

Abolish Municipal Courts: A Response To Professor Natapoff

Response by [Brendan D. Roediger](#)

FEB 20, 2021

134 Harv. L. Rev. F. 213

“What are you still doing here? Are you telling me nobody loves you enough to come up with two hundred dollars?”

These were the first words, spoken by a judge, that I heard in a municipal court. Arriving uncharacteristically early for a scheduled hearing, I walked midway into a meeting where a line of Black men in handcuffs stood before a judge and guard. The judge aimed his cruel query toward one of the men. I never spoke with him and I have no way of discovering the alleged misdeed that triggered the machine that relocates Black men from their homes to the jail in St. Ann, Missouri. The possibilities are endless and endlessly mundane: speeding, jaywalking, a half of a blunt, or the dreaded “failure to comply.” Some of us, when making well-rehearsed equal protection arguments about pretrial detention, are fond of saying that he was “jailed because of his inability to make an arbitrary monetary payment” or some variation on this. I do not think we believe it. He was there because he was Black, because the cops put him there, and because his everyday existence was subject to seemingly endless mechanisms of external management.

RESPONSE TO

- [Criminal Municipal Courts](#) by [Alexandra Natapoff](#)

Eight years later, an email regarding a brave client from a municipal judge helped drive that point home. The judge’s email said: “She obviously needs more help than just legal help for traffic court. She needs sterilization.”¹[1](#)^x¹. *Email from Dan Leslie, Mun. J. of Pacific, Mo., to author (Feb. 9, 2015, 3:32 PM) (on file with the Harvard Law School Library).*[Show More](#)

Along with some dear friends, I have spent much of the last decade in absurd legal fights with criminal (or quasi-criminal) municipal courts. Here are just a few examples of the things we argue over:

Can cities use bail and incarceration to extort cash from poor people?²[2](#)^x². *See Class Action Complaint at 1, Jenkins v. City of Jennings, No. 15-cv-00252 (E.D. Mo. Feb. 8, 2015).*[Show More](#)

Can city courts make up additional costs out of thin air and pocket the cash?³[3](#)^x³. *See Wann v. City of St. Louis, No. 1422-CC-10272, 2016 WL 8136348 (Mo. Cir. Ct. July 18, 2016).*[Show More](#)

Can rich people pay for a special municipal court that only prosecutes homeless people and releases them on the condition that they clean up after major municipal events?⁴[4](#)^x⁴. *See Bogan v. Bonner, No. 044-00250, at 3–4 (Mo. Cir. Ct. Sept. 24, 2004).*

I say all of this not to position myself as a municipal court expert — a rather terrifying concept — but to explain that my sincere desire for their elimination was born primarily from witnessing what they do.

Professor Alexandra Natapoff has done us all a favor by turning her talents toward municipal courts. The descriptive portion of *Criminal Municipal Courts* fills in enormous gaps in our comprehension of the current scope of municipal criminal justice administration across the country.⁵[5](#)^x⁵. *See Alexandra Natapoff, Criminal Municipal Courts, 134 HARV. L. REV. 964, 974–1010 (2021).*[Show More](#) Her picture

of the “bottom of the penal pyramid” is, as always, impressive in scope and detail.⁶⁶ *Id.* at 972. She is clearheaded about the distortions of justice in these courts and the limits of the liberal reforms she ultimately recommends.⁷⁷ *See id.* at 1045.

This Response does not question Natapoff’s picture of the localized criminal court but takes issue with her insistence on imagining its future.⁸⁸ *See id.* at 1046. This insistence is a phenomenon we might call progressive legal legitimation. By this I mean an approach that proceeds to prescribe from the traditional “medication list” of liberal reforms (substantive, procedural, and “democratizing”) without grappling with whether a system or apparatus is so inextricably bound up with the maintenance of race and class hierarchy that it should be demolished. This is the approach that allows not just Natapoff but so many of us to honestly describe and thoroughly critique brutal racist apparatuses like municipal courts, but to then conclude that they have “democratic import”⁹⁹. *Id.* at 1047. and need “greater resources.”¹⁰¹⁰ *Id.* at 1046.

