

# Racially Territorial Policing in Black Neighborhoods

Elise C. Boddie<sup>†</sup>

*This Essay explores police practices that marginalize Black people by limiting their freedom of movement across the spaces of Black neighborhoods. In an earlier article, I theorized “racial territoriality” as a form of discrimination that “excludes people of color from—or marginalizes them within—racialized White spaces that have a racially exclusive history, practice, and/or reputation.” In this Essay, I consider how my theory of racial territoriality could apply to policing. It offers an account of how police not only criminalize Black people but also criminalize Black spaces, ostensibly justifying them—and the people who live in or frequent them—as “natural” targets for police activity. As an example of racially territorial policing, the Essay discusses the Supreme Court’s decision in *Illinois v. Wardlow* and the costs that it imposes by granting police significant discretion to stop people in areas that they define—often inaccurately, according to some research—as having high levels of crime.*

## INTRODUCTION

This Essay proposes a new lens for evaluating an old problem: the harms of policing in Black neighborhoods. It calls attention to what I have theorized in another context as “racial territoriality”—a form of discrimination that excludes people of color from, or marginalizes them within, “spaces that have a racially exclusive history, practice, and/or reputation.”<sup>1</sup> In this Essay, I offer my theory to suggest that police not only criminalize Black people but also criminalize Black *spaces*, ostensibly justifying them—and the people who live in or frequent them—as “natural” targets for police activity. By highlighting the role that spatial meaning plays in policing, I aim to expand the conversation about the dynamics of police behavior in Black neighborhoods and its human cost, including the limitations that police place on the freedom of Black people to move about. As an example of racially territorial policing, I discuss the Supreme Court’s decision

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<sup>†</sup> Henry Rutgers Professor, Professor of Law, and Judge Robert L. Carter Scholar, Rutgers Law School. I thank Michelle Adams, Devon W. Carbado, Don Herzog, and R.A. Lenhardt for their very helpful comments and feedback. Any errors are my own.

<sup>1</sup> Elise C. Boddie, *Racial Territoriality*, 58 UCLA L. REV. 401, 406 (2010).

in *Illinois v. Wardlow*<sup>2</sup> and the harms that it has created by granting police significant discretion to stop people in areas that they define—often inaccurately, according to some research—as having high levels of crime. I leave it to others to evaluate the utility of this proposed frame and whether its contributions are productive.

### I. WHAT IS RACIAL TERRITORIALITY?

Racial territoriality is a spatial system of racial control, grounded in the logic of the Jim Crow era, that operates according to perceptions of where people should—and should not—be based on their race. Understanding racial territoriality as a system requires focus not only on interactions between individuals (police and residents, for example) but also consideration of how spatial context shapes those interactions. When we evaluate racial territoriality, we look to the racial demographics of space—that is, whether it is associated with Black people or other racial and ethnic groups—as well as to its racial meaning.

Appreciating the social dimensions of space is key to understanding the dynamics of racial territoriality.<sup>3</sup> Space is “more than neutral coordinates on a map”<sup>4</sup> or “a physical set of boundaries or associations.”<sup>5</sup> Rather, space is socially constructed based on what people see, how they experience their space,<sup>6</sup> and the resulting meanings they consciously or subconsciously project onto it.<sup>7</sup> These interpretations “correlate with and reinforce cultural norms about spatial belonging and power.”<sup>8</sup>

Racial territoriality unfolds in stages. The first step begins when people classify space according to “perceptions, attitudes, and cultural norms” as well as sentiments about the space and its relative importance to individuals or groups.<sup>9</sup> People map racial

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<sup>2</sup> 528 U.S. 119 (2000).

<sup>3</sup> Boddie, *supra* note 1, at 443 (defining “territory” as a “space that is controlled to some degree by people,” and “incorporat[ing] Robert Sack’s definition of human territoriality ‘as the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area’” (quoting ROBERT DAVID SACK, HUMAN TERRITORIALITY 19 (1986))).

<sup>4</sup> *Id.* at 434.

<sup>5</sup> *Id.* at 438.

<sup>6</sup> *Id.* at 435.

<sup>7</sup> *Id.* at 434–35.

<sup>8</sup> Boddie, *supra* note 1, at 438.

<sup>9</sup> *Id.* at 443.

meaning onto space—i.e., racialize it—based on its actual or imagined associations with particular racial groups. For example, if mostly Black people live in a neighborhood, many will likely identify it as a “Black neighborhood.” Racial biases about groups associated with a given space, whether implicit or explicit, can also be projected onto the space.<sup>10</sup> This constellation of mental and social-emotional processes generates the second stage of territoriality. At this stage, conscious and unconscious assumptions about who is *supposed* to be in a particular space leads those with power to create and maintain boundaries that control access to it or micromanage movement within it.<sup>11</sup> These assumptions—which are grounded in personal and collective experiences, narratives, and memory—will continue to drive patterns of social behavior that continually reproduce the space’s meaning unless and until the cycle is disrupted.

Space can have different meanings for different people. For example, assume that, during a five-month crime spree several years ago, a few dozen local residents were robbed at gunpoint in a neighborhood park. Unable to shake their memory of that time, some residents have decided not to return. They continue to see the park as dangerous. Later, local musicians decide to stage festivals and concerts in the park in order to reclaim it. As residents come to associate the park with celebration rather than danger, it assumes new meaning as a safe and joyful community space.

My point here is that the meaning of space is often contingent; it varies according to who is interpreting it and how they process their spatial experiences. Before the musicians in the above example salvaged the park, locals knew it only as a place where people had been violently attacked. Without a countervailing narrative, the park’s identity as an unsafe space would be difficult to dislodge. Once the park was spatially rehabilitated, however, it took on a different meaning.

I suggest that the same spatial dynamics could apply to policing. Once again, the meaning of space can vary according to who is perceiving it. While police may think of spaces in Black neighborhoods as disorderly, residents may have a more nuanced understanding that does not emphasize crime. Here, residents view crime as only one aspect of life in the neighborhood; crime does

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<sup>10</sup> *Id.* at 437–42.

<sup>11</sup> *Id.* at 444.

not necessarily *define* the neighborhood.<sup>12</sup> Similarly, where the police see distressed space, residents may see the place where they grew up and where their families live—a place of personal and shared memories. Because they have deeper ties to the neighborhood, residents are more likely to see its complexity.

