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## Racial States of Municipal Governance: Policing Bodies and Space for Revenue in North St. Louis County, MO

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### Abstract

In the suburbs of North St. Louis County, Black residents are disciplined and policed for revenue to fund small struggling cities. To put it in the way many residents do, municipalities view poor Black residents as ‘ATMs,’ to which they return time and again through multiple forms of predatory policing and juridical practices. As part of this system and to hold onto the coveted yet hollow prize of local autonomy, both Black and White leaders across this region invest mightily in the ‘White spatial imaginary’ of the suburbs by adopting a rhetoric of producing good citizens, promoting safety, and upholding norms of so-called respectability.<sup>1</sup> Narrated through questions of citizenship, security, risk, and responsibility, the double bind of the Black body means Black residents both suffer from, and pay for, the loss of economic and political viability brought about when they simply occupy space. As a result, Black leaders in North St. Louis County oversee a racial state of municipal governance that relies on centuries-honed tropes of Black deviance and the illegibility of Black suffering. Based on archival research, extensive surveys and interviews, and analyses of court and public records, this Article looks at how desperate municipal governments in North St. Louis County use cultural politics and multiple forms of violence to develop localized policing and juridical practices to replace disappearing resources and revenue.

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† Jodi Rios holds an interdisciplinary PhD from UC Berkeley and a Master of Architecture from Columbia University. She taught architecture and urban design at Washington University in St. Louis for fifteen years and is currently an independent researcher and scholar. This Article is part of a larger research project examining the history and outcomes of racialized space and sustained resistance in the St. Louis region. The Article benefited from comments and discussion provided by Michelle Wilde Anderson, Manolo Callahan, Rosa Linda Fregoso, Yoel Haile, Bruce Haynes, Thomas Harvey, Jesus Hernandez, Christen Lee, Sunny Lim, George Lipsitz, Milton Reynolds and Kim Hester Williams. Angel Carter, Brandice Carpenter, Daniel Sachs, Anuradha Samarajiva, and Adrian Smith provided critical research assistance.

1. See *infra* Section III: Imagining the Suburbs.

“This system is not broken. The system is doing exactly what it was designed to do. There’s nothing broken about it. We will have to show you that your perfect system doesn’t work for us.”  
—Cathy Daniels (Mama Cat)<sup>2</sup>

Over the past fifty years, cities in the United States have implemented urban austerity policies and have increasingly acted as gatekeepers of public and private space through ‘race-neutral’ policies regarding citizenship, rights, and access to resources. These policies are often associated with large cities and urban cores. However, small municipal governments outside of urban centers carry out similar practices that often go unnoticed. While the census tracts of traditional suburban areas have always had levels of diversity, the suburbs in the United States came to represent White middle-class expectations of space and people in the American imagination.<sup>3</sup> These expectations were—and are—used to enforce norms and police areas that no longer reflect imaginations of suburban space. North St. Louis County or “North County,” which sits in the northern portion of St. Louis County, Missouri,<sup>4</sup> is an extreme example of how racialized disparities are produced and policed through spatial practice and cultural politics. The area reveals how municipal governments are critical instruments in remaking the modern racial state and processes of subject-making in twenty-first century U.S. cities.<sup>5</sup> Tiny, majority-Black municipalities build on narratives of propriety, risk, and property to police residents and extract revenue using formal and informal practices that appear rational and routine.<sup>6</sup> Although protesters exposed North St. Louis County’s shockingly racialized policing and governing practices following the 2014 death of Michael Brown in

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2. Cathy Daniels is a protester and community leader in the St. Louis region interviewed as part of this research. Much of this Article is based on interviews with residents of St. Louis, MO. Many of these interviews were conducted under institutional protocols that require strict anonymity, and are on file with the author.

3. See generally DIANNE SUZETTE HARRIS, *LITTLE WHITE HOUSES: HOW THE POSTWAR HOME CONSTRUCTED RACE IN AMERICA* (2013) (exploring the racial and class politics of architecture).

4. “North St. Louis County” and “North County” are both locally understood designations of roughly the northern third of St. Louis County, Missouri. See *infra* Maps 2–8. North St. Louis County is not a legally defined entity.

5. David Theo Goldberg has theorized modern racial states as places “where states of being and states of governance meet.” David Theo Goldberg, *Racial States*, in *A COMPANION TO RACIAL AND ETHNIC STUDIES* 233, 236 (David Theo Goldberg & John Solomos eds., 2002).

6. Jodi Rios, *Flesh in the Street*, 3 *KALFOU* 63, 66 (2016).

Ferguson, cities across this area have been carrying out and perfecting similar practices for decades.<sup>7</sup>

This Article argues that municipalities with majority-Black populations are often both victim and administrator of highly racialized practices that differentiate, oppress, and exploit non-White communities. This argument is based on data that show municipalities with higher percentages of Black residents are more likely to have resources poached by adjacent cities with majority-White populations.<sup>8</sup> The data also show that the residents of these cities experience more extreme forms of political, economic, and physical violence at the hands of local administrators and police. Moreover, the forms of predatory policing in these areas are often obscured or deemed economically ‘rational.’<sup>9</sup> As this Article illustrates, formal and informal manifestations of the law in North St. Louis County use imaginations of suburban space, or a White spatial imaginary, as a basis for the policing of ‘behavioral and spatial norms’ to generate essential funds that keep tiny cities solvent.<sup>10</sup> This policing for revenue also relies on age-old tropes of Black deviance and the illegibility of Black suffering. As such, the function of policing “is not of applying the law, but of obtaining a normal behavior; conformity,”<sup>11</sup> which local leaders exploit in the hope of maintaining hard-won yet politically and economically tenuous Black municipal autonomy. In addition to providing historical context concerning the factors that shaped North St. Louis County, this Article offers detailed accounts of the racialized means and extreme measures Black and White leaders in North St. Louis County use to extract money and resources from Black citizens. These practices have been developed over many years in response to wholesale disinvestment and the poaching of resources out of Black communities. It also considers the ethical arguments and discourses concerning municipal dissolution of majority-Black cities, with particular emphasis on the relationship between

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7. See, e.g., *id.* at 64 (discussing the Ferguson protest movement’s relationship to the Black struggle and reform policies in the United States).

8. See *infra* Section IV: Municipal Winners and Losers.

9. See *infra* Section IV: Municipal Winners and Losers.

10. See *infra* Section III: Imagining the Suburbs (discussing how spatial imaginaries have been conceptualized in relationship to race and space) especially text accompanying notes 215–218 (explaining how predatory policing and fining of Black residents are used as tools to address local budgetary shortfalls).

11. Michel Foucault, MICHEL FOUCAULT: LA JUSTICE ET LA POLICE, cited in André Lepecki, *Choreopolitics and Choreopolitics: Or, The Task of the Dancer*, 57 THE DRAMA REVIEW 13, 19 (2013).

municipal poaching, predatory policing, and suburban race-making. The Article concludes by considering current reform measures and asks what new ‘race-making situations’ will arise if existing paradigms are not shifted. While the focus of this work is on racialized violence—political, social, economic, and physical—against residents in North St. Louis County, it is equally important to note that powerful practices of liberation have also emerged from this geography, namely Ferguson resistance and movements galvanized by Ferguson protesters, such as Black Lives Matter and the Movement for Black Lives.<sup>12</sup>

### I. A Brief History of North St. Louis County

In August 1875, a longstanding political rift between the city of St. Louis and St. Louis County culminated when the Missouri electorate ratified a new state constitution. Included within the new state constitution were provisions for St. Louis City to adopt a charter and establish the first example of constitutional municipal home rule in the United States.<sup>13</sup> The following year, a board of freeholders was elected to draft a city charter and develop a scheme for separation from St. Louis County.<sup>14</sup> Although the 1875 constitution limited home rule charters to cities with over 100,000 residents, a precedent for municipal autonomy was formalized in Missouri and the constitution of 1945 would further liberalize provisions for municipal autonomy.<sup>15</sup> In the years that followed, St. Louis County would be carved into as many as ninety-nine municipalities (today there are eighty-eight), and municipal autonomy came to be viewed as a constitutional right within the region.<sup>16</sup>

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12. Rios, *supra* note 7, at 64 (2016). Due to the scope of this Article, it was not possible to include these decisive and sustained practices. For additional information about them, see Jodi Rios, *Everyday Racialization: Contesting Space and Identity in Suburban St. Louis*, in *MAKING SUBURBIA: NEW HISTORIES OF EVERYDAY AMERICA* (2015) and JODI RIOS, *BLACK LIVES AND SPATIAL MATTERS: RACE AND RESISTANCE IN SUBURBAN ST. LOUIS* (provisional title, forthcoming 2020) [hereinafter *BLACK LIVES*].

13. Henry J. Schmandt, *Municipal Home Rule in Missouri*, 1953 WASH. UNIV. L.Q. 385, 385 (1953).

14. Ellis Paxson Oberholtzer, *Home Rule for Our American Cities*, 3 ANNALS AM. ACAD. POL'Y & SOC. SCI. 68, 75 (1893).

15. See MO. CONST. art. 6, § 19(a) (“Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied . . .”).

16. Interview by Don Marsh with Patrick Green, Mayor, City of Normandy, in St. Louis County (Feb. 5, 2015) (on file with author).

St. Louis County emerged from the “great divorce” of 1875 debt-free and with seemingly endless space to grow.<sup>17</sup> The city, which had assumed the county’s debt as part of the scheme of separation, was now contained by a permanent city limit with no possibility for future annexation, an agreement the city would soon come to regret.<sup>18</sup> Commuter development in the county began in earnest for wealthy St. Louisans due to the creation of the rail line between St. Louis City and the outlying towns of Ferguson (established in 1855) and Florissant (built two years after separation from the city in the northern part of St. Louis County).<sup>19</sup> The Suburban and Electric streetcar line was also built into North St. Louis County soon after the rail line and development expanded to include elite planned neighborhoods in the Garden City tradition—with large lots, curvilinear streets, and restrictive covenants.<sup>20</sup> In 1893, Annie Orff expressed the prevailing distinction between city, understood as gritty and unhealthy, and the “arcadian splendor” of the new and exclusive suburbs in the county:

The pleasure of leaving the chaos of the city on the Suburban Electric car line comes to your mind as you are carried twelve miles through charming environments . . . Having left the dirty, noisy city, this entrancing glimpse of arcadian splendor, is refreshing, indeed . . . [T]he heart of the city dweller yearns for an abode of cleanliness, health, and repose such as is offered by these peerless suburbs . . . Its residents have the highest social standing, and include some of the most influential and wealthiest business men . . . [A]ll objectionable features, like factories, dairies, or any nuisance, are excluded to a distance of three miles. Future immunity . . . is secured by the requisite restrictions in all deeds to property . . . [T]his region is not one individual suburb, but a cluster of suburbs . . . This beautiful spot, which was chosen as a home by the illustrious Captain William Clark, is now conspicuous because of a splendid residence . . . [of] Governor D. R. Francis. That men of such

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17. See Peter W. Salsich, Jr. & Samantha Caluori, *Can St. Louis City and County Get Back Together? (Do Municipal Boundaries Matter Today?)*, 34 ST. LOUIS U. PUB. L. REV. 13, 16 (2014).

18. The city has unsuccessfully attempted to rejoin the county four times since 1876. See *generally id.* (discussing merger plans). There is currently (as of 2019) a consolidation plan under discussion in metropolitan St. Louis.

19. See *generally* Annie L. Y. Orff, *From City to Suburb: A Glimpse of the Beautiful Spot in the Shadow of St. Louis*, CHAPERONE MAG. 69 (1893) (describing the development of the North County suburbs via the creation of public transportation to Ferguson and points along the way in 1855 and Florissant two years later).

20. *Id.*

unerring judgment and high standing should have chosen this, of all regions for a home, is significant.<sup>21</sup>

In keeping with representations of the city and suburbs at the time, the eight pages of Orff's article portray the city as a chaotic place occupied by objectionable people with questionable moral fortitude, whereas the untainted suburbs are home to only the most upstanding citizens.<sup>22</sup> Similar forms of cultural politics are used today in North St. Louis County to differentiate and discipline people moving from the city based on so-called moral arguments and attitudes regarding differing 'nobilities' of people and groups.<sup>23</sup>

Following WWII, North St. Louis County was filled in by homebuilders and commercial developers capitalizing on federally subsidized financing for White homebuyers, infrastructure projects, and vast numbers of working- and middle-class families looking to leave increasingly crowded and racially mixed neighborhoods in St. Louis City.<sup>24</sup> The housing in these post-WWII developments is smaller than the older Garden City developments and follows a grid, although each development adheres to a different grid based on major streets radiating from the City of St. Louis.<sup>25</sup> The physical landscape of North St. Louis County therefore consists of a patchwork of infill housing between large tracts of land with older developments, towns, large religious and institutional grounds, industrial land, corporate headquarters, the University of Missouri-St. Louis (hereinafter UMSL), and Lambert St. Louis International Airport.<sup>26</sup> As a result, the built environment of North St. Louis County is especially divided and noncontiguous, laying a physically fragmented groundwork for political fragmentation to follow.

Like the developments that preceded them, newly settled neighborhoods in North St. Louis County in the 1940s and 1950s tended to be ethnically and religiously homogenous.<sup>27</sup> White working-class neighbors and kinship networks in ethnically divided areas of St. Louis City relocated to St. Louis County in similar proximities to one another; developers often appealed to specific White European ethnic groups when advertising new homes.<sup>28</sup>

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21. *Id.* at 69–77.

22. *Id.*

23. See E. TERRENCE JONES, FRAGMENTED BY DESIGN 25–26 (2000).

24. *Id.*

25. *Id.*

26. *Id.*

27. See Rios, *supra* note 6, at 66.

28. See, e.g., COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY 83–88 (2008) (describing how the private realty industry acted as

Churches with ethnically homogenous groups followed congregants to certain suburbs, prompting those left behind to follow suit.<sup>29</sup> As David Roediger has argued, the suburbs were consciously and unconsciously viewed as a means for ethnic minorities to claim or reinforce “Whiteness” in contradistinction to “the dark races” left behind in urban space.<sup>30</sup> By 1950, the expansion of suburban developments had dramatically increased. In North St. Louis County, for example, the population of the municipality of Bellefontaine Neighbors grew from 766 residents to 5,200 in 18 months where, between 1950 and 1952, 1,330 buildings were completed in this small city.<sup>31</sup> Expansion in North St. Louis County increased again after the University of Missouri established a campus on 128 acres within the boundaries of Bellerive, Bel-Nor, and Normandy in 1963, attracting thousands of students in addition to faculty and staff.<sup>32</sup>

In keeping with Missouri’s spirit of home rule, local autonomy was, and is, highly valued in St. Louis. Residents often identify with their neighborhoods before, or in lieu of, the rest of the metropolitan area.<sup>33</sup> Prior to 1960, Missouri state law allowed existing local governments to easily annex adjacent land and made it very easy for almost any area to incorporate.<sup>34</sup> As a result, a leap-frogging phenomenon of incorporation occurred in St. Louis County between 1940 and 1960 in which neighborhoods large and small incorporated

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“gatekeepers” to neighborhoods, with real estate boards in St. Louis “adher[ing] to the professional conviction that African American occupancy was a public nuisance and a threat to property values.”). See generally Rios, *supra* note 6, at 66 (describing the “constant personal and financial harassment” Black residents of North St. Louis County have endured over time).

29. Rios, *supra* note 7, at 66.

30. For additional information about David R. Roediger’s study regarding the formation of White working-class racism in the United States and specifically his discussion of Irish-American White racial formation, see DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 133–66 (Mike Davis & Michael Sprinker eds., 1991). See also GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* 48–69 (Rev. & expanded ed. 2006) (discussing the social, economic, and political power of ‘Whiteness’ that drives the persistent reproduction of White identity as a cultural norm).

31. See John Keaser, *The Town That Started from Scratch: How City Fathers of Bellefontaine Neighbors Guided It from Dormant Village of 766 Persons to Population of 5200 in 18 Short Months*, ST. LOUIS POST-DISPATCH, Apr. 20, 1952, at 83 (on file with author).

32. *Id.*

33. Unless otherwise noted, this section is based on resident interviews. See *supra* note 2.

34. See JONES, *supra* note 23, at 27–31.

as autonomous and semi-autonomous first-, third-, and fourth-class cities and villages to avoid being joined with other communities that were viewed as different.<sup>35</sup> Because neighborhoods in North St. Louis County tended to be smaller due to physical fragmentation, the area ended up with an exorbitant number of tiny cities that were essentially incorporated neighborhoods, some with just over 100 homes.<sup>36</sup> Formal and informal histories describe this patchwork of cities as tiny fiefdoms where fierce politics play out over relatively little power.<sup>37</sup> Community pride and the desire to control one's immediate environment with people perceived as like-minded meant that collaboration across municipal boundaries was not easily achieved.

Soon after the rash of incorporation and even before the Fair Housing Act of 1968 opened up previously walled-off areas,<sup>38</sup> Black residents were moving to neighborhoods in proximity to already-Black areas in St. Louis City, which were generally located along the northern border. A handwritten document in the archives of the Missouri Historical Society, entitled "Normandy's Black History," states:

By 1964, Garfield and Lincoln schools had a significant number of Black children. The James Price family is typical of many Black families who moved into the Normandy area in the 1960's. When James and Maggie and their two sons moved onto Dardenne Street in Pine Lawn, only two Black families lived on their block. Ten years later, in 1974, only one white family remained. Dr. Wright, the principal of Garfield school, recalls that nearly every house and yard improved in appearance after streets became Black. Mrs. Price said they felt like pioneers in those early days but that Pine Lawn and the Normandy area have made a good home.<sup>39</sup>

Civil Rights legislation—specifically the Fair Housing Act of 1968—opened up more suburban areas to Black homebuyers by 1970.<sup>40</sup> In response, White suburbanites and institutions across the U.S. resorted to other tactics to limit the potential for Black citizens

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35. JONES, *supra* note 23, at 31–33.

36. JONES, *supra* note 23, at 27–29.

37. JONES, *supra* note 23, at 59–68 (discussing the impact of the large number of cities on politics in St. Louis County in the early twentieth century).

38. Fair Housing Act of 1968 § 804, 42 U.S.C. § 3604 (1988) (prohibiting discrimination on the basis of race, color, religion, sex, or national origin in housing sales, rentals, or financing).

39. Normandy's Black History (unpublished manuscript) (on file with Normandy Historical Society Archives, Missouri Historical Society Library).

40. See Fair Housing Act of 1968 § 804.

to buy homes in historically White neighborhoods. Although many observers noted that Black families buying homes in the 1970s tended to take better care of their property than their White predecessors, efforts to keep Black buyers out were often justified through claims that 'Black occupation' depreciated home values and guaranteed decline.<sup>41</sup> As documented by multiple published studies between 1973 and 1976, St. Louis County policymakers, suburban municipal leaders, and grassroots organizations attempted to subdue public panic and slow what was described as the inevitable social and physical decline resulting from the influx of Black families from St. Louis City into the perceived all-White county.<sup>42</sup> Task forces were assembled and meetings took place between residents, civic leaders, and academic researchers.<sup>43</sup> As in cities across the United States, race tensions ran high. Many residents from that period remember acts of violence and property damage aimed at discouraging new Black families from moving in and White homeowners from selling to Black buyers. Blockbusting tactics among realtors were well documented, and redlining strategies among lenders became commonplace in St. Louis County throughout the 1970s.<sup>44</sup> According to researchers, administrators, and leaders, many areas "fell" quickly to "negro invasion," with some areas reaching 70% Black by 1975.<sup>45</sup>

In 1969, the Center of Community and Metropolitan Studies at UMSL conducted a study looking at schools, housing, and municipal governments within the Normandy School District in

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41. See *generally* John Collins, Bryan Downes, & Joan Saunders, *Local Government Intervention in the Face of Mortgage Disinvestment: The Case of Normandy* (Jan. 1976) (funded research report disseminated to stakeholders) (on file with Missouri Historical Society Library) (discussing how racial characteristics of neighborhoods led banks to view them as "occasion to disinvest," beginning a chain reaction that ultimately led to the neighborhood's destabilization); Rick Corry & Tom Dyer, *Factors in Suburban Blight: A Study of Housing in Northwoods, Pine Lawn, and Hillsdale* (June 1973) (funded research report disseminated to stakeholders) (on file with St. Louis Historical Society Library) (exploring 'White flight' and stating that "[i]t is likely that at least part of the white exodus from the Normandy area is not due to outright racial antagonism, but rather to the stereotype held by whites of blacks being poor homeowners and neighbors. Many whites believe that blacks will simply let their property run down . . .").

42. Collins, Downes, & Saunders, *supra* note 41; Corry & Dyer, *supra* note 41.

43. Collins, Downes, & Saunders, *supra* note 41.

44. See, e.g., GORDON, *supra* note 28 (examining the depopulation, deindustrialization, and general decline of St. Louis, a once-thriving city).

45. See, e.g., NORMANDY MUNICIPAL COUNCIL, *A LOOK AT THE NORMANDY AREA: A STUDY COMPILED FOR THE NORMANDY RESIDENTIAL SERVICES* (1975) (employing the vocabulary of war to describe the influx of Black Americans into St. Louis County during the early 1970s).

North St. Louis County. The results were in stark contrast to perceptions of what happens to neighborhoods when Black residents move in. The study found: 1) homes in integrated neighborhoods were either substantially the same quality or better as those in all-White neighborhoods; 2) the *initial* impetus for Whites moving out appeared to be normal changes such as death, retirement, and aging combined with a closed housing market in other areas, as opposed to racial bigotry later fanned by the real estate industry; and 3) proposed school taxes with the potential to improve schools were more likely to pass because Black residents were more likely to support tax levies than the White residents they replaced.<sup>46</sup> The study also found that White-to-Black turnover in integrated neighborhoods was higher and that when White residents did move, the house was sold to a Black buyer at market or above-market rates due to racial steering by real estate agents.<sup>47</sup> Herbert Werner, one of the researchers who conducted the study, told the *St. Louis Post-Dispatch* that “[t]he idea that Negroes depress property values is a myth fostered by real estate men. There has never been any evidence to support this myth and yet it crops up again and again, including in your own newspaper.”<sup>48</sup> Another UMSL study conducted in 1973 analyzed factors of suburban blight in three North County municipalities and found that the quality of housing did not deteriorate with increased racial integration, but actually improved.<sup>49</sup>

Soon after 1970, White residents began moving out of many areas of North St. Louis County at high rates.<sup>50</sup> This shift appeared to confirm the hypothesis of other studies regarding a racial “tipping point”—that once an area (especially a suburban one) becomes 30–40% Black, it will eventually become all Black, largely due to real estate and lending practices in addition to diminishing resources and amenities.<sup>51</sup> The momentum of White residents out of the area escalated when media attention was directed to ‘racial

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46. Dana L. Spitzer, *County Area Studied After Blacks Move In*, ST. LOUIS POST-DISPATCH, Nov. 6, 1969.