What follows is an attempt to approach the *problem* of municipal courts from an alternative critical abolitionist perspective. I say “problem” here rather than “phenomenon” because in such an approach “[o]ur starting point is neither law nor ‘critical law’” but the punished.¹¹¹¹ PETER LINEBAUGH, *THE LONDON HANGED: CRIME AND CIVIL SOCIETY IN THE EIGHTEENTH CENTURY*, at xxv (2d ed. 2003).**Show More** My clients unanimously view municipal courts as a problem and not a phenomenon.¹²¹² For an account of municipal courts and municipal policing from the perspective of their victims, see generally Thomas B. Harvey & Janae Staicer, *Policing in St. Louis: “I Feel Like a Runaway Slave Sometimes,”* in *THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES* 39 (Tamara Rice Lave & Eric J. Miller eds., 2019).**Show More**

The structure of the Response proceeds in three Parts and a conclusion. In the first Part, I provide some brief thoughts on abolitionism as praxis within law. In the second Part, I lay out a history of local courts as imbricated with racial capitalism.¹³¹³. “Racial capitalism” refers not to a type of capitalism but to an understanding of capitalism and its resultant structures as racialized from inception and proceeding accordingly. See CEDRIC J. ROBINSON, *BLACK MARXISM* 2–3 (Univ. of N.C. Press 2000) (1983); Robin D.G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, *BOS. REV.* (Jan. 12, 2017), <http://bostonreview.net/race/robin-d-g-kelley-what-did-cedric-robinson-mean-racial-capitalism> [<https://perma.cc/YL3G-HQBC>] (explaining that capitalism “emerged within the feudal order and flowered in the cultural soil of a Western Civilization already thoroughly infused with racialism”).*Show More* In the third Part, I argue that municipal courts today are best understood not as a democratic juridical apparatus but as a part of modern police bureaucracy.

I. NOTES ON THE ABOLITIONIST ALTERNATIVE

I don’t want an alternative to that. I want you to leave people the hell alone.

— Mariame Kaba¹⁴¹⁴. Josie Duffy Rice & Clint Smith, *Justice in America Episode 20: Mariame Kaba and Prison Abolition*, *THE APPEAL* (Mar. 20, 2019), <https://theappeal.org/justice-in-america-episode-20-mariame-kaba-and-prison-abolition> [<https://perma.cc/8CAF-8BVX>].*Show More*

As I argue for the complete elimination of municipal courts, it has been suggested that a few words about law and abolitionism are appropriate. I am an abolitionist and a lawyer. I try with varying degrees of success to be both at

the same time. For me, in practice, this means attempting to protect clients from state power and working with organizers interested in fundamentally shifting power toward my clients and away from the state. In the most basic sense, this work boils down to the following:

Demystifying: Explaining what a legal system or apparatus actually does (as opposed to what it says it does).

Delegitimizing: Explaining why it does what it does (as opposed to why it says it does what it does).

Disempowering/Dismantling: Collectively implementing interventions that move us closer to the elimination of the system or apparatus — interventions that ideally diminish suffering while weakening the system or apparatus.

*Dreaming: Imagining (not reimagining) ways of collective existence.*¹⁵×¹⁵. A

whole world of scholarship across and against disciplines undermines carceral and police logic. For a useful starting point, see generally Prison Abolition Syllabus 2.0, AFR. AM. INTELL. HIST. SOC'Y: BLACK PERSPS. (Sept. 8, 2018), <https://www.aaihs.org/prison-abolition-syllabus-2-0> [<https://perma.cc/6Z5W-KWSL>]. **Show More**

I start with this explanation of elementary abolitionist practice because, while I fall into that category of people who feel some excitement at the publication of serious and brilliant abolitionist perspectives in major law journals over the last two years, I remain somewhat afraid of abolitionism as legal theory.¹⁶×¹⁶. *Legal scholarship influenced by penal and police abolitionism is, of course, significantly older than this and builds upon decades of work by critical race and feminist theorists. That said, it is a fact that legal scholarship completely missed the popular abolitionist moment of the early 1970s — a period when even mainstream newspapers discussed abolition regularly. These past two years have seen remarkable examples of abolitionist scholarship in “elite” journals. See*

generally, e.g., Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 *N.Y.U. L. REV.* 405 (2018); Paul Butler, *Locking Up My Own: Reflections of a Black (Recovering) Prosecutor*, 107 *CALIF. L. REV.* 1983 (2019); Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 *HARV. L. REV.* 1684 (2019); Daniel Farbman, *Resistance Lawyering*, 107 *CALIF. L. REV.* 1877 (2019); Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 *HARV. L. REV.* 1613 (2019); Dorothy E. Roberts, *The Supreme Court, 2018 Term — Foreword: Abolition Constitutionalism*, 133 *HARV. L. REV.* 1 (2019); Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 *HARV. L. REV.* 1575 (2019); Angel E. Sanchez, *In Spite of Prison*, 132 *HARV. L. REV.* 1650 (2019). **Show More** Few things encounter the rule of law and come away unscathed.¹⁷×¹⁷ For a wonderfully short and simple description of this phenomenon,

see THOMAS MATHIESEN, *SILENTLY SILENCED: ESSAYS ON THE CREATION OF ACQUIESCENCE IN MODERN SOCIETY* 16–17 (2004). **Show More** Law is a space where even the most hardened

materialism, grounded in radical movements and mutual aid, tends to give way to defensive idealism or reformism. Law demands that you explain yourself on its (universal) terms. Even more troubling, whenever truly cornered, Law demands its own replication: “We understand your concerns, and perhaps we are ruining too many lives, but tell us precisely what structure you would build in place of ours.” Law hears “abolitionist alternative” and imagines a new apparatus, similar in form, ready for co-optation.

