

# Kangaroo Courts

*Response by [Shaun Ossei-Owusu](#)*

FEB 20, 2021

134 Harv. L. Rev. F. 200

Kangaroo courts are seemingly everywhere and nowhere. Legal actors often use this term to describe substandard and defective tribunals across various areas of American law.<sup>1</sup><sup>1</sup> See Parker B. Potter, Jr., *Antipodal Invective: A Field Guide to Kangaroos in American Courtrooms*, 39 AKRON L. REV. 73, 74 (2006).*Show More* Yet there are few scholarly treatments of this evocative term. Without embracing this specific description, Professor Alexandra Natapoff's *Criminal Municipal Courts* provides vivid insights into a rarely explored world of administration that has many of the trappings of kangaroo courts.<sup>2</sup><sup>2</sup> Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021). Natapoff catalogs how municipal courts — also referred to as “town,” “summary,” “justice,” “mayor,” and “police” courts — are sometimes replete with conflicts of interests, shockingly staffed with nonlawyer judges, and often flouting standard criminal procedure protections.<sup>3</sup><sup>3</sup> *Id.* at 966, 968. These observations, among many others, raise important questions about our legal system's fidelity to fundamental constitutional ideals. Like in much of her work, Natapoff goes beyond merely lifting the veil of what has gone undiscussed and goes a step further by identifying scholarly, legal, and normative possibilities for future inquiry.<sup>4</sup><sup>4</sup> *Id.* at 1043–46. See generally ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018) [hereinafter NATAPOFF, *PUNISHMENT WITHOUT CRIME*]; ALEXANDRA NATAPOFF, *SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE* (2009).*Show More*

*Building on Natapoff's descriptive and conceptual contributions, this Response attempts to generate a more provocative discussion by making a claim that is admittedly more polemical than Natapoff's take but accords with many of her assiduous insights. Some of these municipal courts, I argue, could conceivably be understood as kangaroo courts. Natapoff is too careful to make such a harsh claim, and doing so is not her project. This assertion might not be useful or possible in the first contemporary, in-depth scholarly treatment of these courts. Simply mapping the boundaries, operation, and empirical features of these tribunals are tall tasks — all of which she accomplishes successfully. Her analysis, she writes, is animated by a desire to raise the institutional profile and status of these tribunals. She hopes to inject these courts into “longstanding conversations about courts, cities, and criminal justice, and to dispel the fiction that they are minor, unimportant, or uninfluential.”*<sup>5x5</sup>. Natapoff, *supra* note 2, at 1046. Yet some of her jaw-dropping descriptions of municipal courts coincide with the ways kangaroo justice has been evoked. This Response makes the controversial case that the kangaroo court metaphor can be applied to some of these municipal courts, and, in doing so, joins Natapoff in teeing up questions about what this kind of slapdash legal adjudication means for policymakers, scholars, and the public.

#### RESPONSE TO

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

*The Response is organized into three parts. Part I offers a sketch of kangaroo courts by drawing on standard definitions and the limited legal scholarship on the term. My goal here is to identify some key features of this type of adjudication. Part II engages in double duty. It simultaneously summarizes some of the core revelations of Natapoff's article and details how the features*

*of kangaroo courts are quite consonant with her descriptions of municipal courts. Part III raises some questions about what these similarities mean for law and society, particularly in a moment when there seems to be a stark recognition of our criminal justice system’s failures.*

*As one scholar has noted, dropping the “k-bomb” is no light matter.*<sup>6×6</sup> See Parker

*B. Potter, Jr., Dropping the K-Bomb: A Compendium of Kangaroo Tales from American Judicial Opinions, 11 SUFFOLK J. TRIAL & APP. ADVOC. 9, 23 (2006).*

*Show More Historically, kangaroo courts have served as preludes to racial violence — particularly lynching and riots.*<sup>7×7</sup> See,

*e.g., MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW 57 (1994) (“The whole point of kangaroo courts was to provide a quick decision to give a facade of legality to what was in effect a mob lynching.”); JEANNIE M. WHAYNE, A NEW PLANTATION SOUTH 76 (1996) (describing the 1919 Elaine race riots and the related kangaroo courts that led to the life sentences of fifty-four defendants and twelve death sentences).*

