

Chicago-Kent College of Law

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Stategraft

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The Michigan State Constitution states that property tax assessments cannot exceed 50% of a property's market value. Property values in Detroit declined precipitously beginning in 2008, and Detroit's assessor's office has been unable to modify assessments to accurately reflect plummeting market values. Against this backdrop, this article makes three primary contributions. First, no other article has argued and proven that assessments in Detroit are illegal. Using assessment and sales data from 2009-2015 for the entire City of Detroit, we find that property tax assessments are substantially in excess of the state constitutional limit, and this illegality is most pronounced for lower valued properties. Second, to remedy inflated assessments, in 2014 and 2015, Detroit's assessor has implemented assessment decreases ranging from 5% to 20% for select districts, but we find that systemic assessment inequity persisted for lower valued properties despite these reductions. Third, this Article uses the case of illegal property tax assessments in Detroit to develop a new theoretical concept called stategraft, which is when state agents transfer property from residents to the state in violation of the state's own laws. Although the concept was developed using the Detroit case, stategraft applies beyond Detroit to many other cases, including the discriminatory fines imposed and enforced by the police and courts in Ferguson, MO, broken treaties with Native Americans, abuses of civil forfeiture, and the misallocation of cigarette settlement funds.

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I. INTRODUCTION

Through illegal property tax assessments, the City of Detroit has been robbing its citizens so that it can stay afloat. The Constitution of the State of Michigan (Michigan Constitution) prohibits property assessments from exceeding 50% of a property's market value: "The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent."¹ As shown in Figure 1, property values in Detroit declined precipitously beginning in 2008, and this article shows that Detroit's assessor's office has been unable to modify assessments to accurately reflect plummeting market values.² Although there have been several articles about property tax assessments in Detroit,³ no other article has proven that assessments

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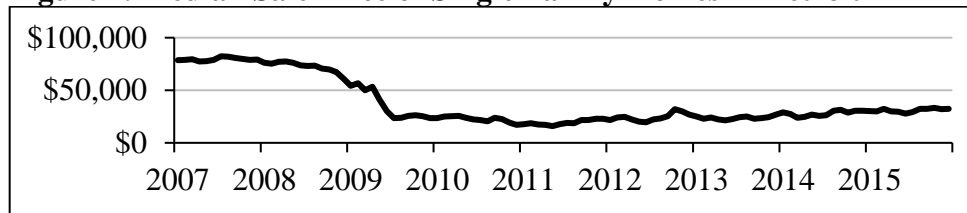
¹ MICH. CONST. art. IX § 3; Mich. Comp. Laws § 211.27(a)(1) (2013).

² See Section IV *infra*, the data show the Detroit assessor is systematically assessing residential properties at far above the constitutionally permitted limit.

³ Timothy R. Hodge, et al., *Assessment Inequity in a Declining Housing Market: The Case of Detroit*, 44 REAL EST. ECON. (forthcoming Oct. 2016) (concluding that assessment practices have created horizontal and vertical inequity); Timothy R. Hodge, et al., *Assessment Growth Limits and Mobility: Evidence from Home Sale Data in Detroit, Michigan*, 68 NAT. TAX. J. 573 (2015) (concluding that Michigan's assessment growth cap makes property sales less likely); 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) (stating that

practices in Detroit are illegal. More importantly, this Article uses the case of illegal property tax assessments in Detroit to develop a new theoretical framework called *stategraft*, which is when state agents transfer property from residents to the state in violation of the state's own laws. Stategraft is a phenomenon that applies beyond Detroit to various cases, including discriminatory fines and fees levied by police and enforced by courts in Ferguson, MO, broken treaties with Native Americans, misallocated cigarette lawsuit settlement funds, and abuse of civil forfeiture statutes.

Figure 1. Median Sale Price of Single Family Homes in Detroit



Zillow, Detroit, MI home value index (single family homes)⁴

It is no secret—Detroit has been in economic decline for decades, and things have drastically worsened recently.⁵ Detroit's 2007

Michigan's assessment growth cap creates horizontal and vertical inequity); Gary Sands & Mark Skidmore, *Detroit and the Property Tax: Strategies to Improve Equity and Enhance Revenue*, LINCOLN INSTITUTE POLICY FOCUS REPORT (Nov. 2015) (proposing strategies to increase tax revenue and mitigate inequity in property tax assessments); Timothy R. Hodge, et al., Mark Skidmore, et al., *Property Value Assessment Growth Limits and Redistribution of Property Tax Payments: Evidence from Michigan*, 63 Nat. Tax. J. 509 (2010) (finding that Michigan's assessment growth cap allows homeowners to see a tax reduction over time).

⁴ See <http://www.zillow.com/detroit-mi/home-values/>

⁵ See Amy Padnani, *Anatomy of Detroit's Decline*, N.Y. TIMES, 2013, <http://nyti.ms/2bclbg5> (Examining how Detroit's reliance on a single industry, racial tensions, shortcomings of leadership, lack of an efficient transit system, and the impact of poverty culminated over decades to produce Detroit's collapse.); Thomas J. Sugrue, *The Origins of the Urban Crisis* 3 (2005) ("In the 1940s, Detroit was America's "arsenal of democracy," one of the nation's fastest growing boomtowns and home to the highest-paid blue-collar workers in the United States. Today, the city is plagued by joblessness, concentrated poverty, physical decay, and racial isolation.").

mortgage foreclosure rate of 5% was the highest in the nation;⁶ and the Great Recession of 2008 only prolonged the existing mortgage foreclosure crisis, so that one in every 275 housing units faced mortgage foreclosure in Detroit during the first quarter of 2009.⁷ Detroit's troubles came to a head in 2013 when it filed the largest municipal bankruptcy in the nation's history, restructuring over 18 billion dollars in debt and long-term liabilities.⁸ The bankruptcy led to significant cuts in city and social services, which further crippled an already wounded city.⁹ The most recent statistics shows that the city has been faring far worse than the national average on a range of economic and social issues (see Table 1). While its precedent setting bankruptcy and mortgage foreclosure rates have grabbed both national and international headlines,¹⁰ Detroit's unprecedented property tax foreclosure rates are a less notorious, yet equally severe wound that the city must suture.¹¹ The *Detroit News* reports that, "[s]ince

⁶ MICH. STATE HOUSING DEV. AUTHORITY, SAVE THE DREAM: MICHIGAN FORECLOSURE DATA, <http://bit.ly/2aRtAXS> (accessed July 31, 2016) ("Highest foreclosure rate in the nation 2007 (5%)").

