

Saint Louis University School of Law
Scholarship Commons

All Faculty Scholarship

2022

**Acknowledging the Racist Roots of Disinvestment and
Abandonment: How Local Government Can Set the Stage for
Change**

Dana M. Malkus

Follow this and additional works at: <https://scholarship.law.slu.edu/faculty>



Part of the [Civil Rights and Discrimination Commons](#), and the [Law and Race Commons](#)



SAINT LOUIS UNIVERSITY SCHOOL OF LAW
Legal Studies Research Paper Series

No. 2022-03

Acknowledging the Racist Roots of Disinvestment and Abandonment:
How Local Government Can Set the Stage for Change

Dana M. Malkus
Saint Louis University School of Law

Forthcoming, University of Florida Journal of Law & Public Policy, Fall 2022

**Acknowledging the Racist Roots of Disinvestment and Abandonment:
How Local Government Can Set the Stage for Change**

Dana M. Malkus*

Abstract

Disinvestment and associated property abandonment are defining features of many post-industrial legacy cities. While the reasons are varied and complex, racist law and policy are at the root. Though abandoned properties negatively affect an entire city, their effects usually disproportionately fall on neighborhoods of color. Law and policy have been major drivers of how such neighborhoods look and feel today. Because law and policy have been part of the problem, they are also a necessary part of the solution.

This kind of large-scale, multi-disciplinary problem is beyond the ability of a single institution or sector to address. Stakeholders such as local government, neighborhoods, and philanthropy have tools to address this challenge. But, to get to effective solutions in the modern community development system, they must use their respective tools in close coordination and cooperation. That requisite close coordination and cooperation require a foundation of trust and shared vision.

Local government is not only a stakeholder with tools to address disinvestment and abandonment; it is also the stakeholder with power to set the “rules of the game.” As such, it is uniquely able to set the stage for the racial healing foundational to rebuilding trust and developing a shared vision. To that end, this article recommends local governments provide a public disclosure about a property’s history as part of their development and demolition processes as a first step toward racial healing. By providing such disclosures, local governments can create conditions for the trust and shared vision needed to make existing tools far more effective. In addition, such disclosures can set the stage for further self-initiated reparative actions.

* Director of the Entrepreneurship and Community Development Clinic and Professor, Saint Louis University School of Law. Thanks to Jeremy Peissig and Henry Brown for their insights and assistance.

Acknowledging the Racist Roots of Disinvestment and Abandonment: How Local Government Can Set the Stage for Change

Disinvestment and property abandonment are defining features of many post-industrial legacy cities.¹ While the reasons for disinvestment and abandonment are varied and complex,² racist law and policy are at the root.³ Detailed histories of the discrimination that undergirds our modern urban and suburban spaces have been extensively documented,⁴ but much of the historical record remains unknown or misunderstood by average neighborhood residents, policymakers, and developers. Indeed, the historical connections between the legal and policy underpinnings of segregation and the disinvestment and abandoned property so prevalent in the city many of my law students call home is not well known even to them before we read “The Making of Ferguson: Public Policies at the Root of its Troubles,”⁵ each semester. It’s as if these histories have been carefully documented and displayed on historical markers all along the community development highway, but only a relative few have had reason to stop and read them. Without this understanding, policy proposals aimed at reckoning with that history will feel neither urgent nor compelling.

¹ See, e.g., ALAN MALLACH, *THE DIVIDED CITY: POVERTY AND PROSPERITY IN URBAN AMERICA* 75-96 (2018) [hereinafter MALLACH, *DIVIDED CITY*]; ALAN MALLACH, CENTER FOR COMMUNITY PROGRESS, *THE EMPTY HOUSE NEXT DOOR* 4-5; Lincoln Institute of Land Policy, *Regenerating America’s Legacy Cities*, 7 (2013) [hereinafter MALLACH, *EMPTY HOUSE*].

² AMERICAN BAR ASSOCIATION, *VACANT AND PROBLEM PROPERTIES: A GUIDE TO LEGAL STRATEGIES AND REMEDIES*, xix-xxvi (Alan Mallach et al. eds., 2019); MALLACH, *EMPTY HOUSE*, *supra* note 1, at 4-8; *A Guide to Understanding and Addressing Vacant Property in the City of St. Louis* 6-7 <http://risestl.org/what-we-do/public-documents/vacancy-guide> (last accessed Jan. 26, 2022).

³ See *infra* Part I.

⁴ See, e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017) (racial residential segregation is the result of explicit government policy); JESSICA TROUNSTINE, *SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES* (2018) (role of local government policy around land use, zoning, and control of public services in creating and perpetuating segregation); MALLACH, *DIVIDED CITY*, *supra* note 1, at 75-96 (history detailing connections between race, real estate, and revitalization); NANCY O. ANDREWS, *RACE, GENDER, AND EQUITY IN COMMUNITY DEVELOPMENT: TEN FINDINGS, SIX WAYS FORWARD 2* (2019) (while there have been significant efforts toward racial equity in the community development sphere, we remain a long way from undoing the racism baked into law, policy, investment priorities, and social attitudes). See also, *infra* notes 15-30.

⁵ RICHARD ROTHSTEIN, *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES* (15 October 2014).

The modern US community development system is fragmented and largely relies on stakeholder coordination and cooperation.⁶ In this kind of system, solutions to problems such as disinvestment and abandonment require coordination and cooperation among a diverse set of stakeholders. Using the post-industrial legacy city of St. Louis as an example, Part I of this Article demonstrates the ways in which these racist roots have resulted in distrust, creating barriers to the very trust and shared vision foundational to the kinds of coordination and cooperation our modern system requires. Part II argues that, in its role as a stakeholder, local government brings essential tools to the challenge, but that—because it also sets the “rules of the game” governing local community development law and policy—it can and should set rules that create conditions for the racial healing needed to produce more trust and shared vision among stakeholders. Finally, Part III explores the self-initiated reparative actions that become more likely when local government sets the “rules of the game” described in Part II that make a property’s history harder to ignore.

I. Racist Roots Have Resulted in Distrust

Like similarly situated legacy cities, St. Louis has a serious vacant property challenge. Since its population peak in the 1950s, the city has lost well over half of its population and has one of the highest rates of vacant and abandoned property in the country.⁷ The overwhelming majority of these properties are concentrated in majority-Black neighborhoods on the city’s north side.⁸ The serious negative impacts of vacant and abandoned property—including crime,⁹

⁶ CLARENCE N. STONE & ROBERT P. STOKER, URBAN NEIGHBORHOODS IN A NEW ERA 28 (2015).

⁷ TYLER SWEHLA ET AL., PARCELS AND PEPPERS: SAVORY IDEAS FOR ADDRESSING VACANCY IN ST. LOUIS, at xix, 7 (2015); ALEXANDRA MILLER ET AL., ASAKURA ROBINSON CO., ST. LOUIS LAND BANK ASSESSMENT: FINAL REPORT 18 (Feb. 2017).

⁸ SWEHLA ET AL., *supra*, note 7, at 8; ALEXANDRA MILLER ET AL., *supra* note 7, at 18. *See also* VACANCY COLLABORATIVE <https://www.stlvacancytools.com> (last accessed Jan. 26, 2022).

⁹ *See, e.g.*, MALLACH, EMPTY HOUSE, *supra* note 1, at 19-20 (vacancy associated with crime and violence); MAX WEINSTEIN ET AL., MASS. OFFICE OF THE ATT’Y. GEN. FORECLOSURE IMPACTS TASK FORCE, FINAL REPORT OF THE

decreased property values,¹⁰ and severe pressure on a city's tax base and its ability to provide basic services¹¹—are well-documented and have been explored in depth by researchers, scholars, practitioners, and community residents alike. Somewhat less emphasized—but no less

FORECLOSURE IMPACTS TASK FORCE OF THE STATE OF MASSACHUSETTS 41 (2014) (violent crime increases by more than 15% within 250 feet of a vacant property); DAN IMMERGLUCK, *THE COST OF VACANT AND BLIGHTED PROPERTIES IN ATLANTA: A CONSERVATIVE ANALYSIS OF SERVICE AND SPILLOVER COSTS* 1 (2015) (vacant properties are associated with higher crime rates); Charles C. Branas et al., *Urban Blight Remediation as a Cost-Beneficial Solution to Firearm Violence*, 106 AM. J. PUB. HEALTH 2158, 2158, 2161 (2016) (finding abandoned building remediation significantly reduced firearm violence by 39%); William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. CRIM. JUST. 481 (blocks with unsecured vacant buildings had 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of violent calls as blocks without vacant buildings); CHRISTOPHER WALKER & FRANCISCA WINSTON, *PLACE, PEOPLE, POLICE: THE EFFECTS OF PLACE-CENTRIC CRIME REDUCTION EFFORTS IN THREE NEIGHBORHOODS* (2017) (finding as much as a 41% decline in crime incidents in Providence after police and community developers worked together to renovate and program a park, construct affordable housing, renovate blighted structures, and introduce more active policing); Charles Branas et al., *Citywide Cluster Randomized Trial to Restore Blighted Vacant Land and its Effects on Violence, Crime, and Fear*, 115 PROC. NAT'L ACAD. SCI. (2018) (participants living near treated vacant lots reported significantly reduced perceptions of crime, vandalism, and safety concerns as well as increased use of outside spaces for relaxing and socializing; significant reductions in crime overall, gun violence, burglary, and nuisances were also found after the treatment of vacant lots in neighborhoods below the poverty line).