*Show More As a sociolegal matter, this description could lead to sanctions, suspensions, and/or disbarment if lodged in court against a judge.*<sup>8×8</sup> See Potter, *supra* note 6, at 57–64. *But*

*the metaphor can be intellectually justified. My use of this designation is animated by a set of concerns — some of which are articulated in Natapoff’s article and in her larger oeuvre. These concerns include a judicial culture that has been relatively tolerant of the constitutional deficiencies in these courts;*<sup>9×9</sup> See NATAPOFF, *PUNISHMENT WITHOUT CRIME*, *supra* note 4, at 134–35. *a*

*scholarly obsession with more conspicuous aspects of criminal law and procedure (such as felonies and appellate decisions) to the neglect of the less visible, low-level adjudications that scholars have increasingly shown matter;*<sup>10×10</sup> See generally, e.g., Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream*

*Consequences of Misdemeanor Pretrial Detention, 69 STAN. L. REV. 711 (2017); Issa Kohler-Hausmann, Managerial Justice and Mass Misdemeanors, 66 STAN. L. REV. 611 (2014); Alexandra Natapoff, Misdemeanors, 85 S. CAL. L. REV. 1313 (2012).*

*Show More and, of course, the human crisis of*

*mass incarceration.*<sup>11</sup>×<sup>11</sup>. See generally NATAPOFF, *PUNISHMENT WITHOUT CRIME*, *supra* note 4. *The kangaroo court comparison is imperfect, but it approximates some of the features of municipal courts described so methodically by Natapoff. The label, I hope, conjures the moral urgency of addressing tribunals that people imagine as unimportant and minor.*<sup>12</sup>×<sup>12</sup>. See Natapoff, *supra* note 2, at 1046. *but that can wreak havoc on society's marginalized.*

## KANGAROO COURTS DEFINED

This Part offers a brief description of kangaroo courts in an effort to tee up the comparisons to municipal courts in Part II. Kangaroo courts have at least three features — all of which are relevant to Natapoff's discussion. Provisionally, we might say that kangaroo courts are inferior, informal, and inequitable. This description is far from comprehensive; a short response does not permit full elaboration of an often-deployed but rarely scrutinized metaphor. Nevertheless, I think this typology captures some of the definitional breadth of the term.

The *inferiority* of kangaroo courts refers to the issue of structure and quality. These courts are considered to be structurally subordinate to traditional courts and likely to generate substandard adjudicative outcomes.

The *informal* nature of kangaroo courts refers to the fact that they sometimes operate unofficially (that is, outside the purview of the traditional legal system) or in a manner that is quite casual (that is, with less intention or deliberation).

Finally, and relatedly, kangaroo courts are *inequitable*. Their reduced procedural protections and generally degraded nature lead to strong likelihoods that they produce unfair legal decisions.

To provide more texture to these definitions, references to a variety of sources are instructive. *Black's Law Dictionary* is most helpful.<sup>13</sup> See *Kangaroo Court*, *BLACK'S LAW DICTIONARY* (9th ed. 2009). It describes the kangaroo court as “1. A self-appointed tribunal or *mock court* in which the *principles of law and justice are disregarded, perverted, or parodied . . . .* 2. A court or tribunal characterized by unauthorized or *irregular procedures*, esp. so as to *render a fair proceeding impossible*. 3. A sham legal proceeding.”<sup>14</sup> *Id.* (emphasis added). These definitions also capture the three features of inferiority, informality, and inequity. The online supplement to *Black's Law Dictionary* goes into more relevant detail. “As a general rule,” it explains, a kangaroo court “is any proceeding that attempts to imitate a fair trial or hearing without the usual due process safeguards” since such “[c]onstitutional safeguards would stand in the way of a kangaroo court reaching its predetermined result.”<sup>15</sup> *Three Features of a Kangaroo Court*, *LAW DICTIONARY*, <https://thelawdictionary.org/article/three-features-kangaroo-court> [<https://perma.cc/N9AU-Q4BU>].*Show More* The designation has a generally negative connotation. The supplement notes that “[r]eferring to something as a kangaroo court usually carries with it a negative inference because of the manner in which they are conducted.”<sup>16</sup> *Id.* The definition found in *West's Encyclopedia of American Law* also corresponds with features of kangaroo courts I describe above. It defines the term as meaning “a proceeding and its leaders who are considered sham, corrupt, and without regard for the law.”<sup>17</sup> *6 WEST'S ENCYCLOPEDIA OF AMERICAN LAW* 103 (Jeffrey Lehman & Shirelle Phelps eds., 2d ed. 2005).*Show More* In ways that are relevant to the revenue-seeking municipal court judges

