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The Racialized History of Vice Policing

I. India Thusi

ABSTRACT

Vice policing targets the consumption and commercialization of certain pleasures that have been criminalized in the United States—such as the purchase of narcotics and sexual services. One might assume that vice policing is concerned with eliminating these vices. However, in reality, this form of policing has not been centered on protecting and preserving the moral integrity of the policed communities by eradicating vice. Instead, the history of vice policing provides an example of the racialized nature of policing in the United States. Vice policing has been focused on (1) maintaining racial segregation, (2) containing vice in marginalized communities, and (3) facilitating the surveillance of these communities. This Article adopts an abolitionist methodology to evaluate vice policing and introduces three principles that animate abolitionist organizing and thought: the principles of legacy, futility, and possibility. This Article introduces this framework for understanding abolition, which will be more deeply examined in future work. It applies two of these principles—legacy and futility—to evaluate the racialized history of vice policing in the United States. The first principle, legacy, invites us to center an institution’s history in the maintenance of white supremacy when evaluating that institution’s continued existence in modern society. The second principle, futility, encourages us to abandon futile attempts to resuscitate morally bankrupt institutions. This Article applies the legacy and futility principles to demonstrate how the very core of vice policing is about maintaining white supremacy.

In many cities in the United States, police deliberately pushed vice into racially segregated Black neighborhoods and contributed to a geography of vice that reinforced the racial hierarchy. This policing protected property interests in white neighborhoods while allowing vice to continue to exist within these cities. Vice policing maintained the property interests of white communities by ensuring their property values did not decrease because of visible, and impossible to fully eradicate, crimes. As such, the policing of vice was a mechanism for maintaining racial segregation and preserving white property. It was a form of redline policing. Liberals who critique police and prison abolition as too radical often ignore this history (or are unfamiliar with it). While these liberal reformers believe we should preserve the good parts of policing, this Article argues that racialized vice policing has left very little good to preserve. In other words, the bad parts of vice policing are core to the way policing occurs and are part of its legacy (and present). This Article illustrates how this policing was critical to creating and then maintaining Black communities as sites of vice and visible crime. Given this history, the abolitionist demand to abandon futile efforts to reform violent institutions invites us to take this history seriously and look beyond police to address community harm in this area.



AUTHOR

Professor of Law and Charles L. Whistler Faculty Fellow at Indiana University Mauer School of Law and Senior Scientist at the Kinsey Institute for Sex Research. For generous feedback and helpful suggestions, I am grateful to all the participants at the *UCLA Law Review Toward an Abolitionist Future Symposium* for their thoughtful contributions and engagement during a challenging time. I am also grateful to I. Bennett Capers, Guy-Uriel Charles, Jessica Eaglin, Jamelia N. Morgan, Eric Miller, and Ngozi Okidegbe for comments on this Article. Thanks to Abby Akrong, Margaret Kiel-Morse, and Allison Coffey for excellent research assistance and library support. I thank the editors at *UCLA Law Review* for remarkable editing, research, and organizational support during this process. I would like to particularly thank Alanna Kane and Hope Bentley. You organized an excellent Symposium and provided thoughtful feedback that has furthered the discourse on abolition. I am grateful to Terry Allen and Danielle Garcia for bringing this issue to completion. I am also grateful for generative commentary and support from participants at the ABA-AALS Criminal Justice Section Academics Workshop. Finally, I thank the abolitionist organizers, advocates, friends who work to dismantle the prison-industrial-complex every day and who inspire me with their relentlessness and passion. Thank you.

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INTRODUCTION

None of the Police Commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in twos and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children. They represent the force of the white world, and that world's real intentions are, simply, for that world's criminal profit and ease, to keep the [B]lack man corralled up here, in his place. The badge, the gun in the holster, and the swinging club make vivid what will happen should his rebellion become overt. Rare, indeed, is the Harlem citizen, from the most circumspect church member to the most shiftless adolescent, who does not have a long tale to tell of police incompetence, injustice, or brutality. I myself have witnessed and endured it more than once. The businessmen and racketeers also have a story. And so do the [sex workers].

- James Baldwin¹

The abolition of prisons and policing has entered mainstream discourse,² and many abolitionists argue we should divest from punitive systems and invest in systems of care and communities.³ The discourse on abolition, however, is often

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1. JAMES BALDWIN, *NOBODY KNOWS MY NAME: MORE NOTES OF A NATIVE SON* 65–66 (Delta Pub. Co 1961).
 2. See Jessica R. Pliley, *Troubling Habits, Poisons of Civilization, and State Growth*, 17 J. GILDED AGE & PROGRESSIVE ERA 412, 412–14 (2018) (reviewing LISA MCGIRR, *THE WAR ON ALCOHOL: PROHIBITION AND THE RISE OF THE AMERICAN STATE* (2016)); see also Emahunn Raheem Ali Campbell, *The Imagination and Construction of the Black Criminal in American Literature, 1741–1910*, 2–3 (Nov. 2015) (Ph.D. dissertation, University of Massachusetts Amherst) (on file with University of Massachusetts Amherst Scholarworks).
 3. See Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1619 (2019) (“Abolition democracy is committed, by contrast, to a conception of justice that not only attends carefully to the actual outcomes of processes that claim to administer justice, but also seeks to distribute resources and opportunities more equitably.”); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1784–85 (2020). Professor Amna Akbar has described the aspirations of abolition:
Abolitionist organizers have pointed to how the state has invested in police and prisons over housing, health care, and school for poor, working-class, Black, and brown communities. Their campaigns offer an approach to reform rooted in hope rather than cynicism: instead of giving more to police and the carceral state, they demand that resources be withdrawn from both and redistributed elsewhere as part of a larger strategy of transforming the state and society.

Id.

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sidelined by concerns about how to effectively address harm in an abolitionist world.⁴ The problem with these critiques is they fail to seriously contend with the principles and premises underlying the abolitionist critique.

In this Article, I provide a basis for an abolitionist approach to the criminal legal system by examining the history of the policing of vice crimes in several American cities. But first, I want to further explain the abolitionist critique. I believe there are at least three organizing principles underlying abolitionist thought that liberals, and others, have failed to sufficiently take seriously, which I plan to explain more fully in a future piece. The first principle is legacy.⁵ This principle looks to the history and legacy of institutions in examining their continued value in modern society. The second principle is the futility principle, which rejects incremental reforms that maintain the logic and structures of social injustice. Philosopher Andre Gorz's conception of nonreformist reforms reflects an embrace of the futility principle.⁶ In the midst of debates in the 1960s about whether revolutionary or reformist measures were necessary to achieve a truly egalitarian society, Gorz argued that adopting nonreformist reforms that reject the logic of the current system, but reduce its harm, is an effective strategy for building a more just society.⁷ Gorz rejected reformist reform "which subordinates its objectives to the criteria of rationality and practicability of a given system" and which may expand the existing system.⁸ Prominent abolitionist thinkers and groups, such as Critical Resistance, have embraced Gorz's conception of nonreformist reforms.⁹ This strategy implicitly recognizes the futility of reforming

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4. See James A. Gagliano, *Calls to Defund the Police Are Dangerous*, CNN (Aug. 15, 2020), <https://www.cnn.com/2020/08/15/opinions/defunding-police-dangerous-crime-gagliano/index.html> [<https://perma.cc/598D-TFW6>] ("Defunding police budgets serves to critically impact the very underserved communities that need them most. We must resist the dangerous momentum of the pendulum's swing."); see also Matthew Brown, *Democratic Whip James Clyburn: 'Defund the Police' Cost Democrats Seats, Hurt Black Lives Matter Movement*, USA TODAY (Nov. 8, 2020), <https://www.usatoday.com/story/news/politics/2020/11/08/james-clyburn-defund-police-cost-democrats-seats-hurt-black-lives-matter/6216371002> [<https://perma.cc/95JV-9J58>] (quoting Black congressman James Clyburn as saying, "We need the police. We want the police. They have a role to play").
 5. See, e.g., Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 19–20 (2019) ("Many prison abolitionists have found the roots of today's criminal punishment system in the institution of chattel slavery The first police forces in the United States were slave patrols.").
 6. See ANDRÉ GORZ, STRATEGY FOR LABOR: A RADICAL PROPOSAL (1967), reprinted in THEORIES OF THE LABOR MOVEMENT (1987).
 7. *Id.*
 8. *Id.*
 9. See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE (May 2020), <https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d342>

the existing system and encourages organizers to minimize the harms of unjust systems while rejecting the logic of such systems.¹⁰ The futility principle may be the most important for abolitionist thinking in that it requires abandonment of futile attempts to resuscitate morally bankrupt institutions.¹¹ The principles of futility and legacy are closely linked because the legacy and history of an institution are instructive in understanding the futility in trying to reform that institution.

The final principle is possibility. This principle focuses on looking at what is possible in society and is not limited by current understandings and structures.¹² This principle encourages imagination and looking beyond the current world to construct a new ideal.¹³ Possibility pushes us to look beyond the status quo to actualize a reality where everyone flourishes. In her seminal piece on abolition, Professor Allegra McCloud has described this aspect of abolition:

[A]bolition may be understood instead as a gradual project of decarceration, in which radically different legal and institutional regulatory forms supplant criminal law enforcement. These institutional alternatives include meaningful justice reinvestment to strengthen the social arm of the state and improve human welfare; decriminalizing less serious infractions; improved design of spaces and products to reduce opportunities for offending; urban redevelopment and “greening” projects; proliferating restorative forms of redress; and creating both safe harbors for individuals at risk of or fleeing violence and alternative livelihoods for persons otherwise subject to criminal law enforcement.¹⁴

But the possibility principle is not the focus of this Article. This Article is primarily concerned with legacy and futility and will use vice policy to illustrate why legacy and futility make fully embracing alternative possibilities a mandate, rather than an aspirational option. This piece applies the three principles I have identified to analyze the history of vice policing in the United States. Vice crimes are often described as victimless crimes that, nevertheless, invite criminal intervention because of the nature of the conduct involved.¹⁵ Historically, these

54f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf
[<https://perma.cc/C2NB-CW5M>].

10. See GORZ, *supra* note 6.

11. See GORZ, *supra* note 6.

12. Elizabeth Ellsworth & Jamie Kruse, Touring the Nevada Test Site: Sensational Public Pedagogy, 552–53 (Jennifer A. Sandlin et al. eds., 2010).

13. See *id.*

14. Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. Rev. 1156, 1161 (2015).

15. See CRIMINAL LAW, VICE CRIMES (2012) (ebook), <https://open.lib.umn.edu/criminalaw/chapter/12-3-vice-crimes> [<https://perma.cc/9QHL-LLZG>].

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crimes have included sex work, gambling (or the numbers game), narcotics consumption, sodomy, and interracial relationships.¹⁶ Vice crimes fall into the category of crimes that are *malum prohibitum*, which are criminalized because they are supposedly affront to community morals.¹⁷ The history of the racialized policing of vice reveals a legacy of policing to maintain racial and residential segregation.¹⁸ The policing of vice was a tool for reinforcing stereotypes about Black people as being inherently predisposed to criminality.¹⁹ Policing reinforced racial boundaries and maintain the superior position of elites within a community.²⁰ This history shows policing is not solely or even primarily concerned with maintaining community safety for people in the policed community.²¹

The racialized history of the policing of vice provides a concrete example for applying the legacy and futility principles, and understanding why abolition should be considered as a serious option in addressing the harms of policing and the criminal legal system. Part I provides the abolitionist framework adopted in this Article to evaluate the policing of vice. Part III examines the history of policing of vice in three United States in three moments of time. Part II of this Article provides that story of famous boxer, Jack Johnson, which is an illustration of the racialized nature of vice policing in the United States. Part IV considers how the legacy of the racialized policing of vice in this country provides evidence of the futility of police reform. It contextualizes the history and uncovers the continuities remaining in contemporary forms of policing.²² The policing of vice in the United States has primarily concerned with segregation, containment, and surveillance. The police in several cities deliberately pushed activities out of white communities into Black communities to protect white property interests and maintain existing residential segregation. Police segregated vice out of white areas into less desirable

16. *Id.*

17. See James Edwards, *Theories of Criminal Law*, STAN. ENCYCLOPEDIA OF PHIL. (Aug 6, 2018), <https://plato.stanford.edu/entries/criminal-law> [<https://perma.cc/J2LH-DFX3>].

18. See Stephen Robertson, Shane White, Stephen Garton, & Graham White, *Disorderly Houses: Residences, Privacy, and the Surveillance of Sexuality in 1920s Harlem*, 21 J. HIST. SEXUALITY 443, 448 (2012).

19. See AMY ABSHER, *THE BLACK MUSICIAN AND THE WHITE CITY: RACE AND MUSIC IN CHICAGO, 1900–1967*, at 30 (Univ. Mich. Press 2014).

20. See Themis Chronopoulos, *Police Misconduct, Community Opposition, and Urban Governance in New York City, 1945–1965*, 44(4) J. URB. HIST. 643, 654 (2015).

21. See *id.*; see also Kim Gilmore, *Slavery and Prison—Understanding the Connections*, 27 SOC. JUST. 195, 197–98 (2000).

22. See Mariame Kaba, *For Blacks, America is Dangerous by Default*, WASH. POST (Aug. 22, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/08/22/for-blacks-america-is-dangerous-by-default> [<https://perma.cc/PXX9-CCWN>]; see also Akbar, *supra* note 3, at 408.

communities. After segregating vice into Black communities, police contained vice and ensured that there was no spillover across the borders of racial segregation. They were not concerned with eradicating vice in Black areas. Rather, they were concerned with ensuring that any vice that occurred did not seep into other areas. Finally, vice activities also provided police with a justification for surveilling Black communities. The very presence of vice reinforced racist stereotypes about Black people and provided a justification for police to adopt an aggressive posture when policing these communities. These objectives of segregation, containment, and surveillance reflect police forces more concerned with maintaining racial hierarchies than eliminating harm, at least when the affected communities were Black ones. Many police reformers might ignore this legacy when evaluating contemporary policing or fail to see its continued relevance. However, for the abolitionist, this legacy is instructive when evaluating whether this form of policing is impervious to reform.

Part IV *infra* illustrates the potential for centering legacy when examining contemporary policing. It also provides guidance on whether it is reasonable to expect reformist reforms to meaningfully change the nature of policing in the United States.²³ If policing vice was primarily concerned with maintaining racial subordination, there should be substantial evidence to support that it is capable of deviating from this norm. Without this evidence, the futility principle would suggest that abolition of this form of policing is necessary if we are committed to eliminating institutions reproducing white supremacy.²⁴ If the core objective in policing vice crimes has been in creating and maintaining racial segregation while providing a justification for surveillance rather than preventing harms to the policed communities, then perhaps policing does not pay its way. Part III embraces the legacy and futility principles by providing a brief historical analysis of the policing of vice and its racialized nature in three U.S. cities—New York, Chicago, and Detroit. This history reveals the racialized nature of vice policing and is instructive in understanding whether this form of policing should continue.