⁷ *Id.*; It is important to note that the foreclosure crisis in the US was not race neutral. See Jacob S. Rugh, et al., *Race, Space, and Cumulative Disadvantage: A case study of the subprime lending collapse*. 62 SOC. PROBLEMS 186 (2015) (finding that lending institutions in Baltimore targeted African-Americans for more costly, risky subprime loans, which caused this group to lose approximately \$2.1 billion in wealth).

⁸ See James Spiotto, *Detroit's Bankruptcy Is the Nation's Largest*, N.Y. TIMES, July 18, 2013, <http://nyti.ms/2aO3PIT> (reporting that the city's bankruptcy is the largest municipal bankruptcy in US history in terms of debt); *In re City of Detroit, Mich.*, 504 B.R. 97, 113 (Bankr. E.D. Mich. 2013).

⁹ Matt Helms, et al., *9 Ways Detroit Changed after Bankruptcy*, DETROIT FREE PRESS, Nov. 9, 2015, <http://on.freep.com/1xcjTX7> ("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."). Although some funding of public services in some neighborhoods may have been restored, other neighborhoods have yet to see this type of attention. See Quinn Klinefelter, *Post-Bankruptcy, A Booming Detroit Is Still Fragile*, NPR, Dec. 12, 2015, <http://n.pr/1O2dQ0v>.

¹⁰ Monica Davey & Mary W. Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, N.Y. TIMES, July 18, 2013, <http://nyti.ms/1ldROpx>; Jonny Diamond, *Detroit Becomes Largest US City to File for Bankruptcy*, BBC NEWS, July 19, 2013, <http://bbc.in/2aIuXqG>; Alastair Good, *Detroit Bankruptcy: Life in the US City that Went Bust*, THE TELEGRAPH, July 19, 2013, <http://bit.ly/2bosn9m>.

¹¹ See generally Eric D. Lawrence, *Wayne Co. treasurer, others sued over foreclosures*, DETROIT FREE PRESS, July 13, 2016, <http://on.freep.com/2aPBH19>; Joel Kurth & Christine MacDonald, *Foreclosures leave a wake of drugs, squatters, arson*, THE DETROIT NEWS, June 25, 2016, <http://detne.ws/2alum8v>; Eric D. Lawrence, *31,000 properties in Detroit*

2005, more than 1-in-3 Detroit properties — 139,699 of 384,672 — have been foreclosed because of mortgage defaults or unpaid taxes, property records show.”¹²

Table 1. Detroit’s Divergence from National Averages

	<u>NATIONAL</u>	<u>DETROIT</u>
Per Capita Income (2016) ¹³	\$28,555	\$14,984
Unemployment Rate (Oct. 2014) ¹⁴	5.8%	8.1%
% of Residents Living Under the Poverty Line (2014) ¹⁵	14.8%	39.8%
Homeless (per 1,000 people) (2013) ¹⁶	1.97	22.6
College Graduation (over 25 years old) (2016) ¹⁷	29.3%	13.1%
Public School Standardized Test Rates	34% (reading)	9% (reading)
(% of 8 th graders at or above proficient levels) (2015) ¹⁸	34% (math)	3% (math)
Infant Mortality Rate (per 1,000 births) (2014) ¹⁹	6.1	11.8

face tax foreclosure, DETROIT FREE PRESS, May 7, 2015, <http://on.freep.com/1KQZRVD>; Rose Hackman, *One-Fifth of Detroit’s Population Could Lose Their Homes*, THE ATLANTIC, Oct. 25, 2014, <http://theatlantic.com/1v1kbLB>; Matthew Bloch & Haeyoun Park, *Here Are the 43,634 Properties in Detroit That Were on the Brink of Foreclosure in 2014*, N.Y. TIMES, June 27, 2014, <http://nyti.ms/1m3glvE>.

¹² See Joel Kurth & Christine MacDonald, *Volume of Abandoned Homes ‘Absolutely Terrifying’*, DETROIT NEWS, 2015, <http://tinyurl.com/nheaete>

¹³ U.S. CENSUS BUREAU, USA QUICKFACTS, <http://bit.ly/2boAuT7> (accessed August 12, 2016).

¹⁴ U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY 2006-2016, <http://bit.ly/L8BKrM> (accessed June 27, 2016, current as of June 2016); U.S. Bureau of Labor Statistics, *Detroit-Livonia-Dearborn, MI Economy at a Glance*, <http://bit.ly/2bmU14k> (accessed June 27, 2016).

¹⁵ *Supra* at footnote 13.

¹⁶ The national homeless level was calculated by dividing the total number of homeless people nationwide in a single night in January, 2013 (610,042) by the 2010 population of the United States (308,745,538). The Detroit level was calculated by dividing the number of homeless people in Detroit in 2013 (16,201) by the 2010 population of Detroit and multiplying by 1,000. U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, THE 2013 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS, <http://bit.ly/2bmU4Ao> (accessed August 3, 2015); HOMELESS ACTION NETWORK OF DETROIT, 2013 STATE OF HOMELESSNESS ANNUAL REPORT FOR DETROIT COC, <http://bit.ly/2bmTT4Y> (accessed August 3, 2015); *Supra* at footnote 13.

¹⁷ *Supra* at footnote 13.

¹⁸ NAT’L CENTER FOR EDUCATION STATISTICS, 2015 READING TRIAL URBAN DISTRICT SNAPSHOT REPORT FOR DETROIT, <http://bit.ly/2aObrEG> (accessed June 27, 2016); Natl Center for Education Statistics, *2015 Mathematics Trial Urban District Snapshot Report for Detroit*, <http://bit.ly/2aRnMec> (accessed June 27, 2016).

¹⁹ MICH. DEP’T. OF HEALTH AND HUMAN SERVICES, LIVE BIRTHS AND INFANT DEATH RATES FOR SELECTED CITIES OF RESIDENCE, 2014 AND 2010 - 2014 AVERAGE, <http://bit.ly/2boAJ0H>

% Black, % White (2010) ²⁰	13.2%, 77.7%	72.4%, 12.6%
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From 2011-2015, the Wayne County treasurer foreclosed upon 100,116 Detroit homes for unpaid property taxes although there are only about 713,000 city residents.²¹ In 2015 alone, the treasurer foreclosed on 28,158 Detroit homes (see Figure 2).²² That is, in 2015, Detroit had 3,949 property tax foreclosures per 100,000 people, which is drastically higher than other cities (New York City: 52; San Francisco: 48; LA county: 4; Erie County, NY (Buffalo): 62; St. Louis County, MO: 197).²³ If it was just a matter of Detroit's citizens failing to pay their property taxes, the record number of property tax foreclosures could be considered large yet legitimate. But, even the current mayor of Detroit, Mike Duggan, has admitted that Detroit's assessor's office has over-assessed many properties, which has contributed to inflated property tax bills that people cannot afford to pay.²⁴ This article argues that property tax assessments in Detroit

(accessed June 27, 2016); U.S. CTRS FOR DISEASE CONTROL AND PREVENTION, NAT'L VITAL STATS. Rep. Vol. 63 No. 5, *International Comparisons of Infant Mortality and Related Factors: United States and Europe, 2010* (2014).