Another point bears mentioning here: space is dynamic. Its meaning shapes expectations about who belongs. If those expectations continue to be met, the meaning of the space will remain the same. If expectations change, however, the meaning of the space will be destabilized and reconstituted to align with new spatial understandings or interpretations. For example, if a group uses the local public school's gym for choir practice every Saturday at 9:00 a.m., the choral director will naturally assume that anyone who shows up at the gym at that time is there to learn how to sing. If the gym is later used for basketball, the coach will expect her players to show up—not the members of the choir. Again, the key here is the shift in spatial meaning, which produces assumptions about who is supposed to be in the gym. These assumptions are so natural that people may not even be aware of the mental processes that produce them.<sup>13</sup>

## II. RACIALLY TERRITORIAL POLICING

The previous Part discussed how meaning is projected onto space and the consequences of that dynamic. This Part explains how these insights could apply to policing in Black neighborhoods.

### A. How Police Define and Regulate Space

Control over space is fundamental to policing. Police regulate the movement of people through space—and create and maintain boundaries to limit spatial access.<sup>14</sup> For example, police detain

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<sup>12</sup> See Monica C. Bell, *Anti-segregation Policing*, 95 N.Y.U. L. REV. 650, 720 (2020) (“[C]ollective and individual memories, including memories of racial violence and injustice, are not always based on complete information. The value of memories is not so much in their accuracy as in their function as lenses through which people interpret the world, lenses that guide future action.”).

<sup>13</sup> See Boddie, *supra* note 1, at 439.

<sup>14</sup> See generally STEVE HERBERT, POLICING SPACE: TERRITORIALITY AND THE LOS ANGELES POLICE DEPARTMENT (1997) (describing the various ways that space influences the exercise of police power). See also Daanika B. Gordon, *Policing the Segregated City: Redistricting and the Spatial Organization of Police Work 1* (May 9, 2018) (unpublished Ph.D. dissertation, University of Wisconsin-Madison) (on file with author) (“Policing is a fundamentally spatial enterprise. From the department to the beat, police work is organized around clearly demarcated geographic units.”).

people who are suspected of a crime, put up barriers at crime scenes to keep people out, and manage foot traffic in crowded city streets by directing people to other areas. In other words, police control people by controlling space—those who “belong” are allowed to remain; those who do not may be excluded outright or mistreated within the space itself. This insider–outsider distinction defines police authority and helps police assess the kind of power that they think necessary to maintain control and protect public safety.<sup>15</sup> For instance, if a group of people refuse to follow an order to move, they run the risk of being arrested.

Police regulation of space has a dark side. As Professor Daanika Gordon observes, when police “regulate the kinds of people and activities found in particular areas,” they “produce and reproduce understandings of how orderly, secure, dangerous, or criminal discrete geographies can be.”<sup>16</sup> Thus, police not only respond to the spatial environment but also help create it. They shape how people experience space—and, thus, the space’s meaning, including “whether an area feels secure or dangerous, cared for or neglected.”<sup>17</sup> Gordon’s observation points to a negative consequence of heavy police presence in Black communities: because such a presence “virtually ensures that Blacks (or other non-Whites) will be observed, questioned, and arrested at rates that substantially overstate objective racial differences in offending,”<sup>18</sup> it engenders stereotypes that criminalize Black spaces and the people within them. These stereotypes pose another risk—that Black communities’ interests regarding policing will be discounted, especially when compared to those of White neighborhoods. For example, police may “prioritize efforts to sustain economic stability and growth” in White areas but choose to focus exclusively on violence in Black areas “despite residents’ more

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<sup>15</sup> See HERBERT, *supra* note 14, at 14–15.

<sup>16</sup> Daanika Gordon, *The Police as Place-Consolidators: The Organizational Amplification of Urban Inequality*, 45 LAW & SOC. INQUIRY 1, 3 (2020); see also Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1797–99 (2020) (collecting sources and describing the role of police in producing and entrenching inequality).

<sup>17</sup> Gordon, *supra* note 16, at 2.

<sup>18</sup> *Id.* at 6 (quoting Graham C. Ousey & Matthew R. Lee, *Racial Disparity in Formal Social Control: An Investigation of Alternative Explanations of Arrest Rate Inequality*, J. RSCH. CRIME & DELINQ. 322, 331 (2008)).

varied concerns.”<sup>19</sup> Here, spatial meaning drives police responsiveness in White neighborhoods while leading them to ignore Black communities’ assessments of their needs.

## B. The Harms

Racial stereotypes of space influence police interactions within communities. Some of these stereotypes define Black spaces as dangerous and guilty and White spaces as safe and innocent.<sup>20</sup> These perceptions matter. As Professor Monica Bell explains, “[n]eighborhood characteristics” help determine how police exercise their discretion, including “whether and how crime is detected and coded,”<sup>21</sup> the level and degree of “suspicion officers bring to observations and interactions,”<sup>22</sup> and the “level of force [they] are likely to use.”<sup>23</sup> Police presumptions of illegality in Black spaces may be used to rationalize police occupation and control of such spaces through force.<sup>24</sup>

Racially territorial policing also exacts personal harms. Recall the second stage of racial territoriality: police project onto space racial assumptions about who belongs. The resulting police practices limit the ability of those who are assumed not to belong to move through the “spaces of everyday life,” which demeans their dignity.<sup>25</sup> People who are subjected to racial territoriality “experience the world as outsiders,” are excluded from full participation

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<sup>19</sup> *Id.* at 13; see also Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1494 (2016) (describing the role that police play in controlling social and economic resources in places by enacting borders and reconfiguring “opportunities and various social structures” such as “housing, schools, public transportation, [and] parks”).

<sup>20</sup> See Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1664 (1995) (“For Whites, White neighborhoods become part of the ‘natural’ world, helping to keep their Whiteness unnoticed and undisturbed, and helping to equate Whiteness with something that reflects positive values and feels like home.”).

<sup>21</sup> Bell, *supra* note 12, at 715.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 716 (citing William Terrill & Michael D. Reisig, *Neighborhood Context and Police Use of Force*, 40 J. RSCH. CRIME & DELINQ. 291, 306 (2003)).