at the center of the Ferguson debacle, the encyclopedia also notes that the term can be traced to the “roving judges” of the U.S. frontier who were “paid on the basis of how many trials they conducted, and in some instances their salary depended on the fines from the defendants they convicted.”<sup>18</sup>×18. *Id.* The term, the encyclopedia explains, “comes from the image of these judges hopping from place to place, guided less by concern for justice than by the desire to wrap up as many trials as the day allowed.”<sup>19</sup>×19. *Id.* But see *Kangaroo Court*, BLACK’S LAW DICTIONARY, *supra* note 13 (“The term’s origin is uncertain, but it appears to be an Americanism. It has been traced to 1853 in the American West. ‘Kangaroo’ might refer to the illogical leaps between ‘facts’ and conclusions, or to the hapless defendant’s quick bounce from court to gallows.”). *Show More*

Various common dictionaries also highlight the three features of kangaroo courts that I have delineated. *Merriam-Webster* defines kangaroo court as “a mock court in which the principles of law and justice are disregarded or perverted.”<sup>20</sup>×20. *Kangaroo Court*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/kangaroo%20court> [<https://perma.cc/KTL9-FMH7>]. *Show More*

The defiance of legal principles in this definition speaks to the inequitable and inferior nature of kangaroo courts. *Merriam-Webster* also describes the kangaroo court as one that is “characterized by irresponsible, unauthorized, or irregular status or procedures.”<sup>21</sup>×21. *Id.* This interpretation, which gestures toward the unofficial nature of these courts, emphasizes their informality. *Collins* describes a kangaroo court as “any tribunal in which judgment is rendered arbitrarily or unfairly” — an interpretation that points directly to the inequitable results that these courts can and do produce.<sup>22</sup>×22. *Kangaroo*

*Court*, COLLINS, <https://www.collinsdictionary.com/us/dictionary/english/kangaroo-court> [<https://perma.cc/5K6P-5Y45>]. Like *Merriam-Webster*, *Collins* also has an entry that describes a kangaroo court as “an unauthorized, irregular court, usually disregarding normal legal procedure, as one in a frontier region.” *Id.* This definition connotes informality

and inferiority as well as including the geographical references made in legal dictionaries.*Show More* As a lexical matter, some definitions of the term include features that one could argue put municipal courts outside the descriptive umbrella of kangaroo courts.<sup>23</sup>*See, e.g., id.* (providing the British English definition of a kangaroo court as “an irregular court, esp one set up by prisoners in a jail or by strikers to judge strikebreakers”).*Show More* But my point here is not that municipal courts are consistent with every definition of kangaroo courts, but that municipal courts entail many features that have been attributed to kangaroo courts and make the application of this metaphor plausible.