23. See Akbar, *supra* note 3, at 428; see also Brandon Hasbrouck, *Abolishing Racist Policing With the Thirteenth Amendment*, 68 UCLA L. REV. DISC. 200, 214–15 (2020).

24. See Paul Butler, *The System Is Working the Way it Is Supposed to: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 90–91 (2019).

I. THEORIZING ABOLITION²⁵

What is needed is what used to be called ‘nonreformist reforms,’ social changes that are feasible in the world as it is (thus they are reforms), but which prefigure in important ways more emancipatory possibilities.²⁶

A. Legacy

The legacy principle of abolition is a recognition that the legacy of an institution is relevant to its evaluation.²⁷ It embraces contextualized knowledge and is a recognition that history is relevant to assessing the present.²⁸ Prominent abolition theorist, organizer, and activist, Mariama Kaba, notes:

There is not a single era in United States history in which the police were not a force of violence against [B]lack people. Policing in the South emerged from the slave patrols in the 1700s²⁹ and 1800s that caught and returned runaway slaves. In the North, the first municipal police

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25. This Part is an abbreviated version of a forthcoming Article that will more fully describe these principles. This abbreviated version is included to provide the methodology for evaluating policing in this piece.
26. Mark Kirby, An Interview with Erik Olin Wright, 21 (2001), https://www.ssc.wisc.edu/~wright/kirby_wright.pdf [<https://perma.cc/Z9NM-PTBM>] (Quote by Erik Olin Wright). While this Article introduces the theoretical framework of legacy, futurity, and possibility, a future article will more fully develop these concepts. This Part is an abbreviated version of that article as this piece needs to introduce these concepts while applying two of them –legacy and futurity—to examine the racialized history of vice policing in the United States.
27. See, e.g., Tussy Wallace, *Abolish Police*, NEBRASKA LEFT COALITION, <https://www.neleftcoalition.com/post/abolish-police> [<https://perma.cc/CW73-CJ2T>]. Wallace writes:
Public police departments allowed owners to control their work force and prevent strikes under the rule of law, disconnected from the payoffs of the economic elite.
In the Southern states the push for police came from a different source. The South needed to modernize the traditional Slave Patrols. Following the Civil War, slave patrols and night watches, which morphed into municipal police departments, were designed to control Black and Indigenous Peoples. For example, the St. Louis police were founded to protect residents from Native Indigenous in that frontier city. In South Carolina, the police department began as slave patrols and moved directly into an official police force.
- Id.*
28. See Kaba, *supra* note 22 (examining the historical context and legacy of policing while arguing for its abolition).
29. Retrenchment refers to the rolling back of antidiscrimination doctrines. See Kimberlé W. Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Jed Rubenfeld, *The Anti-Antidiscrimination Agenda*, 111 YALE L.J. 1141, 1142 (2002) (describing the U.S. Supreme Court’s jurisprudential approach as furthering an “anti-antidiscrimination agenda”).

departments in the mid-1800s helped quash labor strikes and riots against the rich. Everywhere, they have suppressed marginalized populations to protect the status quo. So when you see a police officer pressing his knee into a [B]lack man's neck until he dies, that's the logical result of policing in America. When a police officer brutalizes a [B]lack person, he is doing what he sees as his job.³⁰

Kaba's critique of policing centers its legacy in examining its continued relevance.³¹ Scholar and activist, Angela Davis, has stated that the term abolitionist was deliberately chosen to put the carceral system in its relevant historical context: "I choose the word 'abolitionist' deliberately. The 13th Amendment, when it abolished slavery, did so for all except convicts. Through the prison system, the vestiges of slavery have persisted. It thus makes sense to use a word that has this historical resonance."³² By contrast, reformist approaches to policing focus on its contemporary manifestation and consider ways to address contemporary weakness.³³ People who embrace the reformist approach to policing often focus on policies that immediately respond to weaknesses in policing, including increased police trainings, the hiring of more diverse officers, or the expansion of police-operated surveillance tools, like body-worn cameras.³⁴

In contrast to a reformist approach, the legacy principle prioritizes history, focuses on contextualizing policing, and acknowledges how history continues to be relevant to current manifestations of policing.³⁵ When evaluating an institution with the legacy principle in mind, the context of policing extends far beyond the immediate conduct that prompted its reevaluation in the moment, such as the latest police murder.³⁶ The legacy principle invites us to consider the history of violent policing in that community, its role in perpetuating racial subordination and segregation, and the original purposes of policing in that community.³⁷ The legacy principle recognizes the racially disproportionate nature of policing, and

30. Crenshaw, *supra* note 29; Rubinfeld, *supra* note 29.

31. Crenshaw, *supra* note 29; Rubinfeld, *supra* note 29.

32. Angela Davis, *Incarcerated Women: Transformative Strategies*, 1 BLACK RENAISSANCE; N.Y. 16 (1996).

33. See, e.g., President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [<https://perma.cc/3WZD-382W>].

34. *Id.*

35. See, e.g., Gilmore, *supra* note 21, at 196 ("The connections between slavery and imprisonment have been used by abolitionists as an historical explanation and as part of a radical political strategy that questions the feasibility of 'reform' as an appropriate response to prison expansion.").

36. Gilmore, *supra* note 21, at 196.

37. Gilmore, *supra* note 21, at 196.

that policing's original role in upholding racial subordination has often remained part of the nature of policing.³⁸ Policing's institutional legacy is relevant because the initial incentives and structures to reproduce white supremacy constrain how policing continues to operate today. Unsurprisingly, these arrangements often continue to produce the racial inequalities they were created to maintain in the first place.³⁹

The focus on legacy reveals certain normative commitments about abolition. Abolitionist theorizing and organizing embrace an epistemology that places institutions within their social context.⁴⁰ Focusing on institutional legacy is consistent with the method of many critical race theorists of placing the law within its social and historical context.⁴¹ Abolitionist organizing that looks at how policing shares a lineage with slave patrols that policed Black enslaved people demonstrates a commitment to analyze legacy and history.⁴² By citing policing's historical roots in slave patrols, abolitionists suggest that current strands of racial bias in policing are part of its structure and history, and so, incidents of police violence are not aberrational acts committed by individual bad actors.⁴³ Abolitionists are, instead, adopting an epistemology recognizing that historical context matters.⁴⁴ The focus on legacy suggests there is a normative commitment to rich and contextualized knowledge and a recognition that contemporary inequities share a lineage with and are often caused by historical practices.⁴⁵ It indicates racialized policing did not appear out of thin air. Racialized policing was

38. Gilmore, *supra* note 21, at 196.

39. Gilmore, *supra* note 21, at 200.

40. Gilmore, *supra* note 21, at 197. Gilmore writes:

Tracing this history and the relationship between slavery and prison expansion can help inform current efforts toward prison abolition and provide a context for moving beyond reforms that have usually boosted the carceral state through a rejuvenation of the prison system, rather than clearing a path for true liberation and transformation.

Id.

41. Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461, 462–63, 501 (1993) (compiling and making comments on a list of major works in critical race theory that contain common themes that contextualize the law socially and historically, for example one article “[d]emonstrates that the law-and-order approach has served to turn many poor communities into occupied territories. Argues that the disproportionate number of black men prosecuted for drug-related crimes is evidence that arrests target the black community and are a form of institutionalized racism”).

42. Kaba, *supra* note 22.

43. See also Kaba, *supra* note 22 (outlining some of the many instances of police brutality and misconduct, demonstrating the prevalence of police violence).

44. Kaba, *supra* note 22.

45. Kaba, *supra* note 22

deliberately manufactured and designed to maintain the interests of propertied white people during slavery and after it.⁴⁶

The focus on legacy also suggests a methodology for institutional evaluation. While this focus reflects a commitment to recognizing and considering the past, it also suggests there is an ideal approach to evaluating policing in light of this normative commitment. This methodology includes careful consideration of past abuses of police organizations.⁴⁷ It requires people concerned with the state of policing look beyond the immediate policies that are harming communities.⁴⁸ People should instead engage in a deep investigation into how modern policies are part of a history of policies intended to create racial subordination.⁴⁹ This method looks beyond immediate concerns of whether police are kind and respectful in the moment during individual encounters.⁵⁰ The legacy principle forces researchers to reexamine what the historical purposes of policing were, what hierarchies policing reinforced, and who benefited and continues to benefit from racialized policing.⁵¹ Abolitionists center this history and frequently adopt a critical methodology that places the legacy of policing at the forefront of questions about its continued relevance.⁵² If policing is not evaluated within its social and historical

46. Gilmore, *supra* note 21, at 197–98 (explaining the lineage of slavery and modern criminalization of African Americans). Gilmore writes:

Built into the 13th Amendment was state authorization to use prison labor as a bridge between slavery and paid work . . . [d]uring this period, white ‘Redeemers’—white planters, small farmers, and political leaders—set out to rebuild the pre-emancipation racial order by enacting laws that restricted [B]lack access to political representation and by creating Black Codes that, among other things, increased the penalties for crimes such as vagrancy, loitering, and public drunkenness . . . mass imprisonment was employed as a means of coercing resistant freed slaves into wage laborers.

Id.

47. Kaba, *supra* note 22 (“History is instructive, not because it offers us a blueprint for how to act in the present but because it can help us ask better questions for the future.”).

48. Kaba, *supra* note 22.

49. Kaba, *supra* note 22.

50. *Cf.* Butler, *supra* note 24, at 124 (“The problem with reform that is focused on improving perceptions about the police is that it can cloak aggressive policing in enhanced legitimacy, and it has the potential to blunt the momentum for rising up against overcriminalization, wealth inequality, and white supremacy.”).

51. I. India Thusi, *Policing Is Not a Good*, GEO. L.J. ONLINE (forthcoming 2022).

52. *See, e.g.*, ANGELA DAVIS, ARE PRISONS OBSOLETE? 28 (2003) (embracing a historical analysis in advocating for the abolition of prisons). Davis writes:

In the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many as a reincarnation of slavery. The Mississippi Black Codes, for example, declared vagrant “anyone/who was guilty of theft, had run away [from a job, apparently], was drunk, was wanton in

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context, important insights about its continued failure to reach equitable and fair results are missing.⁵³

Accordingly, the legacy principle invites historical analysis and inquiry. The history of an institution is relevant to understanding its present. Historical analysis can occur by reviewing the genealogy of an institution and examining the social and historical conditions that contributed to its existence.⁵⁴ Some economists have described the difficulty in transforming institutions as “path dependence,” which suggests the future of an institution is dependent upon historical practices in that particular institution.⁵⁵ Path dependence helps to explain why it is so difficult to meaningfully transform institutions.⁵⁶ Accordingly, the legacy and history of institutions reveals continuities to current practices and policies that explain why certain outcomes occur despite attempts to reform institutions at the margins.⁵⁷

conduct or speech, had neglected job or family, handled money carelessly, and . . . all other idle and disorderly persons.” Thus, vagrancy was coded as a [B]lack crime, one punishable by incarceration and forced labor, sometimes on the very plantations that previously had thrived on slave labor.

Id.

53. Thusi, *supra* note 51.

54. See Douglass C. North, *Institutions*, 5 J. ECON. PERSPECTIVES 97, 98 (1991) (describing how institutions “evolve incrementally, connecting the past with the present and the future; history in consequence is largely a story of institutional evolution in which the historical performance of economies can only be understood as a part of a sequential story”); Paul A. David, *Why Are Institutions the ‘Carriers of History’?: Path Dependence and the Evolution of Conventions, Organizations and Institutions*, 5 STRUCTURAL CHANGE & ECON. DYNAMICS 205, 215 (1994). David writes:

Historical precedent thus can become important in the shaping of the whole institutional cluster, simply because each new component that is added must be adapted to interlock with elements of the pre-existing structure—unless the whole is to be abandoned and replaced in its entirety.

Id.

55. David, *supra* note 54, at 208.

56. David, *supra* note 54, at 219.

57. See Matthew Ward, *The Legacy of Slavery and Contemporary Racial Disparities in Arrest Rates*, SOCIOLOGY OF RACE AND ETHNICITY, October 2022, at 534, 537. Ward writes:

Path dependent processes are self-reinforcing sequences displaying increasing returns, meaning the likelihood of continuing along the same path increases with each step forward because the costs of changing course rise with each step. But path dependence means more than just “history matters.” Rather, earlier critical junctures matter more than recent events, especially when groups are incentivized to continue down the same path to defend privilege. Given their historical embeddedness within discriminatory racial orders erected largely to protect [w]hite interests, social control institutions were particularly susceptible to this inertia, making them efficient vectors for the transmission of worldviews and social practices reinforcing racial inequality[.]

Id.

Legacy provides insights about the story of retrenchment and insights about why certain institutions are so difficult to reform.⁵⁸

Moreover, the legacy principle suggests that policies and practices that were explicitly intended to exclude and marginalize communities should not benefit from a presumption of continued legitimacy. Rather, they should be scrutinized and abandoned if their original goal of exclusion remains one of their underlying features. The tendency to find ways to make policing more legitimate presumes policing should be viewed as legitimate by everyone in the community.⁵⁹ People who benefit from inequality might profit from perceiving it as legitimate and finding mechanisms for reinforcing this perception.⁶⁰ Whereas, people who have experienced the harms of racially biased policing do not benefit from increasing the perception that policing is legitimate. Whether marginalized people view policing as legitimate or illegitimate, police are nevertheless able to profile them, engage in violence within their communities, and be a source of community harms. Legitimacy does not save them from police oppression; if anything, it might facilitate it by framing incidents of police violence as aberrational rather than systemic and inherent to the nature of policing.⁶¹

Accordingly, the legacy principle is a rejection of the tendency to rely on legal fictions to support the status quo.⁶² While courts and policymakers tend to give police the benefit of the doubt and presume their judgments about the dangerousness of communities or suspiciousness of suspects should be trusted despite evidence to the contrary, the legacy principle recognizes evidence about the limitations of police judgments.⁶³ It considers historical evidence of malfeasance and supports an inquiry into how policing has occurred and is occurring.⁶⁴ It does not rely on legal fictions presuming we should simply trust

58. *Id.*

59. See Butler, *supra* note 24, at 124.

60. See Butler, *supra* note 24, at 124.

61. See Butler, *supra* note 24, at 124.

62. See Louise Harmon, *Falling Off the Vine: Legal Fictions and the Doctrine of Substituted Judgment*, 100 YALE L.J. 1, 7 (1990) (noting the “conservative function of the legal fiction,” which is a fabrication that has been deemed to have some utility, and “the ability of the legal fiction to maintain the doctrinal status quo”).