47. *Id.*

48. *Id.*

49. Corry & Dyer, *supra* note 41, at 19–20 (“[T]he data indicate that increased racial integration leads to less housing deterioration.”).

50. Corry & Dyer, *supra* note 41, at 2; Collins, Downes & Saunders, *supra* note 41, at 5–7.

51. E. Terrence Jones, *The Municipal Market in the St. Louis Region: 1950–2000*, in ST. LOUIS METROMORPHOSIS: PAST TRENDS AND FUTURE DIRECTIONS 275–92 (B. Baybeck & E. T. Jones eds., 2004).

tensions' at Normandy High School in 1970, when more than sixty Black students were suspended following an in-school protest after a Black female student was hit with an object in the lunch room.<sup>52</sup> The difficulty Black families had with securing conventional loans and well-documented blockbusting tactics by local real estate agents, who routinely called residents and sent mailings intended to scare White homeowners into selling their homes, added to the so-called White exodus.<sup>53</sup> In 1973, six North County subdivisions complained to county authorities that White residents were continuously harassed by real estate agents.<sup>54</sup> However, real estate interests defeated legislation introduced by the county council prohibiting blockbusting practices.<sup>55</sup>

Local studies published on the area throughout the 1970s, along with the Federal Housing Administration (FHA) and the Home Owner's Land Corporation (HOLC) guidelines that established risk ratings for lenders, perpetuated a well-honed vocabulary of war and associations of risk with Black people and space.<sup>56</sup> With racial homogeneity at the top of the risk assessment list used by the FHA, documents stated that neighborhoods "invaded" or "infiltrated" had or would lose all value "and fall" to the "occupation" of Black residents.<sup>57</sup> Another study stated, "the ineluctable sequence of [Black] *penetration to invasion to secession* (or a complete shift in racial composition) actually becomes the predominant pattern only under a certain set of conditions."<sup>58</sup> Recent writing on the St. Louis suburbs continues to frame "racial tipping" as a ruinous phenomenon of residential segregation in which neighborhoods become all Black, while all-White

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52. For examples of this media coverage, see *I.D. Badges Required at Normandy*, ST. LOUIS POST-DISPATCH, Nov. 28, 1970; *Normandy Calm After Warning*, ST. LOUIS POST-DISPATCH, Nov. 30, 1970; *Classes Resume at Normandy High*, ST. LOUIS GLOBE DEMOCRAT, Nov. 30, 1970; *Normandy High Reopens—Police Patrol Campus*, ST. LOUIS GLOBE DEMOCRAT, Dec. 1, 1970; *Parents of Blacks at Normandy Meet*, ST. LOUIS POST-DISPATCH, Dec. 7, 1970.

53. Eric L. Zoekler, *Split on Ending Blockbusting*, ST. LOUIS POST-DISPATCH, Nov. 29, 1973.

54. *Id.*

55. *Id.*

56. See, e.g., Federal Housing Administration, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Federal-Housing-Administration> (last visited Apr. 19, 2019) (describing appraisal rules and risk ratings developed by the FHA which assumed that neighborhoods occupied by the same racial groups would be the most stable over time and produce the highest returns for residents).

57. GORDON, *supra* note 28, at 89.

58. SOLOMON SUTKER & SARA SMITH SUTKER, RACIAL TRANSITION IN THE INNER SUBURB 32 (1974) (emphasis added).

demographics go unquestioned.<sup>59</sup> Interviews revealed that throughout the 1970s, White residents, St. Louis County leadership, and real estate agents acting as gatekeepers “conceded” much of North St. Louis County to “Black occupation.” They considered it a “casualty” of what they saw as the inescapable migration of Black families out of the city.

Many White homeowners in North St. Louis County eventually did respond to blockbusting tactics. Initially, homes were sold to middle-class Black families at high prices due to demand and limited inventories available to Black buyers.<sup>60</sup> As other areas in the county opened to middle-class Blacks, demand slowed in North County and many homes were sold “as is” by alarmed sellers to speculators and investors looking to turn homes around quickly for a profit.<sup>61</sup> These homes were cosmetically improved literally overnight or on a weekend and sold or rented to unsuspecting Black buyers at above-market prices.<sup>62</sup> Due to hidden problems in many of these houses, new homeowners faced unexpected repairs and system replacements that some were not able to afford.<sup>63</sup> In other instances, the interim owner would divide rooms without a building permit and sell the house as a five-bedroom house, for example, instead of a three bedroom.<sup>64</sup> New owners with large families would move in and subsequently be charged with occupancy violations based on the number of rooms on record with the city.<sup>65</sup> Landlords often rented to lower income residents when problems without long-term solutions arose.<sup>66</sup> The U.S. Department of Housing and Urban Development (HUD), which had increased FHA lending in this area between 1950 and 1970 (allowing lower requirements for White borrowers), also contributed to this trend through increased repossession rates.<sup>67</sup> Upon repossessing homes, HUD sold off

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59. Jones, *supra* note 51, at 287–89.

60. Collins, Downes, & Saunders, *supra* note 41.

61. Collins, Downes, & Saunders, *supra* note 41.

62. Collins, Downes, & Saunders, *supra* note 41.

63. Collins, Downes, & Saunders, *supra* note 41.

64. Collins, Downes, & Saunders, *supra* note 41.

65. See, e.g., D. D. Obika, *Beverly Hills Woman Says Realtor Lied About House*, ST. LOUIS POST-DISPATCH, May 7, 1976 (describing how a realtor altered a two-bedroom home without proper permits and sold it to a Black woman as a three-bedroom home).

66. Collins, Downes, & Saunders, *supra* note 41, at 4–6.

67. Collins, Downes, & Saunders, *supra* note 41, at 11–14.

properties “as is” to investors at reduced prices who then flipped the house or rented to Black families.<sup>68</sup>

The expedited sales occurring in many areas of North St. Louis County made it difficult for municipalities to keep track of housing quality. In turn, more ordinances regarding property occurred, such as occupancy permit requirements aimed at excluding or penalizing larger (Black) families.<sup>69</sup> If people not listed on the occupancy permit of a residence were found to be spending nights, the owner was subject to fines.<sup>70</sup> Children were not eligible to enroll in public schools without an occupancy permit. In 1970, the Legal Aid Society became involved in complaints against the city of Pagedale regarding occupancy permits.<sup>71</sup> Several Black families, and in particular Black women, alleged they had been harassed by the city for having more than four children, allowing visiting relatives to stay at their homes, and having babysitters occasionally spend the night when a parent/homeowner was working nights.<sup>72</sup> Many Black residents condemned the occupancy permits as racially motivated and the Legal Aid Society threatened racial charges against the city.<sup>73</sup> One of the women involved in the complaint, who was the first Black homeowner on her block, stated, “It has been the most miserable year of my life . . . because of my white neighbors.”<sup>74</sup>

As neighborhoods in North St. Louis County transitioned, it became almost impossible for potential buyers to receive federally secured loans from banks or saving and loan associations due to the ‘risk’ associated with Black neighborhoods.<sup>75</sup> As a practice, conventional lenders did not lend to White homebuyers in “transitioning neighborhoods” and instead encouraged White buyers to take out loans on homes in all-White areas.<sup>76</sup> Documents

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68. Collins, Downes, & Saunders, *supra* note 41, at 11–14.

69. Collins, Downes, & Saunders, *supra* note 41, at 11–14.

70. Collins, Downes, & Saunders, *supra* note 41, at 11–14.

71. *Legal Aid Society May Challenge Pagedale Occupancy Permit Law*, ST. LOUIS POST-DISPATCH, May 20, 1970.

72. *Id.*

73. *Id.*

74. *Id.*

75. Collins, Downes, & Saunders, *supra* note 41, at 7.

76. Collins, Downes, & Saunders, *supra* note 41, at 8. “Transitioning neighborhoods” was, and is, a term used by the Home Owners’ Loan Corporation, which was established by the federal government to determine risk ratings for mortgage lending, and by real estate agents and developers to denote Black presence in neighborhoods without specifically citing race. See Florence Louise Wilson, *Subsidized Housing and Neighborhood Change* 20–25 (U.C. Berkeley, Working Paper No. D11-001, 2011), [https://urbanpolicy.berkeley.edu/pdf/Wilson\\_Florence\\_di](https://urbanpolicy.berkeley.edu/pdf/Wilson_Florence_di)

also show designations of high-risk lending areas in North County zip codes (redlining) by the Federal Home Loan Bank Board.<sup>77</sup> This further decreased conventional lending to qualified Black residents.<sup>78</sup> In turn, mortgage investment companies (MICs) were well-placed to make high-interest loans to investors and Black buyers. MICs could provide FHA certified loans although the requirements they placed on borrowers and properties tended to be less strict than conventional lenders. When foreclosures occurred, MICs collected their money and turned the property over to HUD, which started the process over by selling the property quickly.<sup>79</sup> Although savings and loan associations were generally not making conventional loans to residents in transitioning neighborhoods, they were making short-term interim loans to investors at high rates and buying FHA insured loans on the secondary mortgage market—turning them back to FHA when foreclosures occurred.<sup>80</sup> Most people, however, would not learn of similar lending practices that bundled government secured high-risk loans and sold them as “safe investments” until thirty years later, when a national foreclosure crisis immobilized the U.S. economy.<sup>81</sup>

As a result of the largely unseen practices by lenders and those flipping housing in North St. Louis County, Black residents, rather than the institutions driving disinvestment, foreclosures, and turnover, were blamed for the deterioration of physical property, decrease in home values, and a declining tax base throughout the 1980s and 1990s.<sup>82</sup> Black homeowners were consequently targeted with ordinance violations for property and occupancy infractions that were said to be aimed at curbing blight associated with new Black occupants.<sup>83</sup> Eventually, ordinances would be crafted to target not just property but also what could be called “living while Black” in order to generate as much income as possible and make

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77. Collins, Downes & Saunders, *supra* note 41, at 8.

78. Collins, Downes & Saunders, *supra* note 41, at 8.

79. Collins, Downes & Saunders, *supra* note 41, at 11 (detailing the rise in MIC investments in the Normandy zip code).

80. Collins, Downes, & Saunders, *supra* note 41, at 11.

81. See John v. Duca, *Subprime Mortgage Crisis*, FEDERAL RESERVE HISTORY (Nov. 22, 2013), [https://www.federalreservehistory.org/essays/subprime\\_mortgage\\_crisis](https://www.federalreservehistory.org/essays/subprime_mortgage_crisis) (explaining factors that contributed to the subprime mortgage crisis from 2007-2010).

82. *Id.*; see also Downes, Saunders, & Collins, *supra* note 42 (detailing lending practices).

83. RIOS, BLACK LIVES, *supra* note 12.

up budget deficits brought about by disinvestment.<sup>84</sup> Adding to municipal shortfalls and policing-for-revenue practices, in the late 1970s the county-wide sales tax shifted from point-of-sale to distribution tied to population.<sup>85</sup> This change penalized communities that were losing population and benefited the growing cities to which White residents were moving.<sup>86</sup> Federal urban austerity policies throughout the 1970s also meant fewer resources for areas facing disinvestment.<sup>87</sup> The federal government ended many municipal tax-sharing mandates throughout the Reagan era, leaving struggling cities in North St. Louis County further stranded.<sup>88</sup>

In spite of pushes for consolidation by academic researchers and regional policymakers, struggling cities dug in their heels and increasingly turned to policing and municipal courts to balance their annual budgets.<sup>89</sup> In 1981, Tim Fischesser, the Executive Director of the Normandy Municipal Council, a community extension program at UMSL that formed in the 1970s and partnered with municipal administrators within the Normandy School District to address common issues, was interviewed by a reporter from the *St. Louis Post-Dispatch*.<sup>90</sup> Fischesser expressed his belief that economic incentives would not be enough to push cities to consolidate and overcome residents' psychological block against losing political autonomy.<sup>91</sup> He stated, "What you notice is the variety of ideas that come around. People here just don't think alike."<sup>92</sup> These differences were more than racial: they existed between neighborhoods where class, ethnicity, and religion established social norms and group identity. Fischesser was interviewed in 2010 regarding his experience with the Normandy Municipal Council, which disbanded in 1990. He said it became clear early in the formation of the Council that municipalities would never consolidate on their own accord and the best the Council could hope for was to facilitate cooperation around common issues, public

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84. RIOS, BLACK LIVES, *supra* note 12.

85. RIOS, BLACK LIVES, *supra* note 12.

86. RIOS, BLACK LIVES, *supra* note 12.

87. RIOS, BLACK LIVES, *supra* note 12.

88. RIOS, BLACK LIVES, *supra* note 12.

89. Interview with Tim Fischesser, former Executive Director, Normandy Municipal Council (on file with the author).

90. Courtney Barrett, *An Alliance of Diversity*, ST. LOUIS POST-DISPATCH, Nov. 30, 1981, at 1 (on file with author).

91. *Id.*

92. *Id.*

services, and community-building events.<sup>93</sup> He acknowledged specific achievements but lamented that many opportunities for cities to work together were thwarted by distrust, competition, and the uneven effects of disinvestment and access to resources across communities.<sup>94</sup>

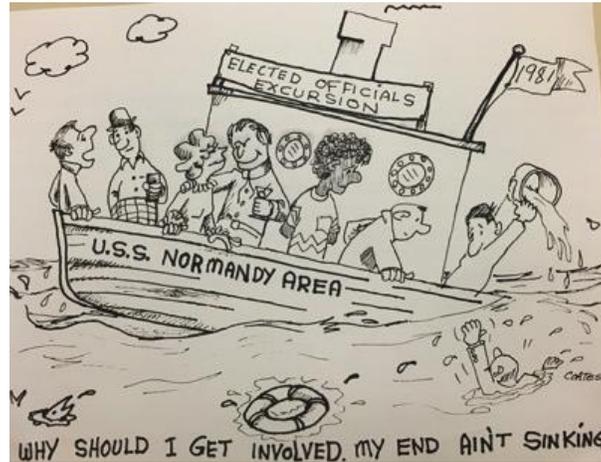


Figure 1. Cartoon from 1981 drawn by Mayor George E. Coates of Beverly Hills in North St. Louis County (source: Missouri Historical Society Library, Normandy Collection).<sup>95</sup>

Data indicate that school districts in North St. Louis County were losing White students at a higher rate than the neighborhoods themselves throughout the 1970s.<sup>96</sup> By the early 1980s it was clear the Normandy School District, which was 85% Black in 1981, was on its way to becoming an all-Black district.<sup>97</sup> The district had not received a tax increase since 1969, and two attempts to raise the school tax were voted down in the late 1970s.<sup>98</sup> The defeat at the polls was attributed to the fact that the majority-White population either did not have school-age children or did not send their children

93. Interview with Tim Fischesser, *supra* note 89.

94. Interview with Tim Fischesser, *supra* note 89.

95. George E. Coates, Cartoon of Elected Officials (1981) (on file with Missouri Historical Society Library).

96. See Barrett, *supra* note 90, at 1 (stating Black enrollment in the Normandy district was 85% while Black residents made up only 49% of the population).

97. See Barrett, *supra* note 90, at 1.

98. See Barrett, *supra* note 90, at 1.

to Normandy schools.<sup>99</sup> At the same time, private and parochial schools saw vast increases in White students.<sup>100</sup> Rev. Robert A. Ottoline, the pastor at St. Ann Catholic Church whose school received many of the White students leaving public schools, told a *St. Louis Post-Dispatch* reporter in 1981, "Let's face it, there's not going to be any white people moving here and sending their children to Normandy schools."<sup>101</sup> Rev. Ottoline saw his parish as a stabilizing force in the area by providing a school for White children so White families would not be forced to either move or send their children to schools with high numbers of Black children.<sup>102</sup> In response to a question regarding why St. Ann School was thriving when other Catholic schools were in decline, he said, "We have the numbers, we have whites, and we have money. That's the only way we make it."<sup>103</sup> Rev. Ottoline acknowledged, however, that the tendency for municipalities to resist cooperation and keep to themselves was not a Black/White issue.<sup>104</sup> Regarding the tendency for municipalities to not work together, he said, "Forty or 50 years ago, when everybody out here was white, they had that same problem."<sup>105</sup>

While the demographic transition of residents in North St. Louis County was swift, demographic transitions in municipal leadership occurred much more slowly. In 1982, Pagedale made national news by electing the first all-Black and all-female city administration in the United States, which included the mayor and five alderpersons.<sup>106</sup>

The positive notoriety did not last long, however. Two months later, the *Detroit Free Press* reported:

The meetings of the Board of Alderpersons sometimes resemble Latin American soccer matches with competing factions in the audience shouting loud approval or displeasure at the parliamentary play. Talk of impeachment is common and allegations of threats of physical violence against board members have been made at meetings.<sup>107</sup>

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99. See Barrett, *supra* note 90, at 1.

100. See Barrett, *supra* note 90, at 5.

101. Barrett, *supra* note 90, at 5.

102. Barrett, *supra* note 90, at 5.

103. Barrett, *supra* note 90, at 5.

104. Barrett, *supra* note 90, at 5.

105. Barrett, *supra* note 90, at 5.

106. Monte Plott, *Pagedale Mayor Is Ousted; City Hall Now All Women*, ST. LOUIS POST-DISPATCH, Apr. 7, 1982, at 1, 4.

107. Joe Swickard, *Government Is a Hot Show in a Small Missouri Town*, DET. FREE PRESS, July 11, 1982, at 1A.

Although this type of behavior was common at city council meetings in Pagedale long before Black women were voted into office,<sup>108</sup> the intense media attention when it made national history with its all-Black and all-female leadership associated chaos with an administration of fighting Black women.<sup>109</sup> The St. Louis media, which has a history of portraying local politics in North County municipalities as a circus, had material to work with. Shortly after the election, the city had three police chiefs at one time due to infighting between the council and the mayor.<sup>110</sup> One of the additional two police chiefs even arrested the mayor and appointed police chief, charging her appointee with impersonating a police officer.<sup>111</sup> The mayor accused the arresting police chief of fraud and of holding her in a shoe store for five hours against her will, during which time she said he fired shots at her.<sup>112</sup> Based on previous White administrations, such events could be considered normal in Pagedale. However, White administrations were not covered in the same way and did not receive national attention.

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108. The previous White mayor, for example, engaged in fistfights during council meetings in the 1970s. *Town Run by All Women Now Has Three Police Chiefs Hired*, CHILLICOTHE TRIB., June 17, 1982, at 1, 12.

109. *Id.*

110. *Id.*

111. Michael D. Sorkin, *Pagedale Mayor, Her Choice for Police Chief Are Arrested*, ST. LOUIS POST-DISPATCH, June 17, 1982, at 1, 8A.

112. Dale Singer & Michael D. Sorkin, *Pagedale Mayor Wants Protection from Chief*, ST. LOUIS POST-DISPATCH, June 20, 1982, at 1. See also Michael D. Sorkin & E. S. Evans, *Injunction Is Issued in Pagedale Dispute*, ST. LOUIS POST-DISPATCH, June 22, 1982.



Figure 2. Although Pagedale politics had long been a “hot show” under White male leadership, newspapers around the country featured local politics in Pagedale after it became the first city to elect all-Black, all-female leadership (source: JM Balmer/Detroit Free Press).<sup>113</sup>

Pagedale, as well as other small municipalities around it, continued to elect and maintain majority-Black leadership after 1985.<sup>114</sup> Often this leadership was also majority female.<sup>115</sup> Contrary to research predictions, these cities did not become more open to consolidation measures or municipal cooperation.<sup>116</sup> They also did not curb the trend toward funding municipal budgets through the policing of Black residents and through the courts, which began under White leadership in the 1970s.<sup>117</sup> Rather, these policies were expanded, often in direct relationship to demographic trends. Many Black female leaders interviewed in the early 2000s stated they were very aware that they would be scrutinized more than their White male predecessors and that nobody wanted to be at the helm of city leadership if, or when, it appeared that dissolution was the only option for their city.<sup>118</sup> Most leaders who were interviewed

113. See, e.g., Plott, *supra* note 106, at 1 (discussing how “a woman mayor and an all-female Board of Aldermen” were elected in Pagedale over incumbent candidates) (on file with author).

114. See RIOS, BLACK LIVES, *supra* note 12.

115. See RIOS, BLACK LIVES, *supra* note 12.

116. See RIOS, BLACK LIVES, *supra* note 12.

117. See RIOS, BLACK LIVES, *supra* note 12.

118. See RIOS, BLACK LIVES, *supra* note 12.

defended property and behavioral ordinances in their cities as continuations of what they saw as effective policies and said that the biggest challenges facing small cities were people who refused to care for property.<sup>119</sup>

In outlying and larger municipalities of North St. Louis County, such as Ferguson and Florissant, transition in the demographics of residents and leadership lagged behind smaller communities that were closer to Black neighborhoods in St. Louis City.<sup>120</sup> By the time the teenager Michael Brown, Jr. was shot by a White Ferguson police officer in 2014, the city was 67% Black but maintained its majority White leadership.<sup>121</sup> This fact was often cited as a contributor to the unrest after the shooting and in subsequent data produced by the Department of Justice regarding extreme racialized policing practices in Ferguson.<sup>122</sup> The demographic misalignment of the population and its leadership did not help relieve tensions in Ferguson. Nonetheless, the presumption that the policing of Black residents based on suburban norms was specifically carried out by White leadership is incorrect—even more extreme forms of racialized policing practices are carried out in multiple cities in North St. Louis County with all-Black leadership.<sup>123</sup>

## II. The St. Louis Region Today

Today the St. Louis metropolitan area consists of 15 counties in 2 states with approximately 2.8 million people.<sup>124</sup> Encompassing over 9000 square miles (Map 1), the region includes over 300 local governments and 165 school districts with the highest number of taxing authorities in the nation at 26.8 taxing units per 100,000 people.<sup>125</sup> Although St. Louis County covers just 507 square miles

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119. See RIOS, BLACK LIVES, *supra* note 12.

