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## House to House: Mergers, Annexations & the Racial Implications of City-County Politics in St. Louis

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## **HOUSE TO HOUSE: MERGERS, ANNEXATIONS & THE RACIAL IMPLICATIONS OF CITY-COUNTY POLITICS IN ST. LOUIS**

ANDERS WALKER\*

### INTRODUCTION

For three weeks in August 2014, the unremarkable hamlet of Ferguson, Missouri exploded. Sparks flew first on August 9, when a white police officer shot an unarmed black teenager in broad daylight, prompting a coterie of witnesses to provide a kaleidoscopic portrait of what appeared to be a struggle, an attempted escape, a possible surrender, and a gruesome crime scene, all of which stoked outrage in the local, predominantly African American community. As angry crowds gathered on Ferguson's streets, county police responded with an overwhelming show of force, prompting almost two weeks of night battles, lootings, police reinforcements, anarchist provocations, media arrests, and international outrage.

Though media attention coalesced around several key issues, including police militarization and the infringement of First Amendment rights, the sound cannons and tear gas obscured a larger, more structural matter implicated in the Ferguson debacle, namely the divide between St. Louis City and St. Louis County, the latter boasting beleaguered Ferguson but also more upscale environs like Clayton, its affluent, arguably indifferent county seat. Though outsiders tend to conflate the county with the city, the two were separated in the 1870s, to dramatic effect. As part of St. Louis County, Ferguson belongs to a population demographic that is majority white, while neighboring St. Louis City is majority black. Both function as parallel universes, each with their own county offices, including their own health departments, their own prosecutor, their own sheriff's department, and—somewhat uniquely—their own chief of police.

Such redundancies prompted reformers as early as the 1920s to argue that the city and the county should merge, partly to save on inefficiencies but also to accomplish a variety of other coincident objectives aimed at regional development and economic growth. Usually, such efforts have leaned towards arguments that the city reenter the county, surrendering its county offices to Clayton. However, minority concerns about prosecutorial insensitivity and

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police excess in Ferguson raise the larger question of whether St. Louis City and St. Louis County should, in fact, be merged and, if so, whether one form of merger or another would better serve the black community, preventing future conflagrations from compromising the region's reputation.

Incidentally, this is not simply a local issue. The fate of consolidation in St. Louis bears directly on larger, national narratives, including prevailing arguments that race relations in the United States have assumed a decidedly spatial/structural cast since the 1970s, prompted largely by the demise of southern segregation, or Jim Crow, and the migration, or "flight," of white urbanites to suburban enclaves nationwide.<sup>1</sup> According to most scholars, Jim Crow's death elevated African Americans even as white departures depressed them, condemning blacks to isolated neighborhoods, segregated schools, and crumbling urban cores.<sup>2</sup> To counter such reversals, liberals endorsed the consolidation of urban and suburban zones, hoping that such moves might thwart flight, promote integration, and ameliorate the effects of what scholars began in the 1970s to term "institutional" or "structural" racism.<sup>3</sup> Initially such efforts focused primarily on schools, but quickly expanded to include other types of consolidation as well, including the consolidation, or merger, of major metropolitan areas and surrounding counties.<sup>4</sup>

While the rubric of consolidation has tended to enjoy a progressive cast, certain aspects of metropolitan mergers bode ill for African Americans, particularly in the area of electoral influence.<sup>5</sup> For example, St. Louis City boasts a comparative black majority of 47.9% (with whites totaling 46.4% and Asians 3.1%), while the adjoining county claims only 23.7% African American residents. As this essay shall demonstrate, full integration of the two entities would lead blacks to lose significant electoral clout, particularly over county positions like the prosecutor's office, leaving them politically weaker across

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1. See generally KEVIN M. KRUSE, *WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM* (2005); THOMAS J. SUGRUE, *ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (1996).

2. See generally KRUSE, *supra* note 1; SUGRUE, *supra* note 1.

3. See James W. Vander Zanden, *Sociological Studies of American Blacks*, 14 SOC. Q. 32, 39–40 (1973).

4. Richard W. Campbell et al., *Augusta/Richmond County, Georgia: Financial Crisis, Racial Accommodation, and the Consolidation of Augusta and Richmond, Georgia*, in CASE STUDIES OF CITY-COUNTY CONSOLIDATION: RESHAPING THE LOCAL GOVERNMENT LANDSCAPE 193, 196 (Suzanne M. Leland & Kurt Thurmaier eds., 2004). See generally Mark S. Rosentraub, *City-County Consolidation and the Rebuilding of Image: The Fiscal Lessons from Indianapolis's UniGov Program*, 32 ST. & LOC. GOV'T REV. 180 (2000). For works on consolidation generally, see W.A. ROSENBAUM & G.M. KAMMERER, *AGAINST LONG ODDS: THE THEORY AND PRACTICE OF SUCCESSFUL GOVERNMENTAL CONSOLIDATION* (1974); CASE STUDIES OF CITY-COUNTY CONSOLIDATION: RESHAPING THE LOCAL GOVERNMENT LANDSCAPE (Suzanne M. Leland & Kurt Thurmaier eds., 2004).

5. See *infra* text accompanying notes 70–84; see also Campbell et al., *supra* note 4, at 195.

the board. Simple democratic math suggests that elected officials in the newly consolidated entity would have less reason to venture out of their way to address black concerns, perhaps inviting more explosive situations like the one that engulfed Ferguson in August 2014. There, elected officials like St. Louis County Prosecutor Robert M. McCulloch suffered criticism for alleged bias against black interests, based in part on his handling of past cases and also his personal background.

Just because full merger may weaken the influence of black St. Louis, however, does not mean that more creative approaches to consolidating the city and county cannot be devised—approaches that still meet important needs like reversing the region’s narrative of demographic decline and averaging its crime rates, both major impediments to outside investment and economic growth. One such approach, as this article shall demonstrate, is a borough model—a form of merger similar to that adopted by New York in the nineteenth century, effectively preserving county structures as metropolitan boroughs. Pursuant to such a plan, the city would become one borough of St. Louis and the county another, with all parallel governmental functions intact. To illustrate how this might work, this article will proceed in four parts. Part I shall demonstrate how race came to animate city-county relations in St. Louis, beginning with the initial division of the two in 1876, following the Civil War. Part II carries the story forward through the twentieth century, again demonstrating how city-county relations bore and continue to bear distinctly racial implications. Part III discusses a possible route to consolidation that takes voting patterns into account, meanwhile lowering crime rates and reversing St. Louis’s reputation for racial tension and demographic decline.

## I. BACKGROUND

The story behind the city-county split in St. Louis began with the Civil War. Leading up to the conflict, Missouri’s population proved deeply divided on questions of slavery and regional loyalty, as pro-slavery Missourians engaged anti-slavery Missourians in the 1850s, many crossing the border into Kansas to influence elections on slavery in that state.<sup>6</sup> Among slavery’s foremost supporters was Governor Claiborne Jackson, who expressed clear sympathy for the South during his gubernatorial campaign in 1860 and, once elected, quickly began to work for secession.<sup>7</sup> In May 1861, Jackson and his fellow secessionists decided to force the issue by seizing St. Louis in a military-style coup, presenting the people of Missouri with a sudden, surprise marriage to the slave South.<sup>8</sup> One obstacle, however, proved the federal

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6. See JAMES NEAL PRIMM, *LION OF THE VALLEY: ST. LOUIS, MISSOURI, 1764-1980*, at 229–30 (3d ed. 1998).

