

# Sanitation Inequity and the Cumulative Effects of Racism in Colorblind Public Health Policies

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**ABSTRACT.** A majority of Lowndes County, Alabama, residents live without properly functioning, legal, basic sanitation infrastructure. We describe the contemporary racialization of sanitation inequality in the county. We trace structural dimensions of race in land tenure through the heir property system, housing availability, and public health enforcement. Our analysis shows how cumulative effects of colorblind policies overlain on explicitly racist foundations operate to establish public health sanitation law as a persistent mechanism of producing racial stratification.

## Introduction<sup>1</sup>

In 2002 Terrence and Sandra Fields<sup>2</sup> faced jail time for being in violation of the Alabama state health code on the sanitary handling of sewage. Their property, described by reporters as being a “compound,” consisted of roughly an acre of land, five trailers, and as many as 18 family members, including children. The Fields lived with a makeshift sewage handling system (referred to as “straight piping”) where a PVC pipe directed sewage from the homes into a ditch. From here, effluent flowed through the ditch and into a lagoon, roughly 100 yards away. For two and a half years the Fields found themselves in court in front of Judge Terri Bozeman, District Judge for Lowndes County. Judge Bozeman stated that she initially had sympathy for the family but when she learned that children lived on the property, her sympathy waned. Bozeman ordered the Fields to install a properly functioning, permitted septic system in 60 days or face jail time and eviction from the land that they owned. The Fields were told by the health department that a septic system that would meet the needs for all five homes on the property would cost between \$40,000–\$50,000. When

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60 days passed and no septic system had been installed, Terrence told the judge: “You can kill me, bury me, put me in jail. The situation is going to still be there when I get out.” The Fields were among 37 families that in early 2002 were identified by the Lowndes County Health Department as being in violation of the Code of Alabama, Section 022-026-001, and who were threatened with jail time for not having properly functioning septic systems on their property.

Today, the residents of Lowndes County, Alabama, are critically underserved by sanitation systems because of high rates of poverty and challenging soil conditions. Residents within 50 to 90 percent of households in Lowndes County live with failing or completely absent septic systems. To manage household sanitation many rely on buried 55-gallon drums as holding tanks, “straight piping,” open cesspools, or broken and leaking septic systems. When residents are too poor to install advanced treatment systems that cost thousands of dollars, typically in the range of \$15,000 to \$20,000 for a single home, they face eviction, fines up to \$500 per day, and arrest. This cost needs to be understood in relation to property values in the area. In Lowndes County, the median price of a house owned by black residents is \$45,400 (U.S. Census 2000), whereas the median value for mobile homes, regardless of race, is \$23,900 (U.S. Census 2016). In many cases, families live in trailers that cost less than \$10,000. The septic system can easily be more costly than the residence.

As well, a recent study found a startling prevalence of soil transmitted helminths, including hookworm, roundworm, and parasitic amoeba, in human fecal samples (McKenna et al. 2017). More than one-third of participants tested were found to be positive for microorganisms commonly associated with the poor sanitation conditions of low-income areas in developing countries.

Access to basic sanitation is recognized as an essential human right by the United Nations, falling under the Millennium Development Goal on Ensuring Environmental Sustainability. It was officially declared a distinct right by the U.N. General Assembly in 2015. Throughout impoverished rural areas in the United States, this is increasingly being recognized as a right denied. In this article, we consider the implications of sanitation denial in Lowndes County, Alabama. We show how a cumulative, enduring process of racially excluding populations in

Figure 1

The location of Lowndes County within the state of Alabama. It lies in the Black Belt, originally defined as a region of dark, fertile, chalky soils about 30 miles north to south, stretching across central Alabama and northeastern Mississippi. The term is also loosely applied to about 200 counties from

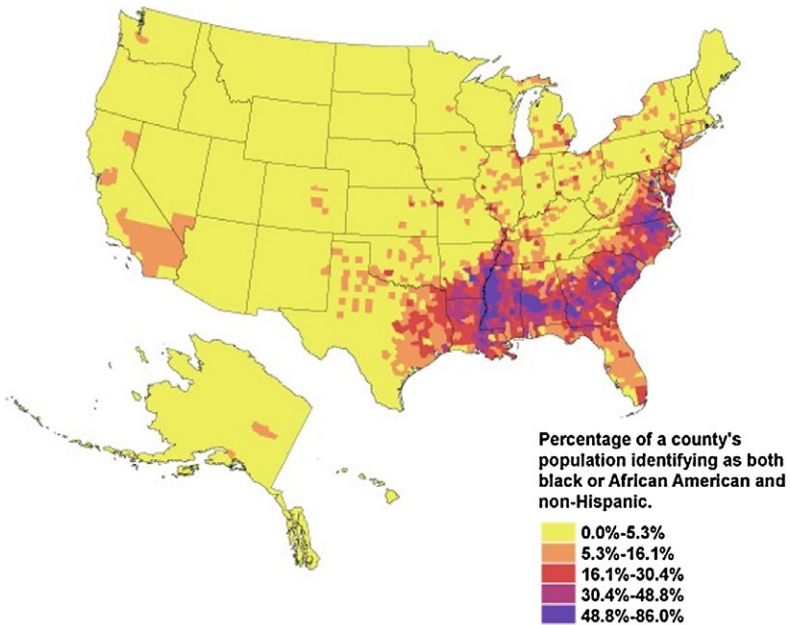
Virginia to Texas in lowland areas where cotton plantation economies dominated and in which blacks have comprised at least half the population. Lowndes County lies west of Montgomery County, where the state capital is located, and east of Dallas County, where Selma is located. As an historical note, the majority of the route for the 1965 voting rights march from Selma to Montgomery, led by Martin Luther King, Jr., crossed through Lowndes County. At that time, terrorist tactics by whites prevented any blacks from registering to vote in Lowndes County, even though blacks comprised 81 percent of the population (Cobb 2008).