120. RIOS, BLACK LIVES, *supra* note 12.

121. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, THE DEPARTMENT OF JUSTICE INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 4 (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [hereinafter *The Ferguson Report*].

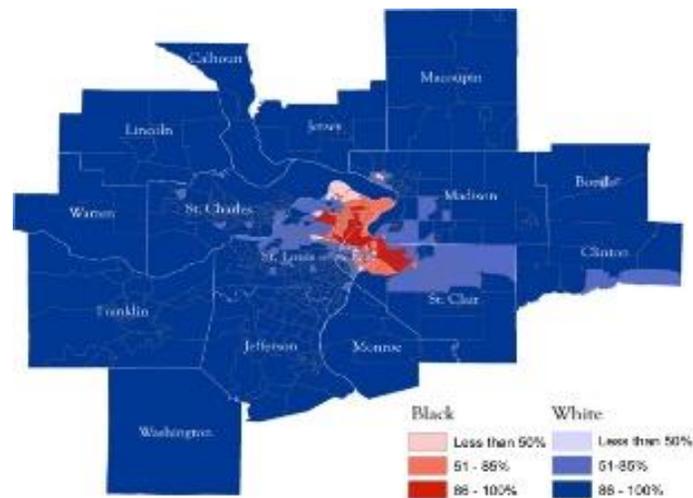
122. *Id.* at 4–5.

123. See *infra* Table 1.

124. *St. Louis, MO-IL Metro Area*, DATAUSA, <https://datausa.io/profile/geo/st.-louis-mo-il-metro-area/> (last visited Jan. 19, 2019). Depending on the source and how boundaries are drawn, the St. Louis region is said to include twelve to seventeen counties. The fifteen counties included in Map 1 are based on counties with economies that are highly dependent upon the St. Louis metropolitan area. *Infra* Map 1, note 130.

125. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, U.S. CENSUS OF

and is geographically one of the smallest counties in the region, at nearly one million people, it is by far the most populated.<sup>126</sup> Established as a district in 1803 when the Upper Louisiana Territory was transferred to U.S. control, and as a county in 1812 when the Missouri Territory was formed, St. Louis County is one of the oldest counties in Missouri.<sup>127</sup> The city of St. Louis, which separated from the county in 1876 due to differing political priorities discussed above,<sup>128</sup> had a population of roughly 302,000 residents in 2018, and spans 61.91 square miles.<sup>129</sup>



Map 1. The 15 counties, and St. Louis City, that make up the St. Louis Metropolitan Area. Areas that are less than 50% White or Black are color-coded based on the majority of a single race reported in that census tract.<sup>130</sup>

There are 88 municipalities in St. Louis County today (Map 2), of which 81 maintain independent courts, 61 have independent police forces, and all provide some level of basic services. More than

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GOVERNMENTS, 2012: LOCAL GOVERNMENTS IN INDIVIDUAL COUNTY-TYPE AREAS (2012).

126. *St. Louis County, Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/stlouiscountymissouri/PST045217> (last visited Jan. 28, 2019).

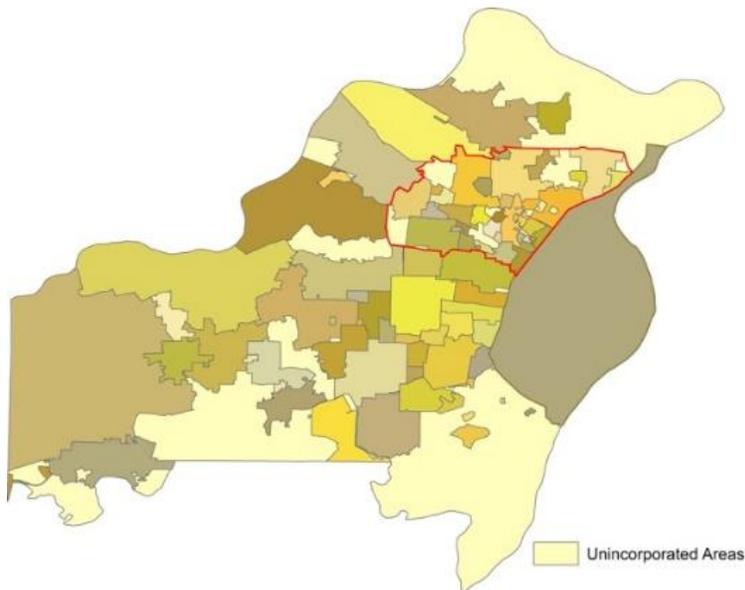
127. See *St. Louis*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Saint-Louis-Missouri> (last visited Apr. 29, 2019).

128. See *supra* Section I: A Brief History of North St. Louis County and note 13.

129. *St. Louis City*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/stloiscitymissouricounty> (last visited Apr. 24, 2019) (reporting the land area in square miles in 2010).

130. *Id.* (map generated by Sean Pries for author based on census data).

half of the 88 municipalities are located in the northern fifth of the county footprint, to the north of Olive Boulevard in the area known as North County. (Map 3). This area covers roughly 50 of the 524 square miles in St. Louis County. Of the 42 municipalities located in the inner-ring area, 25 can be found within a 12-square-mile area known locally as the Normandy suburbs, roughly defined by Page Avenue, Interstates 70 and 170, and the St. Louis City limits. People driving on interstates or thoroughfares in this area may cross 7 or 8 city limits in a 1-to-2-mile stretch.



Map 2. Municipalities of St. Louis County, Missouri. Inner-ring area of North St. Louis County outlined, 2010.<sup>131</sup>

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131. *Id.* (map generated by Sean Pries for author based on census data).



*Map 3.* Inner-ring area of North St. Louis County, 2010. Forty-two of the 90 cities in St. Louis County sit within this footprint.<sup>132</sup>

Black residents make up 24% of the population in St. Louis County—up from 2.7% in 1960.<sup>133</sup> More than 80% of the Black population lives in North St. Louis County, which is majority Black, and many municipalities in North St. Louis County are over 90% Black.<sup>134</sup> As discussed above, demographic shifts were rapid in this area following Civil Rights legislation, and several municipalities inverted within a 20-year period—from over 90% White in 1960 to more than 90% Black by 1980—with the most dramatic shifts occurring in the mid-1970s.<sup>135</sup> Today, demographic mapping of race, income, poverty levels, education, workforce, family structures, health, and amenities reveal a consistent line dividing North St. Louis County from the rest of the region (Maps 4–8).<sup>136</sup>

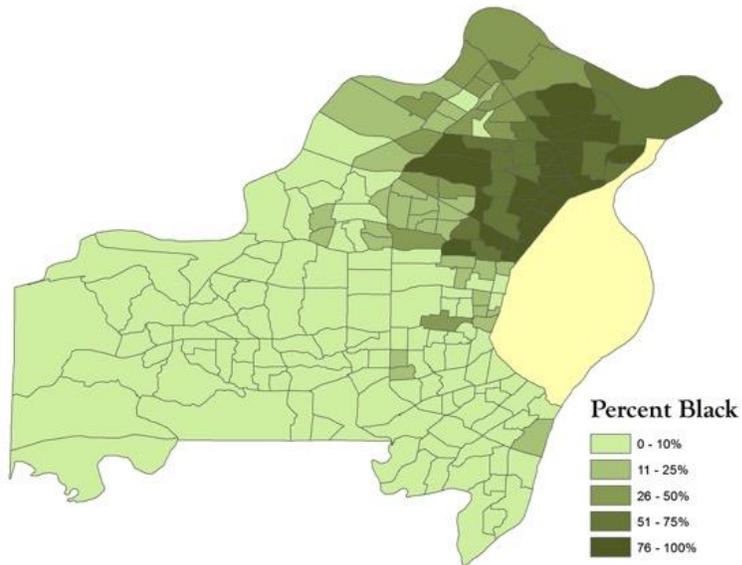
132. *Id.* (map generated by Sean Pries for author based on census data).

133. *Id.*

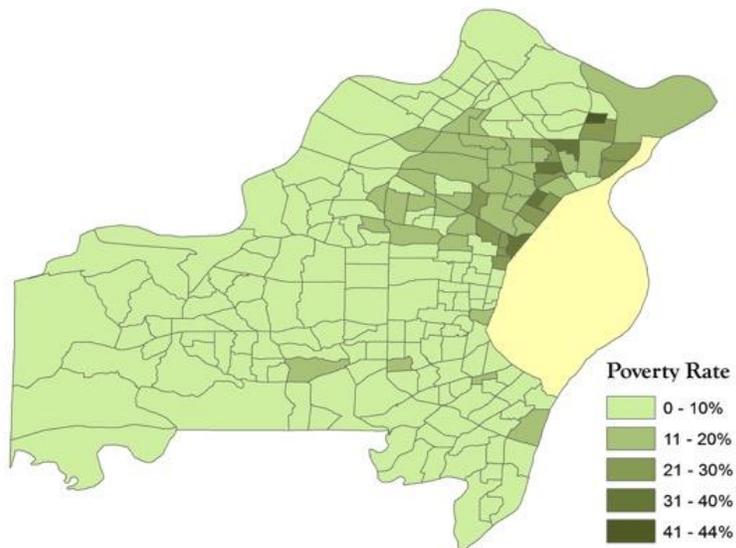
134. *Id.*

135. See discussion *supra* notes 44–45.

136. *St. Louis County*, *supra* note 131 (map generated by Sean Pries for author based on census data).



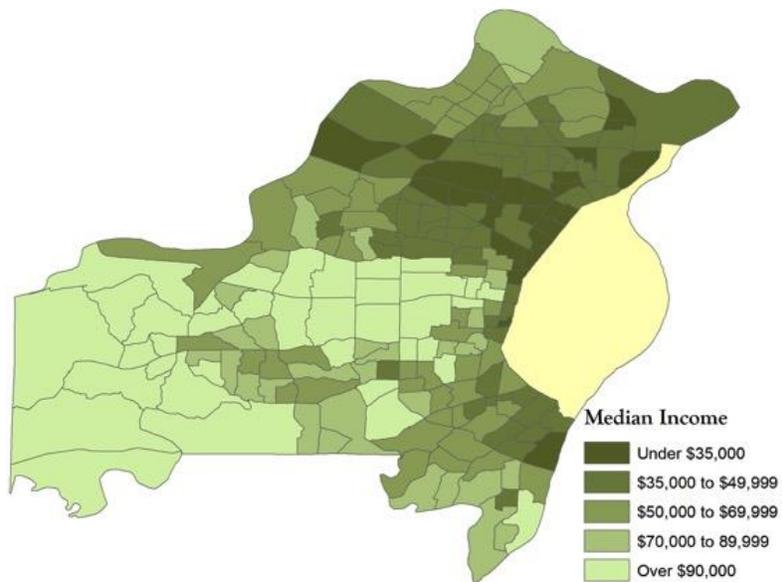
Map 4. St. Louis County, percent Black, 2010.<sup>137</sup>



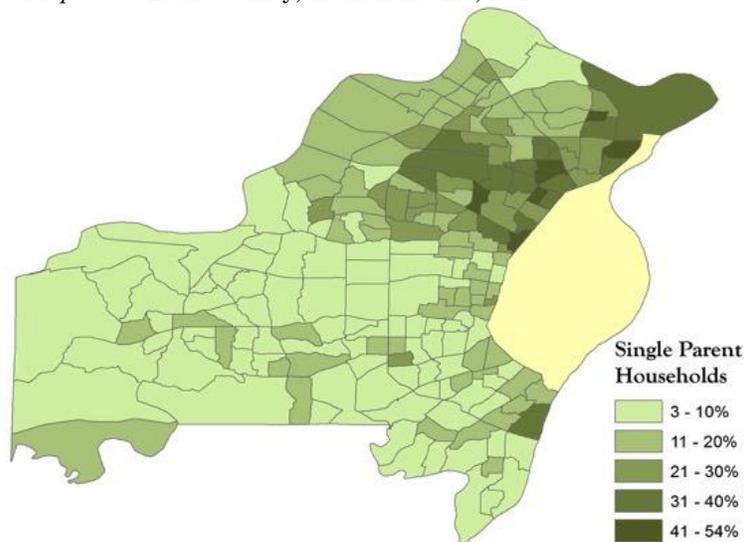
Map 5. St. Louis County, poverty rate, 2010.<sup>138</sup>

137. *St. Louis County, supra* note 131 (map generated by Sean Pries for author based on census data).

138. *St. Louis County, supra* note 131 (map generated by Sean Pries for author based on census data).



Map 6. St. Louis County, median income, 2010.<sup>139</sup>



Map 7. St. Louis County, single parent households, 2010.<sup>140</sup>

139. *St. Louis County*, *supra* note 129 (map generated by Sean Pries for author based on census data).

140. *St. Louis City*, *supra* note 131 (map generated by Sean Pries for author based on census data).

### III. Imagining the Suburbs

North St. Louis County starkly reveals the degree to which race, space, and identity are mutually imagined and policed in metropolitan space and the disparate outcomes produced. The debates over how to define and study urban and suburban space—as well as whether North St. Louis County is urban, suburban, or something in between—go beyond simply qualifying physical geographies or mapping demographics and beyond the relentless need urban scholars have to codify space. These distinctions reveal how space—as imagined, represented, and lived—is highly political and carries out specific types of work. In this way, space can be re-codified over time or overnight, depending on the intended work spatial distinctions perform and the discursive processes used to link social and cultural practices to race and space.

The practices of policing residents for revenue in North St. Louis County rely on the specific and highly developed rhetoric of the White suburban imaginary—producing respectable citizens, protecting private property, and upholding aesthetic and cultural norms of suburban space. The concept of spatial imaginaries, used throughout this Article, draws from the fields of social philosophy and human geography<sup>141</sup> and asserts that the lived experience of place includes physical, sociopolitical, and symbolic (imagined) space. George Lipsitz developed the concept of White and Black spatial imaginaries, which are the historically specific understanding of White space in the United States as separate and distinct from Black space.<sup>142</sup> Lipsitz makes the point that while formal laws and policies intended to oppress, exclude, and segregate Black citizens in the United States have been removed, a residual and powerful imagination of space, and specifically the definition

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141. See Derek Gregory, *Imaginative Geographies*, 19 *PROGRESS HUM. GEOGRAPHY* 447, 447–85 (1995) (dissecting Edward Said's approach to creating geographical imaginaries). See generally HENRI LEBEVRE, *THE PRODUCTION OF SPACE* (Donald Nicholson-Smith trans., 1992) (discussing the search for reconciliation between mental space and real space); DOREEN MASSEY, *FOR SPACE* (2005) (arguing for a re-imagination of the philosophical, theoretical, political understanding of space); KATHERINE MCKITTRICK, *DEMONIC GROUNDS: BLACK WOMEN AND THE CARTOGRAPHIES OF STRUGGLE* (2006) (arguing that the interplay between domination and Black women's bodies is underscored by the social production of space); EDWARD SOJA, *THIRDSPEACE: JOURNEYS TO LOS ANGELES AND OTHER REAL-AND-IMAGINED PLACES* (1996) (discussing the meaning and significance of space and related concepts that compose and comprise the inherent spatiality of human life).

142. See GEORGE LIPSITZ, *HOW RACISM TAKES PLACE* 50 (2011).

and separateness of White space in contradistinction from Black space, remains firmly in place.<sup>143</sup>

Dianne Harris discusses the perceived and actual development of post-WWII suburbs for a specifically White middle class. Harris shows it was not only highly orchestrated by institutional policy and real estate markets, but also seared into the imagination of the American public through calculated promotion and discourses that both produced and maintained normative White space as synonymous with White culture.<sup>144</sup> In this way, the suburbs were imagined, represented, and ultimately defined as White space in opposition to dark urban space, despite the fact that U.S. suburbs have always maintained surprising diversity. As Michel Foucault argues, “Each society has its regime of truth, . . . that is, the types of discourse which it accepts and makes function as true . . . .”<sup>145</sup> North St. Louis County illustrates the multiple political scales in which regimes of truth operate and true becomes false by simply changing the space in which it is applied. Furthermore, this area demonstrates Stuart Hall’s observation that “each regime of truth *makes difference function discursively*” and “by making difference intelligible in this way, each regime marks out human differences within culture . . . .”<sup>146</sup>

The American obsession with the single-family house and the importance of property was institutionalized by New Deal-era housing policy. Over time it became instilled in the collective imagination of U.S. culture, which viewed home ownership as a fundamental right of White citizenship and a distinguishing factor of White culture.<sup>147</sup> In this way, the notion that suburbs are interchangeable with ‘White space’ became true. In her book on housing reform in Chicago between 1871 and 1919, Margaret Garb used historical data to also convincingly argue the link between race

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143. *Id.* at 27.

144. See HARRIS, *supra* note 3, at 83–111 (exploring the racial and class politics of architecture).

145. MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1973*, 131 (Colin Gordon ed., Colin Gordon et al. trans., 1980).

146. STUART HALL, *THE FATEFUL TRIANGLE: RACE, ETHNICITY, NATION* 57 (Kobena Mercer ed., 2017).

147. See, e.g., *FDR and Housing Legislation*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY AND MUSEUM, <https://fdrlibrary.org/housing> (last visited Apr. 17, 2019) (“To Franklin Roosevelt, adequate housing was not just a need, but a right.”); Joseph P. Williams, *Segregation’s Legacy*, U.S. NEWS & WORLD REP. (Apr. 20, 2018), <https://www.usnews.com/news/the-report/articles/2018-04-20/us-is-still-segregated-even-after-fair-housing-act> (discussing how the New Deal housing programs were officially “whites only”).

and cultural imaginations of home ownership, asserting that this connection began much earlier than the post-WWII era.<sup>148</sup> According to Garb, “[e]ven at the turn of the [twentieth] century, a single-family house set on a tidy yard was fast becoming a mark of household health, respectability, and morality,” where perceptions of respectability worked in relationship to Whiteness and White space.<sup>149</sup> The denial of home ownership to non-White citizens through both exclusion and lack of facilitation resulted in vast disparities in individual and family wealth since property ownership and appreciation are fundamental tools for passing assets between generations.<sup>150</sup> In North St. Louis County, access to homeownership by Black families was attainable, yet appreciation of property values and the benefits of suburban citizenship remained out of reach due to the risk attached to Blackness.<sup>151</sup> As a result, debates continue regarding whether North St. Louis County is urban, suburban, or something in between.

A cultural politics that attaches risk to bodies *and to space* is a critical component of localized practices in North St. Louis County that constitutes a racial state of municipal governance. Importantly, this cultural politics relies heavily on the tolerance of *Black* suffering and imaginations of Black and White space. The historical and perpetual tolerance of Black suffering and acceptance of premature Black death create spaces where suffering is not only tolerated but expected, and where death is considered routine. The space of the ghetto, understood today as Black space in the United States, is the imagined opposite of suburban space.<sup>152</sup> It is a place

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148. MARGARET GARB, *CITY OF AMERICAN DREAMS: A HISTORY OF HOME OWNERSHIP AND HOUSING REFORM IN CHICAGO 1871-1919*, 205 (20th ed. 2005).

149. *Id.*

150. *Id.* at 206.

151. See generally Jackson, *infra* note 287 (noting associations of Blackness and risk).

152. The ghetto, as a stigmatized space of separation and exclusion, can be traced to Venice, where it was adopted in 1516 as a mechanism of Jewish containment and gradually came to represent stigmatized urban space across European cities. In American cities, the Jewish ghetto evolved into a space of ethnic marginalization in the late nineteenth century and eventually became synonymous with Black space. See, e.g., David Laskin, *500 Years of Jewish Life in Venice*, N.Y. TIMES (Mar. 6, 2016), <https://www.nytimes.com/2016/03/13/travel/venice-italy-jewish-ghetto.html> (discussing the 500th anniversary of the original Jewish ghetto in Venice); see also Loïc Wacquant, *A Janus-Faced Institution of Ethnoracial Closure: A Sociological Specification of the Ghetto*, in THE GHETTO: CONTEMPORARY GLOBAL ISSUES AND CONTROVERSIES 1–32 (Ray Hutchison & Bruce D. Haynes, eds. 2012) (discussing the emergence of the racially separate Black American ghetto in relationship to histories of the ghetto as a space of ethnic containment).

where life has comparatively little value, although the original Black ghetto was conceptualized as parallel to White society and a place in which people thrived in spite of spatial containment.<sup>153</sup> Hortense Spillers conceptualizes the expectation of suffering as the basis of exploitation of the Black body, which she describes as *pornotroping*.<sup>154</sup> The pornotrope is that which is exploited based on the expectation, normalization, and tolerance of suffering, which she argues produces illicit desire.<sup>155</sup> Borrowing from Spillers's conceptualization of the pornotrope, North St. Louis County, like the space of the ghetto, can be understood as a *pornotopology*.<sup>156</sup> In the same way that the slave subject was dehumanized and eroticized through othering,<sup>157</sup> pornotopologies represent deviant space where suffering is expected and desire is commodified and consumed by popular culture (i.e., in clothing, music, dance, visual arts, and other representations associated with ghetto and urban space). Additionally, pornotopologies are spaces where occurrences like the death of Michael Brown in Ferguson are considered routine.<sup>158</sup>

The term “suburban ghetto,” recently coined by scholars and frequently used by the media, is intended to describe what happens when the suburban imaginary (as opposed to the actual suburbs, which have always had degrees of diversity) loses its middle-class White status and becomes a container of poor non-White people, specific ethnicities, or otherwise non-conforming subjects.<sup>159</sup> The

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153. See, e.g., Wacquant, *supra* note 152 (discussing the history of the term “ghetto”).