7. *Id.* at 231–32.

8. See *id.* at 236–37.

arsenal, which was occupied by Union troops and housed one of the largest assemblages of weapons, particularly rifles, in the nation.<sup>9</sup> In mid-April, Jackson wrote Confederate President Jefferson Davis, requesting heavy artillery to breach the establishment's walls.<sup>10</sup> Two weeks later, Jackson called out the pro-Confederate Missouri Volunteer Militia for "maneuvers" near St. Louis, including the establishment of an operating base christened "Camp Jackson" roughly four miles northwest of the arsenal.<sup>11</sup> On May 9, the southern steamer *J.C. Swon* delivered two twelve-pound howitzers, two thirty-two-pound siege guns, and five hundred muskets in crates marked "Tamoroa marble" to the Rebels, all munitions that had been captured from the federal arsenal at Baton Rouge.<sup>12</sup> Jackson supporters met the shipment at the St. Louis riverfront, transported it to Camp Jackson, and commenced preparations for their assault.<sup>13</sup> However, Union Army Captain Nathaniel Lyon, in charge of defending the arsenal, suspected a Confederate ambush and called for local volunteers to march on the Rebel camp and arrest the Confederate force—which they promptly did.<sup>14</sup>

Shortly thereafter, Missouri's government split.<sup>15</sup> Claiborne Jackson moved the state capital to Arkansas, gained admission into the Confederacy, and seceded from the Union.<sup>16</sup> Meanwhile, pro-Union forces declared Jackson a traitor and established their own, separate government at Jefferson City, accepted by Lincoln.<sup>17</sup> Missouri's pro-Union government purged all pro-Confederate forces through a "test oath" and quickly succumbed to "Radical" Republicans who called for immediate emancipation, no compensation to former slave owners, and federal Reconstruction of the South.<sup>18</sup> Radicals dominated the Constitutional Convention of 1865, ousting non-Radical officials across the state and installing Radicals in their place, a purge that swept St. Louis County but failed to sweep the city.<sup>19</sup> St. Louis City became "the center of opposition" to Radical rule, ministers and priests refused to take an oath required by Radical government, arguing that it infringed on freedom of religion, and a moderate coalition, led by the Conservative Union Party, prevailed.<sup>20</sup>

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9. *See id.* at 234.

10. *See id.* at 235.

11. *See id.* at 235–36.

12. *See* PRIMM, *supra* note 6, at 236.

13. *See id.*

14. *See id.*

15. *See id.* at 240.

16. *Id.*

17. *Id.*

18. *See* PRIMM, *supra* note 6, at 245.

19. *See id.* at 262–63.

20. *Id.* at 263–65.

However, Radicals used state control of city politics, particularly the police board, to exercise influence over St. Louis residents. Police exercised power in part by controlling vice in the city, forcing owners of brothels and “gambling houses” to pay bribes to stay in business, transforming such locales into Radical political bases. At such establishments, located near the riverfront, St. Louis citizens and “visitors from other cities” gathered in a local “entertainment district” that featured saloons and houses of prostitution with names like “Jenny Burke’s Almond Street den” and “Madame LaSelle’s den of infamy.”<sup>21</sup> Radicals further increased their power by increasing the number of wards in St. Louis from ten to twelve, a move aimed to give Radicals a seat on the city council, meanwhile creating “a number of new city boards all appointed by the governor.”<sup>22</sup>

In 1867, the state legislature transferred the power to assess and collect the city’s taxes to the “Radical Republican” county court, part of an effort to punish anti-Radicalism in the city.<sup>23</sup> The court was dominated by rural republicans who “collected \$1.875 million from city taxpayers while the city only collected \$302,000,” primarily “from licenses and fees.”<sup>24</sup> By 1870, calls for reform reached a fever pitch as city residents divided into three groups: (1) those who favored increased representation of the city on the county court, (2) those who wanted consolidation of the city and county, and (3) those who wanted to separate the city from the county.<sup>25</sup> In 1873, Democrats outvoted Radicals and gained control of the state, opening the door for concessions to the anti-Radical city, ultimately turning the tables on remaining Radical strongholds like St. Louis County.<sup>26</sup> Given the corruption that had accompanied the pro-Radical police board, many argued that separating the city from the county would clean up government.<sup>27</sup> Others argued that separation would provide for more control of city tax dollars, which was undeniably true.<sup>28</sup> Finally, proponents of separating the city and the county argued that administering the entire county would be unwieldy.<sup>29</sup>

The door to a separation between city and county first became a legal possibility with the Constitutional Convention of 1875 that “authorized the city and county to elect thirteen freeholders, who were to write a city charter, separate the two governments, define the new boundaries, reorganize the

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21. Jeffrey S. Adler, *Streetwalkers, Degraded Outcasts, and Good-for-Nothing Huzzies: Women and the Dangerous Class in Antebellum St. Louis*, 25 J. SOC. HIST. 737, 741–43 (1992).

22. PRIMM, *supra* note 6, at 265.

23. *Id.* at 299.

24. *Id.*

25. *Id.*

26. *Id.* at 300.

27. *Id.* at 298–99.

28. PRIMM, *supra* note 6, at 299.

29. *Id.*

county government, and settle outstanding financial differences.” The freeholders followed suit, achieving separation two years later, in 1877.<sup>30</sup> At the time, no other city had achieved quite the same rift that St. Louis did, effectively converting the city into its own municipal county.<sup>31</sup>

Several lessons follow. First, the particular pressures that led to the initial city-county split in 1876 have long since vanished into the mists of history; Radical Republicans are long gone, battles over Reconstruction are dead, and alliances between the Democratic Party and white supremacy in the South are no more. However, a few scattered reverberations remain. For example, just as frustration with overtaxation led some to support a split in the 1870s, so too might tax issues rear their head again, particularly if consolidation plans include adjustments to property taxes, earnings taxes, and so on. Not only might St. Louisans object to higher taxes, but so too might they object to adjustments in how those taxes are spent, particularly if control over local money is moved either east or west along Interstate 64. Further, the question of taxation contains within it the larger issue of where, precisely, the nexus of power might be postconsolidation. If the City of St. Louis gains political power over the county, for example, that is likely to dampen county support for a merger, just as city support would likely decrease if the locus of decision-making were removed from Tucker and Chestnut to Clayton. One obvious conclusion to be drawn from this is that a merger plan maintaining local tax structures as they are, and local zones of influence where they are, is perhaps more likely to succeed than a radical rethinking of political offices, governmental entities, and tax rates—independent of questions of race. Precisely such a plan can be found in what Part IV of this article terms the “borough model.” However, it is first worth reviewing early efforts to undo the city-county divide before inquiring into what precisely that model might entail.

## II. EARLY EFFORTS TO MERGE

Though support for the city-county split remained high through the end of the nineteenth century, critics began to complain in the early twentieth that the two entities should be reattached, fueled by “questions of health, crime, transportation, and public welfare,” all “growing out of the development of

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30. *Id.* at 309.