¹⁰ See, e.g., MALLACH, *Empty House*, *supra*, note 1, at 19-20 (vacant buildings and lots reduce property values and associated household wealth of nearby property owners); U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-34, *VACANT PROPERTIES: GROWING NUMBER INCREASES COMMUNITIES' COSTS AND CHALLENGES* 45 (2011) (decreased property values for neighboring owners); NIGEL G. GRISWOLD & PATRICIA E. NORRIS, THE MSU LAND POLICY INSTITUTE, *ECONOMIC IMPACTS OF RESIDENTIAL PROPERTY ABANDONMENT AND THE GENESEE COUNTY LAND BANK IN FLINT, MICHIGAN* 4 (2007) (decreasing property values on neighboring owners); DAN IMMERGLUCK, *THE COST OF VACANT AND BLIGHTED PROPERTIES IN ATLANTA: A CONSERVATIVE ANALYSIS OF SERVICE AND SPILLOVER COSTS* 1 (2015) (vacancy reduces nearby home values); Hye-Sung Han, *The Impact of Abandoned Properties on Nearby Property Values*, 27 HOUS. POL'Y DEBATE 311 (2013) (examining impact of abandoned properties on nearby property values in Baltimore from 1991 to 2010 using longitudinal data sets while simultaneously controlling for both nearby foreclosures and local housing market trends; as properties are abandoned for longer periods of time, the impact on nearby property values increases in magnitude and is seen increasingly farther away); TEMPLE UNIVERSITY CENTER FOR PUBLIC POLICY & EASTERN PENNSYLVANIA ORGANIZING PROJECT, *BLIGHT FREE PHILADELPHIA: A PUBLIC-PRIVATE STRATEGY TO CREATE AND ENHANCE NEIGHBORHOOD VALUE* 21 (2001) (houses within 150 feet of a vacant or abandoned property experienced a net loss of \$7,627 in value); STEPHAN WHITAKER & THOMAS J. FITZPATRICK IV, *DECONSTRUCTING DISTRESSED-PROPERTY SPILLOVERS* 15 (2012) (in Cleveland, vacant property within 500 feet reduces sales price of a home by 1.7% in low-poverty neighborhoods and 2.1% in medium-poverty neighborhoods); JAMES ALM ET AL, *PROPERTY TAX DELINQUENCY AND ITS SPILLOVER EFFECTS ON NEARBY PROPERTIES* 2 (2016) (in Chicago, tax delinquent properties not successfully sold had a negative spillover of 5.1% delinquency discount on value of nearby properties).

¹¹ See, e.g., MALLACH, *EMPTY HOUSE*, *supra*, note 1, at 19-20 (vacancy has devastating effects on a city's fiscal condition due to direct maintenance and demolition costs and lost tax revenues from the vacant properties themselves and from the devaluing of neighboring properties); KERMIT LIND, VACANT PROPERTY RESEARCH NETWORK, *DATA-DRIVEN SYSTEMS: MODEL PRACTICES & POLICIES FOR STRATEGIC CODE ENFORCEMENT* 4 (2016) (noting direct costs on government agencies and indirect costs on tax revenues); Bradley Pough & Qian Wan, *Data Analytics and the Fight against Housing Blight: A Guide for Local Leaders* 2 (2017) (housing blight spreads and brings host of negative externalities impacting a city's financial and physical well-being). See also, Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. AFFORDABLE HOUS. AND CMTY. DEV. LAW 134 (2016) (discussing problems at neighborhood, city, and regional levels).

important—are the health effects of vacancy on the neighborhood, including feelings of fear and depression, increased lead levels, and a loss of community.¹²

The “extremely large” volume¹³ of vacant property in St. Louis is not the result of mere market forces or individual preferences, although those issues are part of the story. Rather, as has been documented,¹⁴ these properties are inextricably tied to legal and policy systems rooted in racism. In other words, law and policy are part of the problem. In St. Louis, racially restrictive covenants established durable patterns of segregation that were subsequently sanctioned and sustained by zoning laws, redlining policies, and other government actions.¹⁵ For example, the FHA—relying on a model of neighborhood change built on the idea that racial change leads to a decline in property values¹⁶—adopted underwriting policies that incentivized using racially restrictive covenants to preserve homogenous white residential areas.¹⁷ FHA policy led to white flight from the urban core to new housing markets in suburban areas while simultaneously barring non-whites from those markets.¹⁸ These kinds of policies cemented

¹² See, e.g., Urban Institute, *Urban Blight and Public Health: Addressing the Impact of Substandard Housing, Abandoned Buildings, and Vacant Lots* (2017); STACY ROSS, *WORKING TOGETHER: THE ST. LOUIS VACANCY SUMMIT FINAL REPORT 3* (2017) (describing psychological impacts) (on file with author); MALLACH, *EMPTY HOUSE*, *supra*, note 1, at 19-20 (vacant lots negatively affect quality of life and sense of well-being and lead to social fragmentation); CLAUDIA J. COULTON ET AL., *HOUSING DETERIORATION CONTRIBUTES TO ELEVATED LEAD LEVELS AND LOWER KINDERGARTEN READINESS SCORES IN CLEVELAND* (2016) (children who spent more time living in or near properties that had signs of deterioration and disinvestment were more likely to have elevated lead levels and to have low scores on a kindergarten readiness assessment).

¹³ ALEXANDRA MILLER ET AL., *supra* note 7, at 18.

¹⁴ See *supra* note 4.

¹⁵ Colin Gordon, *Dividing the City: Race-Restrictive Covenants and the Architecture of Segregation in St. Louis*, *J. URBAN HIST.* 12 (2021).

¹⁶ Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 *YALE L. J.*, 186, 208 and 219-20 (2005).

¹⁷ DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF AN UNDERCLASS* 53-54 (1998); Adam Gordon, *supra* note 16, at 209 (FHA encouraged housing segregation like racial zoning had done prior to 1917 invalidation).

¹⁸ MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH* 16-17 (1995); Colin Gordon, *supra* note 15; Audrey McFarlane, *Race, Space, and Place: The Geography of Economic Development*, *SAN DIEGO L. REV.* 295, 336 (Spring 1999) (describing state and federal policies promoting movement of people to periphery of metropolitan regions).

residential segregation.¹⁹ Moreover, other choices contributed to the problem, including the ways municipal services and resources were allocated, the ways schools were organized and funded, the way policing practices focused on regulating racial boundaries,²⁰ and the way incorporation laws enabled suburbanites to establish separate governments with their own zoning rules.²¹ In addition, choices by businesses and institutions to follow the exodus to suburban spaces (and government policies subsidizing such sprawl) meant white flight was not limited to the residential arena, further compounding disinvestment and segregation.²²

In St. Louis, like other urban areas, the decline in property values triggered by white flight was further exacerbated by policies that effectively barred Black people from accessing mortgage loans,²³ disfavored making loans on the kind of housing stock typically found in urban neighborhoods,²⁴ and disfavored neighborhoods with Black residents.²⁵ Moreover, the real estate industry's use of racial steering and sanctions for members who helped Black people acquire

¹⁹ Adam Gordon, *supra* note 16, at 208, 219-20.

²⁰ Colin Gordon, *supra* note 15, at 12.

²¹ PETER DREIER ET AL., PLACE MATTERS, 37, 99 (2014) (in competition for favored residents and investments, each jurisdiction has incentive to adopt zoning and development policies that exclude while distressed suburbs and central cities provide housing of last resort for all those whom suburban jurisdictions can exclude by reason of low income, lack of mobility, or race).

²² See David Libonn, Note, *From Cautionary Example to "City on a Hill": Revitalizing Saint Louis May Require an Innovative Regional Taxation Model*, 91 Wash. U. L. Rev. 1035, 1051 (2014); PLACE MATTERS, *supra* note 21 at 40 (from 1960s to 1990s, more new jobs located in suburbs).

²³ Colin Gordon, *Making Ferguson: Segregation and Uneven Development in St. Louis and St. Louis County*, in FERGUSON'S FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION 75-91 (2016); OLIVER & SHAPIRO, *supra* note 18, at 18; Adam Gordon, *supra* note 16, at 189 (from 1945-59, fewer than 2% of FHA loans went to Black homeowners). Black people were effectively barred from obtaining FHA loans due to discrimination and from non-FHA loans due to bank safety-and-soundness regulations (i.e., if the FHA would not insure a particular borrower, that borrower could not get a long-term mortgage with a low down payment from another source). Adam Gordon, *supra* note 16, at 217.