154. Hortense J. Spillers, *Mama's Baby, Papa's Maybe: An American Grammar Book*, 17 *DIACRITICS*, no. 2, Summer 1987, at 65.

155. *Id.* at 67.

156. See *id.* In the field of geography, topology has come to be understood as abstract, nonrepresentational, and relational space, whereas topography represents and/or refers to actual physical space. I use topology (pornotopology) as opposed to topography very intentionally to signify the abstracted and relational nature of Black space.

157. *Id.*

158. See *id.*; see also Rios, *supra* note 6 (discussing the unsurprising nature of the killing of Michael Brown in Ferguson).

159. Ronald E. Wilson & Derek J. Paulsen, *Foreclosures and Crime: A Geographical Perspective*, 1 *GEOGRAPHY & PUB. SAFETY*, no. 3, Oct. 2008, at 1. See Mark Gottdiener, *Politics and Planning: Suburban Case Studies*, in *REMAKING THE CITY: SOCIAL SCIENCE PERSPECTIVES ON URBAN DESIGN* 310 (John S. Pipkin et al. eds., 1983) (marking the absence of effective land use in suburban metropolitan areas); see also Tim Retzliff, *Gay Organizing in the “Desert of Suburbia” of Metropolitan Detroit*, in *MAKING SUBURBIA: NEW HISTORIES OF EVERYDAY AMERICA* 51–62 (John Archer et al. eds., 2015) (discussing LGBTQ organizing in the Detroit suburbs); Alexandra K. Murphy, *The Suburban Ghetto: The Legacy of Herbert Gans*

rise of this term illustrates the need scholars feel to qualify low-income, non-White, and/or non-cis/straight suburbs as something other than ‘authentic’ suburbs. In fact, anytime suburban space does not match the imagination of White cis/straight middle-class space, certain implicit qualifiers tend to follow. For example, there are working-class suburbs (White but not middle class), affluent suburbs (White and upper-middle class), Black suburbs (middle class but not White), immigrant or ethnic suburbs (non-European ethnic immigrants), suburban ghettos (Black and poor), gay ghettos (non-cis/straight), and barrio suburbs (Latinx and poor).<sup>160</sup> In the same way that Whiteness is the unspoken, un-raced racial norm, the non-qualified suburbs are assumed to be White and middle class. In this way, disinvestment that follows Black residents to the suburbs must rhetorically recode Black places as something other than suburban.

Policing for revenue in North St. Louis County relies heavily on suburban respectability politics that are specifically spatial. Many of the Black mayors interviewed for this research made distinctions between suburban space and *urban* people—which is a common code term for Black residents—and consistently cited suburban norms as the reason people and space must be policed.<sup>161</sup> Leaders stated things like, “People from the projects must be taught how to act in the suburbs,” and “People who don’t know how to mow their grass have no business living in the suburbs.” In addition to municipal autonomy, the incompatibility of people and space came up repeatedly as the reason for excessive numbers of citations issued in this area and the reason that nothing needs to change. Stating, in various ways, that “people who can’t act right in the suburbs need to go back to the ghetto” is a common refrain that reinforces the racialized dialectic of urban and suburban space. Deploying spatial signifiers, mayors and alderpersons, when asked to describe their cities, most often said, “We are a suburb with urban problems.” Expectations of home ownership and property rights were also commonly cited. Patrick Green, who identifies as Black

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*in Understanding the Experience of Poverty in Recently Impoverished American Suburbs*, 6 CITY & COMMUNITY, no. 1, 2007, at 21 (discussing demographic trends and recent impoverishment of suburbs); Brad Tuttle, *Suburban Ghetto: Poverty Rates Soar in the Suburbs*, TIME (Sept. 26, 2011), <http://business.time.com/2011/09/26/suburban-ghetto-poverty-rates-soar-in-suburbia/print/> (illustrating the rising poverty rate in suburbs).

160. Based on a review of literature on urban planning and urban history.

161. Unless otherwise cited, the following section is based on interviews with St. Louis County Residents, *supra* note 34.

and is the Mayor of Normandy, used cultural politics from both a White and Black perspective when he explained:

A house can be used as a weapon. Having a home is a privilege and a responsibility. These ordinances exist to keep up the standards of why people moved from the city in the first place . . . The issue isn't, why are police giving out so many tickets? [The issue] should be, why are so many people breaking the law? . . . [The State] say[s] the police can still write tickets but then they gotta turn the money over to the state. . . . That's slavery, making you work for the land . . . . When they came to talk to us they accused us of being the number one city in the ticket scheme. . . . That's like calling us n\*\*\*\*\*.<sup>162</sup>

The statement above reveals how multiple spatial and racial tropes are used by and against Black municipal leaders to justify using racialized practices to meet fiscal responsibilities. Green conflate the concept that “having a home is a privilege,” which is derivative of the idea that homeownership is quintessential to the American Dream, with the racist trope that minority citizens expect to receive everything from the welfare state.<sup>163</sup> The idea that the rights of property trump all other rights stems directly from the neoliberal concept that property rights and the right to protect the city are always elevated above all personal rights.<sup>164</sup> Likewise, the responsibilities that come with having a place to live fall under the unstated expectations of suburban citizenship. Equating Senate Bill 5's requirement to turn extra money from fines and fees over to the public schools with slavery is an interesting twist regarding the long history of forced and uncompensated labor by Black people for land in which they have no stake. It also conflates the work of race, space, and exploitation in this area. Mayor Green and several other Black mayors in North St. Louis County consistently contend that being singled out or cited as a number one abuser of taxation by citation is due to the racial makeup of these cities and is motivated solely by racism. These claims have merit since their cities do suffer from vast racialized and racist disinvestment. Their arguments, however, are significantly undermined by the suffering residents experience as a result of race-based practices that rely on the tolerance of suffering in *Black space*.

While the practices carried out by leaders in North St. Louis County are specifically tailored to the intersection of urban bodies in suburban space, they also follow familiar trends. Federal and

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162. Interview with Patrick Green, *supra* note 281.

163. Interview with Patrick Green, *supra* note 281.

164. Ferguson & Gupta, *supra* note 165, at 994–96.

state funding to metropolitan areas in the United States have increasingly been directed toward policing and surveillance activities that protect private property and facilitate private development at local levels.<sup>165</sup> As a result, cities act as gatekeepers of citizens' rights *in space* in what Neil Brenner and Nik Theodore describe as geographies of "actually existing neoliberalism."<sup>166</sup> Using and amplifying already robust public imaginations regarding Black criminality in Black space, city leaders across the United States routinely pass laws and ordinances aimed at policing minor offenses of disorder common to poverty-stricken areas where the majority of residents are non-White.<sup>167</sup> By the 1990s, policing policies such as "broken windows,"<sup>168</sup> enforcement of newly passed nuisance laws aimed at poverty and homelessness,<sup>169</sup> and later

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165. See generally James Ferguson & Akhil Gupta, *Spatializing States: Towards an Ethnography of Neoliberal Governmentality*, 29 AMERICAN ETHNOLOGIST, no. 4, Nov. 2002, at 981 (discussing neoliberal trends by which the authority of the state over localities is reinforced through routine bureaucratic and local practices).

166. Neil Brenner & Nik Theodore, *Cities and the Geographies of "Actually Existing Neoliberalism"*, in SPACES OF NEOLIBERALISM: URBAN RESTRUCTURING IN NORTH AMERICA AND WESTERN EUROPE 2–32 (Neil Brenner & Nik Theodore eds., 2002).

167. See generally MIKE DAVIS, BEYOND BLADE RUNNER: URBAN CONTROL AND THE ECOLOGY OF FEAR (1992) (providing a dystopian layout of Los Angeles); DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY (2002) (analyzing "crime control" in Great Britain and the United States as a reaction to conservative politics and free market ideals in the 1980s); RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA (2007) (discussing the expansion of California's prison system to incarcerate deindustrialized cities' impoverished population); SETHA M. LOW, ON THE PLAZA: THE POLITICS OF PUBLIC SPACE AND CULTURE (2000) (discussing the social and political significance of public space and the cultural politics aimed at its demise in the United States); NEIL SMITH, THE URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY (1996) (exploring the interconnections of urban policy, patterns of investment, eviction, and homelessness); Aihwa Ong, *Cultural Citizenship as Subject Making: Immigrants Negotiate Racial and Cultural Boundaries in the United States*, in RACE, IDENTITY, CITIZENSHIP 262 (Rodolfo Torres et al. eds., 1999) (discussing Asian-American integration and normalization within Black and White communities reflecting dominant racial oppositions and cultural competence).

168. See George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC, Mar. 1982 (arguing that "untended" behavior leads to the breakdown of community controls[,] leaving it more vulnerable to "criminal invasion" and more aggressive policing policies, directly linking space to crime and claiming that lower order markers of disorder, such as broken windows and trash in vacant lots, lead to more serious crime).

169. *Id.* The convergence of broken windows policy, federal and state government retrenchment, and disinvestment led to an increase in the passing of local ordinances and zero tolerance policing. See New York Advisory Committee, *The Civil Rights Implications of "Broken Windows" Policing in NYC and General NYPD Accountability to the Public* A Briefing Report of the New York Advisory Committee

“stop and frisk”<sup>170</sup> provided the tools for police to harass and arrest individuals viewed as a threat to private property on any level. Clinton-era legislation that effectively ended the welfare state, which dramatically increased police funding and mandated the courts to follow extreme sentencing guidelines,<sup>171</sup> ensured that the prison pipeline would increase the number of people incarcerated in the United States from roughly 500,000 in 1980 to over 2.2 million by 2015.<sup>172</sup> As Elizabeth Hinton states, seemingly in answer to Michelle Alexander’s *The New Jim Crow*<sup>173</sup>:

The long mobilization of the War on Crime was not a return to an old racial caste system in a new guise—a ‘New Jim Crow.’ Rather, the effort to control and contain troublesome groups with patrol, surveillance, and penal strategies produced a new and historically distinct phenomenon in the post-civil rights era: the criminalization of urban social programs.<sup>174</sup>

An important part of this phenomenon is the criminalization of urban space, both real and imagined, with and through the perpetuation of ‘Blackness as risk.’ As the twenty-first century ushered in the War on Terror, cities gained even more tools to surveil and criminalize residents in the form of discursive practices centered on risk attached to ‘dark bodies’ and increased funding for police and military-style equipment. These tools were on bold

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to the U.S. Commission on Civil Rights, March 2018 <https://www.usccr.gov/pubs/2018/03-22-NYSAC.pdf>

170. Using George Kelling’s extension of the broken windows theory, New York City Police Chief William Bratton, in coordination with Mayor Rudy Giuliani, formalized the most famous example of stop and frisk policing policy. N.Y. CRIM. PROC. LAW § 140.50 (2010). The policy took a broad interpretation of *Terry v. Ohio*, 392 U.S. 1 (1968), in which the U.S. Supreme Court held that police do not violate the Fourth Amendment when they temporarily detain an individual based on reasonable, articulable suspicion of dangerousness or past or present criminal behavior.

171. The 1994 Crime Bill reinforced the popular “tough on crime” idea that the solution to crime is stricter policing and harsher punishments. See Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. §§ 12101–12113 (1994) (increasing grants for states pursuing higher incarceration rates). Two years later, the Clinton Administration passed the Personal Responsibility and Work Opportunity Act, which, as its title suggests, promoted the idea that poverty is caused by lack of personal responsibility. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) (reforming welfare programs through the budget process).

172. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited Apr. 6, 2019).

173. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (rev. ed. 2012).

174. ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 25–26 (2016).

display in Ferguson to control protesters following the death of Michael Brown.<sup>175</sup>

A. *Evelyn and Patrice*<sup>176</sup>

Evelyn is a sixty-eight-year-old Black woman who has lived in North County for twenty-six years. She inherited the house she was living in from her long-time boyfriend. I got to know Evelyn over a period of three years when she participated in the “services for seniors” project that my students organized as a way to engage with residents and learn about the community. In addition to the time I spent chatting with her while sitting between her two toy poodles on a worn red couch, my students would often come to class and relay how Evelyn had stuffed them with donuts and shared stories that put their own lives in stark perspective. Two of my male graduate students from China became particularly attached to Evelyn, and one continued to ride the bus to visit her long after the semester ended. Every time I saw her, she effusively thanked me for introducing them to her and for their help around the house.

By the time I got to know her, Evelyn had received multiple municipal citations for property-related infractions. My students were helping her address a long list of violations that she could not afford to take care of on her own. Evelyn believed she was being harassed with citations because her son, who lived in another house in the same municipality, vocally supported the candidate who attempted to unseat a municipal alderperson in the previous election. She never received a citation before her son became politically active. After that, she received eight notices of violations of local codes and several letters from the municipality threatening more fines and the possibility of losing her house if she did not comply. Most of the citations were cosmetic and not safety related. They included painting her front and back door, painting the foundation of her house, and re-wiring the exterior lighting. Evelyn also relayed a story about a time she was in her yard trimming a rose bush and the alderperson drove by. According to Evelyn, the alderperson stopped upon seeing her in the yard and told her she should worry about her weeds and not her rose bush and she had better paint her front door right away or receive another citation.

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175. See Paul D. Shinkman, *Ferguson and the Militarization of the Police*, U.S. NEWS & WORLD REP. (Aug. 14, 2014), <https://www.usnews.com/news/articles/2014/08/14/ferguson-and-the-shocking-nature-of-us-police-militarization> (discussing the presence of military type weaponry at the Ferguson protests).

176. Unless otherwise noted, the following section is based on interviews with St. Louis County residents, *supra* note 2.

Evelyn found the exchange very unsettling and moved between visible anger and tearful anxiety as she recounted the experience. When I asked the alderperson who had stopped in front of Evelyn's house about the incident, she stated that all residents of the city were treated equally and the city had the right to protect safety and property values by issuing citations to "people that don't know how or don't want to take care of their property."

Property violations were not Evelyn's family's only experience with predatory policing. Evelyn's youngest child, Patrice accumulated eight traffic citations in the course of two years. She received four citations for the same violation—a faulty muffler—in four different municipalities over a few weeks. After moving in with her mother, Patrice was working two part-time jobs as well as getting her children to three different schools outside of the district because she wanted them to finish the year where they had started. "I couldn't take off work or not get those kids to school to go get my muffler fixed," she shared. "But that's how it is. It's like flies on shit. You got one problem with your car and they will be on your ass in an instant because they want to get at everything you got, which is really nothing." Because she worked evenings, Patrice could not attend three of the court dates, which were all held one evening each month. On the one evening she could attend, she had to decide which ticket to take care of since two court dates were on the same night. She could not make arrangements to take care of tickets other than by physically showing up at court because the cities did not provide online or other payment methods. Consequently, Patrice had three warrants issued for her arrest even after she emptied her bank account of \$800 to pay fines and fees. "If all that hadn't happened," she said, "I could have fixed my car. Maybe even moved out of my mother's house."

Patrice unfortunately had first-hand experience with warrants and had good reason not to want to find herself again in a cycle of municipal jailing. Three years before I met Patrice, she had gone through a similar experience. As she explained:

When my tail light was busted out, the same thing happened which is also why I don't want to show up at courts because, who knows, they may ship me over to Jennings and throw me in jail when I try to pay a \$50 ticket in Velda City. Or they'll take my driver's license away until I can pay and if I lose my car, I lose both my jobs and then I lose my kids. That's how it works. The last time, I got pulled over for no reason at all. The cop was just driving behind me running my plates. He saw there was a warrant in St. Ann and I ended up in jail there. They told me I had to pay a \$1000 bond in cash. I was living on my own then and actually doing okay. My mom took my kids

but they couldn't get to school. I wasn't allowed to shower for the whole ten days. There was like fifteen of us in there, coming and going, and not enough beds for everyone. People were peeing and heaving and bleeding right in where we were supposed to sleep. I haven't never seen nothing like that. It was literally like animals in a cage. It took ten days for my mom and brother to get the money together. By that time, I'd lost my job. As soon as St. Ann got their money, they drove me over to Pine Lawn and booked me into jail there. The bail there was set at \$500 and there was no way my mom and brother could get more. I had to call my ex-boyfriend, the father of my youngest two to get me out. I'd been trying to get away from him for years but I don't have anybody else after my mom and my brother so I ended up going back with him. After that, everything just all fell apart. Maybe I was lucky though because I know people who go through four or five jails and they still owe thousands of dollars. I don't know what's going to happen though if I get pulled over again. I have to think real carefully about when and where I drive. Damn, I wish I could leave St. Louis.

People described similar inhumane conditions and practices in numerous jails across jurisdictions. Common complaints included the lack of personal hygiene implements, such as toothbrushes, towels, or soap; the refusal to accommodate requests to use the bathroom or to shower; the refusal to provide feminine hygiene products to women; vast overcrowding and unsanitary conditions; and taunts, including racial, gendered, and homophobic slurs. Many stories ended with the loss of jobs, housing, and even children. Several stories told by the media ended tragically when individuals hung themselves in municipal jails out of despair.<sup>177</sup>

The stories told by Evelyn and Patrice, especially when compared to other stories told by residents in this geography, not only illustrate the racialized policing of people in space, but also speak to the gendered experiences of policing and gendered

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177. Multiple people being held for minor traffic offenses in the last ten years have died or been injured after hanging themselves in municipal jails in St. Louis County, including in the towns of Jennings, Pine Lawn, and Pagedale. See, e.g., Margaret Gillerman, *Jennings Hanging Attempt Is Latest in Series of Area Jail Incidents*, ST. LOUIS POST-DISPATCH, Oct. 7, 2014; Jeremy Kohler, *Man Who Police Say Attempted Suicide in Jennings Jail Dies; Family Calls for Investigation*, ST. LOUIS POST-DISPATCH, Oct. 23, 2014, at A2; *Police Identify Woman Who Hanged Herself in Pagedale Jail Cell*, ST. LOUIS POST-DISPATCH (Sept. 22, 2014), [https://www.stltoday.com/news/local/crime-and-courts/police-identify-woman-who-hanged-herself-in-pagedale-jail-cell/article\\_c27db72c-acce-5715-95f3-739c6bb6bf36.html](https://www.stltoday.com/news/local/crime-and-courts/police-identify-woman-who-hanged-herself-in-pagedale-jail-cell/article_c27db72c-acce-5715-95f3-739c6bb6bf36.html); Jeremy Kohler, *Video Shows Officers Failed to Act on Pine Lawn Jail Suicide Attempt*, ST. LOUIS POST-DISPATCH (Sept. 16, 2015), [https://www.stltoday.com/news/local/crime-and-courts/video-shows-officers-failed-to-act-on-pine-lawn-jail/article\\_60c3dx32-32-3ad5-5955-9fa0-1607cfb4341b.html](https://www.stltoday.com/news/local/crime-and-courts/video-shows-officers-failed-to-act-on-pine-lawn-jail/article_60c3dx32-32-3ad5-5955-9fa0-1607cfb4341b.html).

expectations in space. Interviews with residents, as well as the available data regarding citations, show that women in this area are more likely to be policed at home and for property violations, similar to those that Evelyn encountered, while men were more often policed in public space, although there are exceptions to the rule.<sup>178</sup> Men more often reported being pulled over for traffic violations when driving with other people in their car or for manner of walking—what many of them referred to as walking while Black—which was the same infraction Michael Brown was initially stopped for in Ferguson.<sup>179</sup> Individuals driving alone who were pulled over for traffic violations appeared to be more equally divided between men and women. Several women recounted that they had called the police to report incidents of domestic violence or fear of a domestic partner and ended up going to jail themselves when the police showed up and a warrant for outstanding property or traffic violations was discovered. In those instances, the domestic violence complaints were not investigated.

When interviewed, municipal leaders in this area, who are predominantly Black women, often spoke about the gendered expectations they held. These included their concerns about teaching young women and girls about domestic skills, avoiding bad partners, learning good parenting, and dressing appropriately. Leaders complained that young men in their jurisdictions generally passed through, but they did not regard them as residents if they were not taking responsibility for heading a household. Several leaders stated that occupancy permit requirements were intended to allow inspectors to stop by any house at random for the purpose of ensuring boyfriends were not taking advantage of free housing in their city. Complaints by leaders about young men often focused on a need to pull up their pants, get a job, and take responsibility for their women and children. In this context, whether viewed through respectability politics or suburban norms, Black men that do not oversee women and hold a full-time job with their pants pulled up, and Black women who engage in expressions of their sexuality and/or parent as the head of a household, fall outside the bounds (and rights) of gendered suburban citizenship. While this is a simplified assessment, these basic tenets give rise to multiple forms of cultural policing based on the ‘out-of-place’ designation of Black

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178. See *infra* note 212 (noting the generation of more revenue through policing than taxing).

179. Rios, *supra* note 6, at 64–65; Cave, *infra* note 258.

residents. The visibility of 'out-of-place' bodies works to control and exploit residents; however, it was also the basis by which women leading Ferguson resistance created alternative spaces of visibility and *appeared* as political actors.<sup>180</sup> Furthermore, the Black women who assumed municipal leadership roles as early as 1978 (many of whom still hold municipal office today and were interviewed for this research) have also struggled mightily with issues of visibility. Because they are Black women, the forces and motivations driving their rhetorical and literal practices demand nuanced consideration.<sup>181</sup>

Whereas White single mothers have been able to push back against the cultural trope of suburban domesticity and establish themselves as liberal subjects, with varying degrees of success, Black women living in historically White suburbs still find themselves squarely judged against these standards, often by other Black women. As Roderick Ferguson observes, we are "in a historic moment in which minority middle classes ascend to power through appeals to normativity and thus become the regulators of working-class racial, gender, and sexual differences . . ."<sup>182</sup>

Black women respondents living in North St. Louis County often reported that they felt disrespected by Black leaders and administrators because they, instead of a man, were the heads of their households. By virtue of this fact, they stated that they felt judged by leaders and others as bad parents and citizens. They also felt that, as single mothers whose time and money was stretched across many demands, they were an easy target for cities looking to increase revenue through property-related violations. Those who had lived in the so-called urban core of St. Louis or other cities stated that being a single mother was more of an issue in the county than it was in the city. Their observations led them to believe that fully employed men who owned homes were more or less left alone, whereas they (who were often fully employed) were held responsible for underemployed partners and sons. Many women also stated that leaders and the police did not see their bodies as worthy of protection because their lack of normativity was framed as the primary *problem* in the area. They were therefore held responsible for anything that happened to them.