63. See Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1042 (1996) (examining the widespread practice of police officers providing false information in order to secure convictions).

64. Gilmore, *supra* note 21, at 196; see also Hasbrouck, *supra* note 23, at 205–06 (“White Supremacy birthed and nurtured modern-day policing. Indeed, policing today can be traced directly to slavery and the racial regime it relies on and violently sustains. . . . James Baldwin remarked in 1996, “[T]he police are simply hired enemies of this population. They are present to keep the Negro in his place and to protect white business interests, and they have no other function.”).

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police.⁶⁵ The legacy principle looks at the historical evidence of policing and encourages an evaluation of whether such deference is warranted.⁶⁶ This approach is not so wedded to maintaining the status quo that it creates fictions to maintain it. It is open to disruption and radical reimagining where the historical record demonstrates our institutions are too corrupt and entrenched in the white supremacist project to be separated from that project.⁶⁷

B. Futility

The second principle that underlies abolitionist thinking and organizing is futility. This principle recognizes the futility of embracing intermediary measures that aid violent institutions.⁶⁸ The principle of futility suggests that it is futile to expend additional resources reforming institutions that have proven resistant to change, particularly where they have a legacy of oppression.⁶⁹ This idea runs

65. See MILTON MOLLEN, HAROLD BAER, JR., HERBERT EVANS, RODERICK C. LANKLER AND HAROLD R. TYLER, JR, NEW YORK COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT: COMMISSION REPORT (1994) (detailing police officer practice of falsification and lying under oath) [hereinafter Mollen Commission Report]; see also I. Bennett Capers, *Crime, Legitimacy, and Testifying*, 83 IND. L.J. 835, 873 (2008) (“An officer witness who commits perjury by telling blue lies should be investigated and prosecuted to the same extent a civilian witness would be.”).

66. *But see* United States v. Arvizu, 534 U.S. 266, 276 (2002) (deferring to police officer assessments and holding that officers are “entitled to make an assessment of the situation in light of [their] specialized training and familiarity with the customs of the area’s inhabitants”).

67. See, e.g., Michelle S. Phelps, Anneliese Ward and Dwjuan Frazier, *From Police Reform to Police Abolition? How Minneapolis Activists Fought to Make Black Lives Matter*, 26 MOBILIZATION: AN INT’L Q. 421, 431 (2021) (examining abolitionist organizing in Minneapolis including organizing that “located the roots of police brutality, corruption and racism in its history and founding mission”); see also MPD150, ENOUGH IS ENOUGH: A 150-YEAR REVIEW OF THE MINNEAPOLIS POLICE DEP’T (2020).

68. See, e.g., Jason Scavone, *Reform, Defund or Abolish the Police?*, UNLV (June 10, 2020), <https://www.unlv.edu/news/article/reform-defund-or-abolish-police> [https://perma.cc/32E9-RF28]. Scavone writes:

Reform measures have failed miserably. If you think about the major reform measures, police cameras don’t always work. We know for a fact that police often turn them off and turn them on at their leisure. More rules cannot, by definition, work for an organization that in many ways have a ridiculous amount of autonomy as to whether or not they’ll operate within those rules. We also know that our police are trained by the same people that often train the military and they are often taught that anything can go bad at any given moment. And because of that, you have a kind of police unit that often comes to situations on edge (quoting Professor Javon Johnson).

Id.

69. *Id.* (“We know that police don’t offer a real deterrent to crime. So why are we continually investing billions of dollars?”); MARIAME KABA & ANDREA J. RITCHIE, NO MORE POLICE 153 (2022) (“As prison industrial complex (PIC) abolitionists, we want far more than what the

counter to the predominant instinct to work within existing structures to improve them, and instead,⁷⁰ acknowledges that certain structures are incapable of reform, or incapable of reforming into institutions that would support and facilitate the liberation of marginalized people.⁷¹ The principle of futility encourages people to contend with the inconvenient truth that we have been in decades-long efforts to reform institutions that have failed to eradicate inequitable outcomes.⁷² For instance, INCITE! and Critical Resistance issued the Statement on Gender Violence and the Prison Industrial Complex in 2001, stating:

The various alternatives to incarceration that have been developed by anti-prison activists have generally failed to provide sufficient mechanism[s] for safety and accountability for survivors of sexual and domestic violence. These alternatives often rely on a romanticized notion of communities, which have yet to demonstrate their commitment and ability to keep women and children safe or seriously address the sexism and homophobia that is deeply embedded within them.⁷³

The statement reflects on the failures of reformist measures:

It is critical that we develop responses to gender violence that do not depend on a sexist, racist, classist, and homophobic criminal justice system. . . . To live violence free-lives, we must develop holistic strategies for addressing violence that speak to the intersection of all forms of oppression. . . . However, the mainstream anti-violence movement has increasingly relied on the criminal justice system as the front-line approach toward ending violence against women of color. It is important to assess the impact of this strategy.⁷⁴

system that killed Breonna Taylor can offer—because the system that killed her is not set up to provide justice for her family and loved ones.”).

70. *Abolition of Policing Resolution: FAQs*, NATIONAL LAWYERS GUILD, <https://www.nlg.org/abolition-of-policing-resolution-faqs> [<https://perma.cc/4E28-N46W>] (explaining “prison reforms that require the construction of new prison buildings and facilities or the expansion of prison contracts are ultimately cementing the power of the [prison industrial complex]”).

71. *Id.*

72. See Marina Bell, *Abolition: A New Paradigm for Reform*, 46 L. & SOC. INQUIRY 32, 53 (2021) (“Mainstream reform efforts do not work to question the logics of the prison system but, instead, employ that very logic in its attempts to address problems within that system.”).

73. *INCITE!-Critical Resistance Statement*, INCITE! (emphasis omitted), <https://incite-national.org/incite-critical-resistance-statement> [<https://perma.cc/7UJJ-WHG9>].

74. *Id.* (emphasis omitted).

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The principle of futility acknowledges the uselessness of reforms that bolster violent institutions.⁷⁵ These types of reforms respond to the immediate manifestations of inequity.⁷⁶ These reforms appear to be resolving problems, but they often pour additional resources into structures that were historically created to facilitate and which continue to perpetuate racial subordination.⁷⁷ Gorz critiqued reformist reforms that pour additional resources to inequitable systems.⁷⁸ These types of reforms provide a feeling that we are slowly moving toward progress and may even result in a decrease of mass mobilization, however, they only provide the appearance of success.⁷⁹ They are not true successes because these reforms often require society to provide additional resources to the institutions that have been perpetuating social inequity.⁸⁰ These types of reforms appear as trainings for the police about diversity or the hiring of more officers of color to address racially discriminatory policing.⁸¹ The reforms may be comforting but are futile because they fail to contend with the legacy of policing and presume more policing can address biased policing.⁸²

The principle of futility is closely connected to legacy because the evidence of futility is, in part, pulled from an institution's legacy.⁸³ By examining policing's

75. See Butler, *supra* note 24, at 81. Butler writes:

Reform of police departments can save lives; when successful, it causes the police to kill fewer people. In some cases, therefore, even short-term limited reform is better than the alternative of not disturbing the status quo. At the same time, however, attempts to reform the system might actually hinder the more substantial transformation American criminal justice needs. . . . [M]y point is that "successful" reform efforts substantially improve community perceptions about the police without substantially improving police practices. The improved perceptions remove the impetus for the kinds of change that would actually benefit the community.

Id.

76. ADAM ELLIOTT-COOPER, *BLACK RESISTANCE TO BRITISH POLICING* (2021) (examining abolitionist arguments that police are beyond reform).

77. See GORZ, *supra* note 6.

78. See GORZ, *supra* note 6.

79. See GORZ, *supra* note 6.

80. See GORZ, *supra* note 6.

81. See, e.g., Olivia Murray, *Why 8 Won't Work: The Failings of the 8 Can't Wait Campaign and the Obstacle Police Reform Efforts Pose to Police Abolition*, HARV. C.R. - C.L. L. REV., <https://harvardcrcl.org/why-8-wont-work> [<https://perma.cc/8JSQ-E82V>].

82. *Id.*

83. *Id.* Murray comments:

Notably, during those 246 years, compromises, such as the Missouri compromise, attempted to satisfy both those who rejected slavery and those who demanded its retention. Ultimately, compromises failed to keep both parties satisfied and arguably, compromises acted as the glue to hold the institution of slavery together, prolonging the road to abolition. We might look at police reform through a similar lens: a compromise that, when implemented, will only

long history of racial discrimination; the repeated failure to achieve equitable policing despite the professionalization of police; the move toward community policing; and multiple lawsuits and uprisings against police violence, the futility of preserving policing is clear.⁸⁴ Harlem residents had become so frustrated with police violence and surveillance that:

[some out of] desperation, sought to wreak vengeance on police officers, responding to abuses with their own violence targeted at the city's protectors. White officers complained of having "missiles"—bricks, bottles, and rocks—thrown at them from tenement windows. The anonymity found behind apartment walls allowed some black people to challenge policemen's attacks.⁸⁵

The futility principle illustrates abolition's openness to abandoning the status quo to imagine a new future.⁸⁶ By acknowledging that the reform of certain institutions is futile, abolition paves a path for imagining new social configurations and possibilities.⁸⁷ It allows all of us to be free from the bondage of current structures and pays little deference to the institutions of the past.⁸⁸ The futility principle is animated by a desire to affirmatively build a new tomorrow that is truly liberatory.⁸⁹ Where there is evidence that discriminatory institutions are operating as intended and the institution is effective at preserving white supremacy, abolition frees us to abandon that institution.⁹⁰

C. Possibility

The final underlying principle I have observed in abolitionist organizing and theory is what I would like to call the principle of possibility.⁹¹ This principle is a forward-looking perspective on the world that centers what is possible while

suffice temporarily. As long as there are police, incidences of brutality and racist policing will persist, and change will be demanded once again. We've already repeated this cycle numerous times in the wake of the beating of Rodney King, the killing of Mike Brown, and other police violence that sparked unrest. The question is: when will enough be enough?

Id.

84. Thusi, *supra* note 51.

85. Marcy S. Sacks, *To Show Who was in Charge* "Police Repression of New York City's Black Population at the Turn of the Twentieth Century," 31 J. URBAN HIST. 799, 814 (2005).

86. ROBIN D.G. KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION 17 (2002).

87. *See id.* at 19-20.

88. *See id.* at 57.

89. *See id.* at 175-78.

90. *See id.* at 81.

91. *See id.* at 10-2.

remaining unburdened by the limits of what is.⁹² Possibility is optimistic and challenges abolitionists to be creative about the type of world we would like to build.⁹³ It goes beyond the question of what institutions and structures need to be eliminated and also recognizes we can build institutions that are free from the inequities of the past.⁹⁴ It allows us to strive for something better while being free from the constraints of the present. Abolitionists can abandon futile attempts at reform because they are optimistic about what is possible when we support alternative structures, such as community-based programs that seek to prevent violence and the provision of resources for people's needs.⁹⁵ It encourages us to embrace what prominent abolitionist, Thomas Mathiesen, has described as the "unfinished."⁹⁶

The principle of possibility encourages imagination and creativity in constructing the world reflecting our ideals.⁹⁷ The possibility principle is illustrated through abolitionist invitations to imagine a new future where the material needs of people are met and we are free from the constraints of white supremacy, surveillance, policing, carcerality, heteropatriarchy, ableism, predation, and deprivation. It is about striving for a world of our dreams unconstrained by our limited perceptions of what is. The principle of possibility encourages radical imagining and ideation.⁹⁸ It may find its inspiration in science fiction or fictional accounts of the world.⁹⁹ It encourages freedom dreams and recognizes the liberatory potential we can reach.¹⁰⁰

92. *See id.*

93. *See* Akbar, *supra* note 3, at 408. Akbar writes:

[T]he most imaginative voices within contemporary racial justice movements are fighting for much more than body cameras and police convictions. The movement is focused on shifting power into Black and other marginalized communities; shrinking the space of governance now reserved for policing, surveillance, and mass incarceration; and fundamentally transforming the relationship among state, market, and society.

Id.

94. Vision for Black Lives Project and Policy Platform 2020, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/> [<https://perma.cc/ZPF2-HFGV>].

95. *Id.*

96. THOMAS MATHIESEN, *THE POLITICS OF ABOLITION: ESSAYS IN POLITICAL THEORY* 13 (1974).

97. Akbar, *supra* note 3, at 473.

98. Akbar, *supra* note 3, at 473.

99. Akbar, *supra* note 3, at 473.

100. Akbar, *supra* note 3, at 473.

D. Applied to Vice Policing

The three principles I have identified, which underlie much of abolitionist thinking and praxis, can be applied to the history of vice policing in the United States. Vice crimes are often described as victimless crimes that, nevertheless, require criminal intervention because of the nature of the conduct involved.¹⁰¹ Historically, these crimes have included sex work, gambling (or the numbers game), narcotics consumption, sodomy, interracial relationships, and accessing abortions.¹⁰² Vice crimes fall into the category of crimes that are *malum prohibitum*, which are criminalized because they are supposedly affront to community morals.¹⁰³ The history of the racialized policing of vice reveals a legacy of policing to maintain racial and residential segregation.¹⁰⁴ The policing of vice was a tool for reinforcing stereotypes about Black people as being inherently predisposed to criminality.¹⁰⁵ It also shows policing is not solely or even primarily concerned with maintaining community safety for people in the policed community.¹⁰⁶ Policing has been used to reinforce racial boundaries and maintain the superior position of elites within a community.¹⁰⁷

Furthermore, looking to history provides guidance on both the legacy and futility of trying to reform this form of policing. This approach contextualizes the history and uncovers the continuities remaining in contemporary forms of policing.¹⁰⁸ Part IV illustrates the potential for centering legacy when examining contemporary policing. It also provides guidance on whether it is reasonable to expect reformist reforms to meaningfully change the nature of policing in the United States.¹⁰⁹ If policing vice was primarily concerned with maintaining racial subordination, there should be substantial evidence to support that it is capable of deviating from this norm. Without this evidence, the futility principle would

101. See CRIMINAL LAW, VICE CRIMES (2012) (ebook), <https://open.lib.umn.edu/criminallaw/chapter/12-3-vice-crimes> [<https://perma.cc/9QHL-LLZG>].

102. *Id.*

103. See James Edwards, *Theories of Criminal Law*, STAN. ENCYCLOPEDIA OF PHIL. (Aug 6, 2018), <https://plato.stanford.edu/entries/criminal-law> [<https://perma.cc/J2LH-DFX3>].

104. See Stephen Robertson, Shane White, Stephen Garton, & Graham White, *Disorderly Houses: Residences, Privacy, and the Surveillance of Sexuality in 1920s Harlem*, 21 J. HIST. SEXUALITY 443, 448 (2012).