²⁰ *Supra* at footnote 13.

²¹ Alex Alsup, *A Recent History of Tax Foreclosure*, The Loveland Blog (Nov. 9, 2015), <https://makeloveland.com/blog/3>. See also Archival Tax Foreclosures in Detroit, 2002 – 2013, Data Driven Detroit (June 13, 2016), <http://bit.ly/2bpFd8A>.

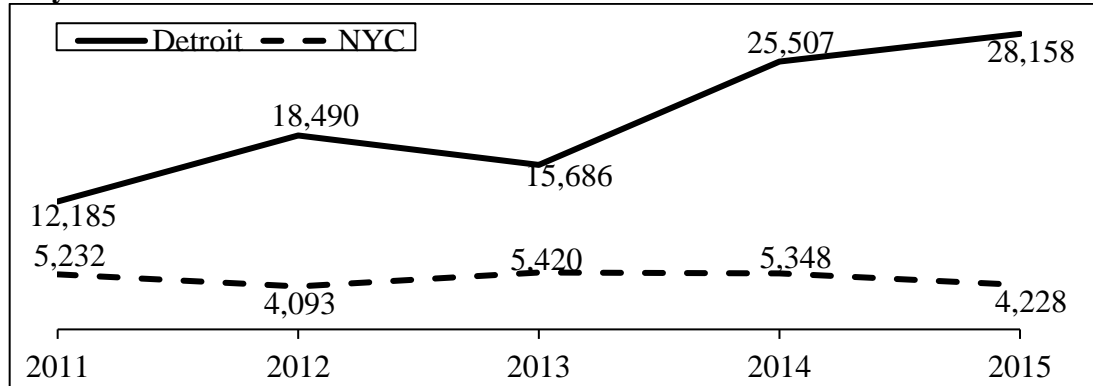
²² *Id.*

²³ These numbers were calculated by dividing the number of tax foreclosed properties in foreclosure sales in each region in 2015 by the 2010 census population from each region and multiplying by 100,000. New York City had a 2010 population of 8,175,133, San Francisco (805,704), LA County (9,818,605), Erie County, NY (919,040), and St. Louis County, MO (998,954). United States Census Bureau, 2010 Census. In Detroit, 28,158 properties were sent to the tax foreclosure auction in 2015. Loveland Blog, <https://makeloveland.com/blog/3>. In New York City, 4,228 property tax liens were sold in 2015. *Supra* at footnote 21. In San Francisco, 389 tax foreclosed properties were auctioned in 2015. SAN FRANCISCO TREASURER & TAX COLLECTOR, PUBLIC AUCTION SALES OF TAX-DEFAULTED PROPERTY, <http://bit.ly/2aSN36v> (accessed Aug. 2, 2016). In LA County, 379 tax foreclosed properties were auctioned in 2015. On file with the author, last accessed at <http://bit.ly/2aRr2q5> on Apr. 22, 2016. In Erie County 569 properties went to the 2015 tax foreclosure auction. <http://tinyurl.com/jecl9ez> (captured August 16, 2015, accessed August 25, 2016) (click on PDF at "InRem Book 159, 160, 161, 162, and 163"). In St. Louis County, 1,964 properties were going through either the first or second tax sale in 2015. <http://tinyurl.com/hxcgkph> (accessed August 25, 2016).

²⁴ CITY OF DETROIT, MOST DETROIT HOMEOWNERS TO SEE PROPERTY ASSESSMENT REDUCTIONS THIS SUMMER, Jan. 28, 2015, <http://bit.ly/2aRyTa5> (Mayor Duggan stating, "For years, homes across the city have been over assessed"). Steve Neavling, *Mayor Dug-*

are not only inflated, but they are actually in violation of Michigan’s state constitution.

Figure 2. Completed Tax Foreclosures in Detroit and New York City



Determining whether property tax assessments in Detroit are illegal is an important research question for three primary reasons. *First*, it is essential for localities in Michigan to comply with state constitutional law, which explicitly mandates that property tax assessments cannot exceed 50% of a property’s market value.²⁵ Records from the 1962 constitutional convention—charged with drafting Michigan’s current state constitution enacted in 1963—show that the constitution’s drafters were acutely concerned about assessment inequity. The 1908 constitution required state localities to assess all properties at full cash value,²⁶ but according to Barlowe, Wide variations exist in the extent to which assessors abide by this provision. Assessment data studies conducted in recent years show

gan: *Property tax bills to be substantially reduced*, Motor City Muckraker, Jan. 28, 2014, <http://bit.ly/2bpGfBh> (Regarding the 2014 reductions, Mayor Duggan stated, “While some neighborhoods have maintained their sales value, most of the northwest side was over-assessed by a minimum of 20%.”)

²⁵ MICH. CONST. art. IX § 3.

²⁶ “All assessments hereafter authorized shall be on property at its cash value.” MICH. CONST. 1908 art. X § 7. According to a preparatory report written by Raleigh Barlowe, “This provision was carried over from Section 12 of Article XIV of the Constitution of 1850.” Raleigh Barlowe, Constitutional Convention Preparatory Commission, *Taxation and Fiscal Policy in the Michigan Constitution* 4, (1961).

that some properties are assessed at as little as two per cent of their market values while others are sometimes assessed at more than their full market sale values. Township, city, and county equalized assessments frequently represent levels of between 30 and 50 per cent of cash value.²⁷

The issue of assessment inequity was so important that the governor, John Swainson, filed a report at the constitutional convention on February, 1, 1962, detailing the findings of his Special Commission on Industrial Development Legislation, which unanimously found that assessments varied widely and resulted in non-uniform property taxes that ultimately deterred investment.²⁸

To address the well-documented assessment inequities, the Committee on Finance and Taxation introduced an amendment at the Constitutional Convention.²⁹ According to the Committee, the 1908 state constitutional provision allowed the court to “simply state that since the former taxpayer is not assessed in excess of 100%, the Constitution affords no basis for relief. This unavailability of judicial relief has made the cash value standard a positive impediment to the achievement of uniform assessment.”³⁰ Consequently, the Committee drafted an amendment explicitly stating that property assess-

²⁷ *Id.* at 5.