31. Truman Port Young, *The Scheme of Separation of City and County Governments in St. Louis – Its History and Purposes*, 8 PROC. AM. POL. SCI. ASS’N, 97, 97 (1912); DON PHARES, ST. LOUIS PLANS: THE IDEAL AND THE REAL ST. LOUIS 55–56 (Mark Tranel ed., 2007); see ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN ORGANIZATION: THE ST. LOUIS CASE 15 (1988) [hereinafter METROPOLITAN ORGANIZATION]. For more on the “borough model,” see LANA STEIN, ST. LOUIS POLITICS: THE TRIUMPH OF TRADITION 109–10 (2002) (describing the 1961 “Borough Plan to Revitalize St. Louis,” which called for twenty-two boroughs to be created within the new combined city-county jurisdiction—eight in the city and seven in the county, with an additional seven spanning the boundary between the two).

urban conditions in county communities adjacent to the city, some of which possessed no municipal government.”<sup>32</sup> Subsequent merger efforts arose in 1926, 1930, 1954, 1955, 1959, and 1962—often promoted by the city’s “business elite.”<sup>33</sup> Complicating such efforts, however, was a dramatic in-migration of African Americans to the city from Deep South states like Mississippi and Louisiana seeking work and relief from white terrorism in the 1950s and 60s, coincident with a dramatic out-migration of white families from the city to the surrounding county at roughly the same time.<sup>34</sup> Though African Americans would themselves migrate to the county in smaller numbers—hence the demographics of county municipalities like Ferguson—black voting power remained concentrated in the city, yielding a racialized landscape that followed city-county lines even as it coincided with concerns among city residents that city-county consolidation would “diminish” their “sovereignty” by removing government “further from the people,” presumably west towards the Clayton county seat.<sup>35</sup>

Evidence that the business elite did in fact consider removing political power from the city emerged prominently in the 1980s, when Civic Progress—a cadre of the city’s most prominent business leaders—hired St. Louis law firm Bryan, Cave, McPheeters & McRoberts (“Bryan Cave”) to research the feasibility of merging the city and county, meanwhile leaving the nexus of political control in the county.<sup>36</sup> In 1984, Bryan Cave issued a report aiming “to combine the multiplicity of governmental units now operating in the territory of the City and the County into a single entity.”<sup>37</sup> The report advocated the termination of “[t]he separate existence of the various municipalities in the County,” along with “the separate existence of the various fire districts.”<sup>38</sup> However, in a manner that would have profoundly impacted black political clout, the county was to become the predominant governing body, with the “surviving entity retain[ing] the fundamental structure of the present government and charter of the county.”<sup>39</sup> To this effect, the Metropolitan St. Louis Sewer District, the Junior College District of St. Louis-

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32. Isidor Loeb, *The Proposed Merger of St. Louis City and County*, 24 AM. POL. SCI. REV. 691, 691 (1930).

33. *Id.* at 691–92; see also BRYAN, CAVE, MCPHEETERS & MCROBERTS, LEGAL FEASIBILITY STUDY OF THE COMBINATION OF THE CITY AND COUNTY OF ST. LOUIS 2–3 (Dec. 21, 1984), available at [stlworldclasscity.com/pdf/Legal\\_Feasibility\\_Study\\_City\\_County\\_STL.pdf](http://stlworldclasscity.com/pdf/Legal_Feasibility_Study_City_County_STL.pdf) [hereinafter BRYAN CAVE STUDY]; see also STEIN, *supra* note 31, at 107–08.

34. COLIN GORDON, MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY 4 (Glenda Gilmore et al. eds., 2008).

35. STEIN, *supra* note 31, at 108.

36. BRYAN CAVE STUDY, *supra* note 33, at 1–2.

37. *Id.* at 3–4.

38. *Id.* at 1.

39. *Id.*

St. Louis County, the Metropolitan Zoological Park and Museum District, and the various school districts in the city and the county would remain intact while other services, including the circuit attorney's office, would go to the county.<sup>40</sup> Rather than make St. Louis City the new county seat, the plan tilted heavily towards increasing the county's influence over the city, a move that echoed earlier tensions between the two entities in the 1870s.<sup>41</sup>

Though written with a pro-county slant, Bryan Cave's report remains the best exploration to date of the legal intricacies of city-county consolidation, providing numerous clues into the potential implications that a merger might have on race. For example, Bryan Cave demonstrated that critical to merging the city and the county is Article VI Section 30 of the Missouri Constitution, which requires the appointment of a "board of freeholders" to propose changes in the city-county relationship—changes that must then be approved by a majority of voters in both the city and the county.<sup>42</sup> Hence, any plan aimed at a city-county merger will likely require substantial black support in the city, an unlikely event if said plan promises to substantially diminish black political power. Incidentally, the track record of freeholder boards is not particularly good: one was appointed in 1925 to contemplate a consolidation of the city and the county but failed, another was appointed in 1953 to create a metropolitan sewer district and succeeded, yet another was formed that same year to create a metropolitan transit district but failed, and finally a board was conjured in 1958 to consolidate various city-county functions like land use planning, which also failed.<sup>43</sup> In 1962, proponents of merging the city and the county attempted to circumvent the boards of freeholders entirely by amending Section 30 of the Missouri Constitution to eliminate them, but did not succeed.<sup>44</sup> In 1962 and 1971, reformers went to Jefferson City again, this time to enact state legislation authorizing the Junior College District of St. Louis-St. Louis County and the Metropolitan Zoological Park and Museum District, both of which enjoyed some state purchase.<sup>45</sup>

Circumventing freeholders and going directly to state government arguably poses a threat to African American majorities in St. Louis, not least because any plan aimed at full consolidation and concomitant vote dilution would

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40. *Id.* at 1–2, 60.

41. On the termination of municipalities, the study pondered whether Section 30 authorizes "adoption of a plan which would terminate the continued existence of the various municipalities in the County, without a separate vote of the residents of each municipality." *Id.* at 12.

42. BRYAN CAVE STUDY, *supra* note 33, at 2, 14–15.

43. *Id.* at 2–3.

44. *Id.* at 3 (citing FRANK S. SANGSTOCK, CONSOLIDATION: BUILDING A BRIDGE BETWEEN CITY AND SUBURB 12–26 (1964)).

45. *Id.* at 3–4; See FAIRBANK, MASLIN, METZ & ASSOCIATES, ST. LOUIS CITY AND ST. LOUIS COUNTY UNIFICATION SURVEY 1–2 (Sept. 2012), available at <http://www.stlworldclasscity.com/pdf/Executive%20Summary%20September%202012%20poll.pdf>.

theoretically be more likely to survive this route. However, the path is heretofore unpaved. It is unlikely, for example, that rural voters would or could be moved to support a merger simply because it benefitted residents of the St. Louis metro area. It is also unlikely that a merger could be pitched in terms that would clearly advantage voters in remote parts of the state, save perhaps to amplify their voice in the state legislature, a move that might be achieved by diluting city votes. Given the more conservative cast of rural Missouri, for example, it is at least conceivable that a conservative drive to dilute the liberal voting power of the city by merging it with the county could garner rural attention. However, the county is itself majority Democrat, which means that merging the two may have little transformative effect.