105. See AMY ABSHER, *THE BLACK MUSICIAN AND THE WHITE CITY: RACE AND MUSIC IN CHICAGO, 1900–1967*, 30 (Univ. Mich. Press 2014).

106. See Chronopoulos, *supra* note 20 at 654; see also Gilmore, *supra* note 21, at 197–98.

107. See Chronopoulos, *supra* note 20, at 654.

108. See Kaba, *supra* note 22; see also Akbar, *supra* note 3, at 408.

109. See Akbar, *supra* note 3, at 428; see also Hasbrouck, *supra* note 23, at 214–15.

suggest that the abolition of vice policing is an option *if we are committed to eliminating institutions reproducing white supremacy*.¹¹⁰

Part III embraces the legacy and futility principles by providing a brief historical analysis of the policing of vice and its racialized nature in three U.S. cities—New York, Chicago, and Detroit—as well as an account of vice policing in other cities around the United States. This history reveals the racialized nature of vice policing and is instructive in understanding whether this form of policing should continue. The story of Jack Johnson is an illustration of this history.

II. THE RACIALIZED POLICING OF JACK JOHNSON'S VICES

John Arthur Johnson was born on March 31, 1878, a year after Union troops withdrew from the Confederacy as the son of parents who were born into slavery.¹¹¹ Johnson grew up in a poor neighborhood in the South, in Galveston, Texas.¹¹² John Johnson, more commonly known, as Jack Johnson, left school after five years of education and worked a series of odd jobs. He found work exercising horses after leaving school until he was eventually fired from this position.¹¹³ Johnson entered into professional boxing in 1898 in a fight billed as “The Texas State Middleweight Title.”¹¹⁴ Johnson found success as a boxer and went on to become the World Colored Heavyweight Champion, a title he successfully defended on 17 occasions.¹¹⁵

Despite his success as the Colored Heavyweight Champion, Johnson sought his sights on the World Heavyweight Champion title.

In the Jim Crow era, the heavyweight championship of the world—the pinnacle of achievement in the sport of boxing—was reserved for white men. After rising to the top ranks of the heavyweight division, Jack Johnson literally followed the champion Tommy Burns around the world and goaded him for years before Burns gave him a shot at the title.¹¹⁶

110. See Butler, *supra* note 24, at 90–91.

111. See GEOFFREY C. WARD, UNFORGIVABLE BLACKNESS: THE RISE AND FALL OF JACK JOHNSON 5 (2004).

112. *Id.* at 8.

113. *Id.* at 171.

114. *Id.* at 55.

115. *Id.*

116. Kevin R. Johnson, *The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance Dear Senator: A Memoir by the Daughter of Strom Thurmond*, by Essie Mae Washington-Williams & William Stadiem. New York: Regan Books, 2005. Pp. 223. \$24.95, 84 TEX. L. REV. 739, 749 (2006).

Tommy Burns was the champion, but Burns refused to fight Johnson.¹¹⁷ Jack Johnson followed Burns across Europe and eventually to Australia, taunting him in the press for a fight over two years.¹¹⁸ Burns eventually agreed to fight Johnson after promoters promised him a guaranteed \$30,000 for the fight.¹¹⁹ After 14 rounds, Jack Johnson prevailed and was declared the winner of the fight, becoming the World Heavyweight Champion—the first Black person to hold this title.¹²⁰ The fight occurred during the Progressive Era in the United States, as eugenics was a growing field of inquiry, and researchers sought to explain racial differences with biology and genetics.¹²¹ Eugenacists believed that white people were biologically superior to Black people as boxers because boxing requires mental strategy and patience.¹²² Johnson’s success against Burns was seen as an affront to the white race.¹²³ As a result, this fight sparked racial riots in several American cities.¹²⁴

Famous author Jack London called for a “Great White Hope” to reclaim the title from Johnson.¹²⁵ Former undefeated heavyweight champion Jim Jeffries came out of retirement with the purpose of serving at the great white hope. He stated, “I am going into this fight for the sole purpose of proving that a white man is better than a Negro.”¹²⁶ The fight was billed as the fight of the century, but Johnson dominated the fight and won. Race rights erupted following the fight as Johnson remained the undisputed world champion. Johnson defied the eugenists’ assumptions that Black people did not have the mental capacity to prevail over white people in the boxing ring.

117. WARD, *supra* note 111, at 111, 117.

118. WARD, *supra* note 111, at 499.

119. WARD, *supra* note 111, at 121.

120. WARD, *supra* note 111, at 131.

121. See Edwin Black, *War Against the Weak: Eugenics and America's Campaign to Create a Master Race* 78-9 (2003) (examining the rise of the eugenics movement as immigration into the United States was rising in the 19th century).

122. *Id.*

123. WARD, *supra* note 111.

124. WARD, *supra* note 111, at 144, 231.

125. Barak Orbach, *The Fight of the Century: On the Exploitation of Social Divides*, 14 NYU J.L. & LIBERTY 493, 502–03 (2020). Orbach writes:

Jack London wrote that “[n]o Armenian massacre could compare with the hopeless slaughter [in the arena] . . . Johnson was too big, too able; too clever, too superb, impregnable; he play-acted all the time.” Johnson’s crowning as the master of the heavyweight class created a challenge for whites who perceived his status as an insult to the alleged supremacy of the white man: there were no white boxers on the horizon who could potentially challenge Johnson.

Id.

126. Dave Zirin, *The Unforgiven: Jack Johnson and Barry Bonds*, INT’L SOCIALIST REV., July-Aug. 2007.

Outside the ring, Jack Johnson gained notoriety for his flamboyant lifestyle. Johnson was notorious for his victories over white men in the boxing ring. However, his romantic victories with white women might have brought him even more notoriety. Jack Johnson claimed that his first wife was Mary Austin, a Black woman who somehow broke his heart.¹²⁷ He was also connected to Clara Kerr, a Black sex worker who left him for his friend and stole jewelry from him.¹²⁸ Johnson briefly reconciled with Kerr before she left him again. After these experiences, Johnson stated “the heartaches which Mary Austin and Clara Kerr caused me led me to forswear colored women and to determine that my lot henceforth would be cast only with white women.”¹²⁹ And so he had a number of high-profile relationships with white women.

In fact, all three of Johnson’s documented marriages were with white women. At the same, Johnson was living during the Progressive Era, when there were moral panics about the vulnerability of White women to the seduction of Black men.¹³⁰ His conduct exacerbated racial anxieties about interracial relationships, and famous civil rights leader Booker T. Washington believed Johnson was making conditions worse for Black people. Nevertheless, on January 18, 1911, Johnson married Brooklyn socialite Etta Terry Duryea. Duryea struggled with depression and had unsuccessfully attempted suicide on two occasions by the time she married Johnson.¹³¹ Soon after marrying Etta, Jack Johnson opened the doors to his black and tan club, Café de Champion, in the Southside of Chicago in Chicago’s Black community in July 1912.¹³² The club was an opulent display of Black social progression and was located in the district where police had segregated vice activities. The club was a “black and tan” club because it was desegregated, welcoming both Black and white patrons.¹³³ Etta Duryea helped Jack manage the club and was in charge of its restaurant operations.¹³⁴ On September 11, 1912, Etta took a revolver and shot herself in an apartment above the club.¹³⁵ The club operators quietly brought her to the hospital while the club remained open for the rest of the evening.¹³⁶

127. WARD, *supra* note 111, at 22.

128. WARD, *supra* note 111, at 57, 61.

129. WARD, *supra* note 111, at 99.

130. WARD, *supra* note 111, at 285.

131. WARD, *supra* note 111, at 285.

132. WARD, *supra* note 111, at 285.

133. WARD, *supra* note 111, at 285.

134. WARD, *supra* note 111, at 285.

135. WARD, *supra* note 111, at 292-93.

136. WARD, *supra* note 111, at 292-93.

The orchestra is reported to have kept playing as she was carried, mortally wounded from a revolver, out of the building and taken to Provident Hospital. The shooting made the front page of the Tribune the next day, accompanied by a report of brutal domestic violence in the recent past at the hands of Johnson, the source of which was not clear.¹³⁷

Following Etta's suicide, Jack Johnson was accused of torturing his wife and of pushing her into her own suicide.¹³⁸ However, "In August, Etta had written a letter to her mother, placed in Johnson's safe, saying she was deeply distressed, having 'worried myself into the grave' and requesting to be buried in Chicago. 'Jack has done all in his power to cure me, but it is no use,' she wrote."¹³⁹

Etta's suicide brought additional scrutiny to the Cafe de Champion club.¹⁴⁰ "The Los Angeles Times ran a front page story headlined 'HOW JACK JOHNSON TORTURED HIS WHITE WIFE,' calling him a 'beast' and a 'black brute.' Etta's mother told the Times her daughter committed suicide in a moment of lucidness, her 'mental fog lifted' and realizing her life 'in all its hideousness.'"¹⁴¹ After Etta's suicide, a Minneapolis woman claimed that Johnson had "hypnotized" her daughter Lucille Cameron and was sexually involved with her.¹⁴² These accusations formed the basis for Johnson's criminal prosecution under the Mann Act, which prohibits crossing state lines for immoral purposes.¹⁴³ This law was passed during the Progressive Era in response to fears that white women were being seduced into sex work. Reformers worried about a perceived increase in "white slavery" following the increase of European immigration into the United States, with some white women entering in sex work.¹⁴⁴ These white sex workers often had Black clients which prompted racial and sexual anxieties that contributed to the policing of vice and sexuality to eliminate the "risks" that occurred when white women fraternized with Black men. Johnson was eventually arrested in October 1912, which resulted in the closure of the club. His prosecution was initially based on his relationship with Lucille Cameron.

137. Charles J. Johnson, *The short, sad story of Cafe de Champion—Jack Johnson's mixed-race nightclub on Chicago's South Side*, CHI. TRIBUNE (May 25, 2018), <https://www.chicago.tribune.com/history/ct-met-cafe-de-champion-jack-johnson-chicago-20180525-story.html> [<https://perma.cc/6CEP-8SF6>].

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

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However, Jack Johnson married Lucille Cameron on December 12, 1912, and Cameron refused to cooperate in the prosecution against her husband.¹⁴⁵ Given Cameron's refusal to cooperate with the prosecution, Johnson's Mann Act prosecution proceeded based on a past relationship he had with Belle Schreiber.¹⁴⁶ Belle was a sex worker in the Everleigh brothel, a brothel that was located in Chicago's Southside community that catered to an interracial clientele.¹⁴⁷

Belle Schreiber, 23, according to the press a "manicure girl and burlesque queen," testified against her former lover, helping to get him indicted for a 1910 jaunt that took the pair from Pittsburgh to Chicago, while presumably engaging in coitus. Johnson, confident of acquittal, claimed never to have taken Schreiber anywhere, noting besides that consensual sex between adults was legal. The boxer's certainty evaporated on May 13, 1913, when a clerk in the U.S. District Court in Chicago read the jury's guilty verdict.¹⁴⁸

Johnson's prosecution was based on his refusal to abide by the racial and sexual hierarchies of the time. His mixed-race, "black and tan" club was targeted and closed because it facilitated interracial relationships.¹⁴⁹ The club was in the Southside of Chicago, where the Black community developed and where the city had strategically pushed its vice district.¹⁵⁰ Vice was largely tolerated in this Black community unless it upset the dominant racial hierarchy by encouraging interracial liaisons.¹⁵¹ Johnson fled the United States following his guilty verdict and went into exile and traveled around Europe and South America.¹⁵² Johnson eventually turned himself into the United States government and served a reduced sentence of 10 months incarceration.¹⁵³

Jack Johnson's story illustrates how vice has been a site for policing race, gender, and sexuality.¹⁵⁴ As Professor Kevin R. Johnson has observed,

145. *Id.*

146. Denise C. Morgan, *Jack Johnson: Reluctant Hero of the Black Community*, 32 AKRON L. REV. 529, 551 (1999): Embarrassed by the failure of their first effort to prosecute Johnson, federal investigators redoubled their efforts "to secure evidence as to illegal transportation by Johnson of any other women for an immoral purpose." Their exhaustive investigation located Belle Schreiber, a White prostitute who was one of Johnson's former girlfriends.

147. *Id.*

148. *Id.*

149. CHI. TRIBUNE, *supra* note 137.

150. CHI. TRIBUNE, *supra* note 137.

151. CHI. TRIBUNE, *supra* note 137.

152. CHI. TRIBUNE, *supra* note 137.

153. CHI. TRIBUNE, *supra* note 137.

154. CHI. TRIBUNE, *supra* note 137.

Jack Johnson epitomized white America's worst fears about African-American men, including those memorialized in D.W. Griffith's famous 1915 film *Birth of a Nation*, which was released during Johnson's life.¹²⁹ The press depicted Johnson as a criminal who preyed on white women and had to be stopped, a drumbeat that undoubtedly influenced the U.S. government's decision to prosecute Johnson under the Mann Act. Race was at the center of the prosecution; the public demanded action to stop a famous African-American man from having the audacity to flaunt his relationships with white women.¹⁵⁵

Jack Johnson was a threat because he enjoyed interracial romantic relationships and created a social space that facilitated such relationships. Johnson's conviction was posthumously pardoned in 2020.¹⁵⁶ Jack Johnson is just one story, and the following section explains the history of vice policing in several U.S. cities.¹⁵⁷

III. POLICING OF VICE HISTORY

The policing of vice in New York City, Detroit, and Chicago during the early and mid-twentieth century provides fascinating accounts of how race, morality, and crime collided to reinforce social hierarchies. These three cities illustrate how police played an active role in maintaining racial segregation and constructing the myth that Black people are inherently criminal.¹⁵⁸ There have been many debates about whether morality should be a basis for criminalizing people's conduct from John Stuart Mill and Immanuel Kant to H.L.A. Hart and Lord Devlin.¹⁵⁹ There are also debates about whether these forms of conduct are, in fact, victimless.¹⁶⁰ Vice crimes intend to define the moral character of the community and express the

155. Johnson, *TEX. L. REV.*, *supra* note 116 at 761.

156. John Eligon & Michael D. Shear, *Trump Pardons Jack Johnson, Heavyweight Champion*, *N.Y. TIMES* (May 4, 2018) <https://www.nytimes.com/2018/05/24/sports/jack-johnson-pardon-trump.html> [<https://perma.cc/6LCR-D2YR>].

157. *See infra* Parts III and II.

158. *See* Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 *ANN. REV. CRIMINOLOGY* 261, 269 (2020); *see also* ABSHER, *supra* note 105, at 30; *see also* Robertson et al., *supra* note 104, at 447.