A few scholars have gone beyond slapping the term kangaroo courts onto adjudicative forms and grappled with the concept. In an article on arbitration, Professor Jeffrey Stempel states that *Black’s Law Dictionary’s* definition of kangaroo court is more negative than his description of the term would be.<sup>24</sup>*Jeffrey W. Stempel, Keeping Arbitrations from Becoming Kangaroo Courts, 8 NEV. L.J. 251, 256 (2007).**Show More* He defines kangaroo court as either “a dispute resolution forum in which either the outcome is largely shaped in advance because of biases of the decision-maker” or “a forum in which the structure and operation of the forum result in an inferior brand of adjudication even if the tribunal is not gripped with intentional bias.”<sup>25</sup>*Id.* Stempel’s definition is consonant with my typology and highlights the inferiority and inequity of kangaroo courts. Professor Parker Potter, Jr., has produced the most in-depth descriptive treatment of how this metaphor is used in litigation.<sup>26</sup>*See generally Potter, supra note 1; Potter, supra note 6; Parker B. Potter, Jr., Marsupial Justice, LITIGATION, Fall 2008, at 20.**Show More* In a series of articles, Potter details how litigants and judges have used the term “kangaroo court” and various synonyms<sup>27</sup>*See Potter, supra note 1, at 96–99 (“[W]hile kangaroo court is itself a metaphor, it should come as no surprise that the term kangaroo court itself now has a whole*

mob of synonyms such as: 'kangaroo ass court,' 'Kangaroo Style Court,' 'kangaroo courtroom,' 'kangaroo justice,' 'kangaroo form of justice,' 'kangaroo proceeding,' 'kangaroo-like proceeding,' 'kangaroo process,' 'Kangaroo type court process,' 'kangaroo hearing[],' 'kangaroo trial,' "'kangaroo" disciplinary proceeding,' 'kangaroo kind of a deal,' and 'summary kangaroo practice.'" *Id.* at 96–98 (second alteration in original) (footnotes omitted)). *Show More* as a kind of “invective[] to disparage the fairness of” proceedings and critique malfunctioning adjudication.<sup>28×28</sup> *Id.* at 74. Primary examples include claims of bias during the proceedings, unfair evidentiary considerations, denial of counsel, denial of the right to be heard, conflicts of interest, and legal decisions animated by improper motivations.<sup>29×29</sup> *Id.* at 148. Ultimately, these interpretations suggest that kangaroo courts lack some of the formality found in traditional courts and have fewer procedural protections, which make them inferior tribunals and likely lead to inequitable legal outcomes. All of these features jump off the page in Natapoff’s analysis of municipal courts.

## MUNICIPAL COURTS AS KANGAROO COURTS

Municipal courts are inferior as a matter of structure and quality. These courts’ structural inferiority bookends Natapoff’s analysis. In the first sentence of the article, she describes this tribunal as “the lowly municipal court,”<sup>30×30</sup> *Natapoff, supra note 2, at 966.* and toward the end she explains how these tribunals are on the bottom of the “penal pyramid” where “cases are pettiest and defendants are poorest” and “limited principles of legality get lost in the shuffle of informal, sloppy, and speedy case processing.”<sup>31×31</sup> *Id.* at 1035. Municipal courts resemble the trial courts that are the lowest tier of

integrated state-wide judicial systems. They similarly handle misdemeanors and traffic cases, but they differ in that they are “controlled by . . . cities and not by state judiciaries.”<sup>32×32</sup> *Id.* at 974; see also *id.* at 997. Most are “part of . . . ‘two-tiered’ appellate review systems” where “convictions are appealed[] not to a state appellate court for error review but to a state trial court,” which reviews *de novo*.<sup>33×33</sup> *Id.* at 980. Structurally, these courts are as low as you can go.

Municipal courts are of questionable legal quality. Here it is important to distinguish between what Natapoff reports and my own interpretation of her descriptions (the former of which I believe is more generous than the latter). Municipal courts are not *necessarily* flawed. She notes that Seattle’s municipal court has undergone reform in the past decade and is a “relatively formal, transparent, high-functioning institution” stocked with various specialty and diversion programs.<sup>34×34</sup> *Id.* at 986. In fact, the National Center for State Courts contends that this court has “one of the best public defense systems of any large urban area.”<sup>35×35</sup> *Id.* Moreover, Natapoff’s article seeks to meld the fields of criminal justice and local government law. This boundary-defying endeavor leads her to wade into the debate about democratizing criminal justice and pose the possibility that municipal courts, because of their flexibility and community-based character, could lead to a “more responsive, locally accountable criminal process.”<sup>36×36</sup> *Id.* at 1034. This local sensitivity may be “particularly attractive against the backdrop of thirty years of state and federal investment in the war on drugs and mass incarceration.”<sup>37×37</sup> *Id.* The specific example of Seattle, along with the normative democratic possibilities of municipal courts — all in the context of empirical uncertainty around these tribunals (but for Natapoff’s work) — suggests that they may not be *inherently* inferior when it comes to quality concerns.