Figure 2

This map shows that the South is still the region of the country with the largest number of counties in which African Americans are a high percentage of the population, a majority in some cases (the darkest purple regions).

That is especially true of the Mississippi Delta (in Arkansas, Louisiana, and northwestern Mississippi) and the Black Belt. High demographic rates for African Americans have not, however, translated into political or economic power due to enduring entrenchment of white racialized power structures. Such structures are often maintained through the promotion of selected black figures by white elites to diminish the appearance of racism. For more on this topic, see Hasan Jeffries (2010) on voting rights mobilization in Lowndes County. Source: [www.CensusScope.org](http://www.CensusScope.org). Social Science Data Analysis Network, University of Michigan. [www.ssdan.net](http://www.ssdan.net).



Lowndes County, in the contemporary context, manifests through the production of unsanitary subjects who are rendered susceptible to colorblind criminal policing.

### **Background**

Lowndes County falls within Alabama's Black Belt. The Black Belt is a region that stretches across the southeastern portion of the United States and is characterized by a dark, heavy, dense clay soil. This area today is associated with high rates of poverty, particularly in Alabama and Mississippi, in no small part because of the challenges that the soil presents for agriculture and drainage. The Black Belt is also associated with high percentages of black residents as the historic result of cotton-growing slave plantations formerly located in the region. At its peak population of 35,651 in 1900, approximately 87 percent of Lowndes County was black.

Lowndes' enduring legacy inverts the demographic trend for rural areas, where nationally more than 75 percent of rural residents identify as white (Housing Assistance Council 2012). Five-year average American Community Survey (U.S. Census 2017) population estimates indicate that the county currently has a population of a little over 10,000, with roughly 73 percent of residents identifying as black or African American alone and the remainder as white alone. Lowndes is generally a low-income and under-resourced county with the median household income being \$27,914 (compared with \$55,322 nationally). Roughly 30 percent of residents officially live in poverty (compared with 13 percent nationally). These statistics are misleading, however, as poverty within the county is strongly racialized. Estimated median household income for white households was \$52,604, whereas for black households it was \$21,686. Similarly, the reported poverty rate for white residents was 4 percent, compared with 37 percent of black residents.

While social inequality is not a modern experience, using race as a mechanism for marking people to order them hierarchically is more recent. This valuation of people served to justify and reinforce exploitative and oppressive actions that came about during colonization and European imperial rule. Michael Omi and Howard Winant (1994) proposed, with their theory of racial formation, that race is a concept that emerges through public and political discourse. Racial formation

is the process through which racial categories are constructed, experienced, and changed (Feagin and Elias 2013). The ways in which racial categories were constituted to support the expansion and development efforts during the colonial period provide an important example of racial formation.

The extraction of labor through slavery made possible the accumulation and concentration of wealth in the growth of the United States. It also established an enduring legacy of inequality that is most apparently manifest in the disparity between the wealth of white and black people (Guinier and Torres 2003; Oliver and Shapiro 1997). Wealth is accumulated and passed down generationally through families, allowing new opportunities for family members to build human, social, and economic capital. Due to historical, institutionalized discrimination, black people have accumulated disadvantages that make the accumulation of wealth extremely difficult. That condition cements African Americans to the bottom of the economic hierarchy as part of what Oliver and Shapiro (1997: 50) call the “sedimentation of racial inequality.”

While recognized as an issue of poverty, many public officials suggest that issues related to sanitation in Lowndes County are beyond race, as public health law is not written with explicitly racialized language, nor is there obviously racially motivated intent on the part of public health code enforcement in the county. They add that there are examples of both poor white and black residents who live with impaired sanitation conditions and that race is therefore not a relevant consideration in addressing solutions for the county. These suggestions represent a “colorblind” approach to public health policy around sanitation in Lowndes County, but being “colorblind” in this sense is not racially neutral.

Colorblindness is a set of ideologies that give a positive value to the making invisible of racial differences between people as part of a quest for equality of opportunity for all (Bonilla-Silva 2010). In effect, these ideologies seek to erase the long history of slavery, Jim Crow, and other manifestations of white supremacy in order to deny their current relevance. Within a colorblind perspective, any mention of race is interpreted as the speaker’s own discriminatory bias, even when discussing the impacts of historical legacies of racism and inequality. Bringing up race is seen as an antiquated practice, indicating an individual’s inability to move on from past slights that have no bearing on relationships and society today. By refusing to consider

how discrimination and racism have changed over time, those adopting a colorblind perspective help to uphold the white-dominated, unequal, discriminatory power structure that continues to exist.

