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Dilemmas of Scale in America's Federal Democracy

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Net gains

The Voting Rights Act and Southern local government

RICHARD M. VALELLY

The Supreme Court—or more precisely, its regular majority in voting-rights cases (comprising Justices Kennedy, O'Connor, Rehnquist, Scalia, and Thomas)—is clearly worried about the impact of the Voting Rights Act of 1965 on state and local government.¹ Supreme Court decisions such as *Shaw v. Reno* (1993), *Miller v. Johnson* (1995), *Abrams et al. v. Johnson et al.* (1997) and *Reno, Attorney General v. Bossier Parish School Board et al.* (1997) reveal (1) overt suspicion of the Department of Justice, (2) a preference for restricting the department's role in voting-rights policymaking, (3) considerable trust in the capacity of the federal courts to guide this policy domain reasonably well, and (4) a desire to diminish the “federalism costs” (to use Court language) of national regulatory oversight of local governmental election practices.

Taking my cue from Albert O. Hirschman's widely known depiction of unnecessary pessimism in modern policy analysis, I argue that the Supreme Court's majority has misconstrued the “federalism costs” of the Voting Rights Act and its administration and implementation by the Justice Department. What has happened with Southern local government is most assuredly *not*, I argue, a case of “jeopardy”: of seemingly progressive reform posing threats to existing values and rights.²

¹ For valuable help and encouragement I thank the volume's editor, Martha Derthick. The Woodrow Wilson Center graciously awarded me a guest scholarship in the summer of 1994, which enabled me to draft this chapter's earliest incarnation. Colin Apse, then on the Wilson Center's staff, provided excellent research assistance that summer. More recently, Peyton McCrary, of the Voting Section of the U.S. Department of Justice, Civil Rights Division, was very generous with his knowledge and time, reading and closely commenting on several drafts. None of the above is liable in any way for any errors of fact, interpretation, or emphasis—everything I say here is my responsibility alone.

² See Albert O. Hirschman, *The Rhetoric of Reaction: Perversity, Futility, Jeopardy* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1991), on the origins of the

The Court and the conservatives are not wrong to worry about "federalism costs." A large majority of the American public has strong confidence in local government, in contrast to the minority support now enjoyed by the federal government among the public.³ Happily for this majority, what has happened in locally implementing the Voting Rights Act does not contradict the value attached by the American public to American local government; instead, it supports it. The gains in the South to what local government is about, and to the values it serves, have been substantial as a result of the process that evolved during the 1970s and 1980s.

For more than half a century, most local government in the South was "captured" government in the sense that it was disproportionately responsive to the partial interests of powerful local whites. A regional system of loosely organized one-party politics, based on white supremacist solidarity, had fundamental consequences for local government. V. O. Key, Jr., communicated these consequences well in his classic study, *Southern Politics*:

A loosely organized politics with no stable centers of power or leadership for an entire state is in one sense admirably suited for dealing with the Negro question. A pulverized politics decentralizes power to county leaders and county officials and in some areas devolution is carried even further in that public officials do not cross the plantation boundary without invitation. . . . In a granulated political structure of this kind with thousands of points of authority there is no point at which accountability can be enforced.⁴

Local government in a fundamental sense was not public, impersonal, and impartial. The Voting Rights Act has helped to rebrighen the local line between the public and the private, and this has resulted in a more desirable framework for each citizen's experience of membership in the local political community.⁵ Certainly the price of that rebrighening has

bias for pessimism in policy analysis. See also Hirschman, "The Rhetoric of Reform," *The American Prospect* (Summer 1993): 148-52.

³ See *Philadelphia Inquirer*, "The Public's View of Federal Powers," inset to Steven Thomas, "Reassertion of Federal Role Shifts Power Back to Where It Always Was" (October 12, 1997); page E-3 shows (on the basis of a poll for the Pew Research Center for the People & the Press) that 65 percent of the public has confidence in city and local government, 61 percent in state government, and 48 percent in the federal government.

⁴ V. O. Key, Jr., with the assistance of Alexander Heard, *Southern Politics in State and Nation* (Knoxville: University of Tennessee Press, 1984 [Knopf, 1949]), 307, note 9.

⁵ On the "citizenship impact" of policies, see *Public Policy for Democracy*, ed. Helen Ingram and Steven Rathgeb Smith (Washington, D.C.: Brookings Institution, 1993).

been some loss of local autonomy from national influences. But on balance it is a fair price.

Whether it has in fact been a fair price occasions strong disagreement though. The Voting Rights Act of 1965 might seem instead to have weakened Southern grass-roots democracy, and thus to have enervated citizenship at the local level. Southern local officials do not have sole custody, after all, of one of the most vital aspects of local self-government, that is, deciding what the electoral rules are. The Voting Rights Act has meant that successive congressional majorities, federal judges, a professional voting-rights bar, and the Civil Rights Division of the Justice Department have all become key players in local voting-rights policy.

However, in doing this (goes the case against the local effects of the Voting Rights Act's administration and implementation), these players have also perpetuated racial divisions by forcing local processes and outcomes into a procrustean bed of racialized categories subject to federal proscription. Furthermore, the partial loss of local custody of electoral-policy decisions has been largely to *private* actors, who have not hesitated to push beyond the legislative intent of 1965. Such organizations as the ACLU's Voting Rights Project, Common Cause, the Lawyers' Committee for Civil Rights under Law, the Leadership Conference on Civil Rights, and the NAACP-Legal Defense Fund, among others—not to mention the large foundations that aid their work—have in fact been critically important protagonists in the voting-rights policy domain. Through their monitoring of Southern local governmental decisions about electoral rules, voting-rights policy has shifted away from remedying impediments to the physical act of voting and toward questions about whether black voters can elect as many black public officials as they should be electing. The politics of black voting rights has therefore been about making black ballots count. There is nothing wrong with that per se, but these groups did not run for office. No one elected them to make public policy.

I call this claim a *regulatory-mischief view* since it concentrates on how narrow groups govern a policy domain at the expense of local government and the broader values it serves. Section I following describes this regulatory-mischief view in greater detail. The optimistic view ultimately propounded here becomes clearer through first describing its alternative. Section II lays out criticisms of the regulatory-mischief view. Section III emphasizes the Voting Rights Act's renewal of local government (this is where my optimistic case comes in). Section IV briefly concludes my contribution.

