THE SMALL AGENCY PROBLEM IN AMERICAN POLICING

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Although legal scholars have over the years developed an increasingly sophisticated account of policing in the largest cities, they have largely overlooked the thousands of small departments that serve rural areas and small towns. As this Article makes clear, small departments are hardly immune from the various problems that plague modern policing. But their sheer number—and relative obscurity—has made it difficult to get a handle on the magnitude of the difficulties they present, or the ways in which familiar reform proposals might need to look different in America's small towns.

This Article begins to fill this gap. It does so by blending together empirical analysis of various dimensions of small-agency policing, with in-depth case studies that add much-needed texture to the patterns that the data reveal. It argues that the problems of small-town and rural policing differ in important ways from those that plague big-city police, and that there are predictable patterns that explain when and why small agencies are likely to go astray. In particular, it shows that small agencies are susceptible to two types of systemic failures—those that reflect the inherent limitations of small-town political processes and those that are driven by the capacity constraints that some small governments face. It then draws on the data and case studies to provide a preliminary sense of how prevalent these problems are likely to be.

This Article concludes with the policy implications that follow from this richer and more nuanced account of small-town and rural police. It begins with the oft-made suggestion that small agencies be made to "consolidate" with one another or simply dissolve, and it explains why consolidation is not only highly unlikely, but also potentially counter-productive. It argues that states should instead pursue two parallel sets of reforms, the first aimed at equalizing the dramatic disparities in police funding across municipalities, and the second focused on a set of regulatory measures designed to address specific small agency harms.

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INTRODUCTION

American policing is unmatched in its degree of fragmentation. The United States has more than 17,500 law enforcement agencies.[1]

[1] ANDREA M. GARDNER & KEVIN M. SCOTT, BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., NCJ NO. 302187, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2018 –STATISTICAL TABLES 11 (2022). This figure includes roughly 12,000 municipal departments, 3,000 sheriffs' offices, and 49 state police departments. There also are an additional 2,600 special purpose agencies, including school and water district police departments, constables, and tribal police. Finally, there are 94 separate agencies at the federal level. *See* CONNOR BROOKS, BUREAU OF

By way of comparison, Canada has just 177.[2] England has 44.[3] And Australia just 9.[4]

Over the years, scholars have developed an increasingly sophisticated account of policing in the nation's largest cities—places like Baltimore, Chicago, and New York. They have described in detail the ways in which policing has contributed to the marginalization and subordination of heavily-policed communities, particularly communities of color.[5] They have identified the many drivers of excessive force and police misconduct—ranging from shortfalls in policy and training, to accountability-impeding provisions in collective bargaining agreements, to a "blue wall of silence" that thwarts meaningful review.[6] And they

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JUST. STATS., U.S. DEP'T OF JUST., NCJ No. 304752, FEDERAL LAW ENFORCEMENT OFFICERS, 2020 – STATISTICAL TABLES 1 (2022).

[2] Patricia Conor, Sophie Carrière, Suzanne Amey, Sharon Marcellus, & Julie Sauvé, *Police Resources in Canada, 2019*, STATS. CAN. (Dec. 8, 2020), https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00015-eng.pdf [https://perma.cc/H4KL-TDAF].

[3] *How INTERPOL Supports the UK to Tackle International Crime*, INTERPOL, https://www.interpol.int/en/Who-we-are/Member-countries/Europe/UNITED-KINGDOM [https://perma.cc/WXJ8-WT2C].

[4] *Composition of Australia's Police Services*, AUSTRALIAN INST. OF CRIMINOLOGY (Mar. 4, 2003), https://www.aic.gov.au/publications/cfi/cfi44 [https://perma.cc/F8ZQ-LUCR].

[5] *See, e.g.*, Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017) (introducing the concept of legal estrangement to more fully describe the ways in which policing contributes to the marginalization of race-class subjugated communities); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650 (2020) (highlighting the role of policing in maintaining racial segregation); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020) (highlighting the failure of reform efforts to meaningfully address policing harms and arguing that, ultimately, proposals must be evaluated based on their likelihood of advancing abolitionist goals); Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 68 UCLA L. REV. DISCOURSE 200 (2020) (arguing that the Thirteenth Amendment provides an important rhetorical and legal tool with which to critique modern policing); Aziz Z. Huq, *Consequences of Disparate Policing: Evaluating Stop and Frisk as a Modality of Urban Policing*, 101 MINN. L. REV. 2397 (2017) (describing the devastating consequences of aggressive street-level enforcement practices); PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN 1–3 (2017) (highlighting the ways in which policing reenforces white supremacy).

[6] *See, e.g.*, Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017) (identifying the most problematic provisions in police union collective bargaining agreements); Stephen Rushin, *Police Arbitration*, 74 VAND. L. REV. 1023 (2021) (explaining why arbitration processes systematically undermine efforts at accountability); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712 (2017) (providing a nuanced account of police unions and their role in forestalling reform); Dhammika Dharmapala, Richard H. McAdams & John Rappaport, *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*, 38 J. L. ECON. & ORG. 1, 1–2 (2022) (providing evidence that collective bargaining rights leads to an increase in violent incidents of misconduct); Maria Ponomarenko, *Rethinking Police Rulemaking*, 114 NW. U. L. REV. 1 (2019) (describing the complex web of policies, procedures, and institutional structures that shape various policing outcomes like excessive force); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761 (2012) (explaining why constitutional law is inadequate to regulate policing); Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211 (2017) (arguing for a new approach to the

have explored various models of police oversight as well as the broader political dynamics that account for familiar policing harms.[7]

The vast majority of police departments, however, look nothing like the sprawling bureaucracies that police the urban core. More than 80% of local police departments and sheriffs' offices have fifty officers or fewer—and nearly half of these employ fewer than ten.[8] Together, "small agencies"—typically defined as agencies with fifty officers or fewer—provide policing services to some 70 million Americans.

Small agencies briefly captured the nation's attention in 2014, when a white police officer in Ferguson, Missouri killed an unarmed black teenager, Michael Brown.[9] The shooting was followed by protests, and a shockingly militarized response on the part of the small-town police.[10] For several nights in a row, viewers across the country watched as armored vehicles rolled down the streets of the small midwestern suburb, officers perched on top with their M4 rifles pointed at peaceful protesters.[11]

As reporters dug into the root causes of the unrest, the Ferguson story quickly ballooned in ways that seemed to encapsulate the many

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Fourth Amendment that incorporates recent advances in police tactics designed to reduce the necessity of resorting to force).

[7] *See, e.g.*, Ponomarenko, *supra* note 6 (arguing in favor of regulatory intermediaries like inspectors general and police commissions); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. Rev. 1827 (2015) (arguing for greater legislative and public involvement in regulating the police); Joanna C. Schwartz, *Who Can Police the Police?*, 2016 U. Chi. Legal F. 437 (evaluating the comparative strengths and weaknesses of various potential police regulators); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 Yale L.J. 778 (2021) (arguing that institutional reforms should be aimed at shifting power to communities that disproportionately bear the burdens of policing); James Forman Jr., Locking Up Our Own (2017) (describing how majority-Black Washington D.C. came to adopt some of the most regressive policing and criminal justice policies); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 Calif. L. Rev. 679 (2020) (evaluating the degree to which various community control efforts actually facilitate power-shifting).

[8] Gardner & Scott, *supra* note 1, at 8.

[9] *See* U.S. Dep't of Just., Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson 5–8 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf [https://perma.cc/F273-NLYR] (summarizing the Justice Department's findings regarding the shooting); Niraj Chokshi, *Militarized Police in Ferguson Unsettles Some; Pentagon Gives Cities Equipment*, Wash. Post (Aug. 14, 2014, 9:12 PM), https://www.washingtonpost.com/politics/militarized-police-in-ferguson-unsettles-some-pentagon-gives-cities-equipment/2014/08/14/4651f670-2401-11e4-86ca-6f03cbd15c1a_story.html [https://perma.cc/V4AF-KU8T] (reporting on law enforcements' response to protests in Ferguson).

[10] *See* Josh Levs, *Ferguson Violence: Critics Rip Police Tactics, Use of Military Equipment*, CNN (Aug. 15, 2014, 10:47 AM), https://www.cnn.com/2014/08/14/us/missouri-ferguson-police-tactics/index.html [https://perma.cc/4T5U-WKES] (describing police response to the Ferguson protests); Chokshi, *supra* note 9 (same).

[11] Chokshi, *supra* note 9.

troubling pathologies of modern policing. The week after the shooting, a local organization released a report showing that the municipal court in Ferguson had issued 32,975 arrest warrants in 2013 (more than 1.5 warrants for each of the town's 21,135 residents), primarily for driving violations and low-level infractions.[12] That year, Ferguson also collected more than $2.6 million in fines—its second biggest source of revenue.[13] Unsurprisingly, both the fines and arrests fell disproportionately on the city's Black residents, who made up 67% of the population, but more than 90% of those who were arrested or fined.[14] A U.S. Department of Justice report released several months later confirmed all of these accounts and more, revealing a troubling pattern of egregious misconduct,[15] lax supervision,[16] casual racism,[17] and a municipal culture that privileged profit above public safety.[18]

The question on the minds of many observers in the wake of these reports was whether Ferguson was just the tip of the iceberg.[19] With more than 12,600 small agencies scattered throughout the country,[20] how many Fergusons were out there?

That same question, in one form or another, has been asked time and again in the years since, as one small town after another has briefly gained national notoriety because of the actions of its police. There

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12 Joseph Shapiro, *In Ferguson, Court Fines and Fees Fuel Anger*, NPR (Aug. 25, 2014, 5:56 PM), https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger [https://perma.cc/J5MZ-5QTM].

13 *Id.*

14 Mark Berman & Wesley Lowery, *The 12 Key Highlights from the DOJ's Scathing Ferguson Report*, Wash. Post (Mar. 4, 2015, 3:11 PM), https://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-dojs-scathing-ferguson-report [https://perma.cc/RWR7-3Z3T].

15 U.S. Dep't of Just., Investigation of the Ferguson Police Department 28–35 (2015) [hereinafter DOJ Ferguson Report] (documenting a pattern of clearly excessive force—including instances that the Justice Department deemed "entirely punitive").

16 *Id.* at 38–41 (noting that officers rarely reported use-of-force incidents, and those that were reported were rarely reviewed).

17 *Id.* at 71–73 (documenting explicitly racist emails and text messages between police officers and other public officials).

18 *Id.* at 2 ("Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs.").

19 *See, e.g.*, Radley Balko, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, Wash. Post (Sept. 3, 2014, 1:30 PM), https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty [https://perma.cc/Y7WT-MNXC] (observing how other localities in St. Louis are prone to Ferguson-like incidents); Jaeah Lee, *Exactly How Often Do Police Shoot Unarmed Black Men?*, Mother Jones (Aug. 15, 2014), https://www.motherjones.com/politics/2014/08/police-shootings-michael-brown-ferguson-black-men [https://perma.cc/NA44-5C9N] (noting that Ferguson was not anomalous).

20 *See infra* notes 104–18 (describing the data sources on which I draw for this figure and others throughout the paper).

was Graham, North Carolina, where officers were captured on video using pepper spray to disperse a small crowd of Black church-goers—including children as young as five—who had been taking part in a pre-election "march to the polls."[21] There was Windsor, Virginia, where officers held a Black Army lieutenant at gun point, before dousing him in pepper spray and dragging him from his vehicle, during a low-level traffic stop.[22] After the botched response to the school shooting in Uvalde, Texas, a small town with not one but two police departments, the *Washington Post* ran a feature questioning "whether tiny police agencies make sense."[23]

The existing literature provides little by way of answers. By far the most comprehensive accounts of small agency policing come from a group of criminologists who published a series of articles and books on small-town and rural police.[24] Writing in the 1990s and early 2000s, these authors offered a relatively sanguine portrait of small agency policing that is difficult to reconcile with more recent reporting—and importantly, is entirely divorced from contemporary policy debates over inequality, policing, and race.[25] Legal scholars, meanwhile, have only focused on small agencies in passing, primarily in the context of

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[21] Emma Peaslee, *Lawsuits Filed After Police Use Pepper Spray at North Carolina March to the Polls*, NPR (Nov. 3, 2020, 5:24 PM), https://www.npr.org/2020/11/03/930912025/lawsuits-filed-after-police-use-pepper-spray-at-north-carolina-march-to-the-poll [https://perma.cc/KL5S-GVUV].

[22] *See* Matthew S. Schwartz & Emma Bowman, *Virginia Attorney General Investigating Police Department*, NPR (Apr. 13, 2021, 12:48 AM), https://www.npr.org/2021/04/11/986271819/officer-who-handcuffed-and-pepper-sprayed-black-army-lieutenant-is-fired [https://perma.cc/UG28-AVVS].

[23] Steve Thompson, *Uvalde Intensifies Doubt over Whether Tiny Police Agencies Make Sense*, Wash. Post (July 19, 2022, 11:30 AM), https://www.washingtonpost.com/nation/2022/07/19/tiny-police-uvalde [https://perma.cc/8QZD-RVJN].

[24] *See, e.g.*, Ralph A. Weisheit, L. Edward Wells & David N. Falcone, Crime and Policing in Rural and Small-Town America (1995) [hereinafter Weisheit et al., Crime & Policing]; Ralph A. Weisheit, L. Edward Wells & David N. Falcone, *Community Policing in Small Town and Rural America*, 40 Crime & Delinq. 549 (1996) [hereinafter Weisheit et al., *Community Policing*]; David N. Falcone, L. Edward Wells & Ralph A. Weisheit, *The Small-Town Police Department*, 25 Policing 371 (2002); John Liederbach & James Frank, *Policing Mayberry: The Work Routines of Small-Town and Rural Officers*, 28 Am. J. Crim. Just. 53 (2003).

[25] *See infra* Section I.A. (summarizing literature). After Ferguson, a number of sociologists turned their attention to small-town policing, providing important and deeply textured accounts of aggressive policing and marginalization in the St. Louis suburbs. *See, e.g.*, Andrea S. Boyles, Race, Place, and Suburban Policing: Too Close for Comfort (2015) (describing the complicated and often fraught relationship between Black residents and their small police department in the St. Louis suburbs); Jodi Rios, Black Lives and Spatial Matters: Policing Blackness and Practicing Freedom in Suburban St. Louis (2020) (addressing race, policing, and segregation in the St. Louis suburbs); Colin Gordon, Citizen Brown: Race, Democracy, and Inequality in the St. Louis Suburbs (2019) (same). Their work made clear that there were indeed other Fergusons in the St. Louis area. But that

discrete policing issues such as municipal liability and insurance, fines and fees enforcement, off-duty employment, and collective bargaining.[26]

The lack of attention to small policing agencies should hardly come as a surprise. In order to study something, one must first make it *legible*. And for legal scholars in particular, smaller government entities tend to be especially opaque.[27] They appear only sporadically in reported cases. They rarely are the subject of Justice Department investigations or advocacy organization reports.[28] Their websites are sparse at best.[29]

Yet making them legible is essential to understanding the full sweep of American policing and for pursuing comprehensive reform. Small agencies police some of the most vulnerable communities. Nearly 1,800 small departments work in jurisdictions in which more than a quarter of residents live below the poverty line.[30] More than 3,671 agencies are in areas with sizeable communities of color—1,521 of which are majority non-white.[31] Chuck Wexler, the Executive Director of the Police Executives Research Forum observed that, if "[y]ou want to change American policing, figure out how to get to . . . the departments of 50 officers or less."[32] We will never make serious headway in addressing the problems of policing by focusing on big city agencies alone.

What, then, are the problems of small agency policing? One of the challenges in answering this question directly is that we have very little

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only changed the form of the question: How many other metros have similar problems as well?

[26] *See infra* notes 98–101 and accompanying text (summarizing the literature).

[27] *See, e.g.*, Aurélie Ouss & John Rappaport, *Is Police Behavior Getting Worse? Data Selection and the Measurement of Policing Harms*, 49 J. Legal Stud. 153, 160–61 (2020) (noting the lack of attention to small agencies both in academic scholarship and in news accounts of various policing harms).

[28] The Justice Department has investigated dozens of police departments for civil rights violations under 42 U.S.C. § 12601 (formerly § 14141), which authorizes the Justice Department to bring suit against state or local law enforcement agencies that engage in a pattern or practice unconstitutional policing. Most of these investigations have focused on the larger cities, including Chicago, Baltimore, Newark, New Orleans, and Oakland. Only a small number of Justice Department investigations involved smaller jurisdictions. *See* U.S. Dep't of Just., The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present 41–47 (2017), https://www.justice.gov/crt/file/922421/download [https://perma.cc/T6MA-2MBF] (summarizing cases).

[29] *See, e.g.*, *Departments*, Vill. of Bainbridge NY, http://www.villageofbainbridgeny.org/departments.html [https://perma.cc/7Z9H-6MBG] (listing only the phone number for the Department and the names of its three officers).

[30] *See infra* Section II.C.2.b (describing the economic characteristics of the communities in which small agencies work).

[31] *See infra* Section II.C.2.b (describing the demographics of small agency jurisdictions).

[32] Mark Berman, *Most Police Departments in America Are Small. That's Partly Why Changing Policing Is Difficult, Experts Say.*, Wash. Post (May 8, 2021, 4:59 PM) https://www.washingtonpost.com/nation/2021/05/08/most-police-departments-america-are-small-thats-partly-why-changing-policing-is-difficult-experts-say [https://perma.cc/H5GK-BEZX].

reliable data on policing generally and even less on small-town and rural police. We do not know, for example, how frequently officers in small (or large) departments use force against the public.[33] And it is only through the tireless efforts of journalists and advocates that we know how many people are killed each year at the hands of the police.[34] Fewer than half of all states collect demographic data on officer-initiated stops (and fewer still do so in any plausibly useful way).[35] Little is known about the number of complaints brought by members of the public, or the frequency with which officers in any given department face discipline for misconduct.

My goal with this Article, then, is to start to make sense of small-town and rural policing in our world of second bests. I do this first and foremost by leveraging the data we *do* have—in particular, by combining more than a dozen federal and state datasets that speak to various properties of small-town and rural departments, as well as the communities in which they work. Some of these datasets get at the question of small-agency problems directly by capturing troubling patterns of policing for profit and discriminatory enforcement. Other data points are more useful as proxies for where some of the problems might be.

Where the data run out, I turn to local government theory to help fill the gaps. Over the years, local government scholars have identified a number of conditions under which local governments are most likely to fall short in remedying local harms.[36] Broadly speaking, some of these reflect the familiar limits of small-scale political processes, including the tendency to externalize the costs of local policies on neighboring jurisdictions and to ignore those harms that fall disproportionately on marginalized groups. Others stem from the significant resource constraints that some small governments face. These insights, when paired with the

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[33] Only a small number of states mandate the collection of use-of-force data, and virtually all states limit these collection efforts to "critical incidents" such as police shootings or in-custody deaths. *See Use of Force Data and Transparency Database*, Nat'l Conf. of State Legislatures (Jan. 12, 2021), https://www.ncsl.org/civil-and-criminal-justice/use-of-force-data-and-transparency-database [https://perma.cc/ZRS7-XV2C].

[34] The best available data on police fatalities come from databases put together by advocates and journalists, which capture more than three times the number of police killings than are reported in the federal government's database. *See Mapping Police Violence*, Campaign Zero (Aug. 15, 2023), https://mappingpoliceviolence.org [https://perma.cc/5TBY-JRDY]; *Police Shootings Database 2015–2023: Search by Race, Age, Department*, Wash. Post (Sept. 23, 2023), https://www.washingtonpost.com/graphics/investigations/police-shootings-database [https://perma.cc/222W-RGHX]; Andrew Ba Tran, Marisa Iati & Claire Healy, *As Fatal Police Shootings Increase, More Go Unreported*, Wash. Post (Dec. 6, 2023, 6:30 AM), https://www.washingtonpost.com/investigations/interactive/2022/fatal-police-shootings-unreported [https://perma.cc/6J6Q-GUYM] (finding that in 2021, just 168 of the 879 fatal police shootings had been reported to the FBI).

[35] *Traffic Stop Data*, Nat'l Conf. of State Legislatures (Jan. 12, 2021), https://www.ncsl.org/civil-and-criminal-justice/traffic-stop-data [https://perma.cc/VVC7-LKKC].

[36] *See infra* Section II.C.

data, provide a roadmap of sorts for identifying the subset of departments that are most likely to generate various small agency harms.

What this Article shows is that there is indeed a distinct set of "small-agency problems" in American policing, which differ in important ways from those that plague big city police. Some problems—like the extreme resource constraints that affect a subset of jurisdictions—are confined almost entirely to small departments. Other troubling practices, like racial discrimination or excessive force, are a problem for all departments. But the factors that drive them in small agencies differ, as do the available avenues for local reform. Small jurisdictions, for example, are far less likely to have the sorts of legal and political accountability structures—such as police commissions and inspectors general, a robust local media presence, or an active plaintiffs bar—that can help nudge policing in the larger cities. As a result, state intervention may be particularly warranted to address the problems that crop up in small-town and rural departments. In the absence of external prodding, small jurisdictions may be even less likely than their big-city counterparts to fix these problems on their own.[37]

This Article proceeds in three Parts. It begins in Part I by briefly summarizing the existing literature on small agency policing, which offers at best a conflicting and piecemeal account of policing in America's small towns. Part II then draws on a mix of local government theory and careful empirical analysis to develop a typology of small-agency problems, and to start to identify the subset of jurisdictions in which these problems are most likely to occur. Finally, Part III turns to the question of what states can do to address the small-agency harms. It begins with the oft-made suggestion that small agencies simply disband or "consolidate" with a larger force, and it shows why consolidation is unlikely to address either the political or fiscal shortfalls that account for the various problems of small-town and rural policing. In lieu of consolidation, it argues that states should instead pursue two sets of reforms—the first aimed at compensating for the predictable limits of local political processes, and the second designed to remedy the dramatic funding disparities that leave some jurisdictions unable to meet their residents' needs.

I
The Virtues and Vices of Small-Agency Policing

Over the years, few policing scholars have paid much attention to small-town and rural police. Across disciplines—from criminology to

37 *See infra* notes 134–37, 215–16 and accompanying text (describing the various political and legal accountability mechanisms that are lacking in smaller jurisdictions).

law—the vast majority of scholarship has been devoted to the problems of policing in the nation's largest cities.[38] As a result, much of what we know about small-agency policing has been shaped by two brief bursts of scholarly and popular attention to policing outside the major cities which, as this Part makes clear, offer a conflicting and decidedly incomplete account of policing in America's small towns.

A. Small-Town Policing as "Community Policing"

By far the most systematic accounts of small-agency policing come from the field of criminology: in particular, the work of Ralph Weisheit, Edward Wells, and Richard Falcone who, beginning in the early 1990s, produced more than a dozen articles and books on small-town police.[39] Their research ranged from in-depth field studies of individual departments to broader survey-based studies of small-agency practices across the nation as a whole.[40] These accounts offer important insights on the many facets of small-town policing. But they also are artifacts of the period in which they were produced, and in particular, the degree to which the "community policing" frame dominated contemporary understandings of both the problems of policing and the manner in which they ought to be addressed.[41]

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[38] *See supra* notes 5–7 and accompanying text.

[39] *E.g.*, Weisheit et al., Crime & Policing, *supra* note 24; Weisheit et al., *Community Policing*, *supra* note 24; Falcone et al., *supra* note 24; Liederbach & Frank, *supra* note 24; Jay Bass, *Rural Policing: Patterns and Problems of "Micro" Departments*, 9 Just. Pro. 59 (1995); Karren Baird-Olson, "Doing What We've Always Done": A Case Study of Rural Policing (1999); Timothy C. O'Shea, *Community Policing in Small Town Rural America: A Comparison of Police Officer Attitudes in Chicago and Baldwin County, Alabama*, 9 Policing & Soc'y 59 (1999); Gary W. Cordner, *Police Agency Size and Investigative Effectiveness*, 17 J. Crim. Just. 145 (1989); Kevin J. Barrett, Maria (Maki) Haberfeld & Michael C. Walker, *A Comparative Study of the Attitudes of Urban, Suburban, and Rural Police Officers in New Jersey Regarding the Use of Force*, 52 Crime L. & Soc. Change 159 (2009). An earlier wave of scholarship on small-town departments dates to the 1970s and was motivated by widespread calls to "consolidate" small departments in order to improve the delivery of policing services. *See, e.g.*, Elinor Ostrom & Dennis C. Smith, *On the Fate of "Lilliputs" in Metropolitan Policing*, 36 Pub. Admin. Rev. 192 (1976) (pushing back against calls to consolidate very small policing agencies); Elinor Ostrom, Roger B. Parks & Gordon P. Whitaker, *Do We Really Want to Consolidate Urban Police Forces? A Reappraisal of Some Old Assertions*, 33 Pub. Admin. Rev. 423 (1973) (same).

[40] *Compare* Leiderbach & Frank, *supra* note 24 (presenting findings from a detailed study of five small departments in Southeastern Ohio), *with* Weisheit et al., Crime & Policing, *supra* note 24 (providing a comprehensive survey of crime and policing in rural areas and small towns).

[41] *See, e.g.*, Cong. Rsch. Serv., IF10922, Community Oriented Policing Services (COPS) Program (2022) (noting that in the mid-1990s, federal spending alone on community policing grants to states and municipalities averaged $1.4 billion per year). As evident from their titles, many books and articles explicitly adopted the community policing frame. *See, e.g.*, Gary W. Cordner & Kathryn E. Scarborough, *Operationalizing Community Policing in Rural*

The basic idea behind the "community policing" turn of the 1980s and 1990s was that the various ills of policing stemmed from the fact that officers had become too far removed from the communities they policed.[42] They did not live in the area.[43] They did not understand the community's social landscape.[44] And as a result, they struggled to distinguish between those who were in fact involved in criminal activity and ordinary neighborhood kids.[45] This in turn made the police less effective in responding to crime, which itself contributed to a further decline in community trust.