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180. RIOS, *supra* note 12 (discussing issues of visibility in relationship to Black women in leadership in Pagedale and the Ferguson protest movement).

181. *Id.*

182. RODERICK A. FERGUSON, ABERRATIONS IN BLACK: TOWARD A QUEER OF COLOR CRITIQUE 147 (2003).

*B. Draconian Practices and Debtors' Prisons*<sup>183</sup>

Stories like Evelyn and Patrice's were told time and again through interviews and during informal conversations. Residents detailed Black citizens' experiences with the police, housing inspectors, and municipal courts—and the impact of those institutions on their lives. However, prior to the sustained protest movement following the death of Michael Brown, few policymakers, journalists, or anyone else were interested in hearing these accounts. Nevertheless, residents consistently described a geography of micro-legal systems designed to criminalize and entrap people in a web of seemingly endless fines and fees for routine ordinance violations that disproportionately impact poor Black residents. The intergenerational effects on Evelyn's family went even further. She recently told me stories of her son's latest traffic stops and warrants and of her granddaughter's encounters with the Ferguson police department as a peaceful protester.<sup>184</sup>

Over the past ten years, most cities in this geography have averaged more than one citation per every one resident.<sup>185</sup> Many average four to five citations for every one resident, with some issuing as many as ten citations per resident on average every year.<sup>186</sup> While the number of citations written in North St. Louis County cities trended upward between 2004 and 2014, a dramatic decrease occurred in all but two cities between 2014 and 2015.<sup>187</sup> According to city leaders interviewed for this research, these data suggest that residents in North St. Louis County became more compliant between 2014 and 2015.<sup>188</sup> There were over fifty media articles, as well as state legislation, aimed at exposing and remediating predatory policing practices brought about by Ferguson protesters following the death of Michael Brown.<sup>189</sup> In 2015, the Missouri legislature passed new guidelines that all revenue generated from court fines and fees over 12.5% of the general operating budget of a city was to go to the local school district.<sup>190</sup> If, as leaders have consistently argued, Black residents

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183. This section is based on interviews with St. Louis County Residents, *supra* note 2, unless otherwise noted.

184. *See supra* Part A, Evelyn and Patrice.

185. *See infra* Table 1.

186. *See infra* Table 1.

187. *See infra* Table 1.

188. Interviews with St. Louis County Residents, *supra* note 34.

189. *Id.*

190. The 12.5% cap stipulated by 2015 Senate Bill 5 was struck down by the

“don’t know how to behave in the suburbs” and need to be policed for purposes of public safety and the protection of property, then the same leadership should, in theory, continue to police citizens and turn the excess revenue over to struggling schools. Interestingly, when cities cease to directly profit from policing, policing decreases substantially.<sup>191</sup>

**Table 1.**

Data for 34 of 90 municipalities in St. Louis County and St. Louis City.<sup>192</sup>

Municipality Population Area % Below Poverty Level (BPL)  2010 Census; 2013-2017 Amer. Comm. Survey	% Black  2010	Average % of Non-traffic Violations Issued to Non- white Individuals  2009-2014	% of Budget from Fines & Fees  2013	Average Violations Per Person Per Year (traffic/non- traffic)  2005-2014	Change in # of Traffic Violations (pre-Ferguson protests to post- Ferguson protests) 2014-2015	Change in # of Non-traffic Violations (pre-Ferguson protests to post- Ferguson protests) 2014-2015
Bel-Nor 1,499 people 0.63 sq. miles 7.6% BPL	46%	79%	11%	2.65	-43%	-37%
Bel-Ridge 2,715 people 0.80 sq. miles 26.7% BPL	85%	City set unreasonable cost for obtaining data	25%	2.57	-47%	-13%
Bellerive 188 people 0.33 sq. miles 0.90% BPL	43%	93%	29%	3.01	-77%	-67%
Berkeley 8,971 people 4.97 sq. miles 21.9% BPL	82%	Data not requested	11%	1.34	-62%	-8%
Beverly Hills 574 people 0.09 sq. miles 29.4% BPL	93%	95%	26%	10.29	-49%	-32%
Black Jack 6,929 people 2.6 sq. miles 10.8% BPL	81%	Data not requested	4%	0.22	-49%	-24%

Missouri Supreme Court in 2017 after twelve municipalities sued the state of Missouri. MO. S., SB 5, Modifies Distribution of Traffic Fines and Court Costs Collected by Municipal Courts (codified in scattered sections of MO. REV. STAT.) (2015).

191. See *infra* Table 1. See also Katherine Baicker & Mireille Jacobson, *Finders Keepers: Forfeiture Laws, Policing Incentives, and Local Budgets*, 91 J. PUB. ECON. 2113, 2135 (2007) (highlighting financial incentives for officers in asset seizure and a cause for this policy).

192. THE OFFICE OF THE MO. ATT’Y GEN., RACIAL PROFILING DATA (2013), <https://www.ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2>; U.S. BUREAU OF THE CENSUS, 2010 CENSUS, <https://www.census.gov/programs-surveys/decennial-census/decade.2010.html>; independent request for court data to selected municipal courts in accordance with the Missouri Sunshine Law (on file with the author).

Calverton Park 1,293 people 0.40 sq. miles 10.2% BPL	42%	Data not requested	66%	4.17	-74%	-75%
Charlack 1,363 people 0.26 sq. miles 8.6% BPL	35%	City set unreasonable cost for obtaining data	29%	3.44	-21%	-65%
Cool Valley 1,196 people 0.47 sq. miles 11.4% BPL	85%	92%	29%	3.04	-53%	-15%
Ferguson 21,201 people 6.22 sq. miles 22.5% BPL	67%	City set unreasonable cost for obtaining data	14%	0.91	-75%	-69%
Greendale 651 people 0.21 sq. miles 18.5% BPL	69%	91%	11%	1.72	-34%	-20%
Hanley Hills 2,101 people 0.36 sq. miles 25.6% BPL	85%	92%	11%	0.69	-50%	-46%
Normandy 5,008 people 1.85 sq. miles 23.3% BPL	70%	90%	41%	4.01	-17%	-28%
Northwoods 4,227 people 0.71 sq. miles 23.2% BPL	94%	City set unreasonable cost for obtaining data	26%	1.53	-28%	+5%
Pagedale 3,304 people 1.19 sq. miles 30.2% BPL	93%	City refused to provide data	18%	2.14	-30%	-23%
Pine Lawn 3,275 people 0.61 sq. miles 33.6% BPL	96%	City refused to provide data	48%	5.88	-1550%	-14%
St. Ann 13,020 people 3.20 sq. miles 13.3% BPL	22%	Data not requested	37%	1.25	-52%	-19%
St. John 6,517 people 1.42 sq. miles 12.1% BPL	24%	64%	24%	1.96	-15%	-10%
Uplands Park 445 people .007 sq. miles 16.9% BPL	96%	Data not requested	24%	4.27	-99%	-93%
Velda City 1,420 people 0.16 sq. miles 24.8% BPL	95%	City set unreasonable cost for obtaining data	22%	3.58	-40%	-36%
Velda Village Hills 1,005 people 0.12 sq. miles 29.5% BPL	99%	99%	10%	0.93	-13%	-46%
Vinita Park 1,880 people 0.72 sq. miles 22.5% BPL	65%	City set unreasonable cost for obtaining data	12%	1.37	+85%	-7%
Vinita Terrace (merged w/Vinita Park 2016) 277 people	73%	89%	52%	6.61	-23%	-46%

0.06 sq. miles 15.2% BPL						
Wellston 2,313 people 0.93 sq. miles 43.5% BPL	95%	City refused to provide data	12%	2.65	-35%	-16%
City of St. Louis (not in St. Louis Co.) 319,294 people 66.0 sq. miles 25% BPL	49%	Data not requested	2%	0.57	+11%	-18%

The data from St. Louis County show a distinct trend: the higher the percentage of Black residents in a city, the higher the percentage of the municipal budget derived from court fines and fees.<sup>193</sup> In the two majority-White cities<sup>194</sup> that are exceptions to this trend, Black motorists make up a significant number of traffic stops relative to the municipal demographics, meaning that Black people are still policed for revenue in majority-White cities.<sup>195</sup>

Although Table 1 reveals that the city of Ferguson is by no means the worst offender in terms of budgetary funding from policing or citations per resident, the Ferguson protests led the U.S. Department of Justice (hereafter DOJ) to review municipal practices in the city. The DOJ found that:

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.<sup>196</sup>

The report describes in great detail the extent to which the police harassed the city's Black population. The police, for example, regularly accosted residents for what might be termed 'sitting in a car while Black.' They then charged them with bogus 'crimes' such as failing to wear a seat belt in a parked car or 'making a false declaration' such as stating that one's name was "Mike," not "Michael."<sup>197</sup> Officers seeking promotion were told to keep in mind that their number of "self-initiated activit[ies]" (random stops)

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193. *See supra* Table 1.

194. Bella Villa and Calverton Park.

195. *See supra* Table 1.

196. FERGUSON REPORT, *supra* note 121, at 2.

197. FERGUSON REPORT, *supra* note 121, at 3.

would have a significant effect on their future success on the force.<sup>198</sup> The report cites several internal documents encouraging lieutenants and sergeants to tell officers wanting promotions that decisions would be based on the number of these stops.<sup>199</sup> Meanwhile, residents issued citations often lost their jobs and livelihoods due to court appearances, fines, and jail time. Justice Department investigators also discovered that Ferguson municipal court did not “act as a neutral arbiter of the law or a check on unlawful police conduct.”<sup>200</sup> Instead, it used its judicial authority “as the means to compel the payment of fines and fees that advance the [c]ity’s financial interests.”<sup>201</sup>

As discussed above, recent reports and media attention focused on Ferguson often suggest that the death of Michael Brown and the unrest that followed were largely due to a racial mismatch between leadership and the residents of Ferguson. Scholars and journalists have used this imbalance to explain the hyper-policing and unjust treatment of residents that led to mistrust between residents, leadership, and the police. This dynamic, however, does not explain similar and (as Table 1 reveals) even larger degrees of predatory practices in predominantly Black cities in North St. Louis County that have all-black leadership. To highlight a comparison from Table 1, police officers, building inspectors, and judges in Pine Lawn, a community of 3,275 people— which is 96% Black, has an all-black leadership, and has significantly more Black law enforcement—issued more than 19,000 traffic tickets and over 9,000 non-traffic ordinance violations (eight violations for every one resident) in 2014.<sup>202</sup> In the same year, fines and fees in Pine Lawn comprised 48% of the city’s budget, well above the 30% cap mandated by the Macks Creek Law.<sup>203</sup> Comparatively, the city of Ferguson (population: 21,200) wrote roughly one violation for every one resident, with fines and fees making up 22% of the municipal budget.<sup>204</sup> If the conclusions of the DOJ cited above were drawn in

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198. FERGUSON REPORT, *supra* note 121, at 11.

199. FERGUSON REPORT, *supra* note 121, at 11–15.

200. FERGUSON REPORT, *supra* note 121, at 3.

201. FERGUSON REPORT, *supra* note 121, at 3; *see also* Campbell Robertson, *A City Where Policing, Discrimination and Raising Revenue Went Hand in Hand*, N.Y. TIMES, Mar. 4, 2015, at A14 (reporting on the city of Ferguson’s efforts to increase revenue through increasing the issuance of citations).

202. *Supra* Table 1.

203. *Supra* Table 1.

204. *Supra* Table 1. *See also* Justin Glawe, *Black Officials Fleece Ferguson’s Neighboring Town*, DAILY BEAST (Apr. 7, 2015), <https://www.thedailybeast.com/black-officials-fleece-fergusons-neighboring-town>.

one of the least 'predatory' cities in North County, it begs the question: How much worse is it in cities issuing up to ten times the number of citations per person?

Across North St. Louis County, it is not uncommon for an individual to rack up hundreds of dollars in fines, as did Patrice, for failure to pay or failure to appear in court for a single infraction that many of us have committed at no cost. For example, Yvonne Fulsom waits in line each month at the municipal court in Pasadena Hills to make a \$25 payment on a \$1,000 debt to the city because she let her pit bull urinate in her own front yard without a leash and was unable to pay the initial fine, which led to a warrant for her arrest. She will need to appear in court on one designated night every month for more than three years to pay off the fine. If she misses a night, she faces arrest and more fines. Another woman interviewed outside of the Pagedale court stood in a long line to pay \$30 toward what she said was a \$350 cumulative fine for moving into her house after dark without a permit and failing to list her boyfriend, who occasionally spent the night, on her occupancy permit. She has spent an evening every month standing in line for the past eight months. If she does not show up to pay her installment, she will face jail and more fines. "This month I was short," she said. "I had to borrow from my neighbor who knows what this city does to people. But now I owe her and the city. If I could move, I would." Examples of how Black residents, including many older people, describe their experiences with policing across this geography follow:

*Black man from Hazelwood (age 46–55)*

I've had horrible experiences with driving in North County. I don't even get tickets when I get pulled over because they can't find anything to ticket me for. They just pulled me over and harassed me. People don't even go to the county solely for that reason.

*Black man from Florissant (age 26–35)*

You've got be 100% cautious around here. It's not a good feeling driving around like that. You feel that anxiety. In Country Club Hills I missed a court date so when I came in they held me and locked me up. It was embarrassing. So much pressure here, it'll make a grown man cry. It'll break you down like cancer.

*Black man from Ferguson (age 66–75)*

I've lived here for nine years and I own my home. I've had very bad experiences with the police. I'm actually suing the Ferguson police department right now. They came to my house because they wanted to speak with my son. They knocked on the door

and said they had a warrant but they didn't. They threw me down on the floor and handcuffed me. They found my son and tased him. It turns out the Berkeley police wanted to talk to my son so the Ferguson police just came in like that. I got a lawyer and went to court and they dropped the charges because they never had a warrant.

*Black woman from University City (age 56–65), regarding North County*

I was walking with my grandson to his day care at our church in North County one morning. He was wearing his rain boots and after I dropped him off I thought, "What if he wants to play outside and he needs his shoes?" So I turned around (in the church parking lot) to go home and get his shoes. The police stopped me and the officer said I had made a "sudden move." In the county they are looking for Black people. In the city Black people blend in.

*Black man from Normandy (age 56–65)*

My wife drives a 2015 Taurus, I was driving it and I got stopped for driving while Black. The officer said my sticker wasn't high enough on my license plate. I told him that the sticker was put on by the dealer when we bought the car. I actually called the dealer and he confirmed it but I still got a ticket. So I walked to the police station and spoke to the chief. I explained how I got the ticket and he tore it up. It's a good thing I know how to talk to the cops or that could have turned out differently.

*Black woman from Ferguson (age 56–65)*

I had a bad experience with Calverton Park. My son was stopped there on his way to work and I was called. He was cited for 'improper lane usage' after the cop put his lights on to pull him over! He hadn't actually done anything wrong until he was pulling over. It was just a 'random' stop.

*Black woman from Venita Terrace (age 56–65)*

My boyfriend used to come over and he would get tickets constantly for parking too often in the community. We went to court and they told us that he would continue to get tickets and he should stay in a hotel. We're still paying for those tickets. I wanted to do community service but I couldn't because I was working a job . . . There's only certain hours you can do it.

*Black man from Hanley Hills (age 56–65)*

They definitely target you on small issues out here: trash, grass, stickers. It keeps you on pins and needles in order to keep things straight all the time. I got a ticket for paying my trash bill (to an independent company) thirty days late. I actually paid it before getting the ticket so I went to the court and

showed them all the paperwork that I had paid it and they dismissed it. Other people were there were paying \$75 and \$100 fines for not paying their trash bills.

His female partner added: They've got someone working at the city who calls the trash company to find out who hasn't paid on time and they send them a ticket. That's just lazy, unfair, and unjust. People could use that money to pay their trash bill but instead they have to give it to the city for a fine.

Interviews with North County residents and a review of court procedures reveal some of the varied ways cities pressure desperate residents to pay fines and fees for nonviolent offenses, even when they lack the financial means. For example, citizens found guilty of a traffic violation in Beverly Hills must pay the fine in full or be jailed until someone shows up to pay the fine.<sup>205</sup> Similarly, it is well documented that Pine Lawn and Jennings have routinely jailed people for weeks and even months without a change of clothes or toiletries for failure to pay a speeding ticket.<sup>206</sup> Northwoods will hold a resident's license if they are unable to pay for the required city parking sticker. Residents pulled over with a warrant for failure to appear in court must pay the fine on the spot or face arrest and detention until the assigned court date weeks later.<sup>207</sup> Many courts then jail individuals without holding the required hearings on their ability to pay the fine in violation of their constitutional rights.<sup>208</sup> According to residents, courts often threaten to jail people, hoping that fear will entice them to take out payday or car title loans. Children and the parents of minors are not allowed in most courts. Police are assigned to keep order, which many residents say amounts to constant harassment while waiting. Cases of those who can afford an attorney are heard first. When those who cannot afford an attorney finally appear, those interviewed report that the most common directive is to immediately step out to call every friend and family member they can think of to bring money so they won't have to "be detained." Not coincidentally, payday loan establishments and bail bondsmen have cropped up next to many

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205. Jennifer Mann & Jeremy Kohler, *Municipal Courts: A Progress Report on Reforms*, ST. LOUIS POST-DISPATCH (June 20, 2015), <http://graphics.stltoday.com/ap-ps/muni-courts/>.

206. Complaint at 55, *Thomas v. City of St. Ann*, No. 4:16-cv-01302 (E.D. Mo. Aug. 9, 2016).

207. *Id.* at 17–18.

208. *See generally* *Bearden v. Georgia*, 461 U.S. 660 (1983) (holding that it was unconstitutional to jail someone claiming the inability to pay fines and court fees without holding a hearing to investigate such claims).

municipal courts to take advantage of family members who do not have the resources to pay fines and fees of those jailed. One municipal judge in the area points to this practice as particularly effective because the city receives more of what is owed, and “if people didn’t break the law, they would not have these problems.”<sup>209</sup> This statement is ironic coming from someone who works for a municipality that has not filed the required data for multiple years or adhered to the cap on municipal financing set forth by the Macks Creek Law, with no consequences.<sup>210</sup> Another judge reportedly handed brochures to residents for his brother’s traffic school as a means to settle tickets.<sup>211</sup>

The threat of jail time and the inability to move due to economic constraints ensure that municipal court payments are a priority for residents. These costs cut into already constrained monthly budgets and require sacrificing basics, such as food for themselves or their families.<sup>212</sup> In many cases, the absence of opportunities for formal employment leads residents to turn to informal economies in order to pay fines. This fact exposes another reading of theorizations regarding the uses of the wage-less class.<sup>213</sup>

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209. Interview with Municipal Judge, in St. Louis County, Mo. (Aug. 10, 2015) (on file with the author).

210. See, e.g., Joseph Miller, *St. Louis Municipalities: Who Is in Trouble with Macks Creek Law?*, SHOW-ME INST. (Oct. 25, 2014), <https://showmeinstitute.org/blog/local-government/saint-louis-municipalities-who-trouble-macks-creek-law> (describing how “proper enforcement within Saint Louis County may be lacking” due to problems in its fine revenue collection). A reform bill, HB103, became effective in August 2013 and lowered the amount to 30% of the annual general operation revenue. MO. REV. STAT. § 302.341(2) (2013).

211. Interview with John Ammann, Director, University of St. Louis Litigation Clinic, in St. Louis County, Mo. (on file with the author).

212. See, e.g., Ryan J. Reilly & Mariah Stewart, *How Municipalities in STL County Use Police as Armed Tax Collectors*, ST. LOUIS AM. (Apr. 2, 2015), [http://www.stlamerican.com/business/how-municipalities-in-stl-county-use-police-as-armed-tax/article\\_6802bccc-d8c0-11e4-85e0-2b0106f10c89.html](http://www.stlamerican.com/business/how-municipalities-in-stl-county-use-police-as-armed-tax/article_6802bccc-d8c0-11e4-85e0-2b0106f10c89.html) (illustrating the use of municipal fines against impoverished people in St. Louis County).

213. Hall et al. use a Marxist theorization of wage-lessness, or the wage-less class, as the necessary production of a disposable reserve labor force necessarily inherent to capitalist societies. STUART HALL ET AL., *POLICING THE CRISIS: MUGGING, THE STATE AND LAW AND ORDER* 363, 382 (Palgrave Macmillan 2d ed. 2013). The wage-less class, or black sub-proletariat, is tied to both the history of slavery and the history of labor in the United States, where surplus labor intersects with racialized rationalizations of wage-less labor within slave society. *Id.* Hall et al. describe this combination of race and class as “secondariness.” This combination of race and class is acutely visible in North St. Louis County, where Black people experienced few economic advantages in the era of economic growth in the 1990s and early 2000s and have significantly added to the “wage-less class” in the wake of recent economic downturns. *Id.*

Due to the “taxation by citation” structure of municipal financing in these small cities, informal economies are a primary source of funding for municipal budgets.<sup>214</sup> Selling food subsidies and blood, bartering, receiving compensation for listing non-family dependents on tax returns, hustling products of questionable origin, doing hair, taking out payday or car title loans, and borrowing money from equally struggling family members, friends, and neighbors, are all examples of how residents cobble together resources to pay fines, fees, and bail for minor infractions. As a result, cities remain financially solvent by extracting resources gained through informal economies. Being Black can thus pivot between survival within and resistance against structures of a racially defined state. While extreme, this phenomenon is not unique to St. Louis County. When Eric Garner said, “it ends today” as he resisted arrest for selling individual cigarettes on a Staten Island street corner, he was referring to the perpetual criminalization of his efforts to make ends meet.<sup>215</sup> Like it did for Michael Brown, resistance led to death.<sup>216</sup>

Reports and news coverage have also revealed that some city leaders and police chiefs set monthly citation quotas for police officers based on budgetary shortfalls, and many cities routinely plan future budgetary increases based on projected increases in arrest and fine quotas by police chiefs.<sup>217</sup> I personally witnessed one city leader calling the police chief and demanding that police officers come to a certain area and write more tickets. I witnessed the same

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214. See Reilly & Stewart, *supra* note 212 (describing the “taxation by citation” methodology).