²⁸ The governor’s letter read in part, “It was the unanimous finding of the Committee that an unhealthy lack of uniformity in property taxation exists in Michigan and the primary basis for this condition is the wide variation of assessments. . . . It is impossible under these conditions to assure an industry seeking to settle in this state that it will be treated equitably in the matter of property taxes. The training, technique, and skill of the assessor are so varied in this state that in some instances it has been a deterrent to new industry. Dr. Harvey E. Brazer, of the University of Michigan, an eminent authority in this field, has stated that a study of a typical Michigan county revealed that some properties were assessed at less than 2% of market value, and others were assessed as high as 175% of their sales price. In one of our large metropolitan counties we have witnessed the practice of assessing inventories at 80% of book value, machinery and equipment at 100% of depreciated value, and real property assessed at 50% of current value. . . .” *Journal of the Michigan Constitutional Convention*, Vol. 1 442 (Feb. 1, 1962).

²⁹ The 50% limit was introduced at the constitutional convention by the Committee on Finance & Taxation on January 31, 1962 as part of Proposal No. 51. *Id.* at 404 (Jan. 31, 1962).

³⁰ *Id.* at 405.

ments were not to exceed 50% of the property's market value.³¹ The committee suggested that 50% was the appropriate limit because it was "currently used by the State Tax Commission," and it said that the standard was not unduly inflexible because the legislature would still have the ability to "change the standard to reflect changes in the general price structure."³² The committee set the start date for this provision in 1966, as an acknowledgment that some jurisdictions currently relied on assessments above 50%.³³

A minority faction disagreed with the 50% limit, and crafted a counter amendment to delete it.³⁴ The counter amendment, however, was handily defeated 84 votes to 43.³⁵ The constitutional drafters did not trust that legislatures would equitably assess properties,³⁶

³¹ The amendment read: "The Legislature shall provide by law a uniform rule governing the general ad valorem taxation of real property and tangible personal property. The legislature shall provide by law for the determination of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 per cent, and shall provide by law for a system of equalization of assessments." *Id.* at 405.

³² *Id.* at 405

³³ *Id.* at 405

³⁴ *Id.* at 523 (Feb. 6, 1962). Its critique of the 50% limit was based on issues of sufficient revenue for local governments, the proper role of the legislature, and the effectiveness of the 50% limit in actually providing relief to tax payers. First, the minority report predicted "devastating immediate effect on the fiscal affairs of some communities." *Id.* Second, the minority report believed that setting a fixed limit to assessment levels was not the role of the constitutional convention: "The inclusion of an arbitrary 50% limitation, statutory in nature, does not have the dignity of a mandate of the people, as does the sales tax rate limitation, expressed in a referendum." *Id.* at 523. Third, the minority report argued that the 50% level did not make practical sense. It argued that the fact that the State Tax Commission had used 50% as the proper assessment level when equalizing taxes among units of government did not mean that assessments should now be limited to 50%. *Id.* at 522-523. It also argued that while using a 50% limit would reduce taxes for some individuals and industries, it would increase taxes for others (because all assessments would be brought closer to 50% in an attempt to make up for the lost revenue). *Id.* at 523.

³⁵ On February 8, 1962, the convention as a whole voted to send the provision to the Committee on Style and Drafting. A delegate called Mr. Austin proposed to remove the 50% language on that day: "Mr. Austin offered the following amendment: 2. Amend page 1, line 13, after "ASSESSED" by striking out the comma and "WHICH SHALL NOT, AFTER JANUARY 1, 1966, EXCEED 50 PER CENT." *Journal of the Michigan Constitutional Convention*, Vol. 2, 557 (Feb. 8, 1962). However, that proposed amendment failed. *Id.* at 557.

³⁶ James K. Pollock, a political science professor and delegate to the convention, wrote, "Well, there was very widespread distrust of the Legislature and people said, 'leave it up to the Legislature and nothing will be done or it will not be done right. Let's put it right in the Constitution and then we know the matter will be taken care of.'" James K. Pollock, *Mak-*

and so the very purpose of the 50% limit was to prevent inequitable assessments like those in Detroit. Several state constitutions require property tax assessments to be uniform, but by requiring that assessed value/market value cannot exceed 0.5, Michigan's constitution is one of the few to use an explicit assessment ratio to constrain its political branches.³⁷ Detroit cannot continue to ignore this constitutional limit, which has a rich history and clear purpose.

Second, illegal assessments may lead to over-inflated property tax bills that citizens cannot afford to pay,³⁸ and nonpayment can result in tax foreclosure.³⁹ The primary economic asset of many Americans is their home, and when the state usurps this asset for nonpayment of property taxes, this can decimate individual and family wealth.⁴⁰ In addition, when an individual's home is taken, she is

ing Michigan's New Constitution, 1961-1962, 49 (Ann Arbor, Mich: G. Wahr Pub. Co., 1962).

³⁷ Most state constitutions that limit assessment values call for uniformity in assessment values, rather than specifying a ratio or percentage. *See e.g.* PA. CONST. art. VIII, § 1 ("All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."); UTAH CONST. art. XIII, § 2 ("[A]ll tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be:(a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law...). Some states put further restrictions on assessment taxes by specifying a percentage by which real property can be taxed. *See e.g.* OKLA. CONST. art. X, § 8 ("Real property shall not be assessed for ad valorem taxation at a value less than eleven percent (11%) nor greater than thirteen and one-half percent (13.5%) of its fair cash value for the highest and best use for which such property was actually used..."); TENN. CONST. art. II, § 28 ("Real Property shall be classified into four (4) subclassifications and assessed as follows: (a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value; (b) Industrial and Commercial Property, to be assessed at forty (40%) percent of its value; (c) Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and (d) Farm Property, to be assessed at twenty-five (25%) percent of its value.").

³⁸ Property tax bills are calculated by multiplying the assessed values (adjusted by available exemptions) by the property tax rate. So even if Detroit lowered property tax assessments, it could theoretically increase the property tax rate, and thereby not decrease its revenues.

³⁹ To understand the property tax foreclosure process in Wayne County, *see* Mich. Dep't of the Treasury, *Real Property Tax Forfeiture and Foreclosures*, <http://bit.ly/2bpLiWh> (accessed July 16, 2016). In a forthcoming paper, the authors empirically measure the relationship between illegal assessments and property tax foreclosure rates.