Further, merging the city and county expressly to dilute minority voting power is unlikely to survive constitutional review, as Part III of this article shall discuss.<sup>46</sup> It is therefore reasonable to assume that proponents of this route are unlikely to make any mention of race, whether their intentions are racially motivated or not. After all, dilution of the city's voting power remains perhaps the most explosive issue affiliated with consolidation, one most proponents of a full merger are likely to deemphasize.<sup>47</sup>

Amendment options aside, the Missouri Constitution currently “provides five alternative ways” to adjust the relationship between the city and the county.<sup>48</sup> The first three were approved in 1924 and include the consolidation “of the City and County into one public subdivision under the municipal government of the City,” “reentry of the City into the County,” and “[a]nnexation of portions of the County by the City.”<sup>49</sup> The fourth approach, approved in 1945, provides for the “establishment of metropolitan districts for the provision of services in the area,” while the fifth approach, sanctioned in 1966, allows for “[a]ny other plan for the partial or complete government of all or any part of the City and the County.”<sup>50</sup> This latter “fifth power” provides the most opportunity for creative restructuring and, perhaps for that very reason, proved to be of particular interest to Bryan Cave in 1984, arguably authorizing “development of a plan in which the County forms the basis for a new

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46. Precisely such an annexation occurred in Richmond, Virginia. As Bryan Cave notes, “[t]he city annexed adjacent territory which increased the number of whites in the city by 32% and the number of blacks by just over 1%, thus transforming the former black majority into a 42% minority. Thereafter, Richmond implemented a single-member district plan which promised to produce four black councilmen on a nine-member council.” While this amounted to a substantial dilution of black power in the city, the annexation survived a Supreme Court challenge brought under the 1965 Voting Rights Act. BRYAN CAVE STUDY, *supra* note 33, at 18 (citing *City of Richmond v. United States*, 422 U.S. 358, 367–68 (1975)).

47. *Id.* at 17–20.

48. *Id.* at 9–10.

49. *Id.* at 10.

50. *Id.*

governmental unit” incorporating the city.<sup>51</sup> While subject to judicial review, Section 30 grants a remarkable amount of discretion to appointed freeholders whose plans “shall take the place of and supersede all laws, charter provisions, and ordinances inconsistent therewith relating to said territory.”<sup>52</sup>

Adopting an expansive reading of Section 30’s fifth power, Bryan Cave recommended consolidation of the city and the county with final control residing in the county.<sup>53</sup> Such a “consolidation” drew inspiration from merger efforts in Indianapolis and Miami.<sup>54</sup> In Miami, reformers proposed a plan to consolidate the city of Miami with surrounding Dade County, eliminating all municipalities in the process, only to fail at the polls. Instead, Miami opted for a new charter that “allowed the county to take over certain municipal services from the municipalities,” a power provided for in the Florida Constitution.<sup>55</sup> Meanwhile, Indianapolis proposed state legislation that merged the governments of Indianapolis City with surrounding Marion County, meanwhile leaving “many municipalities in existence, with some of them being allowed to continue to provide certain municipal functions.”<sup>56</sup> As governance scholar Mark Rosentraub describes it, “Indianapolis’s specific contribution to the experiment in governance models was a city-county consolidation program that concentrated a limited or select group of urban services at the regional (defined as county) level while permitting most other critical urban services to be delivered by administrations and agencies serving different, often much smaller, areas within the county.”<sup>57</sup> Presumably, Missouri could achieve a similar result by amending its constitution or proposing state legislation mimicking the Indiana or Florida plans.

Bryan Cave discouraged state remedies in lieu of adopting an expansive definition of Section 30: consolidation of the city and county with the resulting nexus of power resting in the county.<sup>58</sup> Pursuant to this proposal, an appointed board of freeholders would gather to construct “both a city and a county,” an arrangement not unlike the current legal status of the city which—though generally perceived to be separate from the county—is actually a county unto itself, boasting all of the same services that a county generally provides, including for example a health department, circuit (district) attorney, and a

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51. *Id.* at 13.

52. BRYAN CAVE STUDY, *supra* note 33, at 10.

53. *Id.* at 13–14.

54. *Id.* at 4–5 n.3.

55. *Id.*

56. *Id.*

57. Mark S. Rosentraub, *City-County Consolidation and the Rebuilding of Image: The Fiscal Lessons from Indianapolis’s UniGov Program*, 32 ST. & LOC. GOV’T REV. 180, 180 (2000).

58. BRYAN CAVE STUDY, *supra* note 33, at 11, 13–14.

sheriff's department.<sup>59</sup> Hence, the true legal landscape of St. Louis is two counties, one consolidated with the city and one not.<sup>60</sup>

Whether Section 30 authorizes the board of freeholders to extinguish a county is not entirely clear. However, both the section's fifth power and its third power (annexation) suggest yes.<sup>61</sup> Either one of the two counties at issue could annex the other or, as Bryan Cave notes, "full consolidation" of the two entities could be conducted under Section 30's fifth power.<sup>62</sup>

Arguably more nebulous is the status of the various municipalities within the county. According to state law, "the merger or consolidation of cities, towns, and villages" requires "approval of the majority of the voters voting on the matter in each municipality."<sup>63</sup> However, Section 30 of the state constitution provides that "only" a majority of the voters in the city and a majority of voters in the county need approve a plan of merger or consolidation.<sup>64</sup> Hence, a majority of voters in the county could theoretically outnumber majorities in individual municipalities, provided the plan called for the extinction of independent municipalities.<sup>65</sup> Of course, the converse could also be true. If a plan requiring extinction was in fact approved, courts might decide that Section 30 "should not be read as a grant of authority to affect the existence of the various municipalities other than pursuant to the established procedures for consolidation of cities and towns," meaning that municipalities remain regardless of what the city and county decide.<sup>66</sup> However, the refusal of some municipalities to participate in a merger need not kill hopes of consolidation, as Indianapolis attests.<sup>67</sup> There, four municipalities—Beech Grove, Lawrence, Southport, and Speedway—all opted out of consolidation, continuing on as independent entities responsible for their own tax systems and services.<sup>68</sup>

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59. *Id.* at 1, 20, 54–60, 138 app. G n.1.

60. See METROPOLITAN ORGANIZATION, *supra* note 31, at 34; Thomas H. Reed, *Constitutional Changes Necessary to Accomplish Local Government Reform*, 2 LEGAL NOTES ON LOC. GOV'T 139, 145 (1936) ("[T]he framers of the [Missouri] constitution had entirely omitted to provide for any process by which a city could annex territory in an adjoining county.").

61. See BRYAN CAVE STUDY, *supra* note 33, at 11.

62. *Id.* at 14. The city-county of St. Louis could annex portions, if not all, of the traditional county of St. Louis, thereby "leaving the City as the nominal surviving entity," a development that would effectively extinguish what most St. Louisans currently recognize as the "county." According to Bryan Cave, such a move could "more readily resolve some of the uncertainties which might otherwise arise with respect to the taxing power of the new government." *Id.* at 11, 14–15.

63. *Id.* at 14.

64. *Id.*

65. *Id.*

66. *Id.* at 15.

67. Rosentraub, *supra* note 4, at 182.

68. *Id.* at 181.