In order to address these shortfalls, federal, state, and local governments spent billions on various community policing initiatives designed to bridge this gap between residents and their police.[46] Departments introduced foot patrols and residency requirements.[47] They set up community advisory councils and held weekly beat meetings.[48] They sponsored community block parties and police athletic leagues.[49] And they trained new recruits on the history and traditions of the communities in which they would work.[50]

America: Sense and Nonsense, *in* COMMUNITY ORIENTED POLICING AND PROBLEM SOLVING: NOW AND BEYOND 118–29 (Bill Lockyer ed., 1999); Weisheit et al., *Community Policing*, *supra* note 24; Carl W. Hawkins, Jr. & Ralph A. Weisheit, *The State of Community Policing in Small Towns in Rural America*, *in* COMMUNITY POLICING IN A RURAL SETTING 21–27 (Quint Thurman & Edmund F. McGarrell, eds. 2015); O'Shea, *supra* note 39.

42 *See, e.g.*, Falcone et al., *supra* note 24, at 377.

43 Nate Silver, *Most Police Don't Live in the Cities They Serve*, FIVETHIRTYEIGHT (Aug. 20, 2014, 4:14 PM), https://fivethirtyeight.com/features/most-police-dont-live-in-the-cities-they-serve [https://perma.cc/7MXQ-5425].

44 *See, e.g.*, John Eligon & Kay Nolan, *When Police Don't Live in the City They Serve*, N.Y. TIMES (Aug. 18, 2016), https://www.nytimes.com/2016/08/19/us/when-police-dont-live-in-the-city-they-serve.html [https://perma.cc/A62H-XGVC].

45 *See, e.g.*, FORMAN, *supra* note 7, at 155 ("Unable to distinguish between a student on break and a drug dealer working the corner, the police treat them both as menaces to public safety.").

46 *See, e.g.*, CONG. RSCH. SERV., *supra* note 41; Calvin D. Williams, Cleveland Div. of Police, *2019 Community & Problem-Oriented Policing Plan* (2019), https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5c796361e2c48323a6b4064b/1551459170892/CPOP+Ex+A.pdf [https://perma.cc/RE6Q-SENC] (outlining the Cleveland Police Department's community policing plan).

47 *Id.* at 10 (describing bike and foot patrols).

48 *Id.* at 30 (hosting and attending community meetings and events); *see also* Chi. Cmty. Policing Evaluation Consortium, *Community Policing in Chicago, Year Ten: An Evaluation of Chicago's Alternative Policing Strategy* (2004), https://www.skogan.org/files/Community_Policing_in_Chicago_Year_Ten.pdf [https://perma.cc/FV3Q-SP2N] (describing Chicago's beat meeting program).

49 Williams, *supra* note 46, at 30 (describing various police-organized engagements and events).

50 *See, e.g.*, Marcus Paxton & Robert Strauss, *Cultural Diversity and Cultural Competency for Law Enforcement*, POLICE CHIEF MAG., https://www.policechiefmagazine.org/cultural-diversity-and-competency [https://perma.cc/E7GC-3CJG].

It was against this backdrop that scholars like Weisheit, Falcone, and Wells turned their attention to small-town and rural departments—and perhaps unsurprisingly, found much to admire. Indeed, as the authors routinely pointed out, the supposedly "new" concept of "community policing" was really just another name for ordinary, run-of-the-mill policing in America's small towns.[51]

Small-town officers, for example, already lived in the communities in which they worked, and they knew a significant percentage of residents with whom they came into contact.[52] Structured bonding opportunities like "Coffee with a Cop"[53] were largely superfluous in smaller departments. Officers got to know residents organically by seeing them at baseball games, churches, and various community events.[54]

Small-town officers also appeared to more readily embrace an approach to law enforcement that emphasized "general problem solving" over "reactive law enforcement"—another key focus of community policing reforms.[55] As several studies pointed out, this problem-oriented approach was baked into the day-to-day work of smaller departments, especially in far-flung rural areas where other municipal or county services were typically scarce.[56] Officers changed lightbulbs for the elderly.[57] They performed house checks for residents away on vacation.[58] And they helped connect needy residents to various benefit programs and social supports.[59] Officers in small departments also were more likely to exercise their discretion in responding to various community problems, treating arrest and incarceration as

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51 *See, e.g.*, Weisheit et al., *Community Policing*, *supra* note 24, at 551 ("[C]ommunity policing looks and sounds a great deal like rural and small town policing, as it has been practiced for a long time."); Cordner & Scarborough, *supra* note 41, at 118 (noting that some observers believe that community policing is nothing more than an effort on the part of "urban police agencies . . . to become more like small-town police").

52 Weisheit et al., *Community Policing*, *supra* note 24, at 556. One observational study found that small-town officers "had detailed knowledge" of nearly a third of the people they encountered over the course of their shift. Liederbach & Frank, *supra* note 24, at 67.

53 *See* Coffee with a Cop, https://coffeewithacop.com [https://perma.cc/4R2H-LHQN] (promoting program events for community residents to meet with cops at restaurants and other neutral locations).

54 *See, e.g.*, Baird-Olson, *supra* note 39, at 12.

55 Weisheit et al., *Community Policing*, *supra* note 24, at 558. These reforms often appear under the heading of "Problem-Oriented Policing," a close cousin of community policing that dates to the same period. *See, e.g.*, Michael D. Reisig, *Community and Problem-Oriented Policing*, 39 Crime & Just. 1, 1 (2010) (explaining the relationship between the two policing strategies).

56 Weisheit et al., *Community Policing*, *supra* note 24, at 558–59.

57 *Id.* at 558.

58 Liederbach & Frank, *supra* note 24, at 69.

59 Weisheit et al., Crime & Policing, *supra* note 24, at 136.

measures of "last resort."[60] Officers saw it as their mission "to resolve issues of concern to the community in the least invasive way, reserving the formal legalistic option for more intractable problems."[61] As one officer explained, "If I had to make an arrest, it was almost as if I'd done something wrong further back down the line."[62]

Smaller departments also seemed to have an easier time holding their officers accountable—and were themselves more directly accountable to the communities in which they worked. In their study of small-town and rural policing, Weisheit, Falcone, and Wells predicted that unsanctioned misconduct—that is, misconduct that runs counter to agency expectations or community norms—was likely to be less common in smaller agencies and should be easier for communities to detect.[63] "In smaller communities the actions of police officers are known to most of the population thanks to the effectiveness and extensiveness of informal communication networks."[64] "A [rogue] rural officer," the authors explained, "would need to be far more careful to cover his or her tracks to avoid public suspicion and condemnation."[65] They also found that small-town sheriffs and chiefs were more likely than their big-city counterparts to have their personal phone number publicly listed,[66] and that residents in small towns generally expected to be able to take their problems directly to the agency head.[67]

Finally, the experience of small-town departments appeared to support reformers' predictions that building close ties with residents could help officers better address serious crime. Several studies pointed out that clearance rates in rural counties were considerably higher than in urban areas: In rural areas, 61% of reported violent crimes resulted in an arrest, as compared to just 40% in cities with 250,000 residents or more.[68] Anecdotal evidence suggested that much of this had to do with the higher degree of social cohesion among residents, and the closer relationship between residents and the police.[69] A sheriff quoted in one of the studies recalled a time when the local tire store had been burglarized: "People know [the tire owner] . . . so they come and tell me

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60 Falcone et al., *supra* note 24, at 381.

61 *Id.* at 378.

62 Weisheit et al., *Community Policing*, *supra* note 24, at 557.

63 Weisheit et al., Crime & Policing, *supra* note 24, at 142.

64 *See id.* at 132 (quoting James Eisenstein, *Research on Rural Criminal Justice: A Summary*, *in* Criminal Justice in Rural America 105, 117 (1982)).

65 *Id.* at 142.

66 *Id.* at 134.

67 *Id.*

68 Falcone et al., *supra* note 24, at 375.

69 *See* Weisheit et al., Crime & Policing, *supra* note 24, at 128; Cordner, *supra* note 39, at 153.

'I know who did it'. . . . In some place like Fort Worth [Texas], that's not going to happen—ever. The people on the street don't know the cop; the cop doesn't know the person on the street."[70]

To be sure, the picture that emerged from these studies was not altogether rosy. The authors acknowledged, for example, that officers in rural departments often worked long shifts for little pay[71] and typically completed only the bare minimum in training.[72] A study of rural departments in South Central Oklahoma quoted a local prosecutor describing small-town cops as "bungling idiots" who are "bad at handling evidence" and are easily "caught up in the 'good ole boy thing.'"[73] Several studies acknowledged that there is a fine line—often crossed—between policing in ways that reflect community values and letting the mayor's son off the hook on a DUI in order to keep one's job.[74]

Notably absent from these accounts, however, was any serious discussion of the sorts of problems that were on display in Ferguson, or in the other small towns that have made headlines in the years since. Concerns over race discrimination or excessive force, for example, were mentioned rarely if at all. In their book-length study, Weisheit, Falcone, and Wells devoted a scant few pages to police use of force (and even less to the problems of policing and race).[75] Similarly, a number of studies referenced the fact that small towns can sometimes become "speed traps" for passing motorists, but treated this as evidence that rural police work tends to be "tedious" and "mundane."[76]

B. The Scandal-Prone Small-Town Police

The second wave of attention to small-town policing is of a more recent vintage, spurred largely by the Ferguson uprising of 2014 and the various small-town policing scandals that have made the news in the decade since. By far, the most detailed accounts have come from

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70 Weisheit et al., *Community Policing*, *supra* note 24, at 561–62.

71 Bass, *supra* note 39, at 63, 65 (noting that one way "micro" departments ensure round-the-clock service is by requiring officers to work shifts and switch off days and nights).

72 *Id.* at 65.

73 *Id.* at 67.

74 *See, e.g.*, *id.* at 69 (quoting officers from small departments complaining about the risk of getting fired for "issuing tickets to the 'wrong guy'").

75 *See, e.g.*, Weisheit et al., Crime & Policing, *supra* note 24, at 144 (raising only in passing the possibility that "minorities and the poor" may be more susceptible to "community condoned" misconduct in rural areas).

76 *See, e.g.*, Bass, *supra* note 39, at 70; *see also* Cordner & Scarborough, *supra* note 41, at 119–20 (noting that small town police officers do not always have enough "real police work" to occupy them, and as a result, may engage in "rather oppressive levels of enforcement of minor traffic and minor public order offenses").

investigative reporters, though legal scholars, too, have produced important work on discrete policing issues that crop up in small towns. This latter wave of reporting and scholarship makes clear that small agencies are hardly immune to the familiar problems of excessive force, racial discrimination, and unchecked misconduct. But it too offers at best a partial snapshot of policing in rural areas and small towns.

Much of the reporting on small agency policing follows more or less the same script. It begins with a troubling incident involving a small-town officer. News outlets then dig a little deeper and, more often than not, discover that the incident in question reflected a much broader set of issues within the department as a whole. Occasionally, reporters then turn their attention to neighboring jurisdictions and find similar problems in those departments as well.

For Windsor, Virginia, its turn in the national spotlight began with a video of a traffic stop. On the evening of December 5, 2020, Army Lieutenant Caron Nazario was on his way home from a drill weekend when he was pulled over by two Windsor police officers.[77] A video of the stop showed the officers pointing their weapons at the uniformed Black officer, getting increasingly agitated as a calm (but visibly shaken) Nazario repeatedly asked why the officers were holding him at gunpoint.[78] When Nazario told the officers that he was "honestly afraid" to get out of the car, one of the officers replied that "[he] should be."[79] Moments later, the officer pepper-sprayed Nazario in the face, dragged him out of the vehicle, and threw him to the ground.[80]

Further investigation unearthed a deeper set of issues within the seven-officer force. The chief, it seems, had seen the video almost immediately, but did not take steps to discipline the officers involved until nearly six months later, after video of the stop made national news. When he eventually fired the lead officer, the chief clarified that he "was not fired for his actions, but rather for the video itself."[81] It was also reported that the officer had been disciplined for using excessive force by two previous employers, and that the Windsor chief knew about the incidents when he not only hired him but also put him in

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77 Mike Ives & Maria Cramer, *Black Army Officer Pepper-Sprayed in Traffic Stop Accuses Officer of Assault*, N.Y. Times (Apr. 10, 2021), https://www.nytimes.com/2021/04/10/us/caron-nazario-windsor-police-virginia.html [https://perma.cc/M58Q-GL25].

78 *Id.*

79 *Id.*

80 *Id.*

81 A.J. Nwoko, *Windsor Police Chief Takes Responsibility for Traffic Stop, Says Army Officer Should Have Complied More*, WHSV (Apr. 15, 2021, 10:43 AM), https://www.whsv.com/2021/04/15/windsor-police-chief-takes-responsibility-for-traffic-stop-says-army-officer-should-have-complied-more [https://perma.cc/X7QB-TTJR].

charge of training new recruits.[82] In conversations with reporters, residents acknowledged that the town had a "well-earned reputation" as a speed trap along the intrastate route.[83] A review of Virginia court records confirmed that those stopped in Windsor, as well as the other small towns along Route 460, were disproportionately Black.[84]

In East Pittsburgh, the event that triggered a wave of investigative reporting was the 2018 police killing of an unarmed Black teenager, Antwon Rose, who had attempted to flee on foot from an investigative stop.[85] In the wake of the shooting, it turned out that the department lacked even basic policies on topics ranging from police pursuits to officer use of force.[86] All six of the department's line officers worked part-time, earning just $13 an hour.[87] Many officers picked up shifts at neighboring departments just to make ends meet.[88] At the same time, per capita crime rates in East Pittsburgh were nearly four times higher than in neighboring Pittsburgh proper, and call volumes were much higher as well.[89] A multi-part investigation by the *Pittsburgh Post-Gazette* unearthed nearly a dozen other departments in Allegheny County with similarly high demands for policing services and comparably low levels of pay.[90]

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[82] Stephen Faleski, *Judge: AG Lawsuit Alleging 'Unlawful Pattern' by Windsor PD Can Proceed to Trial*, Suffolk News-Herald (Oct. 7, 2022, 7:22 PM), https://www.suffolknewsherald.com/2022/10/07/judge-ag-lawsuit-alleging-unlawful-pattern-by-windsor-pd-can-proceed-to-trial [https://perma.cc/NC3M-AE48].

[83] Ned Oliver, *Windsor, Site of Viral Traffic Stop, Leans Heavily on Ticketing to Fund Its Budget*, Va. Mercury (Apr. 16, 2021, 12:01 AM), https://www.virginiamercury.com/2021/04/16/windsor-site-of-viral-traffic-stop-leans-heavily-on-ticketing-to-fund-its-budget [https://perma.cc/89S8-G8B9].

[84] Gary A. Harki, *Not a Speed Trap, a Race Trap: Black Virginians Say They've Been Racially Profiled in and Around Windsor for Decades*, Va. Pilot (Apr. 17, 2021, 9:00 AM), https://www.pilotonline.com/news/vp-nw-trap-20210417-awlh5d2tjbfofbzfcxzqi43ziu-story.html [https://perma.cc/LZD5-BBYQ].

[85] Melissa Gomez, *Antwon Rose, Killed by a Police Officer, Is Remembered at Funeral as a 'Bright Light*,' N.Y. Times (June 25, 2018), https://www.nytimes.com/2018/06/25/us/antwon-rose-funeral-pittsburgh-police.html [https://perma.cc/5NU4-Y4WE].

[86] *See* Brandon E. Patterson, *Cop Who Killed This Unarmed Teen Wasn't Following Department Policy—Because There Wasn't One*, Mother Jones (June 28, 2018), https://www.motherjones.com/crime-justice/2018/06/police-officer-killed-antwon-rose-east-pittsburgh-police-department-2 [https://perma.cc/27ZX-MSUE].

[87] Jeffrey Benzing, *In the Mon Valley, Police Fragmentation Means Differences in Pay, Policies, and Public Information*, PublicSource (Oct. 1, 2018), https://projects.publicsource.org/mon-valley-police-policies-interactive [https://perma.cc/9LXY-6R6N].

[88] Shelly Bradbury, *At Local Police Departments, Inequality Abounds*, Pitt. Post-Gazette (Dec. 18, 2018), https://newsinteractive.post-gazette.com/allegheny-county-police-departments-inequality-budgets [https://perma.cc/2KCJ-SJHT].

[89] *Id.*

[90] *Id.*

The *Washington Post*'s in-depth investigation of the Monroe County Sheriff's Office in rural Mississippi highlighted several additional ways in which policing can go badly astray in America's rural areas and small towns. The sheriff's office had first caught the *Post*'s attention because of its heavy reliance on "no-knock" raids—and in particular, a botched night-time raid in which officers killed a startled homeowner mere moments after they burst through the door.[91] A deputy later testified that the office had conducted "hundreds" of these raids during his tenure, breaking down doors and smashing windows in search of small quantities of cash and drugs.[92] Another recalled that traditional "knock and announce" warrants were the exceptions rather than the norm.[93] Again, the raids were just the tip of the iceberg. Further investigation uncovered various allegations of misconduct, ranging from corruption to sexual assault.[94]

Many other reports pick up on similar themes. Before Windsor, there was Bratenahl, Ohio—an affluent, predominantly white suburb on the outskirts of Cleveland, whose officers made a habit of stopping Black motorists who ventured into the town.[95] There was Dolton, Illinois, a small town with a troubled agency whose officers racked up a startling number of shootings, using tactics—like firing from moving vehicles—that had long been discarded by every big-city force.[96] And there was Woodlynne, New Jersey, where an officer had been on his *ninth* department when he was caught on video pepper-spraying a peaceful group of Black teens.[97] One could go on and on.

These accounts provide invaluable insight into the various problems that plague (some) small departments, but they necessarily are limited in scope. The agencies that over the years have captured the

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91 Jenn Abelson & Reena Flores, *When the Sheriff Waged a War on Drugs in a Mississippi County*, Wash. Post (May 11, 2022), https://www.washingtonpost.com/investigations/interactive/2022/no-knock-raids-mississippi-monroe-county [https://perma.cc/B4HN-2FTX].

92 *Id.*

93 Caleb Bedillion, *Widespread Use of No-Knock Search Warrants in Monroe County Raises Constitutional Questions*, Daily J. (Sept. 21, 2021), https://www.djournal.com/news/local/ricky-keeton-no-knock-warrants-monroe-county-mississippi/article_61c2f151-063e-5552-ad97-402b8873cdae.html [https://perma.cc/KWJ6-PUVQ].

94 *See* Abelson & Flores, *supra* note 91.

95 Mark Puente, Stan Donaldson, Jr. & Cid Standifer, *How a Wealthy Cleveland Suburb Profits from Ticketing Black Drivers*, Marshall Project (Nov. 21, 2022, 6:00 AM), https://www.themarshallproject.org/2022/11/21/ohio-cleveland-traffic-tickets-black-drivers-bratenahl [https://perma.cc/BF63-62JG].

96 Jared Rutecki & Casey Toner, *Deadly Force Policies Ignored in Suburban Chicago*, BGA (Jan. 8, 2018), https://projects.bettergov.org/taking-cover/deadly-force.html [https://perma.cc/B6UA-STAG].

97 Rukmini Callimachi, *9 Departments and Multiple Infractions for One New Jersey Police Officer*, N.Y. Times (June 24, 2020), https://www.nytimes.com/2020/06/24/nyregion/new-jersey-police.html [https://perma.cc/5SG8-97SF].

attention of large media outlets are but a tiny fraction of the 12,600 small departments across the country as a whole. The articles themselves are rarely in conversation with one another or with the broader literature on policing (or small agency policing) in ways that could help make sense of the various problems they bring to light. Many are truly exceptional examples of investigative journalism. They are not, however, a substitute for academic scholarship that brings together the various threads.

Legal scholars, meanwhile, have continued to focus primarily on big-city policing—though a handful of articles have tackled discrete policing issues that touch on the practices of small-town and rural police. Ben Grunwald and John Rappaport, for example, have drawn much-needed attention to the problem of the "wandering officer," who, after being fired from one department, simply picks up and moves elsewhere.[98] As they point out, wandering officers typically end up moving to smaller, less-resourced departments (though it is not clear from their article what proportion of these are in fact "small").[99] Jeffrey Fagan and others have highlighted the fact that small towns are more likely than their big-city counterparts to use their police departments to generate municipal revenue through fines and fees.[100] Finally, a number of scholars, including John Rappaport and Joanna Schwartz, have touched on small agencies in the context of broader studies on municipal liability, qualified immunity, municipal insurance, and police funding.[101] Schwartz, for example, points to a handful of small departments that over the years have had to shut down after losing insurance coverage

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98 Ben Grunwald & John Rappaport, *The Wandering Officer*, 129 YALE L.J. 1676 (2020).

99 *Id.* at 1727–29.

100 Jeffrey Fagan & Elliott Ash, *New Policing, New Segregation: From Ferguson to New York*, 106 GEO. L.J. ONLINE 33, 119 (2017).

101 John Rappaport has written extensively on the role that insurance companies play in regulating police misconduct—and in doing so, has focused in part on the small and mid-sized departments that are most likely to purchase insurance coverage for potential claims. *E.g.*, John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539 (2017) [hereinafter Rappaport, *How Private Insurers Regulate Public Police*]; John Rappaport, *An Insurance-Based Typology of Police Misconduct* 396 (U. Chi. Pub. L. & Legal Theory Working Paper No. 585, 2016) [hereinafter Rappaport, *An Insurance-Based Typology*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808106 [https://perma.cc/8VWJ-UAQ7]. Joanna Schwartz has likewise discussed small agencies as part of her work on municipal payouts for misconduct claims. Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144 (2016). *See also* Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277 (2020) (discussing the inequitable manner in which police departments are funded, and using small agencies as some of their examples); Roger Michalski & Stephen Rushin, *Federal (De)Funding of Local Police*, 110 GEO. L.J ONLINE 54 (2021) (describing the extent of federal funding of local policing, and noting that small agencies sometimes get a significant share of their funding from federal grants); Seth W. Stoughton, *Moonlighting: The Private Employment of Off-Duty Officers*, 2017 U. ILL. L. REV. 1847 (2017) (including 24 small agencies in his survey on "moonlighting" by local police).

as a result of incurring too many misconduct claims.[102] That, however, is pretty much it.

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Together, these two sets of literatures provide conflicting accounts of policing in the nation's rural areas and small towns. As the criminology literature makes clear, "small" on its own is not necessarily suspect. Small agencies may predictably lack some of the bells and whistles of their big-city counterparts. But they also have a number of structural advantages that, at least under some circumstances, can generate a style of policing that is less aggressive, more flexible, and better suited to addressing residents' needs. At the same time, it is now beyond doubt that small agencies are susceptible to many of the familiar problems of policing—and that there is some stubborn fraction of small departments that are a cell phone video away from becoming the temporary focus of the national press. What we do not know is how many fall in either or both camps.

II
Making Sense of Small Agencies

This Part turns to the questions at the heart of this paper: To what extent is there a "small agency" problem in American policing, and to what extent do the problems in small jurisdictions differ from those in the largest cities?

It begins in Section A by describing the various datasets and sources on which the remainder of this Article draws. Section B then provides a high-level overview of the country's 12,600 small departments to make the point that the small agency story is a *national* one. It touches every region, and virtually every state, and it affects communities that are as diverse (and different from one another) as is the nation as a whole.

The core of the analysis falls in Section C. Drawing on insights from local government theory and scholarship, it shows that small agencies are likely susceptible to two types of systemic shortfalls—those that reflect the inherent limitations of small-scale political processes, and those that are driven by the capacity constraints that some small governments face. It then draws on the data and case studies to provide at least a preliminary sense of how prevalent these problems are likely to be. It also highlights some of the important ways in which the

[102] Schwartz, *supra* note 101, at 1190–91.

problems affecting small-town and rural departments differ from those facing big-city police.

A. Data and Methodology

By far the most comprehensive database of local police departments comes from the Bureau of Justice Statistics (BJS) at the U.S. Department of Justice.[103] I use the Bureau's 2018 Census of State and Local Law Enforcement Agencies (CSLLEA), which gathers basic department-level data from all participating agencies, as my starting point.[104] I also draw on more granular data from the Law Enforcement Management and Administrative Statistics (LEMAS) survey, which collects much more detailed information from a subsample of roughly 3,700 small departments.[105]

In order to develop a more comprehensive picture of the communities in which these agencies operate, I combined the BJS datasets with jurisdiction-level crime data from the Uniform Crime Reports (UCR),[106] income and demographic data from the 2020

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[103] *See* Duren Banks, Joshua Hendrix, Matthew Hickman & Tracey Kyckelhahn, Bureau of Just. Stats., U.S. Dep't of Just., National Sources of Law Enforcement Employment Data 8–9 (2016), https://bjs.ojp.gov/content/pub/pdf/nsleed.pdf [https://perma.cc/3FD7-QHG4] (comparing the various data sets).

[104] Bureau of Just. Stats., U.S. Dep't of Just., *Census of State and Local Law Enforcement Agencies (CSLLEA)* (2009) [hereinafter CSLLEA], https://bjs.ojp.gov/data-collection/census-state-and-local-law-enforcement-agencies-csllea [https://perma.cc/VQ7T-X6YG]. A total of 710 local and county departments filled out the 2018 BJS survey but left blank the questions about the total number of officers employed. For 570 of these agencies, however, agency size data were available from the 2008 CSLLEA survey (and, perhaps unsurprisingly, ninety-six of the agencies that had submitted incomplete surveys turned out to be small). To develop a more complete picture of small departments, I imputed agency size from 2008 for all agencies that had forty officers or fewer at that time (and thus, even accounting for possible growth, were highly likely to still be "small" in 2018). Doing so added 538 agencies to the sample. No other variables have been imputed or adjusted in any way.