²⁴ Adam Gordon, *supra* note 16, 208 (underwriting standards were biased against homes with rental units or stores, a common type of housing stock in urban neighborhoods, favoring instead single-family homes in single-use neighborhoods); FISHMAN, AMERICAN METROPOLIS 4 (1999) (white homebuyer who wished to stay in neighborhood had to resort to old-style conventional mortgage with high rate and short term; same purchaser who opted for new suburban house could get FHA mortgage with lower rate, longer term, lower down payment, and lower monthly payment).

²⁵ Thomas W. Hanchett, *The Other "Subsidized Housing"*, in FROM TENEMENTS TO TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 163, 165 (2000).

housing in white neighborhoods along with racist and discretionary appraisal standards added to the discrimination prevalent in the housing industry.²⁶ These kinds of policies and practices contributed to artificially low market values for homes in Black and integrated neighborhoods.²⁷ Being cut off from traditional financing and sources of investment left these neighborhoods vulnerable to predatory “investors” and slumlords who were (and are) able to use legal structures (e.g., predatory contract for deed arrangements, single asset LLCs, real estate investment trusts) and evasion strategies to effectively shield owners from accountability for property conditions.²⁸ Moreover, lower property values combined with a lack of access to traditional financing mean that cash transactions without assistance from professionals (e.g., lawyers, title companies) have become the norm in some neighborhoods, often leading to complicated, clouded titles that further reduce a property’s value and make it more likely to be abandoned.²⁹ Add to this the title

²⁶ PETER DREIER ET AL., *supra* note 21, at 107; Jodi Rios, *Racial States of Municipal Governance: Policing Bodies and Space for Revenue in North St. Louis County, MO*, 37 *Law & Ineq.* 235, 244 (2019); see Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 *N.Y.U. J. Legis. & Pub. Pol’y* 709, 716–17 (2017/2018); COLIN GORDON, *MAPPING DECLINE* 88-89 (2008); MAUREEN YAP ET AL., NATIONAL FAIR HOUSING ALLIANCE, *IDENTIFYING BIAS AND BARRIERS, PROMOTING EQUITY* (2022).

²⁷ Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 *PUB. AFFS. Q.* 255, 265 (2007) (FHA policy created demand for segregated white neighborhoods while simultaneously lowering the demand, and therefore the market price, for housing in predominately Black neighborhoods). For more on problems associated with appraisal practices, see DAVID HARSHBARGER ET AL., *THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY* (2018); JOE NERI, *CAN USING A RACIAL EQUITY LENS INCREASE CAPITAL IN COMMUNITIES OF COLOR?* (2019) (low-income communities faced discrimination from redlining, which reduced property values; discriminatory system is reinforced each time lender relies on appraisal).

²⁸ Alan Mallach, *THE TWO VACANCY CRISES IN AMERICA’S CITIES* (2018) (non-local investors in areas of high concentrations of vacancy tend to invest little or nothing in the properties, hold them, and then abandon the properties after getting the anticipated return on their investment); Kermit J. Lind, *Perspectives on Abandoned Houses in a Time of Dystopia*, 24 *J. AFFORDABLE HOUS. & CMTY. DEV. LAW* 122, 124, 127-28 (2015) (local rehab professionals and home improvement amateurs who once absorbed trickle of mortgage failures in the market have been replaced by investors and speculators who treat unprofitable and unmarketable houses as waste); Steven E. Barlow et al., *Ten Years of Fighting Blighted Property in Memphis*, 25 *J. AFFORDABLE HOUS. & CMTY. DEV. LAW* 347, 364-372(2017) (factors contributing to property abandonment include investors, absentee owners, and corporate owners, among others).

²⁹ The problem of clouded title and of liens exceeding a property’s worth in a market with already depressed property values is a serious issue that is exacerbated by a creditors rights system that includes only a very narrow homestead exemption, virtually guaranteeing title encumbrances since almost every debt attaches automatically to property owned by the debtor. See Harry D. Boul, *The Need for a Rational Homestead Exemption in Missouri*, 69 *J. Mo. B.* 264, 266–67 (2013); Christopher P. Lauer, *Belt and Suspenders: Two Key Changes to Reduce Money Laundering Through Residential Real Estate*, 70 *Case W. Res.* 1225, 1228-29 (2020). Moreover, a lack of access to

insurance industry's perceived risk aversion to properties with foreclosure histories,³⁰ and the result is a system where reinvestment becomes hard and disinvestment the path of least resistance.

The political marginalization of segregated urban neighborhoods exacerbated the abandonment and disinvestment. For decades following World War II, segregated urban neighborhoods had little leverage to advance neighborhood-level concerns and received little attention from policymakers as city leaders (i.e., city hall and business elites) focused on redeveloping the central business core in an effort to “save” the city and its economy.³¹ This singular focus on economic redevelopment left neighborhoods relegated to the political sidelines³² and tended to ignore issues of racial and economic equity.³³ Moreover, as the dominant voices on planning and redevelopment bodies, business elites often had little regard for lower income residents or the ways in which redevelopment policies affected them.³⁴ While demographic changes, civil disorder, and Black political mobilization did affect this dynamic at the margins, the urban playing field tilted heavily in favor of economic development and elite

simple estate planning tools (e.g., beneficiary deeds) for homeowners in these neighborhoods results in fractured titles as title passes by operation of law, with the fracturing becoming worse with each passing generation. *See* Barlow et al, *supra* note 28, at 368. The subprime crisis compounded the problems. *See* MALLACH, VACANT AND PROBLEM PROPERTIES, *supra* note 2, at xix. *See also* Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS PUB. L. REV. 113, 116 (2009) (vulnerability of low-income buyers).

³⁰ *See* Grant S. Nelson & Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial Foreclosure Act*, 53 Duke L.J. 1399, 1433 (2004).

³¹ STONE & STOKER, *supra* note 6, at 6, 11.

³² *Id.* at 6 (scholarly research has consistently confirmed marginal political status of neighborhoods during this time period) and 11 (neighborhood-level concerns paled in comparison to economic redevelopment efforts that were accorded privileged position).

³³ PETER DREIER ET AL., *supra* note 21, at 157.

³⁴ STONE & STOKER, *supra* note 6, at 9 (alliance of city hall and business leadership possessed strong capacity to act but were not inclined to probe conditions beyond need to rebuild city economy and had limited knowledge and few concerns about how actions could have spillover effects). For example, between 1956 and 1972, urban renewal and highway construction displaced an estimated 3.8 million people in the US (many of them nonwhite), pushing people from their homes and businesses, destroying social ties and disbursing residents without sufficient compensation for their losses. *See* PETER DREIER ET AL., *supra* note 21, at 119; Sonya Bekoff Molho & Gideon Kanner, *Urban Renewal: Laissez-Faire for the Poor, Welfare for the Rich*, 8 PAC. L. J. 627, 628 (1977).

business interests at the expense of nonaffluent residents for decades.³⁵ While neighborhoods have experienced modest gains as the subject of policy attention in more recent decades, that attention remains very uneven.³⁶

This history has left vacant and abandoned properties in its wake and has severely eroded trust in local government by many of the very citizens such local governments should serve. St. Louis is not alone, of course. Shaped by their own local themes and flavor, versions of the racist-roots story are present in urban areas all over the country.³⁷ The patterns of segregation and disinvestment in St. Louis and in other urban areas not only affect where people live today and who their neighbors are, but also are foundational to the unequal distribution of opportunity that defines much of the US experience³⁸ and speak to who bears the disproportionate burden of vacancy and abandonment. A problem as multi-disciplinary and large-scale as vacancy is beyond the ability of a single institution or sector to address. Local governments have a variety of tools to address the problem (e.g., code enforcement, tax and special lien foreclosure, demolition, and land banking³⁹), but these tools alone have failed to solve the problem. Neighborhood residents can organize to collectively advocate (and sometimes litigate⁴⁰) against problem property owners and work to attract new resources and reinvestment to their

³⁵ STONE & STOKER, *supra* note 6, at 13.

³⁶ *Id.* at 22.

³⁷ See *supra* notes 1-3; Alan Berube, Small and Midsized Legacy Communities: Trends, Assets, and Principles for Action, 20 (Nov. 2019) (noting long-standing patterns of segregation in legacy communities driven, in part, by public policy); Werner Troesken & Randall Walsh, *Collective Action, White Flight, and the Origins of Racial Zoning Laws*, 35 J. L. ECON. & ORG. 289, 294 (2019) (examining segregation trends in 27 cities that passed segregation ordinances between 1910 and 1917).

³⁸ Anika Singh Lemar, *Building Bridges and Breaking Down Walls: Taking Integration Seriously in CED Practice*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 207, 210 (2019) (residential segregation made it possible to allocate resources such as transportation networks, parks, libraries, quality schools, and employment opportunities to white neighborhoods and not to other neighborhoods; racial segregation facilitates unequal distribution of opportunity infrastructure); Kaplan & Valls, *supra* note 27, at 265-66 (segregation lead to differences in access to high quality educational opportunities, local financial institutions, health care resources, and other tangible neighborhood assets).