I: BUILDING FACTION IN? THE REGULATORY-MISCHIEF VIEW

Any “federalism-costs” case against the Voting Rights Act’s administration and implementation runs up against the fact that with the Fifteenth Amendment the American people made an exception to whatever value they attach to local government. They did so in the weightiest and most conspicuous way provided by our polity’s procedures. Nor were the people specific about how to enforce the amendment; the particular form of enforcement was left up to Congress.⁶

Still, it would be hard to argue that the people authorized rampant interest-group liberalism as *the* mechanism of “delocalization.” Critics of voting rights politics have charged that liberal interest groups—recognizing the potency of Section 5—have hijacked the Voting Rights Act.⁷ Because Section 5 requires local jurisdictions to “pre-clear” rules changes with the Department of Justice, voting-rights groups can enter into the regulatory process at the national level.⁸ Critics have also found the 1982 amendments to the act, as well as a 1986 Supreme Court decision interpreting them, disturbing. In 1982 Congress strengthened the act to establish a tighter relationship between black voting and black officeholding. The Court’s 1986 decision, *Thornburg v. Gingles*, simplified the fact-finding process for litigation under the amendment (known as Section 2 litigation). Again, interest groups were both sponsors and beneficiaries of these changes. They could now methodically pick off the many local jurisdictions that lacked black officeholders. By the 1980s, goes the case against the Voting Rights Act’s local effects, interest groups effectively enveloped

⁶ Political scientists, of course, have abandoned serious analytical use of the term “the people,” but I use it here as a reminder of the special nature of democratic constitutionalism. The best brief introduction to the Fifteenth Amendment’s origins is David E. Kyvig, *Explicit and Authentic Acts: Amending the U.S. Constitution, 1776–1995* (Lawrence: University Press of Kansas, 1996), 176–82.

⁷ My characterization represents a sharpening of themes in Timothy G. O’Rourke, “The 1982 Amendments and the Voting Rights Paradox,” and Hugh Davis Graham, “Voting Rights and the American Regulatory State,” in Grofman and Davidson, *Controversies in Minority Voting*, 84–113 and 177–96. The basic work that launched critical assessment of the Voting Rights Act’s evolution, and several scholarly responses, is Abigail M. Thernstrom, *Whose Votes Count? Affirmative Action and Minority Voting Rights* (Cambridge, Mass.: Harvard University Press, 1987, for the Twentieth Century Fund). See also Stephan Thernstrom and Abigail Thernstrom, *America in Black and White: One Nation, Indivisible* (New York: Simon & Schuster, 1997), chap. 16; Raymond Wolters, *Right Turn: William Bradford Reynolds, the Reagan Administration, and Black Civil Rights* (New Brunswick, N.J.: Transaction Publishers, 1996), chaps. 1–7.

⁸ There is anecdotal evidence of group involvement in rule-making; see, for instance, Drew S. Days III, “Section 5 Enforcement and the Department of Justice,” in Grofman and Davidson, *Controversies in Minority Voting*, 52–65, esp. 61–3.

local processes of making basic decisions about electoral rules within a central system of oversight and correction in which they predominated.

The evil said to follow from such expanded group influence is a lack of open debate (except for periodic congressional scrutiny) about how best to realize the aims of the Voting Rights Act. Absent the correcting influence of open public debate, a misunderstanding of democratic process has in turn emerged among such liberal groups as the ACLU's Voting Rights Project, Common Cause, the Lawyers' Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, and the NAACP-Legal Defense Fund. For instance, about a decade ago liberal voting-rights groups pushed for safe districting, that is, the idea that minority office-holding depended on creating legislative districts with a population at least 65 percent black. (This level was chosen because black voter registration and turnout have historically lagged behind white levels.) Critics suggested that this remedy misconceived the requirements of political equality. Equality does not mean guaranteed outcomes. The proper remedies for the losers in democratic majoritarian politics are inventive forms of coalition-building and public discussion.

II: LIMITS OF THE REGULATORY-MISCHIEF VIEW

The regulatory-mischief view thus holds that the Voting Rights Act's politics has become an interest-driven subgovernment—a voting-rights version of the way that, for instance, environmental policy is made within a system of interest groups, regulatory rule-making, and congressional committees.⁹ Any responsible student of democratic politics will recognize that, if true, this would be a serious matter. Yet in key ways, the regulatory-mischief view misdescribes fundamental relationships among the Voting Rights Act, the politics of the act, and Southern local government.

Let me turn first to legal mobilization. Legal mobilization has three key elements: (1) an effort to win policy change in the courts, (2) an empowering and politicizing effect among the first-order beneficiaries of such policy change, and (3) a broadly educative effect on other institutions and actors, for example Congress or former political opponents.¹⁰ In focusing

⁹ On subgovernment, see Bryan D. Jones, *Reconceiving Decision-Making in Democratic Politics: Attention, Choice, and Public Policy* (Chicago: University of Chicago Press, 1994), chap. 7.

¹⁰ The term "legal mobilization" I borrow from Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994), esp. 5–12. McCann emphasizes the first two elements of my definition. From Gerald Rosenberg's discussion of the relative efficacy of group litigation I have borrowed the third element. V. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring*

on the emergence of legal mobilization in the post-1965 period, vital distinctions between the legal-mobilization account and the regulatory-mischief view will emerge. The regulatory-mischief view implies the existence of a dominant coalition of lawyers and black activists using a path-breaking law to establish a bureaucratic receivership of local governments, all the while deploying rights talk.¹¹ Legal mobilization, by contrast, implies that post-1965 events formed a new and often arduous phase in a long struggle to widen the inclusiveness of the American polity.

*Legal mobilization for officeholding*¹²

The regulatory-mischief view says little about the resistance of white Democratic party politicians, but such foot-dragging was pervasive for at least a decade and a half after the Voting Rights Act. After 1965, white Southern officials sought to dilute the ballot.¹³ Reading the handwriting on the walls, many Southern state legislatures quietly but quickly recast local government with such devices as requiring local governments to adopt at-large voting. Blacks could vote, but few would hold office.

Such resistance to the Voting Rights Act transformed Southern local government into a battleground—and small wonder. The local and state offices sealed off by state legislators exercised important responsibilities. In Mississippi, for instance, county boards of supervisors levy county taxes, decide how to spend county money, direct bridge and road construction and maintenance, and appoint such boards as the welfare and planning boards. Until 1975, they also drew up jury lists for the state courts.

About Social Change? (Chicago: University of Chicago Press, 1991), esp. 25–6 discussing “extra-judicial” effects. Rosenberg, incidentally, is skeptical that legal mobilization is as effective as contentious collective action in winning policy and political change.

¹¹ The term “rights talk” was coined by Mary Ann Glendon in her book, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991). For a judicious introduction to the proposition that there are pluses and minuses to rights claims in politics and policy, see Marc Landy, “Public Policy and Citizenship,” in Ingram and Smith, *Public Policy for Democracy*, 19–44, esp. 27–31.