[105] Bureau of Just. Stats., U.S. Dep't of Just., *Law Enforcement Management and Administrative Statistics (LEMAS)* (2009) [hereinafter LEMAS], https://bjs.ojp.gov/data-collection/law-enforcement-management-and-administrative-statistics-lemas [https://perma.cc/BK84-R3UN]. The LEMAS survey includes all agencies with 100 officers or more, as well as a nationally representative sample of smaller agencies. BJS varies the sample of smaller agencies included in each of its LEMAS surveys. BJS conducted two LEMAS surveys in relatively close proximity, in 2016 and 2020. And although some peripheral questions varied, the core questions regarding officer demographics stayed the same, which made it possible to merge the two subsamples and ultimately draw on more comprehensive employment data for a total of 3,668 small agencies.

[106] *See* Jacob Kaplan, *Jacob Kaplan's Concatenated Files: Uniform Crime Reporting Program Data: Offenses Known and Clearances by Arrest (Return A), 1960–2020*, Inter-Univ. Consortium for Pol. and Soc. Rsch. (Sept. 27, 2021) [hereinafter Kaplan UCR], https://www.openicpsr.org/openicpsr/project/100707/version/V17/view?path=/openicpsr/100707/fcr:versions/V17/ucr_offenses_known_yearly_1960_2020_dta.zip&type=file [https://perma.cc/374U-QYE2]. As others have documented, UCR data are notoriously unreliable because

decennial census,[107] and urban-rural classifications from the U.S. Department of Agriculture.[108] I also drew on the Annual Survey of State and Local Government Finances, which collects information on local government revenues and expenditures—including, importantly, the proportion of municipal revenue that comes from fines and fees.[109]

Finally, in order to develop at least a preliminary sense of small agency enforcement practices, I added traffic stop data for agencies in five states: Connecticut, Illinois, Missouri, Maryland, and North Carolina.[110] Because states rely on officers to report all of the stops they

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they depend on voluntary reporting from agencies themselves, which sometimes is shoddy at best. *See* Jacob Kaplan, *Uniform Crime Reporting (UCR) Program Data: A Practitioner's Guide*, ch. 2.2 (Mar. 28, 2023), https://ucrbook.com/ucrGeneral.html [https://perma.cc/Z7BZ-ZQ2J]. I accounted for this in several ways. First, to minimize the effect of short-term fluctuations in reported crime data, I used an annualized average of reported crimes across a five-year period from 2012 to 2016 (the last five years for which cleaned data are available). Second, in reporting crime data figures, I only included those agencies that submitted twelve full months of crime data, for at least four of the five years. This excluded 9% of small agencies from the sample; another 18% of small agencies had not submitted any crime data to the FBI during the 2012–2016 period. This left me with crime data for 76% of small agencies—including 91% of agencies with ten officers or more.

107 To link the two datasets, I relied on the 2012 Law Enforcement Agency Identifier Crosswalk (LEAIC) file. Bureau of Just. Stats., U.S. Dep't of Just., Law Enforcement Agency Identifiers Crosswalk, United States, 2012 (Sept. 18, 2018) [hereinafter LEAIC], https://www.icpsr.umich.edu/web/ICPSR/studies/35158 [https://perma.cc/GB4V-58MC].

108 Econ. Rsch. Serv., U.S. Dep't of Agric., Rural-Urban Continuum Codes (2020) [hereinafter RUCC], https://www.ers.usda.gov/data-products/rural-urban-continuum-codes [https://perma.cc/M76W-FBVC]. The Census Bureau maintains its own urban-rural classification. The USDA's classification system is more granular, distinguishing between larger and smaller metro areas, as well as between rural areas that are close to urban centers, and those that are more remote. *Id.*

109 U.S. Census Bureau, Annual Survey of State and Local Government Finances (2022), https://www.census.gov/programs-surveys/gov-finances.html [https://perma.cc/32DC-8PZ2]. The Census Bureau surveys all local governments in years ending in "2" and "7" (i.e., 2012, 2017). Because I used the finance data primarily in conjunction with state-level stop and arrest data, *see infra* note 110, I used the 2017 finances survey results which are closest in time to when the other data were collected as well. The local finance data are notoriously difficult to work with in their original form. *See* Kawika Pierson, Michael L. Hand & Fred Thompson, *The Government Finance Database: A Common Resource for Quantitative Research in Public Financial Analysis*, 10 PLOS One 1, 3–7 (2015) (explaining the challenges of working with census finance data). The process has been much simplified thanks to the Government Finance Database put together by Willamette University, which transformed the cumbersome dataset into an easy-to-use format. *The Government Finance Database*, Willamette Univ. [hereinafter Government Finance Data], https://willamette.edu/mba/research-impact/public-datasets/index.html [https://perma.cc/2AYY-CBAE].

110 Although a number of other states require agencies to collect and report traffic stop and citation data, I focus on these five states for several reasons. First, each of these states had data for 2017, 2018, or 2019, which are the years covered by most of the federal datasets. Importantly, agencies in each of these states had, by 2017, already been collecting data for some time, ensuring that any initial quirks in data collection practices had likely been worked out. I obtained stop data for Missouri, North Carolina, and Maryland from the Stanford Open Policing Project. *See Data*, Stan. Open Policing Project, https://openpolicing.stanford.edu/

make, traffic stop data are notoriously imprecise.[111] Nevertheless, there are still conclusions one can reasonably draw. For example, studies suggest that officers are more likely to *underreport* than overreport the number of stops, which makes stop data particularly useful for spotting those agencies that, by their own admission, make large numbers of stops.[112] Similarly, there is some evidence to suggest that officers may take various steps to minimize the number of Black motorists that appear in stop data in order to avoid allegations of bias,[113] which again suggests that racial disparities in stop rates are *at least* as high as what agencies report.[114]

I supplement the empirical work with more detailed case studies of individual departments and towns. Here, my approach is decidedly less methodical and driven in large part by the availability of sources themselves. St. Louis County, for example, has drawn outsized attention from scholars, reporters, and advocacy organizations given the important role that the Ferguson protests played in drawing national attention to the need for comprehensive reform.[115] The various

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data [https://perma.cc/Y6VT-EE8B]; s*ee also* Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 Nature Hum. Behav. 736 (2020). I obtained data for Illinois directly from the state (on file with author). *See Traffic Stop Statistical Studies*, Ill. Dep't of Transp., https://idot.illinois.gov/transportation-system/local-transportation-partners/law-enforcement/reporting/illinois-traffic-and-pedestrian-stop-study/studies.html [https://perma.cc/G94U-3Z9G] (providing instructions for requesting the data files). Connecticut posts traffic stop data online. *See Connecticut Traffic Stop Data*, CTData Collaborative, http://trafficstops.ctdata.org [https://perma.cc/KZ86-CJL7]. I manually created a crosswalk to link stop data to the LEAR dataset using agency names [hereinafter Combined Stop Data].

111 *See, e.g.*, Molly Ingram, *Connecticut Troopers Falsified Data on Traffic Stops Reported to Racial Profiling Board, Audit Says*, WHSU (June 29, 2023), https://www.wshu.org/connecticut-news/2023-06-29/connecticut-troopers-falsified-data-on-traffic-stops-reported-to-racial-profiling-board-audit-says [https://perma.cc/2PGL-Z6L2]; Eric Leonard, *LAPD Officers Suspected of Filing False Data on South LA Traffic Stops*, NBC L.A. (Jan. 6, 2020), https://www.nbclosangeles.com/news/local/lapd-officers-suspected-of-filing-false-data-on-south-la-traffic-stops/2286372 [https://perma.cc/8VU9-QMU8].

112 *See, e.g.*, Joshua Chanin & Megan Welsh, *Examining the Validity of Traffic Stop Data: A Mixed-Methods Analysis of Police Officer Compliance*, 24 Police Q. 3, 3, 5 (2021). *But see* Ingram, *supra* note 111.

113 *See, e.g.*, Dave Collins, *Connecticut Troopers Under Federal Investigation for Allegedly Submitting False Traffic Stop Data*, AP News (Aug. 4, 2023, 6:03 PM), https://apnews.com/article/false-traffic-reports-connecticut-state-police-849d99216551efa4658f0026bf09345b [https://perma.cc/K9R2-Q4D5].

114 Throughout the paper, I refer to the combined dataset that links together CSLLEA, LEMAS, RUCC, demographics from the 2020 Census, Kaplan UCR, and the Combined Stop Data as "Small Agency Data File" [hereinafter Small Agency Data File]. This combined dataset is publicly available at Maria Ponomarenko, *Small Agency Problem*, GitHub, https://github.com/prof-maria-ponomarenko/Small-Agency-Problem (last updated Feb. 9, 2024).

115 There have been at least three book-length accounts of policing in the St. Louis suburbs. *See generally* Boyles, *supra* note 25; Gordon, *supra* note 25; Rios, *supra* note 25.

news accounts discussed in Part I—and many others like it—are an invaluable resource as well.[116] Other materials come from departments themselves. Although many small-town departments provide little more than a phone number and address on a barebones municipal website, others have produced a surprising quantity of written material. Some publish detailed annual reports or provide their city council members with regular updates on the number of stops and calls for service that officers handle each month.[117] On their own, all of these materials suffer from obvious problems of representativeness and hindsight bias. When paired with the data, however, they can serve as illustrative examples of broader phenomena that the data reveal.

B. A Nation of Small Departments

The small-agency story is, at bottom, a national one.[118] Small agencies can be found in every state except Hawaii (Figure 1).[119] They account for a majority of departments in each of those states, ranging from 51% of law enforcement agencies in California, to more than 90% of agencies in twenty states including Minnesota, Kentucky, Alaska, and Maine.[120] In absolute terms, the states with the largest number of small departments are Pennsylvania (909), Texas (877), Illinois (686), and Ohio (671). But this mostly reflects the fact that these also are relatively large states with a jaw-dropping number of small towns. Illinois, for example, has 2,827 counties and municipalities, less than a third of which have departments of their own.[121] Rhode Island and Massachusetts may have

116 *See, e.g.*, *supra* notes 77–84 (investigating police relationships with the local community in the aftermath of the Windsor police violence incident); Thompson, *supra* note 23 (casting doubt on especially small police agencies following the Uvalde incident).

117 A particularly rich collection of materials come from New York state, where every law enforcement agency was required, pursuant to a 2020 executive order, to engage in a collaborative reform process with residents and to prepare a report identifying areas for improvement. All told, some 492 agencies—most of them small—submitted the required reports, many of which spanned dozens of pages, addressing in elaborate detail both agency practices and community concerns. To access the reports, see *Police Reform Plans*, N.Y. State Police Reform & Reinvention Collaborative, https://policereform.ny.gov/police-reform-plans [https://perma.cc/RYH5-9CQB].

118 Except where I indicate otherwise, all of the figures in this Section are based on analysis of the Small Agency Data File, *supra* note 114.

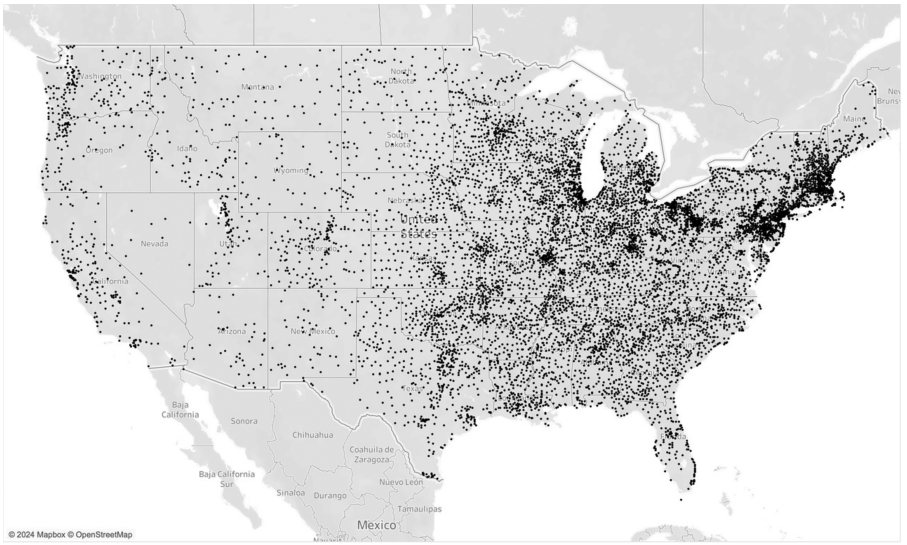
119 Law enforcement in Hawaii is organized at the county (e.g., island) level, and all of the agencies have more than fifty officers.

120 All twenty states are: Vermont, South Dakota, Nebraska, Pennsylvania, New Hampshire, Maine, West Virginia, Oklahoma, Kentucky, Iowa, Alaska, Wyoming, Kansas, North Dakota, Missouri, Minnesota, Arkansas, Montana, Mississippi, and Ohio.

121 Illinois has 2,827 counties and municipalities and 777 general purpose law enforcement agencies (27%).

fewer small agencies, but they have even fewer towns without their own municipal police.[122]

FIGURE 1. SMALL AGENCIES IN THE CONTINENTAL UNITED STATES



Small agencies can also be found in every major metropolitan area, and in several large metros, they number in the hundreds.[123] Half of all small departments are located in urban areas and, of these, half are in large metros with one million residents or more (Table 1).[124] Although St. Louis County often gets cited for its extreme degree of municipal fragmentation,[125] its 53 police departments are hardly an outlier. Cook County (Chicago) has 116 municipal departments, Allegheny County (Pittsburgh) has 104, and Bergen County (across the Hudson River from Manhattan) has 67. Many

122 *E.g.*, Rhode Island (38 agencies vs. 39 towns), Massachusetts (323 agencies vs. 351 towns). *See* Small Agency Data File, *supra* note 114.

123 I use the population counts for Metropolitan Statistical Areas from the 2020 Census. Each of the largest twenty metropolitan areas has at least one small agency, and many have dozens or even hundreds. There are at least 209 small agencies in the New York metro area, 176 in Chicago, and 107 in Philadelphia. And, importantly, these numbers are almost certainly an undercount because the metro area designation is missing from the BJS dataset for some of the smallest towns.

124 2,900 of the 5,864 (49%) of small, urban-area departments are found in large metro areas with one million residents or more. Importantly, this figure is likely an undercount because it relies on the USDA's urban/rural classification codes, which were last updated in 2013.

125 *See* Radley Balko, Opinion, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, WASH. POST (Sept. 3, 2014, 1:30 PM), https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty [https://perma.cc/8SVT-D9LP].

of these suburban municipalities are tiny—one blending seamlessly into the next. In Allegheny County, for example, a staggering thirty departments cover territories that are less than one square mile. In St. Louis County, a "busy 10-mile stretch of Route 115 . . . crosses through 16 different municipalities," each with its own police force.[126]

TABLE 1. SMALL AGENCIES BY JURISDICTION TYPE

	Municipal (Urban)	Municipal (Rural)	County Sheriffs
# Agencies	5,864	4,392	2,263
(% Total)	(47%)	(35%)	(18%)
Median Land Area (Sq. Mi.)	4.1	2.8	615.6

In rural areas, meanwhile, small agencies include a mix of small-town municipal departments and rural sheriffs' offices that provide services to the county as a whole. As discussed in greater detail below, rural sheriffs' departments are a critical part of the small-agency story, and they differ in important ways from municipal police. A key difference is simply geography: Whereas small-town departments are typically responsible for a geographically compact area, the counties over which sheriffs exercise jurisdiction can span thousands of miles. Indeed, the territory covered by the median small sheriffs' department is more than 175 times that of a municipal force. A four-person sheriffs' department is going to be stretched thin in ways that a municipal agency likely is not. Second, unlike municipal chiefs who usually are appointed by the mayor or town council, sheriffs are elected directly by the voters and tend to be much harder to remove when things go wrong.[127] In addition, in many states, sheriffs' departments perform a variety of duties in addition to policing, from managing the local jail, to serving writs and subpoenas, to collecting county taxes and fees.[128]

Finally, the communities in which these various agencies work differ from one another across virtually every possible dimension. As discussed below, they include some of the most affluent communities

[126] POLICE EXEC. RSCH. F., OVERCOMING THE CHALLENGES AND CREATING A REGIONAL APPROACH TO POLICING IN ST. LOUIS CITY AND COUNTY 41 (2015), https://www.policeforum.org/assets/stlouis.pdf [https://perma.cc/PG23-GCUV].

[127] *See infra* notes 206–18 and accompanying text.

[128] *See* David N. Falcone & L. Edward Wells, *The County Sheriff as a Distinctive Policing Modality*, 14 AM. J. POLICE 123, 130–31 (1995).

in the country and also some of the most impoverished.[129] They include places "where the worst crimes [are] usually stolen tractors and lawn mowers,"[130] as well as communities where crime rates are well above those facing most big-city police.[131] And importantly, although a tiny fraction of small departments (4%) work in jurisdictions that are more than 95% white, the rest work in communities with varying degrees of racial and ethnic diversity.[132] More than 1,700 small departments work in communities that are majority-non-white. This means that most small departments, much like their big-city counterparts, must find ways to navigate the complex and often troubling intersection between policing and race.

C. The Problems of Small-Agency Policing

With that background in mind, this Part picks up where Part I left off. We know bad things sometimes happen in small departments. And that when bad things *do* happen, it often turns out that the incident in question was indicative of broader issues within the agency as a whole. What we do not know, however, is how many agencies are likewise afflicted with these problems, and are just a cell phone video away from being next in the headlines.

In thinking about the drivers of harmful policing, it is important to start by recognizing that things will occasionally go wrong even under the best of circumstances. Policing by its very nature imposes harm. Individual officers will at times engage in misconduct. And even at the agency level, one might expect that department practices will at times deviate from community norms. Far more concerning are the problems that are both *systemic* and *intractable*—that is, when agencies and officers consistently fall short in ways that local political processes are, for one reason or another, unlikely to correct on their own.

Framing the question in this manner offers a way around the data limitations with which this paper began. We may not be able to assess the actual prevalence of small agency harms. But what we *can* do is identify the sets of conditions under which the various harms are most likely to occur and use what data there are to identify those agencies or jurisdictions in which these conditions are most likely to be found.

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129 *See infra* notes 230–34, 241–58 and accompanying text.

130 Dan Frosch, Kris Maher & Zusha Elinson, *Rural America Reels from Violent Crime. 'People Lost Their Ever-Lovin' Minds.'* Wall St. J. (June 10, 2022, 8:34 AM), https://www.wsj.com/articles/violent-crime-rural-america-homicides-pandemic-increase-11654864251 [https://perma.cc/H88C-SZ2E].

131 *See infra* notes 247–54, 262–63 and accompanying text.

132 Approximately 35% work in communities in which at least 25% of residents identify as non-white.

Here, local government theory can help. Over the years, local government scholars have identified a variety of reasons why local governments might fail to remedy local problems. Broadly speaking, some of these reasons stem from the inherent limitations of local politics. Others reflect the fact that small government units sometimes lack the resources or capacity needed to fix the problems that everyone agrees must be solved. Using these insights as a jumping off point, this Section identifies the small-agency practices that are particularly susceptible to abuse, as well as the reasons why some small departments may be more likely than others to go astray. It also highlights some of ways in which small-town departments differ from their big-city counterparts, and the effect that these differences are likely to have on the prospect for local reform.

1. The Limits of Political Accountability

An assumption that drives much of the community policing literature discussed in Part I is that residents in small jurisdictions should have an easier time getting what they expect from local police. This intuition is consistent with a much broader literature on local government law and local political participation, which highlights the many ways in which small units of government make it easier for individuals to participate and to make themselves heard.[133]

Yet as local government scholarship also makes clear, there are a variety of conditions under which these general assumptions simply fail to hold up. Local political processes, for example, are thought to be particularly suspect when the costs of local policies are borne primarily by people from outside the jurisdiction.[134] Local political processes may also be less effective when it comes to preventing abuses that fall disproportionately on the marginalized few.[135] Finally, in very small jurisdictions, the absence of willing and viable challengers to local incumbents can dampen the effectiveness of local political controls.[136] As the remainder of this Section makes clear, focusing on these three types of process failures helps to explain why certain practices are

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133 *See, e.g.*, Nadav Shoked, *Local in a Peculiar Way*, 172 U. PA. L. REV. (forthcoming 2024) (manuscript at 34) (on file with author) (summarizing literature).

134 *See* Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 975 (2019) [hereinafter Davidson, *Localism in an Era of Polarization*] (summarizing literature); *see also* Adam A. Davidson, *Managing the Police Emergency*, 100 N.C. L. REV. 1209, 1266–67 (2022) (highlighting this same problem in the policing context).

135 Davidson, *Localism in an Era of Polarization*, *supra* note 134, at 975. This, of course, was also Madison's intuition in Federalist 10. *See* THE FEDERALIST No. 10 (James Madison).

136 *See infra* notes 216–18 and accompanying text.

especially ripe for abuse in small departments, and why some small agencies may be particularly resistant to change.

a. Policing Outsiders

When it comes to policing, local communities are thought to internalize most of its benefits and harms—which in theory provides at least some degree of assurance that agencies will police in ways that are consistent with community needs.[137] If officers in a particular department are slow to respond to calls for service or are ineffective at addressing serious crime, the people who feel it most will be the residents and business owners in the town. Dissatisfied residents should have no trouble figuring out whom to blame and where to make their objections known. Absent the sorts of process failures discussed throughout this Section, one would expect practices to eventually improve.

These safeguards break down, however, when it comes to officer-initiated traffic and pedestrian stops, which can ensnare anyone who happens to pass through town. A study of small departments in the Chicago-area suburbs, for example, found that in some agencies, out-of-town residents accounted for as many as 98% of those stopped.[138] In Bratenahl, Ohio, just 7 of the 1,006 traffic citations issued over a several-month period went to residents of the town.[139] The problem is that existing law gives officers virtually boundless discretion in deciding whether to make a stop, issue a citation, or let a driver off the hook[140]—which makes it possible for small departments to structure their enforcement practices in ways that fall disproportionately on non-residents.

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137 *See, e.g.*, William Stuntz, *Accountable Policing* 6 (Harvard L. Sch. Pub. L. Working Paper, Paper No. 130, 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=886170 [https://perma.cc/9V5B-QZB6].

138 Tony Briscoe & Joe Mahr, *Out-of-Towners More Likely to Receive Speeding Tickets*, Chi. Trib. (June 10, 2016) https://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=8ad5e07f-e8b7-45c9-b6a5-16e74496efe3 [https://perma.cc/ZVT2-EFFA].

139 *See* Puente, Donaldson & Standifer, *supra* note 95; *see also* Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?* (Feb. 15, 2008) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=961967 [https://perma.cc/5MDZ-Q82F] (finding that the likelihood and dollar amount of a citation goes up for drivers who live further from the jurisdiction where the officer is based).

140 *See* David A. Harris, *Driving While Black and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. Crim. L. & Criminology 544, 545 (1997).

Although most states do not collect reliable traffic stop data, what data there are suggest that a significant share of small departments make lots and lots of stops. Of the 1,278 small agencies for which stop data are available, roughly 30% made more than 25 stops for every 100 residents per year—a stop rate that puts them well above most big-city departments.[141] And some agencies actually reported more stops than residents.[142] Not all of the stops, of course, involve non-residents, but the larger the number of stops, the more likely it is that a large share of those stopped are drivers from out of town.[143]

Table 2. Small Municipal Agencies, by % of Revenue from Fines and Forfeits

	<1%	**1–5%**	**5–10%**	**10–20%**	**>20%**
# Agencies	5,770	3,155	571	308	217
(% Total)	(58%)	(31%)	(6%)	(3%)	(2%)

Why so many stops? One driver is the promise of revenue from fines, fees, and asset forfeiture. In most states, municipalities get to keep whatever revenue that they collect through traffic citations, criminal fines, and local justice system fees.[144] They also typically get to keep some or all of the property or cash they seize through asset forfeiture (often without having to prove to any reasonable degree of certainty that the property at issue is tied to criminal conduct).[145] Nationwide, local governments obtain

141 Alex Chohlas-Wood, Sharad Goel, Amy Shoemaker & Ravi Shroff, *An Analysis of the Metropolitan Nashville Police Department's Traffic Stop Practices*, Stan. Computational Pol'y Lab 2 (Nov. 19, 2018), https://policylab.stanford.edu/media/nashville-traffic-stops.pdf [https://perma.cc/54R2-9W5T]. As discussed in greater detail in *supra* note 110, I relied on stop data for agencies in Illinois, Connecticut, Missouri, North Carolina, and Maryland. In these states, 369 of the 1,278 small agencies (29%) made at least 25 stops for every 100 residents. Small Agency Data File, *supra* note 114.

142 There were thirty-nine such agencies in the sample, or 3% of the total.

143 Again, what little data there is bears this out. Connecticut is the only state that tracks residency data. In forty-eight of the fifty-six agencies, out-of-towners accounted for 50% or more of those stopped. Among the five small agencies in Connecticut that made more than twenty-five stops per resident, out-of-towners comprised between 64% and 90% of those stopped.

144 *See* Mike McIntire & Michael H. Keller, *The Demand for Money Behind Many Police Traffic Stops*, N.Y. Times (Oct. 31, 2021), https://www.nytimes.com/2021/10/31/us/police-ticket-quotas-money-funding.html [https://perma.cc/8PZU-XT34].