³⁹ VACANT AND PROBLEM PROPERTIES, at 172.

⁴⁰ See *infra* note 103.

neighborhoods from philanthropy, institutions, and developers. However, those strategies in isolation have not reversed the tide either. A coordinated effort among local government, neighborhood residents, and other stakeholders is required.⁴¹ In other words, coordination and cooperation are not optional components of effective vacancy solutions. Rather, they are foundational to everything else.⁴² Racism’s effects are barriers to the trust and shared vision foundational to the kind of coordination and cooperation needed for effective solutions.

II. Creating Conditions for Increased Trust and Shared Vision

The kind of coordinated and cooperative work necessary for effective solutions requires two foundational elements: trust and shared vision. In its role as a stakeholder, local government brings essential tools to the abandonment challenge. Importantly, however, it is not just a stakeholder. Because it also sets the “rules of the game”⁴³ governing local community development law and policy, it can set rules that acknowledge the racist roots of disinvestment and abandonment and create conditions for the racial healing needed to produce more trust and shared vision among stakeholders. In this way, rule-setting by local government is a mechanism

⁴¹ JOE SCHILLING & KERMIT LIND, STRATEGIC CODE ENFORCEMENT: A NEW MODEL FOR RECLAIMING VACANT PROPERTIES AND STABILIZING NEIGHBORHOODS 9 (2018) (emphasizing that an effective approach coordinates programs, policies, and cases among city departments and agencies and that those departments and agencies routinely collaborate with neighborhood associations, CDCs, and other nonprofits and community-based organizations); Barlow et al, *supra* note 28 at 380-84 (emphasizing that multisector partnerships are critical and explaining that vacancy progress in Memphis came “only as a result of a core cross-sector team that sincerely agreed on a path forward to address the longstanding problem of blighted property in [the] city, that trusted each other to be working toward the same commonly beneficial goals, and that stayed in regular communication with each other in formal and informal ways”); Lind, *supra* note 28, at 130 (most effective response is sustained collaboration between civic groups and public managers at the local community level).

⁴² In recognition of this reality, a multi-year effort to bring law and policy solutions to bear on the vacancy challenge in St. Louis has grown into what has come to be known as the St. Louis Vacancy Collaborative, a coalition of partners committed to the reduction of vacant property as a top priority in St. Louis. The Collaborative is a coalition of community representatives, private and non-profit stakeholders, and local government agencies. The Collaborative coordinates existing vacancy efforts under one umbrella and encourages the public and private sectors to work together toward solutions in a comprehensive and coordinated way. <https://www.stlvacancy.com/>

⁴³ See PETER DREIER ET AL., *supra* note 21, at 175 (using the phrase in the context of arguing state and federal law and policy make regional initiatives limited and difficult to sustain). Thanks to Professor Todd Swanstrom for helping me see the utility of this concept for this Article.

to create conditions where trust and shared vision become more likely.⁴⁴ Using restorative justice and remembrance principles as a guide, local government should add a “truth” element to existing development and demolition processes to acknowledge abandonment’s racist roots and make its historical context more publicly known. A public disclosure of this kind sets the stage for the racial healing that is a prerequisite to more trust and shared vision.

A. Foundational Restorative Justice and Remembrance Principles

Scholars, political actors, activists, and others have called for reckoning with historical racial injustice.⁴⁵ These calls encompass a range of ideas that can be roughly summarized as (1) truth and acknowledgment of harms, and (2) some kind of reparative action or amends (collectively referred to here as “Reparations”).⁴⁶ As many of these calls for action recognize,

⁴⁴ Notably, without shared vision and power, fear and distrust are likely to be the logical responses to any proposed development or demolition decisions. When residents lack power, distrust becomes the dominant narrative. Alan Mallach relates the following story:

My friend Paul Brophy, one of the wisest thinkers about [gentrification] issues I know, taught a graduate seminar at Washington University in St. Louis a few years ago and told me a story that captures this better than anything else I can think of. A young African American student in the class was clearly unhappy with much of his presentation; finally, he made his point directly. “Listen, professor,” he said. “When you talk about gentrification, you talk about numbers, about incomes and house prices and such. When *we* talk about gentrification, it’s about powerlessness.”

ALAN MALLACH, *THE DIVIDED CITY: POVERTY AND PROSPERITY IN URBAN AMERICA* 120 (2018)

⁴⁵ These injustices largely focus on slavery, housing discrimination, and employment discrimination. *See, e.g.*, Brian G. Gilmore and Hannah D. Adams, *The Case for a Reparations Clinic: A Proposal for Investigation, Documentation, and Remediation of Historic Housing Discrimination Through the Law School Clinic Model*, 2018 MICH. ST. L. REV. 1309 (2018) (Jim Crow era injustices and slavery); Kaplan & Valls, *supra* note 27, at 255 (housing discrimination); Brian Gilmore, *Home is Where the Hatred Is: A Proposal for Federal Housing Administration Truth and Reconciliation Commission*, 10 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 249 (2010) (discriminatory housing policies).

⁴⁶ *See, e.g.*, Eric A. Posner and Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689 (2003) (defining reparations narrowly); Alfred Brophy, *Reconsidering Reparations*, 81 IND. L. J. 811 (2006) (defining reparations broadly); Association of American Colleges and Universities, *Planning the Transformation, Truth, Racial Healing & Transformation*, Fall 2016 (v102, n4) (any US model should emphasize transformation rather than reconciliation); HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* 274 (2005) (transformative justice more appropriate than restorative justice because what is needed is an effort to go forward to a new reality and not back to something that existed before); Martin Luther King, Jr., *Facing the Challenge of a New Age*, in *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 14, 22 (1963) (using the term redemption); ROY BROOKS, *ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS* 142 (2004) (using the term atonement and defining it to include apology and restitution); RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2000); CARNEGIE COUNCIL FOR ETHICS IN INTERNATIONAL AFFAIRS, *EXAMINING THE POTENTIAL FOR AN AMERICAN TRUTH AND RECONCILIATION COMMISSION* (February 2015); DONALD SHRIVER, *HONEST PATRIOTS: LOVING A COUNTRY ENOUGH TO REMEMBER*

the current status quo of distrust and open racial wounds is not cost-free.⁴⁷ The concept of Reparations is built on restorative justice, which is centered in the idea that those with a stake in an offense engage in a collective effort to put things as right as possible.⁴⁸ It is generally recognized as having three core concepts: (1) focus on the harms done⁴⁹ to those who have been victimized, to those who caused the harm (whether individuals or systems),⁵⁰ and to the community (and repair relationships to the degree possible);⁵¹ (2) harms result in obligations, and so accountability and responsibility are essential;⁵² and (3) because connection and engagement are foundational to healing, everyone impacted by the harm has a role to play in deciding what justice and healing require.⁵³ It is designed to acknowledge past harms,⁵⁴ understand its present impacts,⁵⁵ and engage stakeholders in creative problem-solving and making amends.⁵⁶ It views

ITS MISDEEDS (2008); CENTER FOR JUSTICE AND PEACEBUILDING, EASTERN MENNONITE UNIVERSITY, TRANSFORMING HISTORICAL HARMS (2019). The Reparations that have occurred in the US to date have occurred at the state and local levels. See, e.g., Racial Equity Tools <https://www.racialequitytools.org/resources/act/strategies/racial-reconciliation> (last visited Jan. 25, 2022) (cataloging numerous Reparations efforts and resources); City of Providence, Mayor Jorge Elorza Announces Truth-Telling, Reconciliation and Municipal Reparations Process (2020); Joel Burgess, *In historic move, North Carolina city approves reparations for Black residents*, USA Today (July 15, 2020) (Asheville, NC); Greensboro Truth and Reconciliation Commission [hereinafter Greensboro TRC] <https://greensborotrc.org> (last visited Jan. 25, 2022); City of Long Beach, Racial Equity and Reconciliation Initiative: Initial Report (2020); Valerie Vande Panne, *What Truth and Reconciliation Looks Like in Practice*, Next City (Nov 2, 2020) (Boston, Philadelphia, San Francisco, Asheville, and Maine); Maryland Lynching Truth and Reconciliation Commission <https://msa.maryland.gov/lynching-truth-reconciliation> (last visited Jan. 25, 2022); 1921 Tulsa Race Massacre Centennial Commission <https://www.tulsa2021.org> (last visited Jan. 25, 2022).

⁴⁷ Gilmore, *supra* note 45, at 278 (to not address the problem means we “accept an unequal society well into the future with all the difficulties such an unequal society imposes upon us all”); IMAMU AMIRI BARAKA, *THE ESSENCE OF REPARATION: AFRO-AMERICAN SELF-DETERMINATION & REVOLUTIONARY DEMOCRATIC STRUGGLE IN THE UNITED STATES OF AMERICA* 21 (2003).