## III. RACIAL IMPLICATIONS

While merger opponents in St. Louis have traditionally argued that any form of consolidation would only benefit the city, consolidation could cost the urban core as well, particularly its African American population. Currently, African Americans comprise 47.9% of the city's population, just slightly more than the city's white population (46.4%), but substantially more than the percentage of black county residents (23.7%) and black state residents, who number only 11.7%.<sup>69</sup> Given the substantially larger percentage of whites in the county, merging the city and the county could have a sizable impact on black influence, perhaps even triggering federal scrutiny. Pursuant to Section 2 of the Voting Rights Act of 1965, for example, any "discriminatory" state efforts to dilute minority voting power are prohibited.<sup>70</sup> Further, "[m]unicipal annexations and consolidations [have been] recognized as 'practices or procedures' which can dilute the voting strength of minorities, and thus bring the provisions of the Act into play," as was the case in Petersburg, Virginia in the 1960s.<sup>71</sup> There, city leaders orchestrated a merger that retained governmental control in white hands by annexing a heavily white area to the city proper, substantially reducing black electoral influence within city bounds.<sup>72</sup> Other courts have held that violations of Section 5 may occur whether or not consolidation is conducted expressly to dilute minority voting power, as happened in Petersburg.<sup>73</sup> Assume, for example, that a local initiative aimed at consolidating electoral districts for the purpose of advancing business investment reduced black voting power. Such a measure could, pursuant to Section 2, activate federal scrutiny under the Voting Rights Act, granting a federal judge the power to strike down the consolidation plan.<sup>74</sup> To do so, a judge would need to find that black voting power dropped below the

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69. U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS: ST. LOUIS, MISSOURI, <http://quickfacts.census.gov/qfd/states/29/29510.html> (last visited Aug. 2, 2014); U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS: ST. LOUIS COUNTY, MISSOURI, <http://quickfacts.census.gov/qfd/states/29/29189.html> (last visited Aug. 2, 2014).

70. Voting Rights Act of 1965 § 2, 42 U.S.C. § 1973 (2012).

71. BRYAN CAVE STUDY, *supra* note 33, at 18 (citing *City of Rome v. United States*, 446 U.S. 156 (1980); *City of Richmond v. United States*, 422 U.S. 358, 367–68 (1975); *Perkins v. Matthews*, 400 U.S. 379, 388–90 (1971); *City of Petersburg, Va. v. United States*, 354 F. Supp. 1021, 1028 n.16 (D.D.C. 1972), *aff'd*, 410 U.S. 462 (1973)).

72. *City of Petersburg, Va.*, 354 F. Supp. at 1028 n.16.

73. *Taylor v. Haywood County, Tenn.*, 544 F. Supp. 1122, 1134 (E.D. Tenn. 1982). Congress expressly removed any requirement of intent from Section 2 of the Voting Rights Act, effectively providing a federal cause of action whenever state action substantially diluted a minority's voting power. *Id.*

74. *Id.*; *City of Rome*, 446 U.S. at 156; *City of Richmond*, 422 U.S. at 371; *Perkins*, 400 U.S. at 388–90; *City of Petersburg, Va.*, 354 F. Supp. at 1028 n.16.

proportionate number of African Americans in the community.<sup>75</sup> If, for example, African Americans comprised 30% of the total population postconsolidation, then their voting power would need to be commensurate to this new number.<sup>76</sup> In other words, black voting rights can be diluted and still survive constitutional review so long as the resulting power differential remains in line with the percentage of total voters that African Americans comprise in the new consolidated entity.<sup>77</sup> To illustrate, if blacks find their voting power reduced from 47.9% to 30% due to consolidation, such a reduction remains constitutional provided that black elected officials constitute 30% of the newly consolidated leadership. Precisely such an outcome occurred in Richmond, Virginia.<sup>78</sup>

Richmond's efforts to preserve black representation on the city council successfully avoided the outcome in the Petersburg case, where consolidation was followed by the creation of an at-large district.<sup>79</sup> For precisely this reason, Bryan Cave recommended that "equality of representation, and thus apportionment based on population, be the starting point and controlling criterion in deriving election districts."<sup>80</sup> Pursuant to the Bryan Cave study, the city's electoral wards were to be abandoned in favor of townships—each ward constituting one township. "It is presently intended," noted Bryan Cave, "to retain existing townships in the County and eliminate wards in the City."<sup>81</sup> Presumably, the wards will be replaced with townships similar in organization to those in the County.<sup>82</sup> While it is uncertain how a township model might be structured to provide for a guarantee that black voting power remain proportionate to the population, even if said proportion were achieved, blacks would quickly find their votes diluted by merger.<sup>83</sup> Such a dilution, to the detriment of African Americans in St. Louis, would be perfectly constitutional so long as black representation remained in line with the total ratio of blacks to whites in the larger, postconsolidation community.<sup>84</sup>

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75. *Taylor*, 544 F. Supp. at 1134; *City of Rome*, 446 U.S. at 156; *City of Richmond*, 422 U.S. at 367–68; *Perkins*, 400 U.S. at 388–90; *City of Petersburg, Va.*, 354 F. Supp. at 1028 n.16.

76. *City of Richmond*, 422 U.S. at 371.

77. *Id.* at 372.

78. *Id.* at 371–72.

79. *City of Petersburg, Va.*, 354 F. Supp. at 1023.

80. BRYAN CAVE STUDY, *supra* note 33, at 65.

81. *Id.*

82. *Id.*

83. U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS: ST. LOUIS, MISSOURI, <http://quickfacts.census.gov/qfd/states/29/29510.html> (last visited Aug. 2, 2014); U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS: ST. LOUIS COUNTY, MISSOURI, <http://quickfacts.census.gov/qfd/states/29/29189.html> (last visited Aug. 2, 2014).

84. *City of Richmond v. United States*, 422 U.S. 358, 367–68 (1975). A final sector where African Americans might suffer under a city-county merger is jobs. As Bryan Cave envisioned it, a "plan of combination can provide for the early termination of elected or appointed offices in the

Of course, reducing African Americans from an electoral majority to an electoral minority in St. Louis need not automatically harm black interests; after all the city has long boasted a white mayor adept enough at addressing majority black concerns to enjoy repeated reelection.<sup>85</sup> However, recent events in Ferguson suggest that certain issues may warrant particular attention to race, among them the diversity of police departments and the election of county prosecutors. In the case of the latter, St. Louis County Prosecutor Bob McCulloch drew criticism from local black leaders, including Ferguson Councilwoman Patricia Bynes, St. Louis County Executive Charlie Dooley, Missouri Senator Jamilah Nasheed, St. Louis Alderman Antonio French, and Missouri Congressman Lacy Clay for refusing to recuse himself from the Wilson case.<sup>86</sup> While McCulloch may have had good reason not to step aside, black leaders took issue with his past, arguing that he had mishandled past cases and that his father's murder at the hands of a black killer prevented him from being impartial. Though McCulloch's loss of his father was arguably irrelevant to the case at hand, the prosecutor proved unable to quell black dissent, even after he assigned the case to subordinates (one of whom was African American), and then left the decision whether or not to indict to a grand jury.<sup>87</sup>

White voters seemed more supportive, a fact that became apparent when Governor Jay Nixon endorsed McCulloch's actions in the wake of the Brown shooting by declaring county prosecutors to be "pillars of democracy."<sup>88</sup> By flaunting McCulloch and flouting black discontents, Nixon revealed the critical importance that racial demographics played in local prosecutions. Himself beholden to the state's overwhelming white majority, Nixon understood better than anyone how democratic pressures might demand a measured approach to the prosecution of Darren Wilson. After all, even if McCulloch secretly sympathized with Ferguson's black demonstrators, his job did not hinge on their votes. More important to his survival was white sentiment, which

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City, the municipalities in the County and the other political subdivisions which will be consolidated with the County." BRYAN CAVE STUDY, *supra* note 33, at 75.

85. Recent evidence indicates that the number of white voting age residents actually outnumber blacks, 49% to 45%. See Alex Ihnen, *Understanding St. Louis: Wards, Race & Votes for Treasurer*, NEXTSTL, Aug. 13, 2012, <http://nextstl.com/2012/08/understanding-st-louis-wards-race-votes-for-treasurer/>. For Francis Slay's rise to power, see STEIN, *supra* note 31, at 245.