In *White Reconstruction*, Dylan Rodríguez asserts that the “praxis of abolition embraces an overarching, internally complex struggle for modalities of human existence that are unapologetically *free* from the systems, epistemologies, and institutionalities of gendered anti-Black and racial-colonial dehumanization.”¹⁸×¹⁸ DYLAN RODRÍGUEZ, *WHITE RECONSTRUCTION* 57 (2021). The emphasis on “free” draws us to the praxis’s dual function here — to the desire to be materially independent from the mechanisms of dehumanization and simultaneously untethered from their ideological underpinnings. Abolitionism

seeks to destroy, and abolitionism seeks to build, but it does not seek to replace that which is destroyed. It is not in search of an abolitionist security apparatus or an abolitionist punishment apparatus.

I often ask my students to think creatively about reducing the harms our clients experience in local courts. In my city, like many others, most police interactions and low-level cases involve motor vehicles and Black drivers. If I suggest we attack this problem as builders of new systems, some students invariably propose a grassroots movement to construct a public transport system that reliably gets people where they need to go. Without the necessity of driving, they argue, these police interactions and the cases that follow them will disappear. Additionally, this movement would build community power, improve climate outcomes, and generally improve human welfare. All of this is true. But if that is the case, I ask them, why are so many thoughtful and committed community organizers spending their days trying to close one building?¹⁹ See *The Campaign to Close the Workhouse*, *CLOSE THE*

WORKHOUSE, <https://www.closestheworkhouse.org/home> [<https://perma.cc/N2LZ-JSLV>] (calling for the closure of a St. Louis jail). *Show More* The answer, of course, is that those organizers know that over any substantial period, the law will figure out how to fill its buildings — jails, courthouses, and prisons.

This is perhaps all a long way of saying that it is okay to be against things. If we are serious about disrupting the generational reproduction of the racial social order, we are going to have to learn to let go. Our allegiance to the governing structures of our time — the only structures we truly know — must give. This piece does not attempt to imagine a ready replacement for municipal courts because the racialized management of everyday life through surveillance and petty regulatory regimes does not demand replacement.

II. HOW THE MODERN MUNICIPAL COURT CAME TO BE

History is featured sparsely in *Criminal Municipal Courts*. This is likely because a detailed history would be nearly impossible to write on a national scale. But Natapoff ultimately concerns herself with the future of the municipal court, offering that “the fullest response to municipal court dysfunction is to raise its institutional profile and status” and asserting that the courts have “innate potential for local accountability.”²⁰×20. Natapoff, *supra* note 5, at 1046. As a rule, the future makes the past relevant.

Europeans brought with them to North America the justice of the peace, the magistrate, and similar local systems.²¹×21. See Erwin C. Surrency, *The Courts in the American Colonies*, 11 *AM. J. LEGAL HIST.* 253, 258 (1967).*Show More* These were among the first coercive state structures implemented by colonists as settlement patterns deepened.²²×22. See Yasu Kawashima, *Jurisdiction of the Colonial Courts over the Indians in Massachusetts, 1689–1763*, 42 *NEW ENG. Q.* 532, 542 (1969).*Show More* Prefiguring by many years the “specialization” of the courts during the Progressive Era, specially appointed justices of the peace supplanted existing local indigenous legal traditions, asserting jurisdiction over native tribes.²³×23. See *id.* at 542–43. Special “slave court[s]” operated in Southern and mid-Atlantic colonies.²⁴×24. Surrency, *supra* note 21, at 268. These structures originally mirrored European justice systems but quickly adapted to the necessities of settler societies and the expanding system of chattel slavery.

Professor Laura Edwards’s *The People and Their Peace* makes a few appearances in *Criminal Municipal Courts*.²⁵×25. E.g., Natapoff, *supra* note 5, at 1023 & n.364 (citing LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION*

OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH 5 (2009)).*Show More* It is wielded to provide historical grounding for Natapoff’s conclusion that municipal courts themselves emerged, in the colonial period, from democratic impulses and are thus now sites of democratic possibility.²⁶×²⁶. See *id.* Natapoff’s contention is worth quoting in its entirety: “Edwards writes that post-Revolutionary local justices of the peace — the precursors to modern municipal courts — represented ‘not some quaint, folksy exception to a formalized rational body of state law’ but rather a profound expression of local democratic impulses and Revolutionary commitments to legal and political accountability.”²⁷×²⁷. *Id.*

(quoting EDWARDS, *supra* note 25, at 5).