Colorblindness ignores historical inequities between groups, institutionalized racism, and personal experiences based on race. People who embrace colorblindness see race as merely about skin color, believing that racism is an individual experience, detached from any larger structures of power (Guinier and Torres 2003). These perspectives recognize racism only when it comes in the form of name-calling, explicit vocalization of race-based motivations for violence, and documentable discrimination in hiring and housing. When race-based experiences are more subtle or at least made more invisible than these overt forms of racism, proponents of this perspective argue that racism is not present. By focusing on the outward forms of fairness and equality over historically conditioned inequity, colorblindness normalizes privilege and injustice (Guinier and Torres 2003).

Efforts to improve sanitation in Lowndes have focused on technical approaches and have yet been unable to identify broad and permanent solutions for the pervasive problem of failing septic systems across the county. To do so would require explicitly addressing historically racialized problems with substandard housing, lack of social and infrastructural support to meet basic healthcare and living needs, limited access to high-quality educational opportunities, and barriers to employment opportunities that are non-extractive and that add to the community. Instead of addressing systemic challenges, colorblind public health policies assign responsibility to individuals (households) for failing to meet expectations of proper healthy living conditions.

In an analysis of the ways in which discourse was racialized within the context of a cholera outbreak in Venezuela in 1992–1993, Briggs and Mantini-Briggs (2002) considered the ways in which colorblind public health policy was used to sediment stratification of cholera victims along racial lines. Through this work they introduced the concept of *sanitary citizenship* as a way of understanding the construction of moral subjectivities under a particular public health-care regime. They found that certain individuals were afforded rights and legitimacy within the system while others were judged as lacking the necessary medical understandings of the body, hygiene, health, and illness and were consequently excluded from decision-making processes about

how and where they would live. Briggs and Mantini-Briggs classified as “sanitary citizens” the first group of people, who possessed the necessary knowledge and resources to carry out the behaviors believed to be appropriate within the particular “modern” health-care system, whereas those who refused to or were not able to adopt a modern medical relationship to the body were deemed “unsanitary subjects” (Briggs and Mantini-Briggs 2002: 10). The conflation of cleanliness with racial purity (lack of race) and lack of cleanliness as dirty, immoral, and having race dates to the earliest attempts to impose living conditions and physical markers as signifiers of racial categories.

Jim Crow laws, passed in the late 1870s, formalized legal mechanisms for maintaining separation between blacks and whites. These laws, framed as “separate but equal,” legalized discrimination and enforced segregation of public institutions. When such laws were overturned or rescinded as a result of the civil rights movement, beginning in the 1950s, mechanisms of separation resulting in segregation were not eliminated but instead changed in form. Alexander (2010) has argued that colorblind policies layered on top of a legacy of racial discrimination serve the purpose of maintaining the institutions and structures that were in place when legal discrimination was allowed. She points to the criminalization of drugs and racially charged enforcement of drug crimes as a new manifestation of Jim Crow laws.

In this article, we consider an older mechanism of racial formation through the use of sanitation discourse and the distribution of unequal sanitation conditions. This older discourse previously served the explicit intent of establishing and policing racial differences, whereas today, through public health law enforcement, this outcome is implicit while intent is obscured. We incorporate the concept of sanitary citizenship in order to show how sanitation conditions in Lowndes County led to the reproduction of a racially stratified condition of citizenship wherein those residents who lack basic sanitation conditions are considered to be unwilling to uphold their responsibilities of proper sanitary living conditions. As such, criminalization, heavy fines, and eviction from owned land are considered reasonable outcomes of colorblind public health policies. We point to three specific frames—land control, housing availability, and public health enforcement—for understanding the ways in which race is folded into outcomes of impaired sanitation for black residents in Lowndes County.



### **Cumulative Costs of Racism**

#### *Land Control*

Article 31 in the section on Slaves and Free Persons of Color in the 1833 Laws of Alabama made teaching a slave or free person of color to spell, read, or write a crime punishable with a \$250–\$500 fine.<sup>3</sup> As a result, few slaves or their descendants possessed the ability to read and write. Although black families were able to begin acquiring land during the period of Reconstruction (1865–1877), low literacy levels meant that many black property owners passed away without leaving written wills.

Heir property, legally referred to as tenancy-in-common, is a system of landownership wherein, when an individual landowner dies without leaving a written will, the property passes to all living heirs according to degree of blood relation (Deaton, Baxter, and Bratt 2009; Dyer 2008). The more closely related a family member, the greater the percentage interest in the property that family member is given. These arrangements entitle that family member to a proportionate share of the profits from the land (either through sale of the land or through sale of the products of the land) but not to a specific, geographic plot of the land. The land itself remains as an entire unit to which all owners, regardless of share size, have access.

Within the context of family disruption under slavery and the legacy of black diaspora from the South, heir property has remained an important mechanism for establishing and maintaining family cohesion, providing an emotional connection to the land as home and sanctuary, and ensuring a degree of political power and independence through collective land ownership (Dunaway 2003; Dyer and Bailey 2008; Gregory 2005).

They felt that it was essential for their families to have something, or their children to have something they can relate to as home, or if they ever need a place to go they could always be there. It was the thing that ... tied the family together ... It's passed down ... It's not even in one family's name ... Property was owning land because they realized the value of land and the value of land keeping a family together, too ... creating that cohesiveness. (Flowers 2009)

Property ownership is a principal mechanism through which wealth is transferred inter-generationally (Lipsitz 2007). Although

valued for its role in preserving black families, the heir property system also makes financial systems related to land ownership more challenging. It has hindered wealth accumulation among blacks in the South. Between 33 and 80 percent of black-owned land in the Black Belt is collectively owned (Dyer and Bailey 2008).

With heir property, as owners of the land pass away, their share of the land also passes on to their heirs. Legal claims on the land continue to be divided into smaller and smaller fractions.

So, if the great-great grandparents bought the land and then all of their heirs are owners. Then that next generation all their heirs are owners. I mean it keeps growing and growing and growing. (Flowers 2009)

Since multiple parties own the land, it is difficult to gain the cooperation of many family members, as co-owners may be spread out over a great distance, may not know each other, and may not know how to get in touch with each other (Dyer and Bailey 2008).

As such, properties do not carry clear property titles. Without clear title to the land, individual co-owners are ineligible for loans or grants to make infrastructural improvements on the land; the land cannot be held as collateral against loans; and agricultural products, such as timber, cannot be sold. Agricultural products cannot be sold because companies worry about litigation should another co-owner claim that he or she was not properly compensated for the sale of the products. Any improvements made to the land, such as houses or septic systems, belong to the entire group of co-owners and not to the individual who invested in those improvements. Because the land cannot be leveraged to gain access to other forms of financial capital, heir property stalls wealth accumulation (Deaton et al. 2009; Dyer and Bailey 2008).

Because if there are ten owners of a property, or twenty owners of a property, or a hundred owners of a property, you know, a bank is not going to make a mortgage to twenty different people. (Flowers 2009)

Complicating the heir property system, as family properties, while the family may collectively own the land that family members live on, not all family members who live on the land are owners of that land.

Flowers (2009) described a case that illustrates this challenge when ACRE was working with a family to help it get a new septic system:

She didn't own the land that she was on. Somebody from Detroit owned the land that she was on ... They were family. She wasn't paying them rent. She had been there for thirty years. And it was family property but ... she didn't own it. The only way she'd own it, she'd have to buy it from them. I don't think they were going to move back ... I did talk to them about them selling it, but they wanted to sell ... the land for ten thousand dollars ... It wasn't even an acre. They wanted to sell it for ten thousand dollars and then ... a septic system would cost fifteen thousand dollars. It wasn't worth it.

A principal risk with heir property is that any co-owner can force the sale of the property through partition sales (Dyer 2008). Any co-owner has the right to attempt to buy other co-owners out of their share of the land, but if they refuse to sell their shares, that original co-owner can petition a court to order a partition sale. By doing so, the interested co-owner can get his or her investment out of the land. Judges can choose to divide the land and sell only a piece of the property but because land may be considered of different value depending on location, typically judges will order the sale of the entire property.

Taxes on heir property can also force a sale. Typically, property taxes are paid by individual co-owners and not collectively. Having paid property taxes in the past does not indicate more significant ownership of the land, as the property taxes are paid for the land as a whole and not in the name of individual occupants (Dyer 2008). Even if a single co-owner has historically paid taxes, if taxes are not kept up to date, the property can be taken by the county.

Heir property is also vulnerable to adverse possession because there is no written title to the land. Another party, even someone without a legal right to the land, can build a fence around the land or construct buildings and claim ownership over the property (Dyer 2008). It has been argued that there have been intentional efforts to remove blacks from their land (Falk 2004; Gilbert, Sharp, and Felin 2006). Exploiting heir property is one mechanism through which this has been done (Dyer and Bailey 2008). One man described the experience of having his land surveyed for an unknown speculator.

But in regards to the land, people talking about their losing land. I had an experience about three years ago where I lived on my in-laws [land]. They have 10 acres. I went outside one evening, and there was a surveyor coming up through the woods, and he was surveying. So I went back to the house, and I told my wife ... I'm going to see what he would charge to survey out two acres out of this ten ... He said, well, I'll be back tomorrow evening. Tomorrow never came. He never came back. So somebody had him surveying out that whole corner of land. You need to check on your land, check on your property, check on your deeds, because people are taking land. (Scott 2002)

The heir property system emerged as a nominally colorblind legal mechanism for handling cases in which property owners passed away without leaving a written designation of who should inherit the land. The need for the heir property system, however, was the direct result of specific mechanisms under slavery that aimed to stall the economic and political development of black communities. Low literacy levels and family disruption made heir property a necessary but constrained system for managing wealth among black families in the South. It led to properties with numerous owners, with little knowledge of or connection to each other, unclear titles due to the number of owners of properties, and lack of ability to leverage land to make improvements on the land. Further, it caused insecurity around the land due to the fragile status of any improvements made on the land, and it made the properties vulnerable to those who might be looking to exploit the system in order to displace black families. All of these effects together make any permanent costly structures like septic systems risky for land occupants and financial institutions, reducing the likelihood of their construction.

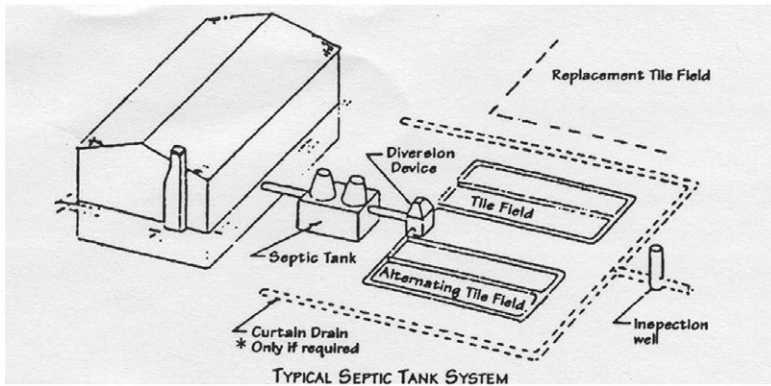
#### *Housing Availability*

Redlining was a federally supported practice of dividing urban communities into fundable and unfundable neighborhoods on the basis of race through marking maps with a red boundary. The practice helped to establish segregated cities, with predominately black inner cities and predominately white suburban communities. In the rural South, legacy practices designated areas for black communities and weak social mobility did little to change those configurations over time.

Figure 3

A schematic diagram of a septic system, showing a pipe carrying waste from the house to a septic tank, which is attached to pipes that carry water out over an expanse of land, allowing the soil to filter the water and thereby remove pathogens. In sandy soils, such systems work relatively well, but in Lowndes County, homes occupied by blacks are largely on dense, clay soil that does not drain well. Thus, even if they pay the large expense of installing a system, there is a high probability that it will fail, forcing them to pay fines they cannot afford. By treating all households the same, the county is actually treating black households inequitably because they are being punished for living on the worst land in the county—the result of centuries of racism.

Source: Montgomery Soil and Water Conservation District (n.d.).



Limited financial resources for the construction of homes and exploitative practices by contractors forced many families to make do with homemade systems for waste management. Other families believed they had proper septic systems installed, but discovered that their systems never met public health code standards or that they failed in a very short time after installation. (Figure 3 is a schematic diagram of a septic system, consisting of a septic tank outside the house, and underground drainage pipes to spread the effluent over a large area of land.)

In 1909, roughly 60 percent of agricultural land in Lowndes County was dedicated to producing cotton, but cotton production began to decline steeply in 1914 due to boll weevil infestations (Schoenmann and Burke 1918). White landownership and cotton production tended to be in higher elevations with better drainage. Lowland areas, which

were less productive and required more intensive cultivation, were the predominate areas where black residents were able to acquire land. These lowland areas have higher percentages of clay and are more prone to flooding compared with land in higher elevations.

As sharecropping replaced the plantation system, the burden of labor for cotton production remained with black residents. Sharecroppers paid a portion of their crop yield as rent for use of the land, supplies, and building materials. In cases where the landlord provided all necessary materials to live on the land and to grow crops, tenants paid at least half of the crop as rent (Schoenmann and Burke 1918). Sharecroppers bore both the costs of labor as well as the risks of failed crop cycles.

Sharecropping was commonplace on large farms through 1947, with more than 75 percent of large farms in the Black Belt functioning through sharecropping labor (White, Robinson, and Glasgow 1951).<sup>4</sup> Sharecropping maintained the overall structure of the plantation system, with black residents providing labor for farms and white landowners benefiting from the wealth generation of the farms. Homes for black residents on farms were poorly constructed with available materials. One resident described a landowner as being generous when he stopped farming and allowed the sharecroppers to disassemble their homes, take the materials, and rebuild them elsewhere.

Policies enacted by the Federal Housing Administration (FHA) directly discriminated against black communities and black applicants for mortgages throughout the first half of the 20th century (Bond and Williams 2007). In an attempt to improve affordability and access to housing for low-income and minority families, Congress passed the Civil Rights Act of 1968. Title VIII of that law, commonly known as the Fair Housing Act, made it illegal to discriminate against a person based on race, color, or national origin in the pursuit of housing. The 1968 Housing Act also required FHA to insure mortgages in areas that had previously been excluded, including inner-city neighborhoods.

Section 235 of the Fair Housing Act established a program to subsidize housing for low-income buyers. It reduced the amount buyers would owe for a down payment, reduced income eligibility to qualify for a loan, and encouraged lenders to permit loans for properties in more financially risky locations, such as inner cities and areas with nonwhite residents (Gotham 2000). Section 235 encouraged new home construction, with only 20 percent of funding for renovating

existing structures. As a result of the program, in 1971 alone, 125,000 new homes were constructed and 15,000 were renovated in the United States (Lewis 2005: 38).

The U.S. Commission on Civil Rights found that houses purchased through the Section 235 program were often of poor workmanship and in immediate need of repair (Hesburgh 1971). Many new and existing homes were found to have serious defects that could present new homeowners with costly repairs. Inexperienced homebuyers were taken advantage of by unscrupulous builders and contractors who did shoddy workmanship. Many newly constructed homes were immediately condemned, and the Department of Housing and Urban Development (HUD) was called “the nation’s biggest slumlord” (Harrigan 1989, quoted in Lewis 2005: 41). Shoddy workmanship in the construction of homes, combined with entrenched poverty and few resources for maintenance and repair, meant that some homes rapidly decayed.

Jerry Matthews (2009), a white health professional from a nearby county, described the decay that he observed while visiting homes with failing sanitation across Lowndes County:

Three of them had floors that were basically useless except for the structural parts, so they had beams under running the floor boards, but the floor boards were beaten out, so people, including us, would kind walk from ... joist to joist on the floor. You couldn’t step in between them for fear of falling through. And so in places like in the kitchen, where they had to stand, people just stacked plywood to protect the floor, but as we toured and visited their homes, they told us, “Don’t step on that spot, you’ll fall through.” And you could see a basically, like a waffle configuration. These floor boards run in this direction and gaps where the floor was breaking down, and honestly, that’s going to let air in, that’s going to let bugs [in]. The homes were physically breaking down.

The Section 235 program was criticized for contributing to housing segregation because, in practice, access to housing was still segregated along racial lines (Gotham 2000). When black buyers could purchase new homes, they were often in blighted areas and when black buyers attempted to move into predominately white areas, white residents panicked and moved out. The Section 235 program was ended in 1973 by President Nixon in response to widespread

complaints about the implementation of the program and its effects. Housing policies aimed at increasing access to affordable housing for low-income, black residents led to corrupt practices and substandard housing development.

Residents in Lowndes County purchased homes built under Section 235 only to discover that those homes were poorly constructed and, in some cases, were uninhabitable from the start. The ability of residents to make improvements to their homes was impaired by poor records and by issues with financing communally owned property. As a consequence, residents have had limited resources for septic upgrades. Further, challenging soil conditions due to a high water table and high clay content make typical septic system installations inappropriate. Thus, most properties require expensive engineered systems. Many septic systems installed along with the Section 235 homes were inadequate at the time but were used anyway, leading to long-term violations of state public health codes. Many residents believed they had functioning septic systems when their homes were built, but found out years later that their septic systems never worked properly. Poorly built houses were often abandoned on family properties and were typically replaced by mobile homes, which are cheaper to purchase than constructed homes and are not considered to be permanent structures.

#### *Public Health Enforcement*

According to the 1975 Code of Alabama, Section 022-026-001, it is illegal to “build, maintain or use” a residential sewage disposal system “that is or is likely to become a menace to the public health anywhere within the state.” Section 022-026-002 states that the State Board of Health compels households to install properly functioning sewage disposal systems and Section 022-026-003 adds that only systems that have been approved by the State Board of Health can be installed. Violation of these codes constitutes a misdemeanor crime. Arrest records dating from November 11, 1999 to April 25, 2002 obtained from the county courthouse in Hayneville showed that at least 10 people, all African American, were formally charged with being in violation of Alabama State Code pertaining to proper use and installation of septic systems.

Each person who was arrested received a legal notice from the Lowndes County Health Department that they were in violation of the



code. For those residents who were arrested, the records show that typically more than a year and a half lapsed between the first citation and the issuance of an arrest warrant. For one family, three years passed before a warrant was issued, while for two other families only three to four months were given to rectify their circumstances before a warrant was issued. In each case of arrest, residents faced a class C misdemeanor, a fine of up to \$500, court costs, and the order to remedy the sewage situation on their property. Some found out about the warrant while coming to the courthouse for other reasons, such as to pay traffic tickets. One woman was picked up on a traffic violation in Montgomery and spent the weekend in jail while awaiting transfer to Lowndes County. In most cases, each person came to or was brought to the county courthouse, was fingerprinted and processed, and was released on a \$500 bond the same day.

While few residents spent time in a jail cell, Irene Mason found herself in court and in jail on multiple occasions because of her septic issues. The first time she was arrested because of her septic issues was in December 1999 (Irene Mason 1999). After three years of court appearances, Ms. Mason was arrested again on April 15, 2002. This time she spent three days in jail for contempt of court after failing to install a permitted septic system and improve the family's living conditions. The family faced financial hardship as a result of Ms. Mason's disability. Because she was unable to work and was receiving monthly disability payments for income, the family struggled to pay power bills that averaged \$400–\$500 per month (Howard Mason 2002: 55). The household had no running water but instead relied upon a hose connected to a neighbor's water pipe. Howard Mason, Irene's husband, tried to rectify the family's living conditions by purchasing a prefabricated septic tank for \$550. Because the Health Department requires systems to be designed for each specific location, it rejected the tank and told Mr. Mason that he would still need someone to come out and design a system for his property.

Through the process of interacting with the Health Department and going before the judge, the Mason family felt demeaned and belittled. Of the public health officer, Mr. Mason said that he "talk[ed] to us like trash" (Howard Mason 2002: 56). The officer said his hog pen smelled better than [Mr. Mason's] backyard" (Howard Mason 2002: 60). Mason continued:

When you put my wife in jail, that's just too far. She is disabled. She can't work. I mean, to lose everything you've got about a septic tank. Then when you save all the money you can for your septic tank ... then when your light bill comes out one month and it's a thousand dollars, you don't understand. How is this happening? When you pay that light bill, there goes your house note; there go your land payments. I'm not ashamed of [where I live] ... I call that home. That's my land. I worked hard for that piece of land. But to see the man I bought it from wanting to take it from me ... So what I had to do, I had to go file bankruptcy ... to see everything I've got just go down the drain. Then you still go to court. (Howard Mason 2002: 57–59)

Many families tried to have functional septic systems installed, but for a variety of reasons the process failed them. In October 1999, Gus Stewart was first issued a citation by the Lowndes County Health Department to rectify the unsanitary living conditions on the property that he and his wife, Dorothy, owned (Stewart 2001). Attempting to address the conditions on their property, Gus and Dorothy Stewart hired a septic tank installer to put in a system for them. The installer put a septic tank in the ground but did not put in drain fields, which are required for treatment and disposal of the wastewater (West 2005). The installer left with the Stewart's money but without completing the full system installation. After the installer left them with an unfinished system, the Stewarts did not have the financial resources available to repair and complete the system. Faced with losing their home, their car, and possible arrest, in 2000 the couple was forced to file for bankruptcy to address their debts (Benn 2003). When the situation had not yet been remedied, in March 2001, Gus was arrested (Stewart 2001).

For public health workers, the issuance of citations and associated fines fulfilled their responsibility in the regulatory process. They saw themselves solely in a role of enforcement with respect to creating a well-functioning regulatory system. Tim Paige (2009), a white county public health professional, explained the process:

We issue legal notices. We can see injunctions in court through our general council and we just seek to get the situation remedied ... We're not out there to write tickets, which can do now, if we have to, but we want compliance through education. But if that doesn't happen, if push comes to shove, then we can seek legal remedies in court ... which would be fines.

When asked what resources they have available to help them remedy the situation, Scott Logan (2009), another white county health professional, replied: “We don’t. Again, we’re a regulatory agency.” Probed on the claim by county health officials that they try to work with residents, Paige (2009) said: “We do have lists of engineers, installers. We steer them to Farmer’s Home Administration, you know, if they can get some federal grant money.” Logan (2009) added that the U.S. Department of Agriculture’s rural development program is also a possibility. “You have to qualify. It’s a lot of paperwork.” As Logan (2009) described, the mechanism for code enforcement is carried out through a criminal process, which requires enforcement by local police officers:

We would take the law enforcement officer out there with us for things like discharge of sewage onto the ground. The fine is five hundred dollars. And he would issue that, and then if somebody wanted to appeal it, they could go to court and appeal it, but now the fine could be five hundred dollars a day. Each day is a violation of the offense.

Public health workers did not see themselves as responsible for working with residents to change their circumstances, except possibly giving residents more time to solve the problem on their own. The application of fines for them sufficed in moving residents along into more punitive procedures. The failure to pay fines provided justification for further action when residents “refused to cooperate.” As Paige (2009) explained, regarding those who do not pay the fine, “That’s out of our hands at that point. That’s up to the judge. I guess it could be considered contempt of court.” As a Montgomery sanitation supervisor asked: “What are you going to do with somebody who doesn’t comply, doesn’t obey the court, doesn’t pay the fines?” (Associated Press 2004).

The irony of fining residents for having insufficient funds to pay for proper sanitation systems seemed lost on the regulators but not on the residents. “Every time I went to court, she always told me 60 days. And I told her, if I pay that \$500 fine, I’d be \$500 short of getting it done” (Ramon 2002a: 81). Initially, for residents who could not afford a septic system, fines were imposed for being in violation of the code. When residents could not afford the fines, the judge offered them the “option” of jail time:

She also said that if you don't get it done within the time that she set, 60 or 90 days, that, you know, she'll give you the option that if you don't have the \$500 fine, you do 90 days [in jail], if you don't have it. After 90 days when you get out, if you still don't get it done, you either have the option of moving off the property—and I know I have spent all I have. I was broke trying to get it done. (Ramon 2002b: 29–30)

For low-income residents, fines, rather than improving living conditions, served a more structural purpose. Fines entered residents into a process designed to regulate their behavior without providing mechanisms for improving their circumstances. The regulatory process itself, by fining people for not having enough money, established a relationship in which residents are held simultaneously inside and outside of the approved status as compliant “sanitary citizens.” They were bound within the process through the obligation to pay the fines, and yet they are outside of the relation through the punitive measure itself. In that way, they are turned into “unsanitary subjects.” Through the punitive measure their ability to pay and regain status as compliant citizens was further complicated.