86. Kimberly Kindy, *Objectivity of Prosecutor in Missouri Shooting of Michael Brown is Questioned*, WASH. POST, August 15, 2014, [http://www.washingtonpost.com/politics/objectivity-of-prosecutor-in-missouri-shooting-of-michael-brown-is-questioned/2014/08/15/1fe20690-24bc-11e4-958c-268a320a60ce\\_story.html](http://www.washingtonpost.com/politics/objectivity-of-prosecutor-in-missouri-shooting-of-michael-brown-is-questioned/2014/08/15/1fe20690-24bc-11e4-958c-268a320a60ce_story.html).

87. See, e.g., STEIN, *supra* note 31, at 239 (discussing Freeman Boseley's attention to black issues as mayor in the 1990s).

88. *Governor Nixon Refuses to Name Special Prosecutor in Brown Shooting Case*, FOX2NOW, Aug. 21, 2014, <http://fox2now.com/2014/08/21/senator-nasheed-delivers-mcculloch-petition-for-his-removal/>.

appeared increasingly frustrated with black demands, particularly after authorities released a video of Brown brazenly robbing a convenience store immediately before encountering Darren Wilson. Further, whites seemed relatively unconcerned that McCulloch himself had lost his father to a black killer, an issue that was ostensibly irrelevant but that many black leaders continued to cite as evidence of prosecutorial bias.

To conclude, the county's racial demographics played a subtle yet structural role in the Darren Wilson-Michael Brown case. Given the black community's suspicions of McCulloch, it is unlikely that he would ever have been elected prosecutor in a majority black district, like St. Louis City. It is also unlikely that he would have kept his job in St. Louis City, as became clear during subsequent county council meetings where blacks aired their frustrations at his arguably glacial response to events. However, McCulloch's job did not hinge on black choice. Because the county was majority white, McCulloch could not risk creating the appearance that he was catering to Michael Brown, particularly as media portrayals morphed Brown into a violent felon.

Conversely, had Brown been shot by an officer in the city, things may well have been different. St. Louis City Prosecutor Jennifer Joyce, who also happens to be white, relies heavily on black votes for support. Her background lacks the anti-black cast that besets McCulloch, even as her career hinges on appearing more sensitive to black concerns than McCulloch. Even if the outcome was the same, in other words, Joyce would arguably be better equipped, and more incentivized, to address and engage the black community—precisely because blacks wield more power inside the city limits.

#### IV. THE BOROUGH MODEL

Assuming that blacks will lose influence under a full merger, what are possible strategies for achieving consolidation that are likely to garner African American support? More precisely, how might the concentration of black voting power currently present in the city be preserved, meanwhile consolidating those aspects of city-county government that are least likely to disparately impact citizens based on their race? One answer, which the remainder of this article shall explore, might be a borough model, not unlike that found in New York where five separate boroughs—Manhattan, Kings, Queens, Bronx, and Staten Island—also double as separate counties.<sup>89</sup>

Note, New York's model differs considerably from an earlier "Borough Plan" introduced in St. Louis in 1961.<sup>90</sup> That plan called for a full merger of

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89. Gary L. Heinmiller, *Craft Masonry in Manhattan, New York County, New York*, Vol. II, Lodge Nos. 202 thru 287, at 2–3 (2011).

90. STEIN, *supra* note 31, at 109–110.

the city and the county, followed by the creation of a mind-boggling “twenty-two boroughs,” eight of which were to be in the city and “seven in the county, with an additional seven spanning the boundary between the two.”<sup>91</sup> Rather than keep county office structures intact, as this article proposes, the 1961 plan sought to consolidate “[a]ll existing governmental bodies,” a move that won virtually no popular support.<sup>92</sup>

Rather than create twenty-two boroughs, this article proposes two: the borough of the city and the borough of the county. Both would exist essentially as they do now, with their own municipal governments and their own county offices. Further, electoral politics would remain largely the same: African Americans would retain power in the borough of the city, while whites would remain a sizable majority in the borough of the county. However, both would be united by a dual executive made up of the mayor of the city and the county executive, who would together possess only limited powers over services that have essentially already been merged, like the Metropolitan St. Louis Sewer District and the Metropolitan St. Louis Transit Authority. With relatively little political upheaval, statistics relevant to the region’s reputation could be averaged, the population number of both boroughs added, and the crime rate reduced.

Already, the city and county police departments have requested that they be viewed as essentially merged by the Federal Bureau of Investigation.<sup>93</sup> According to a petition signed by St. Louis City Chief Sam Dotson and former St. Louis County Chief Tim Fitch, for example, the St. Louis Metropolitan Police Department (SLMPD) and the St. Louis County Police Department (SLCPD) “increasingly share law enforcement services and investigations across a diluted city/county line” including “police air support, bomb and arson response, a terrorism and disaster fusion center, licensing/training for private security personnel, and mass transit security.”<sup>94</sup> “Most importantly,” noted the two chiefs, “the SLMPD and SLCPD Chiefs have agreed to cross-deputize all sworn personnel of the two agencies.”<sup>95</sup> Such joint ventures underscore the feasibility of retaining two departments in two boroughs that, at the same time, operate within one larger city unit.<sup>96</sup>

Merging crime data in the borough of the city and the borough of the county would echo, though not imitate outright, New York’s system, where a mayor and city council exercise control over services that stretch across the

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91. *Id.*

92. *Id.* at 110.

93. *Rick Rosenfeld Proposal*, ST. LOUIS POST-DISPATCH, Sept. 24, 2013, [http://www.stltoday.com/rick-rosenfeld-proposal/pdf\\_6452897b-cda6-5241-88d4-624c60b07bd6.html](http://www.stltoday.com/rick-rosenfeld-proposal/pdf_6452897b-cda6-5241-88d4-624c60b07bd6.html).

94. *Id.*

95. *Id.*

96. *Id.*

city, including police, fire, sanitation, city planning, and transportation.<sup>97</sup> However, each New York borough retains distinct political functions, including their own prosecutors and public defenders.<sup>98</sup> Further, borough presidents are tasked with reviewing land use decisions, presiding over community boards, working with the mayor to prepare an annual budget, and representing the borough's interests to the mayor's office and the city council.<sup>99</sup>

Though New York's structure is relatively centralized around the mayor, St. Louis's version need not be. For example, proponents of decentralization in New York gained traction in the 1990s when the borough of Staten Island attempted to secede—a move eerily reminiscent of St. Louis's city-county split.<sup>100</sup> Tired of high taxes and poor services, a majority of Staten Island voters agreed to abandon the city proper in November 1993.<sup>101</sup> To their dismay, however, a state supreme court judge stymied the rebellion by holding that the secession needed to be approved by New York's city council, setting the stage for a settlement between the rogue borough and newly elected mayor Rudolph Giuliani, who endorsed some decentralization.<sup>102</sup> Following the "Staten Island secession," as it came to be known, "New York's outer boroughs" endorsed a series of "proposals for giving more authority to boroughs and local communities."<sup>103</sup> St. Louis could embody precisely the type of decentralized borough structure that New York has sought to achieve.