<sup>24</sup> See Tia Sherée Gaynor, Seong C. Kang & Brian N. Williams, *Segregated Spaces and Separated Races: The Relationship Between State-Sanctioned Violence, Place, and Black Identity*, 7 RUSSELL SAGE FOUND. J. SOC. SCIS., Feb. 2021, at 50, 61. Professors Tia Gaynor, Seong Kang, and Brian Williams further observe that “[f]indings support the notion that race still matters and that the iconic ghetto represented by [B]lack bodies, perceptions of crime, disorder, and dystopia associated with [B]lack spaces, and the negative connotations of [B]lackness continue to endure as powerful sources for stereotype, prejudice, discrimination, and state-sanctioned violence.” *Id.*

<sup>25</sup> See Boddie, *supra* note 1, at 420.

in society<sup>26</sup> and are denied agency over their bodies in the spaces where they live. Thus, racial territoriality denies its subjects the benefits of ordinariness—the ability to just *be* without being stigmatized and denigrated.<sup>27</sup> It contributes to a sense that there is no place where Black people can be both safe and free.<sup>28</sup>

Segregation exacerbates racially territorial policing.<sup>29</sup> It allows police to territorialize Black spaces through selective law enforcement, while ignoring crime in higher-income White communities. Professor Bell describes this dynamic:

[I]nsider accounts suggest that department policy encouraged greater police presence in predominantly poor and African American neighborhoods, even for officers who were not assigned to those areas. Former Baltimore police officer Michael Wood told reporters that, after getting a plum assignment to an upper-middle-class, predominantly [W]hite neighborhood, he would sometimes leave his post to go to a poor, predominantly [B]lack neighborhood to make arrests. He needed to meet his expected number of arrests, but even though there were people using drugs and committing other crimes in the neighborhood where he was assigned, he knew that there would be “trouble” if he arrested the wrong person.<sup>30</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> See generally Elise C. Boddie, *Ordinariness as Equality*, 93 IND. L.J. 57 (2018). See also R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 816–23 (2004).

<sup>28</sup> Racially territorial policing also contributes to what Bell has conceptualized as “legal estrangement” in poor Black communities. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2054 (describing “legal estrangement” as “a theory of detachment and eventual alienation from the law’s enforcers” that “reflects the intuition among many people in poor communities of color that the law operates to exclude them from society”); see also *id.* at 2107 (explaining that “vicarious marginalization in the context of policing, then, is ultimately about how people draw upon information other than their own experiences as police targets or suspects to understand their group’s common experience with law enforcement”).

<sup>29</sup> See, e.g., Bell, *supra* note 12, at 655 (describing the “mutually constitutive relationship between daily practices of urban policing and residential segregation”); Akbar, *supra* note 16, at 1797 (“Police are a conduit of segregation, gentrification, and displacement, creating and maintaining spatially and racially concentrated inequality.”); I. Bennett Capers, *Policing, Race, and Place*, 44 HARV. C.R.-C.L. L. REV. 43, 72 (2009) (demonstrating “that how we police, and what we police, both contribute to perpetuating segregation along race lines”). See generally, e.g., Jeffrey Fagan & Elliott Ash, *New Policing, New Segregation: From Ferguson to New York*, 106 GEO. L.J. ONLINE 33 (2017) (exploring the various ways that policing reproduces and incentivizes segregation).

<sup>30</sup> See Bell, *supra* note 28, at 2125.

In this account, the police officer is less concerned with public safety than with satisfying his quota of arrests. He achieves his quota by policing Black neighborhoods outside his territory instead of targeting illicit activity in the White neighborhoods to which he has been assigned. Through this selective enforcement, he reinforces racial stereotypes of Black criminality and White innocence—assumptions that are drawn from police presence in the Black neighborhood and the absence of police in the White one. Significantly, these stereotypes are projected not only onto people but are also mapped onto the places where they live or frequent.

Another harm of racially territorial policing is the stigma—both spatial and individual—that it imposes and the risk that people might internalize its negative meaning.<sup>31</sup> There is also the risk that excessive police presence can pose to the safety of Black people, especially when police harbor—and consistently act upon—presumptions of Black guilt.

To illustrate how these harms converge, consider the following scenario: A police officer is patrolling a Black neighborhood that has recently experienced an increase in petty crime. The officer sees a Black teenager (let's call him Charles) running down the street at 6:00 a.m. Charles is rushing to catch a city bus that will take him to school. If he misses the bus, he will be late to school. Charles is also carrying a bag that is full of his schoolbooks. What might appear innocent in a White neighborhood—running while carrying a heavy bookbag—is suspicious to the officer. The officer, deciding to stop and question Charles, runs after him and calls out, “Hey there.”

Now let's shift to Charles's perspective. Charles is aware that the officer is running after him. He hears the officer call out to him and is processing his options. He does not want to be late to school because he has a math exam in first period and is worried that he will be late for the exam if he stops for the officer. He is well aware that stopping will cost him significant time because he has been stopped on countless occasions by the police for no

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<sup>31</sup> See Lenhardt, *supra* note 27, at 823 (“[R]acial stigma turns in large part upon the context in which the stigmatized individual finds her- or himself. It cannot fully be understood without an inquiry into the social, cultural, and historical context from which it originated and in which it now exists.”); cf. Forrest Stuart, *Becoming “Copwise”: Policing, Culture, and the Collateral Consequences of Street-Level Criminalization*, 50 *LAW & SOC'Y REV.* 279, 293–96 (2016) (describing the “innocence signals” that Skid Row residents use to avoid contacts with the police).



apparent reason. Each time he is stopped, he is questioned about what he is doing, where he lives, where he is going, and why he is going there. He is often asked for his identification. The one time that he declined to give his identification (because he forgot it), he was thrown up against a wall and (unlawfully) frisked. At that moment, Charles pledged to himself that he would never forget his ID again to avoid being harassed by the police. But now, he is not sure that he has his it.

I have made up these facts, but what I have described is not that far from how many Black youth have experienced interactions (or prospective interactions) with the police.<sup>32</sup> Here, “hey there” is not an innocuous request. For Black people in policed spaces, it registers as an assertion of authority and a demand that its subject yield to that authority.<sup>33</sup> This raises another problem. If he misses the bus, Charles will suffer consequences at school. But if he continues to run, he realizes that the officer will chase him and that he will likely be caught. Charles knows that he is not breaking the law and has nothing on his person that could get him in trouble. But he is torn and afraid. What should he do?