⁴⁰ *See* Christopher E. Herbert, et al., *Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households? (Was it Ever?)*, Harvard University Joint Center for Housing Studies (Sep. 2013), <http://bit.ly/1z5n9kD> (finding that home ownership

deprived of the home's economic value as well as its emotional, social, political, and cultural value.⁴¹ Like many other material objects, homes exist in tandem with emotional landscapes, which suffuse them with significant intangible value. An individual's childhood home, for instance, is often filled with memories and emotional investments such that when the home is foreclosed upon, a family loses more than an economic asset; their personhood is also impacted.⁴² Also, a house is often the basis of social belonging—a gateway to the benefits and burdens of community membership.⁴³ As neighbors interact, valuable social bonds and networks are formed, and thus foreclosure often leads to social disruption.⁴⁴ Politically, property serves as a bulwark against state encroachment on individual autonomy.⁴⁵ Although people cannot remodel public buildings to reflect their individual tastes, walk around naked in federal buildings, or exclude

continues to contribute significantly to household wealth and reporting that homeownership accounted for 22 percent of average wealth among homeowners in 2010).

⁴¹ Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. OF LAW & SOC. SCI. (forthcoming 2016).

⁴² Margaret J. Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 957 (1982) (“This article explores the relationship between property and personhood, a relationship that has commonly been both ignored and taken for granted in legal thought. The premise underlying the personhood perspective is that to achieve proper self-development—to be a person—an individual needs some control over resources in the external environment. The necessary assurances of control take the form of property rights.”) (internal footnotes omitted).

⁴³ See Joseph W. Singer, *Property and Social Relations: From Title to Entitlement*, 13 *Property and Values: Striking an Equitable Balance of Public and Private Interests* (Charles Geisler & Gail Daneker eds., Island Press 2000) (“Property law helps to structure and shape the contours of social relationships. Choices of property rules ineluctably entail choices about the quality and character of human relationships and myriad choices about the kind of society we collectively create”).

⁴⁴ Through in-depth interviews with people who lost their home and entire community during the 1950s and 1960s as a result of urban renewal, Mindy Fullilove—a board certified psychiatrist and public health professor at Columbia University—found that these displaced populations suffered from what she calls root shock: “the traumatic stress reaction to the destruction of all or part of one’s emotional ecosystem.” Mindy Fullilove at 11, *Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It* (2005).

⁴⁵ See Charles A. Reich, *The New Property*, 73 YALE L.J. 771, 787 (1964) (“[P]roperty performs the function of maintaining independence, dignity and pluralism in society by creating zones within which the majority has to yield to the owner. Whim, caprice, irrationality and “antisocial” activities are given the protection of law; the owner may do what all or most of his neighbors decry... The Bill of Rights also serves this function, but while the Bill of Rights comes into play only at extraordinary moments of conflict or crisis, property affords day-to-day protection in the ordinary affairs of life.”).

others from a public parks at will, all of these activities are allowed in privately owned homes where citizens have greater autonomy to live the kinds of lives they have reason to value. Foreclosure curtails this important source of autonomy. Foreclosure can also adversely affect cultural and identity interests. Individual and group identities are often closely tied to a particular home, neighborhood, or city; and a home, in particular, can reflect a person's unique personality and become intertwined with her sense of self.⁴⁶ In sum, when the state commandeers a home for nonpayment of property taxes, there are not only economic impacts, but also emotional, social, political, and cultural consequences.

Third, illegal assessments in Detroit disparately impact African-Americans and are part of a long and sordid history of racially discriminatory property tax administration in the United States.⁴⁷ On July 13, 2016, the American Civil Liberties Union (ACLU) along with the NAACP Legal Defense Fund and the law firm of Covington & Burling, filed a lawsuit in Federal Court alleging that illegal property tax assessments and the resulting foreclosures in Wayne County (the taxing jurisdiction where Detroit is located) are racially discriminatory.⁴⁸ African-Americans constitute 82.7% of Detroit's population, but only 40.5% of the population in Wayne County.⁴⁹ The lawsuit alleges that Detroit's assessor is illegally assessing property owners, while the assessors in Wayne County's other jurisdictions are not; consequently, African-American homeowners "lose their

⁴⁶ *Supra* at footnote 42.

⁴⁷ See Andrew Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 J. SOUTHERN HIST. 579 (2016) (discussing the history of discriminatory tax assessments in the South through the late-nineteenth and early-twentieth century); Kenneth Baar, *Property Tax Assessment Discrimination against Low-Income Neighborhoods*, 13 THE URBAN LAWYER 3 (1981) (providing an overview of discriminatory property assessments); Lee Harris, *Assessing Discrimination: The Influence of Race in Residential Property Tax Assessments*, 20 J. LAND USE & ENVTL. L. 1 at 4, 1-60 (2004) (finding that "residents of majority-minority neighborhoods are assessed at higher effective rates than residents of majority-white neighborhoods"); William Hendon, *Discrimination against Negro Homeowners in Property Tax Assessment*, 27 AM. J. ECON. & SOCIOLOGY 125, 125-32 (1968) (concluding that property assessments are higher for black homeowners than for white homeowners).

⁴⁸ *Morningside Cmty. Org. v. Sabree*, No. 16-008807-CH (Mich. 3d Cir. Ct. Jul. 13, 2016) (complaint filed with Wayne County Clerk on Jul. 13, 2016).

⁴⁹ *Supra* at footnote 13.

homes through tax foreclosure at a higher rate than non-African American homeowners in Wayne County,⁵⁰ violating the Fair Housing Act of 1968.⁵¹

To examine whether property tax assessments in Detroit are illegal we first examine Michigan's constitution, case law, and statutory law to explain the legal requirements that Detroit's assessors must obey. Then, we explain how our research advances the existing literature. No other article has examined the illegality of assessments in Detroit. Previous research has predominately focused on estimating assessment inequity in different jurisdictions at single points in time. We, however, provide a dynamic view of how assessment inequity has changed in Detroit during the life cycle of the housing crisis and the mayor-led across-the-board cuts in property tax assessments, which occurred in 2014 and 2015.⁵² Next, we use property sales and assessment data from 2009-2015 to test whether Detroit has complied with existing laws. We find strong evidence of illegal assessments across all the years studied. But, assessments for lower-valued properties are substantially higher than 50% of their market value, while assessments for higher-valued properties are closer to this constitutional standard. We leave it to future research to determine the economic and political forces that brought about this pervasive illegality and why it has persisted for so long. We will conclude by recommending that Detroit place a moratorium on tax foreclosures until it can re-assess all properties and ensure that it is in compliance with Michigan's constitutional and statutory laws.

II. LEGAL FRAMEWORK

By law, all taxable properties in the City of Detroit must be assessed on an annual basis by the City's assessment division.⁵³ In 1963, Michigan approved a new constitution, which drastically changed the procedure for determining the assessed value of properties. According to Article IX Section 3 of the still operative state constitution:

⁵⁰ *Supra* at footnote 48.