⁴⁸ HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (2002).

⁴⁹ These harms may be historic ones that have continued to be perpetuated across generations. See THOMAS N. DEWOLFE & JODIE GEDDES, *THE LITTLE BOOK OF RACIAL HEALING* 20 (2019).

⁵⁰ *Id.* at 17-18.

⁵¹ *Id.* at 17.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ An understanding of past harms and their present impact emerges through research, acknowledgment, and the sharing of personal, community, and national histories of race. See *id.* at 21.

⁵⁵ Brophy, *supra* note 46, at 835.

⁵⁶ Michael F. Blevins, *Restorative Justice, Slavery, and the American Soul: A Policy-oriented Intercultural Human Rights Approach to the Question of Reparations*, 31 T. MARSHALL L. REV. 253, 291-92 (2006).

confronting and reckoning with the past as foundational to a transition from the resentment and tensions associated with that past.⁵⁷ Perhaps the most powerful aspect of Reparations in the context of the disinvestment and abandonment that define many legacy cities is its potential to create space for dialogue, provide opportunity for more shared understanding, and move public sentiment. That is, it can engender new forms of community-building⁵⁸ and localized solutions that disrupt the status quo.⁵⁹ As a communicative act,⁶⁰ Reparations can help participants talk to each other rather than past each other,⁶¹ create a fuller picture of the harm in context,⁶² build a foundation for more productive working relationships,⁶³ and reveal the injustice that otherwise tends to remain hidden in a way that brings a greater sense of urgency.⁶⁴ Importantly,

⁵⁷ *What is Truth and Reconciliation*, GREENSBORO TRC https://greensborotrc.org/truth_reconciliation.php (last accessed Jan. 25, 2022); Joshua Inwood, *The Politics of Being Sorry*, 13 SOC. & CULTURAL GEOGRAPHY 607, 14 (2012) (while retributive justice focuses on narrow definitions of guilt and innocence that apply to specific acts and the agency of those involved, restorative justice broadens the scale of injustice to include social, political, and economic conditions that are implicated in continuing racism and inequalities); RACE FORWARD, BUILDING THE WE: HEALING-INFORMED GOVERNING FOR RACIAL EQUITY IN SALINAS 33 (2016) (communities of color, who often hold historical trauma from decades of racially unjust government policies, need to have that truth recognized to move forward together); ERIC YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA Chapter 2 (emphasizing the need to “face[] ourselves and one another”); SHRIVER, *supra* note 46, at 260 (two ways to go after harm: retreat into memory and nourish mutual hostility with plans for reprisal or search together for new ways of living together that do not repeat the past).

⁵⁸ Thalia Gonzalez, *Reorienting Restorative Justice: Initiating a new Dialogue of Rights Consciousness, Community Empowerment and Politicization*, 16 CARDOZO J. CONFLICT RESOL. 457, 473 (2015).

⁵⁹ *Id.* at 468 (restorative justice challenges power); 474-75 (describing restorative justice initiative in South Africa that de-emphasized specific outcomes and focused on empowering people to understand their own capacity to seek a solution); 461-62 (restorative justice brings the “potential to reorient, restore, and redefine power” and can create structures and networks essential to larger mobilization by exposing marginalized people to the strength of collective power to find new reality).

⁶⁰ *Id.* at 460. See also Patryk Labuda, *Racial Reconciliation in Mississippi: An Evaluation of the Proposal to Establish a Truth and Reconciliation Commission*, 27 HARV. J. RACIAL & ETHNIC JUST. 1, 42 (knowledge itself is a form of restorative justice).

⁶¹ Eric Miller, *Reconceiving Reparations*, 24 B. C. Third World L. J. 45, 52 (“too much of the discussion of race in America and elsewhere is characterized by the various participants shouting past, rather than talking to, each other”).

⁶² Gonzalez, *supra* note 58, at 464-65; Brophy, *supra* note 46, at 839 (reframe collective memory to more fully incorporate those who have been excluded and to have a history that is fair to them).

⁶³ YAMAMOTO, *supra* note 57, at 7-12. See also Tera Lynn McIntosh, *Show and Tell: Using Restorative Practices and Asset Based Community Development to Address Issues of Safety and Violence* (2012) (Ph.D. dissertation, Antioch University) (using restorative practices helps increase social fabric within a community to address safety and violence); Panne, *supra* note 46 (truth and reconciliation process essential because understanding and coming to terms with the history of removal of native children was foundational to a productive working relationship).

⁶⁴ DEWOLFE & GEDDES, *supra* note 49, at 23; Regina Munch, *Worship of a False God: An Interview with Bryan Massingale*, JULY/AUGUST COMMONWEAL MAGAZINE (2020) (referencing Thomas Aquinas’s view of anger as the

Reparations may have the best chance of success when done publicly⁶⁵ and led by the local community.⁶⁶

The conceptually related ideas of “remembrance” and “enduring injustice” provide additional instructive principles. While traditional legal theory and practice encompass certain ideas about what justice requires (e.g., perpetrators should be punished and remorseful, victims ought to be made whole as far as it is possible),⁶⁷ historical injustice is a challenge in this paradigm because some or all of the perpetrators and original victims are dead.⁶⁸ Nevertheless, “memories of the injustice linger, and harmful effects are often visited on descendants of the victims.”⁶⁹ Moreover, such injustices often “were made possible by the laws and practices of a society . . . [and] were endorsed by the attitudes and prejudices of many citizens,” all of which raise questions about responsibility, harm, and duties.⁷⁰ A historical injustice is an “enduring injustice” if it “has not been remedied[,] it continues today in some form, and it seems that

passion that moves the will to justice and commenting that lack of critical mass of white Americans who are angry about the situation allows status quo to continue). See also DESIGN IMPACT, PEOPLE’S HISTORY TOOL (2021) https://d-impact.org/wp-content/uploads/2021/04/people_history_worksheet_d1.pdf (activity to create and explore timeline of historic laws that directly changed racial demographics of neighborhoods as basis for conversation about ways policies and practices reinforce racial inequality).

⁶⁵ See, e.g., Gonzalez, *supra* note 58, at 468 (when experienced in a public way, restorative justice can function as a definitional drama that reintegrates aggrieved social groups into the community); Marshall Ganz, *Public Narrative, Collective Action, and Power*, in ACCOUNTABILITY THROUGH PUBLIC OPINION: FROM INERTIA TO PUBLIC ACTION 273-289 (eds. Sina Odugbemi & Taeku Lee, 2011) (through public narrative, participants can move to action by mobilizing, constructing new shared identities, and finding courage to act).

⁶⁶ See CARNEGIE COUNCIL, *supra* note 46 (single reconciliation process that encompasses entire US may be placing too much faith in top-down model; better to allow multiple reconciliation processes to occur tailored by local people); LISA MAGARRELL & BLAZ GUTIERRE FOR THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, LESSONS IN TRUTH-SEEKING: INTERNATIONAL EXPERIENCES INFORMING UNITED STATES INITIATIVES 26 (2006) (skepticism about state-sponsored efforts, particularly in places like the US); TRUTH, RACIAL HEALING & TRANSFORMATION, *Design Team Recommendations*, W.K. KELLOGG FOUNDATION 39 (2016) (community members need to decide themselves what they will be doing and how to best do it given local politics and circumstances and history); *but see* MAGARRELL & GUTIERRE, *supra*, at 27-28 (2006) (cautioning that local community can be repressive, discriminatory, and divisive).

⁶⁷ HISTORICAL JUSTICE AND MEMORY 10 (Klaus Neumann & Janna Thompson eds., 2015).

⁶⁸ *Id.*

⁶⁹ *Id.*; see also JEFF SPINNER-HALEV, ENDURING INJUSTICE 56-57 (2012).

⁷⁰ HISTORICAL JUSTICE AND MEMORY, *supra* note 67, at 11.

without a change in policies, it will continue into the future.”⁷¹ Remembrance both makes possible the duty owed to those harmed and can be an end in itself as a form of restorative justice.⁷² The former is a practical point—without the memory of the historical injustice, the obligations arising out of that injustice would be forgotten and reparative action never accomplished or perhaps even attempted.⁷³ The latter provides a path to harm mitigation and the prevention of a recurrence of the injustice.⁷⁴

Thus, while past injustices of discriminatory housing policies and community development practices may have dissipated from the larger public’s collective memory, historical injustices often remain in the memory of the people and communities affected by them.⁷⁵ Although the harms to these communities are visible (i.e., abandoned properties and disinvested physical spaces), less visible is the “effect of a group’s history on identity and individual development” that likely “play[s] a role in how present members understand themselves and their place in the world.”⁷⁶ The pattern of injustice often leads to a problem of trust, making it less likely that these communities trust local government and related institutions.⁷⁷ Moreover, the ability of these communities to utilize the resources offered by local government is “often

⁷¹ SPINNER-HALEV, *supra* note 69, at 64.