I will pause here to emphasize that Charles’s mental calculus is not just about weighing competing options. As Professor Devon Carbado has illustrated,<sup>34</sup> the choice that Charles makes here could be highly consequential. Based on his prior life experiences (and likely those of his friends and family),<sup>35</sup> Charles knows well that the wrong move could lead to harassment or even death.<sup>36</sup> He is well schooled in the practical reality of “hey there” by a police officer.<sup>37</sup>

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<sup>32</sup> See generally Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2017) (describing the many different forms of police intervention that threaten the lives of Black people).

<sup>33</sup> See Brief for the N.A.A.C.P. Legal Defense & Educational Fund, Inc., as Amicus Curiae at 611–13, *Sibron v. New York*, 392 U.S. 40 (1968) (No. 63) [hereinafter Brief for the LDF].

<sup>34</sup> For additional examples, see generally Carbado, *supra* note 32.

<sup>35</sup> See Bell, *supra* note 28, at 2100, 2118–19 (describing how victimization of individual community members undermines the community’s belief in the legitimacy of law enforcement).

<sup>36</sup> Cf. Carbado, *supra* note 32, at 164 (discussing Eric Garner’s “don’t touch me” response that eventually led to Officer Daniel Pantaleo’s use of deadly force against Garner).

<sup>37</sup> See Brief for the LDF, *supra* note 33, at 35:

“Hey, there” itself, when said by a policeman, is a significant intrusion, except perhaps to those fortunate citizens whose sole image of the police is a vague memory of the friendly face of the school crossing guard. Such citizens are not very often stopped. “Hey, there” to the man likely to be stopped—the man on the

Another problem bears mentioning. Not only does Charles have to contend with the consequences of the officer's suspicion in *this* interaction, but there is also the risk that—given his recurring experiences with the police—he will *internalize* their suspicious perceptions of him. I do not mean to suggest that Charles thinks of himself as a perpetual suspect. Rather, because he is acutely aware that others do, he might feel compelled to calibrate his behavior in anticipation of their reactions.<sup>38</sup> Charles's decision-making process is a case in point. Because he knows that the officer thinks he is suspicious, he must—in a matter of moments—engage in a complex evaluation of his options. Most critically, he is likely aware that the option he would prefer—running for the city bus so that he can make it to school on time—might, in a worst-case scenario, cost him his life. This story illustrates the human and social-emotional costs of racially territorial policing and how it both reflects and actualizes the subjugation of Black people in Black spaces.

Part III applies the insights that I have just described to explain the spatial contingency of law. It discusses how Fourth Amendment doctrine enables racially territorial practices by granting police significant discretion to stop people in areas that they define—often inaccurately, according to some research—as having high levels of crime. This dynamic facilitates police practices that criminalize Black neighborhoods and the people who reside in or frequent them. Law is spatially contingent because it is applied differently depending on its spatial context.

### III. POLICING AND THE SPATIAL CONTINGENCY OF LAW

The role of law in policing is both nuanced and spatially contingent. Law defines the range of permissible police activity, but police culture and norms can lead to outcomes that vary from what law formally prescribes.<sup>39</sup> Thus, law enforcement is a matter of context.

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street in a “bad” neighborhood, the man in the ghetto—is a challenge, an act of dominion by the Fuzz, a thinly veiled threat of force.

<sup>38</sup> Cf. Stuart, *supra* note 31, at 296–300 (describing the comprehensive spatial techniques that Skid Row residents in Los Angeles use to avoid the police, including not “standing or walking too closely to idle groups of pedestrians that had congregated along the sidewalk”).

<sup>39</sup> Professor Steve Herbert describes police culture through the lens of “normative order that mix the social-structural and the cultural,” such that society and culture are “mutually determined and interpellated.” HERBERT, *supra* note 14, at 18. Herbert explains:

The characteristics of place<sup>40</sup> influence whether police respond to criminal activity and the intensity of their response.<sup>41</sup> While law sets the parameters of police authority, police interpret and apply law within those parameters based on their discretion, which reflects their perceptions of the locations where suspected criminal activity is taking place.<sup>42</sup> How the police interpret a place shapes not only the kind of law enforcement that they apply but also whether they enforce the law.<sup>43</sup> Police may underenforce the law in wealthier, Whiter communities while applying it more stringently in communities of color.

The problems of racial territoriality are exacerbated by the lack of meaningful constitutional constraints on the authority of police to stop and detain people.<sup>44</sup> The potential for abuse in policing Black and Brown communities is illustrated by the New York

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These normative orders consist of rules and practices that structure action. Further, these orders center on a primary value, and thereby provide meaning for behavior. The concept of normative order thus captures the cognitive and the affectual, the rules that people follow and the meanings they create. . . . [The use of rules here is intended] to underscore the importance of the acquisition and use of cognitive understandings in the conduct of everyday action.

*Id.* at 19. The normative orders are “law and bureaucratic control,” which “define space for the officers and constitute more formalized and structural systems.” *Id.* at 22 (emphasis in original). The other orders are more subjective. These include “adventure/machismo, safety, competence, and morality.” *Id.* at 23. When these normative orders conflict, the officer has to choose which to follow. That choice, which is influenced by spatial context and meaning, influences how and whether police follow the law.

<sup>40</sup> See *Wardlow*, 528 U.S. at 124 (“[O]fficers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation. Accordingly, we have previously noted the fact that the stop occurred in a ‘high crime area’ among the relevant contextual considerations in a *Terry* analysis.”); HERBERT, *supra* note 14, at 35 (noting that “[t]he location of the incident is [ ] recognized as crucial, because it may shape how officers view situations”).

<sup>41</sup> See HERBERT, *supra* note 14, at 39 (“[L]egally permissible actions are not always taken by police, even in the face of blatant criminal activity . . . [while] some actions are taken without clear, defensible legal grounds.”).

<sup>42</sup> *Id.* at 43 (emphasis in original):

The law is . . . an important ordering system when officers socially construct the spaces they control. The work on police discretion demonstrates that understandings of geography affect how officers enforce the law. However, these geographic understandings are partially constructed in the first place by the law, because the crimes defined by law influence how officers view different areas.

<sup>43</sup> *Id.* at 36–37; see also Bell, *supra* note 28, at 2118 (“The twin perils of harsh policing and neglectful policing indicate structural exclusion from public safety, an exclusion that corresponds with intersecting race, class, and geographic marginalization.”).