But the weight of the descriptive evidence offered by Natapoff leads to the reasonable inference that these municipal courts are suboptimal. In this regard, she is worth quoting at length:

*Sometimes the judge is the mayor. Sometimes the judge is not a lawyer. Prosecutors may be part-time lawyers running their own private practices with strong connections to the judge, to the police, or to city businesses. Sometimes those prosecutors also serve as judges in other cities. Sometimes there is no professional prosecutor and the prosecutorial role is filled by the arresting police officer. In many of these courtrooms, defense attorneys are scarce to nonexistent. In other words, municipal courts routinely lack the usual indicia of independence, impartiality, and legal due process that conventionally characterize the judiciary and on which criminal law relies for much of its integrity.*<sup>38</sup>×<sup>38</sup>. *Id.* at 968 (footnotes omitted).

I am open to the empirical possibility that municipal courts are superior to their traditional trial court analogs. As Natapoff notes, the Supreme Court has given these tribunals the green light on these procedural and personnel oddities because the minor crimes that these tribunals handle sometimes require less complicated processes.<sup>39</sup>×<sup>39</sup>. *See id.* at 1000–01. But in the absence of the kind of evidence-based scholarship that Natapoff’s article serves as a clarion call for, one is left with this unnerving account, anecdotal evidence of municipal courts (à la Ferguson), and the available scholarship on their trial court misdemeanor-processing analogs.<sup>40</sup>×<sup>40</sup>. *See generally* NATAPOFF, *PUNISHMENT WITHOUT CRIME*, *supra* note 4; ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* (2018).*Show More* One does not have to be an abolitionist to reject a presumption that these municipal courts are high quality.

The structural and qualitative inferiority of these tribunals makes the kangaroo court designation appropriate.

The informal nature of municipal courts is simultaneously subtle and stunning, making it difficult to not describe these spaces as kangaroo courts. These tribunals are not the vigilante tribunals of the late nineteenth or early twentieth century. Nor are they the unauthorized adjudicative schemes found in bounded social groups like prisoners (for instance, the kind that California has statutorily prohibited).<sup>41</sup><sup>41</sup>. See *CAL. PENAL CODE § 4019.5(a)* (West 2020) (prohibiting kangaroo courts, which the statute defines as “mock court[s] conducted by any prisoner or group of prisoners for the purpose of inflicting punishment upon any fellow prisoner in any prison, jail, jail camp, or other place of detention”).*Show More*

This is not that kind of informality. Cities that operate as political subdivisions of states create municipal courts as authorized tribunals.<sup>42</sup><sup>42</sup>. See *Natapoff, supra note 2, at 996*.

The informality of municipal courts is rooted in the relatively casual manner in which they handle cases and the absence of formal strictures of adjudication. On this first point, it is worth emphasizing that although kangarooism is not a logic used by Natapoff, municipal court informality is a prominent theme in her article. She is interdisciplinary in her citational practice. She notes how historians like Professor Laura Edwards captured the “informal localized justice” of tribunals that served as municipal courts’ institutional predecessors.<sup>43</sup><sup>43</sup>. *Id. at 998* (citing *LAURA F. EDWARDS, THE PEOPLE AND THEIR*

*PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH 7–10* (2009)). Natapoff also points to the work of Professor Lawrence Friedman, who has shown how low-level ordinary criminal courts receive “perfunctory treatment.” See *id. at 1036 n.443* (quoting Lawrence M. Friedman, *Courts over Time: A Survey of Theories and Research, in EMPIRICAL THEORIES ABOUT COURTS 9, 39* (Keith O. Boyum & Lynn Mather eds., 1983)).*Show More* She reaches back to the social science literature

of the 1970s and 1980s — a moment when scholars took inferior courts seriously and criticized their informality.<sup>44×44</sup> See generally, e.g., John Paul Ryan, *Adjudication and Sentencing in a Misdemeanor Court: The Outcome Is the Punishment*, 15 *LAW & SOC'Y REV.* 79, 79–81 (1980); *Special Issue, Misdemeanor Courts*, 6 *JUST. SYS. J.* 5 (1981).*Show More* Here she highlights the work of people like Professor Malcolm Feeley, who described the “casualness and confusion of lower courts” in his classic text *The Process Is the Punishment*,<sup>45×45</sup> Natapoff, *supra* note 2, at 1013 (quoting MALCOLM M. FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN LOWER CRIMINAL COURT* 13 (1992)).*Show More* and the late Professor John A. Robertson, whose book *Rough Justice* also criticized the informality of low-status tribunals.<sup>46×46</sup> See *id.* at 992 (citing JOHN A. ROBERTSON, *ROUGH JUSTICE: PERSPECTIVES ON LOWER CRIMINAL COURTS*, at xvii, xvii–xxix (1974)).*Show More* The work of Professor Doris Marie Provine also makes an appearance. Provine has captured the phenomenon of the nonlawyer judges who are central to legal informality.<sup>47×47</sup> See *id.* at 1001–02 (citing DORIS MARIE PROVINE, *JUDGING CREDENTIALS: NONLAWYER JUDGES AND THE POLITICS OF PROFESSIONALISM* 1, 10–11 (1986)).*Show More* Moreover, Natapoff is clear that the informality found in these courts is present in other arenas, such as drug courts, community courts, and other specialty courts.<sup>48×48</sup> *Id.* at 1039. As a contemporary matter, the absence of formality in municipal courts would cause a law student to gasp and make civil libertarians bristle. Consider the case of South Carolina, which Natapoff describes as “a case study in municipal court informality.”<sup>49×49</sup> *Id.* at 985. In the Palmetto State, judges in these courts “are not required to have bachelor’s degrees, let alone law degrees.”<sup>50×50</sup> *Id.* She is crystal clear when she notes that “[n]onlawyer judges are part of a larger tolerance for legal informality in misdemeanor courts generally and municipal courts in particular.”<sup>51×51</sup> *Id.* at 1002. In a world where civil sanctions and misdemeanors do not lead to carceral

enmeshment, this kind of informality might make sense. But given what we now know about misdemeanor justice, such informality is hard to square with traditional ideas about criminal justice administration.

The kangaroo court–like informality of these municipal tribunals is also tied to their various adjudicative defects. Amateur hour might be a generous description of some of the proceedings that emerge from these spaces. In the municipal cases where defendants are entitled to legal representation, counsel is sometimes not provided.<sup>52</sup> See *id.* at 1002–03. When mixed with police-prosecutors and nonlawyer judges, this creates scenarios where “defendants may be detained, convicted of crimes, subjected to heavy fines, and sentenced to jail without a single lawyer in the courtroom.”<sup>53</sup> *Id.* Some of these courts are not of record and do not have the transcripts found in standard appeals.<sup>54</sup> See *id.* at 1003, 1012. This unavailability adds another hurdle to the appellate process that misdemeanor defendants are rarely able to avail themselves of.<sup>55</sup> See *id.* at 1005; Nancy J. King & Michael Heise, *Misdemeanor Appeals*, 99 *B.U. L. REV.* 1933, 1938 (2019). *Show More* and, as Natapoff suggests, can shield municipal courts from appellate scrutiny and permit continued misapplication of law.<sup>56</sup> See Natapoff, *supra* note 2, at 1004. Again, these tribunals are not the lethal kangaroo courts that are often thought of when people use the term. But Natapoff is right to suggest that some of these municipal courts, with their laxity toward standard adjudicative protections, “seem like throwbacks to an earlier century when criminal justice was meted out informally, off the record, by local lay justices of the peace.”<sup>57</sup> *Id.* at 975. One might argue that infidelity to constitutional criminal procedure is rampant and that there is no news here. Natapoff preempts this critique and notes that there are differences in the municipal court setting. She suggests that the Supreme Court, through various decisions