145 For a summary of the many problems with asset forfeiture, see Lisa Knepper, Jennifer McDonald, Kathy Sanchez & Elyse Smith Pohl, Policing for Profit: The Abuse

approximately 1% of their own-source revenue from fines and fees.[146] But in nearly 1,100 small towns, the figure is five times that—and in 525 small towns (which I term "high-fine jurisdictions"), fines and fees account for more than 10% of municipal revenue in any given year (Table 2).[147]

The prevailing narrative is that the places that are most likely to engage in various forms of policing for profit are cash-strapped municipalities facing dwindling budgets and the pressure to find funding wherever they can.[148] And there is some truth to that account. Small towns where median incomes fall well below the state median, for example, account for nearly a third of the high-fine jurisdictions.[149] But there also are plenty of more affluent communities on that list as well—including places like Bratenahl, Ohio, where median incomes are nearly double those in the rest of the state.[150] Moreover, only a small fraction of *all* jurisdictions—both cash-strapped and not—derive a significant share of revenue from fines and fees.[151]

Moreover, what often gets lost in the revenue debate is that not every cash-strapped small town could become a "speed trap town" even if it wanted to. Looking at a map of high-fines jurisdictions, what immediately jumps out is how many of them straddle the nation's major throughways. Zooming in on Georgia, for example, one sees a string of

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of Civil Asset Forfeiture (Mindy Menjou ed., 3d ed. 2020), https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf [https://perma.cc/L69T-HVML].

146 U.S. Census Bureau, *supra* note 109.

147 These figures are somewhat lower than those reported by the *New York Times* because I am only including those towns with small police departments (thereby excluding larger jurisdictions, as well as those that did not participate in any of the BJS agency surveys). *See* McIntire & Keller, *supra* note 144.

148 *See, e.g.*, Michelle Wilde Anderson, The Fight to Save the Town: Reimagining Discarded America 8–9 (2022) ("Border-to-border poor places have become infamous for the worst revenue-raising technique of all—many have developed elaborate, regressive schemes of civil and criminal code enforcement for the purpose of extracting fines and fees from residents and drivers passing through town."); *see also* Rick Rojas, *In a Small Arkansas City, Crime, Dread, and an Emergency Curfew*, N.Y. Times (Jan. 1, 2023), https://www.nytimes.com/2023/01/01/us/arkansas-crime-emergency-curfew.html [https://perma.cc/6T48-SMX2].

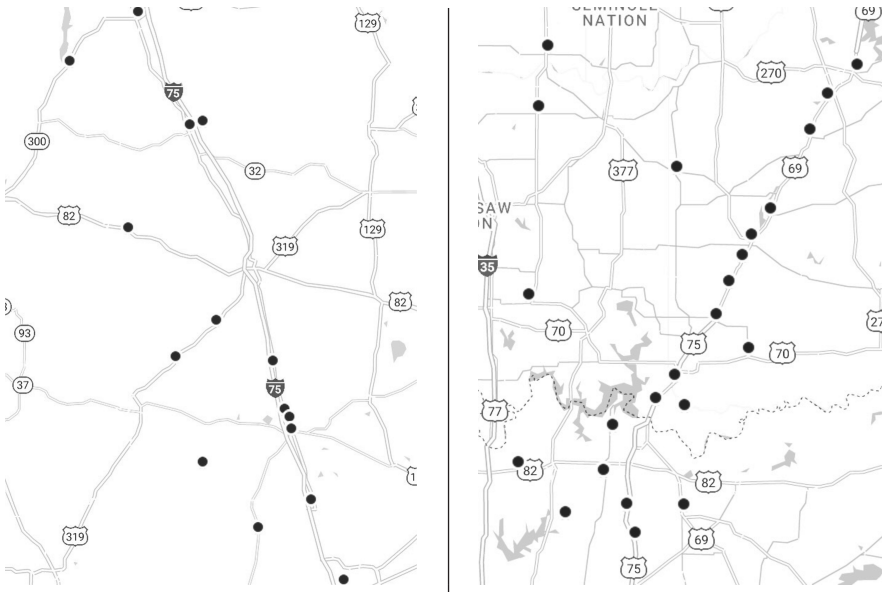
149 The 30% of towns that get 10% or more of their revenue from fines and fees have median household incomes that are less than two-thirds of the state average. Prior studies have shown that, as tax revenues in a particular jurisdiction go down, fines and fees tend to go up. *See, e.g.*, Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & Econ. 71, 71 (2009) ("We find that significantly more tickets are issued in the year following a decline in revenue but that the issuance of traffic tickets does not decline in years following revenue increases.").

150 21% of towns that get 10% or more of their revenue from fines and fees have median incomes that are above their state's.

151 Just 14% of jurisdictions with median incomes less than two-thirds the state median income get 5% or more of their revenue from fines and fees. For jurisdictions where median incomes are 133% or more than the state average, less than 8% (7.38%) derive 5% or more of their own-source revenue from fines and fees. *Id.*

dots along Interstate 75, as well as a handful of others along the smaller highways. Oklahoma is, if anything, even more striking, with a long line of dots along Route 69, one small-town "speed trap" after another.[152] The problem, in short, may be less about motive than *opportunity*.

FIGURE 2. HIGH-FINES TOWNS ALONG GEORGIA AND OKLAHOMA HIGHWAYS



Georgia Oklahoma

Focusing on revenue, however, only tells part of the story. It turns out that the vast majority of departments that make large numbers of stops also write very few tickets: In nearly 70% of these agencies, officers issued citations to fewer than 10% of the drivers they stop.[153] If stops were really about revenue, we would expect officers to let far fewer drivers off the hook.

In some jurisdictions, targeting people from outside the jurisdiction may be less about bringing money in than about keeping unwanted

152 Both maps are screencaps of a map featured in Mike Maciag. Mike Maciag, *Addicted to Fines: A Special Report*, GOVERNING (Aug. 16, 2019), https://www.governing.com/archive/fine-fee-revenues-special-report.html#map [https://perma.cc/8NF4-HFWN] ("[C]onstructing a database from thousands of annual financial audits and reports filed to state agencies.").

153 Citation data are available for 729 of the small municipal agencies in the sample. Of these, 176 make more than 25 stops for every 100 residents. But a staggering 122 (69%) issue citations less than 10% of the time.

outsiders out.[154] Small, affluent suburbs, for example, often go to great lengths to insulate themselves from the threat of criminal activity crossing jurisdictional lines.[155] Hundreds of small towns, for example, have installed cameras outfitted with automated license plate readers throughout the community to keep careful tabs on everyone coming and going and to alert officers if a vehicle is linked to someone with an outstanding warrant, a protective order, or some other law enforcement flag.[156]

In many jurisdictions, officers also physically stop drivers whom they perceive to be suspicious or out of place. Predictably, those stopped are more likely to be people of color. Throughout the country, Black drivers report routinely being stopped by the police when they cross into predominantly white suburbs.[157] Studies likewise suggest that Black drivers are especially likely to get stopped when they cross into affluent, low-crime communities where they are most likely to strike the police as being "out of place."[158]

This is evident in the stop data as well. In the Chicago metro, for example, there are forty small departments in towns where fewer than 10% of residents identify as Black or Hispanic. In nearly a third of these agencies, the percentage of stopped drivers who were Black or Hispanic was at least twenty percentage points higher than their share of the population (i.e., 5% of the population, versus 25% of those stopped). And in some of these communities the disparities are even more stark. In South Barrington—an affluent suburb to the northwest of Chicago—Black and Hispanic residents comprised just 4% of the population, but

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154 *See generally* Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 Colum. L. Rev. 346, 429 (1990) ("Local boundaries do not simply define the size of the locality; they also determine who is left out.").

155 *See generally* Gerald E. Frug, *City Services*, 73 N.Y.U. L. Rev. 23, 68–69 (1998).

156 *See, e.g.*, Florian Martin, *In an Effort to Reduce Crime, More and More Houston Area Communities Use License Plate Readers*, Hous. Pub. Media (Feb. 18, 2020, 9:22 AM), https://www.houstonpublicmedia.org/articles/news/2020/02/18/360895/in-an-effort-to-reduce-crime-more-and-more-houston-area-communities-use-license-plate-readers [https://perma.cc/SB4E-YJ6D] (describing one department's use of plate readers); Drew Harwell, *License Plate Scanners Were Supposed to Bring Peace of Mind. Instead They Tore the Neighborhood Apart.*, Wash. Post (Oct. 22, 2021, 1:55 PM), https://www.washingtonpost.com/technology/2021/10/22/crime-suburbs-license-plate-readers [https://perma.cc/NJ7A-XRTA] ("License plate readers are rapidly reshaping private security in American neighborhoods . . . .").

157 *See, e.g.*, Ariana Taylor, *Black Drivers Feel Targeted by Police in Detroit Suburbs*, Det. News (July 15, 2020, 10:09 AM), https://www.detroitnews.com/story/news/local/wayne-county/2020/07/14/black-drivers-feel-targeted-police-detroit-suburbs/5361521002 [https://perma.cc/S894-2JTV].

158 *See, e.g.*, Albert J. Meehan & Michael C. Ponder, *Race and Place: The Ecology of Racial Profiling African American Motorists*, 19 Just. Q. 399, 401 (2002) (showing a race-and-place effect whereby African Americans were subject to disproportionate surveillance and police stops when they drove through white areas). *But see* Brian L. Withrow, *Driving While Different: A Potential Theoretical Explanation for Race-Based Policing*, 15 Crim. Just. Pol'y Rev. 344, 361 (2004) ("The issue does not appear to be driving while Black. Instead, it appears that the issue is more like driving while different.").

they accounted for more than 30% of those stopped. Just 4% of all stops resulted in a citation, but one in twelve Black drivers were searched. This version of the "policing outsiders" problem, whereby the costs of policing fall not simply on *outsiders*, but on outsiders who already are more likely to be marginalized politically, may be especially impervious to ordinary political controls.

Of course, some small towns end up stopping outsiders simply because non-residents account for a disproportionate share of those on the road. Many small towns are situated along major throughways, and it is not unusual for speed limits to plunge dramatically as drivers near the center of town.[159] Drivers may dismissively refer to these places as "speed traps," but as locals point out, there also are legitimate safety concerns when drivers plow through a town's main street at double the posted speed.[160]

Even when small agencies do not intentionally target outsiders, they still end up externalizing, in whole or in part, whatever harmful practices happen to pervade their small-town force. Traffic stops, for example, account for nearly 30% of all fatal police shootings—and likely a significant percentage of use-of-force incidents generally.[161] A department whose officers are not adequately trained to seek out alternatives to force or to deescalate potentially violent encounters are a problem for *everyone* who might one day pass through the area, not just the residents of the town. Further, the more likely it is that the costs of harmful policing are passed on to outsiders, the less likely it becomes that the ordinary channels of local accountability will work to bring them in check.

In this regard, small-agency traffic enforcement poses a different set of challenges than do stops made by big-city police. Large agencies have, of course, also been known to over-rely on traffic enforcement or disproportionately target marginalized groups.[162] But in large jurisdictions, the people stopped are far less likely to simply be passing

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159 *See, e.g.*, Briscoe & Mahr, *supra* note 138 (quoting a police chief who suggested disproportionate representation of out-of-town drivers in total traffic as the explanation for why out-of-town drivers account for the vast majority of stops in their town).

160 *Id.* (quoting Chicago suburb Wayne Police Chief Dan Callahan on outsiders' lack of familiarity with local speed limits and their more egregious breaking of those limits: "I believe out-of-towners speed at substantially higher rates") (cleaned up).

161 David D. Kirkpatrick, Steve Eder, Kim Barker & Julie Tate, *Why Many Police Traffic Stops Turn Deadly*, N.Y. Times (Nov. 30, 2021), https://www.nytimes.com/2021/10/31/us/police-traffic-stops-killings.html [https://perma.cc/6VD5-C6VE].

162 *See, e.g.*, Policing Project, N.Y.U. Sch. of L., An Assessment of Traffic Stops and Policing Strategies in Nashville (2018), app. B at 2–3 figs. 1 & 2 (2018), https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5bf2d18d562fa747a554f6b0/1542640014294/Policing+Project+Nashville+Report.pdf [https://perma.cc/2L2X-56NS] (finding that, in 2012, Nashville police made more than 700 stops for every 1,000 residents (fig. 1, p. 2, app. B), and that Black drivers were disproportionately likely to be stopped (fig. 2, p. 3, app. B)).

through and, as a result, may have at least some hope of challenging agency practices through political means.[163]

b. Policing Marginalized Groups

Small agencies also at times abuse their own residents in ways that evade ordinary checks. There was Ferguson, for example, which drove residents deeper into poverty through aggressive, revenue-driven enforcement of low-level misdemeanors and infractions. And there was the Monroe County Sheriff's Office, whose deputies broke down their own county residents' doors with militarized SWAT raids. Small agencies, in short, are hardly immune from the the familiar problems of modern policing such as discrimination and excessive force.

Structurally, small-town residents would seem to be better positioned to check these various forms of misconduct. Residents who are unhappy with the quality of policing do not need to navigate a complex municipal bureaucracy; they can take their concerns directly to the council, mayor, or chief.[164] As criminologists Weisheit, Wells, and Falcone intuitively posit, officers should be less likely to use excessive force when they know the individual personally, or when they know that the person they are arresting may one day be two stools over at the local bar.[165]

The problem is that the people who bear the burdens of policing are not always the same people who have the ear of city officials or with whom officers are likely to interact in their day-to-day lives. The more that local communities are stratified—economically, racially, politically—and the more that the specific harms of policing fall on those who are most marginalized, the less likely these street-level checks are to work.

Ferguson offers perhaps the best illustration of this phenomenon—a small town where low-income Black residents long bore the disproportionate brunt of police abuses, yet the local political establishment proved largely indifferent to their plight.[166] Although

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163 Again, the limited data that there is provides some support. In Connecticut, two-thirds of the drivers stopped by officers in agencies with 250 or more officers were residents of the jurisdiction, as compared to just 36% in departments with fewer than twenty-five officers. In Hartford (the largest department in Connecticut), 90% of those stopped were residents. Small Agency Data File, *supra* note 114.

164 *See, e.g.*, WEISHEIT ET AL., CRIME & POLICING, *supra* note 24, at 134.

165 *Id.* at 140–42 (explaining that a rural officers' willingness to use force may be shaped by personal knowledge of the offender or a sense the officer is more vulnerable to retribution).

166 DOJ FERGUSON REPORT, *supra* note 15, at 4. With just over fifty officers in 2014, Ferguson was just on the other side of small, so is excluded from the Small Agency Data File. I nonetheless use it as an example here in part because the outsized attention to the Ferguson department, including the in-depth Justice Department report, offers a much more

Black residents made up 67% of the town population, they were virtually shut out of municipal government. In 2014, the mayor, police chief, and five of six city council members were white as were the municipal judge, the court clerk, the prosecuting attorney, and all of the assistant clerks.[167] Just four of the police department's 54 officers were Black.[168] The Justice Department's Ferguson report details dozens of incidents involving unconstitutional stops and arrests, wildly disproportionate uses of force, First Amendment violations, and routine discourtesy, virtually all involving Black individuals. Statistically, Black people accounted for 85% of stops, 90% of citations, 90% of use-of-force incidents, and a staggering 93% of arrests.[169] City officials were well aware of many of these disparities, but routinely dismissed them as evidence of a lack of "personal responsibility" on the part of some Black residents.[170]

Although the absence of good data on various forms of police behavior makes it virtually impossible to assess the prevalence of these sorts of dysfunctions, what data there are suggest that the political shortfalls on display in Ferguson are likely to crop up to varying degrees in a significant percentage of small towns.

First, as David Kimball explains, the political exclusion of Black residents in Ferguson had a lot to do with the fact that the Black population in Ferguson was younger, less affluent, and, more transient—all factors that significantly depress voter turnout rates.[171] In addition, Ferguson's Black population had increased dramatically over a relatively short time period, from 25% in 1990, to 52% in 2000, to 67% in 2010.[172] Given that it takes time to build relationships and establish a winning political coalition, it should not be surprising that Black residents' political representation was slow to catch up. These

fine-grained window into the political dynamics that pervaded the town. In St. Louis County itself, there were a number of small towns that exhibited similar sorts of disparities. *See* Jeff Smith, Opinion, *In Ferguson, Black Town, White Power*, N.Y. Times (Aug. 17, 2014), https://www.nytimes.com/2014/08/18/opinion/in-ferguson-black-town-white-power.html [https://perma.cc/QX8T-GSFR] ("Many North [St. Louis] County towns—and inner-ring suburbs nationally—resemble Ferguson.").

167 Jordan Weissmann, *Ferguson Is Mostly Black. Why Is Its Government So White?*, Slate (Aug. 14, 2014, 3:15 PM), https://slate.com/business/2014/08/ferguson-missouri-government-why-is-it-so-white.html [https://perma.cc/K6CB-5LDK]; DOJ Ferguson Report, *supra* note 15, at 8.

168 DOJ Ferguson Report, *supra* note 15, at 7, 88.

169 *Id.* at 4–5, 56–57, 62–64.

170 *Id.* at 5, 44, 74–75.

171 Weissmann, *supra* note 167; Editorial, *The Death of Michael Brown*, N.Y. Times (Aug. 12, 2014), https://www.nytimes.com/2014/08/13/opinion/racial-history-behind-the-ferguson-protests.html?_r=0&assetType=opinion [https://perma.cc/3TY2-M9GM].

172 DOJ Ferguson Report, *supra* note 15, at 6.

trends are reflective of a much broader population shift in the nation's suburbs. Between 1990 and 2020, the non-white share of the suburban population doubled, increasing from 21% to 45%.[173]

Second, although the sorts of racial disparities on display in Ferguson are on the extreme end of the spectrum, there is evidence of substantial disparities in other communities as well. As discussed above, Black and Hispanic drivers account for a disproportionate share of those stopped in many small towns. The prior subsection focused specifically on towns that had few Black or Hispanic residents (defined as less than 10%), but where Black and Hispanic drivers nevertheless accounted for a large share of stops. Racial disparities in police stops persist in towns that have a larger percentage of non-white residents as well. The stop data sample includes 329 towns in which Black and Hispanic drivers make up a significant—but minority—share of the local population (between 10% and 50%). In nearly 27% of these, the Black and Hispanic share of drivers stopped was at least 1.5 times higher than their share of the population as a whole. In Riverside, Illinois, for example, Black and Hispanic individuals made up just 18% of the population but accounted for 59% of those stopped.[174] Racial disparities in traffic stops may not always be indicative of discrimination, but they necessarily demonstrate that the burdens of policing are not felt equally by all.

Finally, Ferguson is by no means the only jurisdiction where the police department is far less diverse than the community it serves. The best evidence of the discrepancy between the demographics of departments and their communities comes from the 2016 and 2020 LEMAS surveys, which provide more granular data from a representative sample of small departments.[175] The LEMAS subsample includes 1,007 small agencies from jurisdictions that are at least 25% non-white.[176] In nearly half of these departments, the percentage of officers of color in the department was at least twenty-five percentage points lower than their share of the population as a whole (e.g., 25% of officers, vs. 50% of residents). In eighty-five agencies, the percentage-point disparity was greater than 50%.

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[173] William H. Frey, *Today's Suburbs Are Symbolic of America's Rising Diversity: A 2020 Census Portrait*, Brookings Inst. (June 15, 2022), https://www.brookings.edu/articles/todays-suburbs-are-symbolic-of-americas-rising-diversity-a-2020-census-portrait [https://perma.cc/9LG6-73XC].

[174] In Thornton, Illinois, it was 41% of the population versus 82% of stops.

[175] My combined 2016/2020 LEMAS subsample includes 3,668 small agencies. *See supra* note 105 (describing the subsample in greater detail).

[176] This accounts for just over 20% of all small agencies in the LEMAS subsample. I focus on these agencies because these are the communities in which one would expect to see at least some minority representation on the force.

Race, of course, is only part of the story. Policing necessarily falls disproportionately on people who are marginalized politically—whether by virtue of race, poverty, criminal behavior, or a combination of all three. Indeed, traffic enforcement, which unfortunately is one of the few police activities for which we have reliable data, is also one of the few police activities that directly impacts the public as a whole.[177] Other police activities, such as searches and arrests, affect a much narrower share of the population. A BJS survey of police-citizen contacts found, for example, that in 2018, approximately 8% of Americans had been pulled over by the police.[178] Just 1.4% were stopped on foot.[179] Fewer than 0.5% experienced any threat or use of force (which in this survey included handcuffing).[180] Of course, none of these risks are distributed equally across the population as a whole. For the median (white, middle class) voter, the likelihood of ever experiencing a use-of-force incident is vanishingly small.[181]

The *Washington Post* exposé on the Monroe County Sheriff's Office illustrates why the ordinary channels of political accountability typically fail to check police abuses that fall disproportionately on the marginalized few.[182] As discussed in Part I, the rural Mississippi sheriff's department had for years been conducting dangerous, destructive "no-knock" raids, often based on scant evidence of any serious wrongdoing. By definition, all (or virtually all) of the people affected were residents of the 33,000-person rural county.[183] Yet the department faced little public pushback.[184]

It is easy to see why. First, as is true across much of policing, there is virtually no public information on the frequency of raids, the damage they

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177 *See Traffic Stops and Race: Police Conduct May Bend to Local Biases*, Ass'n for Psych. Sci. (Mar. 23, 2022), https://www.psychologicalscience.org/news/releases/2022-march-traffic-stops-and-race.html [https://perma.cc/CES6-62E9] (noting that "[t]raffic stops . . . are the most common interaction between law enforcement and the public, according to data from the Stanford Open Policing Project" and citing Stan. Open Policing Project, https://openpolicing.stanford.edu [https://perma.cc/YPC5-T4EK] ("Currently, a comprehensive, national repository detailing interactions between police and the public doesn't exist.")).

178 Erika Harrell & Elizabeth Davis, U.S. Dep't of Just., NCJ 255730, Contacts Between Police and the Public, 2018 – Statistical Tables 4 (pub. 2020, rev. 2023).

179 *Id.*

180 *Id.* at 5.

181 *See id.* (detailing police threats or use of force by demographic characteristics).

182 Abelson & Flores, *supra* note 91.

183 *QuickFacts: Monroe County, Mississippi*, U.S. Census Bureau, https://www.census.gov/quickfacts/monroecountymississippi [https://perma.cc/SF9F-K4U2]. Unlike traffic stops, which can ensnare motorists who are passing through, residential warrants necessarily fall on people who live within the jurisdiction (and their guests).

184 *See* Abelson & Flores, *supra* note 91. Indeed, what might have brought the sheriff down after more than seven years in office were video allegations that he had been improperly using inmates at the local jail to help make his campaign signs. *Id*.

cause, or the degree to which they turn up evidence of crime.[185] Second, in Monroe County, as elsewhere, the people who bore the brunt of the department's raids were on the margins of society, which meant that few in the community had any real awareness of what the department was up to. Ricky Keeton, whom sheriff's deputies killed in a botched middle-of-the-night raid, had lived in a small trailer on a "gravel dead-end road." He and his girlfriend lived paycheck-to-paycheck, and he spent most of his time fixing cars in a small workshop behind his trailer.[186] Keeton had a prior conviction for selling marijuana in the 1990s, and he and his girlfriend had recently begun using meth.[187] Ricky's girlfriend was the only person who witnessed the raid, and unsurprisingly, initial reports after the shooting echoed the Sheriff's version of events—that Keeton was a known drug dealer who "opened the door and began shooting" at the deputies attempting to talk with him, leaving them no choice but to shoot.[188] As the *Washington Post* reported years later, the real story was altogether different. Keeton and his girlfriend woke up to the sound of officers banging down the door. Fearing an intruder, Keeton grabbed a pellet pistol—and officers opened fire mere moments later. Contrary to initial reports, there had been absolutely no justification for conducting a dangerous night-time raid.[189]

None of these issues, of course, are unique to small agencies. In big cities as well, policing harms invariably fall disproportionately on race-class subjugated communities. And those who bear the brunt of these harms routinely struggle to get the political establishment to respond to their concerns.[190]

There is, however, one important difference that may make the small-agency version of this familiar problem even more difficult to address: Small agencies are, by definition, found in small jurisdictions, which often lack the sorts of institutional levers that affected communities have traditionally relied upon to force policies to change.

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185 *See* ACLU, War Comes Home: The Excessive Militarization of American Policing 27–28 (2014), https://www.aclu.org/publications/war-comes-home-excessive-militarization-american-police [https://perma.cc/2ZS4-XYUZ] (noting the lack of data on SWAT raids even among larger departments).

186 Abelson & Flores, *supra* note 91.

187 *Id.*

188 *See, e.g.*, Sarah Fowler, *Fatal Deputy-Involved Shooting in Monroe County*, Clarion Ledger (Oct. 28, 2015, 8:38 AM), https://www.clarionledger.com/story/news/2015/10/28/fatal-deputy-involved-shooting-monroe-county/74730994 [https://perma.cc/3QZ9-EAJ8].

189 Earlier that night, a friend of Keeton's had been pulled over with a small quantity of meth, which he told police he had gotten from Keeton. The warrant application did not provide any justification for requesting a no-knock warrant, or for conducting the raid in the middle of the night. Abelson & Flores, *supra* note 91.

190 *See supra* note 5 and accompanying text.