The process of being arrested made residents feel as though they were criminal; they were deviant as a result of failing to live in the manner deemed proper by someone other than themselves.

I've got to go in, sign my bond, get fingerprinted like a criminal. I've never been to jail before in my life, and I'm being treated like a criminal. I got ink all over my hand from being fingerprinted, and then I've got to sign myself back out. That's just a horrible feeling. (Ramon 2002b: 36)

Although black residents are disproportionately impacted by impaired sanitation in Lowndes County, on their surface public health laws are race neutral so racial arguments are largely discounted by public health professionals. Race is seen as irrelevant to the enforcement of the codes, even though those living in unsanitary conditions have systematically been put into such conditions through racially discriminatory actions and policies. The failure of public health professionals to acknowledge the racialized context through which impaired sanitation emerges in Lowndes County, coupled with the policing role of public health officials with respect to residential settings, ensures the racially structured criminalization of poverty in the

county. The persistence of racial entrenchment through land allocation and substandard housing finds a mechanism for transforming black residents into criminals through colorblind policing of public health laws.

### **Conclusion**

Residents whose violation of public health laws was based on lack of funds to install proper septic systems were marked as socially deviant and criminal through a series of tangible actions (fingerprinting and photographing) and symbolic procedures (the creation of an arrest record and going before the judge). Through penalizing poverty, a formal and legitimated structure emerges for the management of the detrimental conditions of those living at the lower ends of the social scale (Wacquant 2001). By criminalizing poverty, the racially conditioned effects of the economic system can be attributed to individual failures as opposed to flaws in the overall system. Such structural violence, as Paul Farmer (2004: 315) describes, is “likely to wither bodies slowly” and remain just below the threshold of visibility that might demand intervention.

On the basis of ability to afford the planning, installation, maintenance, and repair of higher-cost septic systems, made higher because of land inequity, black Lowndes County residents are treated as if they have made conscious and defiant decisions to refuse proper sanitary living conditions. In this way they are said to *refuse* to live as “sanitary citizens” and instead *choose* the alternatives of jail time or eviction and *decide* to give up their freedoms associated with sanitary citizenship. The relinquishment of their freedom to pay fines and install unaffordable septic systems leaves them as criminally poor “unsanitary subjects.”

The reclassifying of low-income Lowndes County residents as criminal in relationship to their sanitation status formalizes the transition from “sanitary citizens” to “unsanitary subjects.” It also makes invisible long-established inequities in the county along racial lines. The recasting of low-income residents as criminals shifts responsibility for marginal living conditions to individuals and away from the social context that systematically excluded black residents from more productive

and higher-quality land and that left black residents with limited resources for housing, vulnerable to exploitation by contractors and speculators.

Through an examination of sanitation inequity in Lowndes County, we point to sanitation as a long-enduring form of racial codification that finds contemporary life under colorblind public health policies in Alabama. This mechanism of codification serves the same purpose it always has, to mark certain bodies as valuable and others as excludable. Through the criminalization of poverty related to sanitation in Lowndes County, black residents experience a modern-day mechanism of old segregation laws. As Michelle Alexander suggested with the criminalization of drugs, *we find that* the criminalization of sanitation conditions also bears a striking resemblance to Jim Crow laws.

The development of this inequity in Lowndes County is possible through the persistent effects of slavery and Jim Crow in the Black Belt. The observed heir property system was established as a direct result of anti-literacy laws established throughout the South, making it necessary to determine alternative means for passing on property among black families. Black families in some ways have embraced this system for its role in building community through family properties. Heir property, through its impedances to wealth creation, contributes to the stalling of wealth accumulation for such families.

Compounding the financial and logistical challenges of heir properties, lands that were available to blacks throughout the county were marginal and of poorer quality for development. In turn, any improvements on these lands, such as the installation of septic systems, are much more costly. Extreme conditions of housing deterioration resulted from: racialized poverty directly; poorly structured housing policies that failed to address racial inequalities; and unscrupulous contractors and land speculators who conspired to abscond with government subsidies targeted toward low-income households.

The cumulative effects of this legacy produce the conditions of impaired sanitation that are observed in Lowndes County today. Nonetheless, public health policies reinforce racial inequities by not seriously considering the ways in which race has produced conditions of inequity in the county. Rather, public health serves as the official

mechanism through which to criminalize and reclassify poor, black residents as unsanitary and deserving of criminal management.

### Notes

1. Portions of this article are adapted from earlier work in the corresponding author's doctoral dissertation, *Sanitation and Social Power in the United States*, completed in 2014 at the University of Illinois at Urbana-Champaign.

2. Names of residents affected by impaired sanitation and the church locations of town hall meetings have been changed to protect privacy. Names of elected public officials and the authors, where referenced, remain unchanged.

3. An equivalent of between \$7,000 to \$14,000 today.

4. As late as 1949, a white resident was still holding slaves in the county, according to one person interviewed as part of this research.

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