about municipal tribunals, has affirmatively exempted them from standard constitutional protections and swaths of the Warren Court criminal procedure revolution.<sup>58×58</sup> See *id.* at 972, 1014. While standard state courts may *ignore* legal mandates, municipal courts are *excused* from some of these requirements.<sup>59×59</sup> See *id.* at 1013–14. Flouting constitutional mandates is qualitatively different from legal exemption.<sup>60×60</sup> See *id.* The latter represents a jurisprudential “embrace of informality” that fits within the kangaroo court description.<sup>61×61</sup> *Id.* at 1014.

Finally, the tribunals that Natapoff describes are prone to inequitable legal outcomes; such unfairness is central to the rhetorical use of the term kangaroo court. One might counter this claim by suggesting that we do not have enough empirical information to safely argue that these courts are *per se* inequitable. That would be partially right, but we do not need long-term ethnography or intricate data sets to make a provisional argument. Intuition based on treasured legal ideals and anecdotal evidence — considered alongside Natapoff’s contributions — all provide a safe starting point.

When it comes to legal principles, it goes without saying that reduced due process protections do not inspire confidence in the fairness of proceedings. Natapoff explains this quite simply: “[I]n courts where judges are not attorneys, the lack of legal expertise in the courtroom may result in illegal or inaccurate outcomes.”<sup>62×62</sup> *Id.* at 969. Averting conflicts of interest is a common ideal in criminal adjudication and legal ethics more generally.<sup>63×63</sup> See *id.* at 1005. These municipal courts, Natapoff shows, are often run by interested parties whose salary and occupational existence are inextricably tied to the municipality’s economic health.<sup>64×64</sup> See *id.* at 1012. When considered alongside the demonstrable reality that lower courts are often cash cows

for municipalities,<sup>65</sup> *Id.* at 982–83. it is hard to envision conflict-free adjudication emanating from municipal courts.

Anecdotally, the Ferguson Report instructively points to the inequality-producing nature of municipal courts. In its section titled “Municipal Court Practices,” the Department of Justice (DOJ) unambiguously detailed how “Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson’s municipal court.”<sup>66</sup>

*U.S. DEPT OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 3*  
(2015), [https://www.justice.gov/sites/default/files/opa/press-](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)

[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) [<https://perma.cc/8KCV-5TU9>]. *Show More* The DOJ also described how “[t]he municipal court does not act as a neutral arbiter of the law” but instead “uses its judicial authority as the means to compel the payment of fines and fees that advance the City’s financial interests.”<sup>67</sup> *Id.* The court’s practices, the DOJ added, led to violations of due process and equal protection requirements and imposed “unnecessary harm, overwhelmingly on African-American individuals.”<sup>68</sup> *Id.* One might argue that Ferguson is simply a jarring outlier. But as Natapoff notes, Ferguson is one of many examples. The unfairness and inequality of municipal courts, she shows, have been critiqued in New Jersey, Ohio, Colorado, Arizona, Utah, and other jurisdictions.<sup>69</sup> *See Natapoff, supra note 2, at 986–89.* The lack of appellate scrutiny, state judicial oversight, and empirical information on these courts — a gap that Natapoff has begun to close — leads to the inference that these spaces are not bastions of equality. Instead, the available information about these tribunals suggests that some are kangaroo courts that fuel mass incarceration.

## MUNICIPAL COURTS, THE LEGAL PROFESSION, AND SOCIETY

What does it mean that municipal courts can be described as kangaroo courts? Here, I am concededly more modest, in part because there is still more to learn about these tribunals. But a set of answers to this question overlaps with the takeaways that can be gleaned from Natapoff's article. Those answers cohere around scholarly and pedagogical concerns.