Local media outlets and advocacy organizations, for example, can bring problems to light in ways that make them much harder for elected officials to ignore.[191] The median voter may not focus too much on policing so long as it is happening elsewhere, but they start to feel differently when presented with concrete evidence of various policing ills.[192]

The media and advocacy landscape in many small towns, however, is decidedly thin. Hundreds of newspapers have closed in recent decades—most of which had been providing hyper-local coverage to metro-area suburbs and rural small towns.[193] As of 2018, half of all counties had "only one newspaper, usually a small weekly," and "[a]lmost 200 counties . . . [had] no newspaper at all."[194] The newspapers that remain are often mere "ghosts" of their former selves, without the capacity to conduct the sort of investigative reporting that is crucial to keeping various forms of government malfeasance in check.[195] Meanwhile, major national advocacy groups like Vera, the American Civil Liberties Union, and the NAACP Legal Defense Fund operate primarily in larger cities and at the state and federal levels. Although some of these organizations have state-level affiliates, these smaller entities typically lack the capacity to engage in dozens—or hundreds—of small towns. Additionally, public defenders, who often have the most direct insight into various forms of police misconduct, are more likely to be underfunded or nonexistent in rural areas, with indigent defense cases picked up on an ad hoc basis by the local private bar.[196]

Smaller jurisdictions also lack the sorts of formal political and accountability structures that can help overcome the politics of the status quo. Many of the smallest jurisdictions (often called "towns" or "townships") are governed by part-time, multi-member commissions

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191 Schwartz, *supra* note 7, at 458, 477–78.

192 *See, e.g.*, Friedman & Ponomarenko, *supra* note 7, at 1864–65.

193 Penelope Muse Abernathy, The Expanding News Desert 8, 10 (2018), https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf [https://perma.cc/7MPW-DJQ6].

194 *Id.* at 8.

195 *Id.*

196 *See, e.g.*, Eli Hager, *When There's Only One Public Defender in Town*, Marshall Project (Sept. 9, 2016), https://www.themarshallproject.org/2016/09/09/what-happens-when-there-s-only-one-public-defender [https://perma.cc/2KSX-FQAN] (describing Louisiana's indigent defense crisis); Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 Ariz. L. Rev. 219, 241–42, 283–307 (2010) (highlighting resource disparities across Arizona counties, noting that several rural counties lack public defenders' offices, and describing various deficiencies in rural indigent defense); *but see* Irene Oritseweyinmi Joe, *Structuring the Public Defender*, 106 Iowa L. Rev. 113, 118–22, 140 (2020) (noting that some states do a better job of equalizing funding across jurisdictions than do others).

that exercise both legislative and executive authority,[197] thereby eliminating the sorts of interbranch checks that can sometimes spur policy change.[198] Members also typically are elected on an at-large basis, which can make it even more difficult for concentrated minority interests to make themselves heard.[199] In addition, smaller jurisdictions lack "regulatory intermediaries," such as police commissions and inspectors general, which can play an important role in reviewing agency practices, identifying systemic shortfalls, and amplifying the voices of those who have the most direct experience with the police.[200] Small governments do not have the capacity to maintain these sorts of oversight structures, nor should they. It would not make sense to have a full-time inspector general overseeing a department that makes at most a few dozen arrests each year.[201] However, the absence of these sorts of external checks does increase the likelihood that certain forms of misconduct will persist for years or decades without being addressed.[202]

Finally, individuals in smaller jurisdictions also may have a harder time seeking recourse through the courts. In *Civil Rights Ecosystems*, Joanna Schwartz highlights the many factors—unrelated to the prevalence or severity of police misconduct—that determine the likelihood that plaintiffs with colorable civil rights claims will bring their cases to court and ultimately prevail once there.[203] These factors include the quality and availability of plaintiffs' attorneys, the predisposition of local judges and juries, and the capacity that local jurisdictions have to settle outstanding claims.[204]

Small town plaintiffs are likely to find themselves at a disadvantage along many of these dimensions. Schwartz points out, for example, that plaintiffs' attorneys who routinely litigate civil rights cases tend to be more

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197 *See* Nat'l Ass'n of Towns and Twps., Town and Township Government in the United States 2–3, https://www.toi.org/Resources/87748A89-B591-4209-AB28-4F81CA6DA1C9/NATAT%20About%20Towns%20and%20Townships.pdf [https://perma.cc/VR33-JUSK].

198 For example, on the role that city councils can play in improving police oversight, see Mary M. Cheh, *Legislative Oversight of Police: Lessons Learned from an Investigation of Police Handling of Demonstrations in Washington, D.C.*, 32 J. Legis. 1, 2 (2005).

199 *See id.* at 2; NAACP Legal Def. and Educ. Fund, Inc., At-Large Voting Frequently Asked Questions 1, https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf [https://perma.cc/MB38-AGVG].

200 *See* Ponomarenko, *supra* note 6, at 45–58.

201 *See, e.g.*, Vill. of Granville, Community Response to: Governor Cuomo Executive Order 203, at 9 (Mar. 2021), https://policereform.ny.gov/system/files/documents/2021/04/granville.pdf [https://perma.cc/H7B2-QLYP] (noting that the ten-officer department made seventy arrests in 2019).

202 *See, e.g.*, DOJ Ferguson Report, *supra* note 15, at 15 (noting that the various problems in Ferguson had been going on for years).

203 Joanna C. Schwartz, *Civil Rights Ecosystems*, 118 Mich. L. Rev. 1539, 1543 (2020).

204 *Id.* at 1547–62.

successful than those who handle only the occasional case.[205] Plaintiffs in smaller jurisdictions, especially outside the major urban centers, may have a harder time finding an experienced attorney willing to take up their case. Judges and juries, too, are likely to be less sympathetic in many small towns, which tend to lean more conservative and more solicitous of the police. For example, although Lieutenant Nazario ultimately prevailed in his lawsuit against the two Windsor, Virginia officers who held him at gunpoint, the rural Virginia jury awarded just $3,685 in damages[206]—a figure that is all but certain to dissuade plaintiffs' attorneys, who typically work on a contingency basis, from bringing similar claims.

All of this suggests that when small agencies do start to drift in problematic directions, there may be fewer mechanisms in place to turn things around—and, importantly, fewer levers through which more marginalized groups can prod local governments toward change.

c. Political Lockup

Finally, political checks tend to be less effective when there are no viable alternatives to the status quo, a problem that may be especially acute when it comes to sheriffs' departments, which account for almost 20% of small agencies nationwide. In theory, sheriffs are supposed to be the law enforcement officials who are the most directly accountable to their communities. Indeed, Falcone and Wells posit that sheriffs should generally be more open, more accessible, and more in tune with the communities they serve.[207] More recent work, however, casts serious doubt on the notion that sheriffs are meaningfully accountable at all. For one, as Michael Zoorob points out, it is difficult to square this rosy account of electoral accountability with the number of sheriffs' offices that seem to perpetually be mired in scandal.[208] Second, electoral accountability only works if voters have options from which to choose, which often is not the case. Nationwide, approximately 45% of sheriffs' elections are uncontested, a figure that goes up to 55% for the smallest departments.[209] Incumbent sheriffs win roughly 90% of the time.[210]

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205 *Id.* at 1559.

206 Tannock Blair, *Virginia Army Lieutenant Awarded Less than $4,000 by Jury in Civil Lawsuit Against Windsor Police Officers*, ABC 8 News (Jan. 17, 2023, 4:28 PM), https://www.wric.com/news/virginia-news/virginia-army-lieutenant-awarded-less-than-4000-by-jury-in-civil-lawsuit-against-windsor-police-officers [https://perma.cc/Y67R-ZL7L].

207 *See* Falcone & Wells, *supra* note 128, at 139.

208 *See* Michael Zoorob, *There's (Rarely) a New Sheriff in Town: The Incumbency Advantage for Local Law Enforcement*, 80 Electoral Stud., Nov. 24, 2022, at 1–2.

209 *Id.* at 3.

210 *Id.* at 3, 10.

Although one could take this lack of turnover as evidence that sheriffs are doing a fine job, Zoorob explains that a much likelier explanation lies in the difficulty of finding someone willing to run.[211] Typically, sheriffs must reside in the county and often must have at least some level of law enforcement experience (although this requirement varies).[212] The problem is that in many of the rural counties where small sheriff's departments are found, the only people who would meet those requirements are deputies in the sheriff's department itself.[213] This is because in many rural counties, the sheriff's department is the sole law enforcement provider. Of the 2,265 small sheriff's departments included in the BJS dataset, 395 (17%) do not have a single municipal department within their borders. Another 1,001 (44%) have just one or two.[214] Invariably these also are small departments, which means the available pool of challengers from outside the agency can be vanishingly small. As for challengers from within the sheriff's chain of command, there are any number of reasons why a deputy might be reluctant to run—ranging from fear of retaliation to sympathy for the sheriff's approach to law enforcement.[215] Finally, even when viable challengers exist, for all of the reasons discussed in the previous Section, residents often have very little information with which to evaluate how well a sheriff is in fact doing his or her job.

Importantly, rural sheriffs are but an extreme example of a broader phenomenon in small communities: the fact that the people currently in power are sometimes the only ones willing to do the job. Eric Oliver has shown, for example, that incumbents generally have a considerable advantage in local elections, and that advantage is highest in communities with fewer than 5,000 residents.[216] He notes that "one of the most often-cited concerns" in many communities is "simply finding enough qualified people to serve much less run for local office."[217] Voter turnout in local elections tends to be "abysmally low," and those who participate are overwhelmingly likely to be "[h]omeowners, the wealthy, and the elderly"—which is to say, the people who are most likely to receive favorable treatment by the police.[218]

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211 *See id.* at 8–9.

212 *See id.*

213 *See id.* at 3–5, 8.

214 There is a chance that at least some of these do have one or two other departments within their borders but that the agencies neglected to participate in any of the BJS surveys over the years.

215 Zoorob, *supra* note 208, at 8.

216 J. Eric Oliver, Shang E. Ha & Zachary Callen, Local Elections and the Politics of Small-Scale Democracy 125 (2012).

217 *Id.* at 122.

218 Christopher Warshaw, *Local Elections and Representation in the United States*, 22 Ann. Rev. Pol. Sci. 461, 462 (2019).

2. *Capacity Constraints*

Small governments also may fail to address policing problems because they simply lack the capacity to solve them. One often-expressed concern about small departments (particularly very small departments) is that they lack the resources and manpower necessary to conduct serious investigations or to address crime problems that cross jurisdictional lines. A related concern is that small agencies may not be able to keep up with best practices or implement state-mandated reforms. As this Section makes clear, these concerns are largely overstated when it comes to small agencies *generally*. But they are far more acute than the existing literature has acknowledged in a small subset of departments that operate in the poorest communities—and, in particular, those that also have some of the highest levels of crime.

a. Small-Agency Capacity

One persistent theme that runs through much of the reporting on small-town departments is that they are too small to deal with serious policing problems or to keep up with the pace of reform. Critics argue that small agencies "lack the training, expertise and accountability expected in today's world of heavily armed criminals and heightened scrutiny for officers."[219] Small agencies also lose out on the "advantages of scale for larger police forces, such as specialized units and data-driven crime prevention strategies."[220] As one observer noted, "They don't have any K-9s. They don't have any undercover drug detectives. They don't have a homicide division. They don't really have squat."[221]

In making sense of these concerns, it is useful to begin by distinguishing among the different sizes of agencies that, collectively, are typically referred to as "small." In policing circles, "small" agencies are typically defined as having fewer than fifty officers.[222] But when it comes to manpower, resources, and specialization, there are important differences between agencies that have just a handful of officers and those that have a few dozen or more.

The sorts of concerns expressed above are most likely to resonate when it comes to the 48% of small agencies that have fewer than ten

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219 Steve Thompson, *Uvalde Intensifies Doubts Over Whether Tiny Police Agencies Make Sense*, WASH. POST (July 19, 2022, 11:30 AM), https://www.washingtonpost.com/nation/2022/07/19/tiny-police-uvalde [https://perma.cc/9EKP-3RLS].

220 *Id.*

221 *Id.*

222 *See, e.g.*, *Smaller Department Section*, INT'L ASS'N OF CHIEFS OF POLICE, https://www.theiacp.org/smaller-department-section [https://perma.cc/CC7V-U2XX] (defining the "smaller department" section as limited to agencies with fewer than fifty officers).

officers—and even more so the roughly 2,800 agencies that have fewer than five (Table 3). These smallest departments tend to have a relatively flat organizational structure, with just two or three levels of employees: patrol officers, a chief of police, and perhaps a sergeant or lieutenant (but usually not both).[223] Officers in these departments all perform essentially the same functions; indeed even chiefs spend part of their time responding to calls for service or conducting routine patrol.[224] The vast majority of these agencies lack detectives or drug units.[225] More than 30% of these departments reported that they either don't have formal mechanisms in place to address internal affairs issues, or that misconduct is simply "not a problem" in their department. These also are the agencies that are most likely to struggle with providing round-the-clock police services.[226] And as a result, they also are the agencies that find it difficult to free-up already scarce officer time for additional training.[227]

TABLE 3. NUMBER OF FULL-TIME OFFICERS[228]

Agency Size	0 to 4	5 to 9	10 to 24	25 to 50	Total
# Agencies	2,767	3,316	4,203	2,316	12,602
(% of Small)	(22%)	(26%)	(33%)	(18%)	(100%)

223 The discussion in this paragraph is based on the 2016 and 2020 Law Enforcement Management and Administrative Statistics surveys. LEMAS, *supra* note 105. The LEMAS subsample includes supervisory data for 1,023 agencies with fewer than ten officers. Of these, 20% did not have any supervisory positions other than the chief, and another 56% had either a sergeant or lieutenant, but not both.

224 Bass, *supra* note 39, at 63–64.

225 Eighty-six percent of agencies with fewer than ten officers reported that they did not have a single detective, and 71% did not have a single officer, assigned to handling drugs, guns, or narcotics.

226 *See* PA. GOVERNOR'S CTR. FOR LOC. GOV'T SERVS., ADMINISTERING POLICE SERVICES IN SMALL COMMUNITIES 29 (7th ed. 2015) (noting that it typically requires five officers to ensure round-the-clock service). *But see* Bass, *supra* note 39, at 63 (noting that the smallest agencies often compensate for lack of personnel by either requiring officers to work longer-than-usual hours, or keeping officers on call).

227 *See* SMALLER AGENCY TRAINING AND TECH. ASSISTANCE PROJECT, INT'L ASS'N OF CHIEFS OF POLICE, EMERGING TRENDS AND ISSUES IN SMALLER LAW ENFORCEMENT AGENCIES: 2015 FOCUS GROUP REPORT 6 (2015), https://www.theiacp.org/sites/default/files/all/s/SmallerAgencyFocusGroupReport.pdf [https://perma.cc/QD5J-XE88] (citing low numbers as the biggest obstacle to additional training in small departments).

228 Throughout this paper I report agency size based on the number of "full-time equivalent" sworn officers, which includes the whole number of full-time officers, plus half of every part-time officer. This is the same measure that BJS uses in its reporting.

These concerns have far less purchase, on the other hand, when it comes to the 18% of "small" departments with twenty-five to fifty officers. These agencies may be small (and work in relatively small places), but when it comes to internal organization, they start to more closely resemble a larger force. These agencies typically have at least a few levels of supervision and at least some of the specialized units that one would expect to find on a larger force, such as narcotics or internal affairs.[229]

Even among the smallest departments, however, the sorts of capacity concerns discussed above are unlikely to affect all agencies in quite the same way. First, resources matter. Although small departments serve some of the most impoverished communities,[230] they also work in some of the most affluent. Approximately 30% of small agencies, for example, work in jurisdictions where the median income is higher than the state's—a figure that goes up to nearly 50% for small urban departments. Wealthy suburban departments (even very small ones) generally have a greater ability to overcome various resource constraints. Take, for example, the six-officer Centre Island Police Department, which serves an affluent enclave on Long Island.[231] In 2016, the department underwent the state's voluntary accreditation program,[232] which requires agencies to comply with a variety of policy and training requirements that exceed the bare minimums required under state law.[233] In a 2020 report, the department discussed at length its policies and procedures on issues ranging from vehicle pursuits, to use-of-force reporting, to the handling of complaints.[234]

Similarly, concerns about small agencies being ill-equipped to address serious crime are largely inapposite in places where there simply is not much of it. Between 2012 and 2016, one in four of the smallest departments reported fewer than twenty serious (i.e. "Part I") crimes *total* for the entire year—the vast majority of which were

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229 In the LEMAS subsample, 76% of agencies with twenty-five to fifty officers (440 out of 577 agencies) had at least one officer assigned to focus exclusively on drugs, guns, or gangs. 56% of these agencies also had four or more detectives. And 82% of agencies had at least one officer assigned to internal affairs.

230 *See infra* notes 241–69 and accompanying text.

231 *See* Michael A. Capobianco, Centre Island Police Dep't, Centre Island Police Department Police Reform and Reinvention Collaborative (2021), https://policereform.ny.gov/system/files/documents/2021/04/centreislandpd-reform.pdf [https://perma.cc/6AJQ-UA9Q].

232 *Id.*

233 *See* Office of Pub. Safety, N.Y. State Div. of Crim. Just. Servs., New York State Law Enforcement Accreditation Program Implementation Guide 8–14 (Sept. 2015), https://www.criminaljustice.ny.gov/ops/docs/accred/Implementation-Guide-Dec-2016.pdf [https://perma.cc/239X-XUDV] (describing accreditation procedures and requirements).

234 Capobianco, *supra* note 231.

low-level property crimes that do not require much investigative prowess to resolve.[235] And when small agencies do encounter problems that exceed their capacity, it is not unusual for them to enlist the help of county or state police.[236] Very small departments, for example, routinely look to larger agencies to conduct homicide investigations or provide tactical support.[237] And they participate in various multi-jurisdictional task forces to address regional concerns.[238]

Finally, when it comes to accountability and reform, agency size cuts both ways. As discussed in the previous Section, *external* accountability may be harder to come by in small jurisdictions, especially when it comes to practices that disproportionately affect the marginalized few. But when it comes to *internal* accountability, small agencies tend to be easier for chiefs to control. Big city agencies are byzantine in their organization, with potentially dozens of precincts, specialty divisions, and levels of supervision. This in turn creates many potential inflection points at which things can go badly astray, from specialty teams that develop troubling subcultures to misconduct investigations that unravel deep within the chain of command.[239] Large agencies also are incredibly difficult for new leaders to turn around once troubling practices have set

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235 Part I crimes include murder, rape, aggravated assault, human trafficking, robbery, burglary, larceny, motor vehicle theft, and arson. As discussed in greater detail *supra* note 106, I only included crime data for the 9,542 small agencies that submitted at least four full years of crime data between 2012 and 2016, which accounts for 76% of small agencies in the BJS CSLLEA census. Crime data were available for 60% of agencies with fewer than ten officers, and 91% of agencies with ten to fifty. The fact that crime data are unavailable for 24% of agencies raises legitimate concerns about representativeness—and is an unavoidable limitation on these findings. The agencies that are excluded are, on average, smaller than those for which data are available, and are more likely to be rural. (Rural agencies comprise 59% of excluded agencies, and 46% of those for which crime data are available.) And they are slightly more likely to be found in lower income communities. (24% of excluded agencies are in jurisdictions where the median income is less than two-thirds of the state's median income, as compared to 18% of those that are included in the sample.)

236 *See, e.g.*, Legis. Budget & Fin. Comm., Police Consolidation in Pennsylvania, H. 2013-168 Regular Sess., at 12 (Pa. 2014) (noting that state police provide specialized services to local departments); *Core Functions*, N.J. State Police, https://nj.gov/njsp/about/core-functions.shtml [https://perma.cc/3YV9-JABX] (noting that the New Jersey State Police provide "scientific and technical services" in criminal investigations to agencies for which such services "are beyond [their] ability and capacity").

237 Just 56% of small agencies reported that they have primary responsibility over homicide investigations—a figure that drops to 40% for agencies with fewer than ten full-time officers.

238 Eighty percent of small agencies indicated that they participate in at least one multi-agency task force.

239 *See, e.g.*, Mike Baker, *Special Memphis Police Unit Was Supposed to Stop Violence*, N.Y. Times (Jan. 27, 2023), https://www.nytimes.com/2023/01/27/us/scorpion-unit-tyre-nichols-death.html [https://perma.cc/99SC-NVKC] (describing concerns over the Memphis Police Department's "SCORPION" unit, a dedicated crime suppression unit whose officers were charged in January 2022 with the murder of Tyre Nichols); U.S. Dep't of Just., Investigation

in. None of this is a problem in small departments, whose organizational simplicity makes them much easier for chiefs to supervise—provided, of course, that they have an interest in doing so.[240]

b. City-Wide Poverty

In a subset of small agencies, however, resource constraints are far more acute than previous accounts suggest. These departments are found in communities like East Pittsburgh, discussed in Part I, where the median household income is just over $25,000 per year, and where roughly one in four households live below the poverty line.[241] East Pittsburgh shuttered its police department after the killing of Antwon Rose, concluding that the city could not afford to make the necessary reforms or even, for that matter, to maintain predictable full-time coverage.[242] But there are dozens if not hundreds of communities just like it that still have their own police.

Just across the border from East Pittsburgh sits Braddock, a town made famous by its former mayor turned senator John Fetterman. Braddock, like East Pittsburgh, maintains an all-part-time force, and nearby Rankin and North Braddock each only have one full-time officer.[243] In an interview with *PublicSource*, the Braddock chief spoke in poignant terms about the many challenges that his cash-strapped department faced.[244] Officers in Braddock earned even less than in nearby East Pittsburgh—just under $12 an hour—which still compared

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OF THE CHICAGO POLICE DEPARTMENT 82 (2017) (noting that multiple layers of review often served to forestall accountability for misconduct).

240 It is not unusual, for example, for small agency chiefs to personally review each use-of-force incident or citizen complaint. *See, e.g.*, Letter to the Members of the Town of Deerpark Town Bd. (Mar. 25, 2021) https://policereform.ny.gov/system/files/documents/2021/07/townofdeerparkplan.pdf [https://perma.cc/6E6E-ZKUQ] (exemplifying use-of-force incidents being reviewed by the Chief of Police).

241 Bradbury, *supra* note 88.

242 *State Police Assuming Full-Time Police Services*, E. PITTSBURGH (Nov. 30, 2018), http://eastpittsburghboro.com/notices/state-police-assuming-full-time-police-services [https://perma.cc/6YW2-4SMR] (noting the circumstances that necessitated the shutdown of the East Pittsburgh Police Department); *East Pittsburgh Police Department to be Dissolved*, CBS NEWS (Nov. 25, 2018) https://www.cbsnews.com/pittsburgh/news/east-pittsburgh-police-department-dissolved [https://perma.cc/C47A-L8GP].

243 HARRY J. FRUECHT, PA. GOVERNOR'S CTR. FOR LOC. GOV'T SERVS., ALLEGHENY COUNTY REGIONAL POLICE STUDY 9 (2020), https://tcvcog.com/wp-content/uploads/2020/02/Regional-Police-Study-Final-Report-2020.pdf [https://perma.cc/FFW7-HB42] (depicting Allegheny County police study demographic data).

244 Jeffrey Benzing, *Low Funding, Strained Patrols and Officer Turnover Common Among Some Mon Valley Police Departments. Will East Pittsburgh's Crisis Spur Changes Elsewhere?*, PUBLICSOURCE (Oct. 2, 2018), https://www.publicsource.org/low-funding-strained-patrols-and-officer-turnover-common-among-some-mon-valley-police-departments-will-the-crisis-in-east-pittsburgh-lead-to-changes-elsewhere [https://perma.cc/K7UY-R27K] (detailing the realities of East Pittsburgh police departments).

favorably to officer wages in Rankin, where the lowest-paid officers earned less than $10.[245] As a result, most of his officers picked up shifts at one or more nearby agencies to make ends meet. It was not unusual, he explained, for an officer to come in having already worked two or more consecutive shifts (or more than twenty-four hours straight).[246] With that level of exhaustion it is difficult to imagine that the officers were anywhere near their best. On some nights, the chief could not find anyone to fill a shift at all, leaving him on his own to patrol the half-mile community, where per capita call volumes and violent crime rates are 1.5 times higher than Pittsburgh's.[247] Turnover is rampant with officers routinely leaving for better pay.[248]

Similar stories crop up in other parts of the country as well. There is Robbins, Illinois, a suburb on the outskirts of Chicago, where officers also work part-time for just $11.50 an hour.[249] In 2021, twelve of the department's fourteen officers walked off in protest over faulty equipment and inadequate pay.[250] And as a rural counterpart, there is Eudora, Arkansas, which drew the attention of *The New York Times* in 2022 when it imposed a citywide curfew in a desperate attempt to curb a wave of more than a dozen shootings in a town of 1,700.[251] The *Times* article described an agency on a shoestring: Eudora has just three officers, including the chief, who found themselves working long hours to try to respond to the mounting caseload.[252] "Its vehicles [were] breaking down. [The chief's] ballistic vest is a hand-me-down. He and the officers have to rely on their own binoculars."[253] Thirty-five percent of families in Eudora live below the poverty line. More than 90% of residents are Black.[254]

In *The Fight to Save the Town*, Michelle Wilde Anderson introduced the terms "citywide poverty" or "border-to-border low-income towns"

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245 Bradbury, *supra* note 88.

246 Benzing, *supra* note 244.

247 *See* Benzing, *supra* note 244; Bradbury, *supra* note 88.

248 Benzing, *supra* note 244.

249 Bill Jones, *Robbins' Dwindling Police Staff Walks Out Over Pay, Staffing, Equipment Issues*, Chi. Trib. (Oct. 4, 2021, 4:15 PM), https://www.chicagotribune.com/suburbs/daily-southtown/ct-sta-robbins-police-labor-dispute-st-1005-20211004-jbzgro7gojdjzmgxgveamcqzvi-story.html [https://perma.cc/3CZ8-MENJ] (noting the starting pay of part-time officers in Robbins).