<sup>44</sup> See Brian J. Foley, *Policing from the Gut: Anti-intellectualism in American Criminal Procedure*, 69 MD. L. REV. 261, 266 (2010) (arguing that Supreme Court decisions have increased police discretion to detain and arrest, producing “a law enforcement machine

City Police Department's (NYPD) extensive use of stop and frisk. In *Floyd v. City of New York*,<sup>45</sup> a decision that declared the NYPD's practices unlawful, the district court observed that the NYPD

carrie[d] out more stops in areas with more [B]lack and Hispanic residents, even when other relevant variables [were] held constant. The best predictor for the rate of stops in a geographic unit—be it precinct or census tract—is the racial composition of that unit rather than the known crime rate. These findings are “robust,” in the sense that the results persist even when the units of analysis are changed from precincts to census tracts, or from calendar quarters to months.<sup>46</sup>

The court declared unconstitutional the NYPD's use of stop and frisk.<sup>47</sup> Nonetheless, the case reveals the proclivity of some officers to engage in racially territorial policing. It also exposes a key problem with Fourth Amendment doctrine. By giving officers broad discretion to stop people based on reasonable, articulable suspicion,<sup>48</sup> Fourth Amendment law increases opportunities for

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that engages in overly broad searches and seizures,” and a “system [that] disproportionately ensnares poor individuals and minorities” (first citing JEFFREY REIMAN, *THE RICH GET RICHER AND THE POOR GET PRISON* 109–10 (6th ed. 2001) (1979); then citing Solomon Moore, *Justice Dept. Numbers Show Prison Trends*, N.Y. TIMES (Dec. 6, 2007), <https://perma.cc/768C-DUN7>; and then citing Associated Press, *Sentencing-Guideline Study Finds Continuing Disparities*, N.Y. TIMES (Nov. 27, 2004), <https://perma.cc/4NZG-L9W3>)).

<sup>45</sup> 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

<sup>46</sup> *Id.* at 589 (citation omitted).

<sup>47</sup> *Id.* at 658.

<sup>48</sup> See Carbado, *supra* note 32, at 125:

This legalization of racial profiling is not a sideline or peripheral feature of Fourth Amendment law. It is embedded in the analytical structure of the doctrine in ways that enable police officers to force engagements with African Americans with little or no basis. The frequency of these engagements exposes African Americans not only to the violence of ongoing police surveillance, contact, and social control but also to the violence of serious bodily injury and death. Which is to say, Fourth Amendment law facilitates the space between stopping Black people and killing Black people.

*See also* Jeffrey Fagan & Amanda Geller, *Following the Script: Narratives of Suspicion in Terry Stops in Street Policing*, 82 U. CHI. L. REV. 51, 55, 57–58 (2015) (observing that little is known “about how officers really form suspicion . . . how they crystallize specific behaviors to reach a threshold of actionable suspicion, or for which groups of persons that suspicion most often arises”; that “what appears suspicious to the average police officer about the behavior of a Black person may seem less suspicious or even neutral for a similarly situated White person”; and that “police on patrol are more likely to view a minority citizen as suspicious based on nonbehavioral cues—location, association, and appearances—while relying more often on behavioral cues to develop suspicion for White citizens”).

racially discriminatory policing.<sup>49</sup> Complicating matters is *Whren v. United States*,<sup>50</sup> in which the Supreme Court observed—in the context of a Fourth Amendment challenge by Black defendants to a traffic stop that led to their arrest for violating federal drug laws—that persons may not bring “selective enforcement” claims alleging racial discrimination under the Fourth Amendment.<sup>51</sup> If an officer stops a person because she is Black, *Whren* indicates that she must allege a violation of equal protection.<sup>52</sup>

The harm here is significant. The failure of Fourth Amendment doctrine to protect against race-based enforcement naturalizes the use of race as a consideration in policing, leaving it only to equal protection’s weak constraints on racial discrimination as a remedy.<sup>53</sup>

These spatial dynamics and the territorial behaviors they facilitate<sup>54</sup> constitute what Professor Tracey Meares describes as the “hidden curriculum of policing.”<sup>55</sup> Together, these doctrines

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<sup>49</sup> As Professor William Stuntz writes, “[d]iscretion and discrimination travel together. Ten percent of Black adults use illegal drugs; 9 percent of White adults and 8 percent of Latinos do so,” yet “Blacks are nine times more likely than Whites and nearly three times more likely than Latinos to serve prison sentences for drug crimes.” WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 4 (2011).

<sup>50</sup> 517 U.S. 806 (1996).

<sup>51</sup> *Id.* at 813.

<sup>52</sup> As the Supreme Court observed in *Whren*:

We think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.

*Id.*; cf. Paul Butler, *The White Fourth Amendment*, 43 TEX. TECH. L. REV. 245, 245 (2010) (describing “the values that the Fourth Amendment protects” as “the perpetration, by law enforcement agents, of ‘White only’ space” and the “construction of race in which non-Whiteness (especially being Black or Brown) is criminal”).

<sup>53</sup> See generally Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779 (2012) (discussing limitations of equal protection doctrine in the context of racial discrimination).

<sup>54</sup> Cf. Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 340 (1998) (“Although the casual reader of the Court’s Fourth Amendment opinions would never know it, race matters when measuring the dynamics and legitimacy of certain police-citizen encounters.”).

<sup>55</sup> See Tracey Meares, *Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525, 1530 (2017) (“Too often this hidden curriculum of policing sends certain members of the polity signals that they are marked as an undesirable and dangerous class of people different from everyone else—‘anticitizen[s].’”(alteration in original) (quoting Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 159, 172 (2014))).

enable police to rely on race while obscuring the racial dimensions of the resulting harms. They naturalize Black space as guilty space, which then normalizes aggressive policing of Black people in Black neighborhoods<sup>56</sup>—often with dire consequences. As Professor Carbado pointedly observes, the Fourth Amendment facilitates a dangerous leap in policing from “stopping Black people to killing Black people.”<sup>57</sup>

#### IV. *ILLINOIS V. WARDLOW* AND THE PROBLEM OF “HIGH CRIME AREAS”

##### A. Unpacking the Majority and Dissenting Opinions

The Supreme Court’s decision in *Illinois v. Wardlow* illustrates the dynamics of racially territorial policing. There, the Court considered whether Mr. Wardlow’s “unprovoked flight” in a “high crime area” justified the initial investigatory stop that eventually led the police to discover a handgun in Wardlow’s possession.<sup>58</sup>