¹² A lucid—indeed, gripping—study of the “legal-mobilization” response to white legislative resistance is Parker, *Black Votes Count*. Less readable but definitive and equally full of surprises is *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965–1990*, ed. Chandler Davidson and Bernard Grofman (Princeton: Princeton University Press, 1994), chaps. 2–9. This account is based on these sources.

¹³ Chandler Davidson defines vote dilution as “a process whereby election laws or practices, either singly or in concert, combine with systematic bloc voting among an identifiable group to diminish the voting strength of at least one other group. Ethnic or racial minority vote dilution is a special case, in which the voting strength of an ethnic or racial minority group is diminished or canceled out by the *bloc vote* of the majority.” Chandler Davidson, “Minority Vote Dilution: An Overview,” in *Minority Vote Dilution*, ed. Chandler Davidson (Washington, D.C.: Howard University Press, 1984), 4.

Other self-evidently vital elective offices are the county school board and the county elections superintendent.

Indeed, this legislative movement to recast local government forms part of a larger pattern. Reading the legislative and political histories of the 1957, 1960, and 1964 Civil Rights Acts and the 1965 Voting Rights Act would reveal a detailed inventory of state and local efforts to resist implementation of the Fifteenth Amendment.¹⁴

The major "reforms" included: (1) requiring or permitting county and municipal governments to substitute at-large voting for public office for district-based voting; (2) requiring or permitting these governments to establish majority-voting requirements for public office, thus preventing plurality black victory over a field of split white candidates; (3) converting elective offices to offices appointed by officials likely to have exclusively white support; and (4) reapportioning of local district lines to create white-majority voting districts.

Black out-migration from the South between the 1930s and 1950s had drained political jurisdictions of many potential voters. Thus these layered changes were quite effective responses to both the increased black voter registration from 1944 on and the sharp jump in black voter registration produced by the Voting Rights Act. They also blunted the potential impact of growing urban black concentrations on city officeholding.

What responses were available to civil-rights leaders? No two-party system exercised a check on those who pressed for these legislative reforms, nor was another eruption of sustained protest comparable to the heyday of civil-rights activity from 1961 to 1965 likely. Fortuitously, though, official white resistance in Deep South states during the 1961-64 period attracted a new political resource: experienced white and black non-Southern lawyers willing and able to work with local black and white political activists and lawyers.

¹⁴ See David J. Garrow, *Protest at Selma: Martin Luther King, Jr. and the Voting Rights Act of 1965* (New Haven: Yale University Press, 1978), 6-132. From Reconstruction until the present, white conservatives have developed many ways to resist black electoral involvement. The list includes but is not restricted to (1) *private violence* (hence the Ku Klux Klan Act of 1870); (2) *private violence under the color of law* (proscribed by the Ku Klux Klan Act, which in turn formed the basis for federal prosecutions of, for instance, the Neshoba County [Mississippi] law-enforcement officers who conspired to murder three civil-rights activists in the summer of 1964); (3) *movement building* (e.g., the Citizens Council movement that began in 1956); (4) *electoral mobilization* (e.g., the States' Rights Party of 1948); (5) *litigation* (e.g., South Carolina's suit challenging the constitutionality of the Voting Rights Act); (6) *constitution-writing* (e.g., the Mississippi Constitution of 1890); (7) *reforms of legal-electoral structures* (e.g., the establishment of white primaries); and (8) *judicial and bureaucratic obstructionism* (e.g., great delay in the federal district courts of Alabama and Mississippi during the early 1960s after legal motions of the United States on behalf of black voters).

The elements of the legal mobilization that eventually emerged were laid in Washington, D.C., and in Mississippi during the summer of 1963 and the "Freedom Summer" of 1964. During a White House meeting with officials of the American Bar Association and the National Bar Association in 1963, President John F. Kennedy urged the formation of a volunteer legal effort in the South; this in turn led to the establishment of the Lawyers' Committee for Civil Rights under Law (LCCR) and the LCCR's invitation to Mississippi by the National Council of Churches. Also, about 130 volunteer lawyers donated vacation time during Freedom Summer under the auspices of the Lawyers' Constitutional Defense Committee (LCDC), a consortium of legal officers from the Congress of Racial Equality, the American Civil Liberties Union, the NAACP-Legal Defense Fund, the American Jewish Congress, and the National Council of Churches.

Initially, volunteer lawyers handled the criminal cases of civil-rights workers facing local and state criminal prosecutions, but they quickly shifted into affirmative, as opposed to reactive, kinds of legal actions. They turned toward challenging antipicketing statutes and, more important, voting-rights denials. The parent organizations also opened up permanent staff offices in the black business district of Jackson.

Then, in the wake of the Mississippi legislature's thorough effort in 1966 to cordon off officeholding from black politicians, the tiny liberal wing of the Mississippi Democratic party and the larger independent party, the Mississippi Freedom Democratic Party (MFDP), forged an alliance with LCCR, LCDC, and NAACP-Legal Defense Fund lawyers in Mississippi. Together they focused on responding to the legislature's burst of electoral reform through 1) acquiring major foundation support to provide a long-run material base and 2) launching Section 5 voting-rights litigation. In doing so, they provided a model for similar combinations in Alabama and Georgia; they also reinforced a long-standing interest in combining electoral mobilization with litigation among African-American and Mexican-American organizations in Texas and other Southwestern states.¹⁵

By 1969, legal mobilization led to a critically important Supreme Court decision, *Allen v. State Board of Elections*, which held that such dilutive devices as at-large plans and majority-vote requirements required clearance from the Justice Department under Section 5 before they became legally effective. As shown in Table 10.1, legal mobilization was

¹⁵ On the Southwest, see Amy Bridges, *Morning Glories: Municipal Reform in the Southwest* (Princeton: Princeton University Press, 1997).

Table 10.1. *Evolution of legal mobilization*

Date	Event	Description	Effects on voting rights activists' strategies and resources, and on perceptions and behavior of white local officials
1969	<i>Allen v. State Board of Elections</i>	The Supreme Court holds that Congress intended for the VRA to have "the broadest possible scope." Vote dilution as well as vote denial are proscribed. Challenges to local rules changes for failure to obtain Section 5 pre-clearance do not require constitutional argument.	Sharp increase in number of rules changes submitted to the Department of Justice for Section 5 pre-clearance from local and state jurisdictions "covered" by the Voting Rights Act.
1970	Renewal of VRA to 1975	Congress in effect says that the decision in <i>Allen</i> articulated congressional intent.	Legal mobilization can continue.
1973	<i>White v. Regester</i>	Supreme Court delineates wide range of circumstances that will raise an "inference of intent" (and thus be sufficient to show intent) to deny minorities equal opportunity "to participate in the political process and to elect legislators of their choice."	Fact-finding in legal mobilization becomes more complex in exchange for what is in effect a "results" standard for showing vote dilution.
1975	Renewal of VRA to 1982, and amendment	Jurisdictions losing in court required to pay plaintiffs' costs and attorneys' fees.	Potential incentive for jurisdictions to settle with voting rights groups and plaintiffs, reducing strain on resources of voting rights legal activists.