250 *Robbins Police Officers Say They're Taking a Stand in Walkout, Call for Higher Pay, More Resources*, CBS News Chi. (Oct. 2, 2021, 6:31 PM), https://www.cbsnews.com/chicago/news/robbins-il-police-officers-walkout [https://perma.cc/4SNV-HX4V].

251 Rojas, *supra* note 148.

252 *Id.*

253 *Id.*

254 *Eudora, AR*, Census Rep., https://censusreporter.org/profiles/16000US0522180-eudora-ar [https://perma.cc/ZZ65-PN8Q].

to describe municipalities where at least 20% of residents live below the poverty line, and where median household incomes are less than two-thirds of the median income in that state.[255] The phrases capture jurisdictions that have "widespread poverty" along with the many challenges it brings. But importantly, they also have "fewer people living at higher incomes," which limits the potential to raise the taxes and revenue necessary to meet low-income residents' needs.[256]

Nationwide, 1,781 municipal police departments work in municipalities that meet Anderson's definition of "citywide poverty." They include a handful of big cities with notoriously troubled police departments, such as Baltimore, Cleveland, and Newark. But the vast majority of these departments—91% of them—are small. Together, they account for a small but significant fraction (16%) of small municipal departments, providing services to approximately 7 million residents.

Like Eudora, an overwhelming majority of citywide poverty towns (70%) are located in rural areas. But there are small towns in many major metros as well.[257] Nearly two-thirds are in the South, but there are significant numbers in every part of the country.[258] City-wide poverty towns are disproportionately likely to have sizeable communities of color, with 40% that are majority non-white.

As Anderson notes, some "border-to-border places have become infamous" for their excessive reliance on fines and fees.[259] And indeed, the list includes some of the worst offenders—like Henderson, Louisiana and Valley Brook, Oklahoma, both of which get more than 70% of their budgets from fines and fees.[260] The vast majority, however, do not. Nationwide, just 8% of citywide poverty jurisdictions collect more than 10% of their revenue from forfeits and fines.

What does unite these departments, however, are their significant resource constraints—and the predictable consequences of these limitations for the quality of the officers they can hire and the services they can provide. The median high-poverty agency had a budget of just over $70,000 per sworn officer—which it must use to cover officer salaries and benefits (if any), all training and equipment, as well as salaries for any non-sworn personnel. In all likelihood, these are the

255 ANDERSON, *supra* note 148, at 5.

256 *Id*.

257 The Pittsburgh area has at least twenty-three citywide poverty jurisdictions, St. Louis has thirteen.

258 Sixty-three percent are located in the South, 20% in the Midwest, 7% in the Northeast, and 10% in the West.

259 ANDERSON, *supra* note 148, at 8.

260 *See* McIntire & Keller, *supra* note 144 (pointing to both Henderson and Valley Brook as some of the worst offenders).

sorts of departments where officers are most likely to complain about having to rely on shoddy, worn-out equipment, and where officers rarely complete more than the bare minimum of training, to the extent that they manage to meet the state's requirements at all. These also are the places that may be forced to hire whatever officers they can, including the "wandering officers" previously fired from another force.[261]

The felt impact of these constraints, however, likely depends in large part on the severity of the crime problems with which these under-resourced agencies must deal. Although crime rates generally are higher in border-to-border towns, there is, as always, a great deal of variance. When it comes to violent crime, for example, 30% of border-to-border towns reported fewer than five incidents per year.[262] Property crime rates, which include burglary, larceny, and motor vehicle theft, were generally higher, but still below the national average in nearly half of the towns.[263]

It is possible, of course, that even very low rates of crime could stretch at least some of these departments to capacity, but the situation is likely considerably more dire in the communities where officers and residents must deal with much higher levels of crime. Roughly 30% of border-to-border towns reported per capita violent crime rates that put them in the top 10% of municipalities nationwide, on par with those of the largest cities.

To be sure, the problem of policing in border-to-border towns is not, at its core, a *policing* problem at all, but rather a symptom of a much broader problem of tying municipal services to local property values and of municipal fragmentation, under-investment, and neglect.[264] The communities that struggle to adequately fund their police departments also are those that cannot adequately fund education, infrastructure, or public health.[265] And these broader failures undoubtedly contribute to

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261 *See, e.g.*, *South Carolina Police Officer Charged in Fatal Shooting*, 25 ABC (Feb. 12, 2022, 12:34 PM), https://www.kxxv.com/news/south-carolina-police-officer-charged-in-fatal-shooting [https://perma.cc/V352-XWLA] (noting that an officer in Eutawville, South Carolina, charged with killing an unarmed driver after a pursuit, had been fired from two other agencies in the past).

262 Violent crimes reported to the FBI include murder, robbery, rape, and aggravated assault.

263 Forty-seven percent of citywide poverty towns reported property crime rates that fell below the national average, as compared to 73% of non-citywide poverty jurisdictions.

264 *See generally* Anderson, *supra* note 148; Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 Colum. L. Rev. 1 (1990) (noting that local legal power reflects inequalities and affirms private values); Maria Ponomarenko, *Our Fragmented Approach to Public Safety*, 59 Am. Crim. L. Rev. 1665 (2022) (noting that overreliance on policing is a result of fragmentation of local authority).

265 *See, e.g.*, Briffault, *supra* note 264, at 20 (noting that "the disparity in assessed valuation per capita between the wealthiest and poorest school district may be on the order of 100 to

the high rates of crime and victimization with which these communities must deal. Eudora, for example, has also struggled over the years to provide basic municipal services like clean water,[266] as well as recreational opportunities and support services for the young people who were responsible for the latest spike in crime.[267]

Still, although the problems in these communities are not first and foremost policing problems, the challenges facing their departments are a big part of the small-agency story. And importantly, it is a problem that one easily can miss by focusing on big cities alone. Although a small number of big cities—like Baltimore and Newark—meet the technical definition of citywide poverty, the departments in those jurisdictions still do not face quite the same sorts of resource constraints. Large cities, including large cities with high crime rates and widespread, persistent poverty, still have a much larger tax base on which to draw. Newark, for example, hosts a number of major employers, including Prudential, Verizon, and Blue Cross Blue Shield.[268] As a result, these jurisdictions typically have the *capacity* to improve the quality of their police departments, even if they need to be made to do so by a federal court decree.[269]

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1" and that "[t]hese wealth differences regularly occur in districts located only a few miles apart in the same metropolitan area").

266 *See* Desmond Nugent, *'The Process Has Started:' City of Eudora Mayor Says Water Issue Is Being Addressed*, KATV ABC 7 (July 1, 2022), https://katv.com/news/local/the-process-has-started-city-of-eudora-mayor-says-water-issue-is-being-addressed [https://perma.cc/7529-S8SA] (noting that Eudora is facing challenges with its drinking water); Desmond Nugent, *'Particles Floating in Your Bathwater.' Eudora Residents Are Frustrated with Dirty Water*, KATV ABC 7 (June 29, 2022), https://katv.com/news/local/particles-floating-in-your-bathwater-eudora-residents-are-frustrated-with-dirty-water [https://perma.cc/ZE7S-P44H] (noting the issues that Eudora residents are having with their water).

267 Amanda Claire Curcio, *SE Corner of State at a Loss, with Little to Offer At-Risk Kids*, Ark. Democrat Gazette (Mar. 4, 2018, 3:23 AM), https://www.arkansasonline.com/news/2018/mar/04/se-corner-of-state-at-a-loss-with-littl [https://perma.cc/5L4U-X3N6] (noting the lack of resources for children in the community).

268 *See Newark: Economy*, City-Data.com, https://www.city-data.com/us-cities/The-Northeast/Newark-Economy.html [https://perma.cc/BK5F-WSAA] (noting the major employers of Newark).

269 Both Baltimore and Newark are under federal consent decrees with the U.S. Department of Justice, which require that the departments make a variety of changes to policies, practices, and training, in addition to making the necessary investments in equipment and oversight. *See City of Baltimore Consent Decree*, City of Balt., https://consentdecree.baltimorecity.gov [https://perma.cc/6PU6-3PVX]; *About Us*, Newark Police Consent Decree & Planning Div., https://www.npdconsentdecree.org [https://perma.cc/YFP2-CP8Y].

So what does all of this tell us, at the end of the day, about the problems of small-agency policing, and the competing narratives with which this Article began? To begin with, what the prior discussion makes clear is that there *are* a distinctive set of small-agency problems in American policing that differ in important ways from the prevailing narratives on big-city police. Some of the problems may well be familiar, but the causes that drive them differ, as do the available avenues for local reform. Accountability, for example, appears to be both easier and harder to come by in small places. On the one hand, small agencies are generally easier for chiefs to manage internally, and there is less of a concern that a subset of officers will develop a troubling subculture that differs from that of the department as a whole. On the other hand, small jurisdictions typically have far fewer institutional levers through which to identify and remedy patterns of misconduct, which makes it more likely that these harms will continue to go unaddressed.

At the same time, it is important to distinguish between those problems that are likely to be a concern for small agencies *generally*, and those that are most likely to affect a subset of small-town police. The sorts of extreme resource constraints on display in places like Rankin and East Pittsburgh, for example, are largely confined to high-poverty small towns, and especially to those that also must deal with significant crime. Other problems, however, are likely to crop up in a much larger share of small towns.

Turning to specific departments and practices, a key takeaway from the preceding discussion is that small-agency traffic enforcement is especially ripe for abuse. Traffic stops routinely put officers in contact with people who live outside the jurisdiction. And even when officers are not targeting outsiders intentionally, traffic stops are the main way in which small agencies externalize various harms. Importantly, overreliance on traffic enforcement appears to be a problem for small agencies *generally*—and not simply the poorest jurisdictions that may be in greatest need of the revenue that traffic fines bring. Many of the agencies that make the largest number of stops are not in fact writing all that many tickets. And a significant share of departments that *do* collect a fair bit of fines revenue are in more affluent areas that have plenty of other revenue sources on which to draw.

Second, as is true in larger departments, we should be especially concerned about those agency practices that fall disproportionately on the marginalized few. In small, relatively homogenous communities, it may be, as Weisheit, Wells, and Falcone suggest, that the familiarity between officers and residents may generate a less aggressive style of

policing and therefore a reduced likelihood of excessive force.[270] But these safeguards are likely to break down in the significant share of small jurisdictions that are more stratified along racial or class lines, and where the people who bear the disproportionate brunt of abusive policing may not be as likely to know the officer personally or to have the ear of the chief.

Third, although there undoubtedly are plenty of rural sheriffs who do their work admirably (and under tremendous resource constraints), rural sheriffs' departments as a whole may be particularly resistant to meaningful accountability and reform. As various scholars have pointed out over the years, elections are generally a poor substitute for systemic oversight. But they are even less likely to be effective where most of the viable challengers to an incumbent sheriff's authority work for the sheriff herself.

Finally, the resource constraints facing small departments are both more and less of a problem than conventional wisdom suggests. As criminologists (rightly) have been pointing out for years, concerns that small agencies are going to be overwhelmed by big city crime, or that they are just too small to do "real police work," have largely been overstated. Small departments in small places with few serious problems are likely managing just fine. On the other hand, the roughly 1,650 small agencies in high-poverty jurisdictions—and especially 500 or more that also face above-average rates of violent crime—pose a serious problem that existing reform efforts have failed to grapple with in any meaningful way.

III
Mitigating Small-Agency Harms

This Part turns to the question of what states, and to a lesser extent, the federal government, might do to address the various small-agency problems discussed in Part II. It begins with what often is the knee-jerk response to the fact that there are thousands of tiny departments—namely, that most of these agencies should simply disband or "consolidate" with a larger force. However, as the discussion below makes clear, there are good reasons to doubt whether consolidation would do much to improve the quality of policing in America's small towns. At least for the foreseeable future, small agencies are probably here to stay.

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270 *See* Weisheit et al., Crime & Policing, *supra* note 24 and accompanying text.

In view of this, this Part then turns to a more targeted set of reforms focused on addressing the political and fiscal shortfalls identified in Part II. With respect to the former, it argues that states should adopt a mix of regulatory reforms aimed at policing practices that are especially ripe for local abuse, along with institutional reforms designed to strengthen local political processes to make it easier for small jurisdictions to oversee their police. With respect to the capacity constraints facing high-poverty towns, it argues that states should take steps to remedy the dramatic disparities in police funding that make it virtually impossible for these jurisdictions to maintain safe and effective police.

A. Consolidation

When something goes wrong in a small department, one question that invariably gets asked is why there are so many small departments to begin with. After Uvalde, the *Boston Globe* declared that "there are far too many police departments" in the United States and urged "state and federal" lawmakers to "move to consolidate" many of them.[271] Earlier that same week, the *Washington Post* had likewise questioned "whether tiny police agencies make sense."[272] These calls echo similar proposals from decades past. In 1972, for example, the Committee for Economic Development declared that agencies with fewer than ten officers "lack anything resembling modern professional police protection."[273] The following year, the National Advisory Commission on Law Enforcement Standards and Goals declared that agencies with fewer than ten officers should either "consolidate" or dissolve.[274]

Proponents of police consolidation cite various potential benefits. Consolidation can save jurisdictions money by reducing duplicative costs.[275] It can address the various problems that arise when dozens of tiny departments police side by side, each subject to a different set of priorities and rules.[276] Larger departments can support the sorts

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271 Editorial, *Consolidate the Police*, Bos. Globe (July 24, 2022, 4:00 AM), https://www.bostonglobe.com/2022/07/24/opinion/consolidate-police [https://perma.cc/2A6K-JTCW].

272 Steve Thompson, *Uvalde Intensifies Doubts over Whether Tiny Police Agencies Make Sense*, Wash. Post (July 19, 2022, 11:30 AM), https://www.washingtonpost.com/nation/2022/07/19/tiny-police-uvalde [https://perma.cc/7W66-CZDX?type=standard].

273 *See* Comm. for Econ. Dev., Reducing Crime and Assuring Justice 31 (1972).

274 Nat'l Advisory Comm'n on Crim. Just. Standards & Goals, Police 110 (1973).

275 *See, e.g.*, Terry W. Koepsell & Charles M. Girard, Off. of Dev., Testing & Dissemination, Nat'l Inst. of L. Enf't & Crim. Just., Small Police Agency Consolidation: Suggested Approaches 8 (1979) (explaining that merged police units found consolidation reduced per unit costs for police services or resulted in more services for the same amount of money).

276 *See Consolidate the Police*, *supra* note 271 (noting the difficulty in creating an efficient response among agencies with "different rules, jurisdictions, and command centers").

of specialized units and robust accountability structures that small agencies necessarily lack—including "regulatory intermediaries" like police commissions and inspectors general that I have urged in prior work.[277]

Over the years, a number of small departments have indeed disbanded, though the precise number is difficult to come by. A report issued in 1967 estimated that there may have been as many as 40,000 independent law enforcement agencies in the United States, which, if accurate, would suggest that more than half of those departments have since dissolved.[278] Yet there are reasons to doubt that consolidation has proceeded at quite so rapid a pace.[279] A 1968 Illinois state study, for example, counted 618 municipal police departments.[280] As of 2018, there were at least 675.[281] Similarly, the *New York Times* predicted in 1973 that the 38 town and village police departments on Long Island would one day dissolve,[282] but at present there are at least 38 still chugging along.[283] Every year some number of small agencies do shut down. But it is not clear that their overall number has decreased by any appreciable degree.

The halting pace of consolidation should not come as a surprise. First, the (admittedly limited) literature on the tangible effects of police consolidation undercuts many of the claims made in its favor. In a 2022 paper, Richard Boylan found that consolidation did not have any impact on local crime rates, and that the cost savings associated with disbanding a small-town department were cancelled out by the increased costs to the county of providing policing services to the town.[284] The far more extensive literature on school district consolidation has likewise shown

277 *See* Ponomarenko, *supra* note 6, at 45–58 (noting that external regulatory structures are rare in police departments, and are only found in a few major cities); Thompson, *supra* note 272 (detailing that small agencies do not have the resources, training, and accountability that larger departments have).

278 President's Comm'n on L. Enf't & Admin. of Just., The Challenge of Crime in a Free Society 91 (1967); *see supra* note 1 and accompanying text.

279 In his longitudinal study of police consolidation, Richard Boylan found just 521 agencies in towns with populations between 1,000 and 200,000 that disbanded between 1973 and 2017. Richard T. Boylan, *Should Cities Disband Their Police Departments?*, 130 J. of Urb. Econ. 1, 6 (2022). A BJS survey, meanwhile, counted just over 17,000 agencies in 1992. Banks et al., *supra* note 103, at 6. Thus, for the 40,000 figure to be accurate, more than half of the nation's law enforcement agencies would have had to disband in the 25-year period between 1967 and 1992. It is difficult to imagine that such a significant wave of closures would have escaped public attention.

280 Pub. Admin. Serv., Police Training and Education in Illinois app. B tbl.1 (1968).

281 Small Agency Data File, *supra* note 114.

282 *See* Alice Murray, *L.I. Village Police May Be on Way Out*, N.Y. Times (Oct. 7, 1973), https://www.nytimes.com/1973/10/07/archives/l-i-village-police-may-be-on-way-out-a-lack-of-funds-cited.html [https://perma.cc/2TUG-6HC6].

283 Small Agency Data File, *supra* note 114.

284 Boylan, *supra* note 279, at 1–2.

that contrary to the optimistic projections put forward by consolidation advocates, merging small school districts together does not lead to any significant improvements in student outcomes and may leave some students worse off than they would have been in smaller schools.[285]

In addition to these cautionary findings regarding the limited fiscal and performance-related benefits to consolidation, there are several reasons to doubt whether consolidation is either a plausible or desirable solution for the specific problems that plague small-town police. For consolidation to make sense, it has to be the case that whatever replaces the 12,600 small departments (or some large fraction of those departments) will necessarily be *better*. As the remainder of this Section makes clear, there are reasons to think that one form of consolidation—merging with one or more neighboring departments—could indeed help address at least some of the problems that small agencies face. The problem, however, is that this rarely is a viable option for most small departments. The far more common route to "consolidation" is to disband a local agency and contract with the county or the state. In many if not most jurisdictions, however, this option raises far more problems than it solves—which helps to explain why so many communities view consolidation as a measure of last resort.

1. What it Means to "Consolidate"

A small town that no longer wants to maintain its own department typically has two choices available: It can contract for policing services with the state or county, or it can merge its department with that of a neighboring town. Contracting is by far the more common of the two.[286]

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[285] *See, e.g.*, Dwight A. Cooley & Koy A. Floyd, *Small Rural School District Consolidation in Texas: An Analysis of Its Impact on Cost and Student Achievement*, 3 ADMIN. ISSUES J.: EDUC., PRAC., & RSCH. 45, 61 (2013) (finding that consolidation of rural Texas school districts had a negative effect on student performance); Christopher R. Berry & Martin R. West, *Growing Pains: The School Consolidation Movement and Student Outcomes*, 26 J. OF L., ECON., & ORG. 1, 2 (2010) (finding that consolidation led to modest improvements in district-wide outcomes, but that these were more than offset by the significant reduction in future earnings on the part of students who went to larger schools); Josh B. McGee, Jonathan N. Mills & Jessica S. Goldstein, *The Effect of School District Consolidation on Student Achievement: Evidence from Arkansas* 12 (Annenberg Inst. at Brown Univ., Working Paper No. 21-347, 2021), https://www.edworkingpapers.com/sites/default/files/ai21-347.pdf [https://perma.cc/VYH6-A8UB] (finding that consolidation of school districts with fewer than 350 students in Arkansas did not lead to improved outcomes or produce any meaningful economies of scale).

[286] *See, e.g.*, LEGIS. BUDGET & FIN. COMM., *supra* note 236, at S-2 (noting that, in Pennsylvania, 1,279 municipalities without their own department relied on the state police, and 244 contracted with a neighboring jurisdiction—as compared to just 102 that merged with neighbors to form regional departments).

In several states, rural communities without their own police departments rely exclusively on the state police. In Alaska, for example, state troopers are the sole provider of policing services to the vast majority of the state's rural residents.[287] In Pennsylvania, state law guarantees that if a municipality lacks its own police department, the state police will step in free of charge.[288] State agencies typically provide a much more limited set of services than do small-town police. State officers respond to calls for service, and occasionally conduct some limited form of directed (i.e. proactive) patrol.[289] But they do not perform the many community caretaking functions—like checking on ailing residents or serving as crossing guards—that over the years have been assigned to small-town police.[290] To be sure, none of these functions actually require a *police officer*—and some functions, like behavioral health response, are almost certainly better handled by someone else. But these functions do require *someone*. Losing a local department means finding someone else to fill in those gaps.

In other jurisdictions, it is more common for small towns to contract for policing services with the county sheriff. In many states, sheriffs provide primary policing services to unincorporated areas within their jurisdiction, as well as to individual communities that opt to rely on the sheriff's office in lieu of their local police.[291] At least some, like the King County Sheriff's Office in Washington State, do so in ways that preserve at least some characteristics of a small-town force.[292] Municipalities that contract with the county get their own dedicated officers—with uniforms

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287 *See State Troopers: A Detachment*, Alaska Dep't of Pub. Safety, https://dps.alaska.gov/AST/ADetachment/Home [https://perma.cc/R23C-KNYR] (describing the north and south functions of one of the state's four trooper detachments); *see also Find Your Local Troop*, Dep't of Pub. Safety: Me. State Police, https://www.maine.gov/dps/msp/about/find-local-troop [https://perma.cc/J86V-3G2X] (noting likewise that the state police provide primary policing services to municipalities).

288 Legis. Budget & Fin. Comm., *supra* note 236, at S-2, S-3 (noting that in 2012 the Pennsylvania State Police spent $540 million to provide services to municipalities without their own police departments).

289 *See, e.g.*, *id.* at 12 (describing "basic patrol duties" and requests for assistance in incidents as Pennsylvania State Police services provided to municipalities).

290 *See id.*

291 *See* James Tomberlin, *"Don't Elect Me": Sheriffs and the Need for Reform in County Law Enforcement*, 104 Va. L. Rev. 113, 137–38 (2018) (explaining that municipalities contracting with the sheriff for police services is a common practice in many states because of the quality of policing and the costs saved by not setting up local departments).

292 *See* Jeremy M. Wilson & Clifford Grammich, Off. of Cmty. Oriented Policing Servs., BOLO E121116421, Police Consolidation, Regionalization, and Shared Services: Options, Considerations, and Lessons from Research and Practice 7 (2012), https://cops.usdoj.gov/RIC/Publications/cops-w0641-pub.pdf [https://perma.cc/Y36E-924N] (noting that the sheriff's office now uses some attributes of a municipal department, such as uniforms and markings, which often bolsters perception of services).

and markings that identify them as local police.[293] Local officials get to pick a local "police chief" from among the sheriffs' deputies, who then works with local officials to establish priorities for local patrols.[294] But as discussed below, most jurisdictions are not in fact choosing between the King County Sheriff's Office and their own small-town force.

The other option—which many small towns seem to prefer, but rarely manage to implement—is to merge with one or more neighboring departments to establish a regional force.[295] Regional departments tend to be relatively small themselves, albeit larger and better resourced than the agencies they replace.[296] As a result, regional departments appear to provide at least some of the benefits of consolidation without sacrificing small-town charm. Regionalization, however, typically involves a messy and costly negotiation process that helps to explain why so many efforts at regionalization ultimately stall.[297] First, studies suggest that regionalization only seems to work well when the participating communities have similar geography, demographics, and crime rates,[298] and that without these commonalities, there is a

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293 *See id.* at 7–8.

294 *Id.* at 8.

295 *See, e.g.*, *State Police Assuming Full-Time Police Services*, *supra* note 242 (describing the town's arrangement with the state police as temporary, and noting that a regional department is a goal).

296 *See, e.g.*, Ashley Murray, *Where Police Consolidation Has Worked*, Pittsburgh Post-Gazette (Dec. 18, 2018), https://newsinteractive.post-gazette.com/where-it-has-worked [https://perma.cc/ZC57-WK8P] (describing two regional departments in Allegheny County, one with 31 officers and the other with 13).

297 *See, e.g.*, John Vivirito, Jr., *Home Rule Amendment Needed for Police Merger*, Pittsburgh Post-Gazette (May 19, 2004, 12:00 AM), https://www.post-gazette.com/local/north/2004/05/19/Home-rule-amendment-needed-for-police-merger/stories/200405190154 [https://perma.cc/D4PU-5P4L] (noting that, after a ten year stall, the issue of a regional police force will be back on the Bellevue ballot); Philip A. Stephenson, *Joint Police Force Still Possible for 3 Towns*, Pittsburgh Post-Gazette (Jan. 19, 2005, 12:00 AM), https://www.post-gazette.com/local/north/2005/01/19/Joint-police-force-still-possible-for-3-towns/stories/200501190303 [https://perma.cc/74A8-D5D6] (explaining that talks stalled for a consolidation of police forces due to discussions regarding which police officers will be kept on, issues with timing, and police contracts); Deborah M. Todd, *Vote Put Police Jointure in Limbo*, Pittsburgh Post-Gazette (May 27, 2010, 6:30 AM), https://www.post-gazette.com/local/east/2010/05/27/Vote-put-police-jointure-in-limbo/stories/201005270354 [https://perma.cc/DXS4-ARF6] (explaining that the Churchill Council narrowly voted against a joint police consolidation study, which meant that the neighboring town of Wilkins would also not participate); Christopher Huffaker, *State to Allegheny Valley: Without Layoffs, Police Merger Won't Save Money*, Pittsburgh Post-Gazette (Mar. 1, 2019, 1:00 PM), https://www.post-gazette.com/news/crime-courts/2019/03/01/State-to-Allegheny-Valley-communities-patchwork-policing-Sharpsburg-Aspinwall-Blawnox/stories/201903010117 [https://perma.cc/NW64-AR35] (describing a government study that found no savings from consolidation when police officers could not be laid off).