On September 9, 1995, a group of Chicago Police Department officers were driving through a Chicago area “known for heavy narcotics trafficking” to investigate drug transactions.<sup>59</sup> Officer Nolan (the arresting officer) was in uniform,<sup>60</sup> though in his testimony he could not recall whether the car he was driving was marked or unmarked.<sup>61</sup> As he drove, Nolan observed Wardlow standing next to a building, holding an opaque bag. After looking in the officers’ direction, Wardlow fled and was eventually cornered.<sup>62</sup> As the majority stated, Nolan “immediately conducted a protective pat-down search for weapons because in his experience it was common for there to be weapons in the near vicinity of

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<sup>56</sup> See E. Tendayi Achiume & Devon W. Carbado, *Critical Race Theory Meets Third World Approaches to International Law*, 67 UCLA L. REV. 1462, 1489 (2021) (“The point is that the cramped space Black people have (and historically have had) within which to mobilize law and contest the racially subordinating features of their lives helps to ‘properize’ those features as natural (and naturally occurring) incidents in the lives of Black people.”).

<sup>57</sup> Carbado, *supra* note 32, at 125.

<sup>58</sup> *Wardlow*, 528 U.S. at 124 (quoting *Adams v. Williams*, 407 U.S. 143, 144, 147–48 (1972)).

<sup>59</sup> *Id.* at 121.

<sup>60</sup> *People v. Wardlow*, 701 N.E.2d 484, 485 (Ill. 1998).

<sup>61</sup> *Id.* This fact is salient because it suggests that Wardlow may not have known that a police car was following him. That would suggest that his flight was not due to a fear of being discovered by the police but was perhaps based on concern for his personal safety.

<sup>62</sup> *Wardlow*, 528 U.S. at 122.

narcotics transactions.”<sup>63</sup> While frisking Wardlow, Nolan felt “a heavy, hard object similar to the shape of a gun.”<sup>64</sup> He then opened the bag and, upon discovering a gun, arrested Wardlow.

It is worth pausing here to consider the decision of the state supreme court, which concluded (consistent with the majority of jurisdictions that had addressed the same issue)<sup>65</sup> that the initial stop was unlawful.<sup>66</sup> The state court rejected the assumption—later embraced by the U.S. Supreme Court—that running away from the police was sufficient justification for an investigative stop.<sup>67</sup> While not explicitly using the language of territoriality, the state court’s opinion is instructive. Noting that the “right to freedom from arbitrary governmental intrusion is as valuable on the street as it is in the home,” the court reasoned that the “option to ‘move on’” includes the right to “refus[e] to listen or answer” to the police.<sup>68</sup> It also emphasized that such refusal alone does not constitute “reasonable, objective grounds” for detaining someone.<sup>69</sup> The importance of spatial freedom to move about is central to the state court’s analysis, which cites the “right to travel, to locomotion, to freedom of movement, [ ] to associate with others,”<sup>70</sup> and “to freely walk the streets.”<sup>71</sup> Thus, having discerned no “independently suspicious circumstances to support an investigatory detention,” the state court concluded that the initial stop and the subsequent arrest were unconstitutional.<sup>72</sup>

The Supreme Court reversed. While noting that “[a]n individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime,”<sup>73</sup> it concluded that Wardlow’s “unprovoked flight” in a “high crime area” satisfied the standard.<sup>74</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Wardlow*, 701 N.E.2d at 487–88.

<sup>66</sup> *Id.* at 489.

<sup>67</sup> *Id.* at 486 (calling for “proof of some independently suspicious circumstance to corroborate” the inference of guilt “associated with flight at the sight of the police” (quoting *State v. Hicks*, 488 N.W.2d 359, 363 (Neb. 1992))).

<sup>68</sup> *Id.* at 486–87 (quoting *Hicks*, 488 N.W.2d at 363).

<sup>69</sup> *Id.* at 487 (quoting *Hicks*, 488 N.W.2d at 363).

<sup>70</sup> *Wardlow*, 701 N.E.2d at 487.

<sup>71</sup> *Id.* (quoting *City of Chicago v. Morales*, 687 N.E.2d 53, 65 (Ill. 1997)).

<sup>72</sup> *Wardlow*, 528 U.S. at 123.

<sup>73</sup> *Id.* at 124 (citing *Brown v. Texas*, 443 U.S. 47 (1979)).

<sup>74</sup> *Id.* at 124–25.

While the Court had observed one dimension of spatial context—the purportedly high degree of crime in the area—it ignored another, which is the justifiable fear that many Black people have of police abuse in Black neighborhoods.<sup>75</sup> As an amicus brief from the NAACP Legal Defense & Educational Fund, Inc. (LDF) pointedly explained:

[T]he documented problems of police abuse are most serious in precisely those areas where police are most quick to presume guilt, and the protections of the Fourth Amendment must not be allowed to mean one thing for the residents of our inner cities (those who are *most* vulnerable to unreasonable and dangerous police conduct) and another for those who live in our Nation’s “low-crime” enclaves.<sup>76</sup>

It is important to see the competing interpretations of spatial meaning in the majority opinion and the LDF brief in *Wardlow* and how they bear on whether the police had “reasonable, articulable suspicion”<sup>77</sup> to stop and ultimately arrest Wardlow. To the Court, the minority neighborhood was a guilty (i.e., high-crime) space—so much so that flight within it, without any apparent connection to suspected criminal activity, could justify the stop. The LDF brief, in contrast, argued that residents within inner-city spaces were vulnerable to police abuse and, therefore, required more protection from police intrusion.<sup>78</sup> Thus, while the Court sought to justify the territorial exercise of police control over “guilty” space, the LDF brief argued for a tighter Fourth Amendment standard that would afford Black space (and the people within it) the same presumptive freedoms as “low-crime” (presumably White) spaces.<sup>79</sup>

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<sup>75</sup> See Brief for the NAACP Legal Defense & Educational Fund, Inc., as Amicus Curiae in Support of Respondent at 9, *Wardlow*, 528 U.S. 119 (No. 98-1036) [hereinafter LDF Brief] (citations omitted):

Moreover, while Illinois and its *amici* profess to accept the *Terry* principle that reviewing courts must examine the totality of the circumstances before adjudging an encounter reasonable as a constitutional matter, none discuss or consider a factor that has enormous relevance to understanding why inner-city African-American residents would flee from police. That circumstance is fear, the sincere and understandable response that many inner-city minority residents — the law-abiding no less than the criminal — [give] to potential encounters of any type with police.