The same is true of Los Angeles; reformers there lobbied for a decentralized borough model of government in 2002, declaring that "a broad range of powers can be vested in boroughs, allowing decisions with a decidedly local impact (for example street maintenance and street policing)" to be handled at the local level.<sup>104</sup> While opponents countered that decentralization would impinge on the economies of scale achieved by consolidation, borough-backers cited evidence suggesting the opposite, namely that "economies of scale are limited to 50,000 to 200,000 residents," and that

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97. Heinmiller, *supra* note 89, at 3.

98. See, e.g., *Office of the Bronx District Attorney: Organizational Structure*, BRONX D.A., <http://bronxda.nyc.gov/frames.html> (last visited Aug. 3, 2014).

99. See, e.g., *Borough President's Duties*, BROOKLYN USA, <http://www.brooklyn-usa.org/pages/faq.htm> (last visited Aug. 3, 2014).

100. Robert D. McFadden, *Staten Island Secession, the Debate that Wouldn't Die, Now Reaches Albany*, N.Y. TIMES, Mar. 1, 1994, at B3.

101. James Dao, *Secession is Approved; Next Move is Albany's: Staten Island*, N.Y. TIMES, Nov. 3, 1993, at B4.

102. *Court Slows S.I. Secession*, N.Y. TIMES, Jan. 19, 1995, at B6.

103. Marilyn Blohm et al., *Back to the Boroughs: Reinventing New York's Governments*, CITY J., Spring 1993, <http://www.city-journal.org/printable.php?id=1506>.

104. Ronald Oakerson & Shirley Svorny, *Rightsizing Los Angeles*, 9 INDEP. REV. 513, 518 (2005).

further consolidations only lead to inefficiency and waste.<sup>105</sup> Urban scholars Ronald Oakerson and Shirley Svorny go so far as to suggest that “[e]conomies of scale vary across the range of services that city governments provide. Some services, such as police patrols, exhaust economies of scale relatively quickly. Others, such as pollution control efforts, benefit from larger regional actions. For most public services, economies of scale are exhausted fairly rapidly as cities grow in size.”<sup>106</sup> In fact, some have argued that consolidation can itself lead to urban decline. As Oakerson and Svorny observe, for example, “large cities suffer for the most part from collective inaction on a plethora of local collective problems. This neglect occurs because officials who operate at an extremely larger scale have little incentive to deal with problems that people who operate at a smaller scale find important. Such problems are often considered petty—a nuisance to public officials and too trivial to command their attention. The deterioration of cities derives primarily from the accumulation of such petty problems that go unsolved.”<sup>107</sup>

A decentralized borough model in St. Louis could address the concerns about overcentralization and indifference that Oakerson and Svorny identify—concerns that exploded in L.A. in 2002, when a secessionist movement argued for partition of San Fernando Valley from the rest of the city, sparking a larger interest in devolving power to local units, some secessionists even proposing that “governing functions over neighborhood matters should be formally decentralized into a system of boroughs, in which local areas have significant governing authority, particularly over land use.”<sup>108</sup> Over 50% of the valley’s voters agreed, but were subsequently thwarted by a larger majority of voters in the other sections of the city.<sup>109</sup> However, complaints that the city of Los Angeles was unresponsive to the concerns of voters in the Valley remained.<sup>110</sup>

St. Louis could not only learn from Los Angeles and New York but could provide the blueprint for precisely the type of decentralized borough structure that reformers there have sought, avoiding the dangers of overconsolidation by moving towards a loosely organized, local-sensitive system of municipal government. Pursuant to this model, little of the city and county’s current governmental structure need change. Even the question of who would preside over the newly created entity could be addressed by simply endorsing a dual executive, with the city mayor and county executive presiding over a very

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105. *Id.* at 516.

106. *Id.* at 515–16.

107. *Id.* at 519.

108. RAPHAEL J. SONENSHEIN, *LOS ANGELES: STRUCTURE OF A CITY GOVERNMENT* 194 (2006).

109. Rick Orlov, *Secession Drive Changed San Fernando Valley, Los Angeles*, L.A. DAILY NEWS, Nov. 3, 2012, <http://www.dailynews.com/20121104/secession-drive-changed-san-fernan-do-valley-los-angeles>.

110. *Id.*

limited number of regional functions, including those that are already consolidated, like transportation and sewers, and possibly also police.<sup>111</sup> Such an arrangement would enable St. Louis to claim a larger population and a more prominent place in America's urban pantheon, even as it would enable the city to average its crime rate with that of the county, taking it permanently off the most dangerous cities list.<sup>112</sup> Further, adopting a borough approach might help sidestep the thorny question of whether, under a complete merger, the county of the city need be legally dissolved. Currently, the city's dual status as a county serves as a protective measure—an effort to insulate county officers from city politics, granting the general assembly a say in local St. Louis politics.<sup>113</sup> Pursuant to the Missouri Constitution, all county officers are ultimately regulated by the state legislature, including for example the collector of revenue.<sup>114</sup> The Missouri Supreme Court has held that “the City cannot, by amendment of its charter, eliminate the County offices so as to take over local control” of the county functions within its boundaries.<sup>115</sup> Of course, the question remains whether a board of freeholders operating under the authority of Section 30 of the state constitution could abolish the city's status as an independent county. A loose reading of Section 30 suggests yes. A strict reading, however, suggests that the state legislature would have to formally dissolve the county of the city before the offices therein could be transferred or terminated. Bryan Cave posited that such a move would be possible were the city to merge with the county, leaving the nexus of power in the county.<sup>116</sup> However, Bryan Cave failed to address the necessary dissolution of the county aspect of the city, again something likely to require state approval. An added wrinkle here is the county of the county's charter status, a distinction that the county of the city lacks. Pursuant to Article VI Section 18 of the Missouri Constitution, “charter counties can provide in their charter for the kind of salaries of county offices, thus taking over responsibility for such functions from the legislature.”<sup>117</sup>

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111. Oakerson & Svorny, *supra* note 104, at 521. According to proponents of decentralization in L.A., the move towards consolidation bears a high likelihood of divorcing municipal governance from voters, in part because “a singular metropolitan government is less suited to solving the multitude of local problems than is a process of metropolitan governance that embraces multiple jurisdictions.” *Id.*

112. Lindsay Toler, *St. Louis Named No. 5 Most Dangerous City Because No One Knows How Statistics Work*, RIVERFRONT TIMES, Feb. 5, 2014, [http://blogs.riverfronttimes.com/dailyrft/2014/02/st\\_louis\\_named\\_no\\_5\\_most\\_dange.php](http://blogs.riverfronttimes.com/dailyrft/2014/02/st_louis_named_no_5_most_dange.php).

113. BRYAN CAVE STUDY, *supra* note 33, at 44.

114. *Id.* (citing *Preisler v. Hayden*, 309 S.W.2d 645 (Mo. 1958)).

115. *Id.* (citing *Stemmler v. Einstein*, 297 S.W.2d 467, 473 (Mo. 1956)).

116. *Id.* at 45.

117. *Id.* at 45 n.100 (citing MO. CONST. art. VI, § 18).