⁵¹ FAIR HOUSING ACT, 42 U.S.C. § 3601-3619 (1968).

⁵² The mayor has also announced another reduction in 2016, but it is not included in our analysis because it is not yet in effect.

⁵³ CITY CLERK OF DETROIT, MICH., MUNICIPAL MANUAL OF THE CITY OF DETROIT 4 (1886); MICH. DEP'T. OF TREASURY, MICHIGAN TAXPAYER'S GUIDE 1 (2016).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments.⁵⁴

This constitutional provision goes on to say that property tax assessments may be even lower than 50% of the property's true cash value because assessments can increase by no more than 5% per year so long as the property is not sold.⁵⁵ In addition, the *Headlee Amendment* (1978) placed additional limits on local taxing powers, including voter approval for increases in property tax rates (also known as millage rates) that go beyond the Amendment's guidelines.⁵⁶

The Michigan legislature codified Article 9 Section 3 of the state constitution in Section 211.27a(1) of the Michigan Compiled Law (MCL), which reads "except as otherwise provided in this section, property shall be assessed at 50% of its true cash value."⁵⁷ The legislature has defined true cash value as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the

⁵⁴ MICH. CONST. art. IX § 3.

⁵⁵ "For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value." MICH. CONST. art. IX § 3. Amendment ratified March 15, 1994, Eff. April 30, 1994 (Proposal A).

⁵⁶ MICH. CONST. art. IX §§ 26-31. Kevin C. Kennedy, *The First Twenty Years of the Headlee Amendment*, 76 U. DET. MERCY L. REV. 1031-32, 1078 (1998-1999) (evaluating the Headlee Amendment's four core provisions: 1) that state, property, and other local taxes could not increase beyond the guidelines set out in the Amendment without voter approval, 2) that the state government could not require new expenditures by local governments without providing financing, 3) that the state could not reduce the proportion of state spending used to assist local governments, and 4) that the state could not shift the tax burden to local governments.)

⁵⁷ MICH. COMP. LAWS § 211.27(a)(1) (2013).

property at private sale....”⁵⁸ The Michigan Supreme Court has declared that true cash value and fair market value are synonymous, and this is now a well settled principle.⁵⁹ Consequently, if Detroit properties are assessed at more than 50% of their fair market value, there is a direct breach of the state constitution.

It is also well established that assessors are allowed to use diverse appraisal methods to determine a property’s market value.⁶⁰ The legislature did not designate a specific valuation method for determining a property’s true cash value, and so the task of determining which approach is most appropriate for any given context has fallen to the Michigan courts.⁶¹ The Michigan Supreme Court explains:

[D]iverse appraisal methods are appropriate in determining ‘usual sales price’ (or fair market value) because many considerations enter into the determination of sales price...Any method for determination of true cash value which is recognized as accurate and reasonably related to fair market valuation will fill the statutory prescription and is an acceptable indicator of true cash value.⁶²

The courts have recognized three standard approaches: (1) the cost-less-depreciation approach, (2) the sales-comparison or market ap-

⁵⁸ *Id.*

⁵⁹ *C.A.F. Inv. Co.*, 221 N.W.2d 588, 592 (Mich. 1974). See also *Great Lakes Div. of Nat’l Steel Corp. v. City of Ecorse*, 576 N.W.2d 667, 672 (Mich. Ct. App. 1998) (“True cash value is synonymous with fair market value.”); *Samonek v. Norvall Twp.*, 527 N.W.2d 24, 26 (Mich. Ct. App. 1995); *Jones & Laughlin Steel Corp. v. City of Warren*, 483 N.W.2d 416, 419 (Mich. Ct. App. 1991); see generally *Meadowlanes Ltd. Dividend Housing Ass’n v. City of Holland*, 473 N.W.2d 636 (Mich. 1991); *Olson v. United States*, 292 U.S. 246 (1934).

⁶⁰ See *President Inn Props. V. City of Grand Rapids*, 806 N.W.2d 342, 347 (Mich. Ct. App. 2011); *Great Lakes Div.*, 576 N.W.2d at 678; *Samonek*, 527 N.W.2d at 26-27; *Jones & Laughlin Steel Corp.*, 483 N.W.2d at 419; *Meadowlanes Ltd.*, 473 N.W.2d at 642; *Teledyne Cont’l Motors v. Muskegon Twp.*, 378 N.W.2d 590, 593 (Mich. Ct. App.1985); *Washtenaw Cty. v. State Tax Comm’n*, 373 N.W.2d 697, 705 (Mich. 1985); *Antisdale v. City of Galesburg*, 362 N.W.2d 632, 636 (Mich. 1984); *Northwood Apartments v. City of Royal Oak*, 295 N.W.2d 639, 642-643 (Mich. Ct. App. 1980); *Safran Printing Co. v. City of Detroit*, 276 N.W.2d 602, 603 (Mich. Ct. App.1979); *Consumers Power Co. v. Big Prairie Twp.*, 265 N.W.2d 182, 188 (Mich. Ct. App.1978); *Olson*, 292 U.S. 246

⁶¹ *Antisdale*, 362 N.W.2d at 626.

⁶² *C.A.F. Inv. Co.*, 221 N.W.2d at 592.

proach, and (3) the capitalization-of-income approach.⁶³ More importantly, the courts have made clear that whichever approach is used “the ultimate goal of the valuation process is a well-supported conclusion that reflects the study of all factors that influence the market value of the subject property.”⁶⁴

For appraisals of residential housing, the industry standard is the market approach—which determines a property’s true cash value by analyzing recent sales of comparable properties.⁶⁵ This approach requires assessors to adjust the sale price of comparable properties, taking into consideration factors such as the property’s size, age, condition, location, existing use, zoning, natural assets, and present economic income.⁶⁶ One potential drawback of the market approach is that, in certain instances, the sale price might not be the ‘usual sales price’ due to factors personal to the parties.⁶⁷ For instance, it is not uncommon for parents to transfer property to their children at discounted rates. Nevertheless, when the assessor considers the sale prices of numerous comparable properties, then this reduces the likelihood that factors extrinsic to the properties will impact price calculations.⁶⁸

In addition to having a robust sample of properties, the law requires assessors to include only arm’s length transactions (which is

⁶³ *Samonek*, 527 N.W.2d at 26; *Jones & Laughlin Steel Corp.*, 483 N.W.2d at 419; *Meadowlanes Ltd.*, 473 N.W.2d at 642; *Antisdale*, 362 N.W.2d at 636-37 (“Generally, there presently are three methods of valuation which are acceptable to the Michigan Tax Tribunal and the courts. They are the cost-less-depreciation approach, the capitalization-of-income approach, and the market approach.”); *Wolverine Tower Assocs v. City of Ann Arbor*, 293 N.W.2d 669, 671 (Mich. Ct. App. 1980); *Great Lakes Div.*, 576 N.W.2d at 673.