⁷² Jeffrey Blustein, *How the Past Matters: On the Foundations of an Ethics of Remembrance*, in HISTORICAL JUSTICE AND MEMORY 76-77 (2015). *See also* HISTORICAL JUSTICE AND MEMORY, *supra* note 68, at 15 (“truth telling can itself be a form of reparation... injustices... damage moral relationships in a community by undermining trust and by destroying normative expectations and hopefulness in relations with others”).

⁷³ Blustein, *supra* note 72, at 77.

⁷⁴ *Id.* at 79.

⁷⁵ HISTORICAL JUSTICE AND MEMORY, *supra* note 67, at 6 (“In movements for historical justice, memory plays a key role. Even in cases where injustices have vanished from public memory . . . memories of injustice often continue to fester among victims and their families and then resurface in the public realm.”).

⁷⁶ Janna Thompson, *Reparative Claims and Theories of Justice*, in HISTORICAL JUSTICE AND MEMORY 50 (2015).

⁷⁷ *Id.* at 57. *See also* SPINNER-HALEV, *supra* note 69, at 75 (failure of state to effectively deal with discrimination and ensure equal treatment creates secondary issue that victimized group will mistrust government; groups mistrust government for what it has done in the past and because they have little reason to think present and future will be different and reasons for mistrust are passed down from one generation to the next); *see also id.*, at 12 (pattern of past and current injustice often leads to problem of trust).

undermined by . . . a history of reduced expectations and discouragement.”⁷⁸ As a result, reparative actions alone will be inadequate without the corresponding truth and acknowledgement of these historical injustices.⁷⁹

B. Using Development and Demolition Processes to Trigger Truth

Restorative justice and remembrance principles help us understand that, while there is no way to undo the historical harm to individuals and the community resulting from the racist roots of disinvestment and abandonment, communities affected by those racist roots can still take meaningful steps toward racial healing.⁸⁰ Local development and demolition law, policy, and practice provide opportunities to develop processes traditionally concerned only with regulating physical space into ones that also trigger “truth.” As part of the consideration of any development proposal or demolition request, a local government should provide a public

⁷⁸ *Thompson, supra* note 76, at 50.

⁷⁹ See SPINNER-HALEV, *supra* note 69, at 77 (lack of trust is obstacle to overcome when devising ways to end the enduring injustice; working to repair the wounded relationship is also often necessary); *id.* at 20 (acknowledgment should be the goal, and such acknowledgments should reveal complexities and note the difficulty of resolving the enduring injustice; some trade-offs and compromises will be needed to try to end the enduring injustice).

⁸⁰ Two very different examples—one from Chicago and one from Mississippi—help to illustrate this point. First, as required by a Chicago ordinance requiring companies doing business with the city to disclose connections to slavery (one of several “slavery disclosure laws” enacted in the US starting in the early 2000s), J.P. Morgan Chase disclosed it had no connections to slavery. When challenged, a subsequent investigation (by historians hired by J.P. Morgan Chase) led to it apologizing for the actions of two of its predecessors that accepted thousands of enslaved people as collateral and took ownership of some of them when loans went into default. The bank also pledged \$5 million for college scholarships for Black students from Louisiana. J.P. Morgan Says Two Precursor Banks Held Slaves, *Los Angeles Times*, <https://www.latimes.com/archives/la-xpm-2005-jan-21-na-slavery21-story.html> (last accessed Jan. 30, 2022). The ordinance led to uncovering historical information that then led to action. For an analysis of slavery disclosure laws, see Jason Levy, *Slavery Disclosure Laws: For Financial Reparations or for Telling the Truth*, 2009 COLUM. BUS. L. REV. 468 (2009). Second, to make the history of racial terror lynchings in the US more visible, the Equal Justice Initiative (EJI) uses physical monuments at its National Memorial for Peace and Justice in Alabama to identify the more than 800 counties implicated in such lynchings. Part of the initiative includes inviting those same counties to erect local historical markers to build up a consciousness around the legacy of lynching. EQUAL JUSTICE INITIATIVE, <https://museumandmemorial.eji.org/memorial> (last visit Jan. 25, 2022). In the case of a local historical marker in Lafayette County, Mississippi, participants described how the process of placing the marker in a specific place in their specific community initiated dialogue and represented a first step toward healing. Cristina Carreon, *Lafayette County recognizes history of racial violence, lynching memorial marks first of seven*, DAILY JOURNAL (2018). EJI’s “disclosure” in the form of a monument invited Lafayette County to acknowledge past racial injustice as a step toward healing. See also SPINNER-HALEV, *supra* note 69, at 81 (justice does not mean people or communities take responsibility for the past but that political communities take responsibility for the present and future by working to undo current injustices).

disclosure aimed at giving basic information about the property’s history. While the contents of the disclosure should be tailored to the local context, its basic elements could include (1) ownership history, (2) any racially restrictive covenants or zoning designations based on race associated with the property, (3) historical racial demographics of the neighborhood and region, (4) the lending and appraisal practices that have affected the property, and (5) a concise summary of (1)-(4) limited to no more than 800 words. The entire disclosure (including research methods and sources) should be displayed on a public website.⁸¹ The concise summary should be displayed at the property itself, provided in any public notices associated with the development or demolition decision, and presented at any public meetings associated with the process.

This kind of public disclosure serves several purposes. The disclosure is itself a public form of truth and acknowledgment of the historical injustices that undergird current patterns of disinvestment and abandonment. It increases the likelihood that information previously known only to those who have reasons to know it or who have made learning and understanding it a priority becomes more widely known, disrupting the status quo.⁸² Truth, dialogue, and a shared understanding create space for stakeholders to decide what to do with history and how to shape future actions in ways that address the past.⁸³ While the disclosure itself is “a reminder of the truth of the past and how it bears on the present,” it is also “a challenge that calls us to act in

⁸¹ To increase the likelihood that future end-users of the property will also have more exposure to the information, the local government could also permanently link the disclosure to the assessor’s tax records or enact an ordinance requiring that it be provided by a transferor each time the property’s ownership changes hands.

⁸² Without this kind of prompting, such truth is likely to continue to be easily ignored. *See, e.g.*, LISA MAGARRELL & BLAZ GUTIERRE *supra* note 66, at 2 (privileged, empowered members of a community generally comfortable with status quo and may have no interest in a truth-seeking effort).

⁸³ *See* Eric Miller, *supra* note 61, at 73 (community needs to explore what to do in the face of a history of discrimination and who bears responsibility for redeeming past and consequences of failing to address it); *About the Commission*, GREENSBORO TRC https://greensborotrc.org/about_the_commission.php (last accessed Jan. 25, 2022) (amplify multiple voices, perspectives and experiences of events and create depth of historical understanding within community based in contextual analysis and self-examination).

recognition of that past and its legacy in our present life.”⁸⁴ While the public disclosure recommended here represents only a first step in racial healing⁸⁵ and is narrowly tailored to deal only with disinvestment’s most direct racist roots, it is a powerful and simple tool that can create conditions for dialogue⁸⁶ and action in response to new understanding. Moreover, it can help generate the public sentiment needed for increased local consciousness on racial division and inequity⁸⁷ and for the will to take seriously racism’s threat to the stability and economic viability of neighborhoods.⁸⁸

Further, making the information an explicit part of regular development processes invites conversation and negotiation that may itself prompt self-initiated reparative action. In other words, a public disclosure not only makes a property’s historical context more visible and

⁸⁴ Howard J. Vogel, *Healing the Trauma of America’s Past: Restorative Justice, Honest Patriotism, and the Legacy of Ethnic Cleansing*, 55 BUFFALO L. REV. 981, 1042, 1045 (2007) (truth and dialogue process that leads to action demonstrates serious intent).

⁸⁵ Such a disclosure is not a panacea. See, e.g., Inwood, *supra* note 57, at 613 (restorative justice cannot immediately undo decades of tension and exclusion); DEWOLFE & GEDDES, *supra* note 49, at 40 (outcome of truth-telling efforts is unpredictable and may not result in apologies, forgiveness, or reconciliation); MAGARRELL & GUTIERRE, *supra* note 66 (truth-recovery processes can, but do not always, lead to more inclusion in participatory democracy and social justice); Barry Yeoman, *Healing Racial Fault Lines*, MINDFUL <https://www.mindful.org/healing-racial-fault-lines> (last accessed Jan. 25, 2022) (progress is slow, even at the local level); HISTORICAL JUSTICE AND MEMORY *supra* note 67, at 21 (memory can exacerbate divisions and turn into competition in victimhood).

