studentdemographics&Districtid=06016200013 [https://perma.cc/UEQ2-W73D] (last visited Sept. 29, 2021). Nearly 18 percent of its students are eligible to receive free or reduced-price lunch, live in substitute care, or receive public aid. *Low Income Students: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?source=studentcharacteristics&source2=lowincome&Districtid=06016200013 [https://perma.cc/ER6H-VX5N] (last visited Nov. 8, 2020).

[3] *Graduation Rate: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?districtid=06016200013&source=trends&source2=graduationrate [https://perma.cc/A3K5-VRYY] (last visited May 7, 2021).

or near proficient in both English and math.[4] It far outpaces the state average graduation rate and average proficiency rates, making it one of the best school districts in Illinois.[5]

Less than two miles away, Austin College and Career Academy High School (Austin High), a Chicago Public School (CPS), is 97 percent Black, and 95 percent of its students are eligible to receive free or reduced-price lunch, an indicator of poverty.[6] A small school with only 195 students, Austin High graduates 88 percent of its students, but only 21 percent of its students test at or near proficient in English, and only 12 percent test at or near proficient in math.[7] Compared to other schools in CPS and the state, Austin High performs far below.[8]

If a parent living equidistant between OPRF and Austin High had a choice and were choosing on the above factors alone, that parent would likely prefer that their child attend OPRF rather than Austin High. But not every parent has that choice. If the family lives west of North Austin Boulevard—the municipal border that separates OPRF and Austin, Chicago—the child will attend OPRF. To the east of the same street, the child will attend Austin High. Only residence

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[4] *SAT: Overall: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?source=trends&source2=sat&Districtid=06016200013 [https://perma.cc/EQC9-EB42] (last visited Nov. 8, 2020).

[5] *See id.*; *Graduation Rate: Oak Park-River Forrest SD 200*, *supra* note 3.

[6] *Illinois At-A-Glance Report Card 2018–2019: Austin College and Career Academy High School*, Ill. Rep. Card, https://www.illinoisreportcard.com/School.aspx?schoolId=150162990250844 [https://perma.cc/36FF-WPPL] (last visited May 3, 2021) (click "View At-a-Glance PDF" and select "2019"); *Low Income Students: Austin College and Career Academy High School*, Ill. Rep. Card, https://www.illinoisreportcard.com/School.aspx?source=studentcharacteristics&source2=lowincome&Schoolid=150162990250844 [https://perma.cc/2NPE-7WD2] (last visited Nov. 8, 2020).

[7] *Illinois At-A-Glance Report Card 2018–2019: Austin College and Career Academy High School*, *supra* note 6.

[8] CPS designates Austin High as a Level 2 school, below average performance. *2019–2020 High School Quality Rating Report: Austin College and Career Academy High School*, Chi. Pub. Schs., https://schoolreports.cps.edu/SQRP_2019/HS_SQRP_ReportSY19–20_NETWORK%2015_610518_.pdf [https://perma.cc/VG8Q-3HWA] (last visited May 3, 2021); *School Quality Rating Policy (SQRP) Overview*, Chi. Pub. Schs., https://www.cps.edu/globalassets/cps-pages/about/district-data/metrics/school-quality-rating-policy-sqrp/sqrp_overview.pdf [https://perma.cc/NVC5-KACC] (last visited May 3, 2021). It ranks below Levels 1+, 1, and 2+ schools, which are schools meeting or exceeding performance expectations, but above Level 3 schools, which are schools that need intensive intervention. *2019–2020 High School Quality Rating Report: Austin College and Career Academy High School*, *supra*; *School Quality Rating Policy (SQRP) Overview*, *supra*. Austin High is also a "comprehensive school" in Illinois, meaning it is in the "lowest-performing 5 [percent]" of the state's schools. *Illinois At-A-Glance Report Card 2018–2019: Austin College and Career Academy High School*, Ill. Rep. Card, https://www.illinoisreportcard.com/School.aspx?schoolId=150162990250844 [https://perma.cc/V6EE-XSXV].

within a school district's jurisdiction confers on a parent a "seat license" unavailable to nonresident parents.[9]

Since *Brown v. Board of Education*,[10] lawyers, policymakers, and scholars have grappled with the problem of race-class[11] segregation in the context of public education.[12] While many argue that today's school segregation results from de facto residential segregation and thus the law cannot reach it, race-class segregation so pervades public education that many Black children, especially working-class and poor Black children, continue to experience the same subordination that accompanied de jure segregation.[13] Black children and their families have long experienced this plight: persistent, hierarchical, and caste-like unequal status in economic, social, cultural, and political power in multiple areas of life.[14]

We can see Black children's subordination in schools. In the 2009–2010 academic year, 74 percent of Black children attended majority-minority

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[9] *See* Kirk J. Stark, *Is Capitalization the Achilles' Heel of School Choice?* 2, 4 (UCLA Sch. L.: L. & Econ. Rsch. Paper Series, Working Paper No. 05–4, 2004) (defining seat license as "the right to enroll one or more children in the neighborhood schools").

[10] 347 U.S. 483 (1954).

[11] I refer to "race-class" to resist many scholars' temptation to separate issues of race from those of class. I seek "to call attention to the interweaving of race and class relations." Joe Soss & Velsa Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 Ann. Rev. Pol. Sci. 565, 567 (2017) ("We intend for the term [race-class subjugation] to trouble the tidy analytic opposition of race and class variables that prevails in much American politics research and to avoid the tendency to reduce race and class to discrete sets of labels. By using this term, instead of discussing poor communities or minority communities as distinct, we encourage attention to the crucial interplay of race and class in the lives of the racialized poor.").

[12] *Brown*, 347 U.S. 483. For an overview of the data, see Sean F. Reardon & Ann Owens, *60 Years After* Brown*: Trends and Consequences of School Segregation*, 40 Ann. Rev. Socio. 199 (2014); Sean F. Reardon, Elena Tej Grewal, Demetra Kalogrides & Erica Greenberg, Brown *Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 J. Pol'y Analysis & Mgmt. 876 (2012).

[13] *See* Gary Orfield, John Kucsera & Genevieve Siegel-Hawley, C.R. Project, E Pluribus . . . Separation: Deepening Double Segregation for More Students (2012).

[14] What constitutes "subordination" can be gleamed from what Ruth Colker calls the anti-subordination principle:

> Under the anti-subordination perspective, it is inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole. This approach seeks to eliminate the power disparities between men and women, and between whites and non-whites, through the development of laws and policies that directly redress those disparities. From an anti-subordination perspective, both facially differentiating and facially neutral policies are invidious only if they perpetuate racial or sexual hierarchy.

Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. Rev. 1003, 1007–08 (1986). Black subordination is plain when looking at differences in wealth, home ownership, employment, and mass incarceration, to name just a few areas.

schools, and 15 percent of Black children attended "apartheid schools," where 99 percent of the pupils are non-White.[15] This phenomenon especially isolates poor Black and Latinx children in large cities; in half of the largest American cities like Chicago, most Black and Latinx children attend schools where at least 75 percent of all students are poor or low-income.[16] Also, poor Black children are more likely to attend high-poverty, majority-minority schools than are poor White children.[17]

The problem is not that poor Black and Latinx children cannot learn when educated in segregated schools. Rather "school poverty . . . [is] a good proxy for the quality of a school."[18] Poor schools:

> are in poorer communities, they have less local resources, they have fewer parents with college degrees, they have fewer two parent families where there are parents who can come spend time volunteering in the school, they have a harder time attracting the best teachers. So for a lot of reasons schools serving poor kids tend to have fewer resources, both economic and social capital resources.[19]

The persistent race-class segregation and subordination in public schooling blatantly lay bare the notion that we have improved schooling opportunities for poor Black children since the U.S. Supreme Court declared that separate can never be equal. Segregated schools are contrary to the Fourteenth Amendment of the U.S. Constitution precisely because, in part, "[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education" and that segregation itself has a "detrimental effect" on Black children who know that the separation is because of race.[20]

Many state constitutions explicitly require state legislatures to provide educational access to all residents.[21] Often, these state constitutional education provisions explicitly state a similar commitment endorsed in *Brown*: that

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[15] Orfield, Kucsera & Siegel-Hawley, *supra* note 13, at 19. The situation for Latinx students is similar. During the same academic year, almost 80 percent of Latinx students attended a majority-minority school, and about 14 percent attended a school that is 99 percent non-White. *Id.*

[16] Janie Boschma & Ronald Brownstein, *The Concentration of Poverty in American Schools*, Atlantic (Feb. 29, 2016), https://www.theatlantic.com/education/archive/2016/02/concentration-poverty-american-schools/471414 [https://perma.cc/D8W4-L9TN].

[17] Martin Carnoy & Emma Garcia, Econ. Pol'y Inst., Five Key Trends in U.S. Student Performance 16–17 (2017).

[18] Boschma & Brownstein, *supra* note 16 (quoting Sean F. Reardon).

[19] *Id.*

[20] Brown v. Bd. of Educ., 347 U.S. 483, 493–94 (1954).

[21] *See infra* Part II.

if a state provides education to any child, it must provide education to every child and on an equal basis.[22] Yet contemporary educational inequality according to race and class leaves us both questioning this commitment and searching for reasons to explain the inconsistency between *Brown's* promise and the current reality.

This Article shines a light on a major phenomenon that contributes to this incompatibility: what I call "stealing education."[23] Stealing education is a legal

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[22] *Brown*, 347 U.S. at 493 ("Such an opportunity [to receive education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms.").

[23] Other scholars have written about specific cases of "stealing education," in particular that of Kelley Williams-Bolar, an Ohio mother sentenced to ten days in jail for stealing education. *See, e.g.*, Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. Irvine L. Rev. 297, 323–26 (2013) (discussing Williams-Bolar's case as an example of the ways in which low-income women are surveilled and punished to prevent them from accessing valuable goods, including a good education for their children); Mae C. Quinn, *The Fallout From Our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward*, 15 J. Gender, Race & Just. 541, 553–54 (2012) (discussing the Williams-Bolar case as an example of "a stand against aggression based upon moral concerns of conscience" in education); Tricia Rose, *Public Tales Wag the Dog: Telling Stories About Structural Racism in the Post-Civil Rights Era*, 10 Du Bois Rev. 447, 447 (2013) (focusing on the Williams-Bolar case as an example of "'invisible intersections of colorblind racism,' the racial privileges of housing and educational resource hoarding via private property taxes for suburban upper-middle-class Whites and the expanded application of the criminalization of the Black poor to Black mothers who receive state assistance by the judicial system, in political discourse and mass media narrative"); Genevieve Siegel-Hawley, *Mitigating* Milliken*? School District Boundary Lines and Desegregation Policy in Four Southern Metropolitan Areas, 1990–2010*, 120 Am. J. Educ. 391, 392 (2014) (discussing the Williams-Bolar case as an example of the "balkanizing effect of school boundaries"); Gloria Romero, *From Topeka, to Adelanto, and Montgomery County:* Brown v. School Board of Education *Continues*, 13 Whittier J. Child & Fam. Advoc. 20, 27 (2014) (referring to Williams-Bolar as "the Rosa Parks of the modern day parent empowerment movement"); Camille Walsh, *White Backlash, the 'Taxpaying' Public, and Educational Citizenship*, 43 Critical Socio. 237, 244 (2017) (discussing the Williams-Bolar case as "the use of residence (within historically segregated communities) and therefore taxpaying status, in order to target, investigate, and exclude black students from wealthy white schools"); Erika K. Wilson, *Toward a Theory of Equitable Federated Regionalism in Public Education*, 61 UCLA L. Rev. 1416, 1418–19 (2014) (using Williams-Bolar's case to illustrate how "the geographic boundaries that define school districts are the product of local government law structures that foster residential segregation and exclusion based on race and class" and how "[a]s a result, race, class, and geography intersect to shape the opportunities available to students and to exclude poor minority students from access to high-quality schools").

This Article differs from the above articles in several ways, including going beyond Williams-Bolar's specific case to describe stealing education within the context of the "education as property" framework. *See* LaToya Baldwin Clark, *Education as Property*, 105 Va. L. Rev. 397 (2019). Most importantly, the Article interrogates the cultural underpinnings of the support for these laws, arguing that the structural arrangement of school district boundaries is bolstered by race-class beliefs about cultural inferiority.

mechanism of race-class stratification[24] and subordination[25] that has been largely overlooked by legal scholarship. Opportunity hoarding occurs when a well-defined network of actors control access to valuable resources that are subject to monopoly and excludable.[26] Under a theory of opportunity hoarding, the network sequesters these resources by "creating beliefs and practices that sustain their control."[27] To justify exclusion based on residence, some supporters recite master narrative beliefs about nonresidents' cultural inferiority to sustain the monopolistic resource control. This Article both describes the stealing education apparatus and the "beliefs and practices" some use to justify the control.

"Stealing education" looks something like this: When first enrolling their child, and then for every year thereafter, parents must attest to having a bona-fide residence within the school district boundaries. Only residence within a school district's jurisdictional boundary confers a child an educational "seat license" unavailable to nonresident parents.[28] Parents purportedly "steal" an education when they falsify a nonresident child's address to be able to benefit from a school district's schools that are designated only for resident children. Both school district officials and community members in highly desirable school districts aggressively enforce these residential requirements by surveilling and investigating children and families suspected of providing false information. As a result of those investigations, school districts and prosecutors threaten parents suspected of falsifying their addresses with criminal and civil penalties, including jail time, felony records, and back tuition for "free" education. "Stealing education" refers to the legal mechanism by which school districts investigate and criminalize these parents.

Stealing education laws appear facially race-neutral and colorblind. Most states' educational financial schemes rely on local property taxes to fund local school districts.[29] In some rich districts, property taxes fund a majority of per-

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[24] Stratification refers to the "hierarchical status or rank" among groups. Talcott Parsons, *Equality and Inequality in Modern Society, or Social Stratification Revisited*, 40 Socio. Inquiry 13, 13 (1970).

[25] *See supra* note 14 for Colker's definition of subordination.

[26] Charles Tilly, Durable Inequality 10 (1998).

[27] *Id.* at 154.

[28] *See* Stark, *supra* note 9, at 4.

[29] In fiscal year 2018, over 37 percent of total revenue for K–12 schools derived from local funds, including property taxes and revenues from the parent governmental agency (such as a village or town) if the district is not independent of another municipal entity. Inst. Educ. Scis, Revenues and Expenditures for Public Elementary and Secondary School Districts: FY 18 4 (2020), https://nces.ed.gov/pubs2020/2020308.pdf [https://perma.cc/K8VC-G3MR]. In 16 states, local funds contributed over 40 percent of K–12 education funding. *Id.*

pupil spending. Stealing education laws, therefore, protect a school district's tax dollars such that they only fund education for children who live within that district's borders. In theory, they do not target any race or class, but rather target nonresidents to protect residents.

Stealing education laws also protect what the U.S. Supreme Court called the "mo[st] deeply rooted" "tradition in public education": "local control over the operation of schools."[30] According to the Court, "local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to [the] quality of the educational process."[31] One aspect of local control is the school district's ability to control expenditures—and to whose benefit. Again, local control does not directly implicate race and class, as every school district, in theory, has the right to local control. Under the theory of local control, how much money a district spends reflects the community's priorities concerning education.[32]

Some who support the enforcement of stealing education laws argue that school districts' enforcement of the laws follows from school districts' responsibility to protect education dollars generated from local property taxes[33] and to effectuate the tradition of a commitment to local control of public education.[34] In a previous paper, I argued that school district officials justify stealing education laws by conceptualizing public education as private community property. I argued that:

> [S]takeholders organized against "stealing education" conceive of education as property that (1) belongs to someone and so can be

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[30] Milliken v. Bradley, 418 U.S. 717, 741 (1974).

[31] *Id.* at 741–42.

[32] Yet, judging how much a community cares about education based on how much money they contribute to educating the community's children is a "cruel illusion." Serrano v. Priest, 487 P.2d 1241, 1260 (Cal. 1971) ("We cannot agree that Baldwin Park residents care less about education than those in Beverly Hills solely because Baldwin Park spends less than $600 per child while Beverly Hills spends over $1,200. As defendants themselves recognize, perhaps the most accurate reflection of a community's commitment to education is the rate at which its citizens are willing to tax themselves to support their schools. Yet by that standard, Baldwin Park should be deemed far more devoted to learning than Beverly Hills, for Baldwin Park citizens levied a school tax of well over $5 per $100 of assessed valuation, while residents of Beverly Hills paid only slightly more than $2. In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.").

[33] *See* Baldwin Clark, *supra* note 23.

[34] *See Milliken*, 418 U.S. at 741–42.

> stolen, (2) is valuable for use and enjoyment, and thus (3) deserves to be vigorously protected by the state against outsiders. . . . [T]he crime of "stealing education" only makes sense if stakeholders regard education as a property right bearing the essential functions of property, including the right to exclude.[35]

Thus, if one were inclined to see this process as nonhistorically contingent and race-class-neutral, the issue arises between residents and nonresidents, people who live in the community and those who do not, local taxpayers and those who do not contribute to the property tax base.

But despite stealing education laws' formal colorblindness, in many areas the context in which districts enforce those laws is anything but colorblind. Who lives where is not random or by chance or mistake; who is a resident and who is not a resident derives from histories of public and private race-class discrimination in residential development, employment discrimination, and public school attendance, shaping the literal and figurative race-class landscape of school attendance.[36] To then say that all nonresidents who falsify an address are "stealing" education as if they are refusing to "pay" for it willfully ignores those histories and contexts. Indeed, rather than seeing poor Black parents as stealing education, we could characterize their behavior as attempting to reclaimthe education debt owed to them after hundreds of years of educational neglect.[37]

As a result, stealing education laws often exist in contexts where "us" are middle-class White people and "them" are working-class and poor Black people.

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[35] Baldwin Clark, *supra* note 23, at 401–02.

[36] *See* Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017).

[37] Gloria Ladson-Billings, a leading educational sociologist, argues that the U.S. owes Black children an "education debt." Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, 35 Educ. Researcher 3 (2006). Drawn from the work of economists, the education debt is "the foregone schooling resources that we could have (should have) been investing in (primarily) low income kids." *Id.* at 5 (quoting Robert Haveman). Ladson-Billings argues that the debt has economic consequences, where the funding disparities between school districts are stark and children's earnings potentials correlate to schooling quality; sociopolitical consequences, where Black people are "excluded from the civic process," *id.* at 7, including school governance; and moral consequences, the "disparity between what we know is right and what we actually do," *id.* at 8. The idea that the United States owes Black people for slavery and its vestiges is not a new concept. Martin Luther King Jr. famously declared that by marching on Washington in 1963, Black people had "come to our nation's capital to cash a check" that "has come back marked 'insufficient funds.'" *'I Have a Dream' Speech, In Its Entirety*, NPR (Jan. 18, 2010, 1:00 PM) https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety [https://perma.cc/EJC6-T9UD].

Differentiating between "us" and "them" in this context is essentially differentiating on the basis of race and class.

In this Article, I illustrate this point by interrogating the operation of stealing education laws across the border separating OPRF, the school district with which I began this Article, and the Austin neighborhood in Chicago. OPRF is a one-school high school district in suburban Chicagoland, Illinois. Oak Park is a majority White, relatively affluent suburban community that has, since the 1970s, aggressively investigated and enforced residential school district boundaries against families from the neighboring, predominately Black and poor, Austin, Chicago neighborhood. This border deserves special investigation given Oak Park's reputation as an "earnestly progressive" suburb regarding race.[38] I show that some vocal supporters of OPRF's border enforcement justify the institutional and structural exclusion of Austin residents through an "us versus them" logic that relies on racist stereotypes about Black inferiority.

To be sure, the race-class segregation that arises from these laws is an indefensible example of institutional racism, even if racist beliefs and ideas did not motivate the laws. In this Article, however, I show that in this community, some community members' racist and classist beliefs provide an additional justification for the propriety of stealing education laws.