159. *See* James Allan, *Revisiting the Hart-Devlin Debate: At the Periphery and By the Numbers*, 54 *SAN DIEGO L. REV.* 423, 425–27 (2017); *see also* Vincenzo Ruggiero, *On Liberty and Crime: Adam Smith and John Stuart Mill*, 51 *CRIME, L. & SOC. CHANGE* 435, 436 (2008).

160. *See* Sally Stanford, *Vice or Crimes, or Both, Both*, <https://law.jrank.org/pages/12290/Stanford-Sally-Vices-or-Crimes-or-Both.html> [<https://perma.cc/RMP7-H8VY>]; Michelle Madden Dempsey, *Victimless Conduct and the Volenti Maxim: How Consent Works*, 7 *CRIM. L. & PHIL.* 11, 26 (2013) (examining whether vice crimes like prostitution are, in fact, victimless).

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community's disapproval about these actions.¹⁶¹ Vice crimes are notoriously difficult to prevent and have had a visible role in shaping most urban spaces.¹⁶²

A. New York City (1920–1929)

In New York City, vice crimes were highly visible in Manhattan's downtown neighborhoods.¹⁶³ The Tenderloin District was a well-known redlight district in central Manhattan where people could solicit the services of sex workers, engage in unlawful gambling, and dance in nightclub venues.¹⁶⁴ But, as property values increased, downtown businesses increasingly called on the police to remove vice from their neighborhoods.¹⁶⁵ During the early 20th century, in the Progressive Era, women's groups, evangelical Christians, and temperance groups were committed to eradicating vice,¹⁶⁶ which led to policing that slowly pushed vice out of New York's downtown neighborhoods and into upper Manhattan.

Like many northern cities, New York City was racially segregated with many Black people living in upper Manhattan and Harlem.¹⁶⁷ The Black population was dramatically increasing in New York City at this time as many Black people migrated from the South into northern cities.¹⁶⁸ As the police moved to eliminate vice from Manhattan's downtown areas, they pushed it further uptown to upper Manhattan and, eventually, Harlem.¹⁶⁹ Harlem then developed a reputation for vice, as a site for sex work, gambling, and interracial dancing.¹⁷⁰ During Prohibition, white Manhattanites traveled into Harlem to partake in the nightlife activities that had been effectively pushed out of their communities.¹⁷¹

161. See Andrew E. Taslitz, *Foreword: The Political Geography of Race Data in the Criminal Justice System*, 66 L. & CONTEMP. PROBS. 1, 10 (2003) (“‘Vice’ crimes are designed to contain a behavior that, when too widespread, can have ill social consequences.”).

162. See J. Kelly Strader & Lindsey Hay, *Lewd Stings: Extending Lawrence v. Texas to Discriminatory Enforcement*, 56 AM. CRIM. L. REV. 465, 468 (2019) (“Because ‘vice’ crimes such as lewd conduct are statutes so broadly and vaguely defined, the police have enormous discretion in deciding whether to arrest and whom to target.”).

163. See Stephen Robertson, *Harlem Undercover: Vice Investigators, Race, and Prostitution, 1910–1930*, 35 J. URB. HIST. 486, 486–87 (2009).

164. See Mara L. Keire, *The Committee of Fourteen and Saloon Reform in New York City, 1905–1920*, 26 BUS. & ECON. HISTORY 573, 573–74 (1997).

165. See *id.*

166. See *id.*; see also Jessica R. Pliley, *Troubling Habits, Poisons of Civilization, and State Growth*, 17 J. GILDED AGE & PROGRESSIVE ERA 412, 415 (2018) (reviewing LISA MCGIRR, *THE WAR ON ALCOHOL: PROHIBITION AND THE RISE OF THE AMERICAN STATE* (2016)).

167. See Robertson et al., *supra* note 104, at 448.

168. See Robertson et al., *supra* note 104, at 448.

169. See Robertson et al., *supra* note 104, at 463.

170. See Robertson et al., *supra* note 104, at 463.

171. Robertson, *supra* note 163, at 488.

During Prohibition, privacy also became more important as Harlem's cabarets, nightclubs, and speakeasies drew unprecedented numbers of whites. Those crowds were part of increasing numbers of Americans who purchased illegal liquor and drank in nightclubs and speakeasies as enforcing Prohibition overwhelmed law enforcement agencies. For whites, the particular attraction of Harlem's venues lay in their reputation for being unregulated and uninhibited, rooted in official tolerance of vice in [B]lack neighborhoods that predated Prohibition, and a growing fascination with African American culture.¹⁷²

Langston Hughes complained about these white vice tourists and stated that “[w]hite onlookers. . . must be made to remember that Harlem is not merely exotic, it is human. . . . It is not a spectacle and an entertainment, it is life; it is not chiefly cabarets, it is chiefly home.”¹⁷³ The increase in vice activities in Harlem was not without friction. A growing number of Black middle-class people were embracing what Professor Evelyn Higginbotham describes as “respectability politics,” which prioritized compliance with dominant middle-class social and moral standards in order to improve the perception and conditions of Black Americans.¹⁷⁴ Some Black Harlemites complained that police had neglected their communities and failed to provide them with the protection from criminal elements.¹⁷⁵ Other community members complained that police had profiled and harassed them and used the presence of vice to justify their surveillance:

[P]atrolmen and their superiors did not pay much attention to crime; instead they looked the other way, received payoffs from organized crime, performed haphazardly, and tolerated conditions that would be unimaginable in affluent areas. On the other hand, patrolmen demanded deference and respect from African American civilians and routinely demeaned and brutalized individuals who appeared to be challenging their authority. On top of these problems, the incidence of crime in Harlem increased. In response, Harlem residents and their leaders appealed to the city administration for better police protection.¹⁷⁶

The New York police actively participated in vice by soliciting bribes from vice venues and adopting a policy of effectively tolerating vice, so long as it

172. Robertson et al., *supra* note 104, at 463.

173. W. E. B. Du Bois, *Harlem*, CRISIS (September 1927).

174. *Id.* at 443.

175. Chronopoulos, *supra* note 20, at 654.

176. Chronopoulos, *supra* note 20, at 654.

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remained within Black communities.¹⁷⁷ The Committee of Fourteen (COF) was an antivice group committed to investigating and eradicating vice from New York.¹⁷⁸ The COF racialized the boundaries where vice occurred by prohibiting vice activities in white communities and ensuring that everyone complied with the boundaries of residential segregation.¹⁷⁹

The Committee of Fourteen, established in 1905 to combat vice in New York City, spent years fighting against the clubs that catered to white and black patrons. They made countless visits to dozens of night spots, repeatedly denouncing places that “disregarded . . . [a]ll laws of common decency and order.” Investigators referred to “black and tan joints” as “dance hall[s] of the lowest type,” where “niggers” and “coons” mingled with white guests. On the other hand, “nigger dump[s]” that served an exclusively black clientele generally received no complaints from committee investigators.¹⁸⁰

Most of the vice establishments in Harlem were owned by white owners and had informal relationships with the police that facilitated their continued existence.¹⁸¹ After successfully pushing visible vice crimes into Black communities, the New York police maintained this push by profiling public spaces.

Furthermore, the existence of vice in Black communities reinforced stereotypes about Black morality and sexuality. New York police officers justified the profiling and surveillance of Black communities because of the presence of vice.¹⁸² The presence of vice in these communities, then again reinforced the perception that Black people were predisposed to criminal activities.¹⁸³ The fact that the police were the ones who effectively pushed vice activities into Black communities did not mitigate this perception. Police officers often described Black people as being predisposed toward vice, and Black women, in particular,

177. Robertson et al., *supra* note 104, at 463; Chronopoulos, *supra* note 20, at 652.

178. See Robertson, *supra* note 163, at 492 (detailing the undercover investigations of COF investigator David Oppenheim. Oppenheim’s investigations at vice establishments fueled the COF’s accusations about police involvement in vice: “Staff talked to him about how their establishments were being run, how their employees paid off police, their efforts to beat prosecutions, and what was happening in the neighborhood’s other saloon and cabarets.”).

179. See Robertson, *supra* note 163, at 488–90.

180. Marcy S. Sacks, *To Show Who was in Charge*” *Police Repression of New York City’s Black Population at the Turn of the Twentieth Century*, 31 *J. URBAN HIST.* 799, 803 (2005). This phenomenon was also occurring in New York.

181. See Stephen Robertson, *Digital Mapping as a Research Tool: Digital Harlem: Everyday Life, 1915–1930*, 121 *AM. HIST. R.* 156, 164–65 (2016).

182. See Hinton & Cook, *supra* note 158, at 269; see also ABSHER, *supra* note 105, at 30; see also Robertson et al., *supra* note 104, at 447.

183. See ABSHER, *supra* note 105, at 30.

were described as being predisposed toward promiscuity and unworthy of police protection.¹⁸⁴ Professor Margaret S. Sacks has described the contrast between how Black women in the sex trade were perceived as compared to their white peers:

According a New York City police officer, black women’s “native indolence” and “lewdness” made “the colored woman a free and easy one in her habits.” Blacks’ migration from the South had disastrous results; in the urban setting, black women “took to prostitution for a living, preferring naturally that mode of earning a living to entering our kitchens. . . . [Th]ey set themselves up with an eye to the barbarous, and when they have reached the lowest grade, are filthy and beastly beyond belief.” Within this model, black women functioned as the aggressors, not the victims, in the sex trade. Whereas innocent and virginal white women in New York faced the constant danger of being corrupted by the evil designs of mendacious men, morally bankrupt black women embodied the worst of degeneracy by subverting both gender conventions and standards of sexual decorum. Their vigorous pursuit of the degradation of unsuspecting white men represented a profound threat to the city. By the end of the nineteenth century, white slaves had become tragic figures in American consciousness. That sympathy by no means extended to their black sisters.¹⁸⁵

Black women were not afforded the presumption of victimhood like white women, and they are treated as the pursuers of white men whom they could corrupt.¹⁸⁶

Accordingly, the presence of vice legitimated the need for heightened surveillance of Black communities.¹⁸⁷ Black Harlemites often complained about the intense policing.¹⁸⁸ James Baldwin noted the intensity of the police presence in Harlem as experienced by the sex worker or the businessperson.¹⁸⁹ Police officers engaged in frequent raids and surveillance of Black-owned establishments while tolerating white-owned vice businesses.¹⁹⁰ Despite the police tolerance of vice in Black Harlem, the Committee of Fourteen remained committed to eliminating

184. Nora C. Krinitzky, *The Politics of Crime Control: Race, Policing, and Reform in Twentieth-Century Chicago* 200-01, 259 (2017) (Ph.D. dissertation, University of Michigan) (ProQuest).

185. Sacks, *supra* note 180, at 802. This phenomenon was also occurring in New York.

186. Sacks, *supra* note 180, at 802.

187. See Robertson, *supra* note 163, at 494 (describing how the COF and police increased surveillance in the later 1920s after it “had lost the ‘degree of control’ over Harlem that it had achieved in the previous decade”).

188. See Robertson et al., *supra* note 104, at 463.

189. BALDWIN, *supra* note 1, at 65–66.

190. Chronopoulos, *supra* note 20, at 655.

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vice there. After successfully eliminating vice in downtown Manhattan's now white neighborhoods, the Committee of Fourteen initially ignored the continued vice occurring in Harlem. Some researchers argue the Committee was unable to successfully investigate vice in Harlem because of the racially segregated nature of vice in the city and white investigators' inability to establish trust with Black community members.¹⁹¹ The Committee, however, eventually managed to successfully surveil the Harlem community by hiring a Black undercover agent, Raymond Claymes, to pose as a sex work client and nightlife enthusiast in 1928.¹⁹² Claymes documented the various vice venues in Harlem, and the Committee published a lengthy report based on his investigation.¹⁹³ The report led to the closure of fifty-nine privately-operated establishments despite the police's initial unwillingness to address vice in Harlem.¹⁹⁴

However, the motivation to address vice in Harlem was in part about maintaining the dominant racial hierarchy. The Committee was concerned about reports of Black and white people intermingling within Harlem's nightlife establishments and warned that "serious race riots" would occur if the racial intermingling in Harlem's vice establishments continued.¹⁹⁵

Interracial sex proved to be among the most contentious issues in turn-of-the-century New York City, directing reformers' spotlight onto black participants. The specter of sexual relations between black men and white women raised the particular ire and concern of New York's white population. Outrage at "mixed prostitution" and its demoralizing influence on the "character and reputation of our own homes, and our own children," drove the efforts to eliminate "black and tan" clubs, which served an interracial clientele.¹⁹⁶

The concern that sex workers would indiscriminately have sex with clients without regard for the racial and social hierarchy prompted the hiring of Raymond Claymes. W.E.B. Du Bois critiqued the Committee's racial motivations.¹⁹⁷ It was the maintenance of the racial hierarchy that finally led to the policing of vice crimes in Harlem.

This story of how residential segregation contributed to the concentration of vice in Black neighborhoods is replicated in several other U.S. cities.¹⁹⁸

191. Robertson, *supra* note 163, at 487.

192. Robertson, *supra* note 163, at 487.

193. Robertson, *supra* note 163, at 487.

194. Robertson, *supra* note 163, at 499.

195. Robertson et al., *supra* note 104, at 463.

196. Sacks, *supra* note 180, at 803.

197. Robertson, *supra* note 163, at 489–90.

198. See Robertson et al., *supra* note 104, at 447.

[C]ities such as Chicago, Detroit, Cleveland, and Pittsburgh, the closing of red light districts turned the areas in which [B]lacks lived into centers of vice, which became overcrowded as waves of migrants arrived from the South. These were neighborhoods too where [B]lacks controlled few of the businesses; they had to range across the city in search of work and operate businesses, including venues that offered privacy for a price, in their residences.¹⁹⁹

The Manhattan police initially deliberately pushed vice into Harlem and profited from this push by entering into informal arrangements and bribes with white owners of vice establishments.²⁰⁰ The presence of vice in Harlem then provided police with a basis for surveilling Black communities and treating them as inherently criminal.²⁰¹ Although the Committee of Fourteen pushed the police to actively work on eradicating vice from Harlem in 1929, the pattern of racially segregating vice, containing it in Black communities, and using its presence to racially profile and surveil Black communities continued and remains a feature of vice policing in Harlem.²⁰²

B. Chicago (1900–1920)

The history of vice regulation in Chicago reflects many of the same patterns from New York City. In Chicago, vice-based activities were initially in central parts of Chicago in the Levee.²⁰³ “As Chicago’s red-light district, the Levee emerged in the 1870s on Wabash Street close to the downtown business district—the Loop. It was a red-light district notorious for its saloons, dance halls, brothels, and displays of sexuality that were often interracial, cross-class, public, and commercial.”²⁰⁴ As industry grew in Chicago, however, the concerns of railroad companies and the owners of increasingly valuable property made the elimination of vice at the Levee a priority for Progressive Era reformers.²⁰⁵ Accordingly, the Chicago police engaged in a deliberate campaign to push the presence of vice

199. See Robertson et al., *supra* note 104, at 447.

200. Chronopoulos, *supra* note 20, at 652, 655.

201. See Robertson, *supra* note 163, at 494.

202. Robertson et al., *supra* note 104, at 446. Arguably, one of the most notable examples of vice policing was the aggressive that occurred during the “War on Drugs,” which contributed to the incarceration and heightened policing of Black and Brown communities. See MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010).