Edwards’s work explores post-Revolutionary War local legal systems in North and South Carolina. In her citation of Edwards’s text, Natapoff substitutes the phrase “justices of the peace” for Edwards’s original “local legal practice.”²⁸×²⁸. EDWARDS, *supra* note 25, at 5. This fundamentally changes what Edwards is articulating. Edwards argues that there was participation in the legal system, not that the legal system was somehow inherently participatory in a democratic sense. Edwards offers that “[t]he compulsory nature of localized law magnified the brutalities of a social order based in stark inequalities.”²⁹×²⁹. *Id.* at 71–72. *The People and Their Peace* unearths a complicated story about local systems that reproduced and maintained racial, class, and gender hierarchies in both intentional and unexpected ways.³⁰×³⁰. See *id.* at 103. To be sure, an unexpected result was the degree to which people situated at all levels of this violent social hierarchy participated in the system.³¹×³¹. See *id.* But Edwards never loses sight of the fact that the primary objective was the maintenance of order (“the peace”) and this required the management of human beings — including those human beings deemed property by law. If this was democracy,

and Edwards never argues it was, it was *Herrenvolk* democracy.^{32×32} Cf. GEORGE M. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND* 61 (1971) (defining *Herrenvolk* democracies as “regimes . . . that are democratic for the master race but tyrannical for the subordinate groups” (quoting PIERRE L. VAN DEN BERGHE, *RACE AND RACISM* 17–18 (1967))).*Show More*

Natapoff understandably centers Progressive Era reforms as foundational to the modern municipal court, primarily relying on Professor Michael Willrich’s *City of Courts*. As in the case of Edwards, Natapoff uses Willrich’s work to construct a historical narrative that associates municipal courts with democratic experimentation.^{33×33} See Natapoff, *supra* note 5, at 992 (citing MICHAEL WILLRICH, *CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO*, at xxvi (2003)).*Show*

More It is true that the modern municipal court phenomenon was largely constructed in the Progressive Era, and that municipal courts were sites of administrative experimentation in Chicago and elsewhere.^{34×34} See JOEL E. BLACK, *STRUCTURING POVERTY IN THE WINDY CITY* 12–42 (2019). It is worth noting that there are indications that this expansion of local courts happened earlier in the South as a response to emancipation. See BRYAN WAGNER, *DISTURBING THE PEACE: BLACK CULTURE AND THE POLICE POWER AFTER SLAVERY* 131 (2009).*Show More* This experimentation marked an expansive turn from municipal enforcement fixated predominantly on “vagrancy.”^{35×35} BLACK, *supra* note 34, at 12. But was this democracy and, if so, what sort? Such experiments need to be evaluated not just in terms of whether they were less horrific than what preceded them but in terms of what they were intended to do.

Willrich’s assertion that municipal courts became “laboratories of progressive democracy” is striking, but more striking is Natapoff’s failure to explain what exactly he meant by “progressive democracy.” Willrich argues: “Merging the authority of the criminal law with the disciplinary techniques of social work,

welfare administration, probation, and psychiatric testing, the new municipal courts produced authoritative social knowledge and delivered governance into the intimate details of everyday life.”³⁶×³⁶. WILLRICH, *supra* note 33, at xxix.

Willrich was aware that the Chicago Municipal Court was an experiment in eugenicist jurisprudence and expansive social control. Yet eugenics, sterilization, and permanent detention are relegated to a footnote in *Criminal Municipal Courts*, while the text simply notes that not all reforms were “benign.”³⁷×³⁷. Natapoff, *supra* note 5, at 992 & n.164.

For many these days, “progressive” denotes a certain egalitarianism. The “progressiveness” of Progressive Era municipal reforms was predicated on corporate efficiency, management, and strengthening mechanisms of urban control; in reality, it mimicked most other initiatives of the era in centering the behavior of poor people as that which had to be reformed.³⁸×³⁸. See Samuel P.