1980	<i>City of Mobile v. Bolden</i>	Supreme Court holds that plaintiffs must directly prove intent to discriminate, vitiating <i>Allen</i> and <i>White</i> .	Potential for reversal of gains from legal mobilization. Voting rights groups turn to Congress.
1982	Congressional renewal and amendment of VRA	Congress extends pre-clearance for 25 years. Amends Section 2 of the VRA to prohibit rules that have dilutive effects regardless of intent.	Potential for Court reversal of <i>City of Mobile v. Bolden</i> .
1982	<i>Rogers v. Lodge</i>	Supreme Court accepts congressional correction in a case with facts very similar to <i>City of Mobile v. Bolden</i> .	Number of voting rights cases in federal courts increases. Number of jurisdictions removing dilutive rules more than doubles. Threat of lawsuits found by <i>Atlanta Constitution</i> survey of local Georgia officials to motivate switches to district elections.
1986	<i>Thornburg v. Gingles</i>	Supreme Court simplifies factual tests for proof of racial bloc voting among whites sufficient to cause vote dilution.	Continued correction of electoral rules and of lines of election jurisdictions.

Sources: Laughlin McDonald, "The 1982 Amendments of Section 2 and Minority Representation" in Bernard Grofman and Chandler Davidson, eds., *Controversies in Minority Voting* (Washington, D.C.: Brookings Institution Press, 1992); Frank Parker, *Black Votes Count* (Chapel Hill: University of North Carolina Press, 1990).

rather successful from then on. Not until 1980 did legal activists experience a severe crisis in the development of voting-rights law. They then turned to Congress and argued successfully for an amendment of the Voting Rights Act that would correct the Court's sudden abandonment of established principles favoring legal mobilization. In the decade following the 1982 congressional amendment of the Voting Rights Act, the Supreme Court played a key support role in legal mobilization (though now, of course, it no longer does).¹⁶

To put the story another way, it was a long, uncertain struggle. The original networks of legal activists had their hands full; only gradually have new networks in other states emerged. Gaining reasonably full compliance with *Allen v. State Board of Elections* at the state and local level took approximately ten years of follow-on litigation. Second, dilutive changes that preceded the Voting Rights Act were not covered by *Allen*; these have required separate litigation under the 1982 amendment to Section 2 of the act. Third, not until the mid- to late 1970s and early 1980s did local associations pushing for legal mobilization emerge in South Carolina and parts of North Carolina, and not until the early 1980s could one really find them in Virginia.

Fourth, as Table 10.2 shows, substantial rates of local black officeholding in states under complete VRA coverage are *recent*—within the last decade or so. (North Carolina is not listed because only part of it is under VRA coverage.) As one would expect from a legal-mobilization framework, the table suggests both (1) considerable delay in the emergence of significant levels of local black officeholding and (2) considerable unevenness in VRA-covered states with regard to rates of black officeholding, taking into account the percentage of the total voting-age population that is black.

Two sets of figures are displayed in Table 10.2. The set on the left (denoted as [1]) shows figures for certain categories of local officeholders only—county commissioners, members of municipal governing bodies, sheriffs, and school-board members. The set on the right (denoted as [2]) shows figures for all local elected officials—including, for instance, coroners, municipal sergeants, probate judges, and commissioners of special boards. The black voting-age population (VAP) as a percentage of the total voting-age population is displayed as a helpful benchmark. One might

¹⁶ In addition to Parker, *Black Votes Count*, and Davidson and Grofman, *Quiet Revolution*, see Laughlin McDonald, "The 1982 Amendments of Section 2 and Minority Representation," in Grofman and Davidson, *Controversies in Minority Voting*, 66–84.

Table 10.2. *Change in local officeholding by African-Americans in Southern states completely covered by the Voting Rights Act*

	Total LEO's [1]	Total BLEO's [1]	BLEO's as % [1]	All LEO's [2]	All BLEO's [2]	All BLEO's as % [2]	Black VAP
AL (1974)	2634	110	4.2%	N.A.	N.A.		23%
AL (1984)	2795	241	8.6%	3125	292	9%	23%
AL (1993)	2936	605	20.6%	3237	672	20%	22.7%
GA (1974)	4077	120	2.9%	N.A.	N.A.		22.9%
GA (1984)	4209	250	5.9%	4950	276	5.6%	24%
GA (1993)	4428	459	10.3%	5760	498	8.6%	24.6%
LA (1974)	2577	141	5.5%	N.A.	N.A.		26.6%
LA (1984)	2651	374	14%	2779	425	15.3%	27%
LA (1993)	3235	511	15.8%	3362	600	17.8%	27.9%
MS (1974)	2252	190	8.4%	N.A.	N.A.		31.4%
MS (1984)	2462	296	12%	3226	410	12.7%	31%
MS (1993)	2477	546	22%	3241	708	21.8%	31.6%
SC (1974)	1961	113	5.8%	N.A.	N.A.		26.4%
SC (1984)	1817	229	12.6%	2252	242	10.7%	27%
SC (1993)	2213	407	14.5%	2602	423	16.2%	26.9%
TX (1974)	11,467	117	1%	N.A.	N.A.		11.3%
TX (1984)	12,587	183	1.5%	18,749	215	1.1%	11%
TX (1993)	12,474	438	3.5%	18,636	447	2.4%	11.2%
VA (1974)	2002	61	3%	N.A.	N.A.		16.6%
VA (1984)	1994	86	4.3%	2451	100	4%	18%
VA (1993)	1999	125	6.2%	2456	141	5.7%	17.6%

expect that over time black local elected officials (BLEOs in the table) as a percentage of total local elected officials (LEOs in the table) would rise toward black VAP (expressed as a percentage of the total VAP). Three states—Georgia, Texas, and Virginia—stand out for their relative lack of convergence.¹⁷

By now, a major difference between the regulatory-mischief and legal-

¹⁷ Showing similar data for other ex-Confederate states, for Oklahoma, and for the Border States, where obstructions to black voting also emerged, is beyond this chapter's scope. These figures are imperfect; several are no more than reasonable estimates. They were derived by the author from the census of black elected officials produced by the Joint Center for Political and Economic Studies (JCPES) in Washington, D.C. It is a testament to the enduring autonomy of local government that even at this late date in American political evolution, and after more than two decades of data collection by JCPES, the *Roster* is often uncertain as to just how many local governments and local elected officials there really are. See *National Roster of Black Elected Officials*, vol. 5 (Washington, D.C.: Joint Center for Political and Economic Studies, July 1975); *Black Elected Officials: A National Roster 1984* (New York: UNIPUB/R. R. Bowker and Company, 1984, for the Joint Center for Political and Economic Studies); *Black Elected Officials: A National Roster*

mobilization views should be clear. The former view suggests a cozy arrangement for reshaping Southern local government according to certain criteria that would never pass the bar of public debate. But the merit of the latter is the clarity with which it communicates the point that enfranchisement is not just one struggle—that is, the effort to allow the physical act of voting. Enfranchisement is at least two struggles. It has also been about access to the political good of officeholding and the best ways of constructing such access.