203. See ABSHER, *supra* note 105, at 20.

204. See ABSHER, *supra* note 105, at 20.

205. Nora C. Krinitzky, *The Politics of Crime Control: Race, Policing, and Reform in Twentieth-Century Chicago 46–48* (2017) (Ph.D. dissertation, University of Michigan) (ProQuest).

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crimes outside of Chicago's white communities into Chicago's Black Belt.²⁰⁶ The Black Belt was "located between the southern tip of downtown—known as the 'South Loop'—and the Hyde Park neighborhood, home of the University of Chicago. This section would almost double in population from 44,000 in 1910 to about 80,000 people in 1920, and it would increase another threefold to 234,000 by 1930."²⁰⁷ During the period of Black migration into northern cities, Black people were concentrated into Chicago's Southside because of residential segregation, racial covenants that prohibited Black people from purchasing property in certain communities, and white violence against Black people who attempted to integrate white neighborhoods.²⁰⁸

Chicago leaders exploited this racial segregation. There was a general consensus that there was no way to fully eradicate vice from Chicago. Instead, Chicago police began to deliberately push vice into Chicago's burgeoning Black communities to protect white property values and interests.²⁰⁹

Chicago leaders were turning more toward using physical segregation as a tool to contain the city's booming "vice" businesses and the growing African American population within the same area of the city. Rather than ending vice, civic leaders pushed brothels, saloons, dance halls, and gambling establishments into the least politically powerful part of the city: the emerging South Side "black belt."

The police segregated vice into Black communities by closing venues where vice crimes were occurring in the Levee and engaging in a pattern of discretionary policing that pushed these establishments further South into the Southside Black communities.²¹⁰

As a result, the concentration of vice in Black communities was used as a justification to police Chicago's Black communities more aggressively.²¹¹ Like in New York City, the presence of vice activities reinforced the stereotype of Black criminality and spatially reinforced negative perceptions about Black people.²¹² The Chicago police profiled Black residents in public spaces and harassed community members on suspicion that they were breaking the law and engaging in vice.²¹³ The concentration of vice in Black communities contributed to the

206. See ABSHER, *supra* note 105, at 20–21; see also Krinitsky, *supra* note 184, at 46, 48–52.

207. See ABSHER, *supra* note 105, at 9.

208. See ABSHER, *supra* note 105, at 21.

209. See ABSHER, *supra* note 105, at 22; see also Krinitsky, *supra* note 184, at 50.

210. See ABSHER, *supra* note 105, at 19; see also Krinitsky, *supra* note 184, at 50, 52.

211. See ABSHER, *supra* note 105; see also Krinitsky, *supra* note 184, at 352–53.

212. See Krinitsky, *supra* note 184, at 31–32.

213. See Krinitsky, *supra* note 184, at 52, 123–25.

introduction of vice squads that closely regulated and policed vice in Black communities.²¹⁴ Vice patrols were used to regulate the moral, sexual, and racial order.²¹⁵ There was concern, however, that the vice squads were ineffective and were instead working in concert with Chicago's vice establishments.²¹⁶

The Vice Commission, a commission created by the mayor of Chicago to investigate vice in the city, in 1910 conducted a comprehensive report on vice in Chicago and claimed the Chicago police had adopted a policy of tolerating vice in Chicago's Black communities.²¹⁷ The Vice Commission's Report claimed vice was "within or near the settlements of colored people. . . . Where ever [sex workers], cadets, and thugs were located among white people and had to be moved for commercial and other reasons, they were driven to undesirable parts of the city, the so-called colored residential sections."²¹⁸ The vice from the Levee was eventually allocated to the Southside Stroll, where "whites and Blacks took part in the music, dancing, theater, [sex work], and other entertainments available in the area, making the Stroll, just as it had made the Levee, a target of both Black and white reformers."²¹⁹

The increasing occurrence of "[B]lack and tan clubs," where Black and white people socialized and intermingled, prompted additional policing of Chicago's vice establishments.²²⁰

The existence of the racial mixing in the "[B]lack and tan" cabarets, where musicians such as Louis Armstrong played, caused "frequent and heated protests," according to the commission. "Although mixed couples constitute somewhat less than 10 per cent of the patronage," the study reported, "this mingling is used" by critics "to characterize all of the association there." Both whites and Blacks frequented the clubs and the commission reported that members of these groups would leave their local areas and travel throughout the city to visit the establishments. The public encouraged the police to arrest customers engaged in racial mixing. Unable to raid clubs to arrest interracial couples, because mixed couples were not breaking the law, the police used liquor violations instead to shut down the cabarets. When police raided the clubs, they arrested the mixed

214. See Krinitzky, *supra* note 184, at 125–26.

215. See Krinitzky, *supra* note 184, at 47–49.

216. See Krinitzky, *supra* note 184, at 47–49.

217. See Krinitzky, *supra* note 184, at 47–49.

218. ABSHER, *supra* note 105, at 21.

219. ABSHER, *supra* note 105, at 23.

220. See ABSHER, *supra* note 105, at 31; *see also* Krinitzky, *supra* note 184, at 207–10.

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couples and allowed white-only groups to go free. The injustice of the arrests incensed African Americans in the city.

The policing of vice in Chicago continued to follow a pattern of racial segregation where police intervened when vice undermined racial segregation and the preexisting racial hierarchy.

C. Detroit (1966-1969)

The history of policing vice in Detroit reflects a similar account of maintaining a hierarchy based on race, sex, and morality. Vice crimes were initially found throughout downtown Detroit.²²¹ Black residents, however, were unable to eat or drink in many of Detroit's racially segregated communities.²²² White establishments refused to serve Black patrons.²²³ During Prohibition, there was a growth of "blind pig" establishments, which were unlawful establishments serving alcohol within Black neighborhoods.²²⁴ The production and sale of alcohol during the Prohibition era was a core feature of blind pig establishments.²²⁵ Blind pigs were often the sites for other forms of illicit activities, including the sale of narcotics, gambling, and sex work.²²⁶ Police generally tolerated the presence of blind pig establishments in Black communities, with some officers obtaining bribes and engaging in corruption.²²⁷ Like in New York and Chicago, vice was tolerated as a necessary evil as long these activities remained segregated in Black communities.²²⁸ These blind pig establishments continued to exist throughout the 1960s.

Racial and residential segregation had contributed to the growth of blind pigs in Detroit's Black neighborhoods, and the police used their presence as a justification for profiling and harassing Black people.²²⁹ Blind pig establishments provided officers with a justification to surveil Black communities.²³⁰ Detroit police officers conducted frequent raids of blind pig establishments, which were

221. See Derek Bower Allen, *From the Ghetto to the Joint: A Study of Black Urban Survival Crime in Detroit, 178–79* (1989) (Ph.D. dissertation, Michigan State University); see also Holly Marie Karibo, *Reading the Archives of the Illicit: Gender, Labour, and Race in Helen McGowan's Motor City Madam*, 22 *LEFT HIST.* 63 (2018).

222. See Allen, *supra* note 221, at 164–68.

223. See Allen, *supra* note 221, at 164–68.

224. See Allen, *supra* note 221, at xi, 236.

225. See Allen, *supra* note 221, at xi, 236.

226. See Allen, *supra* note 221, at xi, 236.

227. See Allen, *supra* note 221, at xi, 236.

228. See generally Krinitsky, *supra* note 184.

229. See generally Krinitsky, *supra* note 184.

230. See Allen, *supra* note 221, at xi, 179.

primarily in Detroit's Black neighborhoods.²³¹ The Detroit police frequently raided blind pigs²³² although officers were also soliciting bribes from them at the same time. While some Black residents complained about the presence of vice activities in their communities, many Black residents complained about the frequency of the police raids and the harassment of Black community members.²³³ The surveillance was not intended to protect communities from harm; it provided officers with an excuse to interfere with the daily activities of Black people and was a way to keep the community "in check."²³⁴ A federal civil rights official warned that the frequent raids of blind pigs in Detroit was contributing to racial tensions in the city.²³⁵ During the raids, police would aggressively search everyone who was present and arrest Black people they suspected were engaging in vice.²³⁶

The Detroit Uprising of 1967 illustrates how the policing of vice was a pathway for police violence and the surveillance of Black communities.²³⁷ The office of the United Community League for Civic Action, above the Economy Printing Company, at 9125 12th Street, was hosting a party for two Black Vietnam War veterans who had just returned home from the war.²³⁸ The police planned to conduct a raid of the blind pig establishment on July 23, 1967. When the police arrived, there were eighty-five patrons there, and the police arrested everyone and placed them in police vehicles.²³⁹ As the officers were arresting this large group of Black people who had been celebrating the return of a veteran, community members became frustrated.²⁴⁰ They began throwing items at the police, and the incident prompted a community uprising against the prevalence of police violence and surveillance.²⁴¹ The heightened policing of blind pigs had already been

231. See Sidney Fine, *Violence in the Model City: The Cavanagh Administration, Race Relations, and the Detroit Riot of 1967*, 155–56 (1989).

232. *Id.*

233. See Fine, *supra* note 231, at 101, 155.

234. See Fine, *supra* note 231, at 155.

235. See Fine, *supra* note 231, at 155.

236. See Fine, *supra* note 231, at 156; see also Tom Parmenter, *Breakdown of Law and Order: A Firsthand Account in the Words of Detroit's Ghetto Dwellers*, 4 TRANS-ACTION NEW BRUNSWICK N.J. 13 (1967).

237. Darlene C. Conley, *Driven and Pursued: Black Migrant Detroit an Analysis of the Neighborhoods Black Bottom and Paradise Valley, 1916–1968*, 67, 84 (May 2016) (M.A. thesis, Morgan State University).

238. SIDNEY FINE, *VIOLENCE IN THE MODEL CITY: THE CAVANAGH ADMINISTRATION, RACE RELATIONS, AND THE DETROIT RIOT OF 1967* 155–56 (1989).

239. F. Thomas Schornhorst & Joseph Schraibman, *The Algiers Motel Incident*, 44 IND. L.J. 118 (1968) (reviewing JOHN HERSEY, *THE ALGIERS MOTEL INCIDENT* (1968)); see also Tom Parmenter, *Breakdown of Law and Order*, 4 TRANS-ACTION NEW BRUNSWICK N.J. 13 (1967).

240. See Parmenter, *supra* note 236, at 13–14.

241. See Parmenter, *supra* note 236, at 13–14.

contributing to racial tensions in the city.²⁴² Many Black residents felt they were being targeted with police harassment and they should be left alone.²⁴³

D. Other Cities

Many other cities in the United States have similar histories of racialized vice policing. In Portland, the police pushed vice into Black neighborhoods and aggressively policed these communities.²⁴⁴ In Kansas City, police racially profiled Black communities for vice and relied on and continue to rely on vice squads to actively surveil Black community members.²⁴⁵ Recently, the Kansas City police department adopted an emblem portraying a Black sex worker and racially ambiguous pimp to commemorate their legacy of policing vice in the city.²⁴⁶ This emblem demonstrated the police's racialized perception of vice.²⁴⁷ The concentration of vice in Black communities reinforced racialized understandings of criminality and provided police with a justification for entering Black communities.²⁴⁸ This notion of criminality and Blackness is important within legal doctrine as the U.S. Supreme Court has recognized that the label of a "high crime" area is a justification for heightened policing.²⁴⁹ Police have played an active role in constructing crime by pushing it into certain communities, tolerating its existence, exploiting it through corruption and profit, and then using it as justification to arrest and harass Black people.

242. See Parmenter, *supra* note 236, at 13–15, 19.

243. See Parmenter, *supra* note 236, at 13–15, 19.

244. See generally Katherine Eileen Nelson, "On the Murder of Rickey Johnson": The Portland Police Bureau, Deadly Force, and the Struggle for Civil Rights in Oregon, 1940-1975 (2018) (M.A. thesis, Portland State University) (ProQuest); see also Tim Dickinson, *RS Reports: Progressive City, Brutal Police*, ROLLING STONE (Jul. 17, 2020), <https://www.rollingstone.com/politics/politics-features/portand-oregon-police-brutality-history-1027677> [<https://perma.cc/P343-BX7B>].

245. See VICE NEWS, *Kansas City is Trying to Reform its Police Department, but Black People Keep Getting Killed*, YOUTUBE (Aug. 28, 2020), <https://www.youtube.com/watch?v=sTHGE3M1r5g> [<https://perma.cc/86KH-XQ3G>].

246. See Monty Davis, *Kansas City Police Cancel "Offensive" Vice Squad Challenge Coin*, KANSAS CITY STAR (May 18, 2020) <https://www.kansascity.com/news/local/crime/article251239804.html>; see also *Commemorative Police Coin Criticized for Offensive Design*, AP NEWS (May 9, 2021), <https://apnews.com/article/michael-brown-police-4cf8ad2a9db140c74846595649f23ed9> [<https://perma.cc/7YSH-L8RP>].

247. See Davis, *supra* note 246; see also AP NEWS, *supra* note 246.

248. See URBAN LEAGUE OF GREATER KANSAS CITY, *CHARTING THE PATH FORWARD: IS EQUITY ENOUGH?* (2021).

249. See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000).

IV. HOW THE HISTORY OF VICE ILLUSTRATES LEGACY AND FUTILITY PRINCIPLES

The historical snapshot into the policing of vice in this Article provides a snippet of the legacy of racialized policing in these cities.²⁵⁰ It demonstrates that the legacy of policing Black communities, particularly as it relates to vice, is not primarily about protecting the community from harm or preserving the public morality of the community.²⁵¹ Rather, the existence of vice in these communities justified increased surveillance and violent encounters by the police.²⁵² The police were unable to meet the demands of community members who asked for regulation of the nuisance aspects of vice conduct.²⁵³ The presence of vice provided an avenue for police to justify their heightened presence in Black communities.²⁵⁴ Black people were presumed to be predisposed to engage in vice and worthy of aggressive police intervention.