Hays, *The Politics of Reform in Municipal Government in the Progressive Era*, 55 PAC. NW. Q. 157, 162 (1964).*Show More* Municipal reform, including municipal court reform, was the

work of groups like the National Municipal League and the American Judicature Society.³⁹×³⁹. See, e.g., *id.* at 158; *Success of Organized Courts as Exemplified by the History*

of Municipal Courts in Chicago and Other Cities, 1 J. AM. JUDICATURE SOC’Y 133, 134 (1918).*Show More* It

was the work of individuals like Harvard Law School Dean Roscoe Pound, who championed the Chicago Municipal Court experiment, and whose interest in efficient human management led him to associate with prominent members of the Nazi Party.⁴⁰×⁴⁰. See JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL: THE UNITED STATES*

AND THE MAKING OF NAZI RACE LAW 15 (2017); Roscoe Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 314 (1913); Peter Rees, *Nathan Roscoe Pound and the Nazis*, 60 B.C. L. REV. 1313, 1317–

23 (2019); Michael Willrich, *The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900–1930*, 16 LAW & HIST. REV. 63, 76 (1998).*Show More* Professor Samuel Hays

summarizes the municipal “movement” as “an attempt by upper-class, advanced professional, and large business groups to take formal political power from the previously dominant lower- and middle-class elements so that they might advance their own conceptions of desirable public policy.”^{41×41}. *Hays, supra note 38, at 162*. These antidemocratic strains of municipal reform in the Progressive era were apparent not only in the courts, but also in the push for weak mayors and powerful city managers.^{42×42}. *See id. at 159*.

The reforms that prefigured the modern municipal court constituted an entrenchment and expansion of the repression of the commons, not a democratic intervention. In 1748, Montesquieu explained that “[i]n the exercise of the Police, it is rather the magistrate who punishes” and “[t]he actions of the Police are quick; they are exercised over things which return every day.”^{43×43}. 2 CHARLES DE SECONDAT, BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* bk. XXVI, ch. 24, at 168 (Thomas Nugent trans., rev. ed. 1905) (1748) (emphasis omitted). *Show More* This is not substantively distinct from the vision of progressive reformers like Pound and Chicago Judge Harry Olson who sought flexible and prompt everyday justice to combat the perceived dangers of multiracial urban centers.^{44×44}. *See BLACK, supra note 34, at 12–42*. Herbert Harley’s 1913 address to the Municipal League noted that “England has not yet applied the principles which underlie her judicial establishment to the concrete problems of a large city as thoroughly as has Chicago.”^{45×45}. Herbert Harley, *The Model Municipal Court*, 3 NAT’L MUN. REV. 57, 63 (1914). For Montesquieu and for the Progressives, human beings were a danger to the peace as much as they were democratic subjects. The municipal court is the efficient managerial response to the perceived problem of modern urban society — its people.

III. UNDERSTANDING MUNICIPAL COURTS TODAY

[T]he posture that the municipality of Ferguson assumed toward its black residents was that of a sovereign toward its subjects who existed outside the compact of consensual governance.

— Minkah Makalani⁴⁶×⁴⁶. Minkah Makalani, *Black Lives Matter and the Limits of Formal Black Politics*, 3 S.

ATL. Q. 529, 539 (2017).[Show](#) [More](#)

In Natapoff’s view, local courts today are best understood as the product of the “tense relationship between criminal justice and local democracy.”⁴⁷×⁴⁷. Natapoff, *supra* note 5, at 1033. The resultant informality and due process concerns are quite serious but can be mitigated by available reforms.⁴⁸×⁴⁸. See *id.* at 1043–46. “Democracy” and its variations do a lot of work in Natapoff’s analysis. To be sure, municipal courts cannot be discussed without reference to democratic ideals and democratic institutions. And, as she notes, a cohort of politically diverse scholars today are interested in local democracy and criminal justice reform.⁴⁹×⁴⁹. See, e.g., *id.* at 1030 & n.405 (citing Symposium, *Democratizing Criminal Justice*, 111 NW. U. L. REV. 1367 (2017)).[Show](#) [More](#) But there is an overarching lack of clarity about how Natapoff herself defines “local democracy.” The concepts of participation and inclusion appear briefly but not as democracy modifiers.⁵⁰×⁵⁰. See *id.* at 1023, 1034 n.433. “Pluralism” is absent. This uncertainty matters if we are concerned with what form of *democratic interaction* is available to the victims of municipal courts. Is it external to the apparatus or internal? Is Natapoff’s democracy defined by suffrage and periodic municipal elections, or is it something more?

When Natapoff describes specific sites of municipal court reform, the question of whether this is in fact democracy remains unanswered.⁵¹⁵¹ See, e.g., *id.* at 989, 991, 1023. There are certainly municipal courts currently in a limited progressive reform cycle — courts that are experimenting (not democratically) with greater due process and offering more diversion programs, more education, and less time in jail. Historically, this has always been the case. Today, if the winds blow correctly, courts and legal activists even receive grants for these things. But the examples Natapoff provides are not convincing. She writes, for example, that courts can be a “de facto forum for decriminalization.”⁵²⁵² *Id.* at 993. Wisconsin serves as her example here, and she refers to a municipal judge from the affluent white town of Pleasant Prairie.⁵³⁵³ See *id.* (citing Richard A. Ginkowski, *Beyond Ferguson: Community-Based or Cash-Register Justice?*, *CRIM. JUST.*, Spring 2018, at 14, 17–19).[Show More](#) But Wisconsin’s “civil ordinance” system looks entirely different if one takes a thirty-minute drive north. In 2017, the most recent year with available data, municipal courts were responsible for 14,683 days spent in the Milwaukee County House of Corrections.⁵⁴⁵⁴ Gretchen Schuldt, *W. Allis Leads Rest of County in Muni Court Lockups*, *WIS. JUST. INITIATIVE* (Jan. 16, 2018), <https://www.wjiinc.org/blog/w-allis-leads-rest-of-county-in-muni-court-lockups> [<https://perma.cc/VK9H-AV5Y>].[Show More](#)