Also, legal mobilization has involved its own kind of public debate. It is true that courts are not, strictly speaking, deliberative institutions. But decisions have been made on the basis of careful public argument and the collection and assessment by courts of a wide range of relevant information.

Bringing parties into the picture

Let me consider Voting Rights Act politics from another angle—its relationship to national party politics. Political parties always have a basic stake in how electoral institutions work, because they care about winning and retaining political offices and controlling representative institutions. Political-party leaders have preferences in such matters as reapportionment, the registration of voters, and how votes are counted. They have to be brought into any picture of voting-rights politics. Doing so also challenges the basic claims of the regulatory-mischief view.¹⁸

It may not be obvious, but the two major parties have an overlapping interest in protecting the regulatory framework that the act provides—although their interests overlap for different reasons, as we shall see. Neither political party, therefore, seeks deregulation. In this context, groups and judges easily seem to be the only actors governing the policy domain. They provide all the movement and action. But in the background are major but unobtrusive stakeholders in voting-rights policy: the two national parties.

Consider first the Democratic party's stake in voting rights. The Voting Rights Act has guaranteed the participation of an African-American constituency very loyal to the Democratic party, helping the Democratic par-

1993 (Washington, D.C.: Joint Center for Political and Economic Studies Press, 1993, by arrangement with University Press of America).

¹⁸ On theory and evidence regarding parties having preferences over electoral institutional design, cf. Richard M. Valelly, "National Parties and Disfranchisement," in *Classifying by Race*, ed. Paul E. Peterson (Princeton: Princeton University Press, 1995), 188–216.

ty build biracial voter coalitions in the South. Although Republicans have dominated presidential elections since the 1960s, in large part because of growing strength among conservative Southern whites, Democrats have twice been able to use their strength in the South to gain unified government. This record contrasts with that of the Republican party, which has not gained unified government in more than four decades. Electoral regulation of the South has thus proved critical in giving Democrats windows of opportunity for major policy change—openings that they squandered, yes, but windows as wide as the “Reagan window” of 1981–3.¹⁹

As for the Republican party, the Voting Rights Act does not impede it. Instead, the act provides a framework for party-building in a region where the Republican party was weak—and associated with the putative ills of Reconstruction—for several decades. By completing the entry of black Southerners into electoral politics, the act created a crucial opening for Republicans to develop strength in the region. White Southerners have more conservative policy preferences than black Southerners. Yet the entry of black Southerners into electoral politics drove Southern Democrats to become substantially more liberal in their policy stances, affording Republicans the chance to build partisan attachments among white Southerners.²⁰

More recently, national Republicans perceived the 1982 amendment to the Voting Rights Act as a chance to work with Southern legislatures to create majority-minority congressional districts. Republican strategists hoped that these new so-called safe districts would drain other districts of enough reliably Democratic black voters to increase Republican representation in the House of Representatives. Indeed, regaining control of the House was a vital strategic goal for Republicans, given the unhappy anomaly—for them, at least—of four decades of Democratic dominance there. Whether in fact the Republican strategy succeeded as intended in 1994—when Republicans regained the House with the help of the

¹⁹ On windows of policymaking opportunity, cf. John T. S. Keeler, “Opening the Window for Reform: Mandates, Crises, and Extraordinary Policy-Making,” *Comparative Political Studies* 25 (January 1993): 433–86.

²⁰ On the increased liberalism of Southern Democrats, see James M. Glaser, *Race, Campaign Politics, & the Realignment in the South* (New Haven: Yale University Press, 1996). For the consequences for the House of Representatives and the Senate, see David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991). On Southern Republicans, cf. Earl Black and Merle Black, *The Vital South: How Presidents Are Elected* (Cambridge, Mass.: Harvard University Press, 1992); Glaser, *Race, Campaign Politics*; and Donald R. Kinder and Lynn M. Sanders, *Divided by Color: Racial Politics and Democratic Ideals* (Chicago: University of Chicago Press, 1996), esp. chap. 8.

South—is sharply debated, but there is no need to settle that debate here. My point is simply that the Voting Rights Act amendment of 1982 eventually stimulated party-building efforts by Republicans.²¹

In other words, both of the major parties have important stakes in voting-rights policy, and neither has sought extensively to revise the regulatory framework established in 1965. The result? Voting-rights policy and politics look like a subsystem. Groups and lawyers affiliated with groups, most of them private or nonprofit, do almost all the work of shaping voting-rights law and policy. Government lawyers initiate only a very small percentage of cases—one estimate is 5 percent. As Gregory Caldeira puts it, “Enforcement of voting rights is . . . very much an activity of the private sector.”²² Yet if both political parties are major (if low-profile) stakeholders in the act, then voting-rights politics is not really a policy subsystem operating largely out of view.

Indeed, subgovernments are ubiquitous in American politics, for at least three reasons:

1. American political parties cannot possibly place every policy issue and domain on the national party system’s agenda for electoral contestation.
2. Countervailing power in the group system is always distributed very unevenly.
3. Regulatory bureaucracy is essential to modern government.