First, scholars need to pay more attention to the bottom of the penal pyramid. This is the area of criminal justice administration where low-status, inferior, misdemeanor processing tribunals do their work. Indeed, it is a collective intellectual failure — particularly for scholars of criminal justice and local government — that a system of judicial administration that is composed of more than 7,500 courts and generates at least two billion dollars in fees and fines had been virtually overlooked until a national scandal shined light on it.<sup>70</sup> *Id.* at 966. Scholarly omissions are easy to identify and magnify; these are common moves in law review articles. The difference in this context is that it is not a doctrinal oversight or a statutory conflict but an entire stratum of criminal justice governance that operates outside of scholarly scrutiny. This inattention can be partially explained by the opacity of municipal courts — the lack of written record, the absence of attorneys, and the relative unavailability of appellate inspection. But this omission also says something about scholarly commitments, particularly the ways appellate case law is understandably privileged but also fetishized. For scholars with concerns about social justice, these easy-to-grasp, reported decisions make detecting legal inequality easier.

But as Natapoff’s article highlights, and as the aforementioned meanings of kangaroo courts show, some of the most egregious constitutional violations occur in these low-status spaces where flagrant informality is tolerated by courts and legislatures. It is up to scholars — at least those who have political commitments to addressing legal inequality in their work — to follow Natapoff’s lead and continue to unearth these peculiar tribunals.

Second, legal academics should inject conversations about these courts into their classrooms and teaching. There are growing calls for a reimagination of how mass incarceration is discussed in law school. Professor Alice Ristroph has argued that the teaching of substantive criminal law in law schools has played a role in mass incarceration.<sup>71</sup> See Alice Ristroph, *Essay, The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1631, 1635–36 (2020). *Show More* Through its overemphasis on homicide and neglect of less serious crimes, the course misinforms students about the actual workings of the criminal justice system and communicates “pro-carceral ideology.”<sup>72</sup> *Id.* at 1669. Elsewhere, I have described how criminal legal education — particularly criminal law, criminal procedure, and evidence — fails to address questions of race, gender, and poverty that can be easily integrated into the curriculum.<sup>73</sup> See generally Shaun Ossei-Owusu, *Criminal Legal Education*, 58 AM. CRIM. L. REV. (forthcoming 2021). *Show More* Taken as a whole, these critiques suggest that law professors are not rendering the most accurate picture of how our criminal justice system operates. This failure has meaning for the scores of students who will graduate every year — some of whom will go on to be clerks, prosecutors, defense attorneys, and government bureaucrats — but be potentially oblivious to a corner of the criminal justice system. While one can only speculate what inclusion of this topic in the criminal justice curriculum would lead to, I suspect that at a bare minimum it would meet Natapoff’s goal

of raising the institutional profile of these institutions.<sup>74</sup> See Natapoff, *supra* note 2, at 1046. Most optimistically, discussions about the kangaroo court version of these tribunals might spawn different ideas about where students want to pursue their public interest commitments (for instance, engaging these spaces in student notes, clinical projects, and/or postgraduate employment).

Finally, there are obvious policy and doctrinal concerns tied to these municipal courts. These are trickier to resolve. On one end, as Natapoff describes, there are salutary aspects of these courts, notwithstanding the long list of problems. The flexibility of these institutions allows for the possibility of individuated justice, local control, and reform.<sup>75</sup> See *id.* at 1041. On the other end, as she also observes, doctrinal fixes have their limitations. These limitations are particularly salient in a world where federal courts have historically permitted procedural exemptions for municipal courts and not been ardent enforcers of constitutional criminal procedure in traditional courts. “The challenges posed by municipal courts,” Natapoff explains, “flow in part from the fact that they are not solely judicial institutions but also integral to local governance and connected to the special role of cities.”<sup>76</sup> *Id.* at 1022. Accordingly, the path forward is uncertain. But the current zeitgeist, which has mainstreamed calls for prison abolition and defunding the police, is cuing attention to the roles Americans want criminal justice institutions to play in society, if any. Even if one rejects those calls or if these movements are unsuccessful, this reimagination provides some clues about how to think about this species of tribunal. In the meantime, Natapoff’s *Criminal Municipal Courts* serves as a helpful intellectual kit for reformers, scholars, and policymakers concerned about the bottom of the penal pyramid.

\* Presidential Assistant Professor of Law, University of Pennsylvania Carey Law School.