⁸⁶ Spending time on truth, dialogue, and shared understanding are foundational for any effort to make amends. See, e.g., Eric Miller, *supra* note 61, at 47 (reparations requires exploration of hurt and rejection and strategies to restore and repair the damage done, together); SOUTHERN TRUTH AND RECONCILIATION <https://southerntruth.net/programs> (last accessed Jan. 25, 2022); Panne, *supra* note 43 (first focus and priority needed to be truth); Ezra Klein, *Bryan Stevenson on How America Can Heal*, VOX <https://www.vox.com/21327742/bryan-stevenson-the-ezra-klein-show-america-slavery-healing-racism-george-floyd-protests> (last accessed Jan. 25, 2022) (“[Y]ou have to commit to truth-telling first. You can’t jump to reconciliation. You can’t jump to reparation or restoration until you tell the truth. Until you know the nature of the injuries, you can’t actually speak to the kind of remedies that are going to be necessary.”); Vogel, *supra* note 84, at 1025 (“To demand or rush to forgiveness and reconciliation . . . is likely to cover up and cast off the past without any needed reparation essential to the construction of a basis for trust between the groups of people involved.”).

⁸⁷ Gail C. Christopher, *Truth, Racial Healing, and Transformation: Creating Public Sentiment*, NATIONAL CIVIC REVIEW 12 (2017); *Implementation Guide*, GREENSBORO TRC 19 (prerequisite to effective and enduring effort to achieve racial equity and healing is full and accurate knowledge of the role racism has played in the evolution of communities; residents must be aware of this history to confront it and understand its relevance to contemporary issues); Brophy, *supra* note 46, at 36-37 (truth commissions and apologies are important because they involve how history is viewed, which has significant consequences for subsequent action and current behavior).

⁸⁸ Christopher, *supra* note 87, at 12.

concrete, but, perhaps more importantly, provides a foundation for dialogue, education, advocacy, and reparative action. A neighborhood is “both a totality in itself and . . . part of a larger totality,”⁸⁹ and development choices should recognize underlying structural reasons for present-day realities.⁹⁰ Understanding a property’s story (i.e., its history and context) can help us move beyond seeing a neighborhood’s particular challenge as internally driven and remediable to one that is influenced by systemic inequities.⁹¹ This kind of deeper understanding can help break through market-based stereotypes equating individuals’ worth and entitlement with the market value of their neighborhood.⁹² Without knowledge of why a neighborhood looks and feels the way it does, it is too easy to assume that any physical decline is directly attributable to the neighborhood’s current occupants. Purposefully linking the past to the present helps us see the built environment in new ways and to question it,⁹³ enabling us to turn away from the false view of segregation and racist resource allocation as benign or inevitable.⁹⁴ In addition, while the recommended disclosure itself is limited in scope, its existence could form the basis for further

⁸⁹ Audrey McFarlane, *Race, Space, and Place*, 36 SAN DIEGO L. REV. 295, 300-01 (1999).

⁹⁰ *Id.* at 301 (must look at the concepts, history, and purposes associated with development and the specific community); *id.* at 352-54 (development processes must recognize underlying structural reasons for depressed economic and social conditions tainted by racism and evolve to disregard unspoken demarcation lines between affluent and poor in ways that do not continue to either isolate poor communities or effectively eliminate them through gentrification).

⁹¹ *Id.* at 342; Audrey McFarlane, *When Inclusion Leads to Exclusion*, 66 BROOKLYN L. REV. 861, 924 (cautioning not to view neighborhood’s problems as internally driven); see also KIRWAN INSTITUTE FOR THE STUDY OF RACE AND ETHNICITY, *Metropolitan and Neighborhood Change* <https://kirwaninstitute.osu.edu/metropolitan-neighborhood-change> (last accessed Jan. 25, 2022) (lectures and tours designed to help create common understanding of historical development of Columbus, Ohio).

⁹² See Stone and Stoker, *supra* note 6, at 230. It might make it more difficult to see residents of distressed neighborhoods as “beyond the bounds of common concern and social obligation, as entitled to only token gestures at most.” *Id.*

⁹³ TRUTH, RACIAL HEALING & TRANSFORMATION, *supra* note 66, at 31.

⁹⁴ *Id.*; DEWOLFE & GEDDES, *supra* note 49, at 22 (“People so often ignore or excuse historic harms committed in their community, taking resulting present-day circumstances for granted. *It’s just the way things are or always have been.*”); JOE R. FEAGIN, RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS, at ix-xiv, 135-52; RACE FORWARD, *supra* note 57, at 33 (racial inequity accumulates in all types of government services, from policing to budgeting).

research and inquiry by neighborhood residents and other stakeholders, leading to relationship-building⁹⁵ and increased self-determination.⁹⁶

To ensure local government has the resources necessary to produce such disclosures, it should identify a sustainable funding stream to support the research and data distribution necessary to carry out its obligations. Local government should also be permitted to use consultants or other outside experts to help produce the disclosure and find ways to create production and distribution efficiencies.⁹⁷ While many of the racist roots of disinvestment and abandonment can be traced to state and federal government agencies and actors, this proposal centers on the role local government can play—not because local government is any more culpable than state or federal actors, but because local government alone has the unique ability to shape a disclosure process informed by local needs and conditions.⁹⁸

III. Self-initiated Reparative Action That Could Follow

Many community development proposals are focused on actions intended to repair the harm that flows from the kinds of racist roots described in Part I. While the public disclosure

⁹⁵ See Eric Miller, *supra* note 61, at 46 (encouraging reparations more in the style of “conversation” than “confrontation” because, if presented purely as confrontation, creates disabling political and ethical problems and alienates large numbers of potential allies).

⁹⁶ *Id.* at 78 (reparations provide opportunity for fractured communities to reconstruct themselves through forward-looking act designed to overcome past inequity); McIntosh, *supra* note 63, at 130 (using restorative practices of study circles led to formation of new relationships, laying foundation for further addressing other neighborhood issues).

⁹⁷ For example, researchers have worked to map the location of racially restrictive covenants in some places. The disclosure could incorporate and build upon this already existing research. See, e.g., *Mapping Segregation in Iowa*, UNIVERSITY OF IOWA <https://dsps.lib.uiowa.edu/mappingsegregationia/10-2/> (last visited Jan. 25, 2022). Moreover, local history museums, historical societies, recorders of deeds, title companies, and community members with GIS or data experience could also be natural partners.

⁹⁸ To be clear, state and federal agencies can (and should) also create conditions for racial healing. Ultimately, this Article’s proposal is not enough. Abandonment and disinvestment have regional historic contexts and, like many community development issues, cry out for a regional approach. See generally, Dreier, *supra* note 21, Chapter 6 (where people live has powerful effect on choices and capacity to achieve high quality of life; difficult for central cities by themselves to solve problems generated by larger regional dynamics and regional approach is needed). Unfortunately, a local government has no power, on its own, to address the fact that there are many majority-white communities (i.e., those to which the white flight migrants fled) that are thriving at the expense of disinvested spaces or to impose accountability on those outside its jurisdiction who contributed to the problem.

proposed in Part II lays the groundwork for reparative action, it does not mandate or necessarily lead to such action.⁹⁹ Rather, it focuses on the first step of “truth,” with the goal of dialogue, conversation, understanding, negotiation, and making relevant history harder to ignore. It recognizes acknowledgment as the first step to racial healing that could then prompt creative and localized reparative actions. A public disclosure lays the groundwork for stakeholders (e.g., institutions, developers, property owners, philanthropy, local government¹⁰⁰) to bargain, negotiate, and compromise in ways that help rebuild trust.¹⁰¹ Reparative actions attempt to respond to the present-day consequences of past injustice and are the major second step in a Reparations process. A public disclosure could prompt self-initiated reparative action by a stakeholder, whether self-motivated or motivated by pressure from one or more other stakeholders. For example, the public disclosure process could put pressure on—and increase the motivation of—bad actors to stop perpetuating harm to the neighborhood. It could also catalyze a greater degree of neighborhood organizing, a prerequisite to the effective cooperation and shared vision needed in the modern community development system.¹⁰² Moreover, in

⁹⁹ In fact, truth and acknowledgment do not always lead to more peace or trust. *See supra* note 85.

¹⁰⁰ This Article is limited to a local government context. There are, of course, additional reparative actions that the state and federal governments can take. *See, e.g.,* COMMUNITY CHANGE NEW DEAL FOR HOUSING JUSTICE: A HOUSING PLAYBOOK FOR THE NEW ADMINISTRATION (2021) (multiple recommendations for federal government action).

¹⁰¹ JOHN TORPEY, POLITICS AND THE PAST (“While the term ‘reconciliation’ is bandied about in many of the discussions of coming to terms with the past, perhaps the best that can be said about it is that previously divided groups will come to agree on a mutually satisfactory narrative of what they have been through, opening the way to a common future. With luck, what they do with that future will be a matter of bargaining, negotiation, and compromise—the mundane business of politics.”).