⁶⁴ *Meadowlanes Ltd.*, N.W.2d at 643; *see also Jones & Laughlin Steel Corp.*, 483 N.W.2d at 419.

⁶⁵ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* 9 (2013).

⁶⁶ *Great Lakes Div.*, 576 N.W.2d at 679; *see also Meadowlanes Ltd.*, 473 N.W.2d at 642; Mich. Comp. Laws § 211.27(1) (2013).

⁶⁷ *Great Lakes Div.*, 576 N.W.2d at 679., *citing Antisdale*, 362 N.W.2d at 638 (Mich. 1984) (“The most obvious deficiency in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sales price of the property, as a result of many factors, personal to the parties or otherwise, might not be its ‘usual’ price.”); *see also Samonek*, 527 N.W.2d at 26; *Cleveland-Cliffs Iron Co. v. Republic Twp.*, 163 N.W. 90 (Mich. 1917).

⁶⁸ *Antisdale*, 362 N.W.2d at 638 (“The market approach to value has the capacity to cure this deficiency because evidence of the sales prices of a number of comparable properties, if sufficiently similar, supports the conclusion that factors extrinsic to the properties have not entered into the value placed on the properties by the parties.”).

when there is a willing buyer and a willing seller, and thus the sale price reflects the demand and supply for property in the market).⁶⁹

As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.⁷⁰

As a result, we use arm's length residential sales transactions alongside assessment data to determine whether Detroit is complying with the state constitutional mandate to assess each property at no more than 50% of its market value.⁷¹

III. LITERATURE REVIEW AND METHODOLOGY

In a typical property tax bill, the assessed value of each property is multiplied by the property tax rate, subject to various exemptions.⁷²

⁶⁹ *Jones & Laughlin Steel Corp*, 483 N.W.2d at 419 ("The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."); *Antisdale*, 362 N.W.2d at 637; *Teledyne Cont'l Motors*, 378 N.W.2d at 593.

⁷⁰ MICH. COMP. LAWS § 211.27(1) (2013); *Olson*, 292 U.S. at 257 ("the market value must be estimated. In respect of each item of property that value may be deemed to be the sum which, considering all the circumstances, could have been obtained for it; that is, the amount that in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy. In making that estimate there should be taken into account all considerations that fairly might be brought forward and reasonably be given substantial weight in such bargaining"). There is, however, an exception for instances where auctions are the "common method of acquisition" for properties in the area. *Samonek*, 527 N.W.2d at 27; MICH. COMP. LAWS § 211.27(1) (2013) ("As used in this act, 'cash value' means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person when those sales have become a common method of acquisition in the jurisdiction for the class of property being valued.").

⁷¹ In *Jones & Laughlin Steel Co.*, the Michigan appellate court said that "evidence of the price at which an item of property actually sold is most certainly relevant evidence of its value at an earlier time..." 483 N.W.2d at 419.

⁷² See Michigan Taxpayer's Guide *supra* at footnote 53 (explaining the state assessment process).

Detroit residents endure the highest property tax rates in Michigan and some of the highest in the country.⁷³ Specifically, the Minnesota Center for Fiscal Excellence estimated Detroit properties are subject to effective tax rates of 3.48%, which is more than double the national average of 1.44%.⁷⁴ Given Detroit's notoriety for high property tax rates, there have been several studies examining this.⁷⁵ We, however, specifically build upon studies exploring assessment inequity in Detroit because our goal is to determine whether the city is complying with its state constitutional mandate to assess properties at no more than 50% of their market values.⁷⁶ For example, several economists have examined assessment inequity among Detroit residents using assessment and market data from 2010.⁷⁷ They observed severe over-assessment and regressivity at levels not previously observed in the United States.⁷⁸ In addition, Dewar et al. compared assessed values and sales prices in one Detroit neighborhood, Morn-

⁷³ MICH. DEP'T OF TREASURY, 2015 AD VALOREM PROPERTY TAX REPORT, 2, <http://bit.ly/2b4GEX5> (accessed July 16, 2016) (Wayne County had the highest average property tax rate at 55.11%).

⁷⁴ MINN. CTR. FOR FISCAL EXCELLENCE & LINCOLN INST. OF LAND POL'Y, 50-STATE PROPERTY TAX COMPARISON STUDY, 24, Apr. 2015, <http://bit.ly/1PNqX6g>.

⁷⁵ Timothy R. Hodge, et al., *The Land Value Gradient in a (Nearly) Collapsed Urban Real Estate Market* (Lincoln Institute Working Paper WP15TH1) (March 2015) (arguing that peripheral neighborhoods are important to the property tax base); Gary Sands, Skidmore, *Making Ends Meet: Options for Property Tax Reform in Detroit*, 36 J. URB. AFF. 682 (2014) (offering reform options for current property tax policies which do not raise sufficient revenues for the City of Detroit); Gary Sands, et al., *Implementing Tax Abatements in Michigan: A Study of Best Practices*, 20 ECON. DEV. QUARTERLY 44 (2006); Michael Simoni, *Tuning up the Motor City: The Viability of Restructuring Detroit's Oppressive Property Tax System within the Boundaries of Michigan's Constitution*, 51 WAYNE L. REV. 1309 (2005) (proposing a new reading of Proposal A); Samuel J. McKim III, *Is Michigan's Ad Valorem Property Tax Becoming Obsolete*, 77 U. DET. MERCY L. REV. 655 (2000) (evaluating Michigan's ad valorem property tax).

⁷⁶ See *supra* at footnote 3.

⁷⁷ *Id.* Even when examining the same years as Hodge et al., we do not expect our numbers to be identical because Hodge et al. transform their collected assessed values by multiplying each value by two. Therefore, they expected their ratios to equal 1 while we expect ours to equal 0.5.