Professor Natapoff also commends the Seattle Municipal Court,⁵⁵⁵⁵ See Natapoff, *supra* note 5, at 986. a court constantly in the midst of progressive reforms, but also a court deeply committed to caging poor people. Whatever municipal court pilot programs Seattle announces, the City’s true intentions are demonstrated by its fiscal planning. Seattle maintains a ten-year contract with King County that promises to fill a minimum number of jail beds — currently 240 per year and increasing.⁵⁶⁵⁶ *OFF. OF THE CITY CLERK, INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE CITY OF SEATTLE FOR JAIL*

(2011), http://clerk.seattle.gov/~public/meetingrecords/2011/pse20110817_2b.pdf <https://perma.cc/J4PB->

[WEGF](#). *Show More*

Understanding the history of local courts as rooted in the tension between criminal justice and the maintenance of the settler-colonial state provides an alternative, antidemocratic possibility for understanding the informality and lack of legal rigor that define local courts today. Professor Achille Mbembe notes that in the colonial context, “Improvisation, ad hoc reactions in the face of unforeseen situations, and, very often, informality and weak institutionalization were the rule.”⁵⁷⁵⁸ *ACHILLE MBEMBE, NECROPOLITICS 26 (2019)*. A coherent and consistent local justice system is the enemy of political imperatives. It may seem extreme to posit that this flexible maintenance of the racial and class order remains the primary objective of local criminal courts, but it is difficult to support an alternative proposition. The modern criminal municipal court is decidedly unmodern. It does not even attempt to cloak its coercive activities as scientific or risk based.⁵⁸⁵⁸ *For a discussion of modern policing and the*

risk-based society, see generally RICHARD V. ERICSON & KEVIN D. HAGGERTY, POLICING THE RISK SOCIETY (1997). *Show More*

This antidemocratic understanding speaks also to the experience of my clients. After public education, the municipal court is the state apparatus with which my clients have the most contact — the city is the State in daily life. But this contact, whether carceral or disruptive, is by any definition antidemocratic. It is a fugitive relationship predicated on avoidance techniques — don’t drive on that street, don’t walk with that friend, don’t go to that appointment. As Professors Amy Lerman and Vesla Weaver demonstrate in *Arresting Citizenship*, a life spent necessarily avoiding the coercive state

reduces democratic political engagement generally.⁵⁹×⁵⁹. See AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* 201–30 (2014).*Show More*

The concept of citizenship clearly lurks behind much of this discussion — the fragile order created and regulated by local justice systems was always primarily for the benefit of the white citizen, and the white citizen was shaped through these interactions. Taken a step further, this is Professor Joel Olson’s “white democracy,” a politics so steeped in whiteness as identity and anti-Blackness as a project that it is impossible to imagine multiracial participation or inclusion within it.⁶⁰×⁶⁰. See generally JOEL OLSON, *ABOLITION OF WHITE DEMOCRACY* 31–63 (2004). The system instead creates and recreates racialized subjects relegated to an external position. This is not mere hyperbole; municipal courts strip my clients of a range of things associated with citizenship in the United States: employment, guns, houses, children, the right to be present in a neighborhood, and the ability to stay in this country.

For Natapoff, the modern municipal court functions as an ascertainable democratic construct — a court of law.⁶¹×⁶¹. See Natapoff, *supra* note 5, at 1012. I believe today’s municipal court is better understood as a component of the modern police bureaucracy.⁶²×⁶². I am appreciative of Professor Mark Neocleous’s caution that we may wish to put some limits around what we mean when we talk about “the police.” See generally Mark Neocleous, *Theoretical Foundations of the “New Police Science,”* in *THE NEW POLICE SCIENCE* 17, 22–39 (Markus D. Dubber & Mariana Valverde eds., 2006). I do not intend here to employ a limitless concept of “police” — Foucauldian or otherwise. The point is, rather, that municipal courts are the real police or “the police as an institution.” MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* 213 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1975).*Show More* Popular discussions on the origins of expansive law enforcement in the United States have rightly focused on slave patrols and strike-breaking, but the

seeds of modern policing are present in the very concepts of peace, order, and security.⁶³×⁶³. See KRISTIAN WILLIAMS, *OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA* 23–49 (3d ed. 2015).*Show More* The Justice of the Peace and his constables are largely indistinguishable from the municipal judge, clerk, and police sergeant moonlighting as a court bailiff. The distinctions lie only in the reach and firepower of the apparatus that extends outside the courtroom.