While opportunity hoarding is a form of structural inequality that can exist independent of invidious stereotypes, it is more stable when supported by a set of beliefs and practices that provide "explanations, justifications, and practical routines for unequal distribution of rewards."[39] In other words, stealing education laws comprise the apparatus of opportunity hoarding, while racist narratives provide the beliefs and practices that justify the unequal distribution of resources. The laws themselves legally limit access to resources, and the methods by which the laws allow for prosecution and civil fines permit communities to sequester economic, social, cultural, and human capital within their school district to the disadvantage of children not living within those boundaries. Racial master narratives illustrate the "beliefs" that underlie part of opportunity hoarding, in which racist stories about nonresidents as Black families and Black children explain why school districts must protect their schools. The task of rationalizing the legal apparatus that denies equal educational opportunity to nonresidents is easier when some supporters can appeal to "common

[38] Richard R.W. Brooks & Carol M. Rose, Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms 216 (2013); *infra* Part I.

[39] Tilly, *supra* note 26, at 76.

sense" racist narratives and dog whistles of undeserving Black families and Black children.

Part I of this Article describes the challenge OPRF has with stealing education. I focus on OPRF's relationship with Austin for two reasons. First, while the stealing education apparatus exists in many communities and states, it is essentially a local process of investigation, surveillance, and eventual removal. Thus, to understand how stealing education laws create and reify race and class subordination, we must analyze them at the level in which the practices and beliefs perpetrating that subordination originate.

Second, the contemporary relationship between Oak Park and its Chicago neighbor has well-researched historical antecedents that help to explain the context in which OPRF enforces stealing education laws. Oak Park enjoys a reputation as a previously all White suburban community that welcomed racial integration during a time when most communities like it, including Austin, were suffering from White flight.[40] Today, Oak Park boasts a racially diverse suburban community with about one fifth of its residents identifying as Black, but it is still predominately White. Despite its diversity, Oak Park is not socially integrated, including within OPRF.[41] A recent ten-part documentary, *America to Me*,[42] follows Black and White students and their parents, as well as staff and teachers, for one year as they navigate the 3000-plus person high school. The documentary

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[40] White flight is measured by a school district's change in "the ratio of white students (the numerator) to the total of white and black students [the denominator] combined" over a specified time. John R. Logan, Weiwei Zhang & Deirdre Oakley, *Court Orders, White Flight, and School District Segregation, 1970–2010*, 95 Soc. Forces 1049, 1059 (2017).

[41] From a resident commenting on an article about residency verification:

> Oak Park is not a [sic] integrated community. We have many ethnicities here but all the white people who move here for "diversity" actually have no interest in actually being diverse. They want to say they are, but how many actually interact with people of color? It's obvious on any block in our village. And when you talk to them, you hear it in their conversation. Diverse? Maybe. Integrated? Hardly.

Comical, Comment to Terry Dean, *OPRF Eyes Residency Check for All Families*, OakPark.com (Nov. 4, 2012, 11:39 AM), https://www.oakpark.com/News/Articles/11–2-2012/OPRF-eyes-residency-check-for-all-families [https://perma.cc/SZ2A-7B6L]; *see also* Terry Dean, *OPRF Eyes Residency Check for All Families*, OakPark.com (Nov. 6, 2012, 10:00 PM) [hereinafter *OPRF Eyes Residency Check*], https://www.oakpark.com/News/Articles/11–2-2012/OPRF-eyes-residency-check-for-all-families [https://perma.cc/SZ2A-7B6L].

[42] America to Me (Kartemquin Films 2018). Langston Hughes' poem, "Let America be America Again," inspired the title, "America to Me." Hughes writes, in part, "Let America beAmerica again./Let it be the dream it used to be./Let it be the pioneer on the plain/Seeking a home where he himself is free./(America was never America to me.)" Langston Hughes, *Let America Be America Again*, Esquire, July 1936, at 92, https://classic.esquire.com/issue/19360701#!&pid=92 [https://perma.cc/8WWZ-TWNM].

shows the extent to which the school relegates Black students, parents, staff, and teachers to a form of second-class citizenship. I use insights from the documentary to give further context to the desire to keep Austin residents out.

Part II of this Article describes the legal structure of stealing education: state constitutional promises of equal opportunity for education, state laws on school attendance, and school district policies. While most state constitutional requirements seem intended to promote equal access to education within a state, state laws about residence, property taxes, control and autonomy, and criminal and civil sanctions undermine that commitment.

In Part III of this Article, I show how this combination of law and policy distinguishes residents from nonresidents. I argue that some supporters of stealing education laws justify the resident versus nonresident structural distinction using racist arguments about cultural distinctions between middle-class White people and poor Black people. I illustrate this through an analysis of local Oak Park online discourse about the problem of illegal enrollment. This analysis shows that some vocal supporters of stealing education laws find them justified when enforced against residents of the predominately poor and Black Austin community because they believe racist stereotypes about Black cultural inferiority.

Part IV explains how both the legal structure of stealing education laws and the racist beliefs that justify them create and reinforce racial subordination. Specifically, I argue that enforcing residency requirements in contexts like that of OPRF and Austin is a form of opportunity hoarding, a mechanism of race-class subordination that legal scholars generally overlook. The racial inferiority justification for aggressive border enforcement plays a key role in sustaining the legitimacy of the laws and the legitimacy of the stratification and subordination that results. Appeals to cultural differences "transform[] the situational control over resources and [political] power into a . . . difference between 'types' of people that are evaluatively ranked in terms of how diffusely 'better' they are."[43] In other words, even though the stratification and subordination inherent in opportunity hoarding are obvious, these types of cultural arguments seek to justify them on other terms that those in the network are familiar with—"we" are better than "them."

Laws that privilege local control of schools, laws that enforce attendance boundaries, and the history of racialized community development effectively deny equal opportunity because of both race and class. While we know that racist attitudes and White supremacist thinking justified these laws in the past,

[43] Cecilia L. Ridgeway, *Why Status Matters for Inequality*, 79 Am. Socio. Rev. 1, 3 (2014).

this analysis shows that these attitudes are more persistent than some may have thought and play a role in how practices of opportunity hoarding endure. Furthermore, they find expression and effect in the phenomenon of protecting borders by policing families and children to exclude nonresidents.[44]

I. Uncomfortable Truths About Race in Progressive Suburbia[45]

Before 1900, Oak Park and Austin were both a part of the township of Cicero, a municipality to the west of Chicago.[46] In 1899, Chicago annexed Austin, and in 1901, Oak Park incorporated as a separate municipality.[47] Despite this political separation, before the 1970s the communities looked similar—both predominately middle-class and White. Yet from the beginning, Oak Park enjoyed a higher cultural reputation.[48]

Oak Park considered itself culturally superior to Austin and other surrounding communities for several reasons. It was the home of cultural icons such as architect Frank Lloyd Wright and the childhood home of Ernest Hemingway.[49] Unlike their neighbors, Oak Parkers enjoyed opportunities to engage in many "high" cultural activities such as the opera, theater arts, and art fairs, separating Oak Park culturally from Austin and other nearby communities.[50] Oak Park also began as a "temperance" community, lending an "air of moral superiority" over Austin and other nearby communities.[51] As a result of these dynamics, Oak Park residents considered their lifestyle to be superior to the lifestyles of their neighbors, including those in Austin.[52]

Despite their similarities before 1970, in the late 1970s, the demographics of Oak Park and Austin began to diverge sharply. While Austin underwent a racial transition[53] from a predominately White neighborhood to a predominately Black

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[44] The parallels to immigration studies and how countries police their borders are undeniable. Future work will further interrogate those parallels.

[45] Dan Haley, *Uncomfortable Truths at OPRF*, OakPark.com (Aug. 28, 2018, 1:09 PM) [hereinafter *Uncomfortable Truths*], https://www.oakpark.com/News/Articles/8–28–2018/Uncomfortable-truths-at-OPRF [https://perma.cc/CF7X-Q69J] (discussing community reaction to the first episode of America To Me, *supra* note 42).

[46] Carole Goodwin, The Oak Park Strategy: Community Control of Racial Change 32 (1979).

[47] *Id.*

[48] *Id.* at 45 ("The Oak Park community was of generally higher status than Austin. That is, not only were Oak Park's residents of higher status, but the community itself enjoyed greater prestige.").

[49] *Id.* at 34.

[50] *Id.* at 35–37.

[51] *Id.* at 32.

[52] *Id.* at 36.

[53] Racial transition refers to the process by which "thousands of white . . . neighborhoods

neighborhood,[54] mimicking the experience of near-suburb neighborhoods in many urban centers across the country,[55] Oak Park was able to stem racial transition,[56] remaining a majority White suburb with a dispersed Black community.

"The Oak Park strategy," as it is known, was a progressive confluence of public and private efforts to encourage integration and stem White flight. It consisted of several local efforts. Oak Park passed a fair housing ordinance in 1968,[57] and in 1972, the municipality outlawed redlining,[58] a racist tool of the Federal Housing Agency (FHA) to keep communities segregated. An Oak Park community organization tested real estate agents and banks to root out racial discrimination in steering and lending, and released the number and types of loans available in Oak Park to prove they were not racially discriminating in loans.[59] Using that data, the community pressured local banks to offer conventional mortgages, instead of FHA loans which relied on redlining.[60] It also fought against "panic-peddling" by encouraging real estate brokers to practice "affirmative marketing," where brokers actively marketed homes to White buyers rather than discouraging White people from buying in certain areas, again to prevent White flight.[61] Because of this history, Oak Park has and continues to have a national reputation for liberalism amid massive racial change.

Oak Park's success in remaining predominately White but with a sizable non-White population stands in stark contrast to Austin's experience. Beginning in the 1970s, while Oak Park fought against White flight and dramatic racial transition, Austin was unable to achieve the same feat.[62] As described above, in the

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[converted] to minority communities." Gary Orfield & Chungmei Lee, C.R. Project, Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies 26 (2007).

[54] Goodwin, *supra* note 46, at 48 ("In the four years between 1966 and 1970, 148 [Austin] blocks changed from white to black occupancy, an average of rate of 37.0 blocks per year. Between 1970 and 1973, an estimated 113 more [Austin] blocks changed occupancy, a rate of 37.7 blocks per year."). In contrast, "[i]n 1974, Oak Park's black population was still less than 3 percent, and in 1977 it had grown only to 8 percent . . . ." *Id.* at 50.

[55] Lincoln Quillian, *Migration Patterns and the Growth of High-Poverty Neighborhoods, 1970–1990*, 105 Am. J. Socio. 1 (1999) (showing that between 1970 and 1990, as Black residents moved into predominately White neighborhoods, the White population in those neighborhoods rapidly decreased).

[56] Goodwin, *supra* note 46, at 67 ("Oak Park was never clearly defined as a 'changing neighborhood,' as was Austin.").

[57] *Id.* at 149.

[58] *Id.* at 156.

[59] *Id.* at 156–57.

[60] *Id.* at 60 ("FHA in any form, accompanied by redlining or not, has become despised in white neighborhoods with black communities nearby.").

[61] *Id.* at 72.

[62] *Id.* at 24–25. In 1960, Austin had a negligible Black population. *Id.* By 1970, Austin was

early twentieth century, Austin was an affluent neighborhood in Chicago,[63] and as late as the 1960s was predominately White.[64] In the 1970s, however, Black families began to move in, prompting White flight. By the 1980s, Austin was majority Black. Unlike Austin, because of its effort to stem racial change, Oak Park was "never clearly defined as a 'changing neighborhood' as was Austin,"[65] and thus remained racially diverse.

Recently, Austin has undergone another dramatic transition. Chicago's largest neighborhood by area, Austin for many years was also its most populated neighborhood.[66] Today, Austin is one of the most violent neighborhoods in the city,[67] fueling a recent exodus of middle-class Black families, leaving behind only the poorest Black families.[68] Between 2000 and 2014, more than 21,000 Black residents left the neighborhood.[69] Journalists called the exodus a reverse Great Migration,[70] referring to the early twentieth-century mass movement of Black people to northern cities to escape the cruelty of the Jim Crow south.[71]

32.5 percent Black, mostly concentrated in only six of twenty-four Census tracts. *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.* at 67.

[66] Marwa Eltagouri, *Austin Population Drops to No. 2 in City for 1st Time in 45 Years*, Chi. Trib. (July 14, 2017, 5:00 AM), https://www.chicagotribune.com/news/breaking/ct-austin-population-decline-met-20170714-story.html [https://perma.cc/7EDR-842F].

[67] *See, e.g.*, Gary Lucido, *Chicago's Safest and Most Dangerous Neighborhoods 2018: Murders*, ChicagoNow (July 24, 2018, 7:30 AM), http://www.chicagonow.com/getting-real/2018/07/chicagos-safest-and-most-dangerous-neighborhoods-2018-murders [https://perma.cc/C4AD-TCXZ]; Whet Moser, *Austin: Chicago's Deadliest Neighborhood?*, Chicago (July 24, 2012), https://www.chicagomag.com/Chicago-Magazine/The-312/July-2012/Austin-Chicagos-Deadliest-Neighborhood [https://perma.cc/4PLY-Z8Z3]; Mason Johnson, *Chicago's 'Most Violent Neighborhood' Is on the Rise, Offers More Than Just Homicide Statistics*, CBS Chi. (Jan. 6, 2015, 10:00 AM), https://chicago.cbslocal.com/2015/01/06/chicagos-most-violent-neighborhood-is-also-a-neighborhood-on-the-rise [https://perma.cc/ZUL4-P33L].

[68] *See* Alex P. Kellogg, *Gunfire Is Reversing the Great Migration in Chicago*, Trace (May 31, 2016, 10:01 AM), https://www.thetrace.org/2016/05/chicago-gun-violence-population-loss [https://perma.cc/W2NJ-BRAK].

[69] Eltagouri, *supra* note 66 (referencing a chart titled "Community area demographics" showing a decline in the Black population in Austin).

[70] *See* Kellogg, *supra* note 68.

[71] Isabel Wilkerson, The Warmth of Other Suns: The Epic Story of America's Great Migration (2010).

Today, Austin is nearly 80 percent Black, while Oak Park is approximately 64 percent White.[72] In addition to race, the table below summarizes the two communities' differences.[73]

Table 1: Austin, Chicago and Oak Park, Illinois Community Attributes

	Austin, Chicago (IL)	*Oak Park, Illinois*
Race	White, non-Hispanic: 4.8% Black, non-Hispanic: 79.1% Hispanic or Latinx: 14.4% Asian, non-Hispanic: 0.5% Other: 1.1%	White, non-Hispanic: 63.6% Black, non-Hispanic: 17.9% Hispanic or Latinx: 8.8% Asian, non-Hispanic: 5.0% Other: 4.8%
Education (highest attained)	Less than HS: 20.2% High School: 35.3% Some College: 23.2% Associates: 7.1% Bachelor's: 9.1% Advanced: 5.0%	Less than HS: 3.6% High School: 9.3% Some College: 12.5% Associates: 5.1% Bachelor's: 30.8% Advanced: 38.9%
Median Household Income	$33,420 [< $25K: 39.2%]	$91,945 [< $25K: 15.9%]
Employment	Unemployed: 13.6% Not in Labor Force: 43.6%	Unemployed: 5.2% Not in Labor Force: 29.1%
Housing Type	Owner-occupied: 35.0% Renter-occupied: 50.4% Vacant: 14.5%	Owner-occupied: 54.2% Renter-occupied: 38.9% Vacant: 7.3%

[72] Chi. Metro. Agency for Plan., Community Data Snapshot Austin, Chicago Community Area June 2020 Release 10 (2020) [hereinafter CDS Austin], https://www.cmap.illinois.gov/documents/10180/126764/Austin.pdf [https://perma.cc/R7Y2–5H8P]; Chi. Metro. Agency for Plan., Community Data Snapshot Oak Park, Municipality June 2020 Release 12 (2020) [hereinafter CDS Oak Park], https://www.cmap.illinois.gov/documents/10180/102881/Oak+Park.pdf [https://perma.cc/T6JS-9NBK] ("The Community Data Snapshots are a series of county, municipal, and Chicago Community Area data profiles that primarily feature data from the 2014–2018 American Community Survey (ACS) 5-Year Estimates. As noted in each profile, the data comes from multiple sources in addition to the ACS, which include U.S. Census Bureau, Illinois Environmental Protection Agency (EPA), Illinois Department of Employment Security (IDES), Illinois Department of Revenue (IDR), and the Chicago Metropolitan Agency for Planning (CMAP).")

[73] *See* CDS Austin, *supra* note 72, at 5, 8, 10–12; CDS Oak Park, *supra* note 72, at 5, 9, 12–15.

	Austin, Chicago (IL)	*Oak Park, Illinois*
Median Housing Value	~ $188K[74]	~ $403K[75]

As Table 1 shows, Austin is overwhelmingly Black and poor, while Oak Park is racially diverse, with almost 40 percent of the population being non-White. Oak Park is also middle class, with 69.7 percent of its adult residents having a college degree or above, and a median income of about $92,000. In contrast, only 14.1 percent of Austin residents have a bachelor's degree or higher, and the median income hovers around $33,000. Forty percent of Austin's population earns below the poverty line for a family of four, compared to 16 percent in Oak Park. Over half of Austin's adults are unemployed or not in the labor force, while in Oak Park, only 35 percent of adults are either unemployed or not in the labor force.

The communities' attributes, beyond demographics, are also different. In Oak Park, the median home value is $403,000, and homeowners occupy more than half of the homes. Only about one-third of Austin's homes are occupied by homeowners, and the median home price is less than half of that of Oak Park, at $188,000. Austin also has twice as many vacant homes as a percentage of total housing stock as does Oak Park.

While Oak Park and OPRF are both racially diverse, the high school itself is racially divided.

Table 2: OPRF Students' Racial Test Score Gap Across Minimum Subject Proficiency

	State	*District Overall*	*White*	*Black*	*Asian*	*Latinx*
English	37%	66%	83%	23%	66%	56%
Math	35%	59%	75%	16%	70%	50%
Science[76]	49%	60%	75%	23%	56%	50%
Four-year Graduation Rate	88%	95%	95%	95%	96%	86%

[74] Most of Austin is in zip code 60644. *60644 Home Values*, Zillow, https://www.zillow.com/chicago-il-60644/home-values [https://perma.cc/R294–83E6] (last visited Nov. 8, 2020).

[75] *Oak Park Home Values*, Zillow, https://www.zillow.com/oak-park-il/home-values [https://perma.cc/GV3N-S7PJ] (last visited Nov. 8, 2020).

[76] *Science Assessment: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinois-reportcard.com/district.aspx?source=trends&source2=isa.details&Districtid=06016200013 [https://perma.cc/GM45-MW2Q].

As Table 2 shows, while OPRF substantially outperforms state averages in test scores in both English and math,[77] the racial test score gap between student populations exists among students testing as at least proficient in a subject. In 2019, 83 percent of White students tested as proficient in English, but only 23 percent of Black students and 56 percent of Latinx students tested as at least proficient.[78] In math, the test score gaps of students testing as at least proficient is even larger: 75 percent of White students tested as at least proficient compared to only 16 percent of Black students and 50 percent of Latinx students.[79] While 91 percent of Oak Park students graduate within four years, only 85 percent of Black and Latinx students graduate within four years.[80]

This historical and contemporary context of race in OPRF and Oak Park's relationship to Austin sets the stage for the drama around stealing an education.

II. How to Steal an Education

How did we get here? Why is it that one child's educational experience differs dramatically from another child's experience, even though they only live two miles apart? In this Part, I describe stealing education laws as central planks of educational stratification and opportunity hoarding. These laws and policies undermine the abstract commitment to equal educational access as described in *Brown*[81] and state constitutional hortatory provisions about education.

A. The Promise: Constitutional Law

In 1954, the U.S. Supreme Court in *Brown v. Board of Education* explained that the U.S. Constitution requires equal access to education:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child

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[77] *SAT: Grade & Demographics: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?source=trends&source2=sat.details&Districtid=06016200013 [https://perma.cc/W6EF-SBC7] (last visited May 7, 2021).

[78] *Id.*

[79] *Id.*

[80] *Graduation Rate: Oak Park–River Forest SD 200*, *supra* note 3; *Graduation Rate By Demographics: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/district.aspx?districtid=06016200013&source=trends&source2=graduationrate [https://perma.cc/X5EK-4QMW].

[81] 347 U.S. 483 (1954).

> to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> . . . .
>
> [I]n the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.[82]

Note *Brown*'s declaration that education is the "most important function of state and local governments."[83] Yet, in the years after *Brown*, the Court upheld state laws that eroded that importance. In 1973, the Supreme Court held in *San Antonio v. Rodriguez* that, while the importance of education is "undisputed," the federal Constitution does not convey an individual right to that education: "[E]ducation, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor [is there] any basis for saying it is implicitly so protected."[84]

Soon after, in 1974, the Court in *Milliken v. Bradley*[85] invalidated a Michigan desegregation plan across city-suburban school district boundaries. The reasoning was that, despite actual de facto segregation, school districts could not be forced to integrate through interdistrict means absent a finding that the suburban district itself engaged in unlawful de jure segregation.[86] In 1983,

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[82] *Id.* at 493, 495.

[83] *Id.* at 493.

[84] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).

[85] 418 U.S. 717 (1974).

[86] *Id.* at 744–45 ("Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within onedistrict that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no

the Court in *Martinez v. Bynum*[87] further reinforced a school district's ability to exclude nonresidents by upholding a Texas law that allowed school districts to restrict education to "bona fide residents" because "[a] bona fide residence requirement . . . furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents."[88]

Unlike *Rodriguez*'s declaration that the U.S. Constitution does not contain a fundamental right to education, almost every state constitution includes a "right to education" provision[89] that intimates a state constitutional commitment like that found in *Brown*. The Illinois state constitution, for example, declares "the educational development of all persons to the limits of their capacities" to be a "fundamental goal" of the state:

> § 1. Goal—Free Schools
>
> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.[90]

The constitutional drafters intended that this provision, while hortatory, set a high standard to provide an excellent education to "all persons" living in the state. During the debates of the Illinois 1847 constitutional convention, a delegate read into the record a letter from a state legislator regarding the need for a state superintendent of education.[91] The state legislator wrote: "'Nothing, it seems to me, in laying the foundations of a republican state, can be of more importance than a provision for securing the *devoted* application of some single mind to the special purpose of advancing the interests of education.'"[92] Other conventioneers too underscored the primacy of education. Indeed, one placed the importance of education squarely within the meaning and legitimacy of the state constitution:

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constitutional wrong calling for an interdistrict remedy.").

[87] 461 U.S. 321 (1983).

[88] *Id.* at 327–28.

[89] *See infra* notes 96–102.

[90] Ill. Const. art. X, § 1.

[91] The Constitutional Debates of 1847, at 913 (Arthur Charles Cole ed., 1919).

[92] *Id.*

> What would become of the constitution itself, unless it was sustained by the intelligence and morality of the people, which depended on their means of education. The rights of men had for their sole protection the creation of just laws, and they could be founded and sustained upon the dissemination of virtue and knowledge among the people.[93]

This is not the only example of Illinois drafters' commitment when they wrote these hortatory provisions. One drafter, speaking of the requirements that education across the state be "high-quality," explained that he "had in mind the highest, the most excellent educational system possible."[94] Similarly, a drafter commented that including the constitution's reference to "all persons" was to generate "a good goal for the educational status of the state."[95]

Not all state constitutions specify high quality education or a commitment to "all persons" as does Illinois. For example, the Alaskan constitution only requires the legislature to "establish and maintain a system of public schools open to all children of the State."[96] Georgia's constitution declares only that "adequate public education for the citizens shall be a primary obligation of the State."[97] Yet, even without the explicit mention of "all people," almost all state constitutions say something about what that education system must look like

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[93] *Id.* at 916.

[94] John Dinan, *The Meaning of State Constitutional Education Clauses: Evidence From the Constitutional Convention Debates*, 70 Alb. L. Rev. 927, 946 (2007) (reporting onthe discussions and debates between the Illinois constitutional delegates of 1969–1970 on the meaning of "high-quality").

[95] *Id.* Of course, in 1847, the Illinois drafters and conventioneers likely did not have racial justice at the forefront of minds when it came to educational equity. In the 1800s, the Illinois legislature enacted harsh anti-Black laws; in 1838, it banned Black people from emigrating to the state. *27 Illinois Black Law (1853)*, Off. Ill. Sec'y State, https://www.cyberdriveillinois.com/departments/archives/online_exhibits/100_documents/1853-black-law.html [https://perma.cc/D86M-QCP8] (last visited Feb. 17, 2021). Thus, in the 1840 census, Black people numbered only 4,065 out of Illinois' total population of 478,929. Jerome B. Meites, *The 1847 Illinois Constitutional Convention and Persons of Color*, 108 J. Ill. State Hist. Soc'y 266, 266 (2015). Prior to the convention, public schools excluded Black children altogether. *Id.* at 270.

[96] Alaska Const. art. VII § 1.

[97] Ga. Const. art. VIII § 1.

using words that suggest both quality and applicability to all state residents: "efficient,"[98] "general,"[99] "common,"[100] "uniform,"[101] and "thorough."[102]

B. The Reality: State Education and Criminal Law

But, similar to the U.S. Supreme Court's backpedaling from *Brown*'s constitutional commitment to equality of educational opportunity, many state supreme courts eroded those state constitutional commitments to quality and equality. In 1994, the Illinois Supreme Court held that the constitutional provision cited above "does not mandate equal educational benefits and opportunities among the State's school districts as the constitutionally required means of establishing and maintaining an 'efficient' system of free public schools."[103] Specifically, the state education codes' bonafide resident requirements discussed in *Milliken* and *Martinez* and the imposition of criminal and civil penalties for transgressing intrastate boundaries further erode the constitutional promises established by *Brown* and adopted by the states.

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[98] Ark. Const. art. XIV, § 1, *amended by* Ark. Const. amend. 53; Del. Const. art. X, § 1; Fla. Const. art. IX, § 1 (amended 1998); Ill. Const. art. X, § 1; Ky. Const. § 183; Md. Const. art. VIII, § 1; Minn. Const. art. XIII, § 1; N.J. Const. art. VIII, § IV(1); Ohio Const. art. VI, § 2; Pa. Const. art. III, § 14 (amended 1967); Tex. Const. art. VII, § 1; W. Va. Const. art. XII, § 1; *see* Wyo. Const. art. I, § 23; *id.* art. VII, § 9.

[99] Ariz. Const. art. XI, § 1; Ark. Const. art. XIV, § 1, *amended by* Ark. Const. amend. 53; Del. Const. art. X, § 1; Idaho Const. art. IX, § 1; Minn. Const. art. XIII, § 1; N.C. Const. art. I; *id.* art. IX, § 2(1); Or. Const. art. VIII, § 3; Wash. Const. art. IX, § 2.

[100] Cal. Const. art. IX, § 5; Idaho Const. art. IX, § 1; Ind. Const. art. VIII, § 1; Iowa Const. art. IX, 2d, § 3; Ky. Const. § 183; Neb. Const. art. VII, § 1 (amended 1972); Nev. Const. art. XI, § 2 (amended 1938); N.Y. Const. art. XI, § 1; Ohio Const. art. VI, § 2; Or. Const. art. VIII, § 3; Wash. Const. art. IX, § 2.

[101] Ariz. Const. art. XI, § 1; Colo. Const. art. IX, § 2; Fla. Const. art. IX, § 1 (amended 1998); Idaho Const. art. IX, § 1; Ind. Const. art. VIII, § 1; Minn. Const. art. XIII, § 1; Nev. Const. art. XI, § 2 (amended 1938); N.M. Const. art. XII, § 1; N.C. Const. art. IX, § 2(1); N.D. Const. art. VIII, § 2; Or. Const. art. VIII, § 3; S.D. Const. art. VIII, § 1; Wash. Const. art. IX, § 2; Wis. Const. art. X, § 3 (amended 1972); Wyo. Const. art. VII, § 1.

[102] Colo. Const. art. IX, § 2; Idaho Const. art. IX, § 1; Md. Const. art. VIII, § 1; Minn. Const. art. XIII, § 1; N.J. Const. art. VIII, § IV (1); Ohio Const. art. VI, § 2; Pa. Const. art. III, § 14 (amended 1967); W. Va. Const. Art. XII, § 1; Wyo. Const. art. VII, § 9.

[103] Comm. for Educ. Rts. v. Edgar, 641 N.E.2d 602, 605 (Ill. App. Ct. 1994). Other states are more generous; for example, the Connecticut Supreme Court held that its constitutional provision for education "entitles Connecticut public school students to an education suitable to give them the opportunity to be responsible citizens able to participate fully in democratic institutions, such as jury service and voting." Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell, 990 A.2d 206, 253 (Conn. 2010).

1. State Education Law

Most school districts operate as autonomous municipal entities with their boards of education elected directly by voters.[104] These autonomous jurisdictions create their attendance boundaries, which may or may not correspond with other political geographic boundaries like city or county limits.

Thirty-three states, plus the District of Columbia, explicitly allow school districts to privilege students who have bonafide residence within their borders.[105] Black's Law Dictionary defines "residency" as "[t]he act or fact

[104] *See* Erika K. Wilson, *The New School Segregation*, 102 Cornell L. Rev. 139 (2016) (showing how certain southern U.S. school districts are seceding from county school districts to create Whiter and more affluent local school districts). Sometimes, school boards operate under other local government entities, such as cities or counties. For example, Chicago Public Schools operates under a mayor-appointed board. In 2015, Chicagoans voted to move the district from an appointed to an elected board, and the Illinois House and Senate voted to make the change in 2017. The then-governor vetoed the bill. The current mayor seemingly expressed her support for an elected board. But in 2019, she appointed seven people to the board. For press about this potential move, see, for example, Pranathi Posa, *What Does an Elected School Board Mean for Chicago?*, Chi. Maroon (Apr. 30, 2019, 3:37 PM), https://www.chicagomaroon.com/article/2019/4/30/state-bill-elected-chicago-school-board-could-soon [https://perma.cc/NW53–35XD]; Alexandra Silets, *Chicago School Board: Better to Elect or Appoint?*, WTTW (Apr. 9, 2019, 6:32 PM), https://news.wttw.com/2019/04/09/chicago-school-board-better-elect-or-appoint [https://perma.cc/BC72-DFB6]; Sarah Schulte, *Will Chicago Public Schools Move to an Elected School Board?*, ABC7 Chi. (Mar. 4, 2019), https://abc7chicago.com/education/will-chicago-public-schools-move-to-an-elected-school-board/5167375 [https://perma.cc/L3L8–4HZ8]; Juan Perez Jr., *90% of U.S. School Boards Are Picked by Voters, but Not in Chicago. Here's Why That Could Change*, Chi. Trib. (Apr. 19, 2019, 5:00 AM), https://www.chicagotribune.com/news/ct-met-chicago-elected-school-board-debate-20190418-story.html [https://perma.cc/CG6Q-X2BA].

[105] Ark. Code Ann. § 6–18–202 (2020); Cal. Educ. Code § 48200 (West 2020); Conn. Gen. Stat. Ann.§ 10–184 (West 2020); Del. Code Ann. tit. 14, § 202 (West 2020); Ga. Code Ann. § 20–2-133 (2020); Ind. Code Ann. § 20–26–11–2 (West 2020); Kan. Stat. Ann. § 72–3118 (West 2020); Me. Rev. Stat. Ann. tit. 20-A, § 5202 (West 2020); Md. Code Ann., Educ. § 7–101(b)(1) (LexisNexis 2020); Mass. Gen. Laws Ann. ch. 76, § 5 (West 2020); Minn. Stat. § 120A.20 (2019); Mont. Code Ann. § 20–5-101 (West 2019); Mo. Ann. Stat. § 167.020 (West 2019); Neb. Rev. Stat. Ann. § 79–215 (West 2020); Nev. Rev. Stat. Ann. § 392.040 (West 2020); N.C. Gen. Stat. § 115C-366 (2020); N.H. Rev. Stat. Ann. § 193:12 (2020); N.J. Stat. Ann. § 18A:38–1 (West 2020); N.Y. Educ. Law § 3202 (McKinney 2020); Ohio Rev. CodeAnn. § 3313.64(B) (West 2020); Okla. Stat. Ann. tit. 70, § 1–113 (West 2020); Or. Rev.Stat. Ann. § 339.115 (West 2020); 24 Pa. Stat. and Cons. Stat. § 13–1302 (West 2020); 16 R.I. Gen. Laws § 16–64–1 (2020); S.C. Code Ann. § 59–63–30 (West 2020); S.D. Codified Laws § 13–28–9 (2020); Tenn. Code Ann. § 49–6-3003 (2020); Tex. Educ. Code Ann. § 25.001 (West 2019); Utah Code Ann. § 53G-6–302 (West 2020); Vt. Stat. Ann. tit. 16, § 1075 (2019); Va. Code Ann. § 22.1–3 (2020); Wash. Rev. Code Ann. § 28A.225.160 (West 2020); D.C. Code Mun. Regs. tit. 5-E § 2002.1 (LexisNexis 2020).

Some states not included in this list have statewide interdistrict transfer programs, otherwise known as "open-enrollment" plans. *See* Colo. Rev. Stat. § 22–36–101 (2020); La. Stat. Ann. § 17:221 (2019); N.M. Stat. Ann. § 22–1-4 (2004); Wyo. Stat. Ann. § 21–4-301 (2020).

of living in a given place for some time."[106] What does it mean to "live" in a place for some time? Consider Ohio, a state where a Black mother, Kelley Williams-Bolar, served nine days in jail for stealing an education.[107] There, residency requires "something more" than "purchasing a house or apartment building or even . . . furnishing such a house or apartment so that it is suitable for the owner's use": a bonafide residence "must be a place where important family activity takes place during significant parts of each day; a place where the family eats, sleeps, works, relaxes, plays. It must be a place, in short, which can be called 'home.'"[108]

In Illinois, a student's bonafide residence means an established presence in a place and an intent to make that place a permanent home.[109] Illinois law forbids families from establishing residence in a school district solely to "have access to the educational programs of the district."[110] A court considers a child's

Even for states with open enrollment policies, residents often get first dibs on school seats before nondistrict residents are allowed in. *E.g.*, *compare* Ark. Code Ann. § 6–18–227 (2020) (open enrollment program), *with* Ark. Code Ann. § 6–18–202 (2020) (statute creating a violation for "knowingly giv[ing] a false residential address for purposes of public school enrollment"). Hawaii is unique in that it has only one school district for the entire state, making school district boundary disputes moot. Nevertheless, the Hawaii Department of Education threatens to prosecute parents who falsely claim an address for intradistrict placement. *See How to Enroll*, Haw. Dept. Educ., http://www.hawaiipublicschools.org/ParentsAndStudents/EnrollingInSchool/HowToEnroll/Pages/home.aspx [https://perma.cc/EVA3-JRG9]; Haw. Rev. Stat. Ann. § 710–1063 (West 2019); Haw. Rev. Stat. Ann. § 302A-1143 (West 2021).

[106] *Residence*, Black's Law Dictionary (11th ed. 2019).

[107] *See supra* note 23; *infra* note 140.

[108] Bd. of Educ. v. Day, 506 N.E.2d 1239, 1242 (Ohio Ct. Com. Pl. 1986).

[109] 105 Ill. Comp Stat. Ann. 5/10–20.12b(a)(2)(v) (LexisNexis 2020); *see also* Mina *ex rel.* Anghel v. Bd. of Educ., 809 N.E.2d 168, 176 (Ill. App. Ct. 2004) (ruling that a student was not a bonafide resident and thus was required to pay tuition).

[110] *Mina ex rel. Anghel*, 809 N.E.2d, at 175–76 (explaining that "a residence, even for a temporary purpose, in a school district is sufficient to entitle children of school age to attend school, so long as the residence is not established solely to enjoy the benefits of free schools").

residence to be his or her "home base," which depends on factors like where the child eats meals and where the child sleeps most nights.[111]

Districts thwart many nonresidents from enrolling through the documentation they require at initial registration and annual residence verification. Illinois state law does not mandate to districts the documentation they must collect for school enrollment, and thus school districts create their own requirements. OPRF requires, at a minimum, four documents; CPS requires only two documents to prove a child's address.[112] In OPRF, one document must be a real estate tax bill, mortgage statement, or rental lease.[113] The other three documents must include at least two documents generated monthly, such as a utility bill, and can include one yearly-issued document such as a driver's license or car registration.[114] CPS requires only two documents, including a utility bill, a driver's license, or an Illinois Department of Public Aid card.[115] Under either a flexible or strict document requirement regime, these rules envision children's homes as the physical place around which their everyday lives revolve.[116]

To aid with catching residency violators, school districts sometimes hire "residency officers" whose work involves investigating cases of residency violations.[117] Instead of hiring an employee, some districts contract with investigatory firms; these firms search online databases and conduct visual surveillance of families with hopes of uncovering residential discrepancies.[118] Districts also sometimes depend on community cooperation;[119] some school districts set up official "tip" lines where community members can report suspect parents, or

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[111] *Id.* at 179.

[112] *Compare Enrollment and Residency Verification Checklist*, Oak Park & River Forest High Sch. [hereinafter *OPRF Enrollment and Verification Checklist*], https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9–9402–0a56f-8be964e/1928952/7e93558a-78b9–11e9–8be3–1267d8fda01e/file/ENROLLMENT-CHECKLIST19–20.pdf [https://perma.cc/A65E-72EQ] (last visited Nov. 8, 2020), *with Elementary School EnrollmentProcess (SY20–21)*, Chi. Pub. Schs. [hereinafter *CPS Enrollment Process*], https://cps.edu/Schools/Enroll_in_a_school/Register/Pages/Elementaryschool-registrationchecklist.aspx [https://perma.cc/3GKU-PNPX] (last visited Nov. 8, 2020).

[113] *OPRF Enrollment and Verification Checklist*, *supra* note 112.

[114] *Id.*

[115] *CPS Enrollment Process*, *supra* note 112.

[116] School districts concerns about a child's home base shows in how they investigate and surveille students and their families: school district investigators visit homes early in the morning and late at night to determine where a child sleeps. Eddy Ramirez, *Schools Crack Down on Boundary Hopping*, U.S. News (Mar. 2, 2009, 5:10 PM), https://www.usnews.com/education/articles/2009/03/02/schools-crack-down-on-boundary-hopping [https://perma.cc/ERV4-B9H4] (quoting Valerie Williams, Director of Pupil Services, Fremont Unified School District).

[117] *See* Baldwin Clark, *supra* note 23, at 405, 416.

[118] *Id.* at 416–20.

[119] *Id.* at 418–19.

create website forms that allow community members to report their suspicions and upload any visual evidence to support their allegations.[120]

2. State Criminal Law

In 1996, the Illinois legislature proposed, and the then-governor signed, a bill that criminalized unauthorized nonresidents enrolling their children in school districts where they did not reside.[121] Described then as a "weapon"[122] against nonresidents and "the teeth of a tiger,"[123] the law makes it a crime—a Class C misdemeanor—to "knowingly enroll[] or attempt[] to enroll . . . on a tuition free basis a pupil known by that person to be a nonresident of the district"[124] or to "knowingly or willfully present[] to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge."[125] Illinois school districts can pursue these charges and sue for back tuition.[126]

Seven other states and the District of Columbia criminalize residency violations: Delaware, Michigan, Missouri, North Carolina, Pennsylvania, Texas, and Vermont.[127] All of these states (except Pennsylvania) classify the criminal offense as a misdemeanor that can carry a fine, jail time, or both, with jail time ranging from a maximum of thirty days in Illinois[128] to five years in Vermont.[129] In addition to these states, eleven states' education codes provide for civil penalties,[130] most often back tuition: Arkansas, Georgia, Illinois, Maryland,

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[120] *Id.* at 419.

[121] Sherry Thomas, *New Law Goes After Parents of Out-of-District Students*, Maywood Herald (July 10, 1996), https://infoweb.newsbank.com/apps/news/document-view?p=WORLDNEWS&docref=news/113E13DEB0A1AD30&f=basic [https://perma.cc/J3X5–3UKM].

[122] *Id.*

[123] *Id.*

[124] 105 Ill. Comp. Stat. Ann. 5/10–20.12b(e) (LexisNexis 2020).

[125] 105 Ill. Comp. Stat. Ann. 5/10–20.12b(f) (LexisNexis 2020).

[126] 105 Ill. Comp. Stat. Ann. 5/10–20.12a(a) (LexisNexis 2020) (authorizing school districts to charge "non-resident pupils who attend the schools of the district tuition in an amount not exceeding 110% of the per capita cost of maintaining the schools of the district for the preceding school year. Such per capita cost shall be computed by dividing the total cost of conducting and maintaining the schools of the district by the average daily attendance, including tuition pupils").

[127] Del. Code Ann. tit. 14 § 202(f)(5) (West 2020); Mich. Comp. Laws Serv. § 380.1812 (LexisNexis 2020); Mo. Ann. Stat. § 167.020.4 (West 2020); N.C. Gen. Stat. § 115C-366(a3) (2020); 24 Pa. Cons. Stat. § 13–1302(c) (2020); Tex. Penal Code Ann. § 37.10(c)(3) (West 2020); Vt. Stat. Ann. tit. 16, § 1075(j) (West 2019).

[128] 730 Ill. Comp. Stat. Ann. 5/5–4.5–65 (LexisNexis 2020).

[129] Vt. Stat. Ann. tit. 13, § 3016(b) (2019).

[130] In civil penalties, I am including expulsion and payment of back tuition.

Massachusetts, Montana, New Jersey, North Dakota, Ohio, South Carolina, and Virginia.[131] Civil penalties range in severity from automatic disenrollment to fines, either measured as tuition fees[132] or as standard fines.[133] The states levy civil penalties in one of two ways: (1) the statute makes the offender automatically liable for tuition without any intervention from the school district (e.g., Maryland[134]) or (2) the statute gives school districts the right to charge or sue the offender for these fines in a proceeding (e.g., Georgia[135]).

Beyond the states that include criminal provisions in their education codes, others allow school districts to threaten parents with prosecution under general criminal statutes. Seventeen states, plus Washington D.C., have at least one school district in the state that threatens criminal prosecution under general theft, perjury, and fraud statutes as indicated on their school enrollment forms.[136]

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[131] Ark. Code Ann. § 6–18–202(e)(4), (f) (2020); Ga. Code Ann. § 20–2-133 (2020); 105 Ill. Comp. Stat. 5/10–20.12b (LexisNexis 2020); Md. Code Ann., Educ. § 7–101(b)(3) (LexisNexis 2020); Mass. Gen. Laws Ann. ch. 72, § 2 (West 2020); Mont. Code Ann. § 20–5-101(5) (2019); N.J. Stat. Ann. § 18A:38–1(b)(1) (West 2020); N.D. Cent. Code § 15.1–29–13 (2019); Ohio Rev. Code Ann. § 3327.06(B) (LexisNexis 2020); S.C. Code Ann. § 59–63–45 (LexisNexis 2020); 8 Va. Admin. Code § 20–720–80 (2021).

[132] For example, Georgia law authorizes districts to charge nonresident students tuition fees if such charges do not "exceed the average locally financed per student cost for the preceding year." Ga. Code Ann. § 20–2-133(a) (2020).

[133] For example, Arkansas law caps the civil fine at $1000. Ark. Code Ann. § 6–18–202(f) (2020).

[134] Md. Code Ann., Educ. § 7–101(b)(3) (LexisNexis 2020) ("If a child fraudulently attends a public school in a county where the child is not domiciled with the child's parent or guardian, the child's parent or guardian shall be subject to a penalty payable to the county for the pro rata share of tuition for the time the child fraudulently attends a public school in the county.").

[135] Ga. Code Ann. § 20–2-133(a) (2020) ("[A] local school system is authorized to charge nonresident students tuition or fees or a combination thereof; provided, however, that such charges to a student shall not exceed the average locally financed per student cost for the preceding year . . . .").

[136] For a representative example from each of these eighteen states, see *Student Residency Requirements 2019–2020*, Homewood City Bd. Educ., https://www.homewood.k12.al.us/cms/lib/AL50000136/Centricity/Domain/8/Certificate%20of%20Residence%20%20English.pdf [https://perma.cc/JUX7-UU7T] (last visited May 8, 2021) (Alabama); *Residency—Important Information*, Palo Alto Unified Sch. Dist., https://www.pausd.org/enrollment/residency-important-information [https://perma.cc/LPJ3-KZ6T] (last visited May 8, 2021) (California); *Student Registration Form*, Appoquinimink Sch. Dist., https://www.apposchooldistrict.com/pdf/2019-student-registration-form.pdf [https://perma.cc/XJ3D-3DJ5] (last visited Feb. 26, 2021) (Delaware); *DC Residency Verification Form*, Off. State Superintendent Educ. 1 (2019), https://enrolldcps.dc.gov/sites/dcpsenrollment/files/page_content/attachments/OSSE_2019–20_School_Year_DC_Residency_Verification_Form_English.pdf [https://perma.cc/99T7-VJEZ] (District of Columbia); *How to Enroll*, *supra* note 105 (Hawaii); *Affirmation of Legal Residency (Form R-1)*, Glenbrook High Schs. Dist. 225 (2019), https://drive.google.com/file/d/0BzKIplgx-c4MRTA3OVozU3RVV1E/view [https://perma.cc/4QQF-YGSA] (Illinois); *Student Enrollment Form*, Shawnee Mission Sch. Dist.

I found twenty-four states, plus Washington D.C., that allow school districts to threaten civil suits against offending parents.[137] For example, a Missouri court

2 (2017), https://resources.finalsite.net/images/v1528142155/smsdorg/hx16i9miuhyz8pd4ydd2/enrollment-form.pdf [https://perma.cc/69AV-SZ72] (Kansas); *Residency Affidavit*, Cent. Cmty. Sch. Sys. 1 (2016), https://www.centralcss.org/uploaded/01_District/Parent_Center/residency_affidavit.pdf [https://perma.cc/AQ5V-ZCDX] (Louisiana); *Enrollment Requirements & Procedures—Disclaimer*, Troy Sch. Dist., https://www.troy.k12.mi.us/departments/central-enrollment/requirements-procedures [https://perma.cc/CW9L-MQLT] (last visited Feb. 26, 2021) (Michigan); *Residency Criteria*, Kirkwood Sch. Dist., https://www.kirkwoodschools.org/Page/5344 [https://perma.cc/ZD77-EJVK] (last visited Feb. 26, 2021) (Missouri); *New Student Registration: Welcome to Salem Schools*, Salem Sch. Dist., https://sau57.org/register [https://perma.cc/N32K-83JD] (last visited Feb. 26, 2021) (log-in required) (New Hampshire); *Application to Establish Residency*, City Sch. Dist. New Rochelle 4 (2017), https://echalk-slate-prod.s3.amazonaws.com/private/districts/360/resources/50af1b4b-d979–46d6–874c-82cd3303068a?AWSAccessKeyId=AKIAJSZKIBPXGFLSZTYQ&Expires=1812366063&response-cache-control=private%2C%20max-age%3D31536000&response-content-disposition=%3Bfilename%3D%22Application%2520to%2520Establish%2520Residency.pdf%22&response-content-type=application%2Fpdf&Signature=uIcSydR8H4XxUtFXWJEIHkKEqjk%3D [https://perma.cc/A6D5-EJEJ] (New York); *Parent/Guardian Registration*, Indian Hill Exempted Village Schs., https://indianhill-oh.finalforms.com/parents/registration [https://perma.cc/HAE7-FVY5] (last visited Feb. 26, 2021) (Ohio); *Procedures for Registering Students New to Abington School District*, Abington Sch. Dist. 3, 10 (2020), https://www.abington.k12.pa.us/policies/media/sites/policies/Registration-Procedures-Superintendents-Administrative-Procedure.pdf [https://perma.cc/CCP6-VMED] (Pennsylvania); *Affidavit of a Student's Domicile*, Charleston Cnty. Sch. Dist. 1 (2017), https://sc50000504.schoolwires.net/cms/lib/SC50000504/Centricity/Domain/139//Registration/ResidencyAffidavitEnglishOnly05012017.pdf [https://perma.cc/9VD7-AWS5] (South Carolina); *Notarized Affidavit of Residence for Parent of Student*, Pearland Indep. Sch. Dist. 1–2, https://www.pearlandisd.org/cms/lib/TX01918186/Centricity/domain/67/enrollment/Residency_Affidavit_2020–21.pdf [https://perma.cc/54RW-57DD] (last visited Feb. 26, 2021) (Texas); *Student Registration Form*, Arlington Pub. Schs. 2, https://www.apsva.us/wp-content/uploads/2018/09/Student-Registration-Form-9.18.pdf [https://perma.cc/6HAL-UHLC] (Virginia); *Resident Enrollment*, Elmbrook Schs., https://www.elmbrookschools.org/about-elmbrook/enroll/resident-enrollment [https://perma.cc/AU7Y-2BWK] (last visited Feb. 26, 2021) (log-in required) (Wisconsin).

[137] Many penalties will resemble the Georgia version discussed above. For a representative example from each of these twenty-four states plus Washington D.C., see *Student Residency Requirements 2019–2020*, *supra* note 136 (Alabama); *New to District Information*, Catalina Foothills Sch. Dist. 16, https://www.cfsd16.org/parents/new-to-district-information [https://perma.cc/LZH3-KZ4W] (last visited Feb. 26, 2021) (Arizona); *Residency Verification Contract*, San Leandro Unified Sch. Dst. (2020), https://ca01001252.schoolwires.net/cms/lib/CA01001252/Centricity/Domain/2632/Residency%20Verification%20Contract-Eng.pdf [https://perma.cc/484F-EHD3] (California); *Student Registration Form*, *supra* note 136 (Delaware); *DC Residency Verification Form*, *supra* note 136 (District of Columbia); *Residency & Guardianship Policy*, St. Johns Cnty. Sch. Dist., https://www.stjohns.k12.fl.us/student/residency [https://perma.cc/SY4S-Q47S] (last visited Feb. 26, 2021) (Florida); *New Student Enrollment Form*, Decatur City Schs., https://www.dcs.edu/apps/pages/index.jsp?uREC_ID=799000&type=d&pREC_ID=1188549 [https://perma.cc/GR2E-UNPT] (last visited Feb. 26, 2021) (log-in required) (Georgia); *How to Enroll*, *supra* note 105 (Hawaii); *Verification of Residency*, Boise Sch. Dist., https://drive.google.com/

found a mother to have committed fraud for falsifying her daughter's address and ordered her to pay over $35,000 to the St. Louis, Missouri, School Board, including $3000 in punitive damages.[138]

In seven states, plus Washington D.C., I located verified criminal prosecutions of parents who allegedly falsified their addresses and were prosecuted under the education code's criminal provisions or general criminal statutes of fraud, perjury, etc.[139] This includes Ohio, where a court infamously jailed Black

file/d/0B_SMD8NnZXugaUtSOFBTd2g3alAwNFBuc3JzcjJEa2o5VDdv/view [https://perma.cc/5N2E-2GXW] (last visited Feb. 26, 2021) (Idaho); *Affirmation of Legal Residency (Form R-1)*, *supra* note 136 (Illinois); *In District Registration for New Families*, Fort Thomas Indep. Schs. (2020), https://www.fortthomas.kyschools.us/Content2/indistrictregistration [https://perma.cc/9Q7K-BPB6] (log-in required) (Kentucky); *Residency Affidavit*, *supra* note 136, at 1 (Louisiana); *Student Registration Form*, Scarborough Schs. 5 (2020) http://www.scarboroughschools.org/parent-information/student-registration [https://perma.cc/N8DE-3K3E] (Maine); *Legal Custody and Residency Requirements*, Calvert Cnty. Pub. Schs. http://www.calvertnet.k12.md.us/departments/student_services/student_services_program_information/legal_custody_and_residency_requirements [https://perma.cc/XZ8Q-CUE2] (last visited Feb. 26, 2021) (Maryland); *Residency*, Pub. Schs. of Brookline https://www.brookline.k12.ma.us/Page/1771 [https://perma.cc/STL3–3F7H] (last visited Feb. 26, 2021) (Massachusetts); *Student Handbook, 2019–2020*, Madison Cnty. Schs. 10 (2019), https://www.madison-schools.com/cms/lib/MS01001041/Centricity/Domain/16/2019%20-%202020%20STUDENT%20HANDBOOK%20with%20COVER%20FINAL.pdf [https://perma.cc/9BYP-EZ69] (Mississippi); *Residency Criteria*, *supra* note 136 (Missouri); *Residency*, Millburn Twp. Pub. Schs., https://www.millburn.org/apps/pages/residency [https://perma.cc/PFP7-LZB5] (last visited Feb. 26, 2021) (New Jersey); *Model Statement of Enrollment Procedures*, Rome City Sch. Dst., https://www.romecsd.org/UserFiles/Servers/Server_695381/Image/Residency%20Statement.pdf [https://perma.cc/KT5F-3QTX] (last visited Feb. 26, 2021) (New York); *Lakota Local Schools Residency Affidavit*, Lakota Loc. Schs., http://www.lakota-sandusky.k12.oh.us/wp-content/uploads/2012/11/ResidencyAffidavit.pdf [https://perma.cc/J6R4–795A] (last visited Feb. 26, 2021) (Ohio); *Procedures for Registering Students New to Abington School District*, *supra* note 136, at 10 (Pennsylvania); *Lincoln Public Schools Registration Checklist*, Lincoln Pub. Schs. 5 (2020), http://www.district.lincolnps.org/wp-content/uploads/2020/09/LPS-District-Registration-Packet-2020–2021.pdf [https://perma.cc/L9SN-9LF2] (Rhode Island); *Affidavit of a Student's Domicile*, *supra* note 136, at 1 (South Carolina); *Residency Verification Form*, Lake Wash. Sch. Dist., https://resources.finalsite.net/images/v1571931344/lwsdorg/fnlg2w7aagvpyu2e6fob/ResidencyVerificationFormSS10512019.pdf [https://perma.cc/H2K6-TJJ4] (last visited Feb. 26, 2021) (Washington); *Resident Enrollment*, *supra* note 136 (Wisconsin).

[138] Bd. of Educ. v. Elam, 70 S.W.3d 448, 449–51 (Mo. Ct. App. 2000).

[139] These seven states, plus Washington D.C., are: California, Connecticut, New Jersey, New York, Ohio, Pennsylvania, and Washington. *See, e.g.*, ABC7, *Parents Face Charges Due to Student Enrollment Fraud*, ABC7 (May 28, 2010), https://abc7news.com/archive/7468257 [https://perma.cc/KAW3–2B2C] (California; San Francisco United School District); Nelson Oliveira, *Brookfield Woman Fights Conviction for "Stealing Education*," newstimes (June 2, 2016, 12:10 AM), https://www.newstimes.com/policereports/article/Brookfield-woman-fights-conviction-for-7957631.php [https://perma.cc/8T92–8RGQ] (Connecticut; Brookfield Public Schools); Ed. Bd., Opinion, *Cracking Down on School Enrollment Fraud*, Wash. Post (June 9, 2018, 11:18 AM), https://www.washingtonpost.com/opinions/

mother Kelley Williams-Bolar for nine days under a "tampering with records" conviction for falsifying her children's address.[140] In Pennsylvania, a suburban district attorney prosecuted Latinx parents Hamlet and Olesia Garcia for theft of services and conspiracy to commit theft of services for falsely stating that their child lived with a grandparent in the suburbs rather than with her parents in Philadelphia.[141]

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cracking-down-on-school-enrollment-fraud/2018/06/09/894ef606–6a9a-11e8-bea7-c8eb28bc52b1_story.html [https://perma.cc/3NQP-E9AK] (District of Columbia); Amanda Oglesby, *Stealing Education: Families Fake Residency for School*, App (Sept. 15, 2015, 11:35 AM), https://www.app.com/story/news/education/in-our-schools/2015/09/14/stealing-education-families-fake-residency-school/71484808 [https://perma.cc/KB5R-UUL8] (New Jersey; Jackson Township School District); Jessica Spies, *Rochester Mom Gets Probation for Lying About Residence*, Daily Messenger (July 29, 2009, 2:17 AM), https://www.mpnnow.com/article/20090729/NEWS/307299847 [https://perma.cc/R42P-APL2] (New York; Greece School District); David Gurliacci, *McDowell Supporters to Give 15,600-Name Petition to Prosecutor*, Patch (May 10, 2011, 7:11 PM), https://patch.com/connecticut/norwalk/mcdowell-supporters-to-give-15600-name-petition-to-prosecutor [https://perma.cc/E5PH-62XR] (Connecticut; Norwalk Public Schools); David Chang, *Dad Accused of 'Stealing Education' for Daughter Pleads to Lesser Charge*, NBC Phila. (Jan. 28, 2014, 5:44 PM), https://www.nbcphiladelphia.com/news/local/dad-accused-of-stealing-education-for-daughter-pleads-to-lesser-charge/75467 [https://perma.cc/3ZA4-YMFZ] (Pennsylvania; Lower Moreland School District); State v. Throneberry, 116 Wash. App. 1078 (Wash. Ct. App. 2003), *rev granted*, 81 P.3d 120 (Wash. 2003) (Washington; Evergreen School District).

[140] Michel Martin, *Mother Jailed for School Fraud, Flares Controversy*, NPR (Jan. 28, 2011, 12:00 PM), https://www.npr.org/2011/01/28/133306180/Mother-Jailed-For-School-Fraud-Flares-Controversy?t=1574692923651 [https://perma.cc/9V4L-XQRN]; Annie Lowrey, *Her Only Crime Was Helping Her Kids*, Atlantic (Sept. 13, 2019), https://www.theatlantic.com/ideas/archive/2019/09/her-only-crime-was-helping-her-kid/597979 [https://perma.cc/GM5Y-U28Z].

[141] *See* Baldwin Clark, *supra* note 23, at 397–98. Eventually, the charges against Olesia Garcia were dropped, and Hamlet Garcia pleaded guilty to a summary offense and was ordered to pay back tuition for the time his daughter was enrolled in the suburban school district while living in Philadelphia. Brad Segall, *Phila. Father Pleads Guilty to Falsely Enrolling Daughter in Suburban School*, CBS Philly (Jan. 28, 2014, 4:03 PM), https://philadelphia.cbslocal.com/2014/01/28/trial-opens-for-phila-couple-accused-of-stealing-suburban-education-for-daughter [https://perma.cc/D5QN-6JXQ]; Press Release, Montgomery County District Attorney's Office, Parents Arrested for Falsifying Residency in Order to Obtain Lower Moreland Education Services (Aug. 30, 2012), https://www.montcopa.org/DocumentCenter/View/124/Parents-Arrested-for-Falsifying-Residency-in-Order-to-Obtain-Lower-Moreland-Education-Services?bidId= [https://perma.cc/R4QU-S8LZ].

The Garcias' struggle as a Latinx family is reminiscent of concerns the Ninth Circuit tackled in a pre-*Brown* 1947 challenge to school segregation in California. In *Westminster School District v. Mendez*, 161 F.2d 774, 780–81 (9th Cir. 1947), Mexican parents, on behalf of their children, challenged segregation in California school districts. The Ninth Circuit held that, while California statutes did allow for the segregation of children of other races, no law allowed the state to segregate children of Mexican descent. *Id.* To do so, the Court held, violated the U.S. Constitution's Fourteenth Amendment. *Id.*

Most state constitutions herald a quality education to all students to be an important goal in their respective states. But these residency laws, together with state funding schemes, force children to attend schools that may be devastatingly unequal from each other, with some offering more educational opportunities than others.

Yet residency laws are not the end of the story. School districts do not enforce these laws in vacuums. The specific geographic spaces, historical contexts, and contemporary realities in which this enforcement occurs give deeper meaning to the laws themselves and the people affected by them. The next Part continues this story by showing how some supporters of aggressive enforcement of residency laws in one suburban community justify their opportunity hoarding through race-class-conscious notions of residential areas representing distinctive cultural communities.

III. Racial Narratives in Suburban America

In a previous article, I developed my overarching theoretical frame: communities justify the unequal system that hoards opportunity by conceiving of education as property. I argued that school district officials invoked property's "bundle of sticks" metaphor, specifically the right to exclude, the right to transfer, and the right to use and enjoy. I approached this Article's project with a related research question: "How do communities justify an unfair system that relegates children to schools that correspond to their address regardless of the quality of those schools?"

While my previous analysis collected examples of residency violation laws from around the country, here I choose to focus on Oak Park, Illinois. Even though it has a well-known reputation as a model of a racially progressive community, journalists have covered OPRF's concern with nonresident enrollment since at least 1988.[142] That year, the district uncovered over 75 students illegally enrolled because of residency violations.[143] That number increased to between 150 and 200 students in the 1991–1992 school year.[144] Recently, the district has averaged investigating over 800 of its approximately 3000 student

[142] *See* Eric Zorn, *Schools Making Life Rough for Outsiders Who Sneak In*, Chi. Trib. (Sept. 30, 1988), https://www.chicagotribune.com/news/ct-xpm-1988–09–30–8802030385-story.html [https://perma.cc/9CLJ-EHGU]. As a reminder, OPRF is both a high school *as well as* its own one-school school district. When I refer to OPRF, I am referring to both the school and the district.

[143] *Id.*

[144] David Silverman & V. Dion Haynes, *Youths Crashing Schools, Not Parties*, Chi. Trib. (Jan. 10, 1992), https://www.chicagotribune.com/news/ct-xpm-1992–01–10–9201030680-story.html [https://perma.cc/RB2E-4WFS].

body per year for residency violations, and remove over 200 students per year because of illegal enrollments.[145] In the 2017–2018 school year, the district flagged and investigated 1102 students for possible residency irregularities, and declared 245 of those students ineligible to attend the school.[146] That number represented an increase from the 2016–2017 and 2015–2016 school years, when OPRF turned away 185 students and 230 students, respectively.[147]

In my previous work, I collected school district officials' public comments regarding enforcing these laws. For this project, I focused on a similar question, but from the community's perspective. In this Article, I analyze comments connected to news articles that appeared in the local Oak Park online newspaper, *www.OakPark.com*, between 2010 and 2019.[148] I chose to look at online

[145] *See* Michael Romain, *Questionable Residency Cases Rising at OPRF*, OakPark.com (Apr. 24, 2018, 3:14 PM) [hereinafter *Residency Cases Rising*], https://www.oakpark.com/News/Articles/4–24–2018/Questionable-residency-cases-rising-at-OPRF [https://perma.cc/4DMQ-FRCM] (from OPRF Principal Nathaniel Rouse's report on residency cases). The table in the article describes what I call "investigations" as "questionable cases" and describes what I call "removals" as "cases determined ineligible."

[146] *Id.*

[147] *Id.*

[148] The news stories and op-eds included in this analysis derive from a search of articles printed in *www.OakPark.com*, the local online newspaper: Ruth Lazarus, Letter to the Editor, *Our Students Deserve Better Than Drug-Sniffing Dogs*, OakPark.com (Dec. 21, 2010, 10:00 PM) [hereinafter *Drug-Sniffing Dogs*], https://www.oakpark.com/News/Articles/12–21–2010/Our-students-deserve-better-than-drug_sniffing-dogs [https://perma.cc/K5SB-AFF9]; Terry Dean, *OPRF Cracks Down on Residency Violators*, OakPark.com (June 21, 2011, 10:00 PM) [hereinafter *Oak Park Cracks Down*], https://www.oakpark.com/News/Articles/6–21–2011/OPRF-cracks-down-on-residency-violators [https://perma.cc/VUZ5-ND97]; *OPRF Eyes Residency Check*, *supra* note 41; Editorial, *Revising Residency at OPRF*, OakPark.com (Nov. 6, 2012, 10:00 PM) [hereinafter *Revising Residency*], https://www.oakpark.com/News/Articles/11–6-2012/Revising-residency-at-OPRF [https://perma.cc/AV4W-48DP]; Terry Dean, *OPRF to Verify Residency of All Families*, OakPark.com (Mar. 5, 2013, 2:00 PM) [hereinafter *Verify All Families*], https://www.oakpark.com/News/Articles/1–29–2013/OPRF-to-verify-residency-of-all-families [https://perma.cc/DP2V-93TJ]; Terry Dean, *1,500 OPRF Families Pass Through School Residency Check*, OakPark.com (Apr. 16, 2013, 10:00 PM) [hereinafter *Families Pass Through Check*], https://www.oakpark.com/News/Articles/4–16–2013/1,500-OPRF-families-pass-through-school-residency-check [https://perma.cc/EK75-TVQ6]; Terry Dean, *OPRF Residency Verification Process Under Review*, OakPark.com (Sept. 10, 2013, 10:00 PM) [hereinafter *Residency Process Under Review*], https://www.oakpark.com/News/Articles/9–10–2013/OPRF-residency-verification-process-under-review [https://perma.cc/38SK-EZVK]; Terry Dean, *OPRF Revisits Residency Verification Process*, OakPark.com (Jan. 7, 2014, 10:00 PM) [hereinafter *Revisits Verification Process*], https://www.oakpark.com/News/Articles/1–7-2014/OPRF-revisits-residency-verification-process- [https://perma.cc/6M2Z-NGJE]; Terry Dean, *OPRF Denied 167 Students Over 'Questionable' Residency*, OakPark.com (June 24, 2014, 10:00 PM) [hereinafter *'Questionable' Residency*], https://www.oakpark.com/News/Articles/6–24–2014/OPRF-denied-167-students-over-'questionable'-residency [https://perma.cc/NV96-B3L9]; *Residency Cases Rising*, *supra* note 145; *Uncomfortable*

news articles as the best source of public discourse on the matter. Between 2010 and 2019, the newspaper featured eleven stories about OPRF's residency investigations. Most of the articles can be classified as "news" in the sense that they reported on issues regarding residency, such as the number of residency cases the district reported flagged and the number of students turned away. Others are opinion pieces, such as an op-ed about the propriety of drug-sniffing dogs at the high school, or an editor's opinion about the *America to Me* documentary.

These articles' comments sections yielded 475 comments. From these, 180 comments, or almost forty percent, directly provided justifications for why residency laws must be enforced. (Other comments were, of course, also about residency, but I focused only on those comments that directly offered a justification for enforcement.) My analysis for this paper involved coding those comments according to the justifications offered. My previous knowledge regarding the role of parents in schools informed my analysis, and that knowledge included existing literature on common stereotypes about Black parents and children in educational stratification, as I describe below.

In these 180 comments, justifications center around four themes. Not surprisingly, fifty-seven comments, approximately 30 percent, center on protecting taxpayers. Fifty-one comments, or another 30 percent, focus on Black parents; thirty-seven comments, or 20 percent, focus on Black children; and thirty-eight comments, another 20 percent, directly implicate community differences between Austin/Chicago and Oak Park-River Forest. Thirty-one comments include two or more justifications, and the vast majority of those connect Black parents to Black children, as I discuss below.

Three interrelated themes emerge in this analysis of how those who support stealing education laws rely on racist stereotypes—"master narratives"—about Black cultural inferiority.[149] Reginald Leamon Robinson defines the master narrative of White supremacy and Black inferiority as:

> the absolutely dominant or privileged story that defines how blacks win or lose, succeed or fail. This story depends on social mythology and has been previously defined as a "preexisting narrative." Taking the myth and the story together, the master narrative of

Truths, *supra* note 45; Timothy Inklebarger, *OPRF Principal Resigns*, OakPark.com (Mar. 19, 2019, 4:06 PM) [hereinafter *Principal Resigns*], https://www.oakpark.com/News/Articles/3–19–2019/OPRF-principal-resigns- [https://perma.cc/5QS6-JQZF].

[149] *See* Reginald Leamon Robinson, *The Racial Limits of the Fair Housing Act: The Intersection of Dominant White Images, the Violence of Neighborhood Purity, and the Master Narrative of Black Inferiority*, 37 Wm. & Mary L. Rev. 69 (1995) (explaining how master narratives of Black inferiority inform legal policies).

> black inferiority is a systemic story, whether openly spoken or silently acted upon, that describes, solely on racial terms, how and why whites legitimately hold power over blacks. Although it depends more on mythology than reliable empirical evidence, the master narrative of black inferiority is both pervasive and powerful.[150]

The comments reveal that some of those who justify the laws rely on three master narratives associated with Black families and Black neighborhoods: (1) Black parents do not care about education and are general criminals; (2) Black children cannot (or will not) learn, and; (3) Black communities are depraved. These master narratives validate keeping Black children from Austin out and allow OPRF to legitimately hoard educational resources.

Before continuing, let me first address a few concerns readers may have about my using these comments to support the thesis of this Article. First, one might ask, does not the commentators' anonymity suggest that only the most extreme views will be voiced? Well, even though anonymity protects from public shame the most extreme and bigoted views, anonymous commentating may also broaden the views shared in the public deliberation of important issues. Indeed, communications research suggests that anonymity encourages a wider range of opinions to be shared, which nonanonymous posts might discourage.[151] The possibility of public shame that derives from nonanonymity may discourage some commentators from sharing their views, but that does not mean that those people do not hold those views.

Second, one might ask, can the comments sections of online news articles be generalizable to the entire population? Likely not, but I do not claim generalizability. Rather, I argue that some individuals who support aggressive enforcement of boundaries use well-worn racist narratives of Black inferiority to justify their support. These justifications make opportunity hoarding seem fair and shore up an unjust form of structural subordination. The comments illustrate those racist, anti-Black justifications.[152] Even if these justifications reflect

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[150] *Id.* at 72–74 (footnotes omitted).

[151] Arthur D. Santana, *Virtuous or Vitriolic: The Effect of Anonymity on Civility in Online Newspaper Reader Comment Boards*, 8 Journalism Prac. 18, 29 (2014) ("[A]nonymity in comment boards expands the number of participants in the discourse as well as the range of views aired.") (citation omitted).

[152] Media research about these forums that shows how they are important sites of public discourse supports my use of these comments to back my thesis. *See* Patrick Weber, *Discussions in the Comments Section: Factors Influencing Participation and Interactivity in Online Newspapers' Reader Comments*, 16 New Media & Soc'y 941, 942 (2014) ("Commenting on the news is the most common form of participation in contemporary news use, and it is certainly one ofthe most common forms of citizen engagement online.") (citation omitted).

a minority's outlook, one must still ask: Why, if we know the system is unfair, do we allow it to continue? What are the subconscious beliefs behind the support? Furthermore, we know that even a minority of thinkers can have devastating effects on public discourse.[153]

Another concern about generalizability may be that this border differs in material ways from other borders. Of course, borders reflect hyperlocal processes because of distinct local histories. But, the border that separates Oak Park and Austin deserves examination because, given Oak Park's reputation, this community should be the last place to find these types of racist justifications. If stealing education enforcement happens in Oak Park, the chance that stealing education enforcement replicates in less self-proclaimed progressive communities is high.

Third, how do I know that some of the commentators are talking about race if they do not explicitly mention race? I suggest that some commentators use what Ian Haney López identifies as racial dog whistles.[154] The dog whistle metaphor "pushes us to recognize that modern racial pandering always operates on two levels: inaudible and easily denied in one range, yet stimulating strong reactions in another."[155] According to Haney López, dog whistles are codes directed to a particular group or audience.[156] The whistle is a "hidden message" about race that those in the audience can identify as being about race without being explicit.[157] To support my argument that some commentators use racial dog whistles when they do not mention race specifically, I contextualize the comments within the sociological literature about White middle-class people's perceptions of poor Black parents and children in education. I also situate the comments within the specific racial dynamics in the area as illustrated in the *America to Me* documentary.

Lastly, how do I know that some commentators who support stealing education laws are primarily concerned about residency violators from Austin and not from other communities? In the comments sections of the articles I coded, when supporters of the law reference an area, they almost always mention Chicago, even though I found no evidence that the school district ever released the true addresses of students whom it stopped from enrolling or otherwise

[153] The January 6, 2021, riot at the U.S. Capitol shows how a minority of actors can endanger an entire system.

[154] Ian Haney López, Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class (2014).

[155] *Id.* at 3.

[156] *Id.* at 4.

[157] *Id.*

removed to determine that most offenders are from Austin.[158] Nevertheless, some commentators make that assumption explicit: "IF YOU DON'T LIVE IN OAK PARK OR RIVER FOREST, THEN YOU DON'T DESERVE TO GO TO OUR SCHOOLS. . . . Keep your kids in Chicago";[159] "Our problems began when black students started attending ILLEGALLY from the city";[160] "I think that any family who does this should be pursued by the village for the taxes spent educating their kids they ship in from Austin after they are expelled";[161] "Perhaps [OPRF] turned a blind eye to residency requirements, word spread of this permissiveness, and now the problem is too big and needs to be reined in. This town cannot singlehandedly solve greater Chicago's education system inequities";[162] "[Unauthorized nonresident enrollment] explains entirely why property taxes are becoming unsustainable and it is unique to us because of our walking distance proximity to Chicago."[163]

To be sure, the comments I highlight here do not represent all the comments left on these articles. Some commentators question whether removing students from school was the right answer.[164] Others express anger and shock at the most disparaging comments[165] and take other commentators to task

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[158] *District Claims Family Lives Out of Town, Sues for $30K in Tuition*, CBS Chicago (June 7, 2011, 10:41 PM), https://chicago.cbslocal.com/2011/06/07/district-claims-family-lives-out-of-town-sues-for-30k-in-tuition [https://perma.cc/6NDN-HRVV]; *see also* LeAnn Spencer, *Pupils Who Jump Borders Test Schools Weeding out Non-Residents*, Chi. Trib. (July 27, 1999).

[159] Fed Up, Comment to *OPRF Eyes Residency Check*, *supra* note 41 (Nov. 5, 2012, 7:39 AM).

[160] Freespirit from coke park, Comment to *Drug-Sniffing Dogs*, *supra* note 148 (Dec. 31, 2010, 12:53 PM).

[161] no thanks from Chicago, Comment to *'Questionable' Residency*, *supra* note 148 (Jan. 17, 2015, 1:50 PM).

[162] Big picture, Comment to *Verify All Families*, *supra* note 148 (Feb. 3, 2013, 2:23 PM).

[163] Tom MacMillan from Oak Park, Comment to *Residency Cases Rising*, *supra* note 145 (Apr. 30, 2018, 12:20 PM).

[164] "I don't have a solution but I guess I wish there was a way as a society to help provide a decent public education to those who want one. Opening our school doors to everyone at taxpayer expense is not an answer but tossing motivated kids out the door doesn't feel right either." Adam Smith, Comment to *'Questionable' Residency*, *supra* note 148 (June 25, 2014, 9:01 AM).

[165] These comments stated:

> Leave it to this area to put a price tag on a kid's worth. . . . Furthermore, would you all care if the kids were well behaved? Talked "better"? . . . But of course, it comes down to the all-mighty dollar. Fraud? Financial crimes? ARE YOU KIDDING? . . . Your children are watching you—and where your ethics lay.

KR from River Forest, Comment to *Verify All Families*, *supra* note 148 (Jan. 30, 2013, 12:38, 12:45 PM);

> Wow, I am embarrassed by the lack of empathy expressed in the comments

for failing to recognize their privilege.[166] Other commentators, while declaring support for the laws in theory, argued for more open enrollment programs where children enroll in their school of choice and funding follows the child[167] or even scholarships that would allow Austin children to attend OPRF legally.[168] I do not argue, however, that the comments I highlight represent how everyone in the community feels. Rather, my project involves understanding those who support the laws, and why. And, in any case, the laws continue to be on the books and enforced; at least some of these arguments about education as property and racial justifications for the laws are widespread.

Even if the comments do not reflect the attitudes of a majority, they perpetuate the system, both by justifying it to those who otherwise would shy away from racist attitudes and in a subconscious way promoting fears and triggering protective reactions and emotions. The very public expression of racist ideas perpetuates an environment that makes it all but impossible to prompt political leaders to undertake law reforms that would solve these problems of

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> below. Am I really reading an Oak Park newspaper? We privileged (mostly White) folks shake our heads and complain about gangs and crime and parents who don't seem to give a darn. And here we have parents who are so desperate for their kids to be safe and to get a good education—to have a real chance in life—and our first response is to "publicly shame" them?? Am I suggesting that we open the doors wide to non-residents? Of course not. But I am appalled that we're focusing on punitive actions instead of empathic discussion. This is not what Oak Park stands for.

Kathy Müller, Comment to *Residency Cases Rising*, *supra* note 145 (Apr. 27, 2018, 4:59 PM).

[166] Another comment stated:

> Again, put yourselves in the parents[']shoes. You likely have limited education and want better for your child. Not saying it is right—but until you walk one day in thier [sic] shoes stop hi fiving [sic]. Many of the people on this board were born into families with money, advantage and are white. To use baseball analogy. You were born on third, someone got a hit and your [sic] act like you hit a home run. Many of these kids have two strikes with two outs . . .

OP, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 6:27 AM).

[167] A comment in support of open enrollment maintained:

Open enrollment is what other states are using . . . for anyone wanting to go to school out of district there is then state funding that follows the child giving them both school choice AND not having local residents pay for the extra students. I find our desire to keep non-OPers out of our schools to be sadly intolerant Open enrollment, Comment to *Verify All Families*, *supra* note 148 (Jan. 30, 2013, 1:12 PM).

[168] I don't know where the non-resident students come from, if there are any, but I assume their parents send them here because the local schools are of poor quality. And let's face it, Oak Park schools aren't as good as they could be. Those parents must be pretty desperate. Instead of hunting them down, perhaps some nonprofit could be developed to offer scholarships. Oak Park could use an infusion of talented students from the wider Chicago area.

Mary Ellen Eads from Oak Park, Comment to *OPRF Eyes Residency Check*, *supra* note 41 (Nov. 2, 2012, 7:24 PM).

separate and unequal life circumstances and the perpetuation of White supremacist attitudes.

My argument is that the comments presented below illustrate the "us versus them" logic of so-called cultural differences that supports aggressive enforcement of the residency laws. This "us versus them" categorization facilitates opportunity hoarding, in which "members of a categorically bounded network acquire [exclusive] access to a resource that is valuable, renewable, [and] subject to monopoly."[169] These resources include economic capital, social capital, and cultural capital that tend to differentiate school districts from each other.[170] I argue that one way the OPRF community engages in opportunity hoarding is through the maintenance of these categories—us and them, resident and nonresident—that "provid[e] explanations, justifications, and practical routines for unequal distribution of rewards."[171] The following analysis illustrates how cultural beliefs about White superiority and Black inferiority legitimate the unequal distribution of education resources. I return to this theoretical discussion of opportunity hoarding in Part IV.

A. Black Parents

The dominant trope used by some supporters of stealing education laws says that Austin parents—poor Black parents—do not prioritize or value education. Black parents "not caring" about education is a well-worn and common narrative some use to explain why Black children do not perform as well in school as their White counterparts.[172] According to this racist master narrative, Black children's relative academic performance results from deficits in Black parenting, not structural impediments to well-resourced schools.

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[169] TILLY, *supra* note 26, at 10.

[170] *See infra* Part IV.

[171] TILLY, *supra* note 26, at 76.

[172] *See, e.g.*, Dory Lightfoot, *"Some Parents Just Don't Care" Decoding the Meanings of Parental Involvement in Urban Schools*, 39 URB. EDUC. 91 (2004); *see also* Edwin Rios, *Racists in One of America's Richest Counties Are Freaking Out Over a "Forced Busing" Proposal*, MOTHER JONES (Oct. 7, 2019), https://www.motherjones.com/politics/2019/10/racists-in-one-of-americas-richest-counties-are-freaking-out-over-a-forced-busing-proposal/?fbclid=IwAR2r-qOZ-7Rzn6kuf0CKgH5aVyjs0MlqqqPwL-pAFxMGwVvjNSXdcBlN7ZQ [https://perma.cc/C5F9–9SFJ] (reporting a parent's testimony regarding a wealthy district in Maryland and why the district should not embark on an intradistrict busing program aimed to reduce the concentration of poor children in specific schools. Written testimony included many suggestions about the cultural deficits in Black parenting, including "Black families (as a core group) don't value education like other cultural groups."). Other groups too have felt the stigma of "not caring" about education. *See, e.g.*, Richard R. Valencia & Mary S. Black, *"Mexican Americans Don't Value Education!"—On the Basis of the Myth, Mythmaking, and Debunking*, 1 J. LATINOS & EDUC. 81 (2002).

For an example of this discourse, consider the following exchange. One commentator attempts to highlight CPS's institutional dysfunction as a reason for why an Austin parent might lie to gain access to OPRF:

> The schools in poor neighborhoods are poorly equipped, this is a fact. Look at a disparity in terms of access to books and computers. I have been to these schools. I was at a school that had a shortage of toilet paper. How can you expect the most from students when you don't even provide them a way to be clean?[173]

In response, another commentator dismisses this point of view as to why schools' resources matter:

> All schools will not be equal—EVER. Maybe in your utopian dream land with liberal unicorn tears, but not in the real world. Heck, I barely had toilet paper in my dorm IN COLLEGE. That didn't stop anyone from getting an [sic] top notch education. We went out and bought it. If parents can afford to smoke a pack of Newports, they can buy toilet paper.[174]

Here, rather than address the structural problem posed by the original poster—how can children focus on learning when they do not have access to basic hygiene for the eight-plus hours they spend in school?—this response reframes the problem as one about parental priorities.[175] Selfishness defines the narrative; poor Black parents would rather spend money on cigarettes than on their children's education.

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[173] Dylan Bellisle from Forest Park, Illinois, Comment to *Verify All Families*, *supra* note 148 (Feb. 4, 2013, 11:51 PM).

[174] Uncommon Sense, Comment to *Verify All Families*, *supra* note 148 (Feb. 5, 2013, 3:22 PM).

[175] In addition to the stretch analogy of a college student to an elementary, middle, or high schooler, the commentator implies that public schools are not responsible for basic supplies, but their parents are. This argument does not hold water; schools that lack basics like toilet paper likely also lack other supplies, like books and computers, supplies that many parents may not be able to afford to donate to the public school. Parents whose children attend poor schools themselves likely stretch monthly budgets to take care of basic needs in their homes, without anything left over to donate to their local schools. Most perniciously, rather than blame this disparity in resources on poverty per se, this comment suggests that the real reason poor Black parents do not buy basic supplies like toilet paper reflects misplaced priorities, such as in a cigarette habit, and not on their children's education. The reference to Newports is a racial dog whistle; Newport cigarettes are well-known to be the choice cigarette brand among Black smokers. *See, e.g.*, Natasha Noman, *Newport, the Top Cigarette Brand for Black Americans, Is Aggressively Targeting Youths*, Mic (Sept. 14, 2016), https://www.mic.com/articles/154126/newport-the-top-cigarette-brand-for-black-americans-is-aggressively-targeting-youths [https://perma.cc/WE8W-XRBQ].

Priority misalignment also shows up in the belief that poor people refuse to forgo luxuries to better their children's educations. Consider the response to this commentator who highlights the difficulty of a poor person legally residing in Oak Park:

> If a mother goes through the trouble to improperly enroll her child in OPRF, she is doing it in the best interest of her child, rather than send her kid to some horrible Austin school. If she could actually afford to live in Oak Park, she would likely do so, but renting an apartment or flat big enough for a family is not exactly cheap here.[176]

In response, a commentator questions whether such an Austin mother "is doing all she can to afford to live here:"

> Is she paying for cable/satellite? Expensive cell phone? Car payment? Frugal wardrobe? Working hard and educating herself so she can get a better paying job? Once I see the personal sacrifices are being made, then we can talk. If an OP education is that important, the parents will make ALL necessary sacrifices to get it. Or perhaps it's truly not important[.][177]

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[176] Progressive Much? from Oak Park, Comment to *Verify All Families*, *supra* note 148 (Jan. 31, 2013, 10:45 AM).

[177] muntz, Comment to *Verify All Families*, *supra* note 148 (Jan. 31, 2013, 5:46 PM). Another commentator makes a similar, yet less sophisticated response: "If you want to go to school hear [sic], live here. Pretty simple really. Yep, it's too bad for those . . . kids [that were removed], but their parents have made something other than the kids' education the priority." OPDad, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 1:09 PM).

This line of argument finds support in conservative spaces. For example, a publication sponsored by the conservative think tank The Heritage Foundation suggests that being poor in America is not real poverty:

> According to the government's own survey data, in 2005, the average household defined as poor by the government lived in a house or apartment equipped with air conditioning and cable TV. The family had a car (a third of the poor have two or more cars). For entertainment, the household had two color televisions, a DVD player, and a VCR. If there were children in the home (especially boys), the family had a game system, such as an Xbox or PlayStation. In the kitchen, the household had a microwave, refrigerator, and an oven and stove. Other household conveniences included a clothes washer, clothes dryer, ceiling fans, a cordless phone, and a coffee maker. . . .
>
> Poor families certainly struggle to make ends meet, but in most cases, they are struggling to pay for air conditioning and the cable TV bill as well as to put food on the table. Their living standards are far different from the images of dire deprivation promoted by activists and the mainstream media.

Robert Rector & Rachel Sheffield, Heritage Found., Backgrounder No. 2575: Air Conditioning, Cable TV, and an Xbox: What Is Poverty in the United States Today? Executive Summary 1, Main Text 2 (2011). Publications such as this one perpetuates the belief

But for the typical Austin family, forgoing living expenses like cable or a car note will not make Oak Park affordable. For example, a two-bedroom apartment—likely not suitable for a family of four—averages more than $2000 a month in Oak Park.[178] For that rent payment to comprise less than 30 percent of one's income,[179] a family would need to have a net income of approximately $6600 per month. That corresponds to an annual salary that nets $80,000 per year. While that may be barely affordable to a resident of Oak Park, where the median household income is $92,000 per year, it is not nearly as possible for the average resident of Austin, where the median household income is only $32,800 per year, and unemployment hovers at almost 40 percent.[180]

Nevertheless, in the eyes of some community members who support aggressive boundary enforcement, the failure to take the bus, forgo a cell phone, or not have cable television reflects parental educational neglect. Poverty is not the problem, the argument goes, priorities are: "My point is, people across this country seem to find a way to sacrifice for the things they TRULY value. That is true for all income levels. Which begs the question . . . is education truly valued?"[181]

Somewhat bewilderingly, commentators pillory Austin parents for selfishness, laziness, and not making sacrifices because they do not reach beyond Oak Park for their children's education. From the previous commentator:

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that poor people are not *actually* poor, but rather have different priorities than working-class or middle-class people. They also perpetuate the belief that American poverty is not real poverty, as if financial instability can only be judged when a family forgoes air conditioning. The commentator above, however, makes this same argument: if only a parent would take the bus or be hot in the summertime, they could afford to do what the numbers suggest they truly cannot. The gendered nature of the first comment also suggests an underlying concern specifically about Black mothers and notions of the welfare queen. *See infra* note 183 and accompanying text.

[178] *Rent Trend Data in Oak Park, Illinois*, Rent Jungle, https://www.rentjungle.com/average-rent-in-oak-park-il-rent-trends [https://perma.cc/W283–92Q3] (last visited Nov. 7, 2020).

[179] Several real estate website and financial experts suggest spending no more than 30 percent of net income on housing. *See, e.g.*, Kathleen Elkins, *Don't Spend More Than This on Housing, Warns Money Expert*, CNBC (Nov. 27, 2018, 2:41 PM), https://www.cnbc.com/2018/11/27/dont-spend-more-than-this-on-housing-says-david-bach.html [https://perma.cc/8A99-QN5F].

[180] *See* CDS Austin, *supra* note 72, at 5, 8; CDS Oak Park, *supra* note 72, at 5.

[181] Real List, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 1:00 PM). Another commentator goes so far as to suggest that parents who "stole" education are actually abusing their children: "The apologists will say 'oh the parent is just trying to get their children a quality education.' Bull Roar The [sic] parent is wrong for involving their children in criminal conduct and they should be referred to DCFS [Department of Children and Family Services]." Dan Hefner from Oak Park, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 1:41 PM).

> Is it the better education or just the convenience of being right across the border that drives the Austin folks? If they truly valued the better education, they would drive up to [New Trier] or west to Hinsdale Central/South, schools that consistently rank higher than OPRF. That would demonstrate a parent truly vested in what is best for their child. Directing your child to walk 3 blocks west is lazy.[182]

Some of the commentators' discussions about the "crime" of residency violations refer to it as a form of fraud and make specific analogies to welfare fraud and Black mothers. A common racist imagery of Black motherhood is that of the "welfare queen"—a mother who repeatedly bears children and pays for expensive "amenities" through government assistance, all the while being able to work.[183] Seeing an OPRF education as property, an entitlement reserved for private taxpayers who paid for the education, commentators draw on analogies to welfare fraud to explain the harm inherent in residency violations:

> Damn straight [this] isn't fair—neither is going to Jewel [a grocery store] and watching someone with a WIC [an antipoverty food program] card putting their groceries into an Escalade.[184]

While the commentator does not say so specially, using the example of WIC—a program specifically available to women, infants, and children—raises the specter of residency violations as both racial and gendered.

Other commentators express the belief that if a parent is willing to falsify an address, she may also be willing to engage in other forms of immoral behavior:

> Honesty and integrity are the types of things that parents are supposed to teach first and foremost to their children, but that can't

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[182] Real List, Comment to *'Questionable' Residency*, *supra* note 148 (June 25, 2014, 12:32 PM).

[183] For more on the "welfare queen" narrative of poor Black motherhood, see, for example, Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & Soc. Just. 233 (2014); Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 S. Cal. Interdisc. L.J. 257 (2016); Julilly Kohler-Hausmann, *Welfare Crises, Penal Solutions, and the Origins of the "Welfare Queen,"* 41 J. Urb. Hist. 756 (2015); Julilly Kohler-Hausmann, *"The Crime of Survival": Fraud Prosecutions, Community Surveillance, and the Original "Welfare Queen,"* 41 J. Soc. Hist. 329 (2007).

[184] Done from Oak Park, Comment to *Verify All Families*, *supra* note 148 (Jan. 31, 2013, 3:17 PM). Another commentator, who claims to work for a charitable organization, expresses similar dismay: "I have had people blatantly ask me to help them cheat their way into federally funded programs. I saw several examples, repeatedly, os [sic] being abusing the system with no intention to use it I was shocked at the amount of working people we served, true, but there was NO shortage of hustling, lying & misuse[.]" another OP transplant, Comment to *'Questionable' Residency*, *supra* note 148 (June 27, 2014, 11:26 PM).

> be true here since it's the shame-less parents themselves who are liars and thieves by falsifying official paperwork so their kids can attend OPRF for free (while sticking the costs to the taxpayers of OPRF). Doing things like this (lying and/or stealing to get whatever you want) is the worst example any parent can set for their kid and it contradicts what the teachers try to install [sic] into the children every day, sometimes to no avail. So that being said, what is the next crime/sin/wrongdoing to be tolerated by OPRF [. . .] how 'bout cheating on tests?[185]

This linkage is a form of symbolic violence, in which a superordinate group's perceptions of a maligned group associate that group with crime and thus "[a]ny act of criminality then works to legitimate and naturalize those arbitrary associations."[186] To this commentator, a parent who violates residency laws cannot teach other moral lessons like "honesty and integrity." The logic: a parent who lies about one thing—residence to get into school—will lie about other things "to get whatever [they] want." The criminal framing of a parent falsifying an address for their child to attend OPRF works to reinforce the racist stereotype of Black criminality. It is thus not surprising that Oak Park's residence czar is a former police officer.[187]

Rather than framing the situation as one of bravery for risking getting caught, some supporters use the crime frame to mark Black parents who break the law as generally immoral and use it to distinguish themselves as law-abiding citizens.

B. Black Children

While some of the commentators supportive of aggressive enforcement of the school district boundary save their harshest criticism for Black parents, they also employ a racist description of Black children's intellectual inferiority and negative cultural proclivities to justify keeping Austin children out of OPRF. As one commentator remarks, "I chose to live in the oak park/river forest area so

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[185] Bruce O'Brien, Comment to *Residency Cases Rising*, *supra* note 145 (Apr. 26, 2018, 3:45 PM).

[186] John Hagan, Ron Levi & Ronit Dinovitzer, *The Symbolic Violence of the Crime-Immigration Nexus: Migrant Mythologies in the Americas*, 7 Criminology & Pub. Pol'y 95, 99 (2008); *see also* Khalil Gibran Muhammad, The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America (2010) (explaining the long history of the American cultural association between Blackness and criminality).

[187] Terry Dean, *OPRF Taps Retired Cop as Residency Officer*, www.OakPark.com, (July 15, 2014, 10:00 PM) https://www.oakpark.com/News/Articles/7–15–2014/OPRF-taps-retired-cop-as-residency-officer [https://perma.cc/5BH7-L93G].

my children can go to school with other children from OP/RF."[188] This suggests Oak Park children are somehow superior to non-Oak Park children. When deciding where to send a child to school, this parent worries not only about academics, but also about their child's peers.

Rhetoric about Black children concerning stealing education is tame in comparison to the rhetoric about Black parents. Yet the discourse is no less suggestive of pernicious racial stereotypes that serve to distinguish between OPRF students who live in Oak Park legally and Austin students who may be attending illegally.

Some commentators express concern that students from Austin cannot keep up academically. They presume Austin children to be less educationally prepared than OPRF students and, thus, more expensive to educate than OPRF students—another reason to reject them:

> [S]tudents who jump [from] Austin often do not have the same level of academic and social preparation as the kids who came up through the OP and RF schools. The resources required to manage behavior and remediate learning deficits can make them even more expensive for the HS to educate than local kids.[189]

The idea that Black children have more behavioral and learning "deficits" is a common belief used to justify opportunity gaps.[190] This belief often plays out in the overrepresentation of Black children in some special education categories,[191] increased contacts with law enforcement in schools,[192] and disproportionate suspensions and expulsions.[193] Unfortunately, this commentator's

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[188] Brendan, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 8:13 AM).

[189] OP Transplant, Comment to *'Questionable' Residency*, *supra* note 148 (June 25, 2014, 11:17 AM).

[190] This sentiment, that Black children are somehow less able to learn, is expressed elsewhere and explicitly ties the criticism to race. *See* LaToya Baldwin Clark, Opinion, *District Policy Shuts Out Some Students From UC/CSU Eligibility*, Palo Alto Wkly., Dec. 2, 2011, at 17, https://issuu.com/paloaltoweekly/docs/2011_12_02.paw.section1 [https://perma.cc/D5QR-QSPD].

[191] *See* LaToya Baldwin Clark, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 Harv. C.R.-C.L. L. Rev. 381, 396–400 (2018) (explaining statistics on racial differences in special education placements and resources spent by disability category).

[192] *See* Kimberlé Williams Crenshaw, Priscilla Ocen & Jyoti Nanda, Afr. Am. Pol'y F. & Ctr. For Intersectionality & Soc. Pol'y Stud., Black Girls Matter: Pushed out, Overpoliced, and Underprotected (2015), https://44bbdc6e-01a4–4a9a-88bc-731c6524888e.filesusr.com/ugd/b77e03_e92d6e80f7034f30bf843ea7068f52d6.pdf [https://perma.cc/6QPG-R457]; Jason P. Nance, *Students, Police, and the School-To-Prison Pipeline*, 93 Wash. U. L. Rev. 919 (2016).

[193] Daniel J. Losen, Cheri Hodson, Michael A. Keith II, Katrina Morrison & Shakti

beliefs may actualize, not because Black children inherently misbehave more often or have learning "deficits," but because schools' engagement with Black children leads to inappropriate special education placements,[194] tracking into lower-level classes,[195] and over surveillance for bad behavior.[196]

Some commentators perceive these differences between Austin children and Oak Park children to be detrimental to the community at large if the children attend school together:

> [A]s non-PC this [sic] may be, I'd bet a high percentage of non-residents are performing below average which further brings down the overall quality of the school which indirectly affects housing values of the entire village. The intangible costs of this issue are huge.[197]

While the commentator says her concerns are about "intangibles," her concerns about property values are very tangible and perhaps, if research supports them, reasonable. But the impact of test scores on property values

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Belway, C.R. Project, Are We Closing the School Discipline Gap? (2015).

[194] Not only do Black children experience disproportionate special education identification, but they also experience more restrictive special education placements, meaning more time outside of the general education classroom than do non-Black students. *See* Baldwin Clark, *supra* note 191, at 396–400.

[195] *See* Angelia Dickens, *Revisiting* Brown v. Board of Education*: How Tracking Has Resegregated America's Public Schools*, 29 Colum. J.L. & Soc. Probs. 469 (1996).

[196] For example, even Black preschoolers are expelled from day care centers at disproportionate rates. U.S. Dep't Educ. Off. for C.R., 2013–2014 Civil Rights Data Collection: A First Look 3 (2016), https://www2.ed.gov/about/offices/list/ocr/docs/2013–14-first-look.pdf [https://perma.cc/7FHF-42KG] (showing that, in the 2013–2014 school year, preschools suspended Black children at rates 3.6 times that of White preschoolers, and that although Black preschoolers were only 19 percent of the preschool population, they comprised 47 percent of preschoolers receiving one or more out-of-school suspensions). Teachers also tend to perceive more misbehavior when evaluating young children's behavior when that child is Black. Walter S. Gilliam, Angela N. Maupin, Chin R. Reyes, Maria Accavitti & Frederick Shic, Yale Univ. Child Study Ctr., Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions? (2016), https://medicine.yale.edu/childstudy/zigler/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_276766_5379_v1.pdf [https://erma.cc/RE8Z-5T6U].

[197] Uncommon Sense, Comment to *Residency Process Under Review*, *supra* note 148 (Nov. 5, 2013, 1:46 PM).

is difficult to measure,[198] and studies that examine the issue are mixed as to the magnitude of the effect of test scores on property values.[199]

But the research on the relationship between a school's racial composition and home prices, independent of test scores, appears to be more robust.[200] Using experimental methods, one study found support for what the authors called a "pure race" effect on White parents' school choice.[201] They found that White parents prefer schools with fewer Black students compared to schools that are identical on all other measures but have more Black students.[202] In another study of a school choice process, the authors found that 75 percent of the variation in which schools White parents preferred could be explained by the percentage of Black students in available schools.[203] These studies suggest that White parents' school concerns transcend test scores. White parents may be willing to pay a home price premium as the percentage of Black students decreases.

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[198] *See* Phuong Nguyen-Hoang & John Yinger, *The Capitalization of School Quality Into House Values: A Review*, 20 J. Hous. Econ. 30 (2011). Methodological issues abound when trying to directly compare housing values on either side of a school district boundary line. School district boundaries reflect not only different schools, but different communities altogether. For example, Oak Park and Austin do not differ only in school quality, but also have different demographics, housing stock, municipal governance, and so forth. *See supra* tbl. 2. One solution to the methodological problem of comparing unlike neighborhoods is to account for those differences in neighborhoods by focusing on similar homes distinguished only by the border. Sandra E. Black, *Do Better Schools Matter? Parental Valuation of Elementary Education*, 114 Q.J. Econ. 577 (1999).

[199] *See, e.g.*, Patrick Bayer, Fernando Ferreira & Robert McMillan, *A Unified Framework for Measuring Preferences for Schools and Neighborhoods*, 115 J. Pol. Econ. 588, 588–89 (2007) (finding that home buyers will pay a 1 percent premium in exchange for a 5 percent increase in district test scores); Black, *supra* note 198, at 578 (finding that parents are willing to pay a premium of approximately 2.1 percent for a 5 percent difference in district test scores).

[200] *See* Thomas J. Kane, Stephanie K. Riegg & Douglas O. Staiger, *School Quality, Neighborhoods, and Housing Prices*, 8 Am. L. & Econ. Rev. 183, 185 (2006) (showing that the "effect of schools on housing values operates through the characteristics of the population living in different neighborhoods," including racial characteristics); *see also* Jack Doughtery, Jeffrey Harrelson, Laura Malony, Drew Murphy, Russell Smith, Michael Snow & Diane Zannoni, *School Choice in Suburbia: Test Scores, Race, and Housing Markets*, 115 Am. J. Educ. 523, 539–40 (2009) (finding that, over a five-year period, test scores' impact on housing values in one Connecticut school district declined compared to their impact over the previous five years while, during the same time period, a school's racial composition became over seven times as influential on housing prices).

[201] Chase M. Billingham & Matthew O. Hunt, *School Racial Composition and Parental Choice: New Evidence on the Preferences of White Parents in the United States*, 89 Socio. Educ. 99 (2016).

[202] *Id.* at 111.

[203] Salvatore Saporito & Annette Lareau, *School Selection as a Process: The Multiple Dimensions of Race in Framing Educational Choice*, 46 Soc. Probs. 418, 424 (1999).

Another theme in the comments is that Austin students themselves might be uncomfortable in OPRF because of cultural differences between bonafide Oak Parkers and Austin residents. One commentator questions why Austin parents would choose OPRF instead of a school that is more like Austin demographically: "How many of those parents are shipping their kids to Proviso East, where they might be a better social fit?"[204] Proviso East is 98 percent Black and Latinx, and 70 percent of their students are low-income.[205] The conclusion is that if Austin parents "really" care about their children, they would not intentionally send their children to a school where they would feel like outsiders.

But it would likely be the racially hostile learning environment causing those feelings of exclusion. As revealed in the *America to Me* documentary, within OPRF, students and staff believe that teachers assumed different "cultures" between racial groups. For example, cheerleading is a predominately Black activity, while the drill team is a predominately White activity. The coach for both teams, a White teacher, treats the girls in the activities differently, according to a rare White student on the cheerleading team:

> The coach that I used to know from when I was twelve . . . she was a lot nicer. She did tell me that she has to put herself in [a place of] authority more because all the girls are Black and she has to . . . put up her own fight to makes sure that she gets what she wants.[206]

Differences in cultures within the school need not lead to more punitive practices for Black children as compared to White children. Yet this punishment stretched to how Black administrators perceived their positions in the school concerning culture. In describing her reasons for resigning, consider the words of a Black former assistant principal: "Every place has a culture. And this school is grounded on White cultural norms. If I don't show up thinking, talking, being, feeling, White, specifically as a White male in this building, there are repercussions connected to that."[207]

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[204] Done from Oak Park, Comment to '*Questionable' Residency*, *supra* note 148 (June 25, 2014, 1:21 PM).

[205] *Racial/Ethnic Diversity: Proviso East High School*, Ill. Rep. Card, https://www.illinoisreportcard.com/school.aspx?schoolid=060162090170001&source=studentcharacteristics&source2=studentdemographics [https://perma.cc/5JK4-A8MH]; *Low Income Students: Proviso East High School*, Ill. Rep. Card, https://www.illinoisreportcard.com/school.aspx?source=studentcharacteristics&source2=lowincome&Schoolid=060162090170001 [https://perma.cc/E2EY-SA8H] (select "5 Year Trend" to view 2018 and 2019 data).

[206] *America to Me*: *What's the Big Deal About Oak Park?*, STARZ, at 36:55 (Aug. 26, 2018), https://www.starz.com/us/en/play/39233.

[207] The administrator continued: "Some of things that I experience as an administrator in this building . . . I feel more affinity to a black girl in a classroom than other administrators. I

Even when some supporters of stealing education laws talk about Black children, the conversation almost always returns to Black parents. One commentator argues that Austin children would not benefit from the OPRF educational opportunities because of their parents' influence:

> One of the main reasons kids fall behind is because of poor "learning culture." One of the reasons kids in the suburbs do well is due to positive "learning culture." When parents have expectations of their children to do well, kids tend to do well. When peers are doing well, it pushes kids to compete. When parents don't care, kids will see no value in learning, and do poorly.[208]

In another comment, this commentator continues:

> The students who enter towns from low income communities and do well are the exception, not the rule. This shows that merely moving low income families into an area with higher performing schools with more resources is not the magic bullet. There needs to be a change in the culture of parenting in those areas for there to be progress. Without that, nothing positive will happen.[209]

In other words, Black low-income students cannot get the benefit of a "better" school because after school, they ultimately go home, and that home does not prioritize education.

Parenting culture as the key to a child's academic success is a common theme some individuals use to explain why some racial and ethnic groups are more academically successful than others. Law professors Amy Chua and Jed Rubenfeld argue that three cultural traits associated with groups can explain life success: (1) a superiority complex; (2) insecurity; and (3) impulse control.[210] While proponents of this theory claim that neither race nor class distinguishes between "good" cultures and "bad" cultures,[211] they often leave Black American culture off the "good" list.

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guess I will say to the next person who has this job [crying, asked if she wants to stop, shakes head] This is who I am. [Pause] Our kids, our faculty and staff and anyone who works in this building deserve to come in to a space where they can bring all of who they are authentically. There is a difference between living and surviving. What if all of our kids could 'live' here? What if all our faculty and staff can 'live' here and not survive?" *America to Me: Stranger in a Room*, STARZ, at 34:40 (Sept. 2, 2018), https://www.starz.com/us/en/series/america-to-me/season-1/episode-2/39573.

[208] Tax payer, Comment to *Verify All Families*, *supra* note 148 (Feb. 4, 2013, 8:28 PM).

[209] Tax payer, Comment to *Verify All Families*, *supra* note 148 (Feb. 4, 2013, 3:17 PM).

[210] Amy Chua & Jed Rubenfeld, The Triple Package: How Three Unlikely Traits Explain the Rise and Fall of Cultural Groups in America (2014).

[211] *See, e.g.*, *id.* at 2 (arguing that the triple package cannot be racist because they there

Consider the following commentator who distinguishes between Black and Jewish culture and Black orientation toward academic achievement:

> Jewish culture embraces learning, and I'll bet Jewish families rank above average in income. Here's a contrast in OPRF's cafeteria: A group of black students at a table. A freshman says she just got an "A," and one of the down-and-out culture says, "You tryin' be like whitey?"[212]

This commentator's words reflect a now-debunked belief that only Black children experience the social pressures against high-achieving students.[213] Yet this belief is false: Black children as a group are achievement-focused, and the social pressure against high-achieving students transcends race.[214]

One commentator suggests that Black students from Austin, especially Black boys, need a different type of education not available at OPRF, one that is more compatible with their needs:

> Just giving kids access to higher performing schools does not change having a screwed up home life. All that occurs is the "gap" that constantly gets discussed now. What is really needed are boot camp like schools i.e., Urban Prep [an all-boys public charter network of schools in Chicago] that are based on tried and true approaches—all male, harsh discipline, and focus on reading, writing, and math. Keep the new math and other mumbo jumbo stuff out.[215]

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are "[B]lack and Hispanic subgroups in the United States far outperforming many White and Asian subgroups.").

[212] Jim from Oak Park, Comment to *Verify All Families*, *supra* note 148 (Feb. 6, 2013, 11:57 AM).

[213] *See* Signithia Fordham & John U. Ogbu, *Black Students' School Success: Coping With the "Burden of 'Acting White,'"* 18 Urb. Rev. 176 (1986).

[214] Karolyn Tyson, William Darity, Jr. & Domini R. Castellino, *It's Not "A Black Thing": Understanding the Burden of Acting White and Other Dilemmas of High Achievement*, 70 Am. Socio. Rev. 582 (2005).

[215] Uncommon Sense, Comment to *Verify All Families*, *supra* note 148 (Feb. 4, 2013, 1:19 PM). Urban Prep is an all-boys public charter network of schools in Chicago. *About*, Urb. Prep Acads., urbanprep.org/about [https://perma.cc/GR5L-UWQX]. Its motto is "We Believe," which it says is "a constant reminder that Urban Prep students will not fall into the trap of negative stereotypes and low expectations." *Id.* It boasts of 100 percent college acceptance rates for its graduating seniors, but a founding teacher at the school recently suggested that those numbers are misleading:

> For starters, the reality is only 12.8% of Urban Prep students at the West campus met Illinois' college readiness benchmarks. Further, only about two-thirds of the class of 2017 at Urban Prep's West campus actually enrolled in college. A little less than 44% of the school's 2016 graduates were persisting in college based on the latest report.

The comment reveals several things about how some see Black children's opportunities in education. First, the commentator supports "boot camp"-like schools for Black children, suggesting that Black children, more than anything, need discipline and order.[216]

Second, the commentator's dismissal of "new math and other mumbo jumbo" suggests that Black children cannot learn according to more innovative methods, a rift off the "Black children cannot learn" theme. Third, while the debates about "new math"[217] and pedagogical innovations under Common Core[218] are not necessarily about race, this commentator suggests, rather paternalistically, that Black students might be harmed by new and innovative teaching and learning methods.

In sum, like the stereotypes used against Black parents, supporters of aggressive enforcement of stealing education laws perceive a clear cultural demarcation between White and middle-class Oak Parkers and Black and poor

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Chezare A. Warren, *Chicago's Urban Prep Academy—Known for 100% College Acceptance Rates—Put Reputation Ahead of Results*, Chi. Rep. (May 23, 2019), https://www.chicagoreporter.com/chicagos-urban-prep-academy-known-for-100-college-acceptance-rates-put-reputation-ahead-of-results [https://perma.cc/3YQN-W7D5].

[216] *See* Warren, *supra* note 215. Charter networks like Urban Prep that serve Black and Latinx students often believe that the only way Black children can learn is through "no-excuses" education, where children are

> required to wear uniforms, sit straight, with their hands folded on the table, and their eyes continuously on the teacher. At breaks, they walk silently through the halls in single-file lines. Students who follow these stringent expectations are rewarded with privileges, while violators are punished with demerits, detentions, and suspensions.

Joanna Golann & Mira Debs, *The Harsh Discipline of No-Excuses Charter Schools: Is It Worth the Promise?*, Educ. Wk. (June 9, 2019), https://www.edweek.org/ew/articles/2019/06/09/the-harsh-discipline-of-no-excuses-charter-schools.html [https://perma.cc/CB2D-7V6H]. Such a punishing environment may do more harm than good: charter schools like Urban Prep suspend Black children four times as often as White students, Daniel J. Losen, Michael A. Keith II, Cheri L. Hodson & Tia E. Martinez, Ctr. C.R. Remedies, Charter Schools, Civil Rights and School Discipline: A Comprehensive Review 6 fig. 1 (2016), contributing to the school-to-prison pipeline rather than disrupting it. *See also* Geoff Decker, Stephanie Snyder & Sarah Darville, *Suspensions at City Charter Schools Far Outpace Those at District Schools, Data Sho*w, Chalkbeat (Feb. 23, 2015, 4:38 AM), https://chalkbeat.org/posts/ny/2015/02/23/suspensions-at-city-charter-schools-far-outpace-those-at-district-schools-data-show [https://perma.cc/9EJH-BTUV].

[217] *See* CBSNews.com Staff, *New, New Math = Controversy*, CBS News (May 28, 2000, 6:22 PM), https://www.cbsnews.com/news/new-new-math-controversy [https://perma.cc/Q22G-AKWN].

[218] *See Controversy Over Common Core Gains Momentum*, Educ. Corner, https://www.educationcorner.com/common-core-controversy.html#:~:text=Common%20Core%20recently%20came%20under,like%20the%20Affordable%20Care%20Act [https://perma.cc/5YKQ-V7RZ].

nonresidents. First, they presume Black children to be academically behind Oak Park students, with little prospect of catching up. Second, they assume that Black parents hold negative values around education. Third, they believe Black children require harsh discipline and traditional, rote pedagogy. And lastly, commentators consider Black children from outside Oak Park to be culturally different—involved in drugs and gangs and unable to leave behind the Austin culture when they enter OPRF. The end conclusion: "they" should not be let into "our" schools. Black children do not belong in schools like OPRF.

C. Black Spaces

Austin's social problems shape how some supporters of stealing education laws perceive residency violations. Commentators express contempt toward Austin as a crime-ridden space of deviant behavior. Austin's woes, according to some supporters of the stealing education laws, illustrate why the laws need to be aggressively enforced. Specifically, they believe that Austin, a Black and economically depressed community, reflects a different way of life that is incompatible with the Oak Park lifestyle.

Commentators cite concerns about crime following Austin students to the detriment of Oak Park students. In one comment, a self-described OPRF graduate complains about how students from Austin treated him and other White kids:

> Most white kids are terrorized at least 4–6 times during their 4 year stint, or they were like me and attacked and viciously bullied in the stairway quarterly. I think that any family who does this should be pursued by the village for the taxes spent educating their kids they ship in from Austin after they are expelled.[219]

For this graduate, his troubles and those of his fellow White students can be directly blamed on non–Oak Parkers, and he implies that the non–Oak Parkers are Black children from Austin.

Another commentator expresses concern that the Oak Park police would struggle to "keep track" of non–Oak Park students from predominately Black and Latinx neighboring communities:

> It is difficult enough for the oak park and river forest police to know the students in the area and their behavior. Now throw in kids from Berwyn, Austin, Maywood, Galewood, etc and it becomes impossible to keep track of these kids.[220]

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[219] no thanks from Chicago, Comment to *'Questionable' Residency*, *supra* note 148 (Jan. 17, 2015, 1:50 PM).

[220] Brendan, Comment to *Verify All Families*, *supra* note 148 (Feb. 3, 2013, 9:25 AM).

While this commentator did not explicitly name race, for Oak Parkers, the dog whistle rings clear given the racial demographics of the communities he references: Berwyn is 65 percent Latinx;[221] Maywood is 68 percent Black;[222] and Galewood is 35 percent Black and 41 percent Latinx.[223] Because the commentator presumes this influx to be non-White, their fear that the police cannot "keep track" means that the nonresidents will blend in with the resident non-White students, students who already need to be surveilled. The influx adds to the police's surveillance work.

To be sure, violence drives many Black residents out of the neighborhood. In response to a comment suggesting the commentator might too lie to get into a better school district ("Maybe parents send their kids across the border so they're less likely to get killed? I would probably do the same"),[224] a commentator states incredulously:

> Really? Is that what you'd do? Because a lot of *us* worked really hard so we wouldn't have to raise our kids in dangerous neighborhoods. But you're in favor of cheating other people into paying for *your* kid's education . . . .[225]

Another commentator expresses concern about this dangerous neighborhood following Austin students: "Is there a beef with a gang and a student outside the district? No one will know until something horrible happens."[226]

Some supporters of stealing education laws contrast their schools with CPS schools to claim cultural superiority. For example, a former CPS parent complains about Chicago parents who, allegedly, did not sacrifice as she did:

> My family moved from Chicago to Oak Park specifically to get away from CPS and enroll in a better school system, and I don't want resources diverted from my children by Chicago families looking to border-jump. Our "tuition" is built into the taxes we pay, and no one

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[221] *QuickFacts: Berwyn City, Illinois*, U.S. Census Bureau, https://www.census.gov/quickfacts/berwyncityillinois [https://perma.cc/P946-H2NJ] (last visited Feb. 22, 2021).

[222] *QuickFacts: Maywood Village, Illinois*, U.S. Census Bureau, https://www.census.gov/quickfacts/maywoodvillageillinois [https://perma.cc/6TCP-DJ3H] (last visited October 23, 2020).

[223] *Race and Ethnicity in Galewood, Chicago, Illinois (Neighborhood)*, Stat. Atlas, https://statisticalatlas.com/neighborhood/Illinois/Chicago/Galewood/Race-and-Ethnicity [https://perma.cc/CTV6-PAPD] (last visited Nov. 8, 2020).

[224] Maybe, Comment to *'Questionable' Residency*, *supra* note 148 (June 25, 2014, 1:16 PM).

[225] OP Transplant, Comment to *'Questionable' Residency*, *supra* note 148 (June 25, 2014, 3:02 PM) (emphasis added).

[226] Brendan, Comment to *Verify All Families*, *supra* note 148 (Feb. 3, 2013, 9:25 AM).

> who lives outside our borders should be allowed to commit fraud and get a free ride.[227]

Similarly, while another parent expresses "great compassion for those trying to escape failing schools," she nonetheless believes that her family's multi-generational sacrifice and investment in the schools makes her children more worthy of access to OPRF than Austin children:

> [M]any of us are holding on by fingernails to get our kids through their OP educations in which we have invested great time and treasure for decades . . . . It is not my children's full bellies that destroyed Westside Schools, and we are eating lots of canned goods to afford ours. I have great empathy, but that is all many of us can give after funding OP schools and services for 25 years. D200 [a short form name for OPRF] is far too expensive and inefficient a charity vehicle.[228]

This animosity toward Chicago and its schools permeates discussions about stealing education enforcement. For example, some commentators recognize CPS's dysfunction, but argue that CPS's problems are not their problems:

> I now pay too damn much money to live in this town and send my kids to Oak Park schools to have someone who lives in Austin attend OP schools because Chicago is too screwed up to care enough "about the kids" to run a decent school system.[229]

Likewise, some supporters of stealing education laws express their resentment about their proximity to Austin, believing they are being punished as a result of the closeness. Some even argue that the proximity to Austin is the reason OPRF uniquely faces this problem:

> It's truly lazy parents in Austin who merely direct their kids to the nearest suburban school. I see no reason for OP to be punished (more so) for its proximity to Austin. I would give them props if they drove their kids back/forth to Hinsdale Central, LTHS, New Trier every day. That takes sacrifice/commitment. That would show me

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[227] Anna from Oak Park, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 10:35 AM).

[228] Jenna Brown Russell, Comment to *Residency Cases Rising*, *supra* note 145, (Apr. 27, 2018, 6:06 PM).

[229] Done from Oak Park, Comment to *Verify All Families*, *supra* note 148 (Jan. 31, 2013, 1:55 PM).

> they truly cared. Instead they point their kids to walk a few blocks west and OP foots the bill. That we cannot tolerate. That's laziness.[230]

Even though these comments do not reference race specifically, in this context, talking about Austin is talking about race. Sociologists have studied the confluence of place with race in Chicagoland; a study on racial discrimination in employment showed how Chicago area employers used job applicants' city addresses as racial proxies to construct racist narratives about urban Black men as "unstable, uncooperative, dishonest, and uneducated."[231] Likewise, commentators with concerns about stealing education seem to believe that even if you take the student out of Austin, you cannot take the Austin out of the student.

For example, one commentator, while acknowledging a student's reasonable desire to attend a better school than that available in Austin, argues that the student really would not be escaping Austin anyway:

> You have a point about the kids who maybe look at their surroundings and hop the border for what they know is better opportunity but cannot obtain. I feel bad for those kids. But the idea that it's safer for those kids at OPRF is an illusion. They still have to walk through Austin. They still have to live in Austin. How will the locals perceive the "sell-out" who thinks he/she is better than them?[232]

In sum, some supporters of the stealing education apparatus make liberal use of racial stereotypes about differences between Oak Parkers and Austin residents, and between Oak Park and Austin. Black parents do not have the right values, Black children are unprepared, and Austin, as a Black neighborhood, is culturally incompatible with Oak Park culture. These stereotypes show that the school district boundary between the two communities needs to be protected not only for reasons of school district accountability but because that

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[230] muntz, Comment to *Verify All Families*, *supra* note 148 (Feb. 4, 2013, 9:53 AM).

[231] Joleen Kirschenman & Kathryn M. Neckerman, *"We'd Love to Hire Them, But . . . ": The Meaning of Race for Employers*, *in* The Urban Underclass 203, 204 (Christopher Jencks & Paul E. Peterson eds., 1991).

[232] Real List, Comment to *'Questionable' Residency*, *supra* note 148 (June 26, 2014, 2:13 PM). To be sure, peril may befall Austin children who must walk through Austin to attend a school not in Austin. Carla Shedd's ethnography of Chicago teenagers' travels to and from school shows that, for many teens in dangerous neighborhoods, the road to school and back home is filled with anxieties about their physical safety. *See* Carla Shedd, Unequal City: Race, Schools, and Perceptions of Injustice 38–40 (2015). Given this danger, in 2010, Mayor Richard Daley created the "Safe Passage" program, which "position[s] adults along the paths that kids took to and from school." *Id.* at 20. Even with the program, however, Shedd's work shows that there is still "danger[] . . . crossing neighborhood boundaries for educational purposes." *Id.*

boundary represents a cultural boundary across which the two communities are incompatible.

IV. Stealing Education, Hoarding Opportunity

Supporters of stealing education laws might take issue with the above analysis, pointing to race-neutral justifications for why districts must enforce the law. Is not the problem *really* about school funding and the local administration of education? Is the problem *really* about race? Why is it not okay to restrict education only for *our* kids? *Our* taxes fund schools, and schools reflect *our* community's preferences and priorities, so aren't we justified in keeping those resources and control among *our* families and children?

Certainly, in affluent communities like Oak Park, homeowners' property tax revenue represents the bulk of per-pupil spending, while other sources represent the bulk of per pupil spending in relatively poorer communities. In Oak Park, local property tax revenue provides 79 percent of the district's revenue,[233] and the out-of-district tuition set by the state roughly reflects the per capita contribution of local property taxes to school expenditures.[234] For a nonresident to attend OPRF, their parent must pay over $22,000 per year.[235] In the other direction, for a child who lives in Oak Park to attend school in CPS costs a parent about $13,000 per year.[236] An education in Oak Park is worth more in terms of dollars than an education from a CPS school. Accordingly, Oak Park

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[233] *District Finances: Revenue Percentages: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/District.aspx?source=environment&source2=revenuepercentages&Districtid=06016200013 [https://perma.cc/AK6E-PBBP] (select "View details" to see property tax information) (last visited May 14, 2021).

[234] *Table 23: Illinois Public School Per Capita Tuition Charge (PCTC) and Operating Expense Per Pupil (OEPP) by District, 2017–2018*, Ill. State Bd. of Educ., https://www.isbe.net/Documents/Il-Public-Schools-Per-Capita-Tuition-Charge-PCTC-Operating-Expense-PP-18.pdf#search=tuition [https://perma.cc/AQX2-SW3T]; *Finance, Budgets & Funding: Operating Expense Per Pupil (OEPP), Per Capita Tuition Charge (PCTC), and 9 Month Average Daily Attendance (ADA)*, Ill. State Bd. of Educ., https://www.isbe.net/Pages/Operating-Expense-Per-Pupil.aspx [https://perma.cc/Z9GG-LL5Q] ("[The per capita tuition charge is [t]he amount a local school district charges as tuition to nonresident students as defined by Sections 18–03 and 10–20.12a of the School Code. The per capita tuition charge is determined by totaling all expenses of a school district . . . for the preceding school year less expenditures not applicable to the regular K–12 program (such as adult education and summer school), less offsetting revenues from state sources, except those from the Common School Fund, less offsetting revenues fromfederal sources except those from federal Impaction Aid, less revenues from student and community services, plus a depreciation allowance and dividing this amount by the nine-month ADA for the year.").

[235] *Table 23: Illinois Public School Per Capita Tuition Charge (PcTC) and Operating Expense Per Pupil (OEPP) by District, 2017–2018, supra* note 234, at 156.

[236] *Id.* at 158.

homeowners and taxpayers predictably want "their" tax dollars to only pay for "their" children. Indeed, this is often exactly how school district representatives across the country justify the exclusion.[237]

Rarely do the school district officials explicitly name race as a factor in their analysis of education as property. Yet they most certainly know that school funding inextricably connects to race and class precisely because of the relationship between property and race-class residential segregation. A school district like CPS has more difficulty adequately funding its schools given its property tax base. That is, the value of the homes upon which taxes are levied is lower in CPS than they are in OPRF. Even if the tax *rates* were similar, reflecting a shared belief in the importance of education, the amount *raised* per student would be considerably less in CPS than in OPRF. OPRF officials must be aware that these differences reflect histories of racist housing development.[238]

Furthermore, constitutionalizing local administration of education is far from race-neutral or class-neutral given its race-class-conscious pedigree. For example, in *Milliken*, Michigan sought to bus children between almost all-Black Detroit and its surrounding, predominately White suburbs to effectuate desegregation in Detroit.[239] Practically, the only way to achieve racial integration in Detroit was to involve surrounding White suburbs. But the U.S. Supreme Court rejected Michigan's approach:

> Boundary lines may be bridged where there has been a constitutional violation calling for interdistrict relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local

[237] Baldwin Clark, *supra* note 23, at 410 (showing three ways in which school district officials use property taxes to justify enforcing attendance boundaries: "First, officials treat education as *transferrable*, such that a taxpayer, by virtue of his contribution to the school district, assigns his or her interest in public education to the children in the district. Allowing children who do not live in the district to attend the district's schools violates this taxpayer right. Second, officials acknowledge a taxpayer's right to *use and enjoy* education. Homeownership gives taxpayers control over their community's education, such that school district officials and law enforcement officials alike treat taxpayers as fiduciaries to which they owe protection. Lastly, officials treat education as property by allowing taxpayers to *lawfully exclude* others, particularly through the coercive machinery of civil and criminal penalties.").

[238] *See* Rothstein, *supra* note 36; Douglas Massey & Nancy Denton, American Apartheid: Segregation and the Making of the Underclass (1993) (explaining how housing laws and policies of the early twentieth century isolated Black populations).

[239] Milliken v. Bradley, 418 U.S. 717, 717–18 (1974).

> autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process.[240]

Likewise, the Supreme Court held in *San Antonio v. Rodriguez* that, while the Texas school financing scheme through property taxes led to stark inequalities between school districts, such a scheme did not violate the U.S. Constitution's Fourteenth Amendment.[241] Furthermore, the Court stated:

> The merit of local control was recognized last Term . . . . Mr. Justice Stewart stated there that '[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society.' The Chief Justice, in his dissent, agreed that '[l]ocal control is not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well.[242]

Both *Milliken* and *Rodriguez* correctly state that school district borders are not arbitrary or only for political convenience. But the opinions ignore how spatial borders are both physical and symbolic representations of historic and contemporary institutional racism and social stratification[243] that keep people in their place physically, socially, and culturally. Borders create "geograph[ies] of opportunity,"[244] in which only legitimate community members can access resources. Borders sequester opportunities and create the "racial-spatial divide," a subordinating "social arrangement in which substantial ethno-racial inequality in social and economic circumstances and power in society is combined with segregated and unequal residential locations across racial and ethnic groups."[245]

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[240] *Id.* at 741–42. *But see* Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 Howard L.J. 705, 719 n. 72 (2004) (arguing that although the Court in *Milliken* declared local control to be "deeply rooted," the concept did not emerge until the Court's 1972 decision in *Wright v. Council of City of Emporia*: "Up to that point, the most notable education cases decided by the Supreme Court not only never mentioned local control, but could hardly be characterized as deferential to local control.").

[241] *Id.* at 55 ("The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. We hold that the Texas plan abundantly satisfies this standard.") (citation omitted).

[242] *Id.* at 49 (citations omitted).

[243] *See* Pierre Bourdieu, *Social Space and Symbolic Power*, 7 Socio. Theory 14 (1989); Pierre Bourdieu, *Social Space and the Genesis of Appropriated Physical Space*, 42 Int'L. J. Urb. & Reg'l Rsch. 106 (2018). *See also* Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841, 1844 (1994) (arguing that such political geographies are "oppressive and disempowering" tools of race and class subordination).

[244] Shedd, *supra* note 232, at 3 (footnote omitted).

[245] *Id.* at 16.

The stealing education apparatus is a key institutional mechanism of opportunity hoarding that reinforces these physical and symbolic borders across the racial-spatial divide.

How? Stealing education laws allow for opportunity hoarding through categorical stratification between residents and nonresidents.[246] Some of those who support these laws defend hoarding by alluding to commonly held beliefs about White supremacy and Black inferiority. These beliefs justify why one community deserves better opportunities than the other. Given the master narratives that come to define race-class groups, the distinction between resident and nonresident takes on racialized meanings because "race," modified by "class," has "already established understandings, practices, and relations . . . . [that provide] potent scripts and [reinforce] common knowledge."[247] In other words, racial stereotypes that brand poor Blackness as inferior justify the hoarding by residence because "nonresident" and "Black and poor" correspond.

The distinction between racialized residents and nonresidents allows for the hoarding of valuable resources by a racially privileged group at the expense of a racially subordinated group.[248] Here, the resources are educational capital—a valuable set of assets that drives social mobility and future opportunities.[249] The structure of who controls capital "at a given moment in time

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[246] *See* Tilly, *supra* note 26, at 75. Categorical inequality involves stratification among pairs of a socially relevant attribute. *Id.* at 8–9. For example, the attribute "race" can be described (albeit incompletely) as a category consisting of specific values, such as White/Black. *Id.* at 8. The attribute "resident" can be described as a category with the values resident/nonresident. Categories can be interior categories, like residence, that describe an internal structure specific to the context, and exterior categories are diffuse and occur among many contexts, like race. *Id.*

> When interior categories match exterior categories, such as when faculty tend to be comprised of White men while adjuncts tend to be women of color, or "honors" students tend to be White while "regular" students tend to be Black, an unequal relationship between pairs in the interior category is reinforced by the exterior category. For example, when White men are perceived as more intelligent because of their race and gender, such a connection seems justified because White men tend to comprise the superior positions in interior categories, like being tenured professors (versus adjuncts), or honors students (versus students in "regular" classes). Here, as the stratification in the race-neutral category ("residence") matches the stratification in the race category, the stratification between resident and nonresident takes on racial meaning.

[247] *Id.* at 76.

[248] *See id.* at 155.

[249] *See* Pierre Bourdieu, *The Forms of Capital*, *in* Handbook of Theory and Research for the Sociology of Education 241 (John G. Richardson ed., 1986) ("Capital is accumulated

representsthe immanent structure of the social world, i.e., the set of constraints, inscribed in the very reality of that world, which govern its functioning in a durable way, determining the chances of success for practices."[250] Within a school like OPRF, economic capital, human capital, social capital, and cultural capital abound, but are available only to children who attend that school. This structure of who controls capital in education corresponds to the larger social structure of stratification and subordination.

First, economic capital, or, more simply, money. As described above, OPRF per student spending exceeds what the state determines would be required for an "adequate" education.[251] As the school maintains a reputation for excellence, more families want to move within the school district boundary, which then drives up property values. As property values increase, so too does property tax revenue. The more property tax revenue, the more the school district can spend per student. And so on.

Second, human capital. Samuel Bowles and Herbert Gintis argue that students in rich schools are taught how to be managers and capitalists that control the modes of production, while poor schools teach students how to be workers, occupying the bottom tiers of occupational prestige.[252] They write:

> These differences in the social relationship among and within schools, in part, reflect both the social backgrounds of the student body and their likely future economic positions. Thus, [B]lack[] [students] and other minorit[y] [students] are concentrated in schools whose repressive, arbitrary, generally chaotic internal order, coercive authority structures, and minimal possibilities for advancement mirror the characteristics of inferior job situations. Similarly, predominantly working-class schools tend to emphasize behavioral control and rule-following, while schools in well-to-do suburbs employ relatively

labor (in its materialized form or its 'incorporated,' embodied form) which, when appropriated on a private, i.e., exclusive, basis by agents or groups of agents, enables them to appropriate social energy in the form of reified or living labor.").

[250] *Id.*

[251] According to the Illinois Report Card, OPRF is at 117 percent financial capacity to meet the adequacy target, which is the "minimum amount required to provide a high-quality education." *District Finances: FY 2020 Percent of Adequacy: Oak Park–River Forest SD 200*, Ill. Rep. Card, https://www.illinoisreportcard.com/District.aspx?source=environment&source2=evidencebasedfunding&Districtid=06016200013 [https://perma.cc/3XVL-8UFR].

[252] Samuel Bowles & Herbert Gintis, Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life 11–12, 130 (1976) (calling this phenomenon the "correspondence principle" by which "schooling has contributed to the reproduction of the social relations of production largely through the correspondence between school and class structure").

> open systems that favor greater student participation, less direct supervision, more student electives, and, in general, a value system stressing internalized standards of control.[253]

In well-funded suburban schools like OPRF, students are taught higher level skills than students in resource-poor schools, affording them the economic and occupational mobility unavailable to students in resource-poor schools.

Third, social capital. Social capital accrues from membership in a resources-rich network, where a member of that network acquires access to information about jobs, internships, and college admissions that he might not be privy to or have access to on his own. Access to middle-income peers and their parents, for example, can offer social capital to less-resourced individuals.[254] Derek Black argues that:

> [m]iddle-income peers (and their parents) . . . bring a host of experiences, outside learning, and high expectations to schools that positively impact other students in their schools. The percentage of middle income students in a school can be more important to the educational achievement of all students in that school than any other resource or factor.[255]

Lastly, cultural capital. Cultural capital accrues from embodying and accumulating markers that signal an individual belongs to a high-status group.[256] One such marker is an elite high school diploma, in which graduation allows members to signal their high status and gives a student a better chance to attend elite colleges and universities than students who attended a less prestigious school.[257] Other markers are the cultural knowledge gained by traveling abroad as part of a high school program or learning about classical literature or art in a high school class.

The claim that school district borders operate as a mechanism of opportunity hoarding does not mean that all those who live within the border have equal access to the resources being hoarded. The story is complicated.[258] As discussed

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[253] *Id.* at 132.

[254] Derek W. Black, *Middle-Income Peers as Educational Resources and the Constitutional Right to Equal Access*, 53 B.C. L. Rev. 373, 377 (2012) (footnotes omitted).

[255] *Id.*

[256] *See* Michèle Lamont & Annette Lareau, *Cultural Capital: Allusions, Gaps and Glissandos in Recent Theoretical Developments*, 6 Socio. Theory 153, 156–57 (1988).

[257] *See, e.g.*, Gerald Bradshaw, *Where You Attend High School Can Affect College Admission Chances*, Chi. Trib. (May 14, 2015, 11:45 AM), https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-bradshaw-educated-advice-st-0515–20150514-story.html [https://perma.cc/HQS7-QE8T].

[258] R. L'Heureux Lewis-McCoy, Inequality in the Promised Land: Race, Resources, and

above, similar racist beliefs about Black people are weaponized against Black students already inside the school. Even when Black children enroll legally, White middle-class schools disproportionately subject them to harsher discipline than their White peers.[259] Schools also deny Black students access to classes where teachers have high expectations[260] like honors and AP classes. Students at schools like OPRF find themselves segregated into racially identifiable classes and activities, such as the majority Black football team, the majority White band, the majority Black cheerleading squad, and the majority White drill team.[261]

Residence, for the legally enrolled Black students, does not directly bar access to the benefits that derive from attending a school like OPRF. But the same "us versus them" discourse justifies their subordination within the school. Race shapes opportunities within the school as it does outside of the school when protecting its borders. Blackness represents outsider status, such that resident Black students are almost as much as outsiders as those who are implicated in stealing education.

The racist justifications for aggressive border enforcement—both within and outside of the school—play a key role in sustaining institutional stratification and social subordination beyond the schoolhouse. The discourse of so-called racial differences supports more than stealing education laws; it justifies many types of structural and institutional racism—racial subordination in housing, higher education, employment, politics, etc. In doing so, these arguments inherently downplay, and often dismiss, the explicit law and policy choices that created and now reinforce these inequalities. Stark inequality can feel fair and stable when you believe education is a form of property that can legitimately be withheld from those who did not "pay" for it.[262] This is especially the case when racism lies shallowly beneath the surface.[263]

Children's educational opportunities in K–12 set them up for a lifetime of privilege or disadvantage in many areas—health, employment, and even political

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Suburban Schooling (2014) (arguing that even in resource-rich suburban schools, schools deny Black and poorer families access to those resources).

[259] *See supra* notes 193, 196, 227.

[260] *See* Dickens, *supra* note 195; Karolyn Tyson, *Tracking, Segregation, and the Opportunity Gap*, *in* Closing the Opportunity Gap: What America Must Do to Give Every Child an Even Chance 169, 169–70 (Prudence L. Carter & Kevin G. Welner eds., 2013).

[261] *See supra* note 206 and accompanying text.

[262] *See* Baldwin Clark, *supra* note 23.

[263] Social psychologists argue that inequality based only on material resources and social power is inherently unstable. Ridgeway, *supra* note 43, at 3. Appeals to cultural differences "transform[] the situational control over resources and [political] power into a . . . difference between 'types' of people that are . . . ranked in terms of how diffusely 'better' they are." *Id.* (emphasis omitted).]

participation. Indeed, stark inequality can feel fair when you think of education as a form of property that can legitimately be withheld from those who did not "pay" for it.[264] What then to do?

A policy change must start with a foundational moral commitment: Every single child deserves the education now being afforded to middle-class and affluent students. Inherent in that moral commitment is that we first devise a system of education that discourages and makes it difficult for families to hoard educational opportunities from other people's children. This means recognizing that part of the problem lies not with Austin, but squarely with school districts like OPRF. In other words, to truly attack hoarding, we must acknowledge that status matters: that those who can hoard opportunities will do so to remain at the top of the social hierarchy. Thus, to truly live out the moral commitment, those who are hoarding must give up some of those resources.

Conclusion

Stealing education laws violate state constitutions' and *Brown*'s[265] moral obligation to educate all children equally. The obligation is arguably strongest when racial stratification—no matter the cause—allows for racial monopolization of valuable educational resources. Residential requirements to attend a school district's schools undermine that obligation.

The stealing education legal apparatus subordinates, "oppress[es] and disempower[s]."[266] It works to undermine the commitment to equal access to high-quality education. It does so by allowing and encouraging communities to hoard educational resources only for their children. Racist stereotypes justify opportunity hoarding by solidifying opposition to reforms that would break old racist patterns of job segregation, denial of economic opportunity and wealth creation, and housing segregation.

The above analysis shows that vocal supporters of the laws are concerned not only with protecting tax dollars, but also with maintaining race-class stratification between school districts because of deeply held negative racial stereotypes about Black parents, Black children, and Black communities. These

[264] *See* Amanda Oglesby, *Stealing Education: Families Fake Residency for School*, Asbury Park Press (Sept. 15, 2015, 11:35 AM), https://www.app.com/story/news/education/in-our-schools/2015/09/-14/stealing-education-families-fake-residency-school/71484808 [https://perma.cc/ZYT5-KGBL] (explaining how a school district official believed that normatively "only people who are . . . supporting the property taxes . . . should be sending their children" to the district's schools as that rule reflected the "best interest of the taxpayer.") (quoting Jackson Township School District spokeswoman Allison Erwin).

[265] 347 U.S. 483 (1954).

[266] Ford, *supra* note 243, at 1844.

stereotypes suggest that students on the "wrong" side of the border do not deserve high-quality education not only because they did not "pay" for it, but also because they are racially inferior. Ultimately, far from being race-class-neutral, stealing education laws perpetuate race-class subordination justified by pernicious racial stereotypes and master narratives.