<sup>76</sup> *Id.* at 4 (emphasis in original).

<sup>77</sup> *Wardlow*, 528 U.S. at 123.

<sup>78</sup> See LDF Brief, *supra* note 75, at 4.

<sup>79</sup> *Id.*



Unlike the majority opinion, the *Wardlow* dissent discusses territoriality only in passing. For example, while observing that an “individual’s presence in an area of expected criminal activity, standing alone, is not enough to” justify a stop, the majority concluded that its occurrence in “a high crime area” is relevant.<sup>80</sup> As to the matter of Wardlow’s flight, however, the dissent was more nuanced. While acknowledging the possible relevance of the “character of the neighborhood,”<sup>81</sup> it explained why an innocent person might run for reasons that have nothing to do with the police. It noted, for example, that one might run

to catch up with a friend a block or two away, to seek shelter from an impending storm, to arrive at a bus stop before the bus leaves, to get home in time for dinner, to resume jogging after a pause for rest, to avoid contact with a bore or bully, or simply to answer the call of nature—any of which might coincide with the arrival of an officer in the vicinity.<sup>82</sup>

In other words, there is nothing inherently suspicious about running, and the Court should not presume that those who happen to be running are trying to escape the police.<sup>83</sup>

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<sup>80</sup> *Wardlow*, 528 U.S. at 124.

<sup>81</sup> *Id.* at 129 (Stevens, J., concurring in part and dissenting in part).

<sup>82</sup> *Id.* at 128–29.

<sup>83</sup> *See id.* at 132 (“[T]here is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer’s sudden presence.”); *see also, e.g.*, Bell, *supra* note 28, at 2110–11 (describing the perspective of a young Black woman in Baltimore who observed that “running away from police is a standard practice for young men even when they are clean (i.e., not carrying anything illegal)”). Herbert offers another explanation for police conduct in high crime areas based on his understanding of the culture of policing in the Wilshire Division of the Los Angeles Police Department. According to Herbert, more is at stake than simple crime; some measure of ego is involved:

The more aggressive [police] response . . . results from [a] group’s attempted flight. Flight not only constitutes evidence of criminal activity but also is a direct challenge to the officers’ sense of competence. To allow the group to flee without a response would be an indefensible admission that they do not exercise control over the areas for which they are responsible. When a direct challenge is issued, the officers’ sense of themselves as capable territorial agents demands that they jump hurriedly from the car even though, moments before, they considered it prudent to refrain from an identical action.

HERBERT, *supra* note 14, at 124–25. Of course, Herbert’s conclusions are based on his own reading of this particular jurisdiction’s police culture. That culture likely differs by department, by geography, and by the personality and temperament of officers. Nonetheless, his conclusions provide a window into how at least some officers approach policing in high-crime areas and the troubling dangers that these approaches pose for residents in those areas.

## B. The Costs of *Wardlow*

The first sentence of the majority opinion in *Wardlow* reads as follows: “Respondent Wardlow fled upon seeing police officers patrolling an area known for heavy narcotics trafficking.”<sup>84</sup>

There are two critical moves in this sentence. The first is to emphasize that Wardlow “fled” after seeing the police, and the second move is to make clear that he did so in an area “known” for drug trafficking, which presumably means that it was known to the officers who were patrolling the area. The opinion later explains that “[t]he officers were traveling together because they expected to find a crowd of people in the area, including lookouts and customers”<sup>85</sup> Yet it is not clear that the officers suspected Wardlow of unlawful activity until he ran.

It would be reasonable to point out that Wardlow was in fact violating the law by carrying, as the Court noted, “a .38-caliber handgun with five live rounds of ammunition.”<sup>86</sup> Others might also find some relief in Wardlow’s arrest, especially if they lived in the vicinity or frequented the area. People want to feel safe, after all.

Bad facts make bad law. But what if we tweaked the facts? Instead of the gun, let’s say that Wardlow was carrying a small hammer (also in an opaque bag) that he had just purchased at a local hardware store and was waiting for the bus to take him home so he could nail together a broken cabinet in his kitchen. Let’s further assume in this scenario that he decided to run because he is often harassed by the police. My point here is that *Wardlow* applies to the law-abiding person as well as to those who are breaking the law.

This observation raises a larger question about our social tolerance for infringements on personal liberty. Many are quite comfortable sacrificing the liberty of others, but would those with privilege and power in “low-crime” enclaves<sup>87</sup> tolerate a legal regime that granted such significant latitude to the police to stop them? The problem with *Wardlow* is that it readily translates innocent behavior into something that is presumptively suspicious. As the dissent notes, there are human costs to this approach. It reminds the majority that “[e]ven a limited search . . . constitutes

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<sup>84</sup> *Wardlow*, 528 U.S. at 121.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 122.

<sup>87</sup> See LDF Brief, *supra* note 75, at 4.

a severe, though brief, intrusion upon cherished personal security”—an intrusion that “must be an annoying, frightening, and perhaps humiliating experience.”<sup>88</sup>

Thus, what the majority opinion takes to be a simple matter of “commonsense judgment[ ] and inference[ ] about human behavior”<sup>89</sup> has real-world implications. For those who do not live in Black neighborhoods, the costs of racially territorial policing are largely hidden. As a practical matter, no one will be free to run in a high-crime area if the police are around because one’s “unprovoked flight” may be interpreted as evasion of the police. Knowing this, many may adjust their routines to avoid the hassle if they see the police or suspect that they are near. They might decide not to take a run around the neighborhood, or they might exercise caution when playing games with their friends in a park. They might avoid walking fast to make it home for dinner. This is the psychic cost of racial territoriality: the heightened sense that danger at the hands of the police is always around the corner, even during the most ordinary and mundane activities of day-to-day life.

### C. Addressing the Community-Safety Argument

One might argue that the possibility of criminal activity justifies police officers’ decisions to stop people who are, for all apparent purposes, trying to evade them by running away. Why divest the police of authority—the argument goes—to prevent crime simply because some innocent people might be unfairly targeted in the process? Continuing this line of argument, a critic might also contend that a person who is “truly innocent” will not mind being stopped by the police because they understand that this inconvenience is the price of public safety.