As a part of police bureaucracy, municipal courts serve multiple discernible purposes. The first of these is the expansion of the scope of police power. They expand the scope of power by extending police interactions in both time and space.⁶⁴×⁶⁴. For an in-depth discussion of state power and the unequal distribution of time, see generally ELIZABETH F. COHEN, *THE POLITICAL VALUE OF TIME* (2018).*Show More* There is paperwork in the form of summonses and compliance letters. There are phone calls to clerks, trips to court, and often nights in a cage. Routine street-level encounters with police officers over minor ordinance violations carry the very real potential for death. At the same time, they carry the near certainty of lost time and continuing disruptions of daily life.

Just as importantly, municipal courts legitimize police activity. Policing is a coercive project, but the maintenance of order requires the management of consent and, of course, education about life and law and order.⁶⁵×⁶⁵. Cf. STUART HALL ET AL., *POLICING THE CRISIS* 198–205 (2d ed. 2013) (explaining the educational role of law and its role in the generation of consent).*Show More* There must be an expressive component of the police bureaucracy. Municipal courts fill this void. This is different from saying that police enforce municipal ordinances and courts then punish any violations. Rather, I argue, individual officers engage in largely unfettered discretion to disrupt daily life. Municipal codes and municipal courts in turn explain these disruptions not only to the defendant, but also to the community

at large. Officer Darren Wilson would likely have told Michael Brown to “get the fuck out of the street” whether or not there was a jaywalking ordinance, but the ordinance and the potential for its enforcement cast a shadow of legitimacy across the lethal interaction.⁶⁶×⁶⁶. Jessica Lussenhop, Dorian Johnson, Witness to Michael Brown

Shooting, Sues Ferguson and Darren Wilson, RIVERFRONT TIMES (May 6, 2015, 2:00 PM), <https://www.riverfronttimes.com/newsblog/2015/05/06/dorian-johnson-witness-to-michael-brown-shooting-sues-ferguson-and-darren-wilson> [<https://perma.cc/9RWJ-XLCC>].

Show More

Warrants themselves remain the most underappreciated aspect of the municipal court’s expressive role in police bureaucracy. It is not uncommon, even after the purported municipal court reforms in Missouri, for a community in this state to average more than one warrant per household. In 2019, the City of Florissant issued 29,017 warrants in a community consisting of approximately 19,700 households, and the City of Pagedale issued 3,028 in a community consisting of approximately 1,400 households.⁶⁷×⁶⁷. See MO. CTS.,

MISSOURI JUDICIAL REPORT SUPPLEMENT: FISCAL 2019, at 301–02 (2019), <https://www.courts.mo.gov/file.jsp?id=155892> [<https://perma.cc/MEN5-VLZW>]; QuickFacts Florissant City,

Missouri, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/florissantcitymissouri> [<https://perma.cc/RZT4-JD67>]; Pagedale, MO, CENSUS REP., <https://censusreporter.org/profiles/16000US2955964-pagedale-mo> [<https://perma.cc/CZF6-9CEH>].

Show More The existence of a municipal warrant effectively means that one is subject to state capture at any moment. It modifies behavior in a myriad of ways. My clients accept default judgments in civil cases, avoid voting at municipal buildings, and alter their driving routes, to name just a few examples. At the same time, these warrants legitimize virtually all police activity in Black neighborhoods. In communities with as many warrants as households, even the most egregiously pretextual and unlawful traffic stop will likely end with a “wanted person” being taken into custody.

I have stayed away from two major intersecting critiques of today’s municipal justice systems. The first notes that ever-increasing interactions with police increase the risk of death.⁶⁸×⁶⁸. See Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 128 (2017).*Show More* The second notes that municipal justice systems engage in racialized wealth extraction, thereby incentivizing increased interactions with police.⁶⁹×⁶⁹. See Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 554 (2017). I agree entirely with these points and will certainly not improve on Professor Devon Carbado’s work in this regard. But even as I have actively litigated issues of excessive fines and fees over the past six years, I have never entirely believed that local court revenue generation is the motivation for repressive policing. The assumption of many, not including Carbado, seems to be that if localities make money from issuing warrants then they must be doing so to make money. I fear this is a misunderstanding of racial capitalism. The *control* is the point, and the revenue often goes directly back into the maintenance of policing.