Accordingly, the racialized history of vice policing reveals the police were motivated by factors other than service and protection.²⁵⁵ They were interested in policing the boundaries between Black and white communities in order to maintain racial segregation.²⁵⁶ The police were further motivated by an interest in containing vice to Black communities and away from white ones. By containing the vice activities to Black communities, they were acknowledging the futility in trying to eliminate vice activities.²⁵⁷ Police were pushing and containing vice activities into segregated Black communities and ensuring the activities would not spill over to surrounding communities.²⁵⁸ The history of vice policing also demonstrates the desire for increased surveillance of Black communities.²⁵⁹ The presence of vice was a justification for aggressive policing in these areas.²⁶⁰ It also reinforced the perception that Black people were predisposed toward crime.²⁶¹ The surveillance was used to racially profile and subject Black people to harassment. The underlying criminal conduct was allowed to continue while the policing of the conduct gave police a pathway into

250. See generally ABSHER, *supra* note 105.

251. See generally ABSHER, *supra* note 105.

252. See generally ABSHER, *supra* note 105.

253. Robertson et al., *supra* note 104, at 443.

254. Robertson et al., *supra* note 104, at 443.

255. Robertson et al., *supra* note 104, at 443.

256. *Id.*

257. See Robertson, *supra* note 163, at 499.

258. *Id.*; see also ABSHER, *supra* note 105, at 19; see also Krinitzky *supra* note 184, at 50, 52.

259. See ABSHER, *supra* note 105, at 19; see also Krinitzky *supra* note 184, at 50, 52.

260. Krinitzky *supra* note 184, at 50, 52.

261. See ABSHER, *supra* note 105, at 30.

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Black communities.²⁶² This Part discusses how the policing of vice was focused on segregation, containment, and surveillance, rather than addressing harm in Black communities.

A. Segregation

The first purpose of vice policing was maintaining racial segregation in these cities. Police ensured the vice-related activities would follow similar patterns of racial segregation by pushing those activities into Black communities.²⁶³ Cities that experienced this vice-separating action were and are highly segregated by race with Black residents residing in communities distinct from those of white residents.²⁶⁴ The police and politicians in these cities appeared to acknowledge that vice could never be completely eradicated from a city.²⁶⁵ Accordingly, the police embraced a strategy of eliminating vice activities from white neighborhoods by deliberately pushing them into Black communities.²⁶⁶ In Manhattan, the police pushed vice from downtown Manhattan's Tenderloin neighborhood into Harlem.²⁶⁷ They redirected the activities, and, at times, were collaborators in them, by soliciting bribes and tolerating them so long as they were consistent with the expectations of the police.²⁶⁸

Police adopted strategies to maintain this residential segregation, including racial profiling of public spaces.²⁶⁹ Police ensured that the people who crossed racial boundaries and entered into communities where they did not look like they belonged were stopped and subjected to police questioning.²⁷⁰ Laws that

262. See ABSHER, *supra* note 105, at 19; see also Krinitzky *supra* note 184, at 50, 52.

263. Krinitzky *supra* note 184, at 50, 52.

264. See ABSHER, *supra* note 105, at 19; see also Krinitzky *supra* note 184, at 50, 52.

265. Krinitzky *supra* note 184, at 50, 52.

266. Krinitzky *supra* note 184, at 50, 52.

267. See Marcy S. Sacks, *To Show Who was in Charge* "Police Repression of New York City's Black Population at the Turn of the Twentieth Century," 31 J. URBAN HIST. 799, 802 (2005): 447 (In "cities such as Chicago, Detroit, Cleveland, and Pittsburgh, the closing of red light districts turned the areas in which blacks lived into centers of vice, which became overcrowded as waves of migrants arrived from the South.").

268. See, e.g., Chronopoulos, *supra* note 20, at 649–52, 658–59 ("A Manhattan Grand Jury formed to investigate the police in Harlem concluded that the entire tenth division of the NYPD did not enforce gambling and vice laws and that its members probably took part in these operations.").

269. See, e.g., Chronopoulos, *supra* note 20, at 649–52, 658–59.

270. Chronopoulos, *supra* note 20, at 646–47, 659–60. One New Yorker wrote: "[T]ransition areas, . . . are far from exempt. The white people are moving out but many of them are still here; the police are on the prowl for suspected Negroes, and some white family can be depended upon to sound the alarm that a Negro is lurking in the streets near their home.

prohibited vagrancy and loitering provided a legal basis for police to monitor which people belonged in different spaces.²⁷¹ Black people were often profiled as potentially engaging in vice and arrested for loitering or for being vagrants when they did not comply with the racial expectations of the public spaces they entered.²⁷²

The policing of vice preserved racial segregation and the separation of vice from white communities. White residents were permitted to occasionally venture into Black communities to indulge in vices, but visible forms of vice were not permitted in white areas.²⁷³ This form of policing maintained the property interests of white communities by ensuring they would not be decreased because of visible crimes.²⁷⁴ It was a form of redline policing.²⁷⁵ The police were preserving racial segregation by protecting white property interests and permitting degradation of Black communities.²⁷⁶

Any Negro who happens to be walking, or riding, for that matter, down that street is apt to be in for it. For this reason, I always keep my press card in my hand when I am driving home late at night. I have been forced to pull my car to the curb by policemen four times in the past two years.” Chronopoulos, *supra* note 20, at 659-60 (quoting LOUIS E. LOMAX, *THE NEGRO REVOLT* 59-60 (1963)).

271. See, e.g., Risa Goluboff, *Before Black Lives Matter Vagrancy laws plagued black Americans for decades. Then the civil rights movement happened*, SLATE (Nov. 6, 2016), <https://slate.com/news-and-politics/2016/03/vagrancy-laws-and-the-legacy-of-the-civil-rights-movement.html> [<https://perma.cc/JL2X-RACP>] (“[V]agrancy laws presumed that everyone had their proper place and that the criminal law should help keep them all there. The vagrancy law became the go-to response to anyone who threatened to move ‘out of place’ . . . whether that be socially, culturally, politically, racially, sexually, economically, or spatially.”).
272. RISA GOLUBOFF, *VAGRANT NATION: POLICE POWER, CONSTITUTIONAL CHANGE, AND THE MAKING OF THE 1960S* 44 (2016) (“Complaints about police harassment of, and discrimination against, African Americans were already prominent in many cities . . . Where law enforcement presented itself as fighting vice and petty crime that happened to be in a black neighborhood, the NACLU saw racial prejudice “against a seemingly helpless minority.”).
273. See ABSHER, *supra* note 105, at 23, 27, 29.
274. See ABSHER, *supra* note 105, at 19; see also Krinitsky *supra* note 184, at 50, 52.
275. See Krinitsky, *supra* note 184, at 83, 208. Redlining is a term used to refer to “many types of historic race-based exclusionary tactics in real estate -- from racial steering by real estate agents . . . to racial covenants in many suburbs and developments.” Candice Jackson, *What is Redlining?*, N.Y. TIMES (Aug. 17, 2021) <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>. In the policing context, “[p]olice and other law enforcement officials played an active role in the association of blackness and criminality as they exercised their discretion to make disproportionate black arrests and direct criminal enterprises into black neighborhoods. Police failure to stop the operation of white-owned vice enterprises and the lack of arrests in cases of white racial violence . . . further decriminalized white racial violence in the same moment.” Krinitsky, *supra* note 184, at 83.
276. See Krinitsky, *supra* note 184, at 38–39, 42–43 (noting how police practices became increasingly discriminatory starting in the early twentieth century and onward: “Police encouragement of

B. Containment

Containing vice within Black areas was a primary concern for police.²⁷⁷ Police were able to maintain the racial segregation that vice policing required through strategies of containment. Containment was concerned with ensuring vice remained within Black communities and occurred within contained areas.²⁷⁸ The police monitored the boundaries of Black communities and ensured there was minimal spillover into white communities.²⁷⁹ Because vice was subjected to heightened surveillance, visible forms of vice were not allowed to expand beyond Black areas.

The focus on containment of vice recognized the inability to fully eradicate it and allowed for the negative aspects of vice to affect the property values and community character of Black communities.²⁸⁰ Vice was tolerated, and police even played a role in facilitating and supporting vice in some instances, with multiple accounts of police corruption being reported.²⁸¹ Nevertheless, vice was only permissible so long as the property interests of white elites were not compromised in the process.²⁸² Containment of vice was a strategy that worked in concert with the maintenance of segregation. It was a way to maintain racial segregation and ensure that the harms of vice were limited to those who were lowest on the social hierarchy.²⁸³ Containing vice in Black communities contributed to community degradation and reinforced negative perceptions about Black people. For example, in Chicago, “[c]ivic leaders knew that they could not end vice, and so they turned to segregation as a way of managing the city. The choice to physically segregate African Americans and vice from the rest of Chicago, therefore, inextricably linked race and vice in the minds of the majority of Chicagoans.”²⁸⁴

illegal enterprises and underpolicing in black neighborhoods, disproportionate black arrests, and inflated statistics on black crime all contributed to the growing association of blackness and criminality and the decriminalization of white racial violence.”).

277. See ABSHER, *supra* note 105, at 19; see also Krinitsky, *supra* note 184, at 50, 52.

278. ABSHER, *supra* note 105, at 19.

279. ABSHER, *supra* note 105, at 14, 50, 52.

280. ABSHER, *supra* note 105, at 14, 50, 52.

281. See Krinitsky, *supra* note 184, at 2-3, 373-74.

282. See ABSHER, *supra* note 105; see also Krinitsky *supra* note 184.

283. Cf. Robertson et al., *supra* note 104, at 463. Chronopoulos, *supra* note 20.

284. See ABSHER, *supra* note 105, at 22.

C. Surveillance

Vice policing provided police with a justification to engage in aggressive surveillance of Black communities.²⁸⁵ By reinforcing the myth that Black people are naturally predisposed toward crime, the segregation and containment of vice crimes in Black communities reinforced the notion that Black people required additional police surveillance.²⁸⁶ Black communities were worthy of increased criminalization and additional police surveillance because of the existence of vice.²⁸⁷ The Supreme Court recognized that “high crime” neighborhoods can be subjected to heightened policing in *Illinois v. Wardlaw*.²⁸⁸ Accordingly, the profile of the community might be a factor contributing to a police officer’s ability to stop an individual, physically search them, and can be a factor in whether someone is considered suspicious.²⁸⁹ Perception of crime is a filter through which additional police intervention and surveillance is permitted.²⁹⁰ Yet, police can and have pushed crimes into certain neighborhoods—literally constructing that community’s character.²⁹¹

In Detroit, the frequent raids by vice squads increased racial tension and led to the 1967 Detroit Uprising.²⁹² Vice provides a reason to monitor communities and ensure they are complying with dominant social norms.²⁹³ The purpose of this surveillance is not just about securing criminal convictions and justified arrests. Surveillance is about regulating behaviors and communicating to community members about their relative social position.²⁹⁴ Constantly entering and monitoring Black communities shows them that they are under the watch of police.²⁹⁵ Black women experienced stereotypes about their hypersexuality and were presumed to be of a poor moral character.²⁹⁶ Police officers frequently

285. See Hinton & Cook, *supra* note 158, at 263; see also ABSHER, *supra* note 105; Robertson et al., *supra* note 104, at 447.

286. See ABSHER, *supra* note 105, at 26–34.

287. See ABSHER, *supra* note 105, at 26–34.

288. See *Illinois v. Wardlaw*, 528 U.S. 119, 124 (2000).

289. *Id.*

290. *Id.*

291. See ABSHER, *supra* note 105, at 19; see also Krinitzky, *supra* note 184, at 50, 52.

292. See Parmenter, *supra* note 236, at 13; see also John B. Waite, *Co-operation Between the Judiciary and the Police*, 4 MICH. ST. B.J. 273, 273–74 (1925).

293. See Krinitzky, *supra* note 184, at 9–10.

294. See Krinitzky, *supra* note 184, at 9–10.

295. See Krinitzky, *supra* note 184, at 10 (describing a “coercive state” in which state actors, as well as private actors, use surveillance to maintain social hierarchies, which were perceived as “unsettled due to influxes of African American migration, immigration, industrialization, and labor unrest”).

296. See Krinitzky, *supra* note 184, at 200–01 (noting that in Chicago, for example, police targeted black women for solicitation offenses and assumed that black women were involved in vice

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commented on the promiscuity of Black women and their lack of morality.²⁹⁷ Black women were profiled as being sex workers, and were the recipients of the sexual advances of police officers who assumed they were sexually promiscuous.²⁹⁸

The police collaborated with vice establishments and often tolerated them.²⁹⁹ So, the policing was not primarily about protecting the community from moral transgressions as much as it was about monitoring the people within the community, communicating to them where they stood in the social hierarchy, and ensuring they never stepped out of line.³⁰⁰ The purpose of this surveillance was to manage and discipline these communities rather than protect them from harm.³⁰¹

At the same time, there were Black people who were demanding additional police presence to deal with the presence of crime in their communities.³⁰² They wanted police protection and were concerned that the presence of vice crimes would degrade their communities.³⁰³ Many of these Black people embraced

activities). Marcy S. Sacks, *To Show Who was in Charge* "Police Repression of New York City's Black Population at the Turn of the Twentieth Century, 31 J. URBAN HIST. 799, 802 (2005). This phenomenon was also occurring in New York:

The popular perception of black women as willing participants in the sex trade emerged at precisely the time when the white "fallen woman" became the beneficiary of reformers' concern and protection. Crusaders eager to contain red-light districts struggled to understand the reasons why young women would engage in this nefarious occupation. By the 1870s, they had developed a stock answer, viewing "captives" of the white slave trade as helpless and innocent victims whose participation in vice never resulted from their own volition. Most sensationalist tracts of the period portrayed diseased, despondent, and remorseful women ensnared in a life not of their own choosing. Black women, on the other hand, encountered almost directly antithetical interpretations of their behavior. According a New York City police officer, black women's "native indolence" and "lewdness" made "the colored woman a free and easy one in her habits."

Id.

297. Sacks, *supra* note 180, at 802.

298. See LaShawn Denise Harris, "Women and Girls in Jeopardy by His False Testimony": Charles Dancy, Urban Policing, and Black Women in New York City during the 1920s, 44 J. URB. HIST. 457, 460 (2018). Harris describes how in Progressive Era New York, "city police pegged women of African descent as masculine, lawless, and dangerous, and as a threat to the metropolis' collective morality. . . . Rookie and veteran cops and detectives pulled their guns out on unarmed women, brutally beat and sexually assaulted them in their apartments or on the streets, and illegally raided their homes." *Id.*

299. Krinitsky, *supra* note 184, at 44-45 (noting that in Chicago, "it was so well known that the Chicago Police Department protected and profited from vice establishments in designated areas of the city that some framed the practice as official policy").

300. See Krinitsky, *supra* note 184, at 9.

301. Robertson et al., *supra* note 104, at 463. Chronopoulos, *supra* note 20.

302. Chronopoulos, *supra* note 20, at 654.

303. See Krinitsky, *supra* note 184, at 352-53. Black intellectuals and elites in Chicago in the 1940s and 1950s criticized the failures of the police to equally enforce the law in black neighborhoods, and pointed to the "pattern of neglectful policing . . . that had resulted in the concentration of

respectability politics and believed if they complied with dominant social morals and worked hard, eventually racial prejudice would dissipate.³⁰⁴ They called on police to monitor the criminals in their communities and to eradicate the presence of vice in them.³⁰⁵ James Forman has written about the demands of Black community in the 1970s and 1980s for additional police protection and aggressive criminal laws when they were frustrated by the harms of narcotics, particularly during the crack cocaine epidemic.³⁰⁶ Despite the calls for more policing, there was a sense that police were unresponsive and were neglectful of Black communities.³⁰⁷

vice and other illicit enterprises in black neighborhoods during the first two decades of the twentieth century.” The editors of the black newspaper, *Chicago Defender*, called on law enforcement to collaborate with social services in order to both combat the rising crime rates, and also address the roots of the problem, which were unemployment, housing shortages, and lack of opportunities for youth.

304. See Krinitzky, *supra* note 184, at 320. Krinitzky discusses the leaders and elites of the black community in Chicago, “who sought to reduce crime and violence among black neighborhoods” and held the view that “black rights to fair and equal law enforcement were premised on black adherence to the law, a critical component of moral respectability.” Additionally, the editors of *Chicago Defender*, highlighted the law-abiding record of black families who were victims of white racial violence, “suggesting that lawfulness should therefore translate to equal protection.” Krinitzky, *supra* note 184, at 320.
305. Krinitzky, *supra* note 184, at 210–11 (describing pressure from blacks and whites in the 1910s and 1920s to suppress vice establishments, especially those that allowed racial mingling, but that resulted in vice establishments being pushed from downtown to the black neighborhoods). See also Krinitzky, *supra* note 184, at 352–54 (summarizing the calls from black leaders for law enforcement to reduce vice and other crime in black neighborhoods that had arisen due to the vice-shifting of the 1920s).
306. See JAMES FORMAN, *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017); see also Susan Kelley, *Pulitzer Prize Winner Describes Why we ‘Lock up Our Own’ – and How to Stop*, CORNELL CHRON. (October 11, 2018), <https://news.cornell.edu/stories/2018/10/pulitzer-prize-winner-describes-why-we-lock-our-own-and-how-stop> [https://perma.cc/82LS-D8T6]; see also Danielle Wiggins, *Book Review: Locking up Our Own*, ATLANTA STUDS. (December 7, 2017), <https://atlantastudies.org/2017/12/07/danielle-wiggins-book-review-locking-up-our-own> [https://perma.cc/82LS-D8T5]; see FORMAN at 127–28 (black communities in D.C. complained in the 1970s about “revolving door justice” where light policing and sentencing enabled criminals, especially those that targeted black people, to quickly reenter communities); *Id.* at 151–84 (detailing the rise of crack cocaine and its impact on black communities, especially the lasting harms resulting from the warrior-style policing that developed in response to crack and crack-related violent crime).
307. FORMAN, *supra* note 306 at 29–33 (describing the efforts of black community activists in 1960s D.C. and New York to deal with the heroin epidemic and associated crime wave, that the police failed to solve in black neighborhoods). Due to ineffective policing, activists created their own drug treatment offices and anti-drug neighborhood patrols. FORMAN, *supra* note 306 at 29–33. See also FORMAN, *supra* note 306 at 35 (the Kerner Commission report “found that many blacks believed that ‘the police maintain a much less rigorous standard of law enforcement in the ghetto, tolerating illegal activities like drug addiction, prostitution, and street violence that they would not tolerate elsewhere.’”) (quoting The Kerner Commission, *Report of the National Advisory Commission on Civil Disorders* (1968), 161.). See also FORMAN, *supra* note 306 at 125–

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Nevertheless, there were also Black community members who complained there was too much police surveillance.³⁰⁸ These community members believed the harms from vice activities were negligible, especially when compared with the harms that came from additional policing.³⁰⁹ Police officers would enter establishments and disrespect the property interests of Black owners.³¹⁰ The police profiled community members and would harass them.³¹¹ Everyone in the community would experience its effects through the constant police presence or from being mistakenly accused of engaging in vice crimes.³¹²

Notably absent from the different strategies for implementing vice policing in these communities is a focus on protection or preventing harm.³¹³ The

28 (outlining additional community efforts in 1970s D.C. to address rising drug trade problems and related violent crime).

308. FORMAN, *supra* note 306 at 23 (discussing the growing criticism of harsh enforcement of Washington D.C.'s marijuana laws, and the body of research demonstrating that blacks were targeted, prosecuted, and punished more harshly than whites, even controlling for employment and education variables).

309. FORMAN, *supra* note 306 at 23 -24 (summarizing the 1975 hearings of the Judiciary Committee of the Washington, D.C. city council, where witnesses testified about the "the most devastating impact [...] was the lifelong stigma that came from a relatively minor offense."). Witnesses also noted that minor drug convictions caused collateral damage that far outlasted the official sentences. Experts testified "that when it came to small amounts of marijuana, criminalization produced more harm than the drug itself." FORMAN, *supra* note 306 at 23 -24.

310. FORMAN, *supra* note 306 at 167-172 (describing D.C.'s Operation Clean Sweep, one of the "war on drugs" programs implemented by major cities around the country that gave police broad powers and encouraged extremely aggressive policing tactics).

311. FORMAN, *supra* note 306, at 155 (describing one of the effects of the war on drugs and warrior policing). Forman observes:

Unable to distinguish between a student on a break and a drug dealer working the corner, the police treat them both as menaces to public safety. In this way, the warrior model inverts the presumption of innocence. In the ghetto, you are not presumed innocent until proven otherwise. Rather, you are presumed guilty, or at least suspicious, and you must spend an extraordinary amount of energy – through careful attention to dress, behavior, and speech – to mark yourself as innocent. All with no guarantee that these efforts will work.

FORMAN, *supra* note 306, at 155.

312. FORMAN, *supra* note 306, at 171 (providing detailed examples of police abuses and the "culture of impunity" that developed around warrior police tactics to the point that "for residents of the city's poorest neighborhoods, especially young people, this treatment became part of the social contract, a tax paid in exchange for the right to move in public spaces. Police mistreatment, that is, became part of growing up.").

313. FORMAN, *supra* note 306, at 147-48. After a discussion of D.C.'s push to increase enforcement of drug laws and increase mandatory minimums in sentencing as a response to the drug and violent crime epidemic of the 1970s and 1980s, Forman observes that "nobody approached it as a public health issue" and also gives examples of community leaders reporting drug activity to the police rather than to the Narcotics Treatment Administration. FORMAN, *supra* note 306, at 147-48. See generally Monica Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650 (2020) (article examines police practices that pushed vice to black communities, then

approach of the police officers in these communities reflected a concern for monitoring the community, putting community members in their place, and disciplining them.³¹⁴ This may be, in part, because the community members that police were protecting and serving were the white community members who did not want vice in their communities.³¹⁵ These communities were being protected and served because police were maintaining racial segregation and containing vice in communities that were perceived as already predisposed to dereliction.³¹⁶ Black people were not the ideal victims worthy of police protection.³¹⁷

Accordingly, police were ultimately embracing the task that one might expect from a society governed by racial capitalism—they were violently protecting interests of white elites and property owners in the community.³¹⁸ They tolerated vice and facilitated it, but in areas they believed were worthy of degradation.³¹⁹ Some scholars have described the overpolicing of Black communities through heightened surveillance and police violence and underpolicing through practices of neglect and degradation as a paradox.³²⁰ The history of racialized vice policing shows there is no tension between these approaches. They are both moving toward the same goal of preserving white property interests and maintaining a white supremacist social order.³²¹

CONCLUSION

This snapshot into the history of vice policing reveals the racially discriminatory effect of policing vice. Vice policing was driven by a strategy of (1) segregation, (2) containment, and (3) surveillance. Police deliberately pushed vice crimes and redlight districts into Black neighborhoods.³²² In many cities in the

maintained that segregation through violent enforcement, biased policing, and mass criminalization.)

314. Bell, *supra* note 313, at 696-701 (describing the practice of patrolling borders, where police tactics such as racial profiling and criminalizing minor infractions are used to keep black people out of white spaces).

315. Bell, *supra* note 313, at 696-701.

316. Bell, *supra* note 313, at 705-16 (detailing the ways that police divide space into different jurisdictions and label neighborhoods as “high crime” in order to justify using aggressive tactics and further reinforce separation of black and white communities).

317. I. India Thusi, *Policing Is Not a Good*, 110 GEO. L.J. ONLINE 226, 245-46 (2021-2022) (noting that racial biases and stereotypes about Black people as inherently threatening result in aggressive policing, not protective policing, and that Black victims of crime often end up being arrested after calling police for help).

318. See Gilmore, *supra* note 21, at 198.

319. See Gilmore, *supra* note 21, at 198.

320. See Chronopoulos, *supra* note 20, at 654.

321. See Gilmore, *supra* note note 21, at 202.

322. See ABSHER, *supra* note 105, at 19; see also Krinitsky, *supra* note 184, at 50, 52.

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United States, police pushed vice into racially segregated neighborhoods and contributed to a geography of vice that was racialized and segregated.³²³ This segregation protected property interests in white neighborhoods while allowing vice to continue to exist within these cities.³²⁴ As such, the policing of vice was a mechanism for maintaining racial segregation.³²⁵

After pushing vice into racially segregated communities, police contained it within these communities by regulating public spaces and harassing Black people who were suspected of bringing vice into white communities.³²⁶ They also engaged in surveillance of Black communities that monitored vice activities, allowed them to harass Black patrons, and manage the people in these areas.³²⁷ Vice policing also facilitated and continues to facilitate police corruption with many police officers soliciting bribes in connection to vice crimes.³²⁸

Despite community demands for police protection, police responded to vice with community harassment and exploitation.³²⁹ The police were accomplices of vice crimes and often appeared to be more concerned with ensuring that it occurred on their terms than actually eradicating it.³³⁰ By embracing a constant and visible presence in Black communities, while simultaneously ignoring calls for police protection, they communicated they were present in these communities to fulfill their agendas and the people within these communities were not the people they were serving.³³¹ This form of policing reveals the ways policing is focused on the managerial aspects of criminal law administration and not the actual enforcement or prevention of crime or harm.³³²

Abolitionist theorizing invites us to look backward at this legacy of policing in assessing its continued value in society. The legacy of vice policing reveals an institution primarily concerned with racial segregation, containment of vice in Black communities, and the surveillance of Black communities often resulting in police violence.³³³ The legacy of vice policing is concerned with maintaining racial hierarchy, protecting white property interests, and containing vice to Black communities.³³⁴

323. See Robertson, *supra* note 163, at 493–94.

324. See Robertson, *supra* note 163, at 493–94.

325. See Robertson, *supra* note 163, at 493–94.

326. See Krinitsky, *supra* note 184, at 218–21.

327. See Krinitsky, *supra* note 184, at 177.

328. Chronopoulos, *supra* note 20, at 652, 654–55.

329. Chronopoulos, *supra* note 20, at 655.

330. Chronopoulos, *supra* note 20, at 652, 654–55.

331. Chronopoulos, *supra* note 20, at 652, 654–55.

332. See Absher, *supra* note 105, at 22; see also Krinitsky, *supra* note 184, at 50.

333. See Kaba, *supra* note 22.

334. See Kaba, *supra* note 22.

This legacy of racialized vice policing is instructive in understanding the futility of police reform. Futility instructs us to abandon racist institutions that are impermeable to meaningful transformation.³³⁵ It demands we divest from institutions intended to perpetuate white supremacy. The racialized history of policing vice provides evidence that policing has been concerned with protecting the property interests of white people and maintaining racially segregated communities.³³⁶ This interest might be in alignment with those of elite white property owners, but it certainly suggests people concerned with the experiences of Black people should reassess whether police should be reformed when it is an institution that has engaged in deliberate policies to maintain their subordination.³³⁷

Police reform presumes policing is intended to protect all communities and when we deal with the few rotten apples in the bunch we will be able to realize a more just police force.³³⁸ By fixing chokeholds, or trainings, we will slowly inch toward a more just policing system.³³⁹ We might even diversify the police force in hopes that would eliminate racially prejudiced policing.³⁴⁰ This perspective centers the stated goals of policing for certain segments of the population without fully contending with the historical role policing has played and continues to play in racial discrimination and segregation.

Police reform reflects an optimistic view of policing and assesses it in the vacuum of what is happening in the present.³⁴¹ The history of policing and its many failed attempts to professionalize,³⁴² community-ize,³⁴³ human rights-atize³⁴⁴ suggest policing is serving a function that is at odds with principles of equity.³⁴⁵ No amount of Black or women police officers will be able to transform police organizations that have a history and a present of racial subordination into police organizations of racial equality.³⁴⁶ The institution operates as intended when

335. See Kaba, *supra* note 22.

336. See Gilmore, *supra* note 21, at 198.

337. See Akbar, *supra* note 3, at 1842–43; see also Kaba, *supra* note 22.

338. See Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN L. REV. ONLINE 120, 131 (June 2021); see also Barack Obama, *Commentary, The President’s Role in Advancing Criminal Justice Reform*, 130:3 HARV. L. REV. 811, 840–41 (Jan. 2017).

339. See Eaglin, *supra* note 338, at 129–31.

340. See Obama, *supra* note 338, at 841 (listing recommendations such as “ensur[ing] police forces better reflect the communities they serve, including strategies to achieve a diverse workforce,” and “address[ing] implicit bias”).

341. See Obama, *supra* note 338, at 841.

342. See KABA & RITCHIE, *supra* note 69.

343. See KABA & RITCHIE, *supra* note 69.

344. See KABA & RITCHIE, *supra* note 69.

345. See KABA & RITCHIE, *supra* note 69.

346. President’s Task Force on 21st Century Policing, *supra* note 33.

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it continues to perpetuate racial subordination.³⁴⁷ How can reform meaningfully transform this?

The futility principle invites us to abandon practices, policies, and institutions that have a legacy of white supremacy and have been resistant to efforts at reform.³⁴⁸ Although the history of racialized vice policing may be new to many, including people who focus on policing issues, the failure of police reforms to eradicate biased policing is common knowledge.³⁴⁹ The history of racialized vice policing illustrates the futility of adopting measures that tinker with policing at its edges. Policing is doing exactly what is and has been intended to do—it has a long legacy of protecting white property interests.

347. Davis, *supra* note 32, at 339–63.

348. See KELLEY, *supra* note 86.

349. See Akbar, *supra* note 3, at 1811; see also Kaba, *supra* note 22.