⁷⁸ *Id.* The PRD for their full sample was 2.68, exceeding the IAAO's upper limit of 1.03 and indicating regressivity. The COD was 109.55, again exceeding the IAAO's acceptable range of 5 to 15 and indicating very low uniformity. Each quintile displayed horizontal inequity with mean values greater than 0.5, as well as regressivity and vertical inequity as lower value properties were more over-assessed (on average) than higher value properties.

ingside, from 2008 to 2013.⁷⁹ They found that although market values declined over this period, assessments did not keep pace.⁸⁰ They also found that lower valued homes were more likely to be significantly over-assessed during this period than higher valued homes.⁸¹

Unlike the existing literature, our study provides a dynamic view of property tax inequity across all Detroit neighborhoods over a seven-year period, and we discuss the legality of the inequities we observe. In doing so, we make three unique contributions to the existing literature. First, we examine how assessment inequity has changed through time for the entire City of Detroit. Second, in response to prior evidence of over-assessment,⁸² Detroit's assessment office tried to remedy this by implementing assessment decreases for two consecutive years, resulting in average assessment reductions of 5% to 20% for select districts each year (Table 2). We examine whether systemic assessment inequity persisted despite these reductions. Third, we examine the legality of Detroit's inflated assessments and discuss the consequences of illegality.

Table 2: Proposed Property Tax Assessment Decreases by District

	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10
2015 ⁸³	-10%	-20%	-5%	-10%	-5%	-20%	-10%	-10%	-10%	-10%
2016 ⁸⁴	-15%	-15%	-5%	+5%	-5%	-15%	-15%	-15%	-15%	-15%

⁷⁹ Margaret Dewar, et al., *Disinvesting in the City: The Role of Tax Foreclosure in Detroit*, 51 URB. AFF. REV. 587, 607 (2015).

⁸⁰ *Id.*

⁸¹ *Id.* Dewar et al. does not include any of the IAAO recommended statistics such as PRD and COD.

⁸² After initial studies from Hodge et al. and the media attention their work received, the State Tax Commission intervened in 2013 and issued a sample of reassessments in Detroit. See Christine MacDonald, *Detroit's property tax system plagued by mistakes, waste*, THE DETROIT NEWS (Feb. 22, 2013); Christine MacDonald, *Michigan's tax board to investigate whether Detroit is overtaxing property owners*, THE DETROIT NEWS (Apr. 9, 2013). Shortly after these articles went to print, the City of Detroit announced it would reassess all property in the City. The reassessments should be completed by 2017.

⁸³ Christine MacDonald & Christine Ferretti, *Detroit assessments to fall 5-20 percent*, THE DETROIT NEWS, Jan. 28, 2015, <http://detne.ws/2b4hcyz> ("Detroit Mayor Mike Duggan announced Wednesday that residential property assessment citywide will decline 5 to 20 percent, the second consecutive year he's cut taxes. The change is in addition to last year's assessment reductions of up to 20 percent.").

To understand whether property tax assessments in Detroit are legal or illegal, we use assessment and sales data for residential homes in Detroit, covering the years 2008 through 2015. The International Association of Assessing Officers (IAAO)⁸⁵ has outlined the appropriate methods for analyzing assessment accuracy, and there are two major components: level and uniformity.⁸⁶ *Level* refers to the overall assessment ratio, defined as a property's assessed value divided by its market value.⁸⁷ Two key statistics for analyzing assessment ratios are the mean and median.⁸⁸ Given Michigan's constitutional requirement that assessments should not be greater than 50% of market value, the mean and median levels of assessment are expected to be no higher than 0.5.⁸⁹ If the ratios derived are consistently higher than 0.5, then this is reliable evidence that assessments in Detroit are systematically illegal and the assessing officials must take corrective action.

In contrast, *uniformity* (also known as variability) refers to the degree to which assessment ratios have achieved horizontal and vertical equity. Horizontal equity means that properties similarly situated in terms of market value and type of neighborhood have similar assessment ratios; while vertical equity means that higher and lower priced properties have similar assessment ratios.⁹⁰ Horizontal and vertical inequity occur when assessment ratios vary widely. There are two methods for analyzing assessment uniformity: the Coefficient of Dispersion (COD) and Price Related Differential

⁸⁴ Matt Helms, *Detroiters to see property assessment up to 20% lower*, DETROIT FREE PRESS (Jan. 28, 2015).

⁸⁵ The International Association of Assessing Officers (IAAO) is a nonprofit, educational, and research association that is comprised of government assessment officials and others interested in the administration of the property tax. The IAAO's main role is to promote standardized practices for assessing property and monitoring assessment performance.

⁸⁶ INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, STANDARD ON RATIO STUDY 1 (2013).

⁸⁷ *Id.* at 7.

⁸⁸ The mean, or average, is calculated by adding all assessment ratios together and dividing by the total number of ratios. The median is the middle ratio in an uneven number of ratios ordered by magnitude, or the average of the two central ratios in an even number of ordered ratios. The median is less affected by extreme outliers than the mean.

⁸⁹ MICH. CONST. art. IX § 3.

⁹⁰ *Supra* at footnote 3.

(PRD).⁹¹ The COD measures horizontal equity by quantifying the degree to which the assessment ratios deviate from the median.⁹² The IAAO considers assessments uniform if the COD is between 5 and 15 for single-family residential properties.⁹³ The PRD is a measure of vertical equity. If high-value properties have lower ratios than low-value properties, the vertical inequity is termed regressive, and if the opposite occurs, it is called progressive. Assessments should be neither regressive nor progressive because—although a degree of variation between ratios is expected as well as accepted—large differences result in the non-uniform and inequitable application of property tax assessments.⁹⁴ The PRD is calculated by dividing the mean ratio by the weighted mean ratio (the total assessed value of all property divided by the total sale price).⁹⁵ According to the IAAO, PRDs between 0.98 and 1.03 are vertically equitable while values greater than 1.03 are regressive, and values less than 0.98 are progressive.⁹⁶

Beyond the IAAO's standard measures, a simple approach for examining horizontal and vertical equity is to estimate the mean, median, minimum, and maximum assessment ratios across sale price quintiles.⁹⁷ This allows further analysis *within* a quintile (horizontal equity) and an examination of how ratios vary *across* quintiles (ver-

⁹¹ We recognize other IAAO recommended measures for analyzing assessments exist, including price-related bias, weighted mean, median absolute deviation, regression analysis. IAAO *supra* at 86. However, we have presented the traditional assessment performance statistics highlighted in the IAAO's publication, "Standard on Ratio Studies," and used in other papers analyzing assessment ratios. Hodge *supra* at footnote 3; Daniel McMillen, *Assessment Regressivity: A Tale of Two Illinois Counties*, Lane Lines 9 (2015); Olha Krupa, *Housing Crisis and Vertical Equity of the Property Tax in a Market Value-based Assessment System*, 42(5) PUB. FIN. REV. 555 (2014).

⁹² As outlined in the IAAO's publication for analyzing assessment accuracy, the COD is calculated as follows: "1) subtract the median from each ratio; 2) take the absolute value of the calculated differences; 3) sum the absolute differences; 4) divide by the number of ratios to obtain the average absolute deviation; 5) divide by the median; and 6) multