

# Predatory Cities

Bernadette Atuahene\*

*Between 2011 and 2015, the Wayne County Treasurer completed the property tax foreclosure process for one in four properties in Detroit, Michigan. No other American city has experienced this elevated rate of property tax foreclosures since the Great Depression. Studies reveal that the City of Detroit systematically and illegally inflated the assessed value of most of its residential properties, which led to inflated property tax bills unaffordable to many homeowners. Extraordinary tax foreclosure rates and extensive dispossession resulted. Consequently, Detroit has become a “predatory city”—a new and important sociolegal concept that this Article develops.*

*Predatory cities are urban areas where public officials systematically take property from residents and transfer it to public coffers, intentionally or unintentionally violating domestic laws or basic human rights. Detroit is not alone. Ferguson, Missouri, New Orleans, Louisiana, and Washington, D.C. are among the other US cities where state actors have used illegal methods to augment public coffers. Although this practice affects many urban areas, US legal scholarship has almost completely overlooked the phenomenon of predatory cities.*

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*This Article is the first attempt to understand the intersecting economic, social, and political factors that have caused these struggling cities to become predatory. Through an ethnographic study of illegal property tax assessments in Detroit, I find that predatory systems, rather than a few predatory people, initiated and perpetuated the illicit practices. More specifically, several factors made the City and its residents extremely vulnerable, and thus susceptible, to predation. Against this backdrop of vulnerability, certain legal and governance failures created structural opportunities for predation to advance at scale. Using the Detroit case, this Article identifies, defines, and examines the phenomenon of predatory cities, which scholars and policy makers must begin to better understand and address.*

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## INTRODUCTION

When Amazon publicly announced that it was searching for a second headquarters, 238 cities placed bids to lure the powerhouse online retailer and capture its promise of jobs and economic prosperity.<sup>1</sup> Many financially desperate cities view investments from companies like Amazon as the only cure to their deeply entrenched economic ills.<sup>2</sup> But private sector investment is elusive.<sup>3</sup> With few other options, cities have increasingly sought to raise much-needed revenue from their own residents by increasing parking and traffic citations, passing jail expenditures onto incarcerated populations, and shifting other expenses that once came from the public purse onto private citizens.<sup>4</sup> Some cities, however, have taken these extractive practices too far. They have become predatory. Predatory cities are urban areas where public officials systematically take property from residents and transfer it to public coffers, intentionally or unintentionally violating domestic laws or basic human rights. This Article explores the question: Why do some financially desperate cities become predatory?

After experiencing decades of economic decline—which worsened in the years just before it declared the largest municipal bankruptcy in US history—Detroit has devolved into a predatory city.<sup>5</sup> Between 2009 and 2015, the City of Detroit, located within Wayne County, Michigan, assessed 53 to 84 percent of homes in violation of the Michigan Constitution, which states that no property

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1. See Elizabeth Weise, *Amazon Second Headquarters: Some Expect Another Round of Finalists Before Winning Bid*, USA TODAY (Apr. 30, 2018), <https://www.usatoday.com/story/tech/news/2018/04/30/could-we-waiting-not-winner-but-round-two-amazons-mulls-game-changing-decision-its-second-headquarter/554045002> [<https://perma.cc/XB8F-R4HC>].

2. Paul Foley, *Local Economic Policy and Job Creation: A Review of Evaluation Studies*, 29 URB. STUD. 557 (1992) (reviewing studies on Enterprise Zones, the Regional Enterprise Grant, and other economic development initiatives); Rodrick Miller, *The Tortoise and the Hare: Economic Competitiveness in the Amazon Era*, FDI ALLIANCE (Dec. 2017), [https://docs.wixstatic.com/ugd/a90217\\_bef9f493000c452f95da4f4db96376c2.pdf](https://docs.wixstatic.com/ugd/a90217_bef9f493000c452f95da4f4db96376c2.pdf) [<https://perma.cc/K65P-BBRM>] (article written by the former President and CEO of the Detroit Economic Growth Corporation (2014–2017) and current CEO of Invest Puerto Rico).

3. Less than three months after Amazon promised its new headquarters would be in New York and Northern Virginia, it pulled out of its New York location despite the city’s promise of massive tax breaks. See *Update on Plans for New York City Headquarters*, AMAZON BLOG: DAY ONE (Feb. 14, 2019), <https://blog.aboutamazon.com/company-news/update-on-plans-for-new-york-city-headquarters> [<https://perma.cc/U2HE-MJ4N>].

4. See, e.g., Matthew Shaer, *How Cities Make Money by Fining the Poor*, N.Y. TIMES (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html> [<https://perma.cc/8FA3-563H>]; Tanzina Vega, *Costly Prison Fees Are Putting Inmates Deep in Debt*, CNN MONEY (Sept. 18, 2015), <https://money.cnn.com/2015/09/18/news/economy/prison-fees-inmates-debt/index.html> [<https://perma.cc/5LFD-JEPK>].

5. See James Spiotto, *Detroit’s Bankruptcy is the Nation’s Largest*, N.Y. TIMES (July 18, 2013), [http://www.nytimes.com/interactive/2013/07/18/us/detroit-bankruptcy-is-the-largest-in-nation.html?\\_r=0](http://www.nytimes.com/interactive/2013/07/18/us/detroit-bankruptcy-is-the-largest-in-nation.html?_r=0) [<https://perma.cc/69DJ-QAUP>].

shall be assessed at more than 50 percent of its market value.<sup>6</sup> This led to illegally inflated property taxes that many homeowners could not afford to pay.<sup>7</sup> Consequently, the Wayne County Treasurer confiscated homes at historic rates for non-payment of property taxes. To make matters worse, many affected residents were not even supposed to be paying property taxes in the first place because they live below the federal poverty threshold and hence qualified for the Poverty Tax Exemption (PTE).<sup>8</sup>

Mr. Jones's story perfectly illustrates the problem. He was born in Detroit and has never called any other city home.<sup>9</sup> He remembers the army tanks that ominously rolled down his tree-lined street during the 1967 uprising. He told me about the good old days when working at a car factory placed your family comfortably in the middle class. He also recalled when the factories left, sending his beloved City in a downward economic spiral. Nevertheless, through the good times and the bad, "I stuck it out here," Mr. Jones said in a melancholy tone.<sup>10</sup>

In 2012, after a lifetime as a blue-collar worker, Mr. Jones finally saved enough money to purchase his first home. He paid \$2,500, which was the approximate price others paid for similar threadbare homes in his neighborhood. Although Mr. Jones's home had been stripped, leaving only a shell with no windows, no furnace, no water, and no electrical lines, the City taxed his home as if it was worth \$49,824—a clear violation of the Michigan Constitution's mandate prohibiting property tax assessments from exceeding 50 percent of a property's market value. Mr. Jones's only source of income was his pension, and he qualified for the PTE because his earnings fell below the federal poverty line.<sup>11</sup> But Mr. Jones was unaware of this entitlement and never applied. In the end, Mr. Jones was unable to pay his illegally inflated property tax bill, so the Wayne County Treasurer foreclosed upon his home and sold it at auction for \$2,900. Mr. Jones lamented: "It's hard to describe the feeling when you lose your home, but it's an embarrassment that I don't think a person should go through more than once, if they survive it the first time."<sup>12</sup>

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6. MICH. CONST. art. IX, § 3.

7. See Bernadette Atuahene & Timothy R. Hodge, *Stategraft*, 91 S. CAL. L. REV. 263, 266 (2018). When Wayne County was brought to task for this unconstitutional behavior, however, the case never received a ruling on the merits and was instead dismissed on jurisdictional grounds. See *infra* note 316 and accompanying text.

8. Forty percent of Detroit residents live below the federal poverty line. See *Community Facts*, U.S. CENSUS BUREAU, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml) [<https://perma.cc/T8PM-DZTW>]; Alexa Eisenberg et al., *'It's Like They Make It Difficult for You on Purpose': Barriers to Property Tax Relief and Foreclosure Prevention in Detroit, Michigan*, HOUSING STUD. (Sept. 2019).

9. See Bernadette Atuahene, *Opinion: Don't Let Detroit's Revival Rest on an Injustice*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/opinion/sunday/dont-let-detroits-revival-rest-on-an-injustice.html> [<https://perma.cc/3T5B-P77S>].

10. Interview with Mr. Jones (Mar. 15, 2017) (on file with author); see also Atuahene, *supra* note 9.

11. Interview with Mr. Jones, *supra* note 10.

12. *Id.*

Detroit, however, is not the only city engaging in this particular type of predatory behavior. A recent Pulitzer Prize nominated *Chicago Tribune* series found that homes in minority neighborhoods on the south and west sides of Chicago were paying effective tax rates twice as high as those in wealthier, predominately white neighborhoods on the north side.<sup>13</sup> In addition, the preliminary results of an ongoing study by Christopher Berry show that most local property tax assessors not only in Chicago and Detroit, but also in New York City, Philadelphia, St. Louis, Phoenix, Miami, Los Angeles, Las Vegas, Boston, and Seattle are systemically inflating the property tax assessments of poor and minority homeowners in violation of existing laws.<sup>14</sup>

In addition to property tax overcharges, judges, police, and other public officials also supplement public budgets by illegally extracting funds from residents. This includes New Orleans judges who jail defendants when they do not have the ability to pay court fees; Ferguson police who engage in unconstitutional policing and issue discriminatory fines; and Washington, D.C. police who abuse civil forfeiture laws. Fiscal austerity endured by economically embattled cities sometimes pushes officials to cut corners and violate laws in order to augment shrinking budgets and replenish public coffers. This is a trend that scholars and policy makers can no longer afford to ignore.

In Detroit, Washington, D.C., Ferguson, New Orleans, as well as many other cities where public officials are illicitly taking money from residents to bolster public coffers, the burning question is: Why? In Part I, I use ethnographic methods to examine the case of unconstitutional property tax assessments in Detroit to determine how the City became predatory. I find that the illegality commenced and persisted because of predatory systems, not a few predatory people. More specifically, I find that systemic racism, economic and political troubles, corporate malfeasance, poor state-level funding, and overstretched civil society organizations rendered Detroit and its residents vulnerable. Against this backdrop of vulnerability, legal and governance failures—such as legal contradictions, concealment, impaired internal accountability, legal limitations, and financial advantage—created structural pressures, precipitating the predation.

In Part II, I look beyond Detroit to construct the theory of predatory cities. I describe how the concept builds upon, but is distinct from, existing theoretical concepts. I then demonstrate that the problem of state actors enlarging state coffers through illegal actions is not unique to Detroit. In addition, I show that this problem expands beyond property tax administration and encompasses

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13. See generally THE TAX DIVIDE, CHI. TRIB. (Apr. 25, 2018), <https://www.chicagotribune.com/investigations/ct-tax-divide-investigation-20180425-storygallery.html> [<https://perma.cc/7NXU-PTVD>] (a collection of articles forming an investigation into Cook County's unique tax system and its unequal burden upon residents).

14. Christopher Berry, *An Evaluation of Property Tax Regressivity in the States*, U. CHI. HARRIS PUB. POL'Y (Apr. 18, 2018) (unpublished) (on file with author).

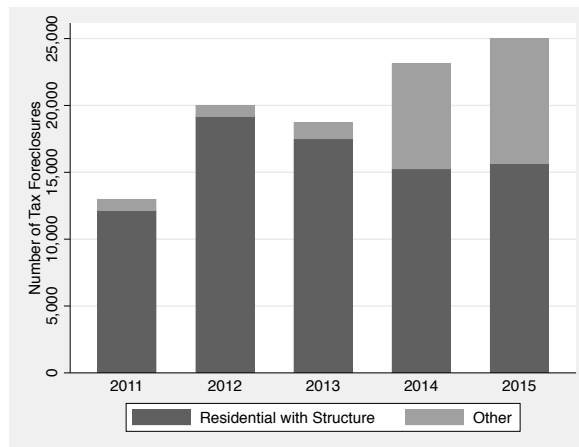
many other domains, including abuses of municipal code enforcement, civil forfeiture, and court fines and fees. In sum, this Article establishes predatory cities as a significant and far-reaching phenomenon worthy of further study by legal scholars and social scientists.

### I.

#### THE CASE STUDY: UNCONSTITUTIONAL PROPERTY TAX ASSESSMENTS IN DETROIT

The magnitude of Detroit’s property tax foreclosure crisis is immense. Between 2011 and 2015, the Wayne County Treasurer completed the foreclosure process for about 100,000 Detroit properties.<sup>15</sup> Given that there are about 385,000 properties in the city, approximately one in four properties completed the property tax foreclosure process during this five-year period.<sup>16</sup> When considering only residential properties with a structure, approximately 30 percent completed the tax foreclosure process during this period (See Figure 1).<sup>17</sup> Americans have not witnessed such massive numbers of property tax foreclosures since the Great Depression. In recent years, foreclosure levels have dropped slightly—Wayne County auctioned about 50,000 Detroit properties between 2015 and 2018—but they are still exceptional.<sup>18</sup>

Figure 1: Foreclosures of Residential Properties with Structures in Detroit<sup>19</sup>



Property tax foreclosures stem from delinquent property tax bills. Authorities calculate property tax bills by multiplying the assessed value of a

15. See Atuahene & Hodge, *supra* note 7, at 266–67.

16. *Id.*

17. *Id.*

18. E-mail from Jerry Paffendorf (Nov. 28, 2018, 11:59 AM) (on file with author) (data obtained through FOIA requests from Wayne County).

19. “Other” includes residential properties without structures on them, such as vacant lots.

property (minus any exemptions) by the property tax rate.<sup>20</sup> Consequently, if assessed values are inflated, the property tax bills will also be overstated. On several occasions, Mike Duggan—Detroit’s mayor—admitted that the City of Detroit is overassessing its residents.<sup>21</sup> Tim Hodge and I conducted a study that found Detroit is not only overassessing its residents, but it is doing so in violation of the Michigan Constitution.<sup>22</sup> The Michigan Constitution, supporting legislation, and case law all state the assessed value of a property divided by its market value cannot exceed 0.5.<sup>23</sup> Between 2009 and 2015, however, the City of Detroit assessed 53 to 84 percent of its residential properties in violation of the Michigan Constitution.<sup>24</sup>

Moreover, our study found that while Detroit’s Assessment Division is assessing most higher-valued properties at or even below this constitutionally permitted limit of 0.5, it assesses lower-valued properties significantly in excess of the limit.<sup>25</sup> For instance, in 2009, the Division, on average, assessed the lowest valued properties at levels eighteen times larger than the constitutionally permitted assessment to market value ratio of 0.5 (9.02), middle-value properties at two times more than the permitted limit (1.00), and the highest valued properties below the permitted limit (0.38).<sup>26</sup>

We determined these estimates using an assessment ratio study (also known as ratio study or sales ratio study), which is the primary mechanism that taxing authorities, taxpayers, and appeal boards use to determine if assessments meet a jurisdiction’s legal requirements.<sup>27</sup> Michigan law requires that analysts include only arm’s length transactions—involving a willing buyer and a willing seller—in their calculations.<sup>28</sup> But there is an exception when non-arm’s length

20. For more on the property tax assessment process, see Bernadette Atuahene & Christopher Berry, *Taxed Out: Illegal Property Tax Assessments and the Epidemic of Tax Foreclosures in Detroit*, 9 U.C. IRVINE L. REV. 847, 856–69 (2019).

21. City of Detroit, *New Property Assessment Reductions*, YOUTUBE (Jan. 28, 2015), <https://www.youtube.com/watch?v=OB4WiRUJzzg> [<https://perma.cc/GUX8-P9KE>] (Mayor Mike Duggan addressing the City of Detroit: “As I said when I was campaigning, I felt like the assessments in this city were higher than the actual sales price that people could sell their house for.”).

22. MICH. CONST. art. IX, § 3.

23. *Id.*; MICH. COMP. LAWS ANN. § 211.27a(1) (West 2019); Great Lakes Div. of Nat’l Steep Corp. v. City of Ecorse, 576 N.W.2d 667, 672 (Mich. Ct. App. 1998).

24. Atuahene & Hodge, *supra* note 7, at 286 (“[F]or properties sold between 2008 and 2014, the majority of assessments violated the Michigan Constitution: 2009 (65%); 2010 (84%); 2011 (53%); 2012 (73%); 2013 (78%); 2014 (83%); 2015 (65%).”).

25. *Id.*

26. *Id.*

27. INT’L ASS’N OF ASSESSING OFFICERS, STANDARD ON RATIO STUDIES 7, 10 (2013), [https://iaao.org/media/standards/Standard\\_On\\_Ratio\\_Studies.pdf](https://iaao.org/media/standards/Standard_On_Ratio_Studies.pdf) [<https://perma.cc/S7ZD-QXRY>] (“assessors, appeals boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination.”).

28. MICH. COMP. LAWS ANN. § 211.27(6) (West 2019) (requiring the purchase price used in assessments to be “an arms-length transaction and not at a forced sale”); *Cty. of Washtenaw v. State Tax Comm’n*, 373 N.W.2d 697, 705 (Mich. 1985); *see also* INT’L ASS’N OF ASSESSING OFFICERS, GLOSSARY FOR PROPERTY APPRAISAL AND ASSESSMENT 9 (2d ed. 2013) [https://www.iaao.org/media/Pubs/LAAO\\_GLOSSARY.pdf](https://www.iaao.org/media/Pubs/LAAO_GLOSSARY.pdf) [<https://perma.cc/6YZQ-CMMG>]. The

transactions “have become a common method of acquisition in the jurisdiction for the class of property being valued.”<sup>29</sup> Even though non-arm’s length transactions are, in fact, the common method of acquisition for Detroit’s residential properties, we nevertheless included only arm’s length transactions in our calculations so that our estimates provide the most conservative measure of unconstitutionality.<sup>30</sup> Analysts who include non-arm’s length transactions in their analysis will find that the measure of unconstitutionality is even worse.<sup>31</sup>

In another study, Christopher Berry and I examined all residential properties in Detroit sold between 2009 and 2013. We found that—controlling for purchase price, location, and time-of-sale—10 percent of these homes would not have gone through tax foreclosure but for illegally inflated tax assessments.<sup>32</sup> Additionally, since the Detroit Assessment Division overassessed lower-priced homes at a greater frequency and magnitude than higher priced homes, we estimated that 25 percent of tax foreclosures among homes in the bottom price quintile (less than \$9,000 in sale price) were due to unconstitutional property tax assessments.<sup>33</sup> The empirical evidence confirms that Detroit’s unrivaled property tax foreclosure rates are illegitimate.

These illegitimate property tax foreclosures have dire consequences for individuals, families, and communities. Alexander Tsai has comprehensively reviewed the empirical literature and found that most studies conclude foreclosure adversely impacts the physical and mental health of individuals and communities.<sup>34</sup> Specifically, studies consistently find that foreclosure prompts increased stress, shame, alcohol abuse, depression, suicide, psychological distress, and anxiety.<sup>35</sup> In addition, high foreclosure rates destroy communities,

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IAAO describes “market value” as the price “which a property should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.” *Id.* at 101.

29. MICH. COMP. LAWS ANN. § 211.27(1) (West 2019).

30. See Atuahene & Hodge, *supra* note 7, at 275, 284 & Table 2 (showing that, of 123,400 property sales in Detroit from 2008 to 2014, only five percent were conducted at arm’s length).

31. This is because the market values for non-arm’s length sales—which includes properties sold through auction—are typically lower than for arm’s length sales.

32. Atuahene & Berry, *supra* note 20, at 886.

33. *Id.*

34. Alexander C. Tsai, *Home Foreclosure, Health, and Mental Health: A Systematic Review of Individual, Aggregate, and Contextual Associations*, PLOS ONE (Apr. 7, 2015), <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0123182&type=printable> [<https://perma.cc/JCA7-KU3K>].

35. See Kathleen A. Cagney et al., *The Onset of Depression During the Great Recession: Foreclosure and Older Adult Mental Health*, 104 AM. J. PUB. HEALTH 498, 498 (2014); Meredith Horowski, *Housing Instability and Health: Findings from the Michigan Recession and Recovery Study*, Policy Brief #29, NAT’L POVERTY CTR. (Mar. 2012), [http://www.npc.umich.edu/publications/policy\\_briefs/brief29/NPC%20Policy%20Brief%20-%2029.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief29/NPC%20Policy%20Brief%20-%2029.pdf) [<https://perma.cc/EP7Q-85QS>]; Jason N. Houle & Michael T. Light, *The Home Foreclosure Crisis and Rising Suicide Rates, 2005 to 2010*, 104 AM. J. PUB. HEALTH 1073, 1073 (2014); Karen McCormack, *Comfort and Burden: The Changing Meaning of Home for Owners At-Risk of Foreclosure*, 35 SYMBOLIC INTERACTION 421, 426 (2012); Tsai, *supra* note 34, at 12–13.



especially when the foreclosure displaces long-standing residents. The evidence suggests that foreclosed homes routinely remain unoccupied and neglected and enter, once again, into tax foreclosure.<sup>36</sup> These vacant homes are more susceptible to blight and arson, which adversely affect the safety and economic value of occupied homes nearby.<sup>37</sup> Increased foreclosure rates are also associated with heightened crime rates and feelings of insecurity.<sup>38</sup> Without question, unconstitutional property tax assessments and the resulting tax foreclosures are a scourge.

### A. Methodology

I use mixed methods to empirically explore the advancement of unconstitutional property tax assessments in Detroit. In prior quantitative work, my co-authors and I employed assessment ratio studies as well as regression analysis to establish that the City of Detroit has been systematically assessing its residents in violation of Michigan law.<sup>39</sup> But to expose why state actors have perpetrated this routinized illegality, I adopt qualitative methods, which reveal nuances and subtleties that quantitative methodologies often miss. Consequently, after obtaining Institutional Review Board clearance from IIT, Chicago-Kent College of Law, I conducted an ethnography that relies principally on participant observation and semi-structured interviews.

#### 1. Participant Observation

There are three primary ways to conduct an observational study: (1) full participant observation (when subjects know that observations are being made and who is making them), (2) partial participant observation (when some subjects know that observations are being made but some do not), and (3) onlooker observation (when no one knows that observations are being made).<sup>40</sup> This study employs full participant observation, as I moved to Detroit and lived there full time from January 2017 to December 2019 in order to actively partake

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36. See Margaret Dewar, *The Effects on Cities of “Best Practice” in Tax Foreclosure: Evidence from Detroit and Flint*, CLOSUP Working Paper Series, Paper No. 2, (2009) [hereinafter Dewar, *The Effects on Cities of “Best Practice”*], <http://closup.umich.edu/files/closup-wp-2-tax-foreclosure.pdf> [<https://perma.cc/YRA8-HNLV>].

37. See *id.* at 5; Violet Ikononova, *As Tax Foreclosures Give Wayne County a Short-Term Financial Boost, Is There Incentive for an Overhaul?*, DETROIT METRO TIMES (June 14, 2017), <https://www.metrotimes.com/detroit/as-the-system-gives-wayne-county-a-short-term-financial-boost-is-there-incentive-for-an-overhaul/Content?oid=4179545> [<https://perma.cc/2FRH-ECRD>]; Loveland Tech., *The Detroit Fire Report: An In-Depth Look at a Year of Fires in the City of Detroit*, <https://detroitfires.squarespace.com/#cover> [<https://perma.cc/594G-BPFY>].

38. Cagney et al., *supra* note 35, at 498; Houle & Light, *supra* note 35, at 1075.

39. Bernadette Atuahene, *“Our Taxes Are Too Damn High”: Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 N.W. U. L. REV. 1501, 1544 (2018) [hereinafter Atuahene, *Our Taxes Are Too Damn High*]; Atuahene & Berry, *supra* note 20, at 862; Atuahene & Hodge, *supra* note 7, at 266.

40. See Mark C. Lashley, *Observational Research Methods*, in THE SAGE ENCYCLOPEDIA OF COMMUNICATION RESEARCH METHODS (Mike Allen ed., 2017).

in ongoing activities and systematically record observations related to the property tax foreclosure crisis.

To begin the immersion, I moved into a downtown Detroit high-rise building. It took six months to get situated, learn the city, and make contacts. I spent the remaining eighteen months living on the city's eastside in the 48214 zip code, where 85.4% of the zip code's population is African American, 37.5% live below the poverty level, 20.7% have not graduated from high school, and only 19.3% have attained a bachelor's degree or higher.<sup>41</sup> Most importantly, between 2002 and 2013, 19% of the properties in this zip code (2,903 out of 15,160) completed the tax foreclosure process.<sup>42</sup> I became fully integrated into the area by becoming an active member of a church whose explicit mission is to minister in the 48214 zip code, frequenting local establishments, and attending local block club and community meetings. Once integrated, I obtained a solid understanding of the tax foreclosure crisis from the perspective of those I lived beside.

In addition to being embedded on the eastside, I was also a convener of the Coalition to End Unconstitutional Tax Foreclosures (the "Coalition"), which has three foundational goals: (1) stop unconstitutional property tax assessments; (2) compensate Detroit residents who have already lost their homes through illegally inflated property tax bills they could not afford to pay; and (3) suspend pending property tax foreclosures until authorities can confirm that delinquent taxpayers have not been unconstitutionally assessed. With twelve different grassroots organizations under its umbrella, the Coalition is a major player in rectifying the property tax foreclosure crisis.

My integral involvement with the Coalition, as well as my residence on the city's eastside, provided extraordinary access to community members, activists, policy makers, government bureaucrats, foundations, social service organizations, and other key players. For instance, when the Coalition was involved in creating and passing an ordinance related to the Poverty Tax Exemption, I was in constant contact and meetings with many city officials responsible for property tax administration. I would arrive early and intentionally use the time before the meeting to ask questions, verify facts, and familiarize myself with the views of key city officials. Also, I commonly followed key actors to their offices after the meeting in order to continue the conversation.

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41. *COMMUNITY FACTS*, *supra* note 8 (search for zip code 48214 under "Community Facts"). Comparatively, the Census reported that, nationwide, 30.3 percent of individuals have attained a bachelor's degree or higher, 87.0 percent have graduated from high school, and 15.1 percent of the U.S. population is determined to be below the poverty level. *Id.*

42. For a list of all parcels recorded as completing the tax foreclosure process between 2002 and 2013, see *Archival Tax Foreclosures in Detroit, 2002–2013*, DATA DRIVEN DETROIT, <https://hub.arcgis.com/datasets/D3::archival-tax-foreclosures-in-detroit-2002-2013> [<https://perma.cc/C4AK-SNNH>] (127 properties completed the tax foreclosure process twice and ten properties completed it three times).

Although participant observation is the primary methodology I employ in this study, it is not without its drawbacks. The observer bias and observer effect are two aspects of participant observation with which researchers must grapple when designing their studies. The most discussed type of observer bias is what anthropologists call the problem of “going native,” which is when observers’ ability to identify and record is compromised by their deep affinity for the group under study.<sup>43</sup> In contrast, the observer effect occurs when researchers are not concealed and thus impact the individuals they observe.<sup>44</sup>

The fact that I was a convenor of the Coalition is a prime example of the observer effect and bias. I was truly a participant-observer and embraced the inherent tensions of this dual role. While in the activist role, my actions deeply impacted how certain city residents and officials viewed and responded to the very phenomenon under study. But it also enabled me to build deep rapport with city officials and residents, which allowed me to unveil many truths inaccessible to strangers. It is important to note that—even if I did not take on an activist role—my ethnographic observations could not be neutral.<sup>45</sup> Uninvolved outsiders who do not impact the phenomenon under study may not be tainted by their subjects or their involvement, but they are tainted by their personal experiences. The only way to deal with this ever-present bias is for researchers to be honest about how their positionality affects their data collection. Pretending to be neutral is unproductive.

## 2. *Semi-structured Interviews*

In order to understand the property tax foreclosure crisis from the perspective of those most acutely affected, I conducted formal, semi-structured interviews with Detroit residents who experienced tax foreclosure. Most of the interviewees were people who had received help from United Community Housing Coalition (UCHC), a longstanding Detroit nonprofit that has been leading local efforts to prevent property tax foreclosure. In 2017, a UCHC volunteer called clients who had lost homes to foreclosure between 2014 and 2016 to ask if they would be willing to participate in this study. About one hundred clients expressed interest, so the research team called each one to schedule a phone interview.

I then personally conducted all the interviews, which typically lasted from thirty to ninety minutes. I stopped interviewing when I reached the point of data

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43. See generally Clifford Geertz, “From the Native’s Point of View”: *On the Nature of Anthropological Understanding*, 28 BULL. AM. ACAD. ARTS & SCI. 26 (1974).

44. See, e.g., Morris S. Schwartz & Charlotte Green Schwartz, *Problems in Participant Observation*, 60 AM. J. SOC. 343, 346 (1955).

45. See Lashley, *supra* note 40. But see Karen O’Reilly, *Going “Native”*, in KEY CONCEPTS IN ETHNOGRAPHY (2009) (“[I]t is increasingly recognized that complete physical and emotional distance is neither possible nor even desirable.”).

saturation.<sup>46</sup> In total, I conducted fifty-nine semi-structured interviews. Each respondent received a \$20 Subway© gift certificate as a research incentive and in gratitude for their time. I also conducted interviews with the leadership of community organizations actively fighting for residents affected by property tax foreclosure. I conducted all interviews of residents and activists with the promise of confidentiality, and thus I use pseudonyms in this Article to protect their identities.

To ensure that I examined the property tax foreclosure crisis from every possible angle, I also interviewed relevant policy makers and bureaucrats. Given their role as public servants, most of these interviews proceeded without the promise of confidentiality. Respondents include several Detroit City Council members, the Wayne County Treasurer, Detroit's Chief Assessor, the Chairman of Detroit's Board of Review, the head of Detroit's Department of Housing and Redevelopment, and many others public servants involved with property tax administration in Detroit. Although I interacted with Detroit's Mayor, Mike Duggan, through the participant observation, he was the only key governmental actor to refuse a formal interview.<sup>47</sup>

In sum, participant observation in combination with semi-structured interviews created space for a comprehensive understanding of how unconstitutional property tax assessments proliferated, leading Detroit to become a predatory city. As with all ethnographic work, the goal is not to suggest that the reasons I identify in the Detroit case are generalizable to all predatory cities. Instead, my results generate empirically informed hypotheses about why other cities become predatory. Using both qualitative and quantitative methods, other scholars can test whether these hypotheses are durable across various cases.

### B. *The Genesis of a Predatory City*

Given the damage wrought, the most pressing question is: Why did unconstitutional property tax assessments proliferate in Detroit? In this Section, I use the Detroit case to begin exploring why predatory cities exist in advanced liberal democracies with well-developed legal infrastructure and an avowed commitment to the rule of law.

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46. Data saturation is when the same themes, facts, and emotional responses are repeated continually, and new information is sparse. See Patricia L. Fusch & Lawrence R. Ness, *Are We There Yet? Data Saturation in Qualitative Research*, 20 QUALITATIVE REP. 1408, 1409 (2015).

47. When our research team requested an interview—making clear we were not party to the ongoing litigation (*see infra* note 303)—Mayor Duggan personally sent the following reply on June 4, 2017: “As you know, this matter is the subject of pending litigation. Whether you are a party to that litigation yourself doesn’t change the fact that I cannot comment on the subject matter of pending litigation. I respectfully ask that you direct requests for discussions on this matter to the city law department.” E-mail from Mike Duggan, Mayor of Detroit, to Bernadette Atuahene, Professor of Law, IIT, Chicago-Kent Coll. of Law (June 4, 2017, 16:31 CDT) (on file with author).

### 1. *The Creation of Vulnerability*

Through an interplay of factors, public and private institutions actively constructed vulnerability in Detroit, and this set the background conditions necessary for unconstitutional property tax assessments to flourish. Martha Fineman has written extensively on vulnerability and defines it as “the universal and constant susceptibility to change, both positive and negative, in our physical and social well-being that exists over the life course.”<sup>48</sup> Although classical liberalism dismisses vulnerability and venerates the ability to ‘pull yourself up by your bootstraps,’ independence and self-sufficiency are myths. As many feminist scholars have noted, to become an autonomous individual, people depend upon family, community, and various forms of state assistance.<sup>49</sup> Since interdependence is the true status quo, a vulnerability analysis acknowledges the role of both state and non-state actors in co-producing volatility.

In Detroit, public and private entities constructed the vulnerability of African Americans through discriminatory zoning, racially restrictive covenants, urban renewal, mortgage and insurance redlining, and predatory mortgage lending. When public officials allowed unconstitutional property tax assessments to proliferate, they worsened existing vulnerabilities. Although many civil society organizations serve and protect vulnerable populations, they were overstretched and thus unable to arrest unconstitutional property tax assessments and the resulting property tax foreclosure crisis. In addition, due to years of economic decline, corrupt politicians, failing schools, reduced state funding, and a historic municipal bankruptcy, the City of Detroit itself was vulnerable: a violated violator worthy of sympathy.

#### a. *Systemic Racism Creates Vulnerability*

This wave of unconstitutional property tax assessments and tax foreclosures is not the first time that state agents have abused African Americans in Detroit and other metropolitan areas. Racial zoning, prevalent at the turn of the twentieth century, is a prime example.<sup>50</sup> In 1910, Baltimore was the first city

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48. Email from Martha Albertson Fineman, to Bernadette Atuahene, Professor of Law, IIT, Chicago-Kent Coll. of Law (Oct. 29, 2018, 13:44 CDT) (on file with author); see also Martha Albertson Fineman, “Elderly” as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility, 20 ELDER L.J. 71 (2012); Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251 (2010); Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008) [hereinafter Fineman, *Anchoring Equality*].

49. See Susan Dodds, *Dependence, Care, and Vulnerability*, in VULNERABILITY: NEW ESSAYS IN ETHICS AND FEMINIST PHILOSOPHY 181, 183–84 (Catriona Mackenzie et al. eds., 2014); Fineman, *Anchoring Equality*, supra note 48, at 19. See generally JENNIFER NEDELSKY, *LAW’S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* 138 (2011).

50. See Christopher Silver, *The Racial Origins of Zoning in American Cities*, in URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS (June Manning Thomas & Marsha Ritzdorf eds., 1997) (describing the establishment of racial zoning ordinances as a substitute for more direct forms of segregation and detailing the spread of such ordinances across major US cities throughout the early twentieth century).

to adopt a citywide ordinance, preventing certain racial groups from residing in its boundaries.<sup>51</sup> Detroit was not far behind.<sup>52</sup> Although the Supreme Court outlawed racial zoning in 1917, the practice nevertheless continued for several years after.<sup>53</sup>

Eventually, local governments moved away from explicit racial zoning and resorted instead to exclusionary zoning—a subtler means of excluding racial minorities.<sup>54</sup> Exclusionary zoning occurs when local governments preclude certain types of land uses, such as low-income apartments, from their jurisdictions by imposing lot size or density requirements. This limits the supply of housing and thus increases its price, barring low-income individuals and families from residing in these suburban communities. Exclusionary zoning allows the market to do the dirty work by legally keeping certain people out.<sup>55</sup> In Wayne County, curtailed access to suburban housing has locked African Americans into racially segregated cities like Detroit, Inkster, and Highland Park.

Similar to racial and exclusionary zoning, racially restrictive covenants also prevented African Americans from taking residence in suburban communities and accessing the attendant educational, social, and economic resources found therein.<sup>56</sup> A covenant is a private agreement between landowners that imposes duties on subsequent owners who were not party to the initial agreement.<sup>57</sup> Racially restrictive covenants ordinarily prevented African Americans (and in the West also Asians) from occupying homes.<sup>58</sup>

Real estate boards and neighborhood associations in Northern cities created and enforced racially restrictive covenants to subordinate African-Americans, politely using contract law like Southern cities impolitely used lynchings and cross burnings.<sup>59</sup> As the Great Migration progressed and scores of African Americans fled racial violence in the South to find refuge in Northern cities,<sup>60</sup>

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51. *Id.*

52. THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 3 (2014).

53. *Buchanan v. Warley*, 245 U.S. 60, 82 (1917). Many cities ignored *Buchanan*, including Atlanta, Indianapolis, New Orleans, Richmond, Kansas City, St. Louis, and Austin. *See Silver, supra* note 50.

54. *See Paul E. King, Exclusionary Zoning and Open Housing: A Brief Judicial History*, 68 *GEO. REV.* 459, 469 (1978).

55. *See Vill. of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926) (ruling exclusionary zoning is legal).

56. *See generally* RICHARD R. W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* (2013).

57. 68 A.L.R.2D 1022 *COMMENT NOTE.—AFFIRMATIVE COVENANTS AS RUNNING WITH THE LAND* § 1 (1959).

58. *See* BROOKS & ROSE, *supra* note 56, at 53.

59. *See* Michael Jones-Correa, *The Origins and Diffusion of Racial Restrictive Covenants*, 115 *POL. SCI. Q.* 541, 559 (2000).

60. *See generally* ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION* (2011).

racially restrictive covenants kept them cloistered in segregated communities with limited economic resources and dilapidated housing.<sup>61</sup> In Detroit, the NAACP reported:

The federal government encouraged the use of racially restrictive covenants and, in one case, refused to make loans to a developer for a housing development project unless he built a six-foot high wall to separate his property from property owned by African Americans.<sup>62</sup>

In the 1940s, “80% of Detroit property outside the inner city was subject to racial covenants, which white residents established neighborhood associations to enforce.”<sup>63</sup> So by the end of the 1940s, the majority of Detroit’s African-American residents lived in a sixty-square block of the city’s Lower East Side.<sup>64</sup> Because there were few neighborhoods in which African Americans could reside, limited supply and great demand pushed up rental prices in these segregated areas. Consequently, although the housing stock was inferior, landlords charged African Americans 20 to 40 percent more in rent than they charged white renters.<sup>65</sup>

While state and private actors used zoning laws and covenants to keep African Americans separate from whites, urban renewal uprooted African Americans from the inner-city communities in which they were sequestered.<sup>66</sup> Urban renewal was when state agencies designated an area as blighted, used eminent domain to acquire properties in the appointed zone, uprooted the existing population, and transferred these properties to developers, subsidizing the purchase price in exchange for the promise of redevelopment.<sup>67</sup> James Baldwin famously called it “Negro removal” because urban renewal disproportionately affected African-American communities weakened by segregation, emaciated tax bases, limited political influence, and a lack of quality public services.<sup>68</sup> By 1970, urban renewal displaced over 5,500 African-

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61. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

62. NAACP, *HISTORY OF HOUSING DISCRIMINATION AGAINST AFRICAN AMERICANS IN DETROIT*, NAACP LEGAL DEF. & EDUC. FUND, INC., <https://www.naacpldf.org/files/our-work/Detroit%20Housing%20Discrimination.pdf> [https://perma.cc/PPP8-2MMD].

63. *Id.*

64. SUGRUE, *supra* note 52, at 23–24.

65. NAACP, *supra* note 62.

66. See generally MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (2016).

67. *Id.*; see also *Garrett v. City of Hamtramck*, 335 F. Supp. 16 (E.D. Mich. 1971) (“Plaintiffs contend that the City of Hamtramck and its mayor, its co-ordinator of urban renewal and its City Planning Commission have intentionally planned and implemented urban renewal and other government projects for the purpose of removing a substantial portion of Black citizens from the City.”); ROTHSTEIN, *supra* note 61, at 122 (“In 1962, with federal urban renewal funds, the city [of Detroit] began to demolish African American neighborhoods. The first project cleared land for expansion of a Chrysler automobile manufacturing plant. Then, federal dollars were used to raze more homes to make room for the Chrysler Expressway (I-75) leading to the plant.”).

68. Interview with James Baldwin by Kenneth Clark (June 24, 1963) [http://openvault.wgbh.org/catalog/V\\_C03ED1927DCF46B5A8C82275DF4239F9](http://openvault.wgbh.org/catalog/V_C03ED1927DCF46B5A8C82275DF4239F9)

American families from their homes in Detroit.<sup>69</sup> The Highway Act of 1956 exacerbated the displacement by disproportionately leveling African-American communities to build freeways.<sup>70</sup> For instance, authorities destroyed Black Bottom—an iconic Detroit neighborhood that was home to the City’s first African-American mayor, Coleman Young, Jr., and boxer Joe Louis—to make room for Route 10 and I-75.<sup>71</sup>

When displaced African-American families tried to resettle in white communities, whites often resisted, using an array of violent and nonviolent tactics.<sup>72</sup> If they failed to keep African Americans out, whites fled and took their physical and social capital with them.<sup>73</sup> With these impediments to moving into adjacent suburbs firmly in place, most poor and working-class African Americans only had the option of relocating from one segregated, distressed neighborhood to another. Crime and despair thrived in these newly configured, hyper-vulnerable communities, in part, because urban renewal disrupted and diminished the social capital necessary to abate it.<sup>74</sup>

Urban renewal cleared the way for redlining and vice versa. Redlining is when financial institutions (such as banks and insurance companies) cordon off an area based on race and refuse to provide the capital and services necessary for these communities to thrive.<sup>75</sup> Redlining marked African-American

[<https://perma.cc/HS2Q-KHN6>]; see also Harry W. Reynolds, Jr., *Population Displacement in Urban Renewal*, 22 AM. J. ECON. & SOC. 113, 115–16 (1963) (“The computations of the Housing and Home Finance Agency on this point suggest that 42,403 displaced families out of 61,200 in urban renewal sites were non-white.”); Greg Miller, *Maps Show How Tearing Down City Shums Displaced Thousands*, NAT’L GEOGRAPHIC (Dec. 15, 2017), <https://news.nationalgeographic.com/2017/12/urban-renewal-projects-maps-united-states> [<https://perma.cc/6PDU-2QPM>] (“In cities like Philadelphia, Detroit, and Atlanta, more than two-thirds of those displaced were people of color.”).

69. See *Renewing Inequality: Urban Renewal, Family Displacements, and Race 1955–1966*, <http://dsl.richmond.edu/panorama/renewal> [<https://perma.cc/Q9KM-VMXT>] (an interactive map provided by the University of Richmond Digital Scholarship Lab).

70. 23 C.F.R. §§ 1–1399 (2018); see MARK H. ROSE, *INTERSTATE: EXPRESS HIGHWAY POLITICS, 1939–89*, at 107 (1990); Federal Transit Authority: Transit Cooperative Research Program, *Consequences of the Development of the Interstate Highway System for Transit*, 21 RES. RESULTS DIG. 1, 6 (1997), [http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp\\_rrd\\_21.pdf](http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rrd_21.pdf) [<https://perma.cc/UHA9-BTXG>].

71. Johnny Miller, *Roads to Nowhere: How Infrastructure Built on American Inequality*, GUARDIAN (Feb. 21, 2018), <https://www.theguardian.com/cities/2018/feb/21/roads-nowhere-infrastructure-american-inequality> [<https://perma.cc/7TTK-9Y5V>].

72. NAACP, *supra* note 62 (In the 1950s, “there were over 200 recorded acts of white neighbors harassing or committing violence against African American ‘pioneers’ attempting to integrate white neighborhoods, including: mass protests, throwing bricks through windows and paint on the house, burning effigies and crosses, breaking windows and physically attacking homeowners”).

73. See Reynolds Farley, *Detroit Fifty Years After the Kerner Report: What Has Changed, What Has Not, and Why?*, 4 RUSSELL SAGE FOUND. J. SOC. SCI. 206, 208 (2018); Amy J. Schulz et al., *Racial and Spatial Relations as Fundamental Determinants of Health in Detroit*, 80 MILBANK Q. 677, 684 (2002).

74. See FULLILOVE, *supra* note 66, at 53–70.

75. See JOHN P. KRETZMANN & JOHN L. MCKNIGHT, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY’S ASSETS* 59–62 (1993) (describing how urban renewal decimated neighborhoods, especially those which had previously housed tight-knit migrant communities, and how that decimation had “ominous implications” for the strength



communities as deviant and so financial institutions refrained from investing, aggravating the existing physical degradation and social distress.<sup>76</sup> By the 1940s, redlining adversely affected much of Detroit.<sup>77</sup> Maps labelled 28 percent of the city as “hazardous,” 51 percent as “definitely declining,” and only 20 percent as “still desirable” or “best.”<sup>78</sup> The effects of redlining are felt even today.<sup>79</sup>

In response to segregation, police brutality, poverty, and racial inequalities in housing, education, and labor, African Americans in Detroit staged an uprising in the summer of 1967.<sup>80</sup> To understand the eruption of racial violence in Detroit and other US cities, President Johnson commissioned the Kerner Report, which concluded that “[o]ur nation is moving toward two societies, one black, one white—separate and unequal.”<sup>81</sup> After the uprising, white flight increased from a trickle to a gushing flood, transforming Detroit into a majority African-American city.<sup>82</sup> Detroit’s population is now about 80 percent African-American due to the combination of state sanctioned racial and exclusionary zoning, racially restrictive covenants, and redlining.<sup>83</sup>

In a recent study, I found that unconstitutional property tax assessments and property tax foreclosures occur at a significantly higher rate in Wayne County’s

of those communities); Peter Dreier, *Redlining Cities: How Banks Color Community Development*, 34 CHALLENGE 15 (1991).

76. See generally Gregory D. Squires et al., *Urban Decline or Disinvestment: Uneven Development, Redlining and the Role of the Insurance Industry*, 27 SOC. PROBS. 79 (1979).

77. See Farley, *supra* note 73, at 208–11.

78. ROBERT K. NELSON ET AL., MAPPING INEQUALITY: REDLINING IN NEW DEAL AMERICA, <https://dsl.richmond.edu/panorama/redlining/#loc=10/42.3475/-83.1365&opacity=0.8&city=detroit-mi> [<https://perma.cc/9ED6-NYWK>] (providing historical maps showing which districts in certain cities were redlined); see FED. HOUSING ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT ¶ 1360 (1918), <https://www.huduser.gov/portal/sites/default/files/pdf/Federal-Housing-Administration-Underwriting-Manual.pdf> [<https://perma.cc/6NG6-4F8Q>] (The Fair Housing Act appraisal manuals advised banks to favor communities that had adopted racially restrictive covenants and instructed them not to lend in areas with “inharmonious racial groups”).

79. See, e.g., DANIEL AARONSON ET AL., FED. RESERVE BANK OF CHI., THE EFFECTS OF THE 1930S HOLC “REDLINING” MAPS 1 (2019), available at <https://www.chicagofed.org/-/media/publications/working-papers/2017/wp2017-12-pdf.pdf> [<https://perma.cc/UXD2-QDUK>]; Tracy Jan, *Redlining Was Banned 50 Years Ago. It’s Still Hurting Minorities Today*, WASH. POST (Mar. 28, 2018), [https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?noredirect=on&utm\\_term=.69d093f1836a](https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?noredirect=on&utm_term=.69d093f1836a) [<https://perma.cc/W5CC-RN5N>].

80. See REPORT OF THE NATIONAL ADVISORY COMMITTEE ON CIVIL DISORDERS: SUMMARY OF REPORT, <http://www.eisenhowerfoundation.org/docs/kerner.pdf> [<https://perma.cc/DV54-GGHZ>] [hereinafter SUMMARY OF CIVIL DISORDERS REPORT]. See generally THE KERNER REPORT: THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (2016).

81. See SUMMARY OF CIVIL DISORDERS REPORT, *supra* note 80, at 1.

82. See Kevin Boyle, *The Ruins of Detroit: Exploring the Urban Crisis in the Motor City*, 27 MICH. HIST. REV. 109, 114 (2001) (Through white flight, “[w]hite Detroiters thus reinforced African Americans’ ghettoization, trapping them in the center of the city as it was being rapidly stripped of jobs. By doing so, they forced black Detroiters to bear the burden of deindustrialization”).

83. COMMUNITY FACTS, *supra* note 8 (search zip code 48214 under “Community Facts”).

predominately African-American cities than in its predominately white ones.<sup>84</sup> It is important to understand that the racialized nature of the property tax foreclosure crisis is part of this longer history of state actors using racially biased laws and policies to construct vulnerability in Detroit and other African-American communities.

*b. Corporate Malfeasance Creates Vulnerability*

The literature provides ample examples of regulatory and governmental agencies passively enabling, ignoring, or actively permitting corporate criminality.<sup>85</sup> In the Detroit case, corporate malfeasance did not directly cause illegally inflated property tax assessments. Instead, it set the background conditions necessary for the illegality. Predatory lending that targeted minority communities for subprime loans was one significant factor that precipitated the Great Recession and caused a steep decline in home values—a pivotal factor in the emergence of unconstitutional property tax assessments.<sup>86</sup> The evidence suggests that predatory practices, involving fraud and deceit, became the rule rather than the exception for minority communities.<sup>87</sup> This was possible because African-American and Hispanic communities have historically turned to predatory lenders for much needed capital, especially since redlining and other policies reduced access to conventional loans.<sup>88</sup>

The detrimental economic impacts of subprime lending have devastated African-American communities in Detroit, New York, Chicago, Atlanta, Houston, and Washington D.C.<sup>89</sup> Detroit stands out among these, however.<sup>90</sup> Jacob Rugh and Douglass Massey show that, between 2004 and 2006, about 40

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84. Atuahene, *Our Taxes Are Too Damn High*, *supra* note 39, at 1455.

85. *See, e.g.*, STATE-CORPORATE CRIME: WRONGDOING AT THE INTERSECTION OF BUSINESS AND GOVERNMENT (Ronald C. Kramer & Raymond Michalowski eds., 2006); David O. Friedrichs & Dawn L. Rothe, *State-Corporate Crime and Major Financial Institutions: Interrogating an Absence*, 3 STATE CRIME J. 146 (2014); David Whyte, *Regimes of Permission and State-Corporate Crime*, 3 STATE CRIME J. 237 (2014).

86. *See* Lauren M. Ross & Gregory D. Squires, *The Personal Costs of Subprime Lending and the Foreclosure Crisis: A Matter of Trust, Insecurity, and Institutional Deception*, 92 SOC. SCI. Q. 140, 142–43 (2011); Jacob S. Rugh et al., *Race, Space, and Cumulative Disadvantage: A Case Study of the Subprime Lending Collapse*, 62 SOC. PROBS. 186, 186 (2015); Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 629–33 (2010); Neil Fligstein & Alexander Roehrkasse, *The Causes of Fraud in Financial Crises: Evidence from the Mortgage-Backed Securities Industry* 25, 33 (Inst. for Research on Lab. & Emp., Working Paper No. 122–15, 2015), <https://www.irle.berkeley.edu/files/2015/The-Causes-of-Fraud-in-Financial-Crises.pdf> [<https://perma.cc/QUX8-RNDJ>].

87. Rugh & Massey, *supra* note 86, at 633.

88. *Id.* at 630.

89. *See* Ross & Squires, *supra* note 86, at 140; Rugh et al., *supra* note 86, at 186, 198.

90. *See* Philip Ashton, *CRA's "Blind Spots": Community Reinvestment and Concentrated Subprime Lending in Detroit*, 32 J. URB. AFF. 579, 587 (2010) (“Detroit emerged as the largest of 30 metro areas distinguished by having the highest prevalence of subprime lending alongside high minority denial rates.”); Rugh & Massey, *supra* note 86, at 633.

percent of all bank loans issued in the metro Detroit area were subprime.<sup>91</sup> Detroit also had one of the highest mortgage foreclosure rates,<sup>92</sup> which is unsurprising because data show that “the greater the degree of Hispanic and especially black segregation a metropolitan area exhibits, the higher the number and rate of foreclosures it experiences.”<sup>93</sup>

Subprime lending and the ensuing mortgage foreclosure crisis ravaged Detroit’s housing market. Between 2008 and 2010, the average Detroit home fell in value from roughly \$80,000 to \$25,000.<sup>94</sup> Unconstitutional tax assessments proliferated largely because Detroit’s Assessment Division was unable to adjust tax assessments to reflect the staggering price declines. Additionally, banks do not typically provide financing to homes worth less than \$50,000.<sup>95</sup> Since 2009, the average value of a Detroit home falls below this threshold amount.<sup>96</sup> Consequently, as shown in Figure 2, most banks stopped originating mortgages in Detroit’s embattled housing market.<sup>97</sup> The situation got so bad that, in 2012, banks originated a mere 203 loans in the entire City of Detroit—down from 6,599 loans prior to the housing bubble’s burst.<sup>98</sup>

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91. Rugh & Massey, *supra* note 86, at 646, n.2; *see also* Class Action Complaint at ¶ 81, *Adkins v. Morgan Stanley*, 307 F.R.D. 119 (S.D.N.Y. 2015) (No. 12 CIV 7667), 2012 WL 4856708, at 25 [hereinafter *Adkins* Class Action Complaint].

91. *Adkins* Class Action Complaint, *supra* note 91, at ¶ 121 (ACLU lawsuit involving against Morgan Stanley sought to certify a class of 6,000 African American homeowners who had obtained predatory loans from that bank alone).

92. Detroit’s 2007 mortgage foreclosure rate of five percent was the highest in the nation. MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, SAVE THE DREAM: MICHIGAN FORECLOSURE DATA, [http://www.michigan.gov/documents/mshda/Data\\_230191\\_7.pdf](http://www.michigan.gov/documents/mshda/Data_230191_7.pdf) [https://perma.cc/G6YK-GL2E].

93. *See* Rugh & Massey, *supra* note 86, at 631.

94. Atuahene & Berry, *supra* note 20, at 853 & Fig. 2.

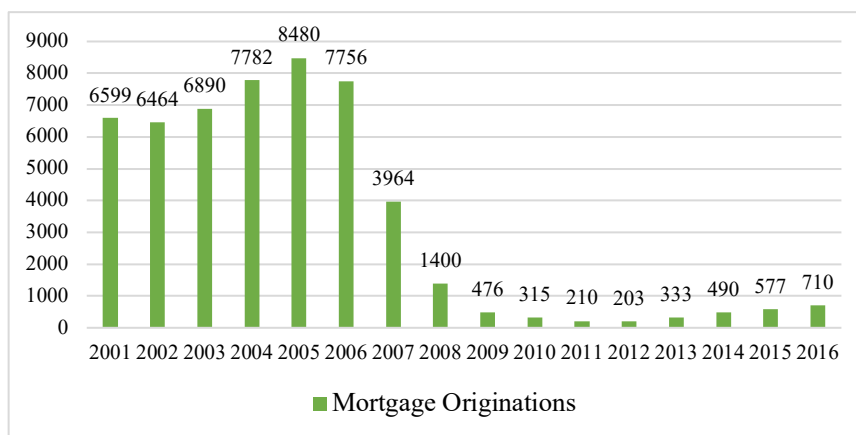
95. *Id.* at 854.

96. *Id.* Moreover, according to our analysis of sales data from the City of Detroit’s Open Data Portal, 71 percent of home sales since 2009 were for a purchase price less than \$50,000. Detroit’s Open Data Portal provides access to public data and information about city governments and service delivery: CITY OF DETROIT OPEN DATA PORTAL, <https://data.detroitmi.gov> [https://perma.cc/KTA4-ZLJ9].

97. *See* ERIKA C. POETHIG ET AL., URB. INST., THE DETROIT HOUSING MARKET: CHALLENGES AND INNOVATIONS FOR A PATH FORWARD 24 fig.19 (2017), [https://www.urban.org/sites/default/files/publication/88656/detroit\\_path\\_forward\\_0.pdf](https://www.urban.org/sites/default/files/publication/88656/detroit_path_forward_0.pdf) [https://perma.cc/239B-PSWH].

97. *Id.*

98. *Id.*

Figure 2: Mortgage Originations in Detroit from 2001-2016<sup>99</sup>

The lack of access to mortgages forced people to purchase homes in Detroit using a land contract, a form of seller financing requiring buyers pay monthly installments similar to rent. In a traditional home sale, the buyer receives legal title prior to paying off the mortgage. But with a land contract, the buyer often receives title only after the contract is paid in full.<sup>100</sup> More detrimentally, if the buyer misses a payment, sellers retain the right to cancel the contract and keep all prior payments, as if they were rental payments and not equity.<sup>101</sup> Unlike a traditional rental contract, however, buyers provide a down payment, assume responsibility for all repairs, and are exempted from legal doctrines—such as the warranty of habitability—that protect consumers from housing unfit for habitation.<sup>102</sup>

In recent years, these disadvantageous land contracts have outnumbered mortgages in Detroit.<sup>103</sup> Unlike mortgages, land contracts are poorly regulated, leaving underinformed first-time homebuyers vulnerable to further corporate malfeasance. Since Michigan law does not require land contract sellers to

99. *Id.*

100. 26 M.L.P. 2d *Real Property: Contracts for Sale of Real Property* § 451 (defining a land contract).

101. BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* 281 (2009) (explaining that renters were bound “in contracts that gave them no equity in the properties until most or all of the price had been paid, [so] the plaintiffs could not sell their properties without suffering a grave financial loss”).

102. See generally 49 AM. JUR. 2D *Landlord and Tenant* § 449 (2018) (describing the implied warranty of habitability).

103. See Joel Kurth, *Loose Regulations Make Land Contracts a Tool to Exploit Low-Income Homeowners*, CRAIN’S DETROIT BUS. (May 20, 2017), <http://www.craindetroit.com/article/20170521/NEWS/170529985/loose-regulations-make-land-contracts-a-tool-to-exploit-low-income> [<https://perma.cc/B87V-ZUV7>] (writing in 2017, noting that “[l]ast year, land contracts outnumbered mortgages in Detroit, 834 to 710, according to Wayne County records”).

disclose liens or debts on the property or to have homes appraised, it is common for buyers to supply a down payment, finish their installment payments, receive the deed, and only then discover that their new property has delinquent property taxes.<sup>104</sup> Consequently, predatory land contracts as well as predatory lending have exacerbated the property tax foreclosure crisis.

*c. Political and Economic Turmoil Creates Vulnerability*

The antidote to vulnerability is resilience.<sup>105</sup> Resilience comes from institutional, personal, and social resources that mitigate vulnerability, although these resources can never erase it altogether.<sup>106</sup> But when institutions, such as city government, are acutely vulnerable too, a community's opportunity for resilience is accordingly reduced.<sup>107</sup> While institutional racism and poverty left most Detroit residents vulnerable, the City's own vulnerability arose from a bevy of socioeconomic ills, including a decades-long economic decline, corrupt leadership, and the largest municipal bankruptcy in US history. In its vulnerability, the City of Detroit intensified the vulnerability of its residents.

In the mid-twentieth century, the auto industry generated almost a third of all jobs in Detroit.<sup>108</sup> With its fate closely tied to America's auto industry, Detroit was once one of the nation's most prosperous cities.<sup>109</sup> But, when the auto industry began to decline, so did Detroit.<sup>110</sup> From the 1950s to now, the City's population has fallen 65 percent from close to two million people to just over 700,000.<sup>111</sup> As Detroit's economy and population declined, its political troubles ascended.

Between 1974 and 1994, under the leadership of Detroit's first African-American mayor, Coleman Young Jr., Detroit was politically stable although its economy was in decline.<sup>112</sup> It was not until the election of Kwame Kilpatrick

104. See MICH. COMP. LAWS ANN. § 565.357 (West 2019); Kurth, *supra* note 103.

105. See, e.g., Diana Hernández et al., *Public Housing on the Periphery: Vulnerable Residents and Depleted Resilience Reserves Post-Hurricane Sandy*, 95 J. URB. HEALTH 703 (2018) (discussing how vulnerable populations cope through resilience).

106. See *id.* at 704, 714.

107. See Fineman, *Anchoring Equality*, *supra* note 48, at 12–13 (“[R]iddled with their own vulnerabilities, society's institutions cannot eradicate, and often operate to exacerbate, our individual vulnerability.”).

108. See SUGRUE, *supra* note 52, at 95.

109. See Charles K. Hyde, “*Detroit the Dynamic*”: *The Industrial History of Detroit from Cigars to Cars*, 27 MICH. HIST. REV. 57, 57 (2001).

110. See SUGRUE, *supra* note 52, at 3.

111. See Ben Austen, *The Post-Post-Apocalyptic Detroit*, N.Y. TIMES (July 11, 2014), <https://www.nytimes.com/2014/07/13/magazine/the-post-post-apocalyptic-detroit.html> [<https://perma.cc/A8MY-9288>]; Christine MacDonald, *Detroit Population Rank Is Lowest Since 1850*, DETROIT NEWS (May 20, 2016), <https://www.detroitnews.com/story/news/local/detroit-city/2016/05/19/detroit-population-rank-lowest-since/84574198> [<https://perma.cc/7M53-XMVN>].

112. See Boyle, *supra* note 82, at 119 (“By the time [Young] took office, angry white voters had repeatedly defeated millage votes, leaving the public schools all but bankrupt, while white flight had fundamentally undermined the city's tax base. Thus, Young was left to govern a city that had never recovered from 1967.”).

(2002-2008) that the economic and political tumult sincerely began.<sup>113</sup> After a court convicted him of perjury and obstruction of justice in 2008, Kilpatrick resigned. In 2013, a federal court convicted him of twenty-four federal offenses and sentenced him to twenty-eight years in prison.<sup>114</sup> While his resignation and subsequent imprisonment was unsettling enough, the end of Kilpatrick's regime also coincided with the Great Recession, which sent Detroit's home prices tumbling. So, political scandal and instability engulfed the City at the time that Detroit's long economic decline was most severe, and the City needed—but lacked—strong leadership to navigate the turbulent economic waters.<sup>115</sup>

From 2008 to 2013, Detroit was drowning in debt and on the verge of economic collapse.<sup>116</sup> Responding to the crisis, Michigan's governor, Rick Snyder, wrested control of Detroit's financial operations from its elected officials in 2013 and gave them to Kevyn Orr—his appointed Emergency Manager—for an 18-month term.<sup>117</sup> Without the approval of Detroit's democratically elected city government,<sup>118</sup> Orr filed the largest municipal bankruptcy in our nation's history, restructuring over \$18 billion in debt and long-term liabilities.<sup>119</sup> During this period, Orr imposed austerity measures, cutting city pensions and reducing spending for vital police, court, transportation, and water services.<sup>120</sup> Strapped

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113. See also Nathan Bomey & John Gallagher, *How Detroit Went Broke: The Answers May Surprise You – and Don't Blame Coleman Young*, DETROIT FREE PRESS (Sept. 15, 2013), <https://www.freep.com/story/news/local/michigan/detroit/2013/09/15/how-detroit-went-broke-the-answers-may-surprise-you-and/77152028> [<https://perma.cc/P5Y8-LBTU>] (“Wall Street types who applauded Mayor Kwame Kilpatrick's financial acumen following his 2005 deal to restructure city pension debt should consider this: The numbers prove that his plan devastated the city's finances and was a key factor that drove Detroit to file for Chapter 9 bankruptcy in July.”).

114. See Steven Yaccino, *Kwame M. Kilpatrick, Former Detroit Mayor, Sentenced to 28 Years in Corruption Case*, N.Y. TIMES (Oct. 10, 2013), <https://www.nytimes.com/2013/10/11/us/former-detroit-mayor-kwame-kilpatrick-sentencing.html> [<https://perma.cc/R5X8-5TSX>].

115. After Kilpatrick's departure, Detroit was overseen by a quick succession of leaders: Kenneth Cockerel, Jr. took office in September 2008 and left eight months later, to be replaced by David Bing. Mike Duggan took office in 2014, and found his governing powers interrupted by Kevyn Orr, the Emergency Manager. Tina Granzo, *People of Detroit: Mayors of Detroit*, <http://historydetroit.com/people/mayors.php> [<https://perma.cc/N6FS-5JAY>].

116. See generally Bomey & Gallagher, *supra* note 113.

117. See Mich. Local Financial Stability and Choice Act of 2012, Public Act 436, § 9(2) (2012) (giving the Governor power to appoint an Emergency Manager to address a financial emergency).

118. See SUGRUE, *supra* note 52, at xix. City Council resisted the implementation of an emergency manager, advocating instead to give the City's program manager more power over necessary financial reforms. See Darren A. Nichols & Chad Livengood, *Emergency Manager Approved to Fix Detroit Crisis*, DETROIT NEWS (Mar. 14, 2013), <http://webarchive.loc.gov/all/20130314203159/http://www.detroitnews.com/article/20130314/METR001/303140456> [<https://perma.cc/MW27-M6PC>].

119. On December 3, 2013, U.S. Bankruptcy Judge Steven Rhodes ruled that Detroit was legally entitled to pursue bankruptcy. In re City of Detroit, 504 B.R. 191, 230–31 (Bankr. E.D. Mich. 2013); see also Public Act 436, § 18(1) (authorizing Emergency Managers to file bankruptcy).

120. See CITY OF DETROIT OFFICE OF EMERGENCY MANAGER KEVYN D. ORR, EMERGENCY MANAGER REPORT 40–44 (2013), [https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/Emergency%20Manager%20Report%20\\_%20September%2030%2C%202013.pdf](https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/Emergency%20Manager%20Report%20_%20September%2030%2C%202013.pdf) [<https://perma.cc/VHV3-UJ94>] (disapproving \$190,000 in water operations and maintenance, \$820,000

for cash, the City could not adequately conduct basic city services such as trash removal, street light repair, and determination of property tax assessments.<sup>121</sup> Without basic city services, about half of Detroit's property owners decided not to pay their property taxes.<sup>122</sup> The downward economic spiral worsened.

*d. Overstretched Civil Society Organizations Create Vulnerability*

Another chief reason that unconstitutional property tax assessment proliferated in Detroit is that civil society organizations serving Detroit's vulnerable populations were stretched exceedingly thin. United Community Housing Coalition (UCHC) was the organization most intensely focused on ameliorating the property tax foreclosure crisis.<sup>123</sup> It provides counseling for homeowners at risk of tax foreclosure, assists owners to re-purchase their homes through the tax foreclosure auction, and offers a zero-interest loan to pay delinquent taxes and prevent homes from going to the auction.<sup>124</sup> While other organizations assisted in battling the property tax foreclosure crisis, the help was modest. But alone UCHC did not have the capacity necessary to deal with the monumental tax foreclosure problem. Its hands were full providing a variety of other housing-related services, including landlord tenant counseling, housing placement, tenant organizing, and mortgage prevention counseling. The property tax foreclosure crisis was a systemic breakdown requiring a systemic solution that UCHC and other Detroit nonprofits did not have the capacity to deliver.

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in transportation, \$5.4 million in "risk management fund," and \$1.5 million from the "general fund," including police, law, and the 36th District Court.); Susan Tompor, *Even 5 Years Later, Retirees Feel the Effects of Detroit's Bankruptcy*, DETROIT FREE PRESS (July 18, 2018), <https://www.freep.com/story/money/personal-finance/susan-tompor/2018/07/18/detroit-bankruptcy-retirees-pension/759446002> [<https://perma.cc/7CBS-4T4W>].

121. See Matt Helms et al., *9 Ways Detroit is Changing After Bankruptcy*, DETROIT FREE PRESS (Nov. 9, 2014), <http://www.freep.com/story/news/local/detroit-bankruptcy/2014/11/09/detroit-city-services-bankruptcy/18716557> [<https://perma.cc/47YU-5JJ8>] ("Average police response times clocked in at almost an hour. Tens of thousands of broken streetlights meant entire streets go dark at nightfall. And though Detroit has more than 200 municipal parks, the city could only afford to keep about a quarter of them open.").

122. Christine MacDonald & Mike Wilkinson, *Half of Detroit Property Owners Don't Pay Taxes*, DETROIT NEWS (Feb. 21, 2013), <https://www.detroitnews.com/story/news/local/detroit-city/2018/06/13/detroit-property-owners-tax-delinquency/700005002> [<https://perma.cc/7EHA-M3JL>] ("The News reviewed more than 200,000 pages of tax documents and found that 47 percent of the city's taxable parcels are delinquent on their 2011 bills. Some \$246.5 million in taxes and fees went uncollected.").

123. See ALEXA EISENBERG ET AL., UNIV. MICH. POVERTY SOLS., PREVENTING OWNER-OCCUPIED PROPERTY TAX FORECLOSURES IN DETROIT: IMPROVING ACCESS TO THE POVERTY TAX EXEMPTION 3 (2018), <https://poverty.umich.edu/files/2018/12/PovertySolutions-PovertyTaxExemption-PolicyReport-r2.pdf> [<https://perma.cc/9CDL-YVP2>] ("UCHC established the Tax Foreclosure Prevention Project (TFPP) in 2003, which provides free counseling services to residents experiencing tax foreclosure.").

124. UNITED CMTY. HOUS. COAL., TAX FORECLOSURE PREVENTION PROJECT, <http://www.uchcdetroit.org/services/tax-foreclosure> [<https://perma.cc/Z9PV-9LAM>].

Many civil society organizations, such as We the People of Detroit, focused instead on battling the City's water shutoff crisis.<sup>125</sup> With water prices rising 120 percent between 2007 and 2017, water became unaffordable for Detroit's impoverished population.<sup>126</sup> When people could not afford to pay, the delinquent water bill would attach as a lien to the home, causing further property tax foreclosures and displacement.<sup>127</sup> In addition to this draconian collection policy, city officials began shutting off water when delinquent water bills amounted to \$150 or more, depriving poor residents of running water in their homes.<sup>128</sup> Most detrimentally, water shutoffs placed families at risk. In addition to the dangers of living with no running water, social services can remove children from a home that is without water for more than seventy-two hours.<sup>129</sup> This dire situation prompted an investigation by the United Nations special rapporteurs on the right to water, sanitation, and affordable housing who produced a report declaring, "disconnection of [water] services due to an inability to pay for the service is a retrogressive measure and constitutes a violation of the human rights to water and sanitation."<sup>130</sup>

Civil society organizations were also preoccupied with reforming Detroit's failing public schools. In the 2017-2018 school year, only 6.3% of Detroit Public Schools' third through eighth graders tested at the level of "proficient."<sup>131</sup>

125. See WE THE PEOPLE OF DETROIT, *COMMUNITY RESEARCH COLLECTIVE* (2016), <http://wethepeopleofdetroit.com/communityresearch/water> [<https://perma.cc/2QHK-TNHH>] (using data to illustrate the impact of water shutoffs on public health).

126. Eleanor Greene, *Detroit Fights for Fair Water Access*, GREEN AM. (Oct. 24, 2017), <https://medium.com/@GreenAmerica/detroit-fights-for-fair-water-access-d644ab46d97f> [<https://perma.cc/HL3P-F2M7>]; see also *Price of Water: 2010–2015*, CIRCLE OF BLUE (Apr. 1, 2015), <https://www.circleofblue.org/wp-content/uploads/2015/04/WaterPricing2015graphs.pdf> [<https://perma.cc/FA3H-KH92>].

127. SUPARNA BHASKARAN, HAAS INSTITUTE FOR A FAIR AND INCLUSIVE SOCIETY, PUBLIC HEALTH & WEALTH IN POST-BANKRUPTCY DETROIT 12 (2017), [https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/haasinstitute\\_publichealthwellbeingdetroit%20%281%29.pdf](https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/haasinstitute_publichealthwellbeingdetroit%20%281%29.pdf) [<https://perma.cc/NWR9-UGEM>].

128. Laura Gottesdiener, *UN Officials 'Shocked' by Detroit's Mass Water Shutoffs*, AL-JAZEERA AM. (Oct. 20, 2014), <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html> [<https://perma.cc/9HJ6-8ZQ9>] (highlighting that the City did not cut off water for commercial and industrial users even though their delinquent bills accounted for the lion's share of the debt owed to the water department); Greene, *supra* note 126.

129. See DIANE DEPANFILIS, U.S. DEP'T OF HEALTH & HUMAN SERVICES, OFF. OF CHILD ABUSE & NEGLECT, CHILD NEGLECT: A GUIDE FOR PREVENTION, ASSESSMENT, AND INTERVENTION 13 (2006), <https://www.childwelfare.gov/pubPDFs/neglect.pdf> [<https://perma.cc/WK4K-X66Z>] (listing lack of running or clean water as a type of behavior that indicates "inadequate supervision"); Greene, *supra* note 126; Rose Hackman, *What Happens When Detroit Shuts Off the Water of 100,000 People*, ATLANTIC (July 17, 2014), <https://www.theatlantic.com/business/archive/2014/07/what-happens-when-detroit-shuts-off-the-water-of-100000-people/374548> [<https://perma.cc/ZK2C-HB37>].

130. U.N. H.R. Council, *Rep. of the Special Rapporteur on the Human Right to Safe Drinking Water & Sanitation*, at 10, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015) <https://www.refworld.org/docid/55f7e7e04.html> [<https://perma.cc/U3WQ-JF6Q>].

131. Detroit Public Schools Grades 3–8 Assessments, MICH. SCH. DATA, <https://www.mischooldata.org/DistrictSchoolProfiles2/EntitySummary/SchoolDataFile.aspx>



Several foundations, such as The Skillman Foundation and United Way, as well as grassroots groups, like 482Forward, have worked tirelessly alongside parents to get Detroit's failing schools back on track.<sup>132</sup>

In addition, civil society organizations were wrapped up in efforts to end predatory lending and the resulting mortgage foreclosure crisis in Detroit. Community development organizations—under the umbrella of Community Development Advocates of Detroit (CDAD)—dealt with the destruction left in the wake of the mortgage foreclosure crisis by focusing on securing vacant properties, reducing blight, facilitating reuse, and promoting urban agriculture.<sup>133</sup> As Detroit has been emerging from financial ruin and attracting new residents,<sup>134</sup> several groups—rallied together by Detroit People's Platform—created a community benefits ordinance that ensures poor residents also benefit from the City's revitalization.<sup>135</sup>

I have provided just a sample of the issues that engrossed Detroit's civil society organizations and diverted their attention from battling unconstitutional property tax assessments. As one long-standing Detroit activist lamented:

If you are working on the ground, you are fucking overwhelmed! There is so much happening. So many fights going on. On the ground, we are always faced with immediate need. We are focused on triage. Rarely do we get opportunity to focus on the cause of the disease. Honestly, I was embarrassed that I did not know about unconstitutional property tax assessments. But the bleeding is so heavy, there is no opportunity to assess structural wrongs.<sup>136</sup>

Her embarrassment, however, is misplaced. Even if activists were not embattled with other ongoing justice fights, understanding how the Assessment Division

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[<https://perma.cc/LYH7-FBD4>] (select “Wayne RSEA” under ISD; select “Detroit Public Schools Community District” under District; select “2017–18” for School Year; and then select “Grades 3–8 Assessments” under Data Files).

132. See *Coalition for the Future of Detroit School Children*, Skillman FOUND. [<https://www.skillman.org/initiatives/coalition-for-the-future-of-detroit-school-children>] [<https://perma.cc/DPH4-N3NK>]; *Education*, United Way Se. MICH., [<https://unitedwaysem.org/focus-areas/education>] [<https://perma.cc/U73E-HVTQ>]; 482Forward, [<https://www.482forward.org>] [<https://perma.cc/82ZK-TJXS>].

133. See *Community Development Advocates of Detroit*, [<https://cdad-online.org>] [<https://perma.cc/3C4A-JECD>].

134. See Austen, *supra* note 111; Monica Davey, *Detroit Needs Residents, But Sends Some Packing*, N.Y. TIMES (June 26, 2014), [<https://www.nytimes.com/2014/06/27/us/detroit-needs-residents-but-sends-some-packing.html>] [<https://perma.cc/DQ3M-SHM3>].

135. See DETROIT, MICH., CITY CODE §§ 12-8-1 to -5 (2019) (previously codified as DETROIT, MICH., CODE OF ORDINANCES §§ 14-12-1 to -5 (2017)); see also *What is the Community Benefits Ordinance?*, CITY OF DETROIT, [<https://detroitmi.gov/departments/planning-and-development-department/citywide-initiatives/community-benefits-ordinance>] [<https://perma.cc/JXV5-7Y48>]; *Community Benefit Agreements*, DETROIT PEOPLE'S PLATFORM, [<http://detroitpeoplesplatform.org/resources/community-benefit-agreements>] [<https://perma.cc/C2MTEJFX>].

136. Comment Made to Bernadette Atuahene, Professor of Law, IIT, Chicago-Kent Coll. of Law at a Community Event (Sept. 27, 2018) (on file with author).

calculates property taxes and determining whether it was following the relevant laws is a formidable task. Ultimately, the lack of watchdog organizations with the time and ability to monitor the Assessment Division left Detroit vulnerable. Hence, unconstitutional property tax assessments proliferated.

*e. Reduced Federal and State Funding Creates Vulnerability*

Underfunding public entities creates vulnerability that can open the door to predatory cities. Federal funding to states and cities has been decreasing, although the services localities must provide have been increasing. In 1974, the federal government created the Community Development Block Grant (CDBG) Program to fund states and local governments.<sup>137</sup> However, the program has been eroded through time, suffering both from Reagan administration budget cuts and inadequate inflation adjustments.<sup>138</sup> Consequently, analysts found that in “real 2016 dollars, funding has decreased 80 percent since its peak in 1979 from \$15.0 billion to \$3.0 billion . . . .”<sup>139</sup> When Trump became President in 2017, his administration proposed cutting the CDBG program entirely.<sup>140</sup> Michigan has sustained significant financial damage from the reduction in federal funding. In 2003, Wayne County received \$6.6 million and Detroit \$46.5.<sup>141</sup> Fifteen years, one bankruptcy, and a Great Recession later, Wayne County received only \$5.5 million and Detroit \$34.5 million.<sup>142</sup>

In addition to reductions in federal funding, states have also drastically cut funding for their cities. The key to understanding state level disinvestment in Michigan is understanding its revenue sharing practices.<sup>143</sup> In exchange for the

137. Richard S. Williamson, *Community Development Block Grants*, 14 URB. LAW. 283 (1982).

138. Robert Benenson, *Reagan and the Cities, Revenue Sharing and Two Other Survivors*, EDITORIAL RES. REP. 1982, at 529–48 (1982), <https://library.cqpress.com/cqresearcher/cqresrre1982072300> [<https://perma.cc/ARB2-JZD4>].

139. BRETT THEODOS ET AL., URB. INST., *TAKING STOCK OF THE COMMUNITY DEVELOPMENT BLOCK GRANT 2* (2017), [https://www.urban.org/sites/default/files/publication/89551/cdbg\\_brief.pdf](https://www.urban.org/sites/default/files/publication/89551/cdbg_brief.pdf) [<https://perma.cc/CU4Q-JHSV>]; see also Pam Fessler, *Shrinking Community Grants Put Cities in a Crunch*, WBUR NEWS (Mar. 2, 2012), <https://www.wbur.org/npr/147751971/shrinking-community-grants-put-cities-in-a-crunch%20> [<https://perma.cc/9FBZ-5NVJ>] (reporting that HUD grants shrank by 25 percent from 2011 to 2012.).

140. Lissette Flores, *Trump Budget Eliminates Housing and Community Development Block Grants*, Ctr. Bud. & Pol’y Priorities (June 8, 2017), <https://www.cbpp.org/blog/trump-budget-eliminates-housing-and-community-development-block-grants> [<https://perma.cc/BA3G-Y5NF>].

141. *About Grantees: HUD Awards and Allocations: Wayne County, MI*, HUD EXCHANGE, <https://www.hudexchange.info/grantees> (under “Find a Grantee Page,” select “by State” and select “Michigan”; change “All Grantees” to include both “Wayne County, MI” and “Detroit, MI”; then select “by Program” and select “CDBG: Community Development Block Grant Program”; click search, and under the results pages of “Wayne County, MI” and “Detroit, MI”, select “CDBG” on the left hand side and then select “View More Awards” to view 2004 amounts).

142. *Id.*

143. For more information about revenue sharing in Michigan, see MICH. MUN. LEAGUE, *Revenue Sharing Factsheet* (2014), <http://www.mml.org/advocacy/2014-revenue-sharing-factsheet.html> [<https://perma.cc/DHZ9-VHMP>]; Anthony Minghine, *The Great Revenue Sharing Heist*, MICH. MUN. LEAGUE (2014), <http://www.mml.org/advocacy/great-revenue-sharing-heist.html> [<https://perma.cc/R5L6-LWXH>].

promise of revenue sharing, localities in Michigan forfeited their right to levy sales taxes and instead gave the state exclusive jurisdiction to do this.<sup>144</sup> Localities became entitled to two types of revenue sharing payments to fund essential services.

The first is mandated by Article IX Section 10 of the Michigan Constitution.<sup>145</sup> Local governmental units receive 15 percent of the gross amount the state collects from its 4 percent sales tax.<sup>146</sup> The Michigan Constitution guarantees these funds and requires voter approval for any changes.<sup>147</sup> The State has come under fire for circumventing this guarantee by re-labeling some constitutional funds as “non-constitutional” to reduce the revenue that it must share with cities.<sup>148</sup>

The second type of revenue sharing payment is statutorily created.<sup>149</sup> Unlike the constitutionally mandated funding stream, the state legislature can and has altered the statutorily decreed payments.<sup>150</sup> Under Governor Rick Snyder, the State replaced statutory revenue sharing with the Economic Vitality Incentive Program (EVIP), which requires local governments to satisfy certain requirements—pertaining to accountability, transparency, consolidation, and employee compensation—prior to receiving funds.<sup>151</sup> In its first year, EVIP reduced revenue sharing payments by approximately one-third in order to cover

144. See MICH. COMP. LAWS ANN. §§ 141.601–99 (West 2019). For a list of cities who have imposed local income taxes, see *What Cities Impose an Income Tax?*, MICH. DEP’T TREASURY, [https://www.michigan.gov/taxes/0,4676,7-238-75545\\_43715-153955--,00.html](https://www.michigan.gov/taxes/0,4676,7-238-75545_43715-153955--,00.html) [<https://perma.cc/XB2E-LNMJ>].

145. MICH. CONST. art. IX, § 10, as amended.

146. *Id.*

147. *Id.* art. IX, § 25.

148. See Plaintiff’s Brief in Support of Complaint at 5, Taxpayers for Mich. Constitutional Gov’t v. Dep’t of Tech., Mgmt. & Budget, No. 334663, 2019 WL 3432064 (Mich. Ct. App. July 30, 2019) (No. 334663) (arguing that the State failed to pay local governments the correct amount due under Michigan Constitution’s Headlee Amendment, depriving them of billions of dollars in funding).

149. Mich. General Omnibus Appropriation Bill, Public Act 207 of 2018, art. VIII (2018); MICH. Senate Fiscal Agency, *Revenue Sharing Overview*, [http://www.senate.michigan.gov/sfa/Departments/Overview/OVrev\\_web.pdf](http://www.senate.michigan.gov/sfa/Departments/Overview/OVrev_web.pdf) [<https://perma.cc/7Y92-VA5D>].

150. For more information on actual revenue sharing expenditures, see *Michigan Senate Fiscal Agency*, [http://www.senate.michigan.gov/sfa/Departments/DPrev\\_web.html](http://www.senate.michigan.gov/sfa/Departments/DPrev_web.html) [<https://perma.cc/EWA7-YUS4>].

151. See Mich. Public Act 63 of 2011 (2011); see also *Constitutional Revenue Sharing*, MICH. DEP’T TREASURY, [https://www.michigan.gov/treasury/0,4679,7-121-1751\\_2197\\_58826\\_62375---,00.html](https://www.michigan.gov/treasury/0,4679,7-121-1751_2197_58826_62375---,00.html) [<https://perma.cc/WYY3-9QKC>]; Presentation, Evah Cole, Mich. Dep’t Treasury, *Economic Vitality Incentive Program (EVIP) Training* (Aug. 16, 2011), [https://www.michigan.gov/documents/treasury/EVIP\\_Training\\_MML081611\\_365895\\_7.pdf](https://www.michigan.gov/documents/treasury/EVIP_Training_MML081611_365895_7.pdf) [<https://perma.cc/6A7R-38X9>]. See generally THE CTR. FOR LOCAL, STATE, AND URBAN POLICY, *Michigan Public Policy Survey: EVIP Dashboards* (2012), <http://closup.umich.edu/files/mpps-evip-dashboards.pdf> [<https://perma.cc/4ZWK-6X88>] (explaining EVIP and Michigan’s statutory revenue sharing program).

a state budget deficit.<sup>152</sup> For Detroit, this meant a \$70 million funding reduction.<sup>153</sup> Revenue sharing payments have never returned to their pre-EVIP levels.<sup>154</sup>

This permanent funding reduction is problematic because, while the state had budget deficits, many local governments were also financially devastated by the Great Recession and desperately needed the funds. Due to caps on property tax growth, cities are slowly recovering from the steep decrease in housing prices and the corresponding decline in property tax revenues. In contrast, state revenues—generated from a variety of taxes (i.e. income, sales, use, business)—have recovered more quickly. Nevertheless, state revenue sharing has decreased over the years, leaving local governments to fend for themselves.<sup>155</sup> One report finds that “[f]rom 2003-2013, sales tax revenues went from \$6.6 billion to \$7.72 billion. Over that same period, statutory revenue sharing declined from over \$900 million annually to around \$250 million.”<sup>156</sup>

The decreased revenue sharing payments have been detrimental for several struggling Michigan cities. The Michigan Municipal League, a collaborative group of municipal leaders and local officials, estimates that between 2003 and 2013 reductions in revenue sharing deprived Detroit of \$732 million, Flint of \$54.9 million, Pontiac of \$40 million, and Lansing of \$40 million.<sup>157</sup> The decline in revenue sharing payments forced many local governments to adopt severe austerity measures, slashing services and cutting corners to stay afloat. While declines in revenue sharing payments hit both wealthy and poor cities hard, affluence is like a mouth guard, preventing richer cities from becoming toothless.

In addition to decreasing revenue sharing payments, in 2003, Michigan’s Secretary of State unilaterally imposed certain fines and fees for commonplace automobile infractions, including driving without a license, driving without insurance, reckless driving, and driving under the influence of alcohol.<sup>158</sup> The

152. See Jonathan Oosting, *How Michigan’s Revenue Sharing ‘Raid’ Cost Communities Billions for Local Services*, MLIVE (Mar. 30, 2014), [https://www.mlive.com/lansing-news/2014/03/michigan\\_revenue\\_sharing\\_strug.html](https://www.mlive.com/lansing-news/2014/03/michigan_revenue_sharing_strug.html) [<https://perma.cc/5S89-L2N2>].

153. *Id.*

154. See MICH. SENATE FISCAL AGENCY, REVENUE SHARING PAYMENTS: CITIES, VILLAGES, TOWNSHIPS (CVTs), AND COUNTIES: FY 2000–01 THROUGH ESTIMATED FY 2018–19 (July 20, 2018), [http://www.senate.michigan.gov/sfa/Departments/DataCharts/DCrev\\_RevSharePayType.pdf](http://www.senate.michigan.gov/sfa/Departments/DataCharts/DCrev_RevSharePayType.pdf) [<https://perma.cc/E8QQ-JRAR>] (showing the total statutorily-authorized payments per fiscal year from 2000 to 2017).

155. *But see* Minghine, *supra* note 143 (discussing revenue sharing losses).

156. *Id.* (emphasis in original).

157. *Id.*; *see also* Oosting, *supra* note 152.

158. See Chad Livengood, *Unpaid Fines Strand Drivers, Crimp Region’s Workforce*, CRAIN’S DETROIT BUS. (Aug. 6, 2017), <https://www.craindetroit.com/article/20170806/news/635666/unpaid-fines-strand-drivers-crimp-regions-workforce> [<https://perma.cc/JZV4-FB22>] (“Drivers were levied new fees ranging from \$150 for driving with an expired license and \$200 for driving without insurance to \$500 for drunken driving and \$1,000 for causing injury or death.”); *see also* Mich. SEC. STATE, Dep’t of State Court Manual DLAD-239: *Offense Code Index for Traffic Violations*, [https://www.michigan.gov/documents/OffenseCode\\_73877\\_7.pdf](https://www.michigan.gov/documents/OffenseCode_73877_7.pdf) [<https://perma.cc/G354-5H5J>].

state called these “Driver Responsibility Fees.”<sup>159</sup> For instance, operating a vehicle while intoxicated now carried a two-year fine of \$1000 per year, while driving with a suspended license resulted in a two-year fine of \$500 per year.<sup>160</sup> With the new fines, the state raised between \$99 million and \$115 million a year.<sup>161</sup> “In Detroit alone, around 70,000 people owed more than \$100 million.”<sup>162</sup> Most detrimentally, the state did not conduct ability to pay hearings prior to suspending a driver’s license. So when poverty prevented drivers from timely paying these fines, this resulted in license suspension (with a hefty reinstatement fee), inability to renew, and additional fines.<sup>163</sup> These measures further immiserated indigent populations by removing their ability to get to work and earn money to pay their debts.<sup>164</sup> The state covered its budget deficit at the expense of the state’s poorest residents. In 2018, after significant public outcry, the state repealed Driver Responsibility Fees.<sup>165</sup> But, significant damage was already done.

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(showing that offenses related to bodily alcohol content or use of a vehicle under the influence of controlled substances or alcohol were updated in September of 2003).

159. Sarah Cwiek, *Five Things to Know About the End of Michigan’s Driver Responsibility Fees*, MICH. RADIO NPR (Mar. 6, 2018), <https://www.michiganradio.org/post/five-things-know-about-end-michigans-driver-responsibility-fees> [<https://perma.cc/88SG-SSFF>].

160. MICH. COMP. LAWS ANN. § 257.732a(2)(a), (b) (West 2019).

161. See ELLIOT WILD, SENATE FISCAL AGENCY, DRIVER RESPONSIBILITY FEES: A FIVE-YEAR CHECKUP 2 (2008), <http://www.senate.michigan.gov/sfa/Publications/Notes/2008Notes/NotesJulAug08ew.pdf> [<https://perma.cc/93QM-VUYZ>] (“Total collected revenue in 2006 reached nearly \$109.0 million, followed by approximately \$120.9 in 2007.”); Kathleen Gray, *Drivers Have Glimmer of Hope to Get Rid of Responsibility Fees*, DETROIT FREE PRESS (Oct. 10, 2017), <https://www.freep.com/story/news/politics/2017/10/10/driver-responsibility-fees-amnesty/748282001> [<https://perma.cc/URA8-2NDH>].

162. See Cwiek, *supra* note 159.

163. The outrage against these laws eventually sparked lawsuits. See *Fowler v. Johnson*, No. 17-11441, 2017 WL 6379676 (E.D. Mich. Dec. 14, 2017), *rev’d sub nom. Fowler v. Benson*, 924 F.3d 247 (6th Cir. 2019) (granting plaintiffs’ motion for a preliminary injunction enjoining the Michigan Secretary of State from suspending the licenses of those unable to pay their fee debts but later modified and stayed pending appeal); *Dawson v. Sec’y of State*, 739 N.W.2d 339 (Mich. App. 2007) (holding that classification schemes imposed by the driver responsibility fees did not violate constitutional equal protection rights).

164. See Mich. Sec’y of State Jocelyn Benson, *If I Had Driver Responsibility Fees Do I Still Have to Pay Reinstatement Fees to Get My License Back?* (Sept. 12, 2019), [https://www.michigan.gov/sos/0,4670,7-127-5647\\_12539\\_71028-486327--,00.html](https://www.michigan.gov/sos/0,4670,7-127-5647_12539_71028-486327--,00.html) [<https://perma.cc/5FBA-2KTG>] (Those wishing to reinstate their licenses must pay a base fee of \$125, with a possibility of additional fees.); see also Mich. Sec’y of State Jocelyn Benson, *Driver License Reinstatement Fee* (Sept. 12, 2019), [https://www.michigan.gov/sos/0,4670,7-127-1627\\_8665\\_9074-29558--,00.html](https://www.michigan.gov/sos/0,4670,7-127-1627_8665_9074-29558--,00.html) [<https://perma.cc/C5ZA-CAA8>] (listing additional fees such as a \$45 fee for failure to appear in court).

165. See Press Release, *Gov. Rick Snyder Signs Legislation to Accelerate Elimination of Driver Responsibility Fees, Address Outstanding Fees and Allow for License Reinstatement* (Mar. 1, 2018), [https://www.michigan.gov/formergovernors/0,4584,7-212-90815\\_57657-462030--,00.html](https://www.michigan.gov/formergovernors/0,4584,7-212-90815_57657-462030--,00.html) [<https://perma.cc/36AN-8VVQ>]; see also MICH. COMP. LAWS ANN. § 257.732a(11) (2019) (“Beginning September 30, 2018 . . . [a]ny outstanding driver responsibility fee assessed under this section shall not be collected.”).

Structural issues—such as reduced federal CDBG funding, decreased state revenue sharing payments and increased state fees and fines—created vulnerability that contributed to Detroit’s economic chaos. When Governor Snyder imposed an Emergency Manager on Detroit, he was not a gallant knight coming to save the day. Instead, he was more akin to a disheveled janitor cleaning up a mess he and other state and federal level leaders helped to create. Most importantly, that economic mess created the background conditions necessary for unconstitutional property tax assessments to thrive.

## 2. *Legal and Governance Failures*

Against this backdrop of vulnerability, legal and governance failures—including legal contradictions, concealment, impaired internal accountability, legal limitations, and financial advantage—created structural opportunities for predation to advance.

### a. *Legal Contradiction*

Law is an imprecise tool. A law that solves one problem can also prevent state officials from achieving other goals crucial to the proper functioning of their agencies or governments. Scholars who have contributed to the state crime literature aptly call this a “legal contradiction.”<sup>166</sup> State crime scholars note that, although constrained by the law, “not everyone caught in this dilemma will opt for violating the law, but some will.”<sup>167</sup>

The legal contradiction at the heart of Detroit’s property tax foreclosure crisis arose from two amendments to Article IX of the Michigan Constitution (1963), which limit local governments’ taxing powers.<sup>168</sup> Article IX initially established that a property’s assessed value cannot exceed 50 percent of its market value.<sup>169</sup> Since property taxes in Michigan were higher than the national average, in November 1978, voters ratified Proposal E, otherwise known as the Headlee Amendment.<sup>170</sup> This requires voter approval for new property taxes and

166. See William J. Chambliss, *State-Organized Crime—The American Society of Criminology, 1988 Presidential Address*, 27 CRIMINOLOGY 183, 201 (1989) (examining legal contradiction through the study of state-organized crime)[hereinafter Chambliss, *State-Organized Crime*]; see also WILLIAM J. CHAMBLISS & MARJORIE S. ZATZ, *MAKING LAW: THE STATE, THE LAW, AND STRUCTURAL CONTRADICTIONS* (1993); Jeffrey Ian Ross & Dawn L. Rothe, *Ironies of Controlling State Crime*, 36 INT’L J. L., CRIME & JUST. 196 (2008).

167. Chambliss, *State-Organized Crime*, *supra* note 166, at 202.

168. See MICH. DEP’T TREASURY, OFFICE REVENUE & TAX ANALYSIS, SCHOOL FINANCE REFORM IN MICHIGAN; PROPOSAL A: RETROSPECTIVE 1 (2002) [hereinafter PROPOSAL A: RETROSPECTIVE], [https://www.michigan.gov/documents/propa\\_3172\\_7.pdf](https://www.michigan.gov/documents/propa_3172_7.pdf) [<https://perma.cc/C72T-N6PC>] (“Before Proposal A, Michigan’s property tax burden was more than 33 percent above the national average . . .”).

169. MICH. CONST. ART. IX, § 3; see also Atuahene & Hodge, *supra* note 7, at 275–79 (discussing the history of the aforementioned amendments to the Michigan Constitution).

170. The Amendment added Section 6 and Sections 25–34 to Article IX. MICH. CONST. art. IX, §§ 6, 25–34; see Michigan Legislature, *Headlee Amendment*, [http://www.legislature.mi.gov/\(S\(a1gl20mcheamde4injezcija\)\)/mileg.aspx?page=LoadVirtualDoc&B](http://www.legislature.mi.gov/(S(a1gl20mcheamde4injezcija))/mileg.aspx?page=LoadVirtualDoc&B)

increases in property tax rates (“millage rates”) that go beyond the Amendment’s guidelines.<sup>171</sup> In a city like Detroit—which has the highest tax rate in the state of Michigan and the third highest tax rate of any city in the US—voters are unlikely to authorize further tax increases.<sup>172</sup>

Next, in March 1994, voters further extended Article IX by approving the Michigan Education Finance Amendment, widely known as Proposal A.<sup>173</sup> This limits increases in a property’s taxable value to no more than inflation or 5 percent, whichever is less.<sup>174</sup> Consequently, when the real estate market is booming and property values rapidly outpace inflation, the cap deprives local governments of significant revenues because they can only legally collect less than 50 percent of a property’s market value. Only upon a property’s transfer can local authorities reset the taxable value to 50 percent of the property’s market value.<sup>175</sup> The Michigan Department of Treasury estimates that, between 1994 and 2003, Proposal A cut \$63 billion in local property taxes.<sup>176</sup> Because property taxes are a significant source of revenue for Michigan localities,<sup>177</sup> Proposal A has left even fiscally conservative local governments facing uncertain budgets.

The two Amendments’ combined effect was to protect taxpayers against spiraling property tax bills. In so doing, legislators anticipated that the primary repercussion would be loss of local government revenues,<sup>178</sup> which could hinder their ability to carry out core functions. It was likely, however, that local governments’ attenuated educational expenditures (also mandated by Proposal

ookmarkID=6536 [https://perma.cc/7RP8-TN9H]; see also Kevin C. Kennedy, *The First Twenty Years of the Headlee Amendment*, 76 U. DET. MERCY L. REV. 1031, 1031–32 (1999).

171. A millage rate is defined as the number of tax dollars the taxpayer must pay for each \$1,000 of taxable value. MICH. LEGISLATURE, MICHIGAN TAXPAYER’S GUIDE 3–4 (2018), <https://www.legislature.mi.gov/Publications/TaxpayerGuide-2018.pdf> [https://perma.cc/EH94-YMS8].

172. See LINCOLN INST. LAND POL’Y & MINN. CTR. FISCAL EXCELLENCE, 50-STATE PROPERTY TAX COMPARISON STUDY FOR TAXES PAID IN 2017 (2018), <https://www.lincolninst.edu/sites/default/files/pubfiles/50-state-property-tax-comparison-for-2017-exec-summary.pdf> [https://perma.cc/7X4L-C9KJ] (showing that Detroit’s effective tax rates is 3.63%, which is more than double the national average of 1.49%).

173. MICH. CONST. art. IX, § 3; see also MICH. COMP. LAWS ANN. § 211.27a(2) (West 2019).

174. MICH. CONST. art. IX, § 3; see also MICH. COMP. LAWS § 211.27a(2)(a); PROPOSAL A: RETROSPECTIVE, *supra* note 168, at 1.

175. MICH. LEGISLATURE, *supra* note 171, at 1 (“A transfer of ownership occurs when a title or present interest in the property is transferred through conveyance by deed, land contract, trust, distribution under a will, certain leases, or other mechanisms.”).

176. PROPOSAL A: RETROSPECTIVE, *supra* note 168, at 8.

177. For 2015 and 2016 respectively, property taxes as a percentage of total revenue for other major Michigan cities as determined from city budget report: Grand Rapids (44.2%, 43.2%); Warren (66.9%, 67.0%); Sterling Heights (38.7%, 36.0%); Lansing (31.8%, 31.5%); Ann Arbor (24.3%, 22.1%); Dearborn (64.3%, 63.2%); Livonia (37.2%, 37.3%); Kalamazoo (53.1%, 54.1%). Figures were determined based on reported city budget numbers; available on file with the author.

178. See HOUSE LEGISLATIVE ANALYSIS SECTION OF MICH., DUAL SCHOOL FINANCE PLANS, SECOND ANALYSIS 7 (1994) (“Preliminary reports from tax specialists estimated that [Proposal A] provide an aggregate net tax cut . . . Various early analyses . . . put the net annual tax cut from the ballot proposal between \$110 million and \$176 million.”).

A) would lessen the financial blow.<sup>179</sup> But the financial hit many localities took was more substantial than anticipated because one central assumption underlying the Amendments—that property values continually increase—proved untrue.

As a result of the Great Recession, property values decreased nationally.<sup>180</sup> In Detroit, the drop was especially precipitous (see Figure 3).<sup>181</sup> Detroit's Assessment Division faced a serious quandary. Because of Proposal A, property tax assessments on unsold parcels could not increase beyond the inflation rate, which over the last decade has never exceeded 1.1%.<sup>182</sup> So, if the 2009 dip in market prices lasted only three to five years, this would nevertheless have a sustained effect on the city's ability to raise revenues. That is, dropping the assessed values would lock these low values in even after the real estate market recovered.

Figure 3: Median Sale Price of Single-Family Homes in Detroit<sup>183</sup>



Alvin Horhn, Detroit's highest-ranking official in the Assessment Division, stated, "Proposal A does not allow jurisdictions to recapture value once the market recovers because no one ever imagined a sustained housing crash would

179. See also Patrick L. Anderson, *Headlee Amendment Protections Under Proposal A*, MACKINAC CTR. PUB. POL'Y (May 1, 1993), <https://www.mackinac.org/5790> [<https://perma.cc/5CC5-E3EF>] ("A' has the intended effect of increasing state aid to local schools while reducing local property taxes.").

180. See, e.g., *United States Market Overview*, ZILLOW, <https://www.zillow.com/home-values> [<https://perma.cc/H4ZT-JYNV>] (showing that the median single-family home valuation for the United States in the aggregate dipped from approximately \$174,000 in 2009 to approximately \$150,000 in 2012 before beginning to increase).

181. See Atuahene & Berry, *supra* note 20 and accompanying text.

182. MICH. DEP'T TREASURY, BULL. 16 OF 2017: INFLATION RATE MULTIPLIER (2017), [https://www.michigan.gov/documents/treasury/Bulletin\\_16\\_of\\_2017\\_-\\_Inflation\\_Rate\\_Multiplier\\_for\\_2018\\_604882\\_7.pdf](https://www.michigan.gov/documents/treasury/Bulletin_16_of_2017_-_Inflation_Rate_Multiplier_for_2018_604882_7.pdf) [<https://perma.cc/DP7F-ZA7H>] (showing that Headlee inflation rate calculations from 1995–2018 vary between 0.997 and 1.044).

183. See *Detroit Home Prices & Values*, ZILLOW, <http://www.zillow.com/detroit-mi/home-values> [<https://perma.cc/W9GQ-EAYF>]; see also Atuahene & Berry, *supra* note 20, at 853 fig.2.



occur. No one conceived of this.”<sup>184</sup> Herein lies the problem legislators did not anticipate when enacting the Amendments to Section IX of Michigan’s constitution: local officials cannot simultaneously respond to temporary market downturns and ensure adequate operational revenues.

Given this legal contradiction, assessors throughout Michigan have an incentive to ride out down markets by not sufficiently decreasing market values, which is possible because assessors have substantial leeway in ascribing value to each taxpayer’s property. As Horhn rightly stated, “Determining market values is an art and a science, so two appraisers can look at the same property and come to different results.”<sup>185</sup> Failure to properly adjust values will cause systemic non-compliance with the constitutional mandate that prohibits assessments from exceeding 50 percent of a property’s market value. But in theory, once the market recovers, values will comply with the law and all would once again be well. But, as shown in Figure 3, property values in Detroit never fully recovered. As a result, the illegality was not temporary. It persisted.

The onus was on individual taxpayers to protest incorrect tax assessments and rectify the illegality.<sup>186</sup> Those who did not, paid “the price,” literally. A study that Hodge and I completed found that unconstitutional property tax assessments are more prevalent and acute amongst lower-valued homes.<sup>187</sup> In Detroit, owners of lower-valued homes rarely appeal their property taxes,<sup>188</sup> so those who actually paid “the price” were those who could least afford to do so. In Detroit and other Michigan cities, assessment officials failed to adequately respond to the steep drop in housing values, and hence broke the law rather than jeopardize

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184. Interview with Alvin Horhn, City of Detroit Deputy Chief Financial Officer (Oct. 15, 2018) (on file with author); *see also* Lindsay VanHulle, *Strapped Cities Taking Aim at Proposal A*, BRIDGE (Feb. 27, 2017), <https://www.bridgemi.com/business-bridge/strapped-cities-taking-aim-proposal> [<https://perma.cc/P87S-JAKQ>] (“While local government leaders understood in the mid-1990s that an economic downturn could have devastating consequences for revenue, [chief operating officer of the Michigan Municipal League] Minghine said, a healthy economy might have led them to underestimate the effect: ‘You never experienced those declines like that, so you never saw the math play out the way it did.’”).

185. Interview with Alvin Horhn, *supra* note 184 (“Experience and knowledge of the local market, that is the art part. The science part is we must follow the state Assessor’s Manual and General Property Tax Act.”).

186. *See* Atuahene & Berry, *supra* note 20, at 865 (explaining that, at a town hall in January 2017, when “Mayor Duggan was asked what his administration planned to do to compensate Detroit residents for assessments that were, for years, in violation of the Michigan Constitution, he said that while it is unfortunate that this occurred, all Detroit residents had an opportunity to appeal their assessments and rectify the situation, so the city is not liable for any damages resulting for the unconstitutional assessments”).

187. Atuahene & Hodge, *supra* note 7, at 288 (“[T]he lowest-valued properties in 2009 were, on average, assessed at levels almost eighteen times larger than the constitutionally permitted 0.5 limit (8.87); middle-valued properties were assessed three times more than the constitutionally permitted limit (1.54); and the highest-valued properties were assessed below the constitutionally permitted limit (0.4).”).

188. *Id.* at 268–69 & n.20, 292.

revenues.<sup>189</sup> While violating the law is imprudent, it is important to understand the prevailing legal contradiction and its role in facilitating the lawbreaking.

*b. Concealment*

Due to the Headlee Amendment, Michigan authorities cannot add new property taxes or increase the rate on existing property taxes without voter approval. This makes state attempts to alter property tax rates tremendously visible.<sup>190</sup> Property tax assessment calculations, on the other hand, are camouflaged by complexity. They are also the only part of the tax equation where local governments have substantial ability to affect revenues. Assessment calculations therefore present the greatest opportunity for mischief because it is too complicated for taxpayers to determine whether officials have violated the law by assessing a property above 50 percent of its market value. This information is, in a sense, concealed so citizens are often unaware that something untoward is happening. In fact, taxpayers must skillfully leap over at least six specific hurdles to identify and rectify flawed calculations. Poverty and time constraints, however, make for short legs.

*First*, the taxpayer must understand how the state calculates their property tax bill. Michigan law demands that authorities assess all properties annually,<sup>191</sup> and this requires three distinct calculations: Assessed Value (AV), State Equalized Value (SEV), and Taxable Value (TV).<sup>192</sup> Local assessors use a mass appraisal system to determine a property's market value, and they set AV at no higher than 50 percent of this determined value. The SEV is the AV equalized across Michigan's various cities and counties by bringing the total valuation for each property category within all assessing units in the county and state as close to the 50 percent constitutional limit as possible.<sup>193</sup> Proposal A created the TV, which is the SEV with growth capped at 5 percent or the inflation rate, whichever is less.<sup>194</sup> To determine annual property tax bills, the assessor multiplies TV by the authorized millage rate.<sup>195</sup>

As this concise summary of AV, SEV, and TV demonstrates, property tax calculations are enormously difficult. These calculations are beyond the comprehension of many homeowners, like Mrs. Baines who, along with her husband and seven children, are life-long Detroiters. Mrs. Baines is often unemployed due to a chronic illness, and her husband's employment in the

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189. See Atuahene, *Our Taxes Are Too Damn High*, *supra* note 39, at 1510–13, n.49 & tbl.3A (showing that Wayne County's predominately African-American cities faced unconstitutional property tax assessment and property tax foreclosures at a significantly higher rate than its predominately white cities).

190. See MICH. CONST. art. IX, § 25.

191. See MICH. COMP. LAWS ANN. § 211.10(1) (West 2019).

192. See MICH. LEGISLATURE, *supra* note 171, at 1.

193. *Id.*

194. *Id.*

195. See *id.* at 3–4.

construction industry is seasonal. Nevertheless, after years of saving, the Baines family was finally able to purchase their first home in 2012 on a land contract. That same year, the Detroit assessor claimed their new home was worth \$46,000 and began taxing them at that rate. But, they had purchased it for only \$20,000—the approximate price of other homes in their area.

When the Baines could no longer afford to pay the illegally inflated property taxes, the Wayne County Treasurer foreclosed on their home in 2015 and sold it to an investor at the tax auction for \$500. The investor eventually evicted the family and the house is now standing empty. To add insult to injury, since their household income falls below the federal poverty line, the Baines qualified for the Poverty Tax Exemption and were not even supposed to be paying the illegally inflated property taxes that triggered their eviction.

When I asked Mrs. Baines whether she understood the various calculations that appeared on her property tax bill, she said:

I had no clue about any of that. The tax bill is, to be honest, confusing. You just look for the number, you are hit with it, and you know you cannot afford it, so you know you are about to lose the house. All these feelings consume you with those large numbers. I was thinking about ways I can raise money . . . You just kind of just pay what they say and do not look at how it is put together. People do not pay attention. It was not something we were taught to do. You want to be a home owner, so you jump into it without having the information. You are not worried about how the taxes are added up. It is just not common knowledge among poor folks. You just do not pay attention to the little things.<sup>196</sup>

*Second*, taxpayers must determine the value of their homes. The industry standard for estimating the market value of residential properties is the market approach, which uses recent sales of comparable properties sold voluntarily.<sup>197</sup> For the most accurate estimates, homeowners can hire a professional appraiser to conduct a formal appraisal, which on average costs anywhere from about \$254 to \$376 in Michigan.<sup>198</sup> Homeowners can also rely on real estate agents who use recent sales recorded in the Multiple Listing Service (MLS) to determine the market value of a home. In addition, homeowners can estimate the market value of their home themselves by using personal knowledge or internet services that aggregate home sales prices such as Zillow© and Trulia©.

For homeowners with low information, minimal education, limited time, or scant resources, calculating the value of their home can be a near impossible task.

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196. Confidential Interview with Mrs. Baines (Dec. 23, 2017) (on file with author).

197. INT'L ASS'N OF ASSESSING OFFICERS, *supra* note 27, § 4.3, at 9.

198. The range is for a single-family home or condominium. *Michigan Real Estate Appraisal Costs & Prices*, PROMATCHER, <https://appraisers.promatcher.com/cost/michigan.aspx> [<https://perma.cc/C4AU-4L3R>]; see also *How Much Does It Cost To Hire A Property Appraiser?*, HOMEADVISOR, <https://www.homeadvisor.com/cost/inspectors-and-appraisers/hire-a-property-appraiser> [<https://perma.cc/3RVU-5EC3>] (The national average cost is \$332. The average cost for Detroit is \$285).

When I asked Mrs. Baines if she knew how to calculate the value of her home she said, “Absolutely not. I did not know how you find the value of your home. I did not know how much my house was worth. If you are trying to get a mortgage, they will tell you, but I bought my home on land contract and this is the type of hidden stuff they keep from you.”<sup>199</sup>

*Third*, the taxpayer must know that an appeals process exists. A clear majority of the people I interviewed who were subject to unconstitutional property tax assessments and then evicted from their homes when they could not afford to pay the resulting illegally inflated tax bills did not even know there was an appeals process. One respondent told me that when he looked at his property tax bill, he did not see anything about an appeals process. He said, “I don’t think that was on there. And, if they did, it was pretty fine print where you wouldn’t be able to see that. You know the only thing you’re basically looking at are the numbers.”<sup>200</sup> Mrs. Baines agreed:

I did not even know about the appeal process when I lost my house. Nobody told me. Community has no clue about the appeal process. The Treasurer should have sent out this info. to people who were about to go through the foreclosure process. The organizations helping with the foreclosure did not tell me either. I went to specific places (like United Community Housing Coalition) for help and it was never said to me.”<sup>201</sup>

Every city in Michigan must mail an assessment notice to taxpayers annually.<sup>202</sup> This notice contains the legal description, property address, property classification, and informs taxpayers what their AV, SEV, and TV are for the current and prior year.<sup>203</sup> Although the assessment notice mailed to all taxpayers contains language indicating they can protest (first to the Assessors Review and then to the March Board of Review and Michigan Tax Tribunal),<sup>204</sup> nowhere is the taxpayer informed that the assessed value listed is constitutionally prohibited from exceeding 50 percent of their property’s market value. That is, the assessment notice informs taxpayers of their right to protest without providing them with the information necessary to properly construct the protest.

Nevertheless, in a hallway conversation, a former City Council member, George Cushingberry Jr., told me the problem was that “black folks” in Detroit did not file property tax assessment appeals because “our people do not read and we have got to start reading.”<sup>205</sup> These types of condescending explanations criticize people for not reading the fine print instead of blaming the local government for putting this essential information in fine print. Cushingberry’s

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199. Confidential Interview with Mrs. Baines, *supra* note 196.

200. Interview with Mr. Jones, *supra* note 10.

201. Confidential Interview with Mrs. Baines, *supra* note 196.

202. MICH. COMP. LAWS ANN. § 211.24(c) (West 2019).

203. *Id.*

204. Assessment Notice form L-4400 (2018). A sample form is available online at [https://www.michigan.gov/documents/treasury/1019f\\_504168\\_7.pdf](https://www.michigan.gov/documents/treasury/1019f_504168_7.pdf) [<https://perma.cc/BGF2-G3DD>].

205. Conversation with George Cushingberry Jr., Detroit City Councilman (July 8, 2017).

re-election materials were certainly in a readable font. But as Mrs. Baines observes, “Even if you read about it, you do not know what to do. You do not know how to file an appeal.”<sup>206</sup>

*Fourth*, even if taxpayers know there is a process for appealing incorrect property tax assessments, they must have the time required to file the appeal, which involves several steps. Between February 1 and February 15, taxpayers must first file an appeal by mail or in person with Detroit’s Board of Assessors,<sup>207</sup> which must, at minimum, contain the property address or parcel number, reason for the appeal, and some form of evidence or justification.<sup>208</sup> If residential property owners fail to file an appeal with the Board of Assessors, they forfeit their right to approach subsequent appeal bodies.<sup>209</sup>

Review by the Board of Assessors is not required by state law, but rather it is an extra step in the appeals process mandated by city ordinance in Detroit alone.<sup>210</sup> The Assessor’s Review infrequently produces changes to the assessment roll,<sup>211</sup> making it nothing more than an unnecessary obstacle. One lawyer—who has made significant sums specializing in property tax appeals for Detroit residents since 2007—noted that “a significant part of the [appeal] process is to discourage people from pursuing their rights. Throwing up obstacles up to discourage them.”<sup>212</sup> My ethnographic observations confirm this.

There are several reasons why even people who knew about the assessment appeals process did not file an appeal within the designated fifteen-day period. Employment demands, child and elder care responsibilities, mobility challenges, and procrastination were among the main barriers respondents recounted. Mr. Harris’s story is instructive. He is an African-American father with two grown children. He has been employed as a nurse’s assistant at Henry Ford hospital for over twenty years. Mr. Harris inherited his father’s home in 2004. When he told me that “the property taxes were outrageous and exceeded

206. Confidential Interview with Mrs. Baines, *supra* note 199.

207. DETROIT, MICH., CITY CODE § 44-4-3(b) (2019) (previously codified as DETROIT, MICH., CODE OF ORDINANCES § 18-9-3(b) (2017)). In recent years, the City of Detroit has lengthened the assessor’s review period from January 25 to February 18. See Joe Guillen, *Detroit Extends Time to Appeal Property Valuation*, DETROIT FREE PRESS (Feb. 13, 2017), <http://www.freep.com/story/news/local/michigan/detroit/2017/02/13/detroit-extends-time-appeal-property-valuation/97850946> [<https://perma.cc/B3BQ-XR35>].

208. *C.f.* interview with Alvin Horhn, *supra* note 184 (“About 65–70 percent of appeals are by mail. The Assessor’s Review is very informal, there are no forms. The appeal process gets increasingly formal as it goes along.”) (on file with author).

209. See *Property Assessment Appeal Information*, CITY OF DETROIT, <https://www.detroitmi.gov/departments/office-chief-financial-officer/ocfo-divisions/office-assessor/property-assessment-appeal-information> [<https://perma.cc/FF57-EE88>]. In contrast, the process for commercial properties is far less cumbersome because taxpayers have the right to go straight to the Michigan Tax Tribunal, bypassing both the Assessor’s Review and the March Board of Review. See MICH. COMP. LAWS ANN. § 205.735a(4)(b) (West 2019).

210. See DETROIT, MICH., CITY CODE § 44-4-3(b).

211. Interview with Alvin Horhn, City of Detroit Deputy Chief Financial Officer (Nov. 9, 2018) (on file with author).

212. Confidential Interview with Mr. Tyler (Feb. 10, 2017) (on file with author).

the value of the home,”<sup>213</sup> I asked him whether he knew about the appeals process and he said:

Yeah, I was aware. But, trying to work every day. I work 12 hours a day, so it’s kind of hard to go downtown and sit down there all day and still not get anything done or even see anybody. That process is so backed up and overwhelming. That’s why a lot of people don’t follow through with it because it’s just too time-consuming. The city knows those properties aren’t worth that much. They should take it upon themselves and come around and yearly assess those properties. The owner shouldn’t have to go through that because we don’t have the time. We have to work to try to keep the home . . . I didn’t have the time to take off to go downtown and pay to park and go through all that and spend a whole day down there and still end up with nothing at the end of the day. So, I just chose not to use the [appeals] process.<sup>214</sup>

*Fifth*, if the taxpayer does not initially get a favorable decision from the Assessor’s Review, she must know there are further opportunities to appeal. The next step in the appeals process is the March Board of Review, which consists of nine Detroit residents appointed by City Council.<sup>215</sup> Homeowners can file an appeal in person or by mail by filling out a standardized form used statewide. Willie Donwell, the Chairman of the Board of Review, says he will accept sales comparisons, cost of repair records, and photographs showing structural damage to prove the City’s market valuation is incorrect.<sup>216</sup>

If homeowners are not satisfied with the March Board of Review’s decision, then they can appeal to the Michigan Tax Tribunal by July 30 of the tax year under protest.<sup>217</sup> While there are no fees to file an appeal at the Assessor’s Review and the March Board of Review, the Tax Tribunal requires a filing fee that ranges from \$125 to \$300, depending on the property’s value.<sup>218</sup>

213. Confidential Interview with Mr. Harris (Apr. 8, 2017) (on file with author).

214. *Id.*

215. The March Board of Review issues all decisions by the first Monday in April and submits its assessment rolls to the county by the first Wednesday in April. *See* DETROIT, MICH., CITY CODE § 44-4-5 (previously codified as DETROIT, MICH., CODE OF ORDINANCES § 18-9-5 (2017); MICH. COMP. LAWS ANN. § 211.28(1) (West 2019); *see also* DETROIT, MICH., CITY CODE § 44-4-7(b) (previously codified as DETROIT, MICH., CODE OF ORDINANCES § 18-9-7(b) (2017)).

216. Interview with Willie Donwell, Member, Detroit Board of Review (Jan 25, 2017) (on file with author). *But see* Christine MacDonald, *Detroit’s Property Tax System Plagued by Mistakes, Waste*, DETROIT NEWS (Feb. 22, 2013) [hereinafter MacDonald, *Property Tax System*], <https://www.detroitnews.com/story/news/local/detroit-city/2018/06/13/detroits-property-tax-system-plagued-mistakes-waste/700547002> [<https://perma.cc/QUX9-BHZJ>] (indicating that sales comparisons may not be sufficient).

217. *See* MICH. COMP. LAWS ANN. § 205.735a(6) (West 2019); Mich. Tax Trib. R. 792.10271 (Jan. 15, 2015).

218. For properties with an SEV or TV less than \$100,000, the filing fee is \$125. If the property is valued at \$100,000.01 to \$500,000, the filing fee is \$200, and values above that require a \$300 filing fee. *What are the Tribunal’s Fees for Filing a Petition or a Motion in Small Claims?*, LARA TAX TRIB.,

If homeowners are not satisfied with the Tax Tribunal's decision and can prove that it committed "fraud, error of law or the adoption of wrong principles," then they can further appeal to the Michigan Court of Appeals and then the Michigan Supreme Court.<sup>219</sup>

*Sixth*, even if taxpayers know there is more than one opportunity to appeal, they must have the time and money to pursue the appeal further. I met Mr. Louis when I was observing the March Board of Review hearings. He bought three properties at the Wayne County tax foreclosure auction and came before the Board to reduce the Assessed Values on all three. Although the Board reduced the AV on all three properties, Mr. Louis believed that further reductions were necessary so that the AV correctly reflected the properties' true market value. He knew he could appeal to the Michigan Tax Tribunal, but he did not have the time. He said,

I did not go to Tribunal because of family health things with my folks. I wish I could have gone to the Tribunal, but I just could not. What bugs me is that during the citywide reassessment they dropped [the AV] by half. So, I had to pay winter and summer taxes with that high amount, and then they brought it down. But nothing changed in that time.<sup>220</sup>

Although the Board of Review did not reduce the AV, the City of Detroit did a complete reassessment of all residential properties in January 2017 and reduced the AV. Mr. Louis believes that the AV now reflects 50 percent of the market value of his properties, as required by law.<sup>221</sup> That is, the citywide reassessment did what the Board of Review failed to do, demonstrating that the appeals process had serious flaws.

During the period when Detroit's economic crisis peaked, the City lost over 90 percent of its Tax Tribunal cases.<sup>222</sup> Even worse, because of manpower issues associated with the 2013 bankruptcy, city lawyers did not even respond to complaints filed with the Tribunal, and so taxpayers routinely won default judgments.<sup>223</sup> In 2015, the City of Detroit tried to right the ship and hired a contractor to respond to Tribunal filings. Nevertheless, according to Mr. Tyler—a lawyer specializing in property tax appeals in Detroit—the city's win rate did not improve very much because "the evidence presented was garbage."<sup>224</sup> He claims "that year, we averaged 42% reductions. Our success rate at the Tribunal went from 95% to 90%."<sup>225</sup> Those taxpayers who appealed all the way to the Tax

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<https://www.michigan.gov/taxtrib/0,4677,7-187-67491-131666--,00.html> [https://perma.cc/67C6-7SP8].

219. See MICH. CONST. art. VI, § 28.

220. Confidential Interview with Mr. Louis (Mar. 19, 2017) (on file with author).

221. *Id.*

222. Interview with Alvin Horhn, *supra* note 211.

223. *Id.*; see also FED. R. CIV. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . the clerk must enter the party's default.").

224. Confidential interview with Mr. Tyler, *supra* note 212.

225. *Id.*; see also Christine MacDonald, *Detroit Tax Appeals Reveal Stark Imbalance*, DETROIT NEWS (June 14, 2018) [hereinafter MacDonald, *Tax Appeals Reveal Imbalance*],

Tribunal received assessed value reductions based on market value estimates rather than conjecture. But, like Mr. Louis, Mrs. Baines, and Mr. Harris, most taxpayers, unfortunately, never made it this far.

For these six reasons, a seemingly impenetrable wall of procedure stymied the detection and correction of unconstitutional property tax assessments in Detroit. Without advocates—such as lawyers, real estate agents, or appraisers—most taxpayers could not navigate the complex process.<sup>226</sup> Although certain entrepreneurial advocates have developed businesses that specialize in submitting property tax assessment appeals at scale,<sup>227</sup> the two business models dominant in this industry make it economically infeasible for owners of low-value homes to hire these innovative firms.<sup>228</sup>

The first is the contingency model where the enterprise charges no upfront fees.<sup>229</sup> Instead, it takes a fixed percentage of the first year's savings resulting from a successful appeal. If the appeal is unsuccessful, the customer does not have to pay a dime. The key to this business model is to serve clients who both are likely to win an appeal and to save significant sums consequently. This means owners of lower-valued homes are not ideal clients because—although they may win an appeal—the resulting sum saved (and thus payment to the enterprise) is lower because they pay lower property taxes.<sup>230</sup>

The second business model—most commonly used for residential properties in Detroit—is based on a flat fee for services.<sup>231</sup> Mr. Tyler and his firm have been doing business in Detroit since 2007 using this business model. His firm filed appeals for about 2,200 homes between 2013 and 2015 and saved these clients about \$2.3 million in year one alone.<sup>232</sup> To secure its services and the resulting savings, Mr. Tyler's company typically charges a \$600 base fee plus out-of-pocket expenses, which most often entail appraisal and filing fees.<sup>233</sup> He estimates the average appeal costs \$875, but the cost can be as low as \$660

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<https://www.detroitnews.com/story/news/local/detroit-city/2018/06/14/detroit-tax-appeals-reveal-stark-imbalance/703650002> [<https://perma.cc/349W-58RS>] (in an analysis of more than 4,000 appeal decisions by the Michigan Tax Tribunal, finding that the tribunal “reduced Detroit property values at a far higher rate than neighboring communities and nearly 50 percent more than the county average”).

226. MacDonald, *Property Tax System*, *supra* note 216 (Harold Hoyt, a businessman who filed 630 tax appeal for his clients, said: “regular citizens rarely have luck without a professional representative. ‘They don’t stand a chance,’ Hoyt said. ‘It’s a rigged game’”).

227. *Id.* (“Complaints are so rampant a cottage industry has emerged to challenge Detroit assessments.”).

228. William M. Doerner & Keith R. Ihlanfeldt, *The Role of Representative Agents in the Property Tax Appeals Process*, 68 NAT’L. TAX J. 59, 60 (2015) (discussing the compensation model for tax appeal representatives and the incentives for them to “target affluent neighborhoods in making their solicitations”).

229. *Id.*

230. *Id.*; *see also id.* at n.19 (showing that the probability of winning a tax appeal is higher in a low-income neighborhood, although the returns on that success are also lower).

231. *See id.* at n.5.

232. Confidential Interview with Mr. Tyler, *supra*, note 212.

233. *Id.*



and as high as \$1200. Unlike clients who use similar property tax appeal services in Chicago, his clients have no guarantee that they will recoup their costs. For owners of lower-valued homes subject to illegally inflated tax assessments, it is not clear they would recoup their costs even when the appeal is successful because their tax savings are lower.

When Detroit reappraised all residential properties in January 2017 and finally began assessing properties based on their market values, business dried up for Mr. Tyler and firms like his. As Mr. Tyler recounted,

We are not pushing this business anymore. The numbers are getting much more in line with reality. Assessments are coming down and are closer to reality. The market has recovered. There is less to fight about. Less of a disparity. So, what we can accomplish for clients is less significant.<sup>234</sup>

Although firms like Mr. Tyler's provided a very valuable service to Detroiters after the Great Recession, he believes taxpayers "should not have had to go through the expense to obtain simple fairness."<sup>235</sup> Fairness came with a price tag and many who could not afford the cost did not have the aptitude to fight the illegally inflated property tax assessments widespread in Detroit. So, they either paid the resulting overpriced property taxes or lost their homes when they could not.

Although the complicated appeals process concealed the problem of unconstitutional property tax assessments, the impact of the tax foreclosure crisis was no secret to Detroit residents, activists, academics, and policy makers. Activists described the property tax foreclosure crisis and the attendant displacement as a hurricane with no water.<sup>236</sup> Local news outlets did several stories about the historic levels of property tax foreclosure in Detroit.<sup>237</sup> Homeowners were also keenly aware that something was awry. As one respondent recounted, "At first I thought it was just me, but when I seen yellow baggies (foreclosure notices) on my entire block, I knew something wasn't right. I knew something was up."<sup>238</sup> Also, in response to residents' long-standing grievances, reducing property tax assessments and abating the foreclosure crisis has been one of Mayor Duggan's key political promises.<sup>239</sup>

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234. *Id.*

235. *Id.*

236. See, e.g., Dianne Feeley, *A Hurricane Without Water: Detroit's Foreclosure Disaster*, BLACK AGENDA REP. (June 3, 2015), [https://blackagenda.com/detroit\\_foreclosure-disaster](https://blackagenda.com/detroit_foreclosure-disaster) [<https://perma.cc/D8K5-DDJS>].

237. See, e.g., MacDonald & Wilkinson, *supra* note 122; Joel Kurth, *Mass Evictions Loom After Homes Sold Off*, DETROIT NEWS (Oct. 7, 2015), <https://www.detroitnews.com/story/news/local/detroit-city/2015/10/07/mass-evictions-loom-homes-sold/73558768> [<https://perma.cc/P3C2-UVNA>].

238. Confidential Interview with Mr. Smith (Mar. 19, 2017) (on file with author).

239. See Rod Meloni, *Detroit Property Taxes and Righting the Ship*, CLICK ON DETROIT (Jan. 27, 2014), <https://www.clickondetroit.com/money/rod-meloni-detroit-property-taxes-and-righting-the-ship> [<https://perma.cc/M6J5-YTNM>].

Given the heightened visibility of the tax foreclosures, the question becomes: How did the problem of systemic unconstitutional tax assessments remain hidden for so long? Although scholars from University of Michigan and Michigan State had written eloquently about Detroit's inordinately high property tax rates and inequitable property tax assessments,<sup>240</sup> it was not until the publication of our study, *Stategraft*, that the discourse of unconstitutional tax assessments began.<sup>241</sup> Hodge and I were the first to make the link between well documented tax assessment inequity and Michigan's constitution, legislation, and case law. One homeowner's comment well reflected what was common knowledge among Detroit residents about their high property taxes: "I knew it was wrong, I did not know it was in the Constitution, Michigan's Constitution, but I knew it wasn't right."<sup>242</sup>

Despite this evidence, the tax foreclosures continued unabated, largely because local officials strategically placed the blame—and the onus to change the situation—on citizens. In all my interviews with City officials, they regularly blamed the excessive tax foreclosure rate on failures of personal responsibility. For example, David Szymanski, Detroit's former Treasurer explained to me that the tax foreclosure crisis was full throttle because "when people had a choice between buying purses and paying their taxes, unfortunately they chose to buy the purse."<sup>243</sup> Victoria Kovari, the General Manager of the Department of Neighborhoods, believes that the tax foreclosure crisis is a result of "people buying homes that they could not afford."<sup>244</sup> Overlooking the problem of unconstitutional property tax assessments and the resulting illegally inflated property taxes, Raymond Wojtowicz—Wayne County's Treasurer for 39 years—rebuked delinquent property owners and advised them to "just pay your

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240. Joshua M. Akers, *Making Markets: Think Tank Legislation and Private Property in Detroit*, 34 URB. GEOGRAPHY 1070, 1070–93 (2013); Margaret Dewar et al., *Disinvesting in the City: The Role of Tax Foreclosure in Detroit*, 51 URB. AFF. REV. 587, 606–07 (2015) [hereinafter Dewar et al., *Disinvesting in the City*]; Timothy R. Hodge et al., *Assessment Inequity in a Declining Housing Market: The Case of Detroit*, 45 REAL EST. ECON. 237 (2017); Timothy R. Hodge et al., *Tax Base Erosion and Inequity from Michigan's Assessment Growth Limit: The Case of Detroit*, 43 PUB. FIN. REV. 636 (2015); Gary Sands & Mark Skidmore, *Making Ends Meet: Options for Property Tax Reform in Detroit*, 36 J. URB. AFF. 682, 682–83, 691–98 (2014).

241. Atuahene & Hodge, *supra* note 7.

242. Illegal Foreclosures Detroit, *The Human Impact of Illegal Foreclosures: Interview with Sonja Bonnett*, YOUTUBE (Dec. 8, 2017), <https://www.youtube.com/watch?v=Zpfvs-VAMJc> [<https://perma.cc/P2PR-S3LS>].

243. Interview with David Szymanski, former Treasurer of Detroit (Mar. 14, 2017) (on file with author). Szymanski had earlier said this at a public meeting in Cobo Center in downtown Detroit on January 29, 2015 in a room full of Detroiters facing tax foreclosures. See Christine MacDonald, *Homeowners Facing Foreclosure Flock to Cobo Center*, DETROIT NEWS (Jan. 29, 2015), <https://www.detroitnews.com/story/news/local/wayne-county/2015/01/29/homeowners-facing-foreclosure-flock-cobo-center/22527173> [<https://perma.cc/G6GT-N7CB>].

244. Conversation with Victoria Kovari, General Manager, Dep't of Neighborhoods (Sept. 25, 2018) (on file with author).

taxes on time.”<sup>245</sup> City officials routinely mobilized narratives that blamed the poor while ignoring the systemic illegality at play, keeping the structural injustices hidden in plain sight.

*c. Impaired Accountability*

Impaired accountability is one main reason that systemic unconstitutional property tax assessments arose and persisted in Detroit. Calculating property tax assessments and ensuring they are in line with Michigan law is the Detroit Assessment Division’s job. While unconstitutional tax assessments abounded, the mechanisms established to hold the Division accountable for accuracy failed. More specifically, there are four entities with the power to oversee and correct the work of Assessment Divisions in Michigan that are not abiding by existing laws and procedures: The Assessment Division itself, Board of Review, Wayne County Board of Commissioners, and State Tax Commission.

*i. Assessment Division*

The internal quality controls within the Assessment Division are the first accountability mechanism. Assessors must go out to inspect and value properties, submit those valuations to their managers for review, and managers then submit all valuations to the three-member Board of Assessors for final approval.<sup>246</sup> Normally, multiple levels of review and approval serve as a safeguard, ensuring accuracy and bolstering the data’s integrity. But the review process broke down because the data were riddled with inaccuracies.

Detroit had not conducted a reappraisal of properties in its jurisdiction in at least fifty years.<sup>247</sup> In addition, between 2002 and 2003, the Assessment Division switched from its original mainframe assessing software to a more modern operating system called Equalizer.<sup>248</sup> The Division totally botched the conversion and, as a result, many property descriptions were incorrect and valuations were inaccurate.<sup>249</sup> A building’s value is based on its attributes, but

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245. Joel Kurth et al., *Sorry We Foreclosed on Your Home. But Thanks for Fixing Our Budget*, BRIDGE (June 6, 2017), <https://www.bridgemi.com/detroit-journalism-cooperative/sorry-we-foreclosed-your-home-thanks-fixing-our-budget> [<https://perma.cc/T3FV-8SN6>]; see also Marti Benedetti, ‘Time to Pass the Torch,’ Says Retiring Wayne County Treasurer Raymond Wojtowicz After 39 Years on Job, CRAIN’S DETROIT BUS. (Oct. 4, 2015), <https://www.craindetroit.com/article/20151004/NEWS/310049995/time-to-pass-the-torch-says-retiring-wayne-county-treasurer-raymond> [<https://perma.cc/6AL7-D2NJ>].

246. Interview with Alvin Horhn, *supra* note 184 (on file with author). As of January 2019, there is one seat empty. Currently, only Horhn and one assessor, Charles Erickson, are on the board.

247. OFFICE OF THE ASSESSOR, WHAT YOU NEED TO KNOW ABOUT THE CITY OF DETROIT’S CITYWIDE PROPERTY REAPPRAISAL [hereinafter DETROIT’S PROPERTY REAPPRAISAL], <https://detroitmi.gov/document/reappraisal-brochure> [<https://perma.cc/M2DC-K8UN>].

248. OFFICE OF THE AUDITOR GENERAL, CITY OF DETROIT, PERFORMANCE AUDIT OF THE FINANCE DEPARTMENT ASSESSMENTS DIVISION JULY 2008–JUNE 2011, at 19 (2012) [hereinafter PERFORMANCE AUDIT], <http://bit.ly/2hu2XJK> [<https://perma.cc/XYQ8-D3FV>].

249. *Id.* at 9 (“Management acknowledged that they have accuracy issues with property information because of the conversion, economic conditions, and changing property valuations. The

the Division lost much of the data about each property's underlying attributes because—while the original assessing software could hold something like 100 building attributes—the new Equalizer system could hold drastically fewer.<sup>250</sup>

Alvin Horhn, Detroit's highest-ranking assessment official, told me, "The conversion should have happened over several years with officials going into the field and verifying the information. But, in 2002, things began going south in Detroit and we did not have the manpower or funding to do the switch properly."<sup>251</sup> Without proper data and documentation, the Division's internal quality control mechanisms were wholly ineffective. Horhn confessed, "We took statistical averages of what we could get our hands on. But, with limited resources and limited access to data, you will come up with garbage. In the best circumstances, this is not what we should have been doing."<sup>252</sup>

A damning report by Detroit's own Office of the Auditor General laid bare the disarray within the Assessment Division. It concluded that "[a]ssessing activities and data management activities are inefficient and are not effective, and they lack sufficient internal controls."<sup>253</sup> The Auditor General's office conducted site visits, which revealed that "for five of the 22 (22.7%) residential properties audited, the actual condition of the building or property did not match its condition in Equalizer."<sup>254</sup> The office also examined a sample of the data in Equalizer. The errors were significant.

Prior to the conversion a property listed three commercial buildings, however, after the conversion the property listed one store, and two apartment buildings; A vacant lot which still included the original building [and] assessed values were not updated appropriately; A property that was improperly listed as tax exempt, and the apartment building only had a base rate of \$5 per square feet; The error rate for accuracy of property information on property record cards (the manual assessing system), as well as information in Equalizer, was greater than 5%, which is not a passing score according to the Michigan State Tax Commission (STC).<sup>255</sup>

Correctly done, assessors determine a property's market value using the most updated cost estimates found in the Michigan Residential Assessors Manual.<sup>256</sup> Without accurate data, the Equalizer system is in override, which

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result is inaccurate or incomplete information and errors in property descriptions and valuations in the Equalizer.").

250. Interview with Alvin Horhn, City of Detroit Deputy Chief Financial Officer (Jan. 26, 2017) (on file with author).

251. *Id.*

252. *Id.*

253. PERFORMANCE AUDIT, *supra* note 248, at 2.

254. *Id.* at 10.

255. *Id.* at 9.

256. *See generally* MICH. COMP. LAWS ANN. § 211.27 (West 2019); STATE TAX COMM'N, MICHIGAN ASSESSORS MANUAL VOL. III (2018) [hereinafter ASSESSORS MANUAL],

means assessment officials must input values manually.<sup>257</sup> That is, the override function creates an opportunity for assessors to escape the Assessors Manual's stringent calculation requirements and bend the rules. This is exactly what happened in Detroit. Assessors based building values on incremental, ad hoc adjustments to previously estimated values. This makeshift system imploded in 2008, during the Great Recession, when Detroit's housing prices fell precipitously, leaving no room for incremental adjustments.

Horhn describes how Linda Bade, Detroit's Chief Assessor at that time, handled the bungled conversion exacerbated by the Great Recession:

She initiated deep across the board cuts. It was impossible to target cuts neighborhood by neighborhood because the resources did not exist to do that. The City was having serious financial troubles and it was just trying to keep fireman and police on the streets. There was no money for an army of appraisers. So Bade made cuts across the board. When she started making cuts in 2007, the total SEV was 14 billion. By the time she left in June 2013, the total SEV dropped to 6 billion. Since the cuts were substantial and uniform across the board, some property owners got cuts they did not deserve, and others did not get enough. Linda knew it was wrong and burned herself to the ground trying to deal with it all.<sup>258</sup>

Horhn's story indicates that property tax assessments in Detroit were no longer derived using legally mandated formulas. They were instead based on crude guesses.

Without adequate staffing, the Assessments Division could not provide better estimates. But due to budget cuts, the Division did not replace employees who left during the chaos, worsening the staffing shortage.<sup>259</sup> Horhn recounts how the Division's staff diminished as Linda Bade came and went.

In 1997, we had 100 staff members. Then, Linda retired. When she came back in April of 2007, we had 57 people. In 2013, Linda retired again and at that point we were down to 35 people. When people left, they were not replaced. We did not have manpower because the City was focused on public safety. But, 35 people could not get the job done.<sup>260</sup>

The Auditor General found that 75 percent of employees interviewed said that lack of adequate staffing was the Division's most piercing problem.<sup>261</sup> According to Michigan's State Assessors Board, "an effective assessment system requires one full-time employee, including clericals per 1,500 to 3,500 parcels."<sup>262</sup> In

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[https://www.michigan.gov/documents/treasury/Merged\\_Volume\\_III\\_With\\_All\\_Edits\\_051817\\_575835\\_7.pdf](https://www.michigan.gov/documents/treasury/Merged_Volume_III_With_All_Edits_051817_575835_7.pdf) [<https://perma.cc/NBD4-25LR>].

257. PERFORMANCE AUDIT, *supra* note 248, at 9.

258. Interview with Alvin Horhn, *supra* note 184 (on file with author).

259. *Id.*

260. *Id.*

261. See PERFORMANCE AUDIT, *supra* note 248, at 43.

262. See *id.* at 50.

2011, the Division had a total of fifty-two employees, and each assessor was responsible for 6,911 parcels, nearly double the recommended ratio.<sup>263</sup> Without adequate staffing, existing employees had to do excessive overtime, routinely leading to burn out.<sup>264</sup>

In addition, the staffing shortages meant that the Assessment Division could not fulfill its legal duty to perform site visits.<sup>265</sup> The Auditor General found that, rather than visiting 30 percent of properties annually in compliance with state requirements and internal metrics, the Division often failed to visit properties for 22–30 years.<sup>266</sup> Assessors are supposed to use site visits to ensure property characteristics and values are up to date. Because Detroit has one of the highest rates of arson, vacancy, mortgage foreclosure, and tax foreclosure, its property stock changes rapidly,<sup>267</sup> making site visits vital for accurate records and assessments.<sup>268</sup> Horhn describes how the Great Recession exacerbated inaccuracies by hindering the Division’s ability to conduct site visits.

As the market crashed, more people were filing appeals and poverty tax exemptions, but we had nobody to send out in the field. We could not get out of the office, so we used the property transfer affidavits and sales available to us. But, you cannot confirm the value of a house if you are not out there to review sales. We didn’t have staff to do what we needed to do. We were in the middle of the storm trying to keep our heads above water while everything was crashing down all around us.<sup>269</sup>

Top officials such as Mr. Horhn and Mrs. Bade are not bad people; nor are they incompetent. Simply said, they were just not given the resources they needed to do their jobs in accordance with existing laws. It was the Assessment Division’s lack of human and financial resources which led its officials to generate an assessment roll that violated Michigan law.<sup>270</sup> Although simple

263. *Id.*

264. *Id.*

265. *Id.* at 11.

266. *See id.* at 9.

267. *See* Jerry Herron, *Niki’s Window: Detroit and the Humiliation of History*, 47 GA. REV. 362, 372–73 (1993); Joel Kurth & Christine MacDonald, *Volume of Abandoned Homes ‘Absolutely Terrifying’*, DETROIT NEWS (June 24, 2015), <https://www.detroitnews.com/story/news/special-reports/2015/05/14/detroit-abandoned-homes-volume-terrifying/27237787> [<https://perma.cc/4Q7F-Z976>]; Loveland Technologies, *THE DETROIT FIRE REPORT*, <http://detroitfires.squarespace.com> [<https://perma.cc/594G-BPFY>]; Patrick Sisson, *The High Cost of Abandoned Property, and How Cities Can Push Back*, CURBED.COM (June 1, 2018), <https://www.curbed.com/2018/6/1/17419126/blight-land-bank-vacant-property> [<https://perma.cc/NC4K-46XC>].

268. *See* PERFORMANCE AUDIT, *supra* note 248, at 11 (“The effect of not conducting the required annual site visits results in detailed property records (including data in Equalizer), assessments, and the City’s tax rolls that are not accurate. Assessments can only be as accurate as the property data on which they are based. Understated assessments results in lost revenues for the City, while overstatements increase revenues at the expense of property owners.”).

269. Interview with Alvin Horhn, City of Detroit Deputy Chief Financial Officer (Jan. 27, 2017) (on file with author).

270. Some believe that Linda Bade, who was in charge during the worst years, deserves ample blame. *See* MacDonald, *Property Tax System*, *supra* note 216 (“Police are investigating the

Hollywood narratives are attractive, the genesis of a predatory city does not always involve good guys donning white hats and bad guys sporting black ones. Sometimes the predation occurs because there is no money to buy a hat.

*ii. Board of Review*

When the Assessment Division's internal quality control mechanisms failed disastrously, the next bulwark against inaccurate property tax assessments was the Board of Review.<sup>271</sup> By soliciting and hearing property tax assessment appeals, the Board identifies and corrects mistakes in the assessment roll to guarantee its accuracy.<sup>272</sup> Willie Donwell—the Board's Chairman since 2004—admitted that he knew about the bungled conversion to Equalizer, the lost data, and the widespread assessment inaccuracies that resulted.<sup>273</sup> He also acknowledged that, according to the Michigan Tax Act, the Board of Review has control over all assessments whether appealed or not.<sup>274</sup> The Board, however, did *not* have the power to mandate a complete reappraisal of every property in the city, which was required to correct the roll's deficiencies.<sup>275</sup> Mr. Donwell felt the only real power he had to compensate for the Assessment Division's failures was to encourage community members to file an appeal, which is exactly what he did.<sup>276</sup>

Interviews with companies that specialize in helping Detroit residents appeal their property tax assessments revealed that the Board of Review could have done more. The head of one such business, Mr. Tyler, said that the Board is “supposed to act as a check on the assessor, but I don't know how well they are fulfilling their role. The Board is working in tandem with the assessor instead

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disappearance of nearly \$310,000 in cash that went missing over five years from the Assessment Division . . . Even so, two of its leaders [Linda Bade and Frederick Morgan] not only have kept their jobs, but also are drawing pensions in additions [sic] to their paychecks.”)

271. STATE TAX COMM'N, STATE TAX COMMISSION BOARDS OF REVIEW 3 (2018), [https://www.michigan.gov/documents/treasury/BOR\\_QA\\_423899\\_7.pdf](https://www.michigan.gov/documents/treasury/BOR_QA_423899_7.pdf) [<https://perma.cc/UTQ5-DM8L>].

272. See DETROIT, MICH., CITY CODE § 44-4-7 (2019) (previously codified as DETROIT, MICH., CODE OF ORDINANCES § 18-9-7 (2017); MICH. COMP. LAWS ANN. §§ 211.28–.30 (West 2019).

273. Donwell did not, however, believe the Equalizer debacle resulted in any illegality. “I believed they were acting with information from the State Tax Commission, which issues bulletins. If they are following the rules [in the bulletin], then they are in compliance.” Interview with Willie C. Donwell, Administrator/Chairman, City of Detroit Board of Review, in Detroit, Mich. (Oct. 23, 2018) (on file with author).

274. *Id.* See also MICH. COMP. LAWS ANN. § 211.29(2) (West 2019) (“The board shall do whatever else is necessary to make the roll comply with this act.”) (emphasis added).

275. See ASSESSORS MANUAL, *supra* note 256, at 118 (“According to the Michigan Supreme Court, a Board of Review may NOT make wholesale or across the board adjustments to assessments. A Board of Review must consider each parcel and act upon it individually.”).

276. Interview with Willie C. Donwell, Administrator/Chairman- City of Detroit Board of Review, in Detroit, Mich. (Feb. 3, 2017) (on file with author). In reality, the Board also should have reported the systemic inaccuracies to the State Tax Commission. See STATE TAX COMMISSION BOARDS OF REVIEW, *supra* note 271, at 11.

of working as a check on the assessor.”<sup>277</sup> As an example, he recounted a story about one property that was assessed as if it was worth \$40,000 when a certified appraisal valued it at \$10,000. The Board disregarded the appraisal and gave only a 3 percent reduction. Scoffing at the reduction, Mr. Tyler said,

At this level, it is not a matter of opinion, it is a core discrepancy. The reduction was not reached by looking closely at the appraisal. There is no rhyme or reason to it. It is not based on value! They give a percentage reduction rather than a reduction based on value because they are overwhelmed by the volume of appeals but recognize that values are overstated.<sup>278</sup>

Mr. Tyler’s company took the appeal to the Michigan Tax Tribunal and won.

In March of 2017, I attended several public sessions of the March Board of Review. Mr. Donwell allowed me to sit in the back and observe. My observations confirmed many of Mr. Tyler’s concerns about the haphazard assessment reductions. When I arrived, about twenty-five people were seated in the hallway, waiting for the Board to call them inside the hearing room. Once it was each taxpayer’s turn, he or she entered the hearing room where there was a court recorder, appraisers from the Assessment Division, and a person who read the parcel number, petitioner(s) name, address, and stated value of the property into the record. Representatives from the Assessment Division placed information about the appellant’s property on a screen and Mr. Donwell called the petitioners to a microphone to explain why they thought that their property assessments were too high. Mr. Donwell was in complete control of the proceedings. There were two or three other board members present at all times, but they only spoke when it was time to say, “I move that we accept” and “I second that.”

During the time I spent observing the hearings, Mr. Donwell rescheduled over 90 percent of the people who came without an advocate because they did not bring any documentation to prove the assessor’s valuation of their property was incorrect. They were ill-informed about the process and only came prepared to tell their story. When people did bring sufficient “proof” and the Board voted to reduce the assessed value, it was not clear how Mr. Donwell came up with the new valuation. After the session, when I asked Mr. Donwell to explain how he came up with the reduced values, he claimed he was using a formula. But when I asked to see the formula, a calculator fiasco that involved typing a string of nonsensical numbers ensued, proving there was, in fact, no formula. In truth, it was a rough estimation. No board members asked questions about how Mr. Donwell determined the final number; their presence and final approval were rubber stamps.

Since Mr. Donwell’s outsized control over the Board of Review is manifest, it was especially problematic when an investigation conducted by Detroit’s

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277. Confidential Interview with Mr. Tyler, *supra* note 212.

278. *Id.*



Board of Ethics found that Mr. Donwell improperly sought to personally benefit from the widespread tax foreclosures.<sup>279</sup> He created a company—called Hometown Detroit—that tried to purchase 2,000 to 4,000 foreclosure eligible homes in Northwest Detroit, some of which could have been foreclosed upon after appearing before the Board. The plan was to restore the homes and then sell them to low-income families on land contracts.<sup>280</sup> But, Detroit’s ethics ordinance does not allow public servants to engage or accept “private employment or rendering services when such employment or service is in conflict or incompatible with the proper discharge of official duties. . . .”<sup>281</sup>

Consequently, on June 7, 2018, the Ethics Board sanctioned Mr. Donwell with a public admonishment—the least severe punishment in its arsenal.<sup>282</sup> Since his scheme never advanced beyond a proposal, City Council allowed Mr. Donwell to remain in his position as the Board of Review’s chairman.<sup>283</sup> Mr. Donwell has publicly apologized to Detroit residents for any impropriety that occurred and continues to work with community groups to reform and improve administration of the Poverty Tax Exemption and appeals processes.<sup>284</sup>

In sum, the Board of Review could not and did not hold the Assessment Division accountable for its systematic miscalculations. In fact, the Board was part of the problem. Mr. Donwell confessed that his belief at the height of the economic crisis was that, “the Board of Review’s job is to make sure balances are correct. There is a number the city gives us, and we have to back into that number. The ABCs are to ensure the right amount of money is coming in. We are charged with making sure assessments are fair. What is the difference between what is right and what needed to be done?”<sup>285</sup> He shrugged.

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279. Res. Admonishing Willie Donwell, Chairperson of the Detroit Board of Review Property Assessment, CITY OF DETROIT, BD. OF ETHICS ADMIN., (2018) [hereinafter BD. OF ETHICS ADMIN.], <https://detroitmi.gov/document/resolution-admonition-w-donwell> [<https://perma.cc/ZU4U-ERNY>].

280. Joe Guillen, *Detroit Property Tax Official’s Side Job in Real Estate Causes Stir*, DETROIT FREE PRESS (Apr. 16, 2017), <https://www.freep.com/story/news/local/michigan/detroit/2017/04/16/2-jobs-detroit-property-tax-official-raise-some-questions/100460728> [<https://perma.cc/PQS3-NVGV>]; Joe Guillen, *Detroit Tax Official Reprimanded for Second Job in Real Estate*, DETROIT FREE PRESS (July 10, 2018) <https://www.freep.com/story/news/local/michigan/detroit/2018/07/10/tax-official-willie-donwell-ethics-rules/769427002> [<https://perma.cc/J6T9-EG4Q>].

281. DETROIT, MICH., CITY CODE § 2-106.1(2)(d) (2019)).

282. Violations of ethics ordinances can result in public admonishment by the Board of Ethics, a recommendation for disciplinary review, a recommendation to City Council for “removal or forfeiture proceedings,” an administrative sanction, and even fines or imprisonment. See DETROIT, MICH., CITY CODE § 2-106.11.

283. Despite finding that Donwell had violated multiple ordinances, the Board of Ethics Administration only required Donwell to receive Ethics training within three months of its resolution. See BD. OF ETHICS ADMIN., *supra* note 279.

284. Willie C. Donwell, Administrator/Chairman,- City of Detroit Board of Review, Press Conference and Community Forum for Coalition to End Unconstitutional Tax Foreclosures (July 8, 2017).

285. Interview with Willie C. Donwell, *supra* note 216.

iii. *Wayne County Board of Commissioners*

Once the Board of Review failed to protect Detroit taxpayers against illegally inflated property tax assessments, the next entity with oversight capacity and the tools to hold Detroit's Assessment Division accountable was the Wayne County Board of Commissioners.<sup>286</sup> Although only the local assessor can assign an assessed value to each property,<sup>287</sup> the Michigan Tax Act mandates that each county perform equalization to achieve uniformity among the local units in the county.<sup>288</sup> To equalize, a county uses its own sales or appraisal studies to verify that the cumulative assessed value of each property category does not exceed 50 percent of the category's cumulative market value. So if Detroit's cumulative State Equalized Value (SEV) for all residential properties is \$14 billion, then its cumulative market value for all residential properties cannot exceed \$28 billion.

The county has several options for making corrections when a category's cumulative SEV exceeds 50 percent of the category's cumulative market value. It could direct the local assessor to make cuts until the cumulative SEV for all residential properties falls below \$14 billion. If the local assessor does not have the required administrative capacity to complete this task, then the Michigan Tax Act authorizes Wayne County to provide assistance.<sup>289</sup> But, if the local assessor is uncooperative, the county can take a more authoritative approach and apply a factor that would categorically reduce or increase the assessed values of all residential properties.<sup>290</sup> Lastly, the county can report the offending city to the State Tax Commission, which can assume jurisdiction of its assessment roll until the local unit complies.<sup>291</sup>

Given the various options, Wayne County chose to work with Detroit's Assessment Division to make cuts in the cumulative SEV. The problem: accurate data are required for this accountability mechanism to work effectively.<sup>292</sup> The county knew Detroit's assessment data were faulty.<sup>293</sup> They knew that the City had not conducted a complete reappraisal in over fifty years.<sup>294</sup> They also knew

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286. MICH. COMP. LAWS ANN. § 211.27(d) (West 2019); MICH. COMP. LAWS ANN. § 211.34 (West 2019).

287. MICH. COMP. LAWS ANN. § 211.10 (West 2019).

288. MICH. COMP. LAWS ANN. § 211.34; *see also* Conroy v. Battle Creek, 22 N.W.2d 275, 280 (Mich. 1946) ("The constitutional requirement of a 'uniform rule of taxation' . . . can be satisfactorily affected [*sic*] through the process of equalization.").

289. MICH. COMP. LAWS ANN. § 211.23a (West 2019); MICH. COMP. LAWS ANN. § 211.34(3) (West 2019).

290. MICH. COMP. LAWS ANN. § 211.34(2) (West 2019).

291. MICH. COMP. LAWS ANN. § 211.10f(1) (West 2019).

292. *See* PERFORMANCE AUDIT, *supra* note 248, at 36 ("[A]nnual sales studies which are used to determine assessment ratios and ultimately, assessed values would be adversely affected if data relating to sales is missing or not accurate.").

293. Interview with Willie C. Donwell, Administrator/Chairman, - City of Detroit Board of Review (Oct. 22, 2018) (on file with the author) ("The county and state would have had to have known because the BSNA software is used throughout state of Michigan. We transmit our BSNA data to the county and they can see everything Detroit can see.").

294. *See* DETROIT'S PROPERTY REAPPRAISAL, *supra* note 247.

of the Equalizer debacle because it was reported in the Auditor General's public report.<sup>295</sup> Yet, the county proceeded as if the data were accurate, knowing this was not the case. Without an accurate record of the market value of each property, the equalization process is nothing more than a game of smoke and mirrors.<sup>296</sup> Accountability remained elusive.

*iv. State Tax Commission*

Many people inside and outside of Detroit are aware of Detroit's Emergency Manager, who had the power to temporarily override the decisions of Detroit's democratically elected officials. Most are not, however, aware that, likewise, the State Tax Commission took control of Detroit's Assessment Division. In response to Detroit's 2012 Auditor General report—examining the Assessment Division's performance from July 2008 to June 2011—and an exposé about unrestrained assessment inaccuracies featured in *The Detroit News*, the State Tax Commission assumed jurisdiction over the Division in 2014.<sup>297</sup> Detroit then went through an Audit of the Minimum Assessing Requirements (AMAR), which the Tax Commission created to more effectively monitor compliance within local assessing units and to institute corrective action plans when a unit's affairs are not in order.<sup>298</sup>

When Detroit finally completed its citywide reappraisal in January 2017, the Tax Commission suspended its mandatory oversight in August of the same year because property assessments were finally based on market values, as required by law.<sup>299</sup> Post reappraisal, my research assistant and I conducted another sales ratio study and found that the widespread illegality had greatly abated, but not for the lowest-valued homes.<sup>300</sup> In fact, we estimated that Detroit's Assessment Division is still unconstitutionally assessing 90 percent of homes valued \$18,500 or less.<sup>301</sup>

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295. See PERFORMANCE AUDIT, *supra* note 248, at 9.

296. See Atuahene, *Our Taxes Are Too Damn High*, *supra* note 39, at 1531.

297. See Christine Ferretti, *State Lifts Oversight of Detroit Property Assessments*, DETROIT NEWS (Aug. 30, 2017), <http://www.detroitnews.com/story/news/local/detroit-city/2017/08/30/state-lifts-oversight-detroit-property-assessments/105130886> [<https://perma.cc/GK4G-VWER>].

298. In 2015, all of Wayne County's other local units went through the AMAR. To review all AMAR reports for Wayne County, see State of Michigan, Dep't of Treasury, *Local Audit and Finance Division*, <https://treas-secure.state.mi.us/LAFDocSearch> [<https://perma.cc/48RL-JPW9>] (search county field for "Wayne").

299. See Ferretti, *supra* note 297; see also MacDonald, *Tax Appeals Reveal Imbalance*, *supra* note 225 (quoting Alvin Horhn: "I am fairly confident that we have it mostly right . . .").

300. See Atuahene, *Our Taxes Are Too Damn High*, *supra* note 39.

301. This is, in part, because nationally recognized assessment tools do not well accommodate such low valued homes. See, e.g., John H. Bowman & John L. Mikesell, *Uniform Assessment of Property: Returns from Institutional Remedies*, 31 NAT'L. TAX J. 137, 140 (1978) (writing that crowded housing, as a proxy for low-quality housing, often suffers during assessments because "assessing such properties is more difficult"). But see J. Wayne Moore, *Property Tax Equity Implications of Assessment Capping and Homestead Exemptions for Owner-Occupied Single-Family Housing*, 5 J. PROP. TAX ASSESSMENT & ADMIN. 37, 60 (2008) ("[T]ypically the low-value and high-value properties are the

The State Tax Commission was the only entity able to hold Detroit's Assessment Division accountable. There is, however, no public entity accountable to the people who would not have lost their homes to tax foreclosure but for the fact that unconstitutional assessments inflated their property tax bills, making them unaffordable.<sup>302</sup> If these taxpayers did not file an appeal, then they were not just out of luck, but also out of their homes.

*d. Legal Limitations*

When oversight entities failed to hold Detroit's Assessment Division accountable for routine unconstitutional property tax assessments on the front end, litigation proved a poor accountability mechanism on the back end. On July 13, 2016, the American Civil Liberties Union of Michigan, along with the NAACP Legal Defense & Educational Fund, Inc. and the law firm of Covington & Burling filed *Morningside Community v. Sabree*, a class action lawsuit against both the City of Detroit and Wayne County.<sup>303</sup> The case against the City of Detroit was for improper administration of the Poverty Tax Exemption (PTE),<sup>304</sup> which relieves individuals and families from paying property taxes if their income falls below the federal poverty line (see Figure 4).<sup>305</sup>

Figure 4: Poverty Tax Exemption Qualification Guidelines<sup>306</sup>

Number in Household	Maximum Income for Full Exemption (100% Reduction)	Maximum Income for Partial Exemption (50% Reduction)
1	\$16,660.00	\$19,160.00
2	\$19,950.00	\$22,450.00

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most difficult to appraise.”). In addition, after trimming, the 2016 data only had 47 sales classified as “Arm’s Length” so we included “Review Needed” number in the analysis. In prior studies, we included only sales marked as “Arm’s length.”

302. See Bernadette Atuahene, *Detroit’s Homeowners Deserve Better*, DETROIT NEWS (Jan. 31, 2017), <http://www.detroitnews.com/story/opinion/2017/01/31/property-assessments/97304442> [<https://perma.cc/79DK-PTA5>] (discussing the need for the Mayor to come up with a plan to repair the widespread damage that unconstitutional assessments caused prior to the city’s reassessment initiative).

303. Complaint, *Morningside Cmty Org. v. Sabree*, No. 16-008807-CH (Wayne Cir. Ct. July 13, 2016).

304. See Complaint, *Morningside Cmty Org.*, *supra* note 303, at ¶ 2.

305. Michigan state law requires municipalities to provide a property tax exemption to homeowners who, by reason of poverty, are unable to pay property taxes. MICH. COMP. LAWS ANN. § 211.7u (West 2019).

306. DETROIT CITIZENS BD. OF REVIEW, 2018 PROCESS FOR REVIEWING HOMEOWNERS PROPERTY TAX ASSISTANCE PROGRAM APPLICATIONS (2018), [https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/2018\\_hptap\\_application\\_guidelines.pdf](https://detroitmi.gov/sites/detroitmi.localhost/files/2018-05/2018_hptap_application_guidelines.pdf) [<https://perma.cc/LUC4-KCFE>]. Add \$4,180.00 to the income limit for each household member above eight for a Full Exemption and add \$1,500.00 to the proportioned Full Exemption for a Partial Exemption.

3	\$22,100.00	\$24,600.00
4	\$25,600.00	\$28,100.00
5	\$28,780.00	\$31,280.00
6	\$32,960.00	\$35,460.00
7	\$37,140.00	\$39,640.00
8	\$41,320.00	\$43,820.00

Figure 5: Poverty Tax Exemption Yearly Comparison<sup>307</sup>

Year	Full Exemption	50% Exemption	Total Applications	Denials	Denial Rate	General Fund Reduction
2006	3,204	139	4,168	825	20%	1,130,389
2007	3,483	264	4,829	1,082	22%	1,184,311
2008	3,483	331	5,780	1,966	34%	1,354,501
2009	4,528	219	5,633	886	16%	1,801,651
2010	4,388	295	5,795	1,112	19%	1,642,997
2011	3,652	265	4,891	974	20%	1,317,388
2012	3,617	196	4,536	723	16%	1,296,026
2013	3,712	148	4,313	453	11%	850,029
2014	3,678	127	4,214	409	10%	1,098,644
2015	3,840	138	4,164	186	4%	1,145,211
2016	4,459	74	4,645	112	2%	1,177,586
2017	5,206	68	5,684	410	7%	1,046,969
2018*	3,652	39	3,766	75	2%	737,133

\*Excludes data from the December Board of Review and hence is incomplete.

Michigan law charges the Board of Review with administering PTE applications and determinations.<sup>308</sup> Given that 40 percent of Detroit residents fall below the poverty line,<sup>309</sup> the important questions are: why did so few homeowners apply for the PTE; and why was the Board of Review's denial rate as high as 34 percent between 2006 and 2018 (see Figure 5)? The *Morningside*

307. Private Document Provided by the Board of Review (on file with author).

308. MICH. COMP. LAWS ANN. § 211.7u(5) (West 2019).

309. See *supra* note 8 and accompanying text.

complaint alleges that “thousands of Detroit homeowners who qualify for a poverty exemption excusing them from paying property taxes have been unlawfully prevented from obtaining that exemption due to needlessly complex and impenetrable application procedures.”<sup>310</sup> The complaint includes among the obstructive procedures: the Board’s failure to make the applications available online, the requirement that applicants apply to receive an application, the denial of applications without valid reasons, and the failure to process several submitted applications.<sup>311</sup> Plaintiffs claim that, through its improper administration of the PTE, the City violated taxpayers’ constitutional right to due process.<sup>312</sup>

On July 3, 2018—when the City of Detroit agreed to revamp its PTE application and review process—the parties settled the case.<sup>313</sup> The settlement requires the City to: Send a PTE application to all households with a Taxable Value of \$95,000 and below, all delinquent taxpayers, and all those who applied in previous year; create a page on the City website that links to the application and a list of organizations that can assist with its completion; make the application available in the Assessor’s Office; provide PTE-related training to staff in the Assessor’s Office; supply reasons for denying an application; reduce the paperwork required to file the PTE; and raise funds to remove residences that qualified for a PTE out of the tax foreclosure auction.<sup>314</sup> The class action against the City of Detroit spurred the City to improve its administration of the PTE and hence was a success.

In contrast, plaintiffs’ suit against Wayne County was unsuccessful. The suit alleged a violation of the Fair Housing Act (FHA) on the grounds that Wayne County’s property tax foreclosure practices disparately impacted African-Americans, causing them to “lose their homes through tax foreclosure at a higher rate than non-African American homeowners in Wayne County.”<sup>315</sup> The courts never heard the plaintiffs’ substantive claims because both the Wayne County Circuit Court and the Michigan Court of Appeals agreed plaintiffs should have filed the case in the Michigan Tax Tribunal rather than in state court.<sup>316</sup> Plaintiffs tried to get the Michigan Supreme Court to overrule the lower courts’ assertion of improper venue, but the Supreme Court dismissed the appeal for lack of subject matter jurisdiction.<sup>317</sup>

Plaintiffs did not refile the case in the Michigan Tax Tribunal because of three procedural disadvantages, which effectively killed their case. The first is

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310. Complaint, *Morningside Cmty Org.*, *supra* note 303, at ¶ 2.

311. *Id.* at ¶ 8.

312. *Id.* at ¶ 264.

313. See Stipulation and Order of Settlement and Dismissal, *Morningside Cmty. Org. v. Sabree*, No. 16-008807-CH (Wayne Cir. Ct. July 3, 2018).

314. *Id.*

315. See Complaint, *Morningside Cmty. Org.*, *supra* note 303, at ¶ 256.

316. *Morningside Cmty. Org. v. Wayne Cty Treasurer*, No. 336430, 2017 WL 4182985, at \*3–4 (Mich. Ct. App. Sept. 21, 2017) (per curiam).

317. *Wayne Cty. Treasurer v. Morningside Cmty Org.*, 905 N.W.2d 597 (Mich. 2018).

the statute of limitations. The FHA gives aggrieved persons two years to file a court claim.<sup>318</sup> In contrast, before the Tax Tribunal gains jurisdiction, homeowners must file an appeal during the Assessor's Review's 15-day window.<sup>319</sup> Plaintiffs had long since passed that window. The second disadvantage is that—although the FHA includes injunctive relief as one of the many remedies courts can impose<sup>320</sup>—the Tax Tribunal cannot issue injunctions because it is not a court.<sup>321</sup> The third and final drawback is that the Michigan Tax Tribunal, unlike state courts, cannot hear class actions.<sup>322</sup> The Tribunal is equipped only to provide relief to *individuals* and thus cannot address the *systemic* illegality that occurred in Detroit.

So, there was an impasse: state courts refused to hear the class action lawsuit on its merits because they ruled that plaintiffs lacked proper venue, but the proper venue—the Tax Tribunal—does not have the power to hear class action suits. Usually, the Tax Injunction Act does not allow federal courts to “enjoin, suspend or restrain the assessment, levy or collection of any tax under State law.”<sup>323</sup> But, there is an exception if there is no “plain, speedy and efficient remedy” in state courts.<sup>324</sup> The *Morningside* litigation has clarified that there is no remedy for systematic property tax assessment errors in Michigan courts. There may be a way forward in federal courts, but plaintiffs and their attorneys did not have the resources and stamina to continue down this path.

Although the most obvious cure for systemic unconstitutional property tax assessments is adjudication, procedural complexities effectively thwarted a legal remedy. The Detroit case demonstrates that when plaintiffs successfully overcome tremendous access to justice issues and secure lawyers to sue the state,<sup>325</sup> they still may not secure a win and attain justice.

#### *e. Financial Advantage*

When investigating why predatory cities evolve, following the money will reveal much. But, the City of Detroit did not stand to gain much from the propagation of unconstitutional property tax assessments. Compared to other

318. 42 U.S.C. § 3613(a)(1)(A) (2012).

319. DETROIT, MICH., CITY CODE § 44-4-3 (2019) (previously codified as DETROIT, MICH., CODE OF ORDINANCES § 18-9-3 (2017)).

320. See 42 U.S.C. § 3613(c).

321. See *Wikman v. Novi*, 322 N.W.2d 103, 114; 413 (Mich. 1982).

322. The Michigan Supreme Court held that “the rules of the Tax Tribunal do not provide for the maintenance of class actions.” *Romulus City Treasurer v. Wayne Cty. Drain Comm’r*, 322 N.W.2d 152, 168; (Mich. 1982). *But see Sessa v. State Tax Comm’n.*, 351 N.W.2d 863, 865 (Mich. Ct. App. 1984) (“The Michigan Tax Tribunal has exclusive and original jurisdiction to review final decisions or determinations concerning assessments or equalization under the property tax laws.”).

323. 28 U.S.C. § 1341 (2012).

324. *Id.*

325. For more about access to justice challenges, see generally FELICE BATLAN, *WOMEN AND JUSTICE FOR THE POOR: A HISTORY OF LEGAL AID, 1863-1945* (2015); Rebecca L. Sandefur, *What We Know and Need to Know about the Legal Needs of the Public*, 67 S.C.L. REV. 443, 448 (2016).

cities, property tax revenues comprise a modest percentage of Detroit's total revenue. According to Comprehensive Annual Financial Reports produced by Detroit's Office of the Chief Financial Officer, between 2007 and 2016, property tax accounted for, on average, 14 percent of Detroit's city revenues.<sup>326</sup> This is low compared to other Michigan cities—Kalamazoo (45.9%), Ann Arbor (56%), Sterling Heights (61.5%), and Warren (61.5%)—as well as other major cities nationwide such as Los Angeles (25.6%), New York City (27%), Omaha (27.9%) and Baltimore (39.6%).<sup>327</sup> Detroit reliance on property taxes is limited because it has three other major sources of tax revenue—state shared taxes (14.2%), municipal income (16.3%), and wagering (11.5%)—whereas most cities mentioned collect revenue only from income tax and/or property tax.<sup>328</sup>

Although it is not clear what portion of Detroit property tax revenues were attributed to illegally inflated property tax assessments, any increase this illicit act provided to city revenues pales in comparison to the long-term losses. Unconstitutional property tax assessments are positively correlated with property tax foreclosures, which have well-documented economic, social, and psychological effects detrimental to Detroit and its residents.<sup>329</sup> So, if you follow the money, unconstitutional property tax assessments produce a net economic and social loss for the City and everyone in it. The question becomes: who then is financially benefitting? The clear and unequivocal answer is Wayne County—the local governmental unit co-governing the metro Detroit area—and investors participating in the tax foreclosure actions.

In 2015, Wayne County was nearing bankruptcy with a \$52 million annual deficit that projections estimated would increase to \$171 million by 2019 if the County did not undergo drastic restructuring.<sup>330</sup> With only 45 percent of the funds necessary to ensure full payment of its pension obligations and less than 1 percent of the monies required to fund its healthcare related obligations, the County was in a financial emergency.<sup>331</sup> Under the 2012 Local Financial Stability and Choice Act, the state had the power to appoint an emergency

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326. Comprehensive Annual Financial Reports (CAFR) are available at *Financial Reports, CITY OF DETROIT*, <https://detroitmi.gov/departments/office-chief-financial-officer/financial-reports> [<https://perma.cc/C6TF-6JWG>].

327. Memo to Mary Sheffield, Detroit City Council Member Pro Tempore, from Coalition to End Unconstitutional Foreclosure (Feb. 2, 2018) (on file with the author).

328. See *id.* (focusing especially on CAFR from FY2011-2016).

329. See Tsai, *supra* note 34 and accompanying text. See also Francis Wong, *The Financial Burden of Property Taxes* (Job Market Paper, Dec. 2019), [https://www.dropbox.com/s/cjetrf94hofy0i/fwong\\_JMP.pdf?dl=0](https://www.dropbox.com/s/cjetrf94hofy0i/fwong_JMP.pdf?dl=0) (showing that increases in property tax bills negatively impact consumption and generate spikes in mortgage delinquency).

330. See *Wayne County to Operate Under State Oversight After Consent Agreement Approval*, CRAIN'S DETROIT BUS. (Aug. 13, 2015), <https://www.crainsdetroit.com/article/20150813/NEWS01/150819925/wayne-county-to-operate-under-state-oversight-after-consent> [<https://perma.cc/GGF6-KYNT>].

331. See CONSENT AGREEMENT BETWEEN WAYNE CTY. AND THE STATE TREASURER (Aug. 10, 2015), <https://www.scribd.com/document/274186251/Consent-Agreement-Wayne-County> [<https://perma.cc/VVF3-GHWS>] [hereinafter CONSENT AGREEMENT].



manager to restructure the county's economic affairs, bypassing the approval of its democratically elected leaders, as it had done in 2013 in Detroit.<sup>332</sup>

To avoid this, in 2015, Wayne County entered into a consent agreement with the state of Michigan.<sup>333</sup> This gave the County Executive, Warren Evans, certain extraordinary powers usually reserved for an Emergency Manager, such as the ability to unilaterally cut employee pay and benefits.<sup>334</sup> So long as Evans satisfied certain obligations under the agreement, the County's leadership could retain much of its decision making power.<sup>335</sup>

In order to emerge from state oversight in 2016, Wayne County produced a turnaround plan that balanced its books on the backs of cities with high property tax delinquency and foreclosure rates.<sup>336</sup> More specifically, the plan banked on \$286 million in revenue between 2015 and 2019 from delinquent taxes and foreclosures.<sup>337</sup> Robert Ficano—the Wayne County Executive from 2003 to 2014—admitted that the County's reliance on tax delinquencies and foreclosures to close budget gaps was bad policy.<sup>338</sup> He remarked, “[f]rom a policy perspective, you hope it dries up. You don't want to have to keep foreclosing in order to balance the budget.”<sup>339</sup> Most detrimentally, the county's reliance on surpluses generated from tax delinquencies erased its incentive to halt the property tax foreclosure crisis.

To fully understand how the County regained solvency using surpluses it seized from delinquent taxes and tax foreclosures, an explanation of how Michigan handles real property tax delinquency and forfeiture is required. Under the prior system in place from 1977 until 1998, each locality performed its own debt collection—even if it did not have the capacity—leading to debt collection rates of less than 50 percent.<sup>340</sup> Under the new system, established by the Delinquent Property Tax Foreclosure Public Act (1999), when property owners do not pay their property taxes, in the second year of delinquency, counties purchase the debt and become the debt collector.<sup>341</sup>

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332. See Mich. Local Financial Stability and Choice Act of 2012, Public Act 436 (2012); MICH. COMP. LAWS ANN. §§ 141.1541-141.1575 (West 2019).

333. See CONSENT AGREEMENT, *supra* note 331.

334. See *id.* at 3.

335. *Wayne County to Operate Under State Oversight After Consent Agreement Approval*, *supra* note 330; see also CONSENT AGREEMENT, *supra* note 331.

336. See RECOVERY PLAN: WAYNE COUNTY, MICHIGAN [hereinafter RECOVERY PLAN], <https://assets.documentcloud.org/documents/4337808/Wayne-County-RECOVERY-PLAN-FINAL5-22-15FINAL.pdf> [<https://perma.cc/RBW2-FAJW>]; *Wayne County Released From Consent Agreement*, DETROIT FREE PRESS (Oct. 20, 2016), <https://www.freep.com/story/news/local/michigan/wayne/2016/10/20/wayne-county-released-consent-agreement/92455932> [<https://perma.cc/2RZ8-2UH4>].

337. See RECOVERY PLAN, *supra* note 336, at 44.

338. Kurth et al., *supra* note 245.

339. *Id.*

340. *Id.*

341. H.B. 4489, 90th Leg., Reg. Sess. (Mich. 1999).

To purchase the debt, counties borrow money from banks at low rates.<sup>342</sup> Counties then give cities monies to cover the unpaid taxes.<sup>343</sup> Counties recuperate their funds by collecting the unpaid property taxes and the sizable fines, fees, and interest levied on the delinquent sums in addition to the revenues from tax foreclosure sales.<sup>344</sup> Counties deposit all funds collected from delinquent property taxes and foreclosures into a facility called the Delinquent Tax Revolving Fund (DTRF), which is used to make payments to cities and banks.<sup>345</sup>

There are three distinct funding streams supplying the DTRF. The first stream comes from the fees, fines, and interest charged on delinquent sums. In addition to several specific fees,<sup>346</sup> the Michigan Tax Act allows counties to levy 18 percent interest on delinquent amounts owed.<sup>347</sup> Consequently, in the 2015-2016 fiscal year, Wayne County anticipated revenue of \$8,175,328 from charges, fees, and fines.<sup>348</sup> In 2017, fees and interest constituted 9 percent of Wayne County's revenues, which was approximately equivalent to its state revenue sharing payments.<sup>349</sup>

The second stream funding the DTRF is the property tax foreclosure auctions. If delinquent taxes remain unpaid after three years, the Wayne County Treasurer has the right to foreclose and sell the property at auction.<sup>350</sup> Between 2011 and 2015, the Wayne County Treasurer completed the foreclosure process for about 100,000 Detroit properties.<sup>351</sup> Given the remarkable number of

342. See MICH. COMP. LAWS ANN. § 211.87b (West 2019); CATHERINE COENEN, ET AL., UNIV. OF MICH. URBAN & REG'L PLANNING PROGRAM, FROM REVENUE TO REFUSE: MANAGING TAX-REVERTED PROPERTIES IN DETROIT 12 (2011), [https://taubmancollege.umich.edu/pdfs/student\\_work/planning/revenue\\_to\\_reuse.pdf](https://taubmancollege.umich.edu/pdfs/student_work/planning/revenue_to_reuse.pdf) [<https://perma.cc/N5LE-UUMQ>]; Interview with Eric Sabree, Wayne County Treasurer (Apr. 19, 2017) ("Four to five banks, including Chase and Bank of America, have purchased the bonds. The RFP goes out in the *Wall Street Journal*. We had trouble getting people interested the last two years, so the interest rate was higher: 5.75% (2015) and 4.25% (2016).").

343. MICH. COMP. LAWS ANN. § 211.87b.

344. Any funds that counties do not recover, they charge back to the cities. See Atuahene & Berry, *supra* note 17, at 869–70.

345. See MICH. ASS'N OF CTY. TREASURERS, THE DELINQUENT TAX REVOLVING FUND IN 2016 AND BEYOND 4 (2016) [hereinafter TAX REVOLVING FUND HANDBOOK], <https://mactreasurers.org/wp-content/uploads/2012/07/Delinquent-Tax-Revolving-Fund-Handbook.pdf> [<https://perma.cc/MD9F-5GK2>].

346. Atuahene & Berry, *supra* note 20, at 870.

347. See WAYNE CTY. GOV'T, ADOPTED BUDGET FY 2015–2016 AND PROJECTED FY 2016-2017 22-2 [hereinafter FY 2015-2016], [http://www.waynecounty.com/documents/mb/2015-2016\\_treasurer.pdf#toolbar=1&view=FitH](http://www.waynecounty.com/documents/mb/2015-2016_treasurer.pdf#toolbar=1&view=FitH) [<https://perma.cc/K9DP-LDY6>] (explaining that, in fiscal year 2014-2015, Wayne County collaborated with the city of Detroit and the state of Michigan to propose legislation that would reduce the interest rate on property tax-delinquent owners from 18% to 6%); see also MICH. COMP. LAWS ANN. § 211.78g(3)(b) (West 2019).

348. See FY 2015–2016, *supra* note 347 (showing an increase of \$426,928 from the 2014–2015 budget).

349. Kurth et al, *supra* note 245.

350. MICH. COMP. LAWS ANN. § 211.78(g) (West 2019).

351. For the authors' calculations, see Atuahene & Hodge, *supra* note 7.

property tax foreclosures, the auctions generate significant revenues. The 2014 tax auction netted approximately \$24 million for the county, while in 2018 the auction brought in between \$23–25 million.<sup>352</sup>

A wide range of investors and speculators—from individuals and families in the Detroit Metro area to real estate investment corporations from California and Japan—purchase homes at the two tax foreclosure auctions that take place each year. At the first auction, the minimum bid is all unpaid taxes, interest, and fees.<sup>353</sup> Properties that do not sell at the first auction go to the second one, where the opening bid is \$500.<sup>354</sup> At these low prices, it is not uncommon for a geographically distant investor to purchase a property sight unseen.

My interviews with people whom Wayne County foreclosed upon reveal that there are two models investors use to flip occupied homes. The first model is possible because the law prevents delinquent owners from repurchasing their own properties at auction.<sup>355</sup> Consequently, investors purchase the homes and then sell them back to the original owner on a land contract. This works because, while delinquent taxpayers do not have a large sum of money (i.e. \$5000) to pay off their past due bills, they can scrape together what a land contract requires (i.e. \$500 for a down payment and then \$200 per month thereafter). Investors can quickly recover the amount they paid at auction and the rest is profit because, in a land contract, occupants are liable for repairs and upkeep on the property.

In the second model, investors purchase the home, evict the prior owner or occupant, and then sell the home to a new buyer. If investors are unable to sell the property to the current occupant or new buyer, then they commonly do not pay the property taxes or maintain the home. As a result, Dewar finds that “a high percent of auctioned property quickly went back into foreclosure.”<sup>356</sup> Also, these abandoned homes contribute to blight and crime.<sup>357</sup> While the City of Detroit suffers, investors and Wayne County together profit handsomely from the property tax foreclosure crisis in Detroit.

The third stream of money funding the DTRF is tax auction overages. In a mortgage foreclosure, after the debtor pays lenders their loan amount and any additional accrued fees, the debtor is entitled to keep any remaining equity. In contrast, once the county sells a home in the tax foreclosure auction and collects

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352. Loveland Tech., *A Year After the 2014 Tax Auction*, LANDGRID, <https://makeloveland.com/reports/foreclosure> [<https://perma.cc/8NHS-D854>]; Loveland Tech., *About What Happened at the 2018 Auction*, PATREON (Oct. 28, 2018), <https://www.patreon.com/posts/about-what-at-22350862> [<https://perma.cc/2XWT-DXZC>].

353. MICH. COMP. LAWS ANN. § 211.78m(2) (West 2019).

354. MICH. COMP. LAWS ANN. § 211.78m(5) (allowing the county to establish a “reasonable opening bid” to recover cost of sale); see Dewar et al., *Disinvesting in the City*, *supra* note 240, at 591 (noting that Wayne County has set \$500 as cost recovery amount).

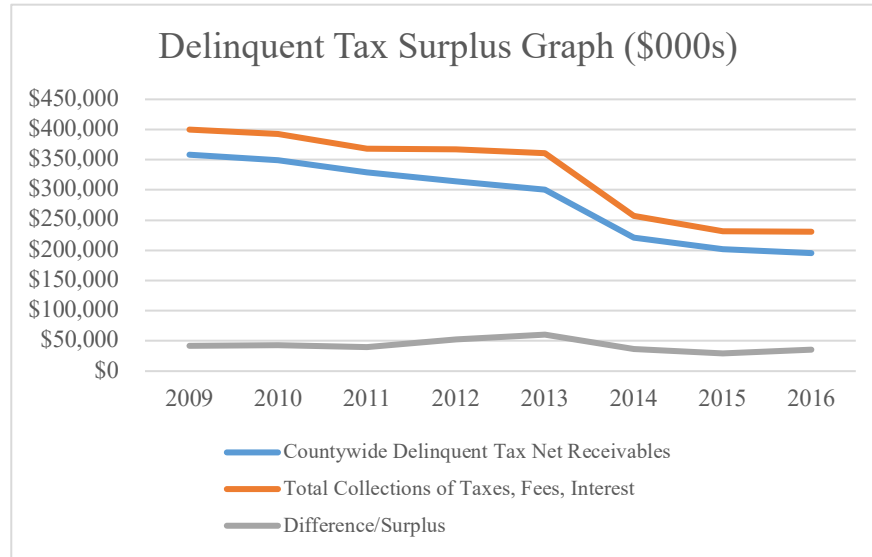
355. MICH. COMP. LAWS ANN. § 211.78m(2)(a)-(b).

356. Dewar, *The Effects on Cities of “Best Practice”*, *supra* note 36, at 22.

357. See Ellen Kirtner, Note, *Interrupting the Blight Cycle: Managing the Future of Properties in Tax Foreclosure Sales through Pre- and Post-Sale Initiatives*, 66 CASE W. RES. L. REV. 1083, 1112 (2016).

all property tax debts owed to it, Michigan law allows counties to retain any overages. So, if a home sells for \$50,000 at the tax auction, but the total tax debt amounts to only \$25,000, counties retain the overage of \$25,000. While there are several lawsuits challenging this practice as a violation of state and federal takings clauses, none have yet been successful, so the practice endures.<sup>358</sup>

Figure 6: Wayne County Delinquent Tax Surplus<sup>359</sup>



Loveland Technologies estimates that, between 2009 and 2016, all three streams funding the DTRF resulted in significant revenues, ranging from \$399,923,489 in 2009 to \$230,842,267 in 2016.<sup>360</sup> More importantly, a significant portion of these revenues is surplus because the county borrows

358. See, e.g., *Hammoud v. Cty. of Wayne*, No. 15-cv-14461, 2016 WL 8094373 (E.D. Mich. Oct. 7, 2016) (dismissing plaintiffs’ ten causes of action for insufficient pleading and for lack of jurisdiction); *aff’d by Hammoud v. Cty. of Wayne*, 697 Fed. Appx. 445 (6th Cir. 2017). See also *Timbs v. Indiana: Excessive Fines Clause Applies to All Governments*, PAC. LEGAL FOUND., <https://pacificlegal.org/case/timbs-v-indiana> [<https://perma.cc/4MAU-ZQ58>] (Explaining the ongoing case of Uri Rafaeli who “inadvertently underpaid his 2011 property taxes by \$8.41 on a \$60,000 home. Though he paid all of his taxes on time each year thereafter, Oakland County, Michigan, foreclosed on his property to collect the \$8.41, sold the property at auction for \$24,500, and kept every penny of the proceeds rather than refund the difference to Uri”).

359. Loveland Tech., *Wayne County Delinquent Tax Fund Graph*, PATREON (June 11, 2018) [hereinafter Loveland Tech., *Wayne County Delinquent Tax Fund Graph*], <https://www.patreon.com/posts/wayne-county-tax-19383149> [<https://perma.cc/S5VU-RPXD>].

360. *Id.* (“The Total Collections of Taxes, Fees, and Interest measures all of the money that came back to them in a given year through collections, fees, interest, and chargebacks from any properties where taxes weren’t ultimately collected.”).

money from banks for about 5 percent or less,<sup>361</sup> but sometimes collects up to 35 percent in fees, fines, and interest in addition to auction sale revenues.<sup>362</sup> According to Loveland Technologies, from 2009 through 2016 the surplus ranged from \$29,342,843 in 2015 to \$60,457,170 in 2013.<sup>363</sup>

By statute, county treasurers must keep DTRF monies separate and cannot comingle them with other funds in their custody.<sup>364</sup> The stated purpose of the DTRF is to obtain “funds to pay to all taxing units within the county the total amount of delinquent real property taxes, which have not been collected by the due date.”<sup>365</sup> The statute envisions the DTRF as a lock box. Nevertheless, to balance its books, Wayne County has been transferring ample sums from the DTRF to its general fund, violating the DTRF’s statutorily established purpose.

As recently as 2018, the county transferred over \$26 million from the DTRF to the County General Fund with the authorization of the 15-member county commission.<sup>366</sup> The county authorized similar transfers in 2017 (\$35,153,226), 2016 (\$62,047,215), 2015 (\$161,222,041), 2014 (\$160,975,779), 2013 (\$23,109,101), 2012 (\$15,000,000), 2011 (\$4,000,000), 2008 (\$5,000,000), 2007 (\$14,500,000), 2006 (\$8,000,000), 2005 (\$21,000,000), 2004 (\$25,500,000), and 2003 (\$10,000,000).<sup>367</sup> Sources indicated that, from 2002 to

361. Kurth et al., *supra* note 245 (“Profit comes from borrowing at 5 percent or less and getting up to a 22-percent return on delinquent taxes, creating the surplus controlled by the county treasurer.”). Wayne County’s CAFR from FY2016 notes that the county is permitted to loan securities to banks for collateral cash at a 2% interest rate. WARREN C. EVANS, CHARTER COUNTY OF WAYNE, COMPREHENSIVE ANNUAL FINANCIAL REPORT: FOR THE YEAR ENDED SEPTEMBER 30, 2016, at 78 (2016).

362. See Atuahene & Berry, *supra* note 20, at 22.

363. See Loveland Tech., *Wayne County Delinquent Tax Fund Graph*, *supra* note 359.

364. MICH. COMP. LAWS ANN. § 211.87c (West 2019) (“Money and other property held in the delinquent tax revolving fund shall be kept separate from and shall not be commingled with any other money in the custody of the county treasurer.”).

365. See HANDBOOK, *supra* note 345, at 1; *id.* at 55 (“[T]he county has no right, title or interest in the delinquent tax revolving fund and the county treasurer is only a collecting agent.”).

366. NO. 22 ANNUAL MEETING, FOURTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE PF MICH. 477 (Nov. 16, 2017), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>] (Communication from Wayne County Executive Warren C. Evans to Committee on Ways and Means, 10/30/2017: “requesting Commission approval of a resolution authorizing the transfer of \$35,153,226 to the County General Fund for fiscal year 2016-2017, which has been identified as available for transfer from the Delinquent Tax Revolving Fund”).

367. *Id.* at 488; NO. 25 ANNUAL MEETING, FIFTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 485 (Dec. 1, 2016), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 12 EQUALIZATION MEETING, FIFTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 149 (June 4, 2015), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 26 ANNUAL MEETING, SIXTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 567 (Dec. 17, 2015), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 12 EQUALIZATION MEETING, FIFTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 291 (June 19, 2014), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 24 ANNUAL MEETING, FIFTH DAY 588 J. COMMISSION CHARTER COUNTY OF WAYNE

2017, the Wayne County Treasurer has transferred \$571 million from the DTRF to the county's general fund.<sup>368</sup> Through 2019, Wayne County plans to receive \$30 million per year from these transfers.<sup>369</sup>

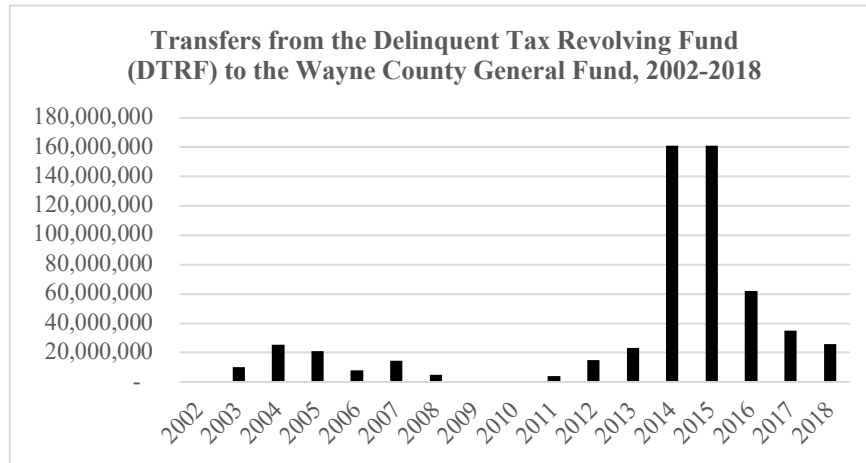
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STATE OF MICH. 291 (Dec. 4, 2014), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 24 ANNUAL MEETING, SIXTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 646 (Dec. 19, 2013), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 2 ORGANIZATIONAL SESSION, SECOND DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 29 (Jan. 19, 2012), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 6 ORGANIZATIONAL SESSION, SIXTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 111 (Mar. 17, 2011), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 5 ORGANIZATIONAL SESSION, FIFTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 110 (Mar. 6, 2008) <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 8 EQUALIZATION SESSION, SECOND DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 186 (Apr. 19, 2007), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 22 ANNUAL MEETING, FOURTH DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 646 (Nov. 15, 2007), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 19 ANNUAL MEETING, FIRST DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 657 (Oct. 5, 2006), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 19 ANNUAL MEETING, FIRST DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 819 (Oct. 6, 2005), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 19 ANNUAL MEETING, FIRST DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 735 (Oct. 7, 2004), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>]; NO. 21 ANNUAL MEETING, FIRST DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 968 (Oct. 2, 2003), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>].

368. Kurth et al., *supra* note 245; see NO. 23 ANNUAL MEETING, SIX DAY, J. COMMISSION CHARTER COUNTY OF WAYNE STATE OF MICH. 579 (Dec. 6, 2018), <https://www.waynecounty.com/elected/commission/archived-journals.aspx> [<https://perma.cc/2UUX-ZMHM>].

369. Violet Ikonomova, *As Tax Foreclosures Give Wayne County a Short-term Financial Boost, is There Incentive for an Overhaul?*, DETROIT METRO TIMES (June 14, 2017), <https://www.metrotimes.com/detroit/as-the-system-gives-wayne-county-a-short-term-financial-boost-is-there-incentive-for-an-overhaul/Content?oid=4179545> [<https://perma.cc/2FRH-ECRD>].

Figure 7: Approved Transfers from the DTRF to the Wayne County General Fund<sup>370</sup>



The numbers are damning. They unequivocally show that, working with investors, Wayne County is profiting from the tax foreclosure crisis in Detroit. But, as the current Wayne County Treasurer, Eric Sabree, correctly asserted, “It is our job to collect delinquent taxes. The City makes assessments. The City is responsible for incorrect assessments, not the County.”<sup>371</sup> Without the City of Detroit’s failings, Wayne County could not and would not profit.

## II.

### BUILDING THE THEORY OF PREDATORY CITIES

Based on the Detroit case, I hypothesize that predatory cities evolve in places where citizens do not have the economic and political resources to hold accountable the street level bureaucrats who intentionally or unintentionally use illicit means to fix budget shortfalls. Predatory cities have existed in the shadows of legal scholarship because many assume that they are a product of undemocratic regimes in the developing world and do not exist in advanced liberal democracies committed to the rule of law. But the historic rates of inequality experienced in America and abroad weaken the rule of law.<sup>372</sup> Not because poor people engage in more crime, but because inequality facilitates

370. See *supra* notes 366–368 and accompanying text.

371. Interview with Eric Sabree, *supra* note 342.

372. See generally Thomas Piketty, *About Capital in the Twenty-First Century*, 105 AM. ECON. REV. 48 (2015) (showing trends in income inequality).

government crimes against poor people. In this era of increasing fiscal retrenchment, it is important to bring discussions of state predation from the cobweb-festooned basement of development studies to the center stage of legal discourse.

While many forms of coercive state extraction are, in fact, legal, the two primary features of predatory cities are (1) that the routinized actions of public officials are illegal and (2) that these illegal actions directly augment public coffers. So in order to transition from a legitimate city into a predatory city, the illegal takings must be systematic rather than a one-off occurrence. The illegality does not necessarily make the extractive practices more destructive or morally opprobrious. Instead, the illegality deconsecrates the state, removing its cloak of legitimacy and allowing citizens to clearly perceive the state's transition from protector to predator. When revealed, the illegality can bolster social movements by signaling the breach of a deliberated, concretized, and privileged moral standard, rendering the state's abuse of power more visible and opening institutional avenues for resistance.

The predatory city is related to but distinct from four existing theoretical constructs. The *first* is state crime, a term criminologists credit William Chambliss with introducing.<sup>373</sup> State crime is committed or tolerated by state agents through their actions or inactions; performed by state agents in the course of carrying out the state's business; and involves the intentional or unintentional violation of existing domestic or international laws.<sup>374</sup> The *second* related concept is stategraft, which is an important subcategory of state crime. Stategraft is when state agents transfer property from persons to the state in violation of domestic or international laws.<sup>375</sup> While both state crime and stategraft focus on public officials who violate the law in the course of achieving organizational objectives, stategraft spotlights one crime in particular—illegal property transfers that augment public coffers.

Stategraft can occur in rural and urban areas; in advanced capitalist nations as well as developing nations; and at the national or local level. A predatory city is an urban area where local government officials perpetrate stategraft at scale.<sup>376</sup> This geographic dimension of stategraft is important because local governments significantly impact people's everyday lives by developing and implementing

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373. Chambliss, *State-Organized Crime*, *supra* note 166, at 184 (“The most important type of criminality organized by the state consists of acts defined by law as criminal and committed by state officials in the pursuit of their job as representatives of the state.”).

374. See, e.g., WILLIAM J. CHAMBLISS, *POWER, POLITICS, AND CRIME* 142 (2000); Stuart Henry, *The Informal Economy: A Crime of Omission by the State*, in *CRIMES BY THE CAPITALIST STATE: AN INTRODUCTION TO STATE CRIMINALITY* 253, 266 (Gregg Barak ed., 1991); Jeffrey Ian Ross, *Controlling State Crime: Toward an Integrated Structural Model*, in *CONTROLLING STATE CRIME* 3, 5 (2d ed. 2017) (“[S]tate crime is a broader and more inclusive concept than is the concept of human rights violations.”).

375. Atuahene & Hodge, *supra* note 7, at 294–96.

376. The urban area involved can have one of several designations, including a town, village, county, municipality, borough, district, or city.



policies in diverse areas, such as housing, public health, education, social services, policing, land use, and economic and environmental regulation.<sup>377</sup> City officials are “street-level bureaucrats” on the frontlines,<sup>378</sup> so when they abuse their discretion, entrench arbitrariness, and violate laws, this leaves citizens particularly vulnerable.

The *third* related theoretical construct is the predatory state, which is coercive resource extraction initiated or facilitated by state actors and institutions—often in concert with market actors—that exploits vulnerable populations and benefits elites.<sup>379</sup> I am applying the well-recognized concept of the predatory state to local governments. The primary difference is that the predatory state is a concept that foregrounds elites who extract private gain from public institutions while the concept of a predatory city focuses on state predation that chiefly benefits the public purse.

The *fourth* is a pair of concepts, austerity urbanism and the minimal city, which describe the evolution and consequences of the shrinking revenues, mounting expenses, and escalating debt that many cities must endure.<sup>380</sup> While distinct, the predatory city framework builds upon these two concepts because it moves beyond how and why cities become financially desperate to a deeper understanding of the illicit actions that can occur in the shadow of austerity.

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377. Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 591 (2017).

378. See MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES xi-xiii (1980) (“[T]he decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively *become* the public policies they carry out.”).

379. See JAMES K. GALBRAITH, THE PREDATOR STATE: HOW CONSERVATIVES ABANDONED THE FREE MARKET AND WHY LIBERALS SHOULD TOO 126 (2008); DOUGLASS C. NORTH, STRUCTURE AND CHANGE IN ECONOMIC HISTORY 21 (1981); see also Joshua Page & Joe Soss, *Criminal Justice Predation and Neoliberal Governance*, in RETHINKING NEOLIBERALISM: RESISTING THE DISCIPLINARY REGIME 139, 145 (Sanford F. Schram & Marianna Pavlovskaya eds., 2018) (arguing that the predatory state subverts the political relationship between state and citizen, transforming this fiduciary union into one predicated upon dominance and subordination); William Reno, *Predatory States and State Transformation*, in THE OXFORD HANDBOOK OF TRANSFORMATIONS OF THE STATE (Stephan Leibfried et al. eds., 2015); James A. Robinson, *When Is a State Predatory?* (Ctr. for Econ. Studies & Ifo Inst. Working Paper No. 178, 1999).

380. Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1120-6 (2014); Jamie Peck, *Austerity Urbanism*, 16 CITY 626 (2012).

Figure 8: Conceptual Matrix

	<b>What is the wrong?</b>	<b>Who is the main actor perpetrating the wrong?</b>	<b>Who is the primary financial beneficiary of the wrong?</b>	<b>Where does the wrong occur?</b>
<b>Predatory Cities</b>	Illegally taking property from people.	Public officials carrying out official business	Public coffers	Urban areas
<b>State Crime</b>	Any violation of law	Public officials carrying out official business	Public coffers or private actors	Anywhere
<b>Stategraft</b>	Illegally taking property from people	Public officials carrying out official business	Public coffers	Anywhere
<b>Predatory State</b>	Coercive resource extraction	Public officials carrying out official business	Private actors	Anywhere
<b>Austerity Urbanism &amp; Minimal Cities</b>	Eliminating essential public services by selling assets	Public officials carrying out official business	Private actors	Urban areas

Figure 8 shows how the idea of predatory cities fits with other theoretical concepts that also describe how public officials achieve organizational goals. There is one question conspicuously missing from the chart: What are the intentions of the public officials who commit the wrong? This absence is because the intentions of public actors in each category vary wildly. Some are actively trying to harm certain groups. Other public officials have a reckless disregard for the consequences of their actions, even though they are not actively trying to harm any segment of the population. Yet other public actors have the very best of intentions but act in ways that nevertheless lead to illegal extraction. The intentions of public actors can be a red herring. What really matters is that citizens were *actually* adversely impacted, and not whether public officials *intended* this harm.

A. *Understanding Why Cities Become Predatory*

It is easy to attribute the genesis of a predatory city and its attendant structural violence to political corruption. For instance, some commentators blame Kwame Kilpatrick—Detroit’s disgraced former mayor who is now serving twenty-eight years in a federal penitentiary—for the City’s woes.<sup>381</sup> Although Hollywood narratives that identify an evil villain are attractive, they are rarely true. The surge of unconstitutional tax assessments and the resulting property tax foreclosure crisis in Detroit is due to evil systems. Not evil individuals. A system, however, makes for an exceedingly poor villain because you cannot place a black cape or horns on a system. Nevertheless, it is important to resist simple explanations that pin the blame for the evolution of a predatory city on a few scoundrels because doing so masks deeper truths.

While there are countless reasons why Detroit evolved into a predatory city, my ethnographic research shows that a two-part explanation reveals a large part of the puzzle. First, various factors plowed the City and its residents down, creating vulnerability. Second, on this fertile ground, legal and governance failures sowed seeds that eventually sprouted predation. By only highlighting governance failures without a vulnerability analysis that underscores the background factors at play, onlookers could wrongly assume that Detroit got into this mess all by itself.

In the Detroit case, a vulnerability analysis identifies how structural racism—including racial and exclusionary zoning, racially restrictive covenants, urban renewal, predatory lending, and mortgage and insurance redlining—set the stage for unconstitutional property tax assessments.<sup>382</sup> In addition, water shut-offs, school closures, municipal bankruptcy, economic decline, political turmoil, and drastically reduced funding from the state further weakened the City and its residents, fortifying existing vulnerabilities. Although civil society organizations normally serve as watchdogs and guard against malfeasance, they were busy combating Detroit’s bevy of problems and so did not have the capacity to prevent the Assessment Division from propagating unconstitutional property tax assessments.

Against this backdrop of vulnerability, certain legal and governance failures created the structural conditions necessary for predation to advance. One source of tension was the two amendments to Article IX of the Michigan Constitution, which were intended to protect taxpayers from ever increasing property taxes, but actually forced assessment officials to choose between maintaining a dependable revenue stream or breaking the law. Because

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381. See, e.g., Tresa Baldas, *How Corruption Deepened Detroit’s Crisis*, USA TODAY (Oct. 6, 2013), <https://www.usatoday.com/story/news/nation/2013/10/06/how-corruption-deepened-detroit-crisis/2929137> [<https://perma.cc/695K-GFZG>].

382. Due to space constraints, there are also other major incidences of housing discrimination in Detroit that I omit, most notably blockbusting, racial steering, and discriminatory placement of housing projects.

accountability was elusive, public officials in Detroit chose to break the law by certifying tax assessment rolls where unconstitutional property tax assessments abounded. Although the Assessment Division, Board of Review, Wayne County Board of Commissioners, and the State Tax Commission all had varying levels of oversight and authority to correct the prevalent unconstitutional property tax assessments in Detroit, only the State Tax Commission successfully stopped the illegal assessments by mandating a citywide reappraisal. Wayne County had no incentive to intervene because it was profiting from the tax foreclosure crisis in Detroit. Even worse, by generating assessments rolls that systematically violated Michigan law, the City of Detroit enabled the County to balance its budget on the backs of Detroit residents delinquent on their property taxes.

Appealing their property's assessed value was taxpayers' only remedy against the rampant illegality. But many owners were unaware of the appeals process while its complexity baffled those who were, in fact, aware. This Article identifies six distinct hurdles that homeowners had to leap over to detect and correct inaccurate property tax assessments. Taxpayers able to secure an advocate were most likely to reach the finish line and obtain justice. Finding an advocate, however, was difficult, especially for the indigent populations occupying lower-valued homes most acutely affected by unconstitutional assessments. If owners failed to appeal their property tax assessments and secure individual justice, procedural complexities prevented taxpayers from bringing a class action lawsuit in state courts for the systemic nature of the unconstitutional assessments. So limited access to advocates and procedural complexities infected the justice system and allowed the epidemic of unconstitutional tax foreclosures to continue unabated.

Most importantly, Detroit officials illegally assessed residents, not because they are evil people, but because they did not have the staff and budget to do what was legally required. Resource deprivations brought an evil system into existence. Dominant narratives about irresponsible homeowners who decided to buy purses instead of paying their taxes masked this evil and drew attention away from structural explanations for the crisis. That is, narratives that blamed the poor kept the structural injustice (systemic illegal property tax assessments) hidden in plain sight.

My data only allow me to hypothesize that heightened vulnerability alongside legal and governance failures may be relevant to the genesis of other predatory cities. Using quantitative and qualitative methods, other empirical scholars should test whether these factors are, indeed, durable across cases.

### *B. Detroit is Not Sui Generis*

Detroit earned the label "predatory city" because the proliferation of unconstitutional property tax assessments fulfilled the following five elements: 1) occurred in an urban area; 2) perpetrated by public officials acting in their official capacity; 3) involved the routine taking and transfer of property; 4)

augmented the public purse; and 5) intentionally or unintentionally violated domestic laws or basic human rights. But Detroit is not alone. These five elements prevail in many other cities.

Ferguson, Missouri is likely another example of a predatory city. The 2014 police killing of an unarmed, 18-year-old African-American man, Michael Brown Jr., put the spotlight on Ferguson and its suspect law enforcement practices.<sup>383</sup> In its 2015 report, the Department of Justice (DOJ) Civil Rights Division revealed that the Ferguson police department violated the US Constitution's First, Fourth, and Fourteenth Amendments by adopting practices intended to raise revenues rather than secure public safety.<sup>384</sup> The report found that Ferguson's unconstitutional policing targeted African Americans, unfairly subjecting them to excessive fines and fees.<sup>385</sup>

Instead of serving their intended role as neutral arbitrators who regulate unlawful police conduct, courts merely enforced financial penalties, issuing arrest warrants for unpaid fines and fees without consideration of an individual's ability to pay.<sup>386</sup> The DOJ report finds that,

In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees.<sup>387</sup>

Washington, D.C. provides yet another potential entry point into the conversation about predatory cities. Civil forfeiture allows law enforcement officers to seize property that they suspect was involved in a crime without charging owners for violating any laws.<sup>388</sup> Civil forfeiture requires property owners to prove the property was not involved in a crime, effectively reversing the normal burden of proof and upending traditional due process protections.<sup>389</sup>

383. See generally *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/herstory> [<https://perma.cc/H8W7-2AZU>].

384. See U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 3, 15, 42 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [<https://perma.cc/CK9X-K63E>].

385. *Id.* at 4.

386. See *id.* at 3.

387. *Id.*

388. In contrast, criminal forfeiture requires a criminal conviction to deprive people of their property. See DICK M. CARPENTER II ET AL., INSTITUTE FOR JUSTICE, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE 5 (2d. ed. 2015) [hereinafter *POLICING FOR PROFIT*]. In 2019, the Supreme Court ruled that the Eighth Amendment's Excessive Fines clause was incorporated against the states through the Fourteenth Amendment, and that civil forfeiture laws entailing severe fines can indeed violate the Eighth Amendment. See *Timbs v. Indiana*, 139 S.Ct. 682 (2019).

389. See CARPENTER II ET AL., *POLICING FOR PROFIT*, *supra* note 388, at 8; Timothy J. Ford, Note, *Due Process for Cash Civil Forfeitures in Structuring Cases* 114 MICH. L. REV. 455, 466 (2015).

Although the intent of forfeiture laws is to undercut profits derived from crime, it is also a revenue generating mechanism for law enforcement departments—giving cash-strapped police departments a structural incentive to abuse the law in a contemporary perversion of Robin Hood.<sup>390</sup>

Without charging car owners with any crimes, D.C.’s police officers routinely seized cars and other property that they suspected were involved in a crime.<sup>391</sup> “From 2010 to 2012, D.C. seized 339 vehicles, as well as money from over 8,500 individuals, for a total profit of over 4.8 million dollars.”<sup>392</sup> In order to challenge these takings, car owners had to post bonds of up to \$2500.<sup>393</sup> If poverty prevented owners from promptly rendering payment, D.C. officials nevertheless took title to their cars, robbing indigent owners of their constitutional right to due process.<sup>394</sup>

As a result, in *Brown v. District of Columbia*, the D.C. Public Defender Office filed suit on behalf of 375 car owners, challenging the D.C. government’s “unconstitutional scheme of seizing cars and retaining them indefinitely pending potential civil forfeiture proceedings, without providing individual owners a prompt, post-deprivation hearing before a neutral arbiter in which they can challenge the self-interested police decision to seize, hold, and attempt to take ownership of their private property.”<sup>395</sup> The court ruled in favor of the plaintiffs, and local politicians agreed to reform D.C.’s wayward practices.<sup>396</sup>

Judicial practices in New Orleans may further illuminate the phenomenon of predatory cities. Although debtor’s prisons (which incarcerate people for being unable to pay their debts) violate the US Constitution,<sup>397</sup> state criminal

390. See CARPENTER II ET AL., *POLICING FOR PROFIT*, *supra* note 388, at 8; Chuck DeVore, *Police-Collected Fines, Fees and Forfeitures: How Does Your City Rank?* FORBES (Oct. 26, 2016), <https://www.forbes.com/sites/chuckdevore/2016/10/26/police-collected-fines-fees-and-forfeitures-how-does-your-city-rank/#4dfa44ca2520> [<https://perma.cc/VHQ7-K5MJ>].

391. See Robert O’Harrow Jr. & Steven Rich, *D.C. Police Plan Future Seizure Proceeds Years in Advance in City Budget Documents*, WASH. POST (Nov. 15, 2014), [https://www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-advance-in-city-budget-documents/2014/11/15/7025edd2-6b76-11e4-b053-65cea7903f2e\\_story.html?utm\\_term=.af57a5d0122c](https://www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-advance-in-city-budget-documents/2014/11/15/7025edd2-6b76-11e4-b053-65cea7903f2e_story.html?utm_term=.af57a5d0122c) [<https://perma.cc/XF6T-TYYC>] (“Since 2009, D.C. officers have made more than 12,000 seizures under city and federal laws . . .”).

392. Pamela Huber, *Policing for Profit: When Your Property Does the Time*, AWOL (Dec. 12, 2013), <https://awolau.org/847/uncategorized/policing-for-profit-when-your-property-does-the-time> [<https://perma.cc/EPG2-Q64R>].

393. *Id.*

394. Complaint, *Simms v. District of Columbia*, No. 1:12-cv-00701, at 2 (D.D.C. May 1, 2012), <https://www.clearinghouse.net/chDocs/public/CJ-DC-0002-0001.pdf> [<https://perma.cc/DJ4K-WVXU>].

395. Class Action Complaint at 1–2, *Brown v. District of Columbia*, No. 1:13-cv-00686-ESH (D.D.C. May 13, 2013), <https://www.clearinghouse.net/chDocs/public/PN-DC-0011-0001.pdf> [<https://perma.cc/9BLR-4GYU>]; see also *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 92 (2012).

396. See O’Harrow & Rich, *supra* note 391.

397. The Supreme Court clarified that authorities can jail debtors only if they have the ability to pay and are not willing to do so. See *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970).

court judges in New Orleans revived this vile, anachronistic practice. Despite endemic poverty, the Orleans Parish Criminal District Court routinely failed to examine defendants' ability to pay court debts prior to jailing them for non-payment.<sup>398</sup> In fact, the fines and fees that the court collected were its primary source of funding, creating a structural incentive for judges to aggressively and erroneously pursue payment from those with no ability to pay.<sup>399</sup>

In 2018, a U.S. federal district court issued a ruling in *Cain v. City of New Orleans*, declaring the Orleans Parish Criminal District Court's (OPCDC) debt collection practices violated the Fourteenth Amendment.<sup>400</sup> Specifically, the court ruled that:

[W]ith respect to all persons who owe or will incur court debts arising from cases adjudicated in OPCDC, the Judges' policy or practice of not inquiring into the ability to pay of such persons before they are imprisoned for nonpayment of court debts is unconstitutional. The Court further DECLARES that with respect to all persons who owe or will incur court debts arising from cases adjudicated in OPCDC, and whose debts are at least partly owed to the OPCDC Judicial Expense Fund, the Judges' failure to provide a neutral forum for determination of such persons' ability to pay is unconstitutional.<sup>401</sup>

In response to the litigation, Louisiana state legislators implemented substantial reforms, ending the resurgence of debtor's prisons in their state.<sup>402</sup>

While the unlawful practices occurring in Ferguson, Washington D.C., and New Orleans seem to satisfy the five elements of a predatory city, further empirical examination is required before we can definitively declare them such. The preliminary evidence I provide, however, suggests that predatory cities may be more common than we think.

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398. *Cain v. City of New Orleans*, 327 F.R.D. 111, 117 (E.D. La. 2018); *Judge Finds Louisiana's Debtors' Prison Scheme Violates Core Constitutional Rights of New Orleans' Poorest Citizens*, LAW COMMITTEE FOR C.R. UNDER LAW (Dec. 14, 2017), <https://lawyerscommittee.org/press-release/judge-finds-louisianas-debtors-prison-scheme-violates-core-constitutional-rights-new-orleans-poorest-citizens> [<https://perma.cc/XT3E-HMPJ>].

399. *Cain v. City of New Orleans*, 327 F.R.D. 111, 111–12 (E.D. La. 2018); *Cain v. City of New Orleans*, 281 F. Supp. 3d 624, 658 (E.D. La. 2017).

400. Declaratory Judgment, *Cain v. City of New Orleans*, Civil Action No. 15-4479, 1 (E.D. La. Aug. 3, 2018), <https://www.clearinghouse.net/chDocs/public/CJ-LA-0011-0035.pdf> [<https://perma.cc/3P54-6MES>].

401. *Id.*

402. See H.B. 249, 2017 Reg. Sess. (La. 2017); Tanner Magee, *Guest Column: An Unsustainable Court System in Louisiana*, ADVOC. (Dec. 18, 2017), [https://www.theadvocate.com/baton\\_rouge/opinion/article\\_8043f944-e1ec-11e7-8b8d-1f3ff080a176.html](https://www.theadvocate.com/baton_rouge/opinion/article_8043f944-e1ec-11e7-8b8d-1f3ff080a176.html) [<https://perma.cc/WNN2-HLM9>].

Figure 9: The Constitutive Elements of a Predatory City

	<b>Urban Area</b>	<b>Public Official(s)</b>	<b>Property Routinely Transferred</b>	<b>Public Coffers Augmented</b>	<b>Legal Violation</b>
<b>Property taxes</b>	Detroit & Wayne County	Officials in Detroit's Assessment Division & the Wayne County Treasurer	Monetary difference between property taxes legally and illegally calculated; and homes that would not have gone into tax foreclosure but for illegal tax assessments	City and county's operating budgets	Michigan Constitution, legislation, and case law prohibiting tax assessments from exceeding 50 percent of a property's market value
<b>Municipal code enforcement</b>	Ferguson	City police officers & municipal judges	Excessive fines and fees derived from unconstitutional policing	City's operating budget	US Constitution's First, Fourth, and Fourteenth Amendments
<b>Civil forfeiture</b>	Washington, D.C.	City police officers	Property forfeited without post-deprivation hearing	Police department's operating budget	US Constitution's Fourteenth Amendment
<b>Court fines and fees</b>	New Orleans	Judges in Orleans Parish Criminal District Court	Court debts collected from plaintiffs with no ability to pay	Court's operating budget	US Constitution's Fourteenth Amendment

### *C. Directions for Future Research and Policy*

Detroit, New Orleans, Ferguson, and Washington D.C. serve as mirrors, and in their reflection, the larger phenomenon of predatory cities becomes visible (Figure 9). Several arenas are particularly vulnerable to predation perpetrated by public officials and thus require further examination by lawyers, anthropologists, political scientists, economists, urban planners, geographers, sociologists, and historians.

The *first* area for expanded research and policy making is property tax administration. Although the case of unconstitutional property tax assessments in Detroit is illuminating, some may assume that it is sui generis. This is wrong. Christopher Berry and others have found that inequitable and racially



discriminatory property tax assessments are also happening in Chicago.<sup>403</sup> As a consequence, Berry designed a study to understand if Chicago and Detroit are part of a national trend. The national study is still ongoing, but his preliminary results show that most local assessors in Chicago, Detroit, New York City, Philadelphia, St. Louis, Phoenix, Miami, Los Angeles, Las Vegas, Boston, and Seattle are systemically inflating the property tax assessments of poor and minority homeowners in violation of existing laws.<sup>404</sup>

The *second* area is civil forfeiture laws, which is an area where the government's grasping hand has an especially high potential to victimize innocent property owners. According to the DOJ, 88 percent of civil forfeitures happened automatically because the property owner missed the deadline, could not afford a lawyer, or otherwise failed to challenge the seizure.<sup>405</sup> In fact, when lawyer's fees and other administrative costs surpass the value of the property confiscated, owners are less likely to contest the seizure, even when it is blatantly unjust.<sup>406</sup> In addition to the problems in Washington D.C., there have been comprehensive reports and lawsuits identifying and denouncing systemic abuses

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403. See THE TAX DIVIDE, *supra* note 13; see also Berry, *supra* note 14. Berry also conducted a regressivity analysis in Illinois and found that, in 2016, 91 out of 102 counties in Illinois were conducting assessments using standards that produced widespread inequities in property tax assessments. See INT'L ASS'N OF ASSESSING OFFICERS, *supra* note 27, at 14.; see also Complaint, Brighton Park Neighborhood Council v. Berrios, No. 2017-CH-16453, at 1 (Cook Cty. Cir. 2017).

404. Berry, *supra* note 14. See also Carlos Avenancio-Leon & Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation* (Job Market Paper, Nov. 2019), <https://dx.doi.org/10.2139/ssrn.3465010> (showing that, in a study of 118 million homes in the United States, black and Hispanic homeowners face a significantly higher tax burden).

405. POLICING FOR PROFIT, *supra* note 388, at 5.

406. See also Nick Sibilla, *After Cops Seized and Kept Cash, Washington, D.C. Settles Almost Million-Dollar Forfeiture Class Action*, FORBES (Sept. 12, 2014), <https://www.forbes.com/sites/instituteforjustice/2014/09/12/after-cops-seized-and-kept-cash-washington-d-c-settles-almost-million-dollar-civil-forfeiture-class-action/#7d015f867a42> [<https://perma.cc/X6QC-QQ9N>] ("In Minnesota, the average value of forfeited property was \$1,250, while in Georgia half of the property seized by law enforcement in 2011 was worth less than \$650. Since the cost to litigate is often worth more than the property that was taken, many owners do not even contest these seizures.").

of civil forfeiture laws in New York City,<sup>407</sup> Albuquerque,<sup>408</sup> Philadelphia,<sup>409</sup> Nebraska,<sup>410</sup> and Texas.<sup>411</sup>

The *third* area is citations issued by police and other city officials for code violations. The unconstitutional policing and excessive fines in Ferguson are not singular. The Institute for Justice is suing city officials in Doraville, Georgia, where courts threaten residents with probation and jail time for failure to pay innocuous code violations. The city “budgets between 17 and 30 percent of its overall expected revenue to come from fines and fees issued by its police officers and code inspectors.”<sup>412</sup> The Institute for Justice is also suing Pagedale, Missouri. Because Missouri limits the revenue municipalities can generate from traffic tickets, Pagedale extracts money from poor residents by ticketing them for “[h]aving mismatched curtains; [w]alking on the left-hand side of a crosswalk; [w]earing pants below one’s waist; [h]aving holes in window screens, and; [h]aving a barbeque in front of a house.”<sup>413</sup>

The *fourth* area for further research is court fines and fees. New Orleans is not the only city violating the US Constitution by jailing defendants who cannot afford to pay court fines and fees.<sup>414</sup> The Brennan Center for Justice surveyed

407. Amended Complaint, *Encarnacion v. City of New York*, No. 1:16-cv-00156-DLC (S.D.N.Y. June 3, 2016). Public defenders initiated a class action in 2016 alleging the City of New York’s civil forfeiture practices are unconstitutional. The parties reached a settlement when the NYPD and the Bronx DA agreed to stipulated reforms.

408. See Harjo v. City of Albuquerque, 326 F. Supp. 3d 1145, 1151 (2018); J. Justin Wilson, *Federal Court Finds Albuquerque’s Civil Forfeiture Program Unconstitutional*, INST. FOR JUST. (July 3, 2018) <https://ij.org/press-release/federal-court-finds-abqs-civil-forfeiture-program-unconstitutional> [<https://perma.cc/SHH4-WB4W>].

409. See Andrew Wimer, Press Release: Institute for Justice Dismantles the Philadelphia Forfeiture Machine, INST. FOR JUST. (Sept. 18, 2018), <https://ij.org/press-release/institute-for-justice-dismantles-philadelphia-forfeiture-machine> [<https://perma.cc/3JAW-MWFY>] (“[C]ity officials agreed to a set of reforms that will end the perverse financial incentives under which law enforcement keeps and uses forfeiture revenue, fundamentally reform procedures for seizing and forfeiting property, and establish a \$3 million fund to compensate innocent people whose property was wrongly confiscated.”). The consent decrees are available at the Institute for Justice’s website.

410. See Carimah Townes, *How to End Civil Forfeiture*, SLATE (July 27, 2017), <https://slate.com/news-and-politics/2017/07/how-nebraska-and-new-mexico-banned-civil-forfeiture.html> [<https://perma.cc/8F3G-MNAU>] (“Nebraska passed a similar law abolishing civil forfeiture last year, after the state’s ACLU chapter released a damning report on the practice in 2015.”). To read the report, see ACLU OF NEB., *GUILTY MONEY: CIVIL ASSET FORFEITURE IN NEBRASKA* (2015).

411. *Eagle Pass Forfeiture*, INST. FOR JUST., <https://ij.org/case/eagle-pass-civil-forfeiture> [<https://perma.cc/GEL9-HDWX>]; *Houston Forfeiture*, INST. FOR JUST., <https://ij.org/case/houston-forfeiture> [<https://perma.cc/D7PH-DRV2>]; see, e.g., INST. FOR JUST. CIVIL FORFEITURE ARCHIVES, [https://ij.org/pillar/civil-forfeiture/?post\\_type=case](https://ij.org/pillar/civil-forfeiture/?post_type=case) [<https://perma.cc/V3LP-H5TW>] (cataloguing the nonprofit law firm’s campaign to eradicate civil forfeiture and listing cases challenging abuses in twenty states across the country).

412. See *Police Must Serve and Protect, Not Ticket to Collect*, INST. FOR JUST., <https://ij.org/case/doraville-ticketing> [<https://perma.cc/5DLS-9CPH>].

413. See *Pagedale Municipal Fines*, INST. FOR JUST., <https://ij.org/case/pagedale-municipal-fines/> [<https://perma.cc/4NSE-K8DH>].

414. ALICIA BANNON, ET AL., BRENNAN CTR. FOR JUST., *THE HIDDEN COSTS OF CRIMINAL JUSTICE DEBT* 20 (2010) <https://www.aclu-wa.org/sites/default/files/media->

the fifteen states with the highest prison populations and found that all of them have jurisdictions that arrest defendants for failure to pay a debt or attend debt-related hearings.<sup>415</sup> All fifteen states also have jurisdictions that impose court fees without considering the defendant's ability to pay.<sup>416</sup>

In addition to these four areas, scholars should aggressively search for other domains where public officials have incentives to use illicit means to bolster public coffers. When scholars and policy makers detect predation, they must refrain from pointing fingers at specific local government officials and assuming that removing these individuals will solve the problem. The problem is often systemic. While a changing of the guard is easier, a system change is often required. Future research should therefore resist the urge to cast all public officials involved in the illicit extraction as unredeemable villains. Instead, scholars and policy makers should take a balanced approach that acknowledges these officials are often trying to maintain a constant water supply from a well that is growing ever drier.

#### CONCLUSION

Predatory cities are precipitated by two emerging global trends: the rise of inequality and the retrenchment of local government budgets. As a result, the pressure for local officials to use illicit means to augment the public purse is mounting. In addition to Detroit, several other cities seem to have been beguiled by the siren song of illicit extraction, filling public coffers with dissonance. This Article is the first attempt to identify the phenomenon of predatory cities and explain why one local government could not resist the lure. I began this Article with Mr. Jones's story, so it is only fair that he gets the last word. Recall that the City of Detroit inflated his property tax assessment in violation of the Michigan Constitution, which led to illegally inflated property taxes that he could not afford to pay. Consequently, the Wayne County Treasurer foreclosed upon his home for failure to pay his property taxes. Adding insult to injury, he was not

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legacy/attachments/Criminal\_Justice\_Debt\_report\_V8.pdf [https://perma.cc/GDJ3-PV5Z] (“Only recently, an appellate court in Louisiana found that a trial court in Monroe Parish violated the Constitution in sentencing an indigent person to an automatic jail term that was triggered if he failed to pay fines and costs.”). In addition, a municipal judge in Bowdon, Georgia routinely threatened to jail defendants for traffic violations if they did not provide payment immediately. Once the media surfaced this illegal conduct, authorities temporarily closed the Bowdon Municipal Court while they implemented reforms. See Shalia Dewan, *A Surreptitious Courtroom Video Prompts Change in a Georgia Town*, N.Y. TIMES (Sept. 4, 2015), <https://www.nytimes.com/2015/09/05/us/a-surreptitious-courtroom-video-prompts-changes-in-a-georgia-town.html> [https://perma.cc/GF8V-C9K8]; Brittany Miller, *Court Closes After Judge Tells Defendant They Can't Leave Until Traffic Fines Are Paid*, CBS46 (Sept. 9, 2015), [https://www.cbs46.com/news/court-closes-after-judge-tells-defendant-they-can-t-leave/article\\_73c18efe-9c54-5470-89dd-8b48d9d50f61.html](https://www.cbs46.com/news/court-closes-after-judge-tells-defendant-they-can-t-leave/article_73c18efe-9c54-5470-89dd-8b48d9d50f61.html) [https://perma.cc/UGQ8-6NP9].

415. The fifteen states covered, listed in order of number of incarcerated persons, are: California, Texas, Florida, New York, Georgia, Ohio, Pennsylvania, Michigan, Illinois, Arizona, North Carolina, Louisiana, Virginia, Alabama, and Missouri. BANNON ET AL., *supra* note 414, at 1.

416. *Id.* (“All fifteen of the examined states charge a broad array of fees, which are often imposed without taking into account ability to pay.”).

supposed to pay any taxes in the first place because his low income qualified him for a poverty tax exemption. Mr. Jones succinctly described the structural violence perpetrated by predatory cities when he said, “This whole mess makes me feel like I was stuck up and robbed.”