298 *See, e.g.*, Police Exec. Rsch. F., *supra* note 126, at 6 (recommending certain consolidations based on factors such as similar crime rates, population densities, and

significant risk of perpetual squabbles over finances, policing priorities, and the like.[299] This means that for any given department, there may not be a viable candidate nearby with whom to merge. Combining two or more departments also requires jurisdictions to overcome a variety of logistical hurdles, from merging pension plans and renegotiating union contracts, to reaching agreement over patrol assignments, contribution levels, and much else.[300] Finally, most studies suggest that although regionalization can save some jurisdictions money over the long term, in the short-run, costs almost invariably go up.[301]

2. Consolidation and Political Accountability

From an accountability standpoint, consolidation is a decidedly mixed bag. The accountability case for consolidation is that larger agencies may be better able to support the sorts of external accountability structures that are necessarily lacking in small towns, and relatedly, that advocates may have an easier time monitoring one larger agency as opposed to a half-dozen small ones. But even this potential benefit is almost certainly overstated. For one, many of the accountability mechanisms discussed in Part II—including strong advocacy groups, a robust plaintiffs' bar, and a vibrant press—have less to do with the size of the *agency* than the broader institutional ecosystem of which it is a part.[302] In larger metro areas, advocacy groups and media organizations may indeed have an easier time tracking the conduct of a smaller number of departments. But in the more rural parts of the country, these resources are unlikely to appear just because agencies merge. Second, many of the sheriffs' departments with which a small agency might contract are *themselves* going to be too small to support any sort of robust control.[303] Finally, because sheriffs' departments are generally independent of the broader county bureaucracy, the sorts of

geographic continuity); Murray, *supra* note 296 (noting that experts say indicators of a successful consolidation are communities possessing similar demographics and crime rates).

299 *See, e.g.*, Murray, *supra* note 296 (pointing to a regional department that splintered because of the many differences among the rural and urban communities that had merged).

300 *See, e.g.*, LEGIS. BUDGET & FIN. COMM., *supra* note 236, at S-4 (reporting that surveyed regional police departments ranked difficulty of factors when consolidating, including lack of control, union contract and pension issues, and determination of cost distribution and staffing needs).

301 *See, e.g.*, *id.* at S-5 (noting that the majority of surveyed regional police departments experienced an initial increase in costs).

302 *See* LEGIS. BUDGET & FIN. COMM., *supra* note 236, at S-4.

303 Seventy-four percent of sheriffs' departments are themselves small.

external accountability structures that increasingly are found in big city departments are largely absent at the county level.[304]

The accountability case for consolidation only goes downhill from there. For small towns in particular, turning to the state police—which answer to a statewide constituency—means giving up any real semblance of political control over the police.[305] It also often means trading one sort of accountability deficit for another. State police departments undoubtedly perform better along some metrics: They are more likely to keep data, for example, and to impose more rigorous training and qualification requirements on their police.[306] But they also face the unique problem of supervising officers who may be scattered across thousands of square miles or detailed to local outposts that, like precincts or specialized units, can sometimes develop troubling subcultures of their own. In February 2023, for example, a *Baltimore Banner* reporter revealed that a handful of Maryland State Police "barracks" had implemented a de facto quota system for traffic stops and arrests in clear violation of state law.[307] In 2021, the *New York Times* highlighted the troubling record of state troopers in Kentucky, who had been responsible for a disproportionate share of rural killings at the hands of police.[308]

Contracting with the county raises many of these same concerns. As discussed in Part II, sheriffs often face little meaningful oversight, and whatever accountability elections provide is often ephemeral.[309] For small municipalities, the prospect of holding their sheriffs accountable is more fleeting still. Although sheriffs are elected on a countywide basis, not every resident actually relies on the sheriff's department for primary policing services. In urban areas in particular, the more populous jurisdictions will invariably have (and retain) their own police departments, which means that most of the people deciding whether to

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304 The NACOLE database of local oversight entities, for example, includes just seven county sheriff's departments: Denver, San Diego, Los Angeles, Sacramento, Kings County (Seattle) Sonoma County, CA, and Onondaga County, NY (Syracuse). Civilian Oversight Agency Directory, Nat'l Ass'n for Civilian Oversight of L. Enf't, https://directory.nacole.org [https://perma.cc/5NWW-FYUV].

305 *See* Legis. Budget & Fin. Comm., *supra* note 236, at S-4.

306 *See, e.g.*, N.J. Rev. Stat. § 52:17B-235 (2019) (requiring the state police department—but not local departments—to track data on stops and arrests).

307 All Things Considered, *Report: Maryland Police Are Using a Quota-Like System to Reward Arrests*, Nat'l Pub. Radio (Feb. 12, 2023, 6:18 PM), https://www.npr.org/2023/02/12/1156430794/report-maryland-police-are-using-a-quota-like-system-to-reward-arrests [https://perma.cc/VT2F-YU8J].

308 Alysia Santo & R.G. Dunlop, *Where Police Killings Often Meet with Silence: Rural America*, N.Y. Times (Sept. 25, 2021), https://www.nytimes.com/2021/08/13/us/police-shootings-rural.html [https://perma.cc/9L52-RHS3].

309 *See supra* notes 207–18 and accompanying text.

reelect a county sheriff will have very little personal experience with how well the sheriff has performed.[310]

Although the contractual relationship itself should in theory provide some degree of leverage, in practice this often is not the case. Once a municipality has disbanded its police department, it may have no choice but to continue with the sheriff (or state), even if it is not happy with how its residents are being policed. When the small town of Guadalupe, Arizona objected to Maricopa County Sheriff Joe Arpaio's immigration raids in its small community, the sheriff basically told residents to take it or leave it—and it turned out that leaving was not really an option.[311] None of the neighboring jurisdictions were willing to take over the contract, and it would have taken several years for the town to create a department of its own.[312]

Of course, contracting with the county sheriff means trading up to an agency that will often have plenty of problems of its own. As discussed in Part II, more than 75% of county sheriffs' departments are *themselves* small, with all of the resource constraints facing smaller departments, but spread out across a much larger territory.[313] Meanwhile, some of the largest sheriffs' departments, like the Maricopa County Sheriff's Office, have been responsible for some of the worst policing abuses and have been equally impervious to reform.[314]

By far the most attractive option from an accountability standpoint is for two or more smaller departments to merge with one another and establish a regional force. Unlike the various contractual relationships described above, merger preserves a greater degree of local control by forming a new department that reports to an oversight commission with representatives from each of the participating towns.[315] So long as the

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310 *See* Tomberlin, *supra* note 291, at 143 (explaining that sheriffs' elections often feature little interaction with the community).

311 *Id.* at 139–40.

312 *Id.*

313 2,172 of the 2,933 sheriffs' departments included in the BJS CSLLEA dataset (74%) are small.

314 John Dougherty, *Dog Day Afternoon*, Phx. New Times (Aug. 5, 2004), https://web.archive.org/web/20101018121647/http://www.phoenixnewtimes.com/2004-08-05/news/dog-day-afternoon/full [https://perma.cc/J2RY-P73V] (describing various serious abuses committed by Maricopa County Sheriff's Office during Sheriff Joe Arpaio's tenure and Arpaio's efforts to illegally investigate and silence opponents and critics); *see also, e.g.*, Dana Goodyear, *The L.A. County Sheriff's Deputy-Gang Crisis*, New Yorker (May 30, 2022), https://www.newyorker.com/magazine/2022/06/06/the-la-county-sheriffs-deputy-gang-crisis [https://perma.cc/HD67-NF7G].

315 *See, e.g.*, *Intergovernmental Cooperation Agreement Establishing a Regional Police Department*, Cent. Bucks Reg'l Police Dep't 3 (Sept. 21, 2015), https://bucks.crimewatchpa.com/sites/default/files/17396/page/2023/05/intergovernmental_agreement_2015.pdf [https://perma.cc/N4WL-9N39] ("Each party shall appoint two (2) representatives, who

participating towns are relatively similar to one another, this sort of arrangement can ensure that smaller communities continue to have a direct way to shape the conduct of their police.[316] The problem, as discussed above, is that regionalization is also by far the most difficult option to implement, and one that is only available in places where there is in fact a plausible partner nearby.[317]

3. Consolidation and Citywide Poverty

Consolidation fares somewhat better when it comes to addressing the capacity constraints that small agencies face, but not in the communities that, at least on paper, would seem to benefit from it the most. Perhaps the most obvious candidates for consolidation are communities like Braddock and East Pittsburgh, which only manage to afford their own departments by paying the equivalent of a fast-food wage, while skimping on virtually everything else.[318] These also are the jurisdictions with the highest crime rates and, as a result, the greatest need for the investigative capacity that part-time departments typically lack.[319]

The problem is that consolidation may not address their financial plight. In the wake of the Antwon Rose shooting, the East Pittsburgh police department first approached Allegheny County about taking over police services in the borough.[320] It quickly learned that because the county hired officers on a full-time basis and paid them an average of $90,200 a year plus benefits, a county contract would cost more than twice what the borough had been paying to maintain its own force.[321] East Pittsburgh also approached the neighboring jurisdictions of Braddock, North Braddock, Whitaker, and Rankin about a possible merger—and

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shall be chosen from among the members of Borough Council and/or the Mayor of the Municipality.").

316 Regionalization could also facilitate better supervision by municipal insurers, who, as John Rappaport has persuasively argued, can fill an important gap in police oversight—but at present tend to have a harder time supervising their "most diminutive customers." *See* Rappaport, *How Private Insurers Regulate Public Police*, *supra* note 101, at 1610–11.

317 *See supra* text accompanying notes 274–77.

318 *See* Bradbury, *supra* note 88.

319 *See id.*

320 *See State Police Assuming Full-Time Police Services*, *supra* note 242 ("Since July, we've participated in discussions and meetings with Allegheny County officials about the possibility of the County providing police coverage.").

321 Rich Lord & Shelly Bradburry, *County, East Pittsburgh, North Braddock Can't Agree on Policing Deal; Cost a Factor*, Pittsburgh Post-Gazette (Sept. 27, 2018, 6:10 PM), https://www.post-gazette.com/news/crime-courts/2018/09/27/police-consolidation-allegheny-county-north-braddock-east-pittsburgh-antwon-rose/stories/201809270180%5bR16.6(f) [https://perma.cc/F6ZF-3TJS] (noting that county officers make an average of $90,000 a year plus benefits).

the five towns even participated in a consolidation study commissioned by the state.[322] But one by one, each of the towns eventually backed out, once again citing concerns over manpower and cost.[323] At the time of the study, the five boroughs relied almost entirely on part-time officers, totaling 47 full-time-equivalent officers.[324] The state calculated that together, they could set up a regional department with just 12 full-time officers including the chief, with each officer still making just $41,600 a year.[325] Ultimately, each of the communities decided that the math simply did not work out. It turns out that merging five impoverished communities together does not make them any less poor—or alter in any appreciable way the financial constraints that they face.

4. Where it Makes Sense to Consolidate

The goal here, of course, is not to suggest that every one of the country's 12,600 small agencies should keep chugging along indefinitely.[326] Some degree of consolidation is inevitable and perhaps desirable, but on a much narrower scale than proponents envision.

The most likely candidates for dissolution are small towns in remote areas that can no longer find qualified candidates to serve. A survey of small police department closures in rural North Carolina found, for example, that in more than half of the nineteen departments that disbanded between 1995 and 2009, the retirement of a longstanding chief of police and the difficulty of finding a suitable replacement helped prompt the departments to close.[327] Other departments in recent years have similarly closed after losing all or most of their officers to

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322 Fruecht, *supra* note 243, at 1; *State Police Assuming Full-Time Police Services*, *supra* note 242.

323 *See* Lacretia Wimbley, *Braddock Council Opts Out of Mon Valley Police Regionalization Plan*, Pittsburgh Post-Gazette (Mar. 10, 2021, 1:31 PM), https://www.post-gazette.com/news/politics-local/2021/03/10/Braddock-council-opts-out-of-police-regionalization-plan-north-braddock-east-pittsburgh-rankin/stories/202103100137 [https://perma.cc/748H-FY4T] (discussing North Braddock and Braddock's decisions to opt out of the regionalization study); Lacretia Wimbley, *'How Do You Sell This Job?': Police Recruitment Declines in Some Parts of Pennsylvania, While Some Departments Try to Hold Their Own*, Morning Call (Oct. 3, 2021), https://www.mcall.com/2021/10/03/how-do-you-sell-this-job-police-recruitment-declines-in-some-parts-of-pennsylvania-while-some-departments-try-to-hold-their-own [https://perma.cc/AL76-VUG7] (same).

324 Fruecht, *supra* note 243, at 9.

325 *Id.* at 21–22.

326 Consolidation may be especially warranted in those cases where several police departments are concentrated in extremely close proximity. *See*, *e.g.*, Police Exec. Rsch. F., *supra* note 126, at 64 (listing nine municipalities all clustered together in a 4.2 mile area, each with their own separate police).

327 James R. Brunet, *Goodbye Mayberry: The Curious Demise of Rural Police Departments in North Carolina*, 47 Admin. & Soc'y 320, 329–31 (2015).

retirement or relocation.[328] Although state funding could potentially help some communities forestall these closures for some period of time, some of these trends may simply be irreversible in areas that continue to experience steady population decline. Indeed, to the extent funding is available, it may be better spent helping remote communities identify alternative models for meeting the community caretaking needs that previously had been fulfilled by local law enforcement, and would likely disappear in the transition to county or state police. We should not be too quick to assume, however, that these closures will in any meaningful way improve the quality of *policing* that these communities receive.

Consolidation also may make sense in places where the department and municipal culture has become sufficiently toxic that there is little hope for redemption on any plausible time horizon—and at least some reason to think that the state or county alternative would not make things appreciably worse. Sorrento, Louisiana is an oft-cited example of a police department that had engendered such controversy that even the mayor deemed it a lost cause.[329] The department had lost its chief after he pled guilty to charges of sexual assault; it lost its insurer after the company decided the agency posed too great a risk; and it fired several of its remaining officers for various forms of misconduct.[330] Another is Hampton, Florida, a notorious small town that at one point had just 477 residents but 19 police officers, who did virtually nothing other than write tickets to motorists along a tiny stretch of interstate highway that the town had annexed as its own.[331] After a state audit turned up evidence of widespread corruption and embezzlement, and the town mayor was arrested for drug charges, the state threatened to yank the town's charter if it did not disband its department and undertake various other reforms.[332] In these sorts of cases, the admittedly imperfect

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328 *See, e.g.*, Trisha Ahmed & Jim Salter, *Some Small Towns in America Are Disbanding Police Forces, Citing Hiring Woes*, Associated Press (Sept. 5, 2023, 7:22 PM), https://apnews.com/article/police-departments-hiring-disbanding-defunding-minnesota-6bc707834152806264dce7bfa80d9b29# [https://perma.cc/5X5Y-KVUC] (recounting the closure of small police departments as a result of officer retirements and resignations).

329 *See, e.g.*, Cameron McWhirter, *There's a New Cop in This Town, but Perhaps Not for Long*, Wall St. J. (Oct. 31, 2014, 4:14 PM), https://www.wsj.com/articles/louisiana-mayor-battles-a-great-grandmother-over-police-department-1414782037 [https://perma.cc/6GFA-FEHC].

330 Kate Stevens, *It's Official: Sorrento Town Council Dissolves Troubled Police Department*, Advoc. (July 1, 2016), https://www.theadvocate.com/baton_rouge/news/it-s-official-sorrento-town-council-dissolves-troubled-police-department/article_297cec2c-cddd-561c-9935-77f17f6f1bb9.html [https://perma.cc/8AL5-KVLM].

331 Ann O'Neill, *City Too Corrupt for Florida Is Spared*, CNN (Mar. 31, 2014, 10:47 AM), https://www.cnn.com/2014/03/29/us/hampton-florida-corruption-survival/index.html [https://perma.cc/3Z5K-87MA].

332 *Id.*

alternatives of state or county policing are still likely preferrable to the departments they replace.

Finally, in places like Allegheny County with dozens of tiny departments packed tightly together, some degree of municipal regionalization may ultimately make sense, but only if it is accompanied by a significant commitment of state funding to address the underlying fiscal constraints that these communities face. The five Mon Valley hamlets of Braddock, North Braddock, Whitaker, Rankin, and East Pittsburgh were all strongly in favor of forming a regional department until it became clear that their financial woes would simply carry over to a regional force.[333] But the various officials who spoke publicly on the issue recognized that the five communities, which shared similar demographics and comparably high levels of crime, would ultimately be better off with a regional force.[334] States can and should facilitate these sorts of arrangements—including as discussed below by providing funding where necessary to make the math work. At the same time, it is important to recognize that these sorts of homogenous clusters, with crime problems serious enough to exceed the capacity of most small-town police, are comparatively rare.[335]

B. Regulating—and Funding—Small-Town Police

If small agencies largely are here to stay, however, it is incumbent upon states to take steps to address the small-agency problems that are unlikely to get resolved on their own. This Section begins by briefly surveying the existing regulatory landscape, along with its notable gaps. It then turns to the two sets of reforms, the first aimed at addressing the political shortfalls that predictably generate harmful policing, and the second designed to address the funding disparities that disproportionately harm border-to-border poverty towns.

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333 *See, e.g.*, Benzing, *supra* note 244 (covering the aftermath of the fatal Antwon Rose shooting); Shelly Bradbury, *Penn Hills and Rankin: Different Towns, Different Takes on Police Consolidation*, Pittsburgh Post-Gazette (Dec. 18, 2018), https://newsinteractive.post-gazette.com/allegheny-county-police-department-consolidation-rankin-penn-hills [https://perma.cc/L54R-63ZM] (reporting the disparities in policing resources and attitudes towards consolidation across two Mon Valley towns).

334 *See 'How Do You Sell This Job?': Police Recruitment Declines in Some Parts of Pennsylvania, While Some Departments Try to Hold Their Own*, Morning Call (Oct. 3, 2021, 5:47 AM), https://www.mcall.com/2021/10/03/how-do-you-sell-this-job-police-recruitment-declines-in-some-parts-of-pennsylvania-while-some-departments-try-to-hold-their-own [https://perma.cc/XMB7-9N83] (quoting statements by then-Rankin Police Chief Ryan Wooten).

335 *See supra* notes 258–64 and accompanying text.

1. Existing Regulatory Landscape

Although we think of policing as inherently local, sworn police officers are, in fact, creatures of the state. It is states, not localities, that authorize police officers to exercise the powers of force and arrest.[336] And it is states, not localities, that establish the minimum standards and qualifications that determine who gets to carry a badge.[337] States get to decide whether officers must complete 400 training hours or 1,200.[338] And although there is some (largely unfounded) dispute over the scope of state legislative authority to regulate sheriffs,[339] it is beyond any doubt that states have plenary authority to regulate local police.

The degree to which states exercise that authority, however, varies considerably. In the vast majority of states, there are few if any limits on what the police can do beyond the very minimal constraints imposed by federal constitutional law. Virtually all states, for example, authorize their Peace Officer Standards and Training (POST) Boards to revoke or suspend an officer's license ("decertify") for various forms of malfeasance, but in many of these states, officers may only be decertified based on criminal convictions, which are exceedingly rare.[340] A small number of states have enacted comprehensive use-of-force statutes, but in many states the only state-law requirement is that an officer's use of force be objectively reasonable at the exact moment it is used.[341] More than twenty states require agencies to collect demographic data on traffic (and sometimes pedestrian) stops, but most do not.[342]

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336 Shoked, *supra* note 133, at 8–9.

337 Ponomarenko, *supra* note 6, at 60 ("Every state has a commission on Police Officer Standards and Training (POST), which establishes the requirements for becoming a police officer and sets minimum standards for police training."); *see also* Shoked, *supra* note 133, at 10–11.

338 *See State Law Enforcement Training Requirements*, Inst. for Crim. Just. Training Reform, https://www.trainingreform.org/state-police-training-requirements [https://perma.cc/6DTG-ZMWC] (surveying the variance in state-mandated training requirements).

339 *See* Christy E. Lopez, Opinion, *Beware the Extremist, Dangerous and Unconstitutional 'Constitutional Sheriffs'*, Wash. Post (Dec. 17, 2021, 8:00 AM), https://www.washingtonpost.com/opinions/2021/12/17/constitutional-sheriffs-extremist-dangerous-unconstitutional [https://perma.cc/UGN6-GTEC] ("After searching in vain for any legal basis for sheriff supremacy and checking with several others who have studied law enforcement and civilian oversight, I can confirm that a constitutional sheriff with unique autonomy is not actually a thing.").

340 Roger L. Goldman, *Importance of State Law in Police Reform*, 60 St. Louis U. L.J. 363, 377, 381–82 (2016) ("Even where the prosecutor does take the case to state grand juries, they rarely indict.").

341 *See, e.g.*, Mich. Comp. Laws Ann. 780.972 § 2(1) (West 2023) (establishing the standard for when *all* individuals in Michigan, including officers and members of the public, may use deadly force).

342 *See Traffic Stop Data*, Nat'l Conf. State Legislatures, https://app.powerbi.com/view?r=eyJrIjoiNWEwYjFkMDktNzY2YS00MTUzLTg0NDAtNzE2ZDhlNmJkOTI4IiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9 [https://perma.cc/5NGN-9KGL] (gathering state traffic stop data collection laws). South Carolina,

In most jurisdictions, primary authority for regulating policing falls to the courts, which are almost entirely unsuited to the task.[343] In the absence of substantive federal or state legislation, courts have two principal fonts of authority on which to draw: federal and state constitutional rules of criminal procedure as well as common law state torts.[344] Constitutional rules, however, only cover a limited subset of police activities and, as a result of various predictable judicial biases, are tilted overwhelmingly in favor of the police.[345] As Joanna Schwartz has shown, both individual officers and the municipalities that employ them routinely escape liability even in cases of egregious misconduct thanks to an elaborate web of immunity doctrines invented more or less out of whole cloth by the United States Supreme Court.[346]

Finally, there are private municipal insurers, who, as John Rappaport points out, are often the ones to provide the most direct oversight of local police.[347] Although large cities generally "self-insure," smaller municipalities typically obtain private insurance coverage for possible claims against them.[348] This gives insurers an incentive to assess the degree to which any given agency poses a risk of unfavorable judgments against it and to encourage or require municipalities to adopt policies and practices that limit their exposure to civil rights claims.[349]

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for example, only requires officers to fill out a stop form when they *do not* issue a citation or make an arrest—a bizarre choice that all but ensures that residents and researchers have no meaningful way to get a handle on how many stops officers make, or the outcome of these stops. *See Public Contact Reports*, S.C. Dep't of Pub. Safety, https://scdps.sc.gov/public-contact-reports [https://perma.cc/98VY-X8KT].

343 Friedman & Ponomarenko, *supra* note 7, at 1832 ("[I]t has been largely left to courts to govern the police.").

344 *See* Schwartz, *supra* note 203, at 1550–52.

345 *See, e.g.*, Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 Calif. L. Rev. 125, 127–30 (2017) (describing the ways in which existing doctrines facilitate police violence); Friedman & Ponomarenko, *supra* note 7, at 1865–77 (considering the manifold reasons why constitutional judicial review is a poor substitute for statutory regulation of the police).

346 *See* Joanna C. Schwartz, Shielded: How the Police Became Untouchable 71–116 (2023) (describing the various ways in which both officers and municipalities are insulated from liability even for meritorious constitutional claims); Joanna C. Schwartz, *Backdoor Municipal Immunity*, 132 Yale L.J.F. 136 (2022) (describing how courts have allowed agencies to piggy-back off officer immunity in ways that further limit available relief); *see also* William P. Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45, 55–62, 80–82, 88 (2018) (making the case from a conservative, originalist perspective that qualified immunity is inconsistent with the original understanding and goals of § 1983).

347 Rappaport, *How Private Insurers Regulate Public Police*, *supra* note 101, at 1544 ("In fact, the insurer may be better positioned than the government to reform police behavior.").

348 *Id.* at 1547–48, 1610–11. As Rappaport notes, some municipalities instead participate in risk pools with neighboring municipalities, but even in these cases there is typically a large private insurer positioned somewhere in the background. *See id.* at 1567–70.

349 *See id.* at 1573–91.

But as Rappaport explained in a separate paper, insurers are principally concerned with reducing those forms of police misconduct that are most likely to result in large payouts—such as excessive force that is likely to result in death or serious bodily injury.[350] Insurers have little or no incentive to focus on most routine forms of police misconduct, ranging from unlawful stops, to discourtesy, to racial profiling, because even in the rare event of a successful challenge, the resulting payout is likely to be quite small.[351] In addition, insurers can read the legal landscape better than anyone, so their assessment of risk incorporates at least to some extent the permissiveness of existing state-law standards, as well as the various immunity doctrines that protect municipalities from having to pay.[352] Finally, as Rappaport acknowledges, "market insurance struggles to regulate effectively its most diminutive customers," the thousands of small municipalities whose insurance premiums are so low, and claims so sporadic, that insurers may have little incentive to invest any sort of effort in assessing whether they pose an undue risk.[353]

In short, states indisputably have the authority to address many of the problems of small-agency policing, but to this day, most states have exercised this authority in piecemeal fashion (at best). Other potential regulators, like courts and municipal insurers, have stepped in to fill some of these gaps, but in the absence of more robust state standards they too can only go so far. As I and others have argued in prior work, there is a great deal that both states and the federal government can do to improve the overall quality of policing.[354] The remainder of this Section focuses more narrowly on the steps that states can take to address the specific small-agency harms discussed in Part II.