215. See Saki Knafo & Matt Sledge, *‘It Ends Today’: Eric Garner’s Parting Words Become Rallying Cry at Vigil*, HUFFPOST (July 22, 2014), [https://www.huffpost.com/entry/eric-garner-vigil\\_n\\_5611465](https://www.huffpost.com/entry/eric-garner-vigil_n_5611465). For additional context about the racial politics of Mr. Garner’s neighborhood, see Al Baker et al., *Beyond the Chokehold: The Path to Eric Garner’s Death*, N.Y. TIMES (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html>.

216. *Protests over Missouri Teen’s Death Turn Violent*, CBS NEWS (Aug. 11, 2014), <https://www.cbsnews.com/news/thousands-march-at-vigil-for-teen-killed-in-police-shooting/>.

217. John Gwaltney, *Edmundson Mayor Letter*, ST. LOUIS POST-DISPATCH (Jan. 23, 2015), [https://www.stltoday.com/Edmundson-mayor-letter/pdf\\_7a056e0d-dd8b-5980-9dba-79e95d2eeea6.html](https://www.stltoday.com/Edmundson-mayor-letter/pdf_7a056e0d-dd8b-5980-9dba-79e95d2eeea6.html); see also BETTER TOGETHER, PUBLIC SAFETY – MUNICIPAL COURTS REPORT (2014) (finding examples of municipalities proposing budgeted increases in revenue from fines and fees, indicating plans to increase ticketing to increase municipal budgetary support); *The Problem Is Bigger than Ferguson*, N.Y. TIMES, Mar. 12, 2015, at A28 (highlighting the issues with Missouri municipalities obtaining money from poorer individuals); Jennifer Mann, *Municipal Courts Operate in Secret and Work Hard to Keep It that Way*, ST. LOUIS POST-DISPATCH, Mar. 15, 2015 (discussing municipal courts’ processes for petty offenses); Erica Hellerstein, *‘It’s Racist as Hell’: Inside St. Louis County’s Predatory Night Courts*, THINKPROGRESS (Apr. 10, 2015), <https://thinkprogress.org/its-racist-as-hell-inside-st-louis-county-s-predatory-night-courts-21be3d5bf723/>.

official calling the mayor to report specific addresses for visits from the housing inspector because the residents “didn’t have the right attitude” during interactions.

## MEMO

Date: April 18, 2014

To: Edmundson P. D. – Sergeants and Patrolmen

Subject: Traffic tickets

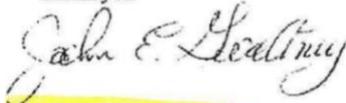
In the past several weeks, the Board and I have noticed a marked downturn in traffic and other tickets being written by your department. It is correct that we have no quotas and want only “good tickets” written. However, we do have a record of your past performance to compare to your current performance and the picture that I see is a very disappointing one.

I wish to take this opportunity to remind you that the tickets that you write do add to the revenue on which the P. D. budget is established and will directly affect pay adjustments at budget time.

It is and has always been the desire of myself and the Board to provide a safe and pleasant work place with good compensation and benefits for everyone. However, our ability to continue doing this is being compromised by your work slow down. I realize that your work production records are directly affected by many extenuating circumstances and those factors are always accounted for as your work records are reviewed by myself and human resources.

As budget time approaches, please make a self evaluation of your work habits and motivations, then make the changes that you see that will be fair to yourself and the city.

Thank you



Mayor John Gwaltney

Figure 3 - Edmundson Mayor Letter

While most residents I interacted with had frequent encounters with the police, the majority have given up on calling authorities when they are victims of, or witnesses to, a crime, because they do not trust the police to act in their best interest. One woman interviewed for this research discussed how she called the police because she feared for her neighbor’s safety after overhearing an argument. By the time the police arrived, the neighbors were quiet; however, she ended up in handcuffs because she refused to let police search her house. While she was handcuffed, the police searched her house unlawfully and then cited her for multiple housing infractions. Three days after she complained to city

officials, the housing inspector showed up at her house and issued additional property violations. She interpreted this as retaliation and a warning. In another more publicized case, a mother called the police because her mentally disturbed son had a knife and was threatening to hurt himself. The police arrived and coaxed him out of the house. The son was carrying the knife and a bible. When the son refused to drop the knife, the police shot him dead.<sup>218</sup> Many people I spoke with said they would not call the police voluntarily “no matter what” because they feared they or someone else would be wrongfully arrested or killed. “There is no way in hell I would call the police even if I was dying,” one woman told me. Because nearly every respondent said voluntarily calling the police was entirely out of the question, officers have even more time to initiate stops on their own.

The fragmented geography and postage-stamp size of many cities in North County often mean that residents experience what Patrice has described. They find themselves amassing several violations from multiple cities, often on the same day for the same infraction, such as having a broken taillight or faulty muffler. Residents comment on “the fact you can get pulled over in one jurisdiction then just cross over into another and in 5 seconds get the EXACT same ticket as you just did.” Another stated, “in the county you can get ticketed almost every other day. I have tickets from municipalities I didn’t even know existed. Turns out, I was driving through five different towns when I thought it was all one—because they are literally the size of a football field.” Yet another said, “I’ve been stopped three times in one week in three different municipalities on my way home from work because my windows were tinted. It is ridiculous. The only way you know you’re entering a different city is a different police officer stops you.” Again, while extreme, these experiences are not unique to North St. Louis County. For example, the 2016 shooting of Philando Castile—who was stopped for a broken taillight and subsequently shot to death in front of his girlfriend and her daughter in his car in Falcon Heights, Minnesota—revealed how Black residents in suburban Minnesota also experience hyper-policing.<sup>219</sup> Prior to being shot,

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218. See Michael McLaughlin, *St. Louis County Police Fatally Shoot Man Carrying Knife, Bible in Jennings*, HUFFINGTON POST (Apr. 18, 2015, 10:00 AM), [https://www.huffingtonpost.com/2015/04/18/st-louis-police-officer-involved-shooting-jennings\\_n\\_7092114.html](https://www.huffingtonpost.com/2015/04/18/st-louis-police-officer-involved-shooting-jennings_n_7092114.html).

219. Complaint at 3, *Minnesota v. Yanez*, No. 62-CR-16-8110, 2016 WL 6800872 (Minn. Dist. Ct. 2016); see, e.g., Eyder Peralta & Cheryl Corley, *The Driving Life and*

Castile had been stopped over 40 times and issued 86 violations in 14 years for minor traffic infractions and had paid thousands of dollars in municipal fines and fees.<sup>220</sup> As was the case in several instances involving North St. Louis County residents, witnesses claim that Castile's taillight was not broken on the day he was shot to death.<sup>221</sup> Like Michael Brown, whose physical appearance was seemingly blamed for his death, Mr. Castile's "wide-set nose" was described by the officer who shot him as resembling that of a suspect in a robbery.<sup>222</sup>

Residents throughout North County point to tickets that do not list court dates or list the wrong court date as intentional attempts to create confusion about how to settle tickets or ploys to prevent citizens from appearing for court dates, which leads to more fines and arrest warrants. Many also explain the difficulties they have encountered when trying to obtain information. Courts lack full-time staff, hold court only one or two nights each month, and often do not maintain websites. Confusion also results from there being multiple courts in small areas, each with a different set of policies and practices. The biggest factor residents name for not appearing in court is fear of jail time for inability to pay. Many, like Patrice, have either experienced this themselves or know about it from others who have been jailed. Other reasons for not appearing include lack of childcare, since most cities do not allow children in court, and the inability to get to the court for fear of receiving another ticket while driving there. As a result, the number of people who live with anxiety over warrants for their arrest or mounting fines for small infractions in multiple cities is staggering. This trend dramatically affects decisions residents make, such as when and where to drive and whether to use public spaces and amenities, like parks. Public transportation is lacking in the area, which was developed as a series of commuter suburbs for people with cars.<sup>223</sup>

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*Death of Philando Castile*, NPR (July 15, 2016), <http://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile> (detailing the traffic stops and driving history of Philando Castile); Mary N. Beall, *Gutting the Fourth Amendment: Judicial Complicity in Racial Profiling and the Real-Life Implications*, 36 LAW & INEQ. 145, 145–46; Daniel Politi, *Philando Castile Had Valid Permit for Gun, Long History of Getting Pulled Over*, SLATE (July 9, 2016), [www.slate.com/blogs/the\\_slatest/2016/07/09/philando\\_castile\\_had\\_valid\\_permit\\_for\\_gun\\_when\\_he\\_was\\_killed.html](http://www.slate.com/blogs/the_slatest/2016/07/09/philando_castile_had_valid_permit_for_gun_when_he_was_killed.html).

220. Peralta & Corley, *supra* note 219.

221. Peralta & Corley, *supra* note 219.

222. Peralta & Corley, *supra* note 219.

223. Norman Eisenbert, *A Look at the Normandy Area 2* (July 1975) (unpublished booklet) (on file with author).

Food deserts are common. Many people described sending their children to the nearby gas station to buy snacks for meals because they did not want to drive several miles for groceries for fear of being pulled over.

For those residents that do attempt to take care of violations immediately, stories of frustration, barriers, and jail time are surprisingly normal. Many cities in North County issue so many violations that they often have several hundred cases on a court docket for one evening, with some courts averaging 500 cases per docket.<sup>224</sup> On court nights, people can be found lined up and down the street of the court building for hours waiting to take care of a ticket. Many who were interviewed on those evenings worried while they waited that they might end up in jail that night because they did not come with enough money. Others explained that they constantly lived on the edge due to payment plans that took years to pay off. Many residents shared the sentiment of a woman who said, “money-wise I’ve practically gone broke multiple times. Court fees and paying fines constantly over minor things has really taken a toll on me and [my son].”

While the recent focus on St. Louis County has been directed at traffic violations and warrants, many people are unaware of the many other methods by which municipalities in this area collect fines and fees and even take possession of property. These types of non-traffic and property violations have increased greatly over the past ten years and, like traffic violations, disproportionately affect non-White residents.<sup>225</sup> When Senate Bill 5 (“SB-5”) was passed in 2015,<sup>226</sup> many residents feared that cities would seek to replace lost traffic-related revenue by increasing the number of non-traffic violations issued and their associated fines. Based on preliminary data, this was a valid concern since the number of traffic violations plummeted while non-traffic citations increased significantly over

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224. *See, e.g.*, ST. LOUIS CTY., MO. MUN. CT. SEARCH, <https://www.municipalrecorsearch.com/stlouiscountymo/Cases> (reviewing municipal court dockets from 2013-2014).

225. *See, e.g.*, MO. CTS., ANNUAL JUDICIAL AND STATISTICAL REPORTS, <https://www.courts.mo.gov/page.jsp?id=296> (providing annual reports on court data by circuit).

226. Senate Bill 5, passed in March of 2015, capped revenues collected from court fines and fees from traffic violations by cities in St. Louis County at 12.5% of the general operating budget, while cities in the rest of Missouri were capped at 20%. The bill was passed with much fanfare and was crafted in direct response to extreme municipal practices that state politicians could no longer ignore. CURRENT BILL SUMMARY, S.B. 5, 98th Gen. Assemb., 1st Reg. Sess. (Mo. 2015), [http://www.senate.mo.gov/15info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=160](http://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=160).

the six-month period after SB-5 went into effect.<sup>227</sup> In 2016, the Missouri legislature passed modifications to SB-5, which added non-traffic violations to the limits set on revenue generated through the courts.<sup>228</sup> These types of nonviolent violations target property and behavior. Infractions include the following: manner of walking, wearing sagging pants, playing loud music, leaving toys or wading pools in front yards, playing in the street, having basketball hoops or barbecuing in front yards, drinking alcohol within fifty feet of a grill, installing mismatched curtains, loitering in a park, failing to secure a trash can lid, failing to keep grass at a certain length, allowing individuals not listed on occupancy permits to spend the night, owning a nuisance dog, telling someone's future, and failing to contract with the private trash collection company.<sup>229</sup> The idea that someone could potentially land in jail for failure to appear in court or for the inability to pay for a citation for mismatched curtains seems implausible, yet residents questioned about this possibility emphatically stated, "Yes, that could happen."<sup>230</sup>

Cities also use bizarre interpretations of the International Property Maintenance Standards (IPMS) to cite hundreds of homes for specific infractions. According to the data, cities tend to choose a 'pet infraction' each year.<sup>231</sup> For instance, in 2010 the city of Normandy cited 110 homes for 'Failure to Paint Sign Pole,' citing ordinance 505.020, which adopted the IPMS as the standard for property maintenance requirements.<sup>232</sup> This number was in

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227. See MO. CTS., TABLE 93, MUNICIPAL DIVISION, FY 2015, CASES FILED, DISPOSED AND PENDING, <https://www.courts.mo.gov/file.jsp?id=96435> (analyzing the municipal records from 2015 reported to the Missouri Attorney General's office).

228. CURRENT BILL SUMMARY, S.B. 572, 98th Gen. Assemb., 2d Reg. Sess. (Mo. 2016), [http://www.senate.mo.gov/16info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=22246557](http://www.senate.mo.gov/16info/BTS_Web/Bill.aspx?SessionType=R&BillID=22246557).

229. *Id.*; see also Jennifer S. Mann, *Municipalities Ticket for Trees and Toys, as Traffic Revenue Declines*, ST. LOUIS POST-DISPATCH (May 24, 2015), [https://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article\\_42739be7-afd1-5f66-b325-e1f654ba9625.html](https://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article_42739be7-afd1-5f66-b325-e1f654ba9625.html) (describing how the City of Pagedale posted warnings to residents that things like "pants worn too low" or "grass grown too high," would be closely monitored—over two thousand citations for these types of offenses were handed out in one year); Reilly & Stewart, *supra* note 212.

230. This statement, or something similar, was made by more than 20 residents of North St. Louis County during resident interviews.

231. See INT'L PROP. MAINT. CODE ("IPMC") (INT'L. CODE COUNCIL 2018) (property standards for adoption as legally enforced codes by municipalities and associations).

232. The data in this paragraph concerning the city of Normandy was obtained by and on file with the author using the Missouri Sunshine Law from the REJIS Commission (Regional Justice Information Service), which is contracted by individual cities to compile data.. The Revised Statutes of Missouri Chapter 610 were

addition to the 303 homes that received citations for ‘Violating Minimum Housing Standards,’ with reference to the same ordinance.<sup>233</sup> But the only wording in the IPMS guidelines about failing to paint a sign pole is a clause stating that all exterior metal must be painted with rust resistant paint.<sup>234</sup> The following year, no houses received a ‘Failure to Paint Sign Pole’ citation in Normandy; however, eighty-one homes were cited for ‘Failure to Paint the Front of a Rear Door,’ again using ordinance 505.020.<sup>235</sup>

One could argue that the practices outlined above are not race-based since, as one leader put it, “we’re all poor and we’re all Black.”<sup>236</sup> This argument, however, would be shortsighted since the reasons that these cities seemingly ‘must’ resort to policing-for-revenue and the predatory policing tactics employed by administrators are dependent upon the risk attached to Blackness. Cities in North St. Louis County with more diverse populations claim that the inordinate number of traffic citations written to Black drivers is due to the number of Black non-residents driving through their boundaries, but these cities also disproportionately cite Black residents for housing and non-traffic violations.<sup>237</sup> Of the eight municipalities that complied with a request for data regarding non-traffic ordinance violations, all but one of them issued a larger percentage of citations to Black residents than the overall percentage of Black residents in their jurisdiction.<sup>238</sup>

For example, Greendale has a population of 651 residents and is 69% Black.<sup>239</sup> Between 2012 and 2014, 91% of all non-traffic violations were written to Black Greendale residents.<sup>240</sup> The city of Bellerive has a population of 254 people and is 43% Black.<sup>241</sup> Between 2012 and 2014, 93% of non-traffic violations were written

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signed into the Missouri Constitution in 1973 following the passage of the Freedom of Information Act by the U.S. Congress in 1966. The law expressly states that meetings, records, votes, actions, and deliberations of public governmental bodies are to be open to the public. The REJIS Commission (Regional Justice Information Service) compiles and provides the data [hereinafter REJIS Commission].

233. *Id.*

234. INT’L PROP. MAINT. CODE, at § 304.2.

235. See REJIS Commission data, *supra* 232.

236. Interview with Municipal Leader in St. Louis, Mo. (Apr. 9, 2012).

237. See *supra* Table 1.

238. See *supra* Table 1.

239. U.S. BUREAU OF THE CENSUS, 2010 CENSUS, <https://www.census.gov/programs-surveys/decennial-census/decade.2010.html>.

240. See REJIS Commission data, *supra* note 232.

241. U.S. BUREAU OF THE CENSUS, *supra* 239.

to Black residents of Bellerive.<sup>242</sup> The city of Bel-Nor has a population of 1,500 people, of whom 43% are Black.<sup>243</sup> Between 2012 and 2015, 79% of non-traffic ordinance violations were issued to Black residents of Bel-Nor.<sup>244</sup> In Cool Valley, 85% of the 1,196 residents are Black, but Black residents receive 92% of non-traffic violations.<sup>245</sup> Normandy, with a population of 5,008 residents, of whom 70% are Black, issues 90% of non-traffic citations to Black residents.<sup>246</sup> Finally, the city of Pasadena Park has a population of 470 people, of whom 60% are Black, and issues 78% of non-traffic ordinance violations to Black residents.<sup>247</sup> Non-traffic ordinance violations feed the cycle of traffic violations—whenever a police officer stops a Black driver, the likelihood is high that the driver will have an outstanding warrant for failure to pay a non-traffic violation.<sup>248</sup> Seventeen municipalities either did not comply with my request for specific data concerning non-traffic citations (in violation of the Missouri Sunshine Law<sup>249</sup>) or demanded more than \$500 to provide data.<sup>250</sup> This response led me to wonder whether disparities in noncompliant cities are potentially even higher than the disparities among cities that complied with my request.

#### IV. Municipal Winners and Losers

The Missouri constitution lays out questionable roles and powers for municipal courts,<sup>251</sup> including grey areas as to whether municipal courts should act more as criminal or civil courts. T. E. Lauer described the apparent problem of municipal court ambiguity in 1966 in his argument for municipal court reform in Missouri, which was unsuccessful.<sup>252</sup> In addition to identifying inherent conflicts of interest, a clear lack of procedure and standards, little uniformity across municipalities, consistent duplication of laws,

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242. See REJIS Commission data, *supra* note 232.

243. U.S. BUREAU OF THE CENSUS, *supra* 239.

244. See REJIS Commission data, *supra* note 232.

245. See REJIS Commission data, *supra* note 232.

246. See REJIS Commission data, *supra* note 232.

247. See REJIS Commission data, *supra* note 232.

248. See REJIS Commission data, *supra* note 232.

249. See Eric Schmitt, *Sunshine Law: Top 10 Things to Know*, OFFICE OF THE MO. ATTY GEN. <https://ago.mo.gov/missouri-law/sunshine-law/sunshine-law---top-10> (last visited Apr. 25, 2019).

250. *Id.*

251. See generally MO. CONST. art. VI.

252. T. E. Lauer, *Prolegomenon to Municipal Court Reform in Missouri*, 31 MO. L. REV. 69 (1966).

strangely particular ordinances across municipalities, and an alarming disinterest in the spirit of justice, Lauer also reveals that abuses by the municipal courts have a long history. He states:

While our criminal law makes an increasing claim to adhere to the theory that rehabilitation of the offender is the proper end of criminal justice, municipal ordinance violators are dealt with almost as though the twentieth century had never happened: the offender is *punished* by the imposition of a fine or jail sentence. And failure to pay a fine will cause the offender to be remanded to jail, there to ‘lay it out.’ But ordinance violations are trivial matters, we will say; they are only civil matters and surely the fine or imprisonment cannot amount to much. An examination of the statutes, however, discloses that in third and fourth class cities an offender may be punished by a fine of one hundred dollars and imprisonment in the “city prison or workhouse” for three months.<sup>253</sup>

Although significant problems have existed within policing and municipal courts in St. Louis County for more than fifty years, more recent manifestations of predatory policing and court practices have taken a new racial turn both statistically and rhetorically.<sup>254</sup> These practices have increased in North County at roughly the same rate as the Black population grew.<sup>255</sup> From specific types of ordinances (e.g., against sagging pants and barbecuing in the front yard)<sup>256</sup> to justifications for policies (e.g., statements such as “these people don’t know how to act in the suburbs”)<sup>257</sup> to employing dehumanizing practices and tropes (e.g., police leaving a body in the street for four and a half hours and labeling it “like a demon”),<sup>258</sup> the criminalization and dehumanization of Black people conveniently justifies significant increases in court-generated revenues, which make up for significant disinvestment and loss of sales tax revenues.

There is a direct relationship between the loss of sales tax revenue and an increase in the revenue generated through policing

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253. *Id.* at 91 (emphasis in original).

254. See THE OFFICE OF THE MO. ATT’Y GEN., RACIAL PROFILING DATA (2013), <https://www.ago.mo.gov/docs/default-source/public-safety/2013agencyreports.pdf?sfvrsn=2>.