¹⁰² Community associations (i.e., “voluntary organizations composed of and led by residents and other stakeholders, including churches, businesses, and other nonprofits, of a geographically defined area”) that serve as an intermediary between residents and other stakeholders, such as local government and philanthropy, are a way for neighborhoods to have a seat at the community development table. *See* Robin Jacobs, *Building Capacity Through Community Lawyering*, J. AFF. HOUS. & CMTY. DEV. L. 30, 30 n2, 38 (2015); Michael Diamond, *Community Economic Development*, 8 J. SMALL & EMERGING BUS. L. 151, 170 (community organizing and capacity building can lead to greater and more balanced interaction with local government and outside institutions and can result in more political influence); K. Sabeel Rahman, *Balancing Political Power: Community Economic Development and Institutional Design*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 497 (2019) (at systems level, inequitable development is rooted in disparities of political power between communities and developers and between

situations where the problem property owner is an heir who became the owner by operation of law, the disclosure could prompt more effective owner engagement and creative solutions by helping stakeholders acknowledge ways such heirs have been impacted by law and policy choices.¹⁰³

The disclosure could prompt other kinds of reparative actions, including physical markers, neighborhood monuments, public art installations, grief gardens, museum exhibits, street names, and legal actions to officially nullify racially restrictive covenants,¹⁰⁴ all of which can all help foster collective understanding and memory.¹⁰⁵ In addition, committing financial

communities and city officials; disparities are especially stark in the context of urban planning and development decisions). Moreover, in some jurisdictions, they are a vehicle through which neighborhoods can achieve vacancy reduction goals by using nuisance litigation tools as leverage with problem property owners. See Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L., 133 (2016) (cataloging vacant property receivership laws in the US); Robin Jacobs, *supra*, at 32 (community lawyers working with communities struggling with vacant properties to use receivership and nuisance law); Peter Hoffman, *Legal Aid of Western Missouri's Economic Development Project: Bringing Self-empowered Revitalization to Distressed Neighborhoods*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 403 (2016) (nuisance litigation tools to empower neighborhoods to address issue of vacancy in a community-focused way); *A Guide to Understanding and Addressing Vacant Property in the City of St. Louis* 22-27 <http://risestl.org/what-we-do/public-documents/vacancy-guide> (last accessed Jan. 26, 2022).

¹⁰³ These heirs have legal responsibility for—and emotional ties to—properties they often cannot maintain for a variety of reasons. See Barlow et al, *supra* note 28, at 368 (often the case that heir may become owner by operation of law even when property is a liability and not an asset). This kind of understanding and acknowledgment could, for example, prompt mediated solutions that could lessen the anger, bitterness, and distrust that often accompany a judicial process.

¹⁰⁴ See, e.g., Mo. Rev. Stat. 213.041 (process to delete racially restrictive covenants). While such covenants are no longer legally enforceable by operation of law, the additional symbolic act of affirmatively nullifying them can bring a measure of healing.

¹⁰⁵ See also SPINNER-HALEV, *supra* note 69, at 83 (robust acknowledgment of enduring injustices through museums and monuments is one way a government can show it is committed to a new path); Yamamoto, *supra* note 57, at 35 (public education commemorates, imparts lessons learned, generates new justice narrative about a democracy's commitment to civil and human rights); DEWOLFE & GEDDES, *supra* at 49, 36-37 (describing healing benefits of memorializing and contextualizing that which caused racial wounds as well as those that have contributed to justice, peace, and transformation; describing benefits of providing memorials as space for collective grief); SOUTHERN TRUTH AND RECONCILIATION *supra* note 86 (story-telling and oral histories, dialogue and focus groups, public education and curriculum development, memorial events, and arts performances); COMING TO THE TABLE, REPARATIONS: THE TIME IS NOW! 11-12 (2019) (community-level reparation responses to include collaborating with and supporting organizations devoted to history and providing support to writers, filmmakers, and other artists to address subject of racial justice, healing, and reconciliation); THE WINTER INSTITUTE <https://www.winterinstitute.org/community-building/partners> (last visited Jan. 26, 2022) (public ceremonies, oral history projects, historical markers, history); Bridjes O'Neil, *Justice Fleet Awarded \$23K Grant to Launch Community Grief Garden*, SAINT LOUIS UNIVERSITY <https://www.slu.edu/news/2021/april/justice-fleet-grant.php> (last accessed Jan. 26, 2022) (using horticulture therapy and conservation, grief garden to serve as public green space for racial trauma healing).

resources to affordable housing set-asides in residential and commercial developments, programs that help residents acquire and remain in homes (e.g., homeownership programs, real estate tax relief, home repair programs),¹⁰⁶ physical infrastructure projects for historically disinvested areas, greenlining funds,¹⁰⁷ and other community reparative initiatives¹⁰⁸ are all ways of working toward making amends. Moreover, local government can modify existing policies and programs that have the effect of reinforcing existing patterns of segregation,¹⁰⁹ affirmatively further fair housing through zoning,¹¹⁰ and enact other policy reforms informed by a community's history (e.g., inclusionary zoning requirements, policies giving living descendants the opportunity to name or otherwise participate in decisions concerning development projects with public subsidy, community ownership strategies, requirements tied to development incentives that apply amends to an entire area).¹¹¹ Local governments can also institute training and policies for agency decision-makers and elected officials that foster greater inequity consciousness and more just

¹⁰⁶ See, e.g., N. CAMBRIA, P. FEHLER, J.Q. PURNELL, B. SCHMIDT, *SEGREGATION IN ST. LOUIS: DISMANTLING THE DIVIDE* (2018).

¹⁰⁷ See, e.g., *id.*

¹⁰⁸ See, e.g., Benjamin Appel & Cyanne E. Loyle, *To fight US racism, research prescribes a nationwide healing process*, GALE OPPOSING VIEWPOINTS ONLINE COLLECTION (funding for public spaces and hospitals and educational scholarships); THE WINTER INSTITUTE, *supra* note 105 (mentoring and tutoring programs, school curricula, scholarships, playgrounds, gardens, community center, community clean-ups); Sandra Moore, *Ferguson: Undoing the Damage of the Past—Creating Community Wealth*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 298 (2017) (building wealth through homeownership for those disproportionately economically disadvantaged by historic policies, procedures, and practices); Brophy, *supra* note 46, at 840 (proposing community development trust fund designed to repair specific past discrimination with specific remedial goals).

¹⁰⁹ See, e.g., Tim Iglesias, *Threading the Needle of Fair Housing Law in a Gentrifying City with a Legacy of Discrimination*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 64-65 (proposal to use community preferences to explicitly favor residents of color to restore level of demographic balance that existed prior to government-sponsored discrimination).

¹¹⁰ For example, Boston's local zoning code requires that development proposals for residential or mixed-use development undergoing large project review include (1) a narrative description of how the project will further the goal of reducing segregation, (2) an assessment of historical exclusion and displacement risk along with an affirmative fair housing marketing requirement, and (3) a description of measures to be taken to achieve affirmative fair housing goals, chosen from a menu of intervention options. See Memorandum in Furtherance of Amending Boston Zoning Code, BOSTON PLANNING AND DEVELOPMENT AGENCY <https://bpda.app.box.com/s/r59pn90sdmj5kfh5lm7kmr4rstnye9l6> (last accessed Jan. 26, 2022).

¹¹¹ For example, the development incentives could be tied to symbolic actions such as releasing (now unenforceable) racially restrictive covenants or to funding for local artists to tell the history of the community. It could be used to require ongoing monitoring and public disclosure of the racial demographics of the development area or a detailed history of the development area that includes racialized land use policies and migration patterns.

decision-making.¹¹² Moreover, they can ensure neighborhood residents have opportunities to participate in developing and carrying out a shared vision for their neighborhoods.¹¹³

IV. Conclusion

Because racist law and policy are at the root of the disinvestment and abandonment many legacy cities face, efforts to fix the problem without addressing the distrust and lack of neighborhood power engendered by historical context will tend to stall out. Local government, neighborhood residents, and other stakeholders must use their respective tools in coordinated and cooperative ways. Thus, effective solutions require a foundation of trust and a shared vision. Because local government is in the unique position of being both a stakeholder and the player with the power to set the rules of the game, it should use that power to create conditions that make such trust and shared vision more likely. Without these steps, the status quo of distrust and lack of a shared vision is likely to continue to undermine the effectiveness of efforts (however well intentioned) to meet the challenge. While local government cannot eliminate past historical injustices and is severely limited in its ability to push forward more effective regional solutions to these kinds of issues, it can create conditions for historical injustices to become more widely known and harder to ignore. At least within its own jurisdiction, it can create conditions for a greater degree of power sharing and accountability, essential elements of the trust and cooperation necessary to develop and carry out a shared vision. That trust and cooperation will

¹¹² See, e.g., Race Forward, *supra* note 57.

¹¹³ For example, local governments can allocate resources to support the robust community organizational infrastructure that can represent a collective neighborhood voice. Along with philanthropic partners, they can financially support capacity-building and ongoing operations as well as provide in-kind resources such as meeting spaces. See, e.g., *id.* at 32 (city governments should invest in community organizations as long-term strategy to build trust with residents, expanding participation); Robin Jacobs, *supra* note XX, at 53-4 (flexible funding for community associations needed to sustain operations over time). See also *supra* note 102.

ultimately make stakeholders' fight against the effects of disinvestment and abandonment more effective.