Given the real possibility that a constitutional amendment may be needed to dissolve the county of the city of St. Louis, it might make sense to simply leave the county of the county and the county of the city intact, more or less functioning as independent boroughs within a larger metropolitan unit. Note, this is different from an earlier borough model proposed for St. Louis in 1961, which called for “twenty-two boroughs to be created within the new combined jurisdiction, eight in the city and seven in the county, with an additional seven spanning the boundary between the two.”<sup>118</sup> It is also different from an even earlier borough proposal advanced by a Professor Thomas H. Reed in 1930.<sup>119</sup> Charged by a “joint metropolitan development committee” to survey the best possible way of merging the city and the county, Reed recommended a “federal, or borough, plan” which would leave “practically intact the organization of existing municipalities, school districts, and courts, subject to the power of the legislature to change them in the future.”<sup>120</sup> Presiding over these units would be a “government of the Greater City, with important powers relating to health, sewers, highways, public welfare, public utilities, libraries, parks, recreation, city planning, and elections.”<sup>121</sup> Meanwhile, a “separate municipal government” was created for the “unincorporated rural territory.”<sup>122</sup> To effect this arrangement, the proposed “plan involved the adoption of an amendment to the constitution which would authorize the drafting of a charter for the city of Greater St. Louis, to go into effect when adopted at separate elections by a majority vote in city and county.”<sup>123</sup>

That counties might coordinate functions is already provided for in Missouri law, as evidenced by the Bi-State Development Agency which, as Bryan Cave notes, “is already in existence and covers an area broader than even the City and County,” meanwhile possessing “the power and authority to perform a number of functions normally performed by a city or county government.”<sup>124</sup> Another successful example is the Metropolitan St. Louis Sewer District.<sup>125</sup> Already, Missouri law “provides that counties may join in the performance of common functions,” opening the door for an even more

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118. STEIN, *supra* note 31, at 109–10.

119. Loeb, *supra* note 32, at 692.

120. *Id.* at 691–92.

121. *Id.* at 692.

122. *Id.*

123. *Id.*

124. BRYAN CAVE STUDY, *supra* note 33, at 46.

125. A borough model was proposed in 1930 but failed. See Aimee Levitt, *The Great Divorce: Everything You Ever Wanted to Know About the City/County Split*, RIVERFRONT TIMES POL. BLOG, May 4, 2010, [http://blogs.riverfronttimes.com/dailyrft/2010/05/the\\_great\\_divorce\\_everything\\_you\\_ever\\_wanted\\_to\\_know\\_about\\_the\\_city\\_county\\_split.php](http://blogs.riverfronttimes.com/dailyrft/2010/05/the_great_divorce_everything_you_ever_wanted_to_know_about_the_city_county_split.php) (citing Joe Huber, *The History of Possibilities of a St. Louis City-County Reunification* (unpublished manuscript) (on file with Christian Brothers College High School)).

cooperative borough-type government.<sup>126</sup> Under such a system, the city and county could conceivably integrate certain services, like the police function, effectively merging the county police with the municipal police department. Such coordination would, pursuant to current state law, require “a petition signed by 8 percent of the voters” in the county of the county and the county of the city.<sup>127</sup> Other duplicative services that could be coordinated include “housing, port, and industrial development authorities.”<sup>128</sup>

Currently, both the city and the county operate parallel court systems, including parallel prosecutors’ offices. In a traditional setting, only one prosecutor would preside over a county, or district, with jurisdiction throughout that district and a subordinate staff of attorneys to handle the caseload. Municipal judges, in such a system, remain part of the overall judicial district, or in the case of St. Louis, the circuit court. As Bryan Cave noted in 1984, “[c]onsolidation of the circuit courts presents a much more difficult question” than consolidation of the municipal courts.<sup>129</sup> Conceivably, consolidation of municipal courts would simply fall under the reigning circuit court, with little need for state legislation or approval. Part of the reason that merging circuits would require state approval is the Missouri Constitution, which provides for state division of Missouri into explicit judicial circuits, each district comprised of at least one county.<sup>130</sup> To date, the city and the county of St. Louis each comprise a district—the 21<sup>st</sup> and the 22<sup>nd</sup>—meaning that merging the two would possibly require “legislation by the General Assembly.”<sup>131</sup> However, Bryan Cave argued in 1984 that any number of possible mergers could occur between the city and the county without state legislation, provided that the judicial districts remain the same. Similarly, “control over the method of selection of judges” also rests with the state.<sup>132</sup> Consequently, Bryan Cave suggested that “it would be more practical to leave the entire circuit organization intact.”<sup>133</sup> In the event that this did not occur, and the state authorized the consolidation of the two districts, separate circuit (prosecuting) attorneys and clerk’s offices could still be maintained, each operating in their distinct counties.<sup>134</sup> However, it is more likely that the positions would merge, with either the county of the city or the county of the county becoming the dominant judicial district. Were the county of the county to emerge the winner, city residents may find a circuit attorney with a different

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126. BRYAN CAVE STUDY, *supra* note 33, at 47 (citing MO. REV. STAT. § 70.010 (1978)).

127. *Id.* (citing MO. REV. STAT. § 70.020 (1978))

128. *Id.* at 51.

129. *Id.* at 58.

130. *Id.* (citing MO. REV. STAT. § 478.075 (1978)).

131. *Id.* at 58–59.

132. BRYAN CAVE STUDY, *supra* note 33, at 59.

133. *Id.* at 60.

134. *Id.* at 59 (citing MO. REV. STAT. § 56, § 483 (1978)).

set of prosecutorial objectives, perhaps less sensitive to questions of poverty and structural inequality than the current office. For this reason, city residents may have an interest in preserving judicial districts as they are.

Just as Bryan Cave recommended the retention of judicial districts, so too did the firm recommend the retention of school districts—another indication that a decentralized approach to merger best fits St. Louis.<sup>135</sup> Presumably, this was because of the potentially charged nature of school districting questions, including questions of funding, resources, and race. However, the recommendation that school districts be left intact heightens the chance that other districts could also be left intact, like the outstanding judicial districts. As Bryan Cave notes, for example, Section 30 “contemplates under the fifth power the possibility that a plan will provide for the partial government of the territory included within the geographic scope of the plan,” meaning that “some governmental functions might be left with existing entities.”<sup>136</sup> Yet another public function that could remain decentralized under such a provision is land use and zoning, allowing “some control over such matters to remain with local communities.”<sup>137</sup>

Merger of specific functions can also be achieved through state legislation, pursuant to Section 30 of the state constitution, as happened with the creation of the Metropolitan St. Louis Sewer District in 1955.<sup>138</sup> The district was proposed by a board of freeholders and later approved by voters in the city and county, providing for “multiple watersheds” and taking over “existing sewers,” including takeovers that were later challenged in court, by, for example, the Lemay Sewer District.<sup>139</sup>

#### CONCLUSION

A full consolidation of the city and county of St. Louis is likely to compromise the influence of African American voters in the region, a problem given recent racial unrest in the county municipality of Ferguson. However, minority voting power might be preserved under a more loosely structured merger, one in which the city and the county retain their basic governmental structures by adopting a borough model. Precisely such a model has been endorsed by critics of overcentralization in other cities, most notably Los Angeles and New York, where each of the city’s five boroughs is also an independent county, with independent county functions.

St. Louis need not follow New York’s model completely, but could distinguish itself by establishing an even more decentralized structure presided

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135. *Id.* at 62.

136. *Id.*

137. *Id.* at 63.

138. BRYAN CAVE STUDY, *supra* note 33, at 52.

139. *Id.* (citing *State v. Metro. St. Louis Sewer Dist.*, 275 S.W.2d 255, 231–32 (1955)).

over by a dual executive staffed by the mayor of the city and the county executive, both of whom would control a limited number of functions—all other responsibilities remaining with current offices as they are. Perhaps most important, the city prosecutor and the county prosecutor would retain their offices, and their jurisdictions.