255. *Id.*

256. *Id.*

257. Interview with Municipal Alderperson in St. Louis, Mo. (Mar. 12, 2010) (on file with the author).

258. Transcript of: Grand Jury Vol. V at 207, *State of Missouri v. Darren Wilson*, (Sept. 16, 2014), [https://www.scribd.com/doc/248128351/Darren-Wilson-Testimony#fullscreen&from\\_embed](https://www.scribd.com/doc/248128351/Darren-Wilson-Testimony#fullscreen&from_embed) (Officer Darren Wilson’s grand jury testimony, including his description of Mr. Brown as looking “like a demon”).

and the courts.<sup>259</sup> One of the most influential pieces of Missouri legislation with regard to the experience of residents in North County today was passed in 1969. It allows cities in Missouri to levy a municipal sales tax in addition to the relatively low state sales tax rate.<sup>260</sup> Upon passage of the state legislation, most cities in the St. Louis region almost immediately passed a local sales tax, and many approved lower property tax rates at the same time. The vast fragmentation of the region and tiny size of many cities promoted a cannibalistic approach to sales tax revenue as cities lure shoppers from surrounding municipalities to pay for services in their own jurisdiction.<sup>261</sup> This passes the cost of local government to people outside of municipal boundaries and creates vast disparities between the winners and losers of what is today a sales tax war.<sup>262</sup> In 2014, 69 of the 92 local governments in St. Louis County and the city of St. Louis list sales taxes as their primary source of revenue.<sup>263</sup> Not surprisingly, the majority of the 23 cities prevented from relying on sales tax by the hollowing out of tiny commercial districts are located in North St. Louis County.<sup>264</sup> Furthermore, residents in many areas of North St. Louis County described having to travel to neighboring communities to buy groceries and other necessities and pay a sales tax between 7.5% and 10% to fund services for more well-off neighbors, while their own property taxes remain the highest in the county. The passage of the 1980 Hancock Amendment to the Missouri constitution<sup>265</sup> added to the fierce competition between jurisdictions and the creative measures to raise revenue.<sup>266</sup>

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259. Based on a review of sales tax revenues from 1970, 1975, 1980, 1985, 1990, 1995, 2000, 2005, 2010 compared to the revenues reported from fines and fees between 1970 and 2010.

260. BETTER TOGETHER, *THE WILL TO CHANGE 4* (2016), <https://static1.squarespace.com/static/59790f03a5790abd8c698c9c/t/5c49665b4fa51a8e6ec61a4a/1548314246674/BT-Will-to-Change-Final.pdf>.

261. BETTER TOGETHER, *supra* note 260, at 4.

262. See SIDNEY PLOTKIN & WILLIAM E. SCHEUERMAN, *PRIVATE INTEREST, PUBLIC SPENDING: BALANCED-BUDGET CONSERVATISM AND THE FISCAL CRISIS* (1994) (discussing how every subunit of government has been pitted against every other subunit in response to vast decreases in public funding from federal and state revenues).

263. BETTER TOGETHER, *supra* note 260, at 5.

264. MO. CONST. art. X §§ 16–24.

265. MO. CONST. art. X §§ 16–24 (limiting the tax revenue the state can collect from personal income, preventing the state from imposing laws on local governments without funding them, and barring local governments from levying or increasing any tax without voter approval).

266. MO. CONST. art. X §§ 16–24.

The dependence on municipal sales tax and measures precluding equitable collection and distribution of resources established under Missouri state law mean that developing and maintaining thriving commercial districts is not just generally advantageous to cities, it is essential for the funding of municipal budgets. As such, competition for economic development is also fierce, and municipal governments offer vast incentives to developers and retail businesses to lure commerce away from weaker communities.<sup>267</sup> Developers and businesses often call the shots and hold tiny cities hostage with the threat of leaving, in a manner similar to the way sports teams threaten to leave large cities if stadiums and other amenities are not provided through taxpayer dollars.<sup>268</sup> Tax Increment Financing (TIF) is frequently used throughout the United States to attract development.<sup>269</sup> This mechanism is particularly attractive to both cities and developers in the St. Louis region because Missouri state law allows sales taxes and property taxes to be captured by TIF.<sup>270</sup> Furthermore, under Missouri law, the creation of a TIF area requires only municipal approval,<sup>271</sup> whereas other states have a more rigorous regional approval process to ensure TIF is used for public rather than private good.<sup>272</sup> Consequently, it is common to find TIF areas in relatively

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267. See BETTER TOGETHER, *supra* note 260, at 11 (“[P]rolific use of development incentives such as tax increment financing (TIF) to acquire retail development diminishes the effectiveness of such tools for the communities most in need of addressing blight.”).

268. BETTER TOGETHER, *supra* note 260, at 5–6.

269. See Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 305–337 (2004).

270. Tax Increment Financing (TIF) is the ability to capture and use most of the increased local property tax (and in Missouri, sales tax) revenues from new development in a defined district for a defined period of time. Tax Incremental Financing Map, BETTER TOGETHER, <http://www.bettertogetherstl.com/tax-incremental-financing-map> (click on a project on the map to receive more details about the TIF project) [hereinafter Tax Incremental Financing Map]. The cost of the development is paid back after the project is built, making it an attractive development tool. BETTER TOGETHER, *supra* 260, at 4. The intended uses of TIF are the revitalization of depressed areas, to build affordable housing, create jobs, and remediate areas with environmental issues, although these uses are often liberally interpreted. BETTER TOGETHER, *supra* note 260, at 4.

271. *Local Tax Increment Financing*, MO. DEP’T REVENUE, <https://dor.mo.gov/business/tif/> (last visited May 20, 2019).

272. Alyssa Talanker & Kate Davis, *Straying from Good Intentions: How States Are Weakening Enterprise Zone and Tax Increment Financing Programs*, GOOD JOBS FIRST (Aug. 2003), <https://www.goodjobsfirst.org/sites/default/files/docs/pdf/straying.pdf> (describing each state’s TIF requirements).

affluent neighborhoods throughout the region.<sup>273</sup> In a particularly notorious example in St. Louis County, an upscale area of the county seat was deemed blighted in order to secure a TIF district.<sup>274</sup> According to the consolidation advocacy group Better Together, over \$2B in tax revenue has been diverted to developers in the past 20 years as subsidies for private developments in the St. Louis region.<sup>275</sup> Of the 168 TIFs carried out in the area, 13 are located in North St. Louis County, which covers more than 1/3 of the physical geography.<sup>276</sup>

### V. Theorizing Blackness as Risk

In 1978, Stuart Hall et al. published *Policing the Crisis: Mugging, the State, and Law and Order*, which asserts that real and perceived crime rates cannot be viewed independently from the institutions that aim to control and report on it.<sup>277</sup> The book examines the politics of policing—using mugging to look at the relationships between a rhetorical *moral panic* and policing campaigns in the context of colonial and imperial legacies of human differentiation through race-making.<sup>278</sup> The authors argue that agencies such as the police, the courts, and the media do not passively react to a given crime situation but are, “actively and continuously part of the whole process . . . .”<sup>279</sup> More than thirty-five years later, this conceptualization is useful for looking at the case of North St. Louis County, where municipal leaders, police, and the courts not only participate in the process of criminalization but, to a large extent, have created specific ways to criminalize Black behavior for economic purposes. Residents are moved from rights-bearing citizens to ‘rightless’ criminals and risky people through the active policing of a rhetorical ‘suburban crisis,’ which works in tandem with equally powerful imaginations of suburban space and norms.

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273. See Sarah Coffin, *Tax Increment Financing in St. Louis County, 2000-2012*, ST. LOUIS UNIV. CTR. FOR SUSTAINABILITY (Jan. 2015), <https://pprc.umsl.edu/pprc.umsl.edu/data/tif-legislative.pdf>.

274. See Molly Molly Metzger, *It's Time to Dismantle TIFs as Tool of Segregation*, ST. LOUIS AM. (July 4, 2018), [http://www.stlamerican.com/news/columnists/guest\\_columnists/it-s-time-to-dismantle-tifs-as-tool-of-segregation/article\\_118f3574-7f42-11e8-9c5b-0fb4db570319.html](http://www.stlamerican.com/news/columnists/guest_columnists/it-s-time-to-dismantle-tifs-as-tool-of-segregation/article_118f3574-7f42-11e8-9c5b-0fb4db570319.html).

275. BETTER TOGETHER, *supra* note 260, at 5.

276. See Tax Incremental Financing Map, *supra* note 270.

277. See HALL, ET AL., *supra* note 213.

278. See HALL, ET AL., *supra* note 213.

279. See HALL, ET AL., *supra* note 213, at 54.

The ‘crisis in the suburbs’ rhetorically promoted by municipal leaders stems from the very real economic crisis brought about by plummeting property values, hollowed out commercial districts, and the evaporation of state and federal funding outlined in the beginning of this Article. Leaders, municipal judges, and city attorneys, however, frame the ‘crisis’ as a public safety issue and as their “fundamental right to protect private property” and “maintain their sovereignty.” According to these narratives, the astronomical number of citations handed out—ten to twenty times higher than in White suburbs—is simply due to the inability of Black residents to follow rules and the tendency of these residents to engage in behaviors said to threaten safety, devalue property, and discourage private investment. Taking the conflation between property values and public safety even further, one mayor argued that failing to maintain an aesthetically pleasing property was absolutely a public safety issue because it lowered overall property values and put other people in economic danger.<sup>280</sup> Consistently invoking the right of the city, leaders, judges, and city attorneys claim that residents would have nothing to complain about if they would just act right and take care of their property.<sup>281</sup> Blaming residents for the predicament of lost investment and framing aesthetic concerns as public safety issues shifts the focus of responsibility away from public and private actors that have abandoned this area and ignores the blatant poaching of resources practiced by more financially stable cities in the region. It also follows a long history of linking Black people to risk and blaming Black residents in North County neighborhoods when self-fulfilling prophecies of decline occur after investment moves elsewhere.

Most Black residents in North St. Louis County do not believe public safety has anything to do with municipal practices. When asked, virtually all Black respondents (eighty-four) said they believed policing was based on money and greed rather than issues

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280. Deposition of the Honorable Mary Louise Carter Taken on Behalf of the Plaintiffs at 126:25–129:13, Valerie Whitner v. City of Pagedale, No. 4:15-cv-01655-RWS (E.D. Mo. July 24, 2017).

281. *Compare* Interview with Patrick Green, Mayor of Normandy, Mo. (Nov. 30, 2015) (discussing rights of the city of Normandy to secure the same economic advantages and order as that of its more well-to-do counterparts by policing behavior in public space and protecting the value of property) with Erica Smith, *Mayors of Municipalities Fight Back Against Consolidation, Revenue Proposals*, ST. LOUIS PUB. RADIO (Feb. 5, 2015), <https://news.stlpublicradio.org/post/mayors-municipalities-fight-back-against-consolidation-revenue-proposals#stream/0> (discussing how Mayors Green of Normandy, Murphy of Cool Valley, and Carter of Pagedale argue independently that the seemingly excessive amount of fines collected in their cities, as recently reported in the media, is due to residents’ inability to follow the law).

of safety. One resident voiced the sentiment of the respondents as a whole:

I think the public safety argument is a complete lie. How does not putting your trash can in the right place put the public in danger? And then when there is an actual law enforcement issue, they're nowhere to be found. They only fine us to put money in their pockets. I truly believe that.

Most residents said they thought the race of the leaders did not matter. However, they believed the race of residents had everything to do with municipal policy. Residents said things like, "The color of the leadership doesn't matter, but I do think they treat us so badly because we are Black," and, "It doesn't matter what color the leaders are, it matters what color the people are when it comes down to how much they care about the people in their community." Another Black resident stated:

Black leaders are more corrupt because they can get away with more. Imagine if leaders treated a white community this way. They can do this because we're a Black community. Ferguson is under scrutiny because white leaders are oppressing black people. Black leaders get off the hook here because they can say it's not about race.

While much has been written about the criminalization of poverty<sup>282</sup> and the many economies of the prison industrial complex,<sup>283</sup> residents of North St. Louis County are perpetually punished for the loss of economic viability brought about by their sheer presence in space. They are subsequently extorted because of their financial hardships and the fact that these practices go unnoticed by people in the larger region. Through this cycle, cities must necessarily 'catch and release' poor residents to maintain a steady stream of revenue through what amounts to legalized extortion.<sup>284</sup> Comparing municipal practices to criminal racketeering, a class action complaint against thirteen cities in North St. Louis County makes the following point:

[Cities] have abused the legal system to bestow a patina of legitimacy on what is, in reality, extortion. If private parties

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282. See, e.g., Suzanne Allen et al., *Throwaway Moms: Maternal Incarceration and the Criminalization of Female Poverty*, 25 *AFFILA: J. WOMEN & SOC. WORK* 160 (2010); Jackie Esmonde, *Criminalizing Poverty: The Criminal Law Power and the Safe Streets Act*, 17 *J.L. & SOC. POL'Y* 63 (2002); Kaaryn Gustafson, *The Criminalization of Poverty*, 99 *J. CRIM. L. & CRIMINOLOGY* 643 (2009); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 *UCLA L. REV.* 1540 (2012).

283. See GILMORE, *supra* note 167; ALEXANDER, *supra* note 173.

284. Complaint at 4–9, *Thomas v. City of St. Ann*, No. 4:16-CV-1302 (E.D. Mo. Aug. 9, 2016).

had created and implemented this scheme, enforced it by threatening and imposing indefinite incarceration, and milked poor families of millions of dollars, the law would punish them as extortionists and racketeers, and the community would take steps to prevent them from exploiting the most vulnerable of its members. These predatory practices are no more legitimate—and indeed are more outrageous—when state and local government actors perpetrate them under color of law.<sup>285</sup>

In contradistinction to the concept of ‘Whiteness as property’—the legally protected rights associated with a privileged identity<sup>286</sup>—‘Blackness as risk’ erodes, and in some cases suspends, the rights of Black citizens so that perceived risks may be contained, controlled, and limited on the basis of economic and physical security.<sup>287</sup> As Cheryl Harris showed more than two decades ago, Whiteness holds tangible and enforceable rights.<sup>288</sup> In her now classic essay *Whiteness as Property*, Harris examines the many ways White privilege is constructed and enforced in, and through, legal interpretations that do not explicitly rely on racist doctrine.<sup>289</sup> Based on legal claims of public good and highest and best use, the ways in which eminent domain is exercised and upheld in spite of legal challenges by communities of color exemplify how ‘Whiteness as property’ determines what is good or best for people and space.<sup>290</sup>

‘Blackness as risk’ can be understood as the inverse of Harris’s argument. The association of Blackness with risk permeates all

285. *Id.*

286. Although the conventional understanding of property refers to things owned by persons, and the rights of individuals with regard to a thing, the concept of property has evolved to include intangible rights as protected by legal ruling. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1740–41 (1993) (describing measurement of Black blood and Whiteness as a privilege in courts). As Harris theorizes, property is in this case a right, not a thing, and is metaphysical, not physical. *Id.* Whiteness therefore includes multiple forms and interpretations of rights and is not just an identity but also a property with inherent, as opposed to explicit, legal status and legal rights. *Id.* at 1737–41. The right to move, the right to exclude, and the right to prosper at the expense of others are all part of the possessive rights of, and investment in, Whiteness—as itself a defensible property—that have created the physical, social, and political conditions in North St. Louis County.

287. Associations between Blackness and risk have been theorized by several scholars, including Rashad Shabazz, in *SPATIALIZING BLACKNESS: ARCHITECTURES OF CONFINEMENT AND BLACK MASCULINITY IN CHICAGO* (2015); Shona N. Jackson, *Risk, Blackness, and Postcolonial Studies: An Introduction*, 37 CALLALOO 63 (2014). In this Article, I link associations between Blackness and risk as the antithesis to Cheryl Harris’s conceptualization of Whiteness as property. Harris, *supra* note 286, at 1740–49.

288. Harris, *supra* note 286, at 1740–49.

289. Harris, *supra* note 286, at 1714–15.

290. Harris, *supra* note 286, at 1736–37.

levels of current decision-making, from individual to institutional, in a society where historical constructions of race determined whether one was free or unfree and where one drop of Black blood stripped individuals of the privileges afforded White subjects.<sup>291</sup> In a more blatant example of the legal ramifications of ‘Blackness as risk,’ less than 5% of police officers who shoot and kill unarmed people of color are convicted of wrongdoing.<sup>292</sup> This statistic alone shows how the risk associated with Black bodies is understood as sufficient reason for the use of deadly force. That risk is clearly seen in North County, from structural disinvestment and the hollowing out of middle-class suburbs, to the legalized killing of unarmed Black residents.

Another useful theorization for understanding the phenomena found in North St. Louis County is Michel Foucault’s concept of a punitive society and the use of the fine (defined as the taking of property).<sup>293</sup> The four tactics of state violence that create a penal system within normative society as identified by Foucault in *The Punitive Society* are on bold display throughout this geography:

1) *Exclusion from the right to live somewhere.*<sup>294</sup> Residents of North St. Louis County find their right to a place to live compromised in the form of multiple property violations, harassment, loss of income, and in some cases, the confiscation of their homes. Many residents find that the so-called *right to the suburbs* afforded to them by the Fair Housing Act of 1968 does not apply to them and they end up returning to St. Louis City, where they report there is significantly less harassment. As one mayor in North St. Louis County put it, “Having a home is a privilege. . . .”<sup>295</sup>

2) *Compensation for what is lost.*<sup>296</sup> As described in this Article, residents are made to compensate cities for lost revenues

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291. Cf. GUY STUART, *DISCRIMINATING RISK: THE U.S. MORTGAGE LENDING INDUSTRY IN THE TWENTIETH CENTURY* (2003) (tracing the racialized social factors that impact risk assessment by mortgage lenders throughout the twentieth century with a particular focus on mortgage lending practices in Chicago in the 1990s, showing how embedded racialized discriminations continue to produce the racialized spaces of the American city).

292. *Police Killed More Than 100 Unarmed Black People in 2015*, MAPPING POLICE VIOLENCE, <http://mappingpoliceviolence.org/unarmed/> (last visited Apr. 6, 2019) (explaining how 104 unarmed Black persons were killed by police in the United States in 2015, and that of those incidents, charges were brought against 13 police officers, 4 of which were convicted of crimes and 1 pleaded guilty).

293. MICHEL FOUCAULT, *THE PUNITIVE SOCIETY* 8–10, 71 (Bernard E. Harcourt ed., Graham Burchell trans., 2015).

294. *Id.* at 6–7.

295. Interview with Patrick Green, *supra* note 281.

296. FOUCAULT, *supra* note 293, at 7.

brought about by disinvestment linked to the risk associated with their very bodies.

3) *Public acknowledgment of a sovereign power and authority and the marking of the subject.*<sup>297</sup> Residents are marked as deviant—publicly harassed and humiliated—through constant police stops and draconian court policies, which have lasting effects on residents’ future employment and housing opportunities.<sup>298</sup>

4) *The literal denial of physical and individual freedoms—confinement.*<sup>299</sup> Jail time and the denial of individual freedom are frequent threats and part of the reality experienced by countless people across this geography. Many residents are further confined by the inability to move due to economic constraints.

Foucault goes on to argue: “[W]hat has to be brought out first of all in the analysis of a penal system is the nature of the struggles that take place around power in a society.”<sup>300</sup> He asks, “What forms of power are actually at work for power to respond to infractions that call its laws, rules, and exercise into question with tactics such as exclusion, marking, redemption, or confinement?”<sup>301</sup> The criminalization of normal behavior, extreme policing of minor infractions, as well as everyday practices that oppress the opportunity to live freely, are some of the forms of power at work in this area, which reveal how governance and governmentality operate at the most local and mundane levels of society. In this way, the racial state is a local state of affairs. Moments of extreme violence, such as the death of Michael Brown, are eruptions of quotidian practices that create the conditions for racialized police brutality.

The people of North St. Louis County understand the history, policies, and politics of Blackness as risk, and their experience defies the notion that race is becoming increasingly less important in the United States. Many people I spoke with also believe that the implications of race today are less about skin color and personal prejudices and more about the power to control in ways that benefit one group over another. This has always been the fundamental

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297. FOUCAULT, *supra* note 293, at 7–8.

298. Cf. FOUCAULT, *supra* note 293, at 7–8 (defining “to mark” as “to scar, to leave a sign on the body . . . or, if one does not strike the individual’s real body, to inflict a symbolic stain on his name, humiliate his character, damage his status.”).

299. FOUCAULT, *supra* note 293, at 8.

300. FOUCAULT, *supra* note 293, at 13.

301. FOUCAULT, *supra* note 293, at 12.

purpose of race-making.<sup>302</sup> For this reason and as part of renewed and new forms of political activism triggered by the death of Michael Brown, people across this geography continue to call for reforms that go beyond the discourse of police brutality.<sup>303</sup>

## VI. A Hollow Prize of Black Political Autonomy<sup>304</sup>

The scathing review by the DOJ regarding racist and race-based practices and culture in both the municipal administration and police department of Ferguson,<sup>305</sup> was just one of several reports prompted by Ferguson resistance that cite racialized practices.<sup>306</sup> For example, the findings presented in the report from the Ferguson Commission, released in September 2015, squarely focus on race.<sup>307</sup> After a year of research and listening to communities,<sup>308</sup> the report began: “We know that talking about race makes a lot of people uncomfortable. But make no mistake: this is about race.”<sup>309</sup> Remarkably, the Commission was made up of a bipartisan cross-section of community leaders, residents, and law enforcement representatives appointed by the Governor of Missouri to report on the underlying causes of, and proactive responses to, unrest in Ferguson.<sup>310</sup> Although there are 189 calls to action listed in the report focused on Ferguson, the authors make clear that the report is intended to read as a narrative about racial inequities found in the history, policies, and practices of the St. Louis region.<sup>311</sup>

The report is somewhat unique because it is intended to directly address the causes, as opposed to merely the consequences,

302. Harris, *supra* note 286, at 1713–14.

303. RIOS, BLACK LIVES, *supra* note 12 (discussing specific practices in North St. Louis County and the renewed and new forms of Black resistance that have emerged from Ferguson protests).

304. H. Paul Friesema, *Black Control of Central Cities: The Hollow Prize*, 35 J. AM. INST. PLANNERS 75, 78–79 (1969) (observing that by the time a minority finally rises to the position of mayor, that city is very likely to be in decline—and legislatures are unlikely to assist minority municipalities—so minority mayors win a hollow prize).

305. THE FERGUSON REPORT, *supra* note 121.

306. See generally FERGUSON COMM’N, FORWARD THROUGH FERGUSON: A PATH TO RACIAL EQUITY (2015) (reporting issues in the St. Louis area, including calls to action to produce greater racial equity in the region).

307. Governor Jay Nixon commissioned a cross-sectional panel (The Ferguson Commission) to investigate the causes of the Ferguson uprisings. *Id.* at 12. The commission delivered its report on September 14, 2015. *Id.* at 1.

308. *Id.* at 14.

309. *Id.* at 6.

310. *Id.* at 12, 174.