One can discern threads of this argument in *Wardlow*. Its difficulty is that it rests on a very thin conception of “safety” for the people who reside in Black neighborhoods or other low-income neighborhoods of color. Victimization of any Black person undermines the community’s collective sense of safety. And the victimization of one member of the community means that anyone can similarly be victimized. If someone is not safe, then no one is.<sup>90</sup>

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<sup>88</sup> *Wardlow*, 528 U.S. at 127 (Stevens, J., concurring in part and dissenting in part) (quoting *Terry v. Ohio*, 392 U.S. 1, 24–25 (1968)).

<sup>89</sup> *Id.* at 125 (majority opinion).

<sup>90</sup> See Bell, *supra* note 28, at 2104–14 (discussing how individuals incorporate community experiences in understanding the possibilities for negative interactions with the police).

Nor can a vague appeal to public safety justify police officers' broad authority to stop people who are fleeing in areas that are defined by the police as having high levels of crime. First, there is the reality that Black people run from the police because they (justifiably) fear police harassment and abuse. Second, there is a high likelihood that when general references are made to public safety, they do not include Black people. "Safety" is raced as White, as is "the public." Because Black people are stereotyped as dangerous, they are functionally excluded from the body politic.<sup>91</sup> Thus, their safety is not a matter of public concern.

#### D. The Inaccuracy of the "High Crime Area"

There is another question that bears on the legitimacy of *Wardlow*. Even assuming, as the *Wardlow* majority did, that unprovoked flight in a high-crime area is a legitimate basis for reasonable suspicion, how confident can we be of the accuracy of "high crime" designations by the police?

A recent study by Professors Ben Grunwald and Jeffrey Fagan calls into question police judgments that areas have high levels of crime.<sup>92</sup> They argue that *Wardlow* rested on three unarticulated empirical assumptions.<sup>93</sup> First, a "high-crime area" should be analyzed as a smaller geographic unit, such as a street block or intersection, rather than an entire neighborhood or city.<sup>94</sup> Second, officers' identification of an area as "high crime" is "relatively accurate."<sup>95</sup> Third, an officer's identification of an area as "high crime" should predict whether a suspect's presence in that area means that they are involved in crime.<sup>96</sup>

Grunwald and Fagan's study suggests that none of these assumptions are justified when it comes to actual "high-crime area" designations. Their conclusions are based on nearly 2.5 million stops conducted by the NYPD between 2007 and 2012 under its stop-and-frisk policy. The authors concluded that implementation of the high-crime-area standard in New York City during this

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<sup>91</sup> See *id.* at 2067 ("The concept of legal estrangement has the power to reorient police reform efforts because it clarifies the real problem of policing: at both an interactional and structural level, current regimes can operate to effectively banish whole communities from the body politic.").

<sup>92</sup> See Ben Grunwald & Jeffrey Fagan, *The End of Intuition-Based High-Crime Areas*, 107 CALIF. L. REV. 345, 396 (2019).

<sup>93</sup> *Id.* at 367–70.

<sup>94</sup> *Id.* at 367–68.

<sup>95</sup> *Id.* at 368.

<sup>96</sup> *Id.* at 370.

period appears to have been “haphazard at best, and discriminatory at worst”;<sup>97</sup> that the police indiscriminately used the “high-crime area” designation across the city; and that every block in the city had—at one point or another—been identified by police officers as having high levels of crime.<sup>98</sup>

Most importantly for my purposes, Grunwald and Fagan concluded that “[t]he racial composition of the area and the identity of the officer [were] stronger predictors of whether an officer deem[ed] an area high crime than the crime rate.”<sup>99</sup> Finally, they noted the possibility that high-crime designations were used as a “cover to bolster the appearance of constitutional validity in their weakest”—that is, most unjustified—“stops.”<sup>100</sup>

This study is of only one (very large) jurisdiction, but the results are alarming. It suggests the proclivity of police to misuse the “high-crime area” designation to justify aggressive policing in ways that also feed racial stereotypes about Black people in Black neighborhoods. These overly broad designations stigmatize Black space as criminal space of the presumptively suspect. The stigmatization of Black space as guilty space makes it easier for the police to justify their territorialization and to dominate, contain, and subjugate the people within.<sup>101</sup> In so doing, it impairs the freedom to move throughout the everyday spaces of Black neighborhoods.

## CONCLUSION

Space is a critical, but often neglected, frame for understanding racial inequality. This Essay sought to explain why space matters in the context of policing, the spatial harms that racially

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<sup>97</sup> See Grunwald & Fagan, *supra* note 92, at 396.

<sup>98</sup> *Id.* at 383–84 (“[O]fficers called 98 percent of the block groups in the city high crime in at least 30 percent of stops conducted in those areas. In other words, officers are claiming that every block in New York City is high crime at one time or another.”).

<sup>99</sup> *Id.* at 352.

<sup>100</sup> *Id.*

<sup>101</sup> *Cf.* Bell, *supra* note 12, at 655 (describing the “mutually constitutive relationship between daily practices of urban policing and residential segregation”); Fagan & Ash, *supra* note 29, at 120:

When police routinely and promiscuously intervene in the everyday lives of citizens, they impose interaction costs that inevitably deter residents from moving freely. . . . Because police deployments and actions are racialized and focused in poor and segregated places, police in effect reproduce inequality, racial stratification, and segregation through criminal legal enforcement actions that can constrain mobility.

territorial policing creates, and the toll on individuals and communities that such policing exacts.

We should pause here to reflect on the damning precarity of Black lives in predominantly Black neighborhoods and the stereotypes and ideations that perpetuate that status. Racially territorial policing is hypercomplicit in this affair. It spatializes notions of Black inferiority and White superiority onto neighborhood spaces through processes of marginalization, exclusion, and concentration. Black space is naturalized as subordinated space, which is often followed by a denial of resources and opportunities.<sup>102</sup>

There are individual harms too. They include the stigma of experiencing oneself as a perpetual suspect and the fight it takes to resist that marginalization; the loss of freedom to be left alone and to move (unquestioned) through space according to one's will; and, finally, the sense that there are too few places where one is free to just *be*.

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<sup>102</sup> See generally Lenese C. Herbert, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 GEO. J. ON POVERTY L. & POL'Y 135 (2002) (providing a first-person account of a former assistant U.S. attorney's experiences in court and how readily high crime area designations were accepted not only by law enforcement but also by defense counsel and judges).