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350 Rappaport, *An Insurance-Based Typology*, *supra* note 101, at 376 ("[W]hen a prominent risk management expert compiled a list of twelve 'high risk/critical tasks' in policing that warrant the attention of insurers and risk managers, use of force topped the list.").

351 *See id.* at 395–403.

352 *See* Rappaport, *How Private Insurers Regulate Public Police*, *supra* note 101, at 1573–75 ("An insurer assessing whether an agency policy adequately manages risk—again, the risk of legal liability— would be hard-pressed not to form and convey an opinion about what the law requires.").

353 *Id.* at 1610–11.

354 *See, e.g.*, Principles of the L., Policing (Am. L. Inst. 2023) (combined revised tentative drafts), https://www.policingprinciples.org/wp-content/uploads/2023/01/Policing-Tentative-Draft_1-31-23.pdf [https://perma.cc/7BEG-NZ7E] (I was an Associate Reporter on the project, along with Barry Friedman, Tracey Meares, Brandon Garrett, and Christopher Slobogin); *Model Legislation Overview*, Policing Project, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/61eef3b625bc24652ebf2a52/1643049910157/Model+Statutes+Overview.pdf [https://perma.cc/4D96-LSRP] (outlining a robust agenda for state-level legislation on policing).

2. *Addressing the Failures of Local Political Processes*

Although local residents are often going to be in the best position to decide what policing should look like in their communities, Part II makes clear that local political processes will predictably fail to address certain small-agency harms. This Section outlines a few ways that states can step in to fill the void.

a. Reducing Local Spillovers

One of the strongest cases for state intervention into local affairs is when local governments regulate in ways that externalize the attendant harms. In the policing context, this means taking a much firmer stance on traffic enforcement by local police. As discussed in Part II, small-town traffic enforcement practices often are driven by a fundamental misalignment between the interests internalized by local officers and the communities they answer to (be it revenue, or an added sense of security), and the harms of aggressive enforcement that often fall primarily on outsiders. And even in the absence of these dynamics, traffic enforcement also is how the problems within any particular small-town department invariably spill over across jurisdictional lines.

Perhaps for this reason, small-town traffic enforcement is also one of the only aspects of small-town policing that has caught the attention of scholars and advocates, who have advanced various proposals for reform. Most of these have focused on eliminating or reducing the financial incentives that make traffic enforcement such a lucrative proposition for small-town and rural police.[355] Some have urged states to impose caps on the percentage of revenue that municipalities can collect through fines and fees,[356] whereas others have argued in favor of eliminating the profit incentive once and for all by requiring localities to remit revenue from fines and fees to the state.[357] A number of states,

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355 *See, e.g.*, Michael Makowsky, *A Proposal to End Regressive Taxation Through Law Enforcement*, Hamilton Project 2 (Mar. 2019), https://www.hamiltonproject.org/assets/files/Makowsky_PP_20190314.pdf [https://perma.cc/KF9T-EZMW]; Aravind Boddupalli & Livia Mucciolo, *Following the Money on Fines and Fees: The Misaligned Fiscal Incentives in Speeding Tickets*, Urban Inst. 17 (Jan. 2022), https://www.urban.org/sites/default/files/publication/105331/following-the-money-on-fines-and-fees_final-pdf.pdf [https://perma.cc/6K9A-TPCA].

356 *See* Dick M. Carpenter II, Richard Pochkhanawala & Mindy Menjou, *Municipal Fines and Fees*, Inst. for Just. (Apr. 30, 2020), https://ij.org/report/municipal-fines-and-fees [https://perma.cc/B6HU-WAEQ] (finding that states can reduce demand for fines and fees by capping its percentage of the budget).

357 *See* Penny J. White & Glenn H. Reynolds, *A Simple Solution to Policing for Profit*, Wall St. J. (Feb. 21, 2022), https://www.wsj.com/articles/policing-for-profit-speed-trap-traffic-ticket-pulled-over-revenue-injustice-due-process-minority-low-income-policing-11645464482 [https://perma.cc/3PXL-3CK3] (calling for fees and forfeitures to go to a state's general fund).

including Missouri and Alabama, have imposed modest caps on the proportion of revenue that can come from traffic enforcement (or fines and fees generally), typically in the range of 10% to 20%.[358] None have eliminated entirely the ability of municipalities to collect revenue from traffic fines.

Although there is every reason to decouple enforcement decisions from revenue generations, Part II illustrates why these solutions are at best a partial fix. First, revenue caps at the levels adopted by Missouri and Alabama would only affect the enforcement practices of a tiny number of jurisdictions—including only a fraction of municipalities that make a disproportionate number of stops. Notably, caps that are based on the overall share of local revenue that comes from traffic enforcement will necessarily exclude affluent communities like Bratenahl, which write lots of tickets, but also generate a fair bit of revenue from other sources, thereby obscuring the degree to which they profit from fines and fees.[359] Per capita caps, which impose limits based on a town's population, would constitute a more equitable approach.[360]

Second, what Part II makes clear is that stops are not always about the money. As Farhang Heydari and others have shown, departments across the country routinely rely on traffic stops as a form of crime control despite the fact that there is very little empirical evidence to suggest that this strategy works.[361] Expansive traffic codes give officers virtually limitless discretion to stop any driver, any time—which makes

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358 *See Missouri SB5: Modifies Distribution of Traffic Fines and Court Costs Collected by Municipal Courts*, Fines & Fees Just. Ctr. (Dec. 1, 2014), https://finesandfeesjusticecenter.org/articles/missouri-sb-5-fines-fees-municipal-courts [https://perma.cc/AW7F-GLBB] (noting that the act imposed a 20% cap on municipal court revenue from fines and fees across Missouri, with a 12.5% cap on St. Louis County before the Missouri Supreme Court ruled that differential caps by county were unconstitutional); Heather Gann & Mary Sell, *Municipal Court Fine Reporting, Fee Revenue Cap Bills Pass Legislature*, Ala. Daily News (Apr. 12, 2022), https://aldailynews.com/municipal-court-fine-reporting-fee-revenue-cap-bills-pass-legislature [https://perma.cc/G5SG-M7BD] (reporting that only 10% of the city's budget can come from traffic fines and penalities); *see also* Maciag, *supra* note 152 (noting similar laws in Georgia, Maryland, and Texas).

359 According to a Marshall Project investigation, Bratenahl collected between 6% and 8% of its annual general budget from traffic citations and court costs, which would put it well below any of the caps that have been proposed. Puente, Donaldson Jr. & Standifer, *supra* note 95.

360 Still, adjustments might need to be made for vacation towns, which have very small year-round populations but experience considerable traffic and the burdens that come with it during peak months.

361 *See* Farhang Heydari, *The Invisible Driver of Policing*, 76 Stan. L. Rev. 1, 37–39, 47–50 (2024) (describing the heavy reliance on the part of many agencies on traffic stops and the lack of evidence that it is an effective way to fight crime); Jordan B. Woods, *Traffic Without the Police*, 73 Stan. L. Rev. 1471, 1480–88 (2021) (discussing how traffic codes give officers broad discretion to pull drivers over for pretextual reasons).

it possible for officers to pull over drivers based on a mere hunch (often a biased hunch) that they warrant additional scrutiny.[362] From there, officers can question drivers and passengers about where they are going and why, check for outstanding warrants, and ask for permission to search and frisk both the driver and vehicle based on the barest suspicion that the person may be armed.[363] These "pretextual" stops are humiliating for those who experience them.[364] And as the police killings of Philando Castile, Daunte Wright, and Tyre Nichols illustrate, they have the potential to quickly escalate, sometimes with tragic results. Although much of the focus around pretextual traffic enforcement has been on the major cities, Part II underscores that they are a problem in small towns as well. Indeed, both Daunte Wright and Philando Castile were killed by officers from small towns.[365]

Addressing these sorts of stops requires an entirely different set of policy tools. First, states can take a page from Virginia and Oregon, which prohibit officers from making stops for certain low-level infractions, essentially demoting them to secondary offenses that can only be enforced if someone is stopped for a more serious offense or safety concern.[366] A number of major cities, including San Francisco, Los Angeles, and Philadelphia have taken similar steps.[367] Meanwhile, some state courts have imposed sensible limits on the ability of officers to turn traffic stops into fishing expeditions without some actual basis

362 *See* Heydari, *supra* note 361, at 16–17.

363 *See* Carbado, *supra* note 345, at 151–61 (demonstrating the quick progression from stop to search to arrest that is permissible under the Fourth Amendment).

364 *See* Heydari, *supra* note 361, at 13 (describing many pretextual traffic stops as targeting certain individuals in a particularly intrusive manner).

365 *See* Becky Sullivan, *Brooklyn Center, Minnesota's Most Diverse City, Is in the Spotlight After Shooting*, NPR (Apr. 18, 2021), https://www.npr.org/2021/04/18/987688755/brooklyn-center-minnesotas-most-diverse-city-in-the-spotlight-after-shooting [https://perma.cc/A3YR-5KKV] (noting that Daunte Wright was shot by an officer in a city of just 30,000 people); Christine Baeumler et al., Falcon Heights We Can Do Better, *Police Shooting of Castile: In Falcon Heights, We Were Jolted into Knowing We Needed Change*, Star Tribune (June 21, 2017), https://www.startribune.com/police-shooting-of-philando-castile-in-falcon-heights-we-were-jolted-into-knowing-we-needed-change/429766933 [https://perma.cc/6BHX-K58B] (describing Falcon Heights, where an officer shot Philando Castile, as a small town).

366 *See* Va. Code. Ann. § 46.2-1003 (West 2023); Or. Rev. Stat. Ann. § 810.500 (West 2023).

367 *See* S.F. Police Dep't, General Order 9.07, Curtailing the Use of Pretext Stops (2023); Kevin Rector, *New Limits on 'Pretextual Stops' by LAPD Officers Approved, Riling Police Union*, L.A. Times (Mar. 1, 2022), https://www.latimes.com/california/story/2022-03-01/new-limits-on-pretextual-stops-by-lapd-to-take-effect-this-summer-after-training [https://perma.cc/RZ82-HQPG]; Katie Krzaczek, *8 Common Traffic Violations No Longer Warrant a Police Stop in Philly*, Phila. Inquirer (Mar. 3, 2022), https://www.inquirer.com/news/philadelphia/philadelphia-police-wont-stop-drivers-minor-offenses-20220303.html [https://perma.cc/6DL5-Q39C].

for thinking that the person stopped is involved in criminal activity,[368] something that state legislatures could easily codify as well.[369]

A far better solution to both versions of the traffic stop problem, however, would be to shift away entirely from police-driven enforcement. Small-town chiefs have a point when they note that there is some danger to having drivers plow through small towns at highway speeds. But the surest way to get *all* drivers to slow down is to install one of many traffic-calming measures that necessarily force everyone down to more reasonable speeds.[370] Speed cushions, for example, cost just $3,000 to $4,000 to install and have been shown to reduce speeds by 20% to 25%, without the need for a cop at all.[371] Indeed, after the Windsor Police Department drew national fury with its stop of Lieutenant Nazario, the city announced that it would work with the state to install rumble strips and flashing signs to alert drivers to the speed change ahead.[372]

b. State-Level Standards for Practices that Evade Local Control

The preceding discussion also makes a compelling case for strengthening state-level standards on various aspects of policing. Although there are any number of policy areas where state (or indeed, federal[373]) regulation might be desirable, this Section focuses on the set of reforms that follow most naturally from the discussion in Part II—namely, for policing tactics that fall disproportionately on the narrowest slice of the population and may therefore be particularly impervious to local political control.

The way officers use force against the public and the circumstances under which they may do so should be at the top of any regulatory

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368 *See, e.g.*, State v. Fort, 660 N.W.2d 415, 419 (Minn. 2003) (holding that an officer who asks for consent to search a car absent reasonable suspicion to do so impermissibly expands the scope of a traffic stop).

369 *See, e.g.*, *An Act to Curtail Pretextual Traffic Stops*, Policing Project, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/63dc54409f248b0f17a6ae48/1675383884348/Pretext+Model+Statute.pdf [https://perma.cc/Z9LV-84VB] (providing model legislation to limit low-level stops that do not have a close nexus to public safety).

370 *See, e.g.*, *Traffic Calming Fact Sheets: Introduction*, Inst. of Transp. Eng'rs (May 2018), https://www.ite.org/pub/?id=29d042e8%2De97e%2Da03f%2D216f%2Dddb3d50e42e8 [https://perma.cc/7VZK-7MLD] (listing and grouping various traffic calming measures).

371 *Id*.

372 *See* Letter from R.D. Riddle, Chief, Windsor Police Department, to William Saunders, Town Manager, and Glyn Willis, Mayor (May 3, 2021), https://www.windsor-va.gov/uploads/docs/WPD%20Chief%27s%20Report%202021-05-04.pdf [https://perma.cc/N58P-PCDN] (describing options to change traffic enforcement strategies).

373 On the role that the federal government could and should play in regulating local police, see Barry Friedman, Rachel Harmon & Farhang Heydari, *The Federal Government's Role in Local Policing*, 109 Va. L. Rev. 1527 (2023).

agenda. Most Americans will never experience what it means to have force—much less excessive force—used against them. Police violence predictably falls disproportionately on those who are politically marginalized, by virtue of their race, socioeconomic status, or involvement in criminal activity (the last of which may justify police scrutiny, but by no means justifies the sort of brutality that officers sometimes deploy). Unless and until a particularly bad incident is captured on video, and makes the local or national news, most small-town residents will have no way of knowing how their officers conduct themselves when interacting with people they suspect for whatever reason of being involved in crime. Importantly, as Lieutenant Nazario's experience makes clear, small-town residents are not the only ones who have to worry that an undertrained, overly-aggressive small-town police officer will subject them to disproportionate force.

Regulating use of force, however, means more than simply adopting state-level standards for when force may be used or mandating that officers receive appropriate training on de-escalation and crisis response. It also requires that states take steps to ensure that officers with a history of excessive force in one agency do not simply pick up and move to another.[374] And it requires states to address the use of more high-risk tactics like no-knock raids and dynamic entry, as well as the training and deployment of SWAT. Indeed, given the extensive and frequent training that is necessary to deploy these tactics responsibly, it may be the case that small agencies should be barred from using these tactics at all, relying instead on better-trained state-level teams (subject to the added check of state-level oversight) to fill in the gaps.[375]

c. Facilitating Oversight

This Article began with the observation that in order to regulate small agencies, the state must first make them legible. Although this paper has drawn on a variety of available sources, the reality is that the vast majority of small agencies are still largely opaque, not only to the states in which they are located, but also often to residents themselves. Much of this has to do with the fact that the various actors and institutions that make policing legible—journalists, advocacy organizations, local

374 *See* Grunwald & Rappaport, *supra* note 98, at 1758–71 (outlining the steps that jurisdictions can take to address the wandering officer problem).

375 *See, e.g.*, *Tactical Response and Operations Standard for Law Enforcement Agencies*, Nat'l Tactical Officers Ass'n 8 (2018), https://ntoa.org/pdf/swatstandards.pdf [https://perma.cc/QVY2-PZVF] (recommending a multijurisdictional approach for agencies lacking adequate size or demographics to meet the extensive requirements to maintain a SWAT team).

oversight entities, and Justice Department investigators—are largely absent from small towns.[376]

There is a great deal that states can do to facilitate more robust local (and sometimes state) control over the police. First, as I and others have urged, states can require all local police departments to collect and make public basic data and information on department practices and police-citizen encounters.[377] One reason that this Article has focused so heavily on traffic stops as a proxy for likely policing problems is that traffic stops are one area where there actually *are* data available, at least in some states. It is unconscionable, however, that the same is not true when it comes to far more intrusive tactics, such as arrests, uses of force, and the deployment of tactical teams.[378]

Although state-level data collection requires money and time, two resources that often are in short supply, there are several reasons to think that the benefits of having a more comprehensive picture of local policing outweigh the costs. First, in the states that *already* collect some form of traffic stop data, expanding these programs to include stop outcomes, arrests, and use-of-force incidents would be relatively inexpensive because the largest costs of any data collection program are the up-front costs of setting up the systems necessary to facilitate collection and sharing.[379] Once the systems are in place, it becomes much easier to add additional fields. Relatedly, whereas an officer might make multiple stops in any given shift, more serious intrusions such as arrests, use-of-force incidents, and SWAT deployments are comparatively rare events—*especially* in the smaller jurisdictions with low levels of crime.[380]

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376 *See supra* notes 191–202 and accompanying text.

377 *See* Berman, *supra* note 32 (quoting Georgetown Law Professor Christy E. Lopez in favor of basic state-level transparency measures, specifically that "no matter how small the agency is, there are certain things they are required to do and certain things we are required to know about them"); *see also Data Collection and Transparency Statute*, Policing Project, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/62cdcc9f669e1b7afd48fa43/1681493398102/Data+Collection+and+Transparency+Statute.pdf [https://perma.cc/QH97-MNKU] (providing a model statute that takes account of resource constraints of smaller agencies).

378 A small number of states have begun to require the collection of use-of-force data, but many of these statutes are limited to police shootings and in-custody deaths, which offer a decidedly incomplete picture of how officers interact with the public. *See Use of Force Data and Transparency Database*, Nat'l Conf. of State Legislatures (Jan. 12, 2021), https://www.ncsl.org/civil-and-criminal-justice/use-of-force-data-and-transparency-database [https://perma.cc/P4QU-742E] (surveying state laws).

379 *See, e.g.*, Va. Dep't of Plan. and Budget, *2020 Fiscal Impact Statement*, https://lis.virginia.gov/cgi-bin/legp604.exe?201+oth+HB1250FER122+PDF [https://perma.cc/82UN-VRPM] (estimating year one costs of $4.4 million for implementation, with costs falling to $1.4 million in year two).

380 *See, e.g.*, Harrell & Davis, *supra* note 178, at 2 (estimating nationwide that approximately 2% of police contacts resulted in the use or even the *threat* of force).

Any agency that complains about the burdens of use-of-force reporting is probably allowing its officers to use far more force than warranted. Finally, improving the quality of data collection can potentially reduce *other* costs over time by identifying troubling patterns before they turn into a lawsuit, or another senseless death at the hands of the police.

To be sure, not every aspect of policing can be reduced to a data point on a state-level dashboard. Having more data, on its own, is unlikely to move the needle on policing unless communities have meaningful capacity to make sense of what the data show. The oft-used phrase "drowning in data, but starving for knowledge" describes the problem well.

One way to address at least part of this gap is to establish state-level "regulatory intermediaries" with the authority to review the policies and practices of local police, focusing primarily on those jurisdictions that lack the capacity to conduct this sort of oversight themselves.[381] Unlike oversight bodies that are tasked with reviewing individual cases of officer misconduct, these entities would operate more like local Inspectors General—already in place in cities like Los Angeles, Chicago, and New York—which play an important role in facilitating policy change by flagging problems that would otherwise go unnoticed or simply be ignored by those in charge.[382]

The idea is not as far-fetched as it sounds: Indeed, most states *already* do this when it comes to municipal finance, sometimes at local governments' request. Twenty-two states have fiscal monitoring systems in place to audit local financial records to identify potential irregularities, as well as to flag local governments that may be on the verge of financial distress.[383] Iowa's monitoring system was adopted at the behest of small municipalities who were tired of having their own reputations tarnished by fiscal crises in neighboring towns.[384]

One can imagine a similar sort of argument appealing to small police departments as well. The agencies that are mostly doing an admirable job of policing their small towns may very well see a benefit to being able to show that the small-agency scandals that make front-page

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381 Ponomarenko, *supra* note 6, at 7 (introducing the concept of "regulatory intermediaries" at the local level).

382 *Id.* at 51–52 (describing the information-forcing function of local Inspectors General).

383 *See* Pew Charitable Trusts, State Strategies to Detect Local Fiscal Distress 11 (Sept. 2016), https://www.pewtrusts.org/~/media/assets/2016/09/detecting_local_distress_report.pdf [https://perma.cc/FG4J-ANBE]; *see also* Adam C. Parker, *Positive Liberty in Public Finance: State Oversight of Local-Government Debt and the North Carolina Model*, 37 Campbell L. Rev. 107, 115 (2015) (describing North Carolina's uniquely robust system of state oversight of municipal debt).

384 Pew Charitable Trusts, *supra* note 383, at 8.

news are unlikely to happen in their town. Importantly, focusing on entities whose primary function is to *generate information*, as opposed to punish individual instances of misconduct, should in theory engender less pushback from local police.

Finally, states can also use *existing* oversight capacity to pay closer attention to policing in rural areas and small towns. A number of states empower their Attorneys General to conduct pattern-or-practice investigations of local departments, similar to the U.S. Department of Justice's authority under § 12601 (formerly § 14141).[385] For these entities, this Article may serve as a roadmap of sorts, by highlighting the indicators to which these state entities might look to proactively identify potential targets for reform *before* something goes wrong. Local departments that make far more stops than residents, for example, are one obvious place to start.

3. Funding Small-Town Police

None of the aforementioned reforms, however, have much hope of improving the specific problems that plague police departments in border-to-border low-income towns. The problem at its core is that we tie far too many essential public services to local taxes and property values with predictably inequitable results. This problem is hardly unique to policing. But it powerfully shapes the quality of policing services that any given jurisdiction can hope to provide. It also is a problem that is uniquely attributable to *state-level* policy choices about local financing, municipal incorporation and annexation, and the delegation of state regulatory power[386]—which makes it all the more imperative that states take steps to address it.

In *Police Funding*, Stephen Rushin and Roger Michalski urge states to model police funding on the equalization approaches that an increasing number of states have taken in the context of local education—another area where unequal property values have generated dramatic disparities in the funding available to local schools.[387] Rushin and Michalski point in particular to the "Robin Hood" law in place in

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[385] *See* Jason Mazzone & Stephen Rushin, *State Attorneys General as Agents of Police Reform*, 69 DUKE L.J. 999, 1064–66 (2020) (noting that various state legislatures grant their attorneys general statutory standing to enforce certain laws concurrent with DOJ); 42 U.S.C. § 12601.

[386] *See generally* Briffault, *supra* note 264 at 19–21, 73–81.

[387] Rushin & Michalski, *supra* note 101, at 320–27. On other states with similar models, see *All School Finance Equalizations Are Not Created Equal* 1–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 6792, 1998), https://www.nber.org/system/files/working_papers/w6792/w6792.pdf [https://perma.cc/7NSX-DDU9] (describing the models in California, New Jersey, and New Mexico).

Texas which redistributes a portion of local property tax revenue to low-income communities.[388] Funding could be allocated based on a combination of population and crime rates, ensuring that the money goes to the places that need it the most.[389] A politically simpler approach would be to use state funds to provide additional resources to high-need communities (though this would have the effect of increasing police spending overall). Under either funding model, the promise of state funds could be paired with the requirement that local departments adhere to the standards above.

Although states and municipalities should, as many have urged, take steps to expand the available alternatives to policing—from community re-investment to alternative response—these reforms will undoubtedly take time (and themselves are not cheap).[390] In the meantime, there are real, significant human costs to running a police department on a shoestring. And these costs fall disproportionately on the residents who can least afford them. If policing, as Tracey Meares and others have powerfully argued, is to be genuinely conceived of as a public good, then states should fund policing much like they do interstate highways—irrespective of a local community's ability to pay.[391]

Conclusion

This Article is by no means the last word on small-agency policing. Indeed, the hope is that this preliminary account of small-town and rural policing encourages scholars to give these departments the attention that they very much deserve. Still, it offers some important lessons for how we think about—and regulate—small-town and rural police. First, it puts to rest the notion that small departments are inherently likely to police in any particular way. At the same time, it shows that it is in fact possible to identify the set of circumstances (or sets of circumstances) under which small-town policing is most likely to fall short. Finally, it argues that it is time to come to terms with the fact that

388 *Id.* at 324 (explaining the precise mechanisms at issue).

389 *Id.* at 326.

390 *See, e.g.*, Yucel Ors, *How Local Governments Are Building Alternative Public Safety Models*, Nat'l League of Cities (May 18, 2023), https://www.nlc.org/article/2023/05/18/how-local-governments-are-building-alternative-public-safety-models [https://perma.cc/73A9-ARBT]; Jackson Beck, Melissa Reuland & Leah Pope, *Behavioral Health Crisis Alternatives*, Vera Inst. (Nov. 2020), https://www.vera.org/behavioral-health-crisis-alternatives [https://perma.cc/P45M-7ER9]; *Alternative Response Models*, Policing Project, N.Y.U. Sch. of L., https://www.safetyreimagined.org/designing-a-reimagined-system/alternative-response-models [https://perma.cc/4TK4-MM2C].

391 *See* Rushin & Michalski, *supra* note 101, at 325 (quoting Tracey L. Meares, *Policing: A Public Good Gone Bad*, Bos. Rev. (Aug. 1, 2017), https://www.bostonreview.net/articles/tracey-l-meares-public-good-gone-bad [https://perma.cc/7ZTA-VW3P]).

there will be thousands of small departments for the foreseeable future, and that those who care about the quality of policing in marginalized communities should be wary of calls to consolidate the police. If small agencies are here to stay, however, states necessarily must take seriously the problem of regulating small-town police, while ensuring that the most impoverished local communities have the resources they need to maintain quality departments of their own.