311. *Id.* at 8.

of racial tensions.<sup>312</sup> Governor Jay Nixon's executive order establishing the Ferguson Commission stated: "[T]he unrest and public discourse set in motion by the events of August 9 in Ferguson, Missouri underscore the need for a thorough, wide-ranging and unflinching study of the social and economic conditions that impede progress, equality and safety in the St. Louis region."<sup>313</sup> The Ferguson Commission, in its own words, "embraced the call to be 'unflinching.'"<sup>314</sup> This meant

listening, often uncomfortably, to the personal stories shared by citizens who came to our open meetings, and by people we interviewed throughout the process of developing this report. . . . [M]any [of the stories] were frustrating, depressing, infuriating, deflating, and heart-wrenching. We are committed to honoring those stories, and facing those truths, throughout our work and in this report.<sup>315</sup>

The 198-page report presents the same depressing data regarding disparities of race and class in the St. Louis region as the research presented in this Article and similarly attaches the experiences of marginalized residents to specific data and analysis.<sup>316</sup> As a living document, commissioned at the highest level of state government, the report is an important resource for understanding the degrees of racialized experience in the St. Louis region, with an emphasis on North St. Louis County.<sup>317</sup> How the report will impact change and whether recommendations will be implemented remain to be seen. Black bodies continue to be used as they historically have been, as revenue-generating reservoirs. The recent victory of Wesley Bell, a Black candidate who ran on a reform platform in the Democratic primary for St. Louis County prosecutor, has provided hope to some that change is occurring.<sup>318</sup> Almost four years to the day after Michael Brown was killed in Ferguson, Bell unseated the seven-term<sup>319</sup> White incumbent, Bob

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312. FERGUSON COMM'N, *supra* note 306, at 8.

313. FERGUSON COMM'N, *supra* note 306, at 9–10.

314. FERGUSON COMM'N, *supra* note 306, at 9.

315. FERGUSON COMM'N, *supra* note 306, at 9–10.

316. FERGUSON COMM'N, *supra* note 306, at 35–36 (policing), 46–47 (youth), 55–57 ('opportunity to thrive', or economic mobility), 60 (racial equity).

317. FERGUSON COMM'N, *supra* note 306, at 6–7, 12.

318. Radley Balko, *A Reformer Won the Election for St. Louis County DA. But His Future Subordinates Might Join the Police Union*, WASH. POST (Dec. 17, 2018), [http://www.washingtonpost.com/opinions/2018/12/17/reformer-won-election-st-louis-county-da-his-future-subordinates-might-join-police-union/?noredirect=on&utm\\_term=.c0c52abfb36c](http://www.washingtonpost.com/opinions/2018/12/17/reformer-won-election-st-louis-county-da-his-future-subordinates-might-join-police-union/?noredirect=on&utm_term=.c0c52abfb36c).

319. Joel Currier, *McCulloch Looks Back at 35 Years as St. Louis County Prosecutor, Says 'Ferguson Is the Only Reason I'm Retiring'*, ST. LOUIS POST-

McCulluch, who was highly criticized for his handling of the police shooting that killed Brown.<sup>320</sup> Although many people calling for reform in St. Louis County cite this outcome as a major milestone,<sup>321</sup> the fact that Bell worked for many years as a municipal judge and prosecutor in North St. Louis County and oversaw many of the practices described above<sup>322</sup> is rarely mentioned.

Although cities are fighting to maintain the status quo, it is clear to municipal leaders that their world is changing. Less clear is whether change will come in the form of actually remediating inequitable and unconstitutional practices, finding alternative ways to exploit residents, dissolving cities, or some combination of these outcomes. In the three years following the Ferguson unrest, municipal administrators attempted to preemptively reform themselves in closed-door meetings with judges and attorneys in the hope of convincing state legislators and the Missouri Supreme Court that court reform can be internally addressed.<sup>323</sup> An extensive audit and public meetings held by a working group of the Missouri Supreme Court uncovered vast problems with municipal courts in St. Louis County. Despite these findings, few reforms are slated for implementation other than telling cities to do a better job.<sup>324</sup> Several leaders of small villages and third- and fourth-class cities complain their sovereignty is being infringed upon by the state.<sup>325</sup> This

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DISPATCH (Dec. 24, 2018), [https://www.stltoday.com/news/local/crime-and-courts/mcculloch-looks-back-at-years-as-st-louis-county-prosecutor/article\\_f4ae91a4-8083-5855-9010-0d71d0357c36.html](https://www.stltoday.com/news/local/crime-and-courts/mcculloch-looks-back-at-years-as-st-louis-county-prosecutor/article_f4ae91a4-8083-5855-9010-0d71d0357c36.html).

320. Balko, *supra* note 318.

321. Chris Davis, *Wesley Bell Plans to Eliminate Cash Bail for Nonviolent Offenders After Swearing-in on Jan. 1*, ST. LOUIS BUS. J. (Dec. 24, 2018), <https://www.bizjournals.com/stlouis/news/2018/12/24/wesley-bell-plans-to-eliminate-cash-bail-for.html>.

322. Currier, *supra* note 319.

323. See, e.g., Francis X. Clines, *Restoring Public Trust in Government Isn't Getting Any Easier in Ferguson, MO*, N.Y. TIMES (Sept. 23, 2015), <https://takingnote.blogs.nytimes.com/2015/09/23/restoring-public-confidence-in-government-isnt-getting-any-easier-in-ferguson-mo/>; Jennifer S. Mann, *Municipal Court Officials Prepare for Major Reforms—In Secret*, ST. LOUIS POST-DISPATCH (Aug. 14, 2015), [https://www.stltoday.com/news/local/crime-and-courts/municipal-court-officials-prepare-for-major-reforms-in-secret/article\\_1fab5afd-8ea6-561e-aaac-885c38ec6c32.html](https://www.stltoday.com/news/local/crime-and-courts/municipal-court-officials-prepare-for-major-reforms-in-secret/article_1fab5afd-8ea6-561e-aaac-885c38ec6c32.html); ASSOC'D PRESS, *Ferguson to Pay Attorney \$1,335 an Hour to Pursue Reforms*, MYRTLE BEACH ONLINE (May 4, 2015), <https://www.myrtlebeachonline.com/news/nation-world/national/article20234769.html>.

324. MUN. DIV. WORK GRP. TO THE SUPREME COURT OF MO., REPORT OF THE MUNICIPAL DIVISION WORK GROUP TO THE SUPREME COURT OF MISSOURI 1–14 (2016), <https://www.courts.mo.gov/file.jsp?id=98093> (citing state laws that allow municipalities to fund budgets through the courts and allow incompetence within the municipal courts).

325. Cf. Interview with Patrick Green, *supra* note 281 (citing the sovereign right

consistent invocation of sovereignty suggests that the culture of fiefdoms in this fragmented area and the Missouri tradition of defying Dillon's Rule<sup>326</sup> continue to frame leaders' perceptions (and confusion) regarding hierarchy of power and structure of law.<sup>327</sup> However, the fact that cities have more or less been able to pass laws and conduct business as they wished for so many years certainly supports the idea that local governments can act as fiefdoms. In this way, municipalities continue to operate as racial states of sovereign subjects caught in perpetual cycles by which residents fund their own oppression in order for cities to survive.

Many Black leaders I spoke with claim that policing is not about race or class in majority-Black cities where the leadership is all Black. However, the same leaders do cite race when challenging recent reform measures. A dozen North County municipalities, most of which are very small and majority-Black, brought a lawsuit in Cole County Circuit Court against the state claiming Senate Bill 5 violates their constitutional rights.<sup>328</sup> The cities won the lawsuit by arguing the state is taking away an important revenue source without funding the law it has passed.<sup>329</sup> The lawsuit reveals how

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of his city to exist).

326. In 1868, Judge John Dillon of Iowa ruled that cities existed at the pleasure of the state. *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 475 (1868) ("Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control."), *overruled in part by Berent v. City of Iowa City*, 738 N.W.2d 193, 211 (Iowa 2007). In 1875, Missouri became the first state to establish municipal home rule by constitutional grant to St. Louis. Schmandt, *supra* note 13, at 385. Missouri later extended home rule provisions to smaller cities in the state. MO. CONST. art. 6 § 19(a).

327. *See, e.g.*, Schmandt, *supra* note 13 (describing the historical background of judicial difficulties in navigating home rule).

328. The plaintiffs include the cities of Normandy, Cool Valley, Velda Village Hills, Village of Glen Echo Park, Bel Ridge, Bel-Nor, Pagedale, Moline Acres, Vinita Park, Northwoods, Wellston, and the Village of Uplands Park. In the lawsuit, the municipalities claim that Senate Bill 5 "has imposed staggering unconstitutional unfunded mandates on the St. Louis County municipalities." Verified Petition for Declaratory Judgment and Preliminary and Permanent Injunction at 5, *City of Normandy v. Nixon*, No. 15AC-CC00531 (Mo. Cir. Ct. of Cole Cty. Nov. 18, 2015), <https://bloximages.newyork1.vip.townnews.com/stltoday.com/content/tncms/assets/v3/editorial/f/0a/f0a4d562-ee89-5bd2-a035-f8ced682832e/564e2b7c13b02.pdf>. The lawsuit also claims that the new law does not apply equally to all municipalities in the state, unfairly targeting majority-Black municipalities in St. Louis County. *Id.* at 2–3. The municipalities claimed severe damages resulting in a devastating reduction of municipal services for their residents. *Id.* at 3.

329. *See* Jennifer S. Mann & Jeremy Kohler, *Judge Sides with St. Louis County Cities that Claimed Municipal Court Reform Law Is Unfair*, ST. LOUIS POST-DISPATCH (Mar. 28, 2016), <https://www.stltoday.com/news/local/crime-and-courts/ju>

some municipalities will be vastly more affected by the law than others, and, in the end, many will cease to exist. The fact that small Black cities will be the first to be erased and merged with other cities or dissolved into unincorporated St. Louis County shows how race directly affects issues of autonomy and democracy at the smallest scale.<sup>330</sup> It also harkens back to a long history of erased and disempowered Black communities throughout history and particularly in the St. Louis region.<sup>331</sup> This argument, however, is both a classic double bind and zero sum game if the question at hand remains: should small Black cities be allowed to oppress and harass residents because their tenuous right to exist (as determined by Missouri state law) will otherwise be violated? Arguing that Black leaders have a right to oppress Black constituents because they themselves are Black is an ironic twist in the logic of racial equality and illustrates the limitations of pursuing a racial democracy. Clearly, neither Black nor White municipal leaders should construct systems by which cities are funded through violence. However, setting majority-Black cities up for certain failure is equally troubling and reveals the degree to which 'Blackness as risk' operates within the economic structuring and norms of the United States.

The disparate politics of older Black women in leadership for decades and the gender non-conforming protesters who emerged after the death of Michael Brown illustrate the many and often contrasting facets of gender, generational, and sexual identity. Their differences illustrate the power of discourse and cultural politics in determining regimes of truth. The truths put forward by

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dge-sides-with-st-louis-county-cities-that-claimed-municipal/article\_b1b75039-4dd9-5325-890f-35535561cafa.html (reporting that the 12.5% cap was struck down when the lower court's ruling agreed with the lawsuit's claim—that the bill was discriminatory because it targeted cities in a single county without funding the disparity it created). The Missouri Supreme Court upheld the ruling in May of 2017. Jeremy Kohler, *Court-Reform Law Survives Missouri Supreme Court, but No Longer Targets St. Louis County*, ST. LOUIS POST-DISPATCH (May 16, 2017), [https://www.stltoday.com/news/local/crime-and-courts/court-reform-law-survives-missouri-supreme-court-but-no-longer/article\\_81466cd3-3ec6-5c12-8652-2fec5981e9a4.html](https://www.stltoday.com/news/local/crime-and-courts/court-reform-law-survives-missouri-supreme-court-but-no-longer/article_81466cd3-3ec6-5c12-8652-2fec5981e9a4.html).

Consequently, the twenty percent cap on fines and fees applies to all counties in the state, down from thirty percent prior to 2015. *Id.*

330. See Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118 (2014) (addressing the issues and decisions facing cities in financial distress as well as the racialized factors impacting municipal dissolution); Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008).

331. See JOHN A. WRIGHT SR., ST. LOUIS: DISAPPEARING BLACK COMMUNITIES 7 (2004).

the municipal leaders identifying as women, who fought long and hard to gain and maintain positions of power, are very different from the truths of the young women and queer individuals leading resistance now. However, both groups have suffered the violence that accompanies being deemed ‘unintelligible,’ as Black women or LGBTQ people of color. As Brittany Cooper points out, laying claim to a public space from which to speak and be heard was a critical achievement of early Black women activists and intellectuals—and *respectability* provided such a space.<sup>332</sup> However, as Cooper also points out, the Black women activists and intellectuals who were historically categorized as matriarchs of respectability politics did in fact push the limits placed on Black feminized bodies at critical junctures through intentional as well as embodied practices.<sup>333</sup> Cooper brings an important dimension to other studies of Black woman and respectability politics that developed during and after Black rural migration to cities like St. Louis after Reconstruction. Acceptable public spaces and public personas were critical to Black feminized visibility.<sup>334</sup> This visibility was also critical to the success of the first Black women elected to office in United States in cities such as Pagedale. Those leading Ferguson resistance relied on a different form of visibility, specifically the visibility of ‘out of place’ Black and non-conforming bodies in suburban space to claim Blackness as a site of freedom. Although conveyed differently, Black municipal leaders and leaders of Ferguson resistance similarly expressed that many of their actions stemmed from pushing back against the limitations placed on their claimed or conferred identities—as Black, feminized, or non-conforming. However, Black women and queer activists in Ferguson also stated in various ways the need to decouple Blackness from identity politics and to view it instead as a fluid and ethical approach to being and living—an *ethics of lived Blackness*.<sup>335</sup>

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332. BRITTNEY C. COOPER, BEYOND RESPECTABILITY: THE INTELLECTUAL THOUGHT OF RACE WOMEN 39–41 (2017).

333. *See id.* at 66–67, 95 (describing Mary Church Terrell’s observation of Black women’s “double-handicap” of race and sex in the 1940s and Pauli Murray’s struggle for acceptance in society while gender nonconforming).

334. *See* VICTORIA W. WOLCOTT, REMAKING RESPECTABILITY: AFRICAN AMERICAN WOMEN IN INTERWAR DETROIT 49–92 (Thadious M. Davis & Linda K. Kerber eds., 2001) (describing public displays of respectability put on by Black women during the early twentieth century migration to Detroit); Hazel V. Carby, *Policing the Black Woman’s Body in an Urban Context*, 18 CRITICAL INQUIRY 738 (1992); Farah Jasmine Griffin, *Black Feminists and Du Bois: Respectability, Protection, and Beyond*, 568 ANNALS AM. ACAD. POL. & SOC. SCI. 28 (2000).

335. *See also* COOPER, *supra* 332332, at 129–133 (describing activists who looked at Black women’s lives and experiences as a possibility rather than a problem).

Proponents of municipal consolidation quickly leveraged the momentum of Ferguson resistance to call for the natural end to cities that do not serve the interests of residents. Majority-Black cities, as the most vulnerable to predatory poaching and the most reliant on predatory policing, will be the first to be dissolved under proposed reforms. The arguments used to promote consolidation focus almost entirely on the symptoms of municipal insolvency—specifically, predatory policing—and not on the cause, and certainly not on where responsibility historically lies. Those who have long supported consolidation plans view the unrest that reverberates from Ferguson as a political opportunity to highlight the very real consequences of political fragmentation, such as municipal dysfunction, inefficiency, the hoarding of power, and racialized practices, as they push for regional consolidation plans. However, from this perspective, cities that can survive the restructuring of revenue sources will be permitted to exist or maintain power under alternative structures, while those that cannot restructure will be absorbed into surrounding jurisdictions. It is assumed in these discussions (in the media and public forums) that residents will be better off as citizens of unincorporated areas of St. Louis County or larger municipalities, without consideration of how space functions as a racializing force, or what new race-making situations may emerge under alternative oversight. In most cases, questions of accountability have not gone beyond municipal leaders, whose primary powers lie within the police force and courts.

It is not clear if Black residents would be better off in unincorporated or consolidated areas or if new racialized practices would evolve within alternative systems. As one resident put it, “I think bringing city governments together could decrease the number of citations we get but I don’t think it will stop whoever we have to answer to from harassing us. They will just find another way to make us pay and leave us struggling in the end.” Lawsuits arguing that the state has not funded the law created by Senate Bill 5<sup>336</sup> potentially shift the focus to a different question: What is the obligation of the state or the county to ensure certain levels of funding for cities with no alternative sources of revenue—especially cities with historically oppressed populations? This could also shift the focus to how the roots of inequality lie in the myriad ways Black

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336. See, e.g., Jeremy Kohler, *North County Cities Sue to Block Law That Limits Revenue from Traffic Cases*, ST. LOUIS POST-DISPATCH (Nov. 19, 2015), [https://www.stltodaystltoday.com/news/local/crime-and-courts/north-county-cities-sue-to-block-law-that-limitslimits-revenue/article\\_842a6e6b-562b-5045-9458-a5d2901a3ae4.html](https://www.stltodaystltoday.com/news/local/crime-and-courts/north-county-cities-sue-to-block-law-that-limitslimits-revenue/article_842a6e6b-562b-5045-9458-a5d2901a3ae4.html).

residents have been isolated through legal forms of segregation and the legal gutting of resources from minority-occupied areas. Recent reformers have shifted this line of questioning to ask: should any of the small municipalities in St. Louis County—Black or White—exist relative to the costs and benefits to the region and, if so, what powers should they have?<sup>337</sup> The debates over localism versus regionalism are of course not new; however, the extreme practices, disparities, and violations of individual rights revealed in the case of North St. Louis County bolster arguments for regionalism by vividly illustrating the devastating consequences of “the favored quarter” or, in this instance, *the favored fragments*.<sup>338</sup> These, however, were not the points of the lawsuit brought by municipalities and not the arguments that leaders discursively highlight. Rather, according to the arguments made in the case and consistently made by municipal leaders, the purpose of the lawsuit was to declare Senate Bill 5 unconstitutional based on racialized inequities and return to business as usual.<sup>339</sup>

It appears that any discussions will remain centered on the consequences rather than the causes of predatory practices, and Black leaders will continue to be scapegoats for the vast inequities and suffering residents endure. While it is difficult to find much sympathy for Black leaders who intentionally prey upon their own citizens, what they claim is true. Majority-White cities in St. Louis County will remain relatively unaffected, whether the state is eventually able to enforce Senate Bill 5 or other consolidation schemes. Cities in North St. Louis County that have maintained White populations and/or bolstered their commercial districts will likely weather current and future reform measures. Those that have attracted corporate investment, such as Emerson Electric in

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337. For more on the ongoing debate regarding municipal consolidation and city/county merger in St. Louis, see, e.g., Jacob Kirn, *The Merger Plan: How Better Together Wants to Make St. Louis the State's First 'Metro City'*, (Jan. 28, 2019) <https://www.bizjournals.com/stlouis/news/2019/01/28/the-merger-plan-how-better-together-wants-to-make.html>. Referring to a proposal that has since been retracted which allows cities to keep their governments but shifts police and the courts to ‘municipal districts.’ Alternative proposals continue to be discussed.

338. Sheryll Cashin describes “the tyranny of the favored quarter” as areas of metropolitan regions with resources that create externalities that are then shifted to areas without resources. Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1987–89 (2000). Poorer neighbors are burdened by their more affluent neighbors’ ability to capture valuable assets and push out waste, or ‘unwelcome’ types of people and entities that require outside assistance. *Id.*

339. Petition for Declaratory Judgment and Preliminary and Permanent Injunction at 4–5, *City of Normandy v. Nixon*, (No. 15AC-CC00531).

Ferguson and Express Scripts in Berkeley, are better positioned to maintain levels of autonomy (although these cities also experience 'predatory investment').<sup>340</sup> Municipalities that can afford to claim autonomy in the St. Louis region will continue to profit from and defend the culture of fragmentation, and small Black communities will dissolve or be annexed into neighboring cities. Simply focusing on municipal autonomy versus regional governance as a means to remediate inequality does not acknowledge the historical and prevailing weight of Blackness, particularly associations of Blackness with risk.

Blackness as risk, as experienced by people like Evelyn and Patrice in their everyday lives, justifies multiple technologies of the modern racial state. As discussed in this Article, the case of North St. Louis County challenges academic tendencies to draw distinct boundaries around *violence* and *the state*. The area also illustrates how technologies of policing and control operate formally and informally within civic society at multiple scales of governance, particularly at the local scale.<sup>341</sup> These technologies of policing bodies in and through space are reinforced by the fact that individuals and institutions are economically rewarded when they separate themselves from perceived risks associated with non-White people. Black city administrators tasked with the responsibility of reducing risk and maximizing economic stability in their jurisdictions are thus incentivized to engage in racialized practices that lead to complex contradictions and dilemmas when cities become majority-Black. In North County, the economic risk associated with being Black creates an additional double bind for leaders of majority-Black cities. They must either work against the individual interests of their residents or risk losing Black political autonomy by operating outside of the prevailing economic models. As a result, actions or inactions that disadvantage already disadvantaged groups are easily justified. Civic and corporate administrators are subsequently represented as rational actors taking actions on the basis of managing risk and exercising fiscal responsibility.

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340. See Walter Johnson, *The Economics of Ferguson: Emerson Electric, Municipal Fines, Discriminatory Policing*, ATLANTIC (Apr. 26, 2015), <https://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492/> (discussing how corporations prey on cities such as Ferguson that suffer from a hollowed out tax base but, due to limited returns, these cities are still desperate for alternative forms of funding). In spite of the exploitation by predatory investment, these cities are marginally better off than those without corporate headquarters investment.

341. See Ferguson & Gupta, *supra* note 165, at 994–96.

As for Evelyn and Patrice, Evelyn has since moved out of Missouri and lives with her brother in Birmingham, where she grew up. Patrice still lives in her mother's house, which Evelyn is trying to sell. But, Evelyn said, "after what's owed on it in fines," the city may as well have it. "I swore I'd never go back to the South," she went on, "but nobody should have to live like that."