CONCLUSION

As *Criminal Municipal Courts* nears its end, Natapoff remarks that “[w]hile it is tempting to conclude that the pathologies of municipal courts outweigh their redeeming qualities, it is too soon” to “give up on” them.⁷⁰×⁷⁰. Natapoff, *supra* note 5, at 1046. In terms of scholarly debate, she may be correct that it is too soon. A hundred years into municipal courts’ history, her article is “the first comprehensive description of and analytic framework for the modern criminal municipal court phenomenon in the United States.”⁷¹×⁷¹. *Id.* at 969. In the 1960s, a few scholars were critical of specific local court systems. See, e.g., T.E. Lauer, *Prolegomenon to Municipal Court Reform in Missouri*, 31 MO. L. REV. 69, 69 (1966); Lewis R. Katz, *Municipal Courts — Another Urban Ill*, 20 CASE W. RESRV.

L. REV. 87, 87 (1968). *Show More* It is worth thinking briefly about this absence of attention. Why haven't scholars talked about municipal courts?

I must admit that in recent years I have stayed away from discussing municipal courts even as I continue to work in them and against them. They are dreadfully boring — housed in police station basements, city hall conference rooms, and middle school gymnasiums. Defendants stand in lines waiting to beg judges for extra time to make some money or complete community service. Clerks scribble “warrant” on thin file folders. The courts produce misery for millions, but by and large it is the sort of bureaucratic misery that has not been of significant interest to scholars in the last half a century.⁷² See DAVID GRAEBER, *THE UTOPIA OF RULES 3* (2015).

That municipal courts are local and mundane should not lead us to mark their abolition as less urgent. “Structural violence” has popularly come to mean the state’s capacity to do shockingly vicious things. I sometimes fear the intensive focus on such violence is to the exclusion of comprehending the state’s lurking capacity for violence embodied in the day-to-day intrusions discussed above. My desire here has been to surface the mundane that accompanies the visibly obscene in the broader structures of police bureaucracy.

I understand that for all of us interested in building a better world, there is a certain appeal to the idea of local structures. The critics of the carceral state share a focus on local organizing, local activism, and local politics. But for many of us this is about tactics (available targets) and power building, and not a belief that the municipal corporation and its apparatuses are somehow more democratic or less repressive.

This fetishization of local systems and their transformative capacity has real-world consequences that are destructive to the work of abolition and liberation. In 2014, Ferguson, Missouri, became an international news story. For many of those I love, and for myself, everything changed. Incredible leaders were born in that struggle and new energy was injected to social movements across the United States. Terrible sacrifices were made: a dear friend horribly injured at a protest, my client Bassem Masri now dead, and my client Josh Williams still locked up all these years later. Natapoff's contention that "municipal court corruption . . . helped trigger" the Ferguson uprising does not ring true to these memories.⁷³^{x73}. *Natapoff, supra note 5, at 1047*. We chanted, "We do this for Mike Brown!" But what is true is that, in the face of an unwavering commitment by local governments to white power and police impunity, significant reduction or abolition of municipal courts was among the only likely short-term victories. The interest-convergences that made this a reality are deserving of their own article, but a perfect storm of circumstance put the Missouri municipal court system under enormous scrutiny and pressure.

Predictably, Missouri municipal judges and other status quo defenders of the municipal court system pointed glowingly to the very same benefits of democratic municipalism embraced by Natapoff. Still, this is not why we lost. We lost because of the reformers who saw the moment as teeming with possibilities for democracy and justice experimentation. They made impassioned pleas to give our courts the chance to become "innovative, problem-solving . . . municipal courts."⁷⁴^{x74}. *Karen Tokarz & Sam Stragand, Opinion, Community*

Justice Courts Can Be an Innovative Reform, ST. LOUIS POST-DISPATCH (May 5, 2015), https://www.stltoday.com/opinion/columnists/community-justice-courts-can-be-an-innovative-reform/article_96a59f74-f1cd-5aff-802e-014955831e69.html [<https://perma.cc/K9RP-F2CN>]. *Show More They*

won. In 2019, St. Louis municipal courts issued about 150,000 new municipal court warrants.⁷⁵ See *MO. CTS.*, *supra* note 67, at 301–02.

Reforms, no matter how serious or how imaginative, can never change the *nature* of the arrangement, which is control. It finds its level. Municipal courts, as we are fond of saying, are not broken. They are a coercive apparatus perfectly suited to limiting the mobility (physical, economic, and political) of racialized subjects. They will produce what they are designed to produce until they are abolished.

* Director of Civil Advocacy Clinic and Professor, St. Louis University School of Law. Thanks to Ashton Dietrich, SLU Law Class of 2020, for her insights and assistance. Thanks also to Julian Roediger and Warren Zevon for the soundtrack.