Notwithstanding the inevitable ubiquity of subgovernments, voting-rights policymaking is not part of this universe. It comprises, in sharp

²¹ The marginal impact of this strategy—whose existence no one disputes—is open to argument. David Lublin suggests that the strategy’s political repercussions have been genuinely consequential. See David Ian Lublin, “Race, Representation, and Redistricting,” in Peterson, *Classifying by Race*, 111–25, and Lublin, *The Paradox of Representation: Racial Gerrymandering and Minority Interests in Congress* (Princeton: Princeton University Press, 1997). A far more skeptical view can be found in Pamela S. Karlan, “Loss and Redemption: Voting Rights at the Turn of the Century,” *Vanderbilt Law Review* 50 (March 1997): 291–326, and Karlan, “Still Hazy After All These Years: Voting Rights in the Post-Shaw Era,” *Cumberland Law Review* 26: 2 (1995–96): 287–312. An analysis that would also yield skepticism is J. Morgan Kousser, “*Shaw v. Reno* and the Real World of Redistricting and Representation,” California Institute of Technology, Division of the Humanities and Social Sciences, Social Science Working Paper 915, February 1995; this work is rich with lessons about voting-rights politics since 1965. Other useful works are Michael Kelly, “Segregation Anxiety,” *The New Yorker* (November 20, 1995): 43–54; John R. Petrocik and Scott W. Desposato, “The Partisan Consequences of Majority-Minority Redistricting in the South, 1992 and 1994,” paper prepared for presentation at the Annual Meetings of the American Political Science Association, Chicago Hilton and Towers, August 31–September 3, 1995; Carol Swain, “The Future of Black Representation,” *The American Prospect* (Fall 1995): 78–83.

²² Gregory A. Caldeira, “Litigation, Lobbying, and Voting Rights Law,” in Grofman and Davidson, *Controversies in Minority Voting*, 230–57.

contrast, (1) legal struggle, (2) judicial governance, constrained by norms of statutory and constitutional interpretation and conducted on the basis of open, high-profile argument, and (3) the partisan use of strategic opportunities provided by the Voting Rights Act.

The regulatory-mischief view obviously provides valuable cautionary analysis, and it does so from within a rich analytical tradition.²³ But a fair-minded reading of what has happened since 1965 in Southern local government requires bringing legal mobilization and political parties into a discussion of voting-rights politics. Doing so strongly suggests that the Voting Rights Act's politics simply has not engendered democratic pathologies.

There is more, as it happens, to bring in besides legal mobilization and political parties. Let us turn to a closer focus on a cluster of three topics: (1) the character of local government, (2) enfranchisement as a two-stage process, and (3) interactions between enfranchisement and local governmental renewal.

III: THE RECONSTRUCTION OF LOCAL CITIZENSHIP AND OFFICEHOLDING

The positive case for the role of the Voting Rights Act in Southern local government hinges on appreciating (1) the value of local government in democratic theory and relatedly (2) fair access to the political good of officeholding.

Autonomous local government is a democratic resource. Its worth to democracy comes in part from simple arithmetic: Given that the ratio of local offices to numbers of citizens in a local jurisdiction is much closer to unity than it is for other governmental levels, there are more possibilities for citizens to engage in governance—and more possibilities for citizens to have some personal knowledge of those who engage in governance. More citizens will either cross (or know people who cross) the line between the public and private domains and back.

Such line-crossing can reinforce people's awareness that government is a public enterprise (at least in principle) and ought not be the creature of any group or organized interest.²⁴ The relatively enlarged ratio of offices

²³ A book suggesting why this is a rich analytical tradition is James A. Morone, *The Democratic Wish: Popular Participation and the Limits of American Government* (New York: Basic Books, 1990).

²⁴ Cf. Richard M. Valelly, "Public Policy for Reconnected Citizenship," in Ingram and Smith, *Public Policy for Democracy*, 241–66, discussion at 244.

to voters at the local level creates the possibility that—to paraphrase Aristotle—many citizens will rule and be ruled in turn.

Of course, one would not want to overstate this point about the possibilities of local government. The constant probability of citizens crossing between public and private domains will be greater if local governmental offices are vigorously contested. Yet such robust conflict may not exist. On some accounts, it is *less* likely to exist at the local level because the policy responsibilities of local governments pale in comparison with those of state governments—and particularly national government. Speaking before a county commission or a borough council is, after all, a much different “line-crossing” experience than giving congressional testimony or stepping up to the lectern to deliver an oral argument before the Supreme Court. Therefore the strength and number of moral or simply architectural reminders of being in the public domain differ at the level of county and local government.²⁵

Few people, however, can give congressional testimony about social policy; many more can speak before their borough council about fire, sanitation, police, or recreational services. Relatively few people can serve in national or state office; relatively more can serve on school boards, town and city councils, and county commissions and assemblies.

Local governmental citizenship and officeholding can therefore leaven our politics with broadly diffused knowledge of government and political association. Notice, though, that the possibility for such leavening critically depends on local governments’ being *public*: They and their offices cannot belong to one group and not others. Otherwise there is no “line” between the public and private domains whose crossing subtly instructs local citizens and officeholders in government and political association. For local governments to perform their leavening function, they cannot—any more than governments at other levels—be openly biased in favor of one set of people.

Southern local government during the era of Jim Crow manifestly did not fill the bill. It was *white* government—the blacker the county or town, the dimmer the line between the public and private domains.²⁶ This brings up the value of fair access to political office.

²⁵ Paul E. Peterson, *City Limits* (Chicago: University of Chicago Press, 1981); Steven Kelman, *Making Public Policy: A Hopeful View of American Government* (New York: Basic Books, 1987).

²⁶ Key, *Southern Politics in State and Nation*.

The political good of officeholding

Voting Rights Act politics is an interesting case of enfranchisement *and* officeholding among the enfranchised. But what happens when there is enfranchisement *without* officeholding? Women's suffrage in America suggests an unfortunate answer.

The Nineteenth Amendment established female suffrage nationwide; in the absence of rapid gains in female officeholding, however, it shaped the national agenda only gradually. Another critically important factor was the collapse in the amendment's aftermath of the dense infrastructure of women's suffrage organizations, leaving no associations dedicated to mobilizing women as women or to producing viable female candidates for office. Not until rates of female officeholding began to increase in the 1970s—half a century later—did a pronounced women's-issues legislative agenda emerge. Enfranchisement without officeholding and the survival of mobilizing organizations appears, on the basis of the women's suffrage case, to engender weak representation.²⁷

With weak representation, there is also what I call the problem of lingering doubt: If the newly enfranchised are not fit for the responsibilities of public office why should they be fit for the other obligations and rewards of citizenship? Enfranchisement always occurs in a context of some hesitation. Invidious stereotypes long buttressed the barriers to full citizenship. Without new forms of officeholding, such stereotypes may not dissipate, tainting the well of democratic change. Thus as late as 1972, about half the electorate agreed with the statement that "Women should take care of running their homes and leave running the country up to men," and 63 percent agreed that "Most men are better suited emotion-

²⁷ Cf. Barbara C. Burrell, *A Woman's Place Is in the House: Campaigning for Congress in the Feminist Era* (Ann Arbor: The University of Michigan Press, 1994) and Anne Costain, *Inviting Women's Rebellion: A Political Process Interpretation of the Women's Movement* (Baltimore: Johns Hopkins University Press, 1992). For an explanation of the collapse of women's organizations after the Nineteenth Amendment, see Anna Harvey, "The Political Consequences of Suffrage Exclusion: Organizations, Institutions, and the Electoral Mobilization of Women," *Social Science History* 20 (Spring 1996): 97–132. This is not to say that the culmination in 1920 of the struggle for female suffrage had no policy effects. See Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992), esp. part 3. See also Kristi Andersen, *After Suffrage: Women in Partisan and Electoral Politics Before the New Deal* (Chicago: University of Chicago Press, 1996). On "weak representation," see Ira Katznelson, *Black Men, White Cities: Race, Politics, and Migration in the United States, 1900–30, and Britain, 1948–68* (Chicago: University of Chicago Press, 1976), 23–8.

ally for politics than are most women." Like all survey responses, these are not unambiguously clear, and their interpretation raises new questions. But it would be hard to say that they fulfilled the expectations of those who had pushed for women's suffrage.²⁸

We now have several related propositions. The first is that local government's ratio of offices to citizens makes it a potential school of democracy. Second, local government can enrich the enfranchisement process, since officeholding and the character of representation are no small matters for the quality of enfranchisement. Third, and implicit in the analysis so far, nationally sponsored enfranchisement can strengthen the democratic contributions of local government. With these propositions in mind, a comparison of the first and second Reconstruction periods is in order.

The two reconstructions of Southern local government

From 1867 to 1877, about two thousand black men served as federal, state, and local officeholders in the ex-Confederate states subject to congressional Reconstruction. They were all undoubtedly strongly Republican. In Eric Foner's survey of these officeholders, using secondary work, the U.S. Census, and the Los Angeles Genealogical Library of the Church of Jesus Christ of Latter Day Saints, he assembled a census of 1,465 officeholders. Foner omitted several hundred possible entries because the data were too sparse, but almost all of these were local officeholders. Of his sample, 78 percent were elected or appointed local officeholders. Thus the vast majority of all black officeholders were local officeholders, occupying offices as diverse as boards of education, city councils, mayoralties, county commissions, magistracies, and streetcar commissions. They were concentrated in Deep South states with majority black or significantly black populations: South Carolina, Mississippi, Louisiana, North Carolina, Alabama, and Georgia, in that order. In all, Foner found 56 kinds of local officeholding. Some 20 percent of the total were justices of the peace, 11 percent were city council members, 9 percent were county commissioners, 7 percent were registrars, 6 percent were members of boards of education, 5 percent were police officers, and 4 percent were local-elections officials.²⁹

²⁸ Burrell, *A Woman's Place*, 15.

²⁹ This account for Reconstruction and after relies heavily on evidence (and my calculations from that evidence) in Eric Foner, *Freedom's Lawmakers: A Directory of Black Officeholders during Reconstruction* (New York: Oxford University Press, 1993), ix-xxv.

For black officeholders such as James K. Green, an Alabama state politician, their service seems to have had enormous symbolic importance:

I believe that the colored people have done well, considering all their circumstances and surroundings, as emancipation made them. I for one was entirely ignorant; I knew nothing more than to obey my master; and there were thousands of us in the same attitude . . . but the tocsin of freedom sounded and knocked at the door and we walked out like free men and met the exigencies as they grew up, and shouldered the responsibilities.³⁰

From the perspective of the democratic theory sketched above, the drama of answering the "tocsin of freedom" takes on considerable meaning. Men risked their lives and livelihoods in many places, yet turnover among officeholders was high, in part to accommodate a demand for officeholding. Local black citizens had unusually high expectations of the importance of local office, bringing all manner of problems before local black officials. Local government, thanks to national intervention, was a school of democracy.

Nonetheless, most local officeholders during Reconstruction were white. What, therefore, was local democracy like in those places where white Republicans largely governed, but in a context of robust black associationalism?³¹ Historian Donald Nieman has recovered the fascinating story of Washington County, Texas, midway between Houston and Austin. It is probably representative of many (if only a minority of) Southern counties.³²

Consistent with other scholarship, Nieman shows that a vibrant black politics at the local level meant public employment for freedmen, exemplifying one of many labor-market alternatives that emerged with the col-

³⁰ Foner, *Freedom's Lawmakers*, s.v. James K. Green, 90–1.

³¹ Here I am adding a third case to my account of enfranchisement-as-process: To the cases of enfranchisement with and without officeholding, I add enfranchisement with some officeholding in a context of robust associationalism among the enfranchised. As Anna Harvey shows in "The Political Consequences of Suffrage Exclusion," women's associations largely collapsed after the Nineteenth Amendment. Black associationalism during Reconstruction, by contrast, was vibrant, partly because no black associations existed before the Civil War amendments; thus there was no issue of negotiating the transition to a new political context, as there was for women's associations.

³² On white officeholding, see Randolph B. Campbell, "Grass Roots Reconstruction: The Personnel of County Government in Texas, 1865–1876," *Journal of Southern History* 58 (February 1992): 99–116; Donald G. Nieman, "African Americans and the Meaning of Freedom: Washington County, Texas, as a Case Study, 1865–1886," *Chicago-Kent Law Review* 70:2 (1994): 541–82. Representativeness of Washington County discussed in e-mail message, "Washington County," Donald Nieman to Richard Velelly, July 31, 1996, hard copy in possession of author (message cited with permission of Donald Nieman).

lapse of slavery. Republican officeholders also established outdoor poor relief for black as well as white citizens. Here they innovated in a way that Democrats promptly reversed when they gained office. Rather than require residence at a county poor farm, Washington County Republicans gave monthly payments to the aged and infirm and to widows and orphans requiring help.

It is in discussing the transformation of the local criminal-justice system that Nieman breaks new ground. Between 1870 and 1876, the state district court and the county sheriff selected jurors from the registered-voter list. Rates of African-American jury service were high: About one-third of the jurors who served on 107 petit juries were black, while 40 to 50 percent of grand juries were black. Although the state legislature acted in 1876 to curb black jury service, about a quarter of both petit and grand jurors in Washington County were black until 1884—at which time Democrats violently crushed the local Republican party.

These juries consistently indicted blacks for property crimes at higher rates than for whites, but not at the punitively high rates typical of local justice where there was no African-American jury service. Evidently they did so because black property crime occurred at a higher rate. Also, for the period 1870–4, juries indicted blacks for crimes against the person at higher rates. Rates of conviction and the severity of punishment for black-on-black murder were also higher than for white-on-white murder. Black jurors were apparently determined to stop black-on-black crime; white jurors may have been more sanguine about private violence, and thus pushed for milder punishments of white-on-white murder.

Here Nieman's historiography suggests an intricate insight into the possibilities of local government. Through their determination and success in addressing black crime, black jurors constructed a new moral order in a post-Emancipation South riddled with deep conflicts over how to cope with old and new forms of violence. This may be one of the reasons why court was generally well attended by both black and white citizens. Many whites preferred malign neglect of black-on-black crime. Indeed, the local white press complained about Washington County's success in coping with black-on-black crime, finding it financially burdensome. But having constructed their own churches, schools, and communities in Emancipation's aftermath, African-American leaders and citizens clearly intended to keep those institutions as free from social disorder as they could. The case of Washington County indicates that local government during Reconstruction could be a very special school of democracy indeed.

What about the Second Reconstruction of local Southern government? No study that matches the rich depth of Nieman's is yet available. Still, the evidence so far about local black officeholding yields several conclusions.³³

First, black officeholding is symbolically quite important. As a contemporary South Carolina official has said, "There's an inherent value in officeholding that goes far beyond picking up the garbage. A race of people who are excluded from public office will always be second class."³⁴

Second, black officeholding has often stimulated black voter interest in local government (though less so in rural Deep South counties). It has also unsurprisingly led to conflicts over what black officeholders can and should do, thus heightening political factionalism among black Southern communities.

Third, although racially polarized voting persists, it is worth looking past the statistical indicators to note that fairly large numbers of whites vote for black candidates. Relatively speaking, few do; in absolute terms, however, many do.

Fourth, local services involving municipal construction and road service have become more equally distributed within local jurisdictions. More police and fire protection has been extended to black neighborhoods. But redistributing municipal or county *jobs* to blacks—other than the menial labor to which Jim Crow historically relegated them—has, not surprisingly, been much more difficult and controversial. Finally, local governments have more actively sought state or federal assistance that will benefit both black and white citizens.

On my reading, all of this counts as renewal—a rebrightening of the line between the public and private domains. It is impossible, of course, for local government to hold quite the same attraction for local citizens as it did during Reconstruction, despite the suggestion in survey results that

³³ The only two lengthy and systematic studies available are James W. Button, *Blacks and Social Change: Impact of the Civil Rights Movement in Southern Communities* (Princeton: Princeton University Press, 1989) and Lawrence J. Hanks, *The Struggle for Black Political Empowerment in Three Georgia Counties* (Knoxville: University of Tennessee Press, 1987). Out of the fairly well-developed journal literature, I found a recent study of a Deep South county quite worthwhile: Pildes and Donoghue, "Cumulative Voting in the United States" (which ought actually to be titled "Cumulative Voting in Chilton County, Alabama, since 1988"). An overlooked but valuable treatment that manages to make issues and debates in the scholarly literature come alive is "Hands That Picked Cotton: Black Politics in Today's Rural South," a documentary comparing local governmental electioneering and representation in rural black-belt Mississippi and small-town black-belt Louisiana; this 60-minute video, released in 1982, was directed by Alan Bell and Paul Stekler.

³⁴ Grofman and Davidson, *Quiet Revolution*, 16.

Americans cherish this level of government more than all others. National and state governments now do much more. Also, local voting differs. In the nineteenth century, it occurred in the open, in front of one's peers. One asked for a party ballot in plain sight of a neighbor or a former overseer. Local voting is much less stressful now, but it is also less publicly meaningful—an affair conducted at the end of a workday, in secret and in silence in a booth, somewhere in a school auditorium.

But the disappointment among black voters in the possibilities of local government speaks volumes about how they once prospectively valued—and still implicitly value—local government. White voters and local leaders often seem unhappy about the particulars of voting-rights implementation. But there is scattered survey and anecdotal evidence suggesting overall white support for how the Voting Rights Act has influenced local government. At any rate, the resistance, discomfort, and adjustment of whites to local black political influence are marks of local government's value to whites—otherwise, there would be sheer indifference.³⁵

It is far from clear just how the contemporary situation will evolve. Accounts by participants in the post-1965 legal mobilization show that the overall experience was one of relative success for them. The periodization and characterization provided in Table 10.1 underscore this point. On the other hand, there is some evidence that state and local barriers to representation may now be able to survive, or even reemerge, because of the Supreme Court's hostility to race-conscious remedies for vote dilution.³⁶

One hopes that such a danger is not realized. Local government can teach the arts of citizenship and government more readily to more people than other levels of government. But it must be public and socially neutral government. The reconstruction of Southern local government restores such necessary features. Given the political instruction provided by openly and publicly taming social frictions, Southern local governments may actually be *better* schools of local democracy than many non-Southern counties.

³⁵ In addition to Pildes and Donoghue, "Cumulative Voting," see Parker, *Black Votes Count*, 202–4 (though Parker finds the evidence less reassuring than others might).

³⁶ Worry about the future can be found in Jacqueline A. Berrien, "All Politics Are Local: The Extension of *Shaw v. Reno* to Local Election Systems," *Voting Rights Review* (Voting Rights Program of the Southern Regional Council, Summer 1997), 14–17. See also Selwyn Carter, "Justice, Section 5 Targeted: Limits on Race Cost Minority State Seats," *Voting Rights Review*, Summer 1996, 15–20. Some of the context for this worry can be explored in Saul Brenner and Harold J. Spaeth, *Stare Indecisus: The Alteration of Precedent on the Supreme Court, 1946–1992* (Cambridge: Cambridge University Press, 1995).

IV: A DEMOCRATIC AUDIT

This chapter has closely considered what would seem to be an open-and-shut view of the Voting Rights Act, namely, that it is a powerful (perhaps *too-powerful*) engine of delocalization. This view has found support among the Supreme Court's majority in voting-rights cases. If one were to imagine what might be called an audit of the Voting Rights Act's politics, the regulatory-mischief view would advise entry of such debits as private government, subsequent misunderstanding of the democratic process, and substantial federalism costs.

Yet is it clear that those items must be placed in the debit column? The major parties, as well as groups, quietly implement the Fifteenth Amendment. Also, the voting-rights policy domain is hardly shielded from public scrutiny and discussion. In fact, it is in part an arena of democratic struggle.

Through such struggle there has been a renewal of Southern local government. In this respect, the Voting Rights Act opts for *both* nationalism and localism. Local governments have to be moderately neutral and decently unbiased for them to enrich American citizenship. For more than half a century, Southern local governments did not serve the purpose; only in the last decade, really, have they again begun to do so. The truth is that the Voting Rights Act is a windfall for Southern local government. Enter into the credit column, then, the rejuvenation of a kind of local citizenship and officeholding that existed all too briefly during Reconstruction and that betokens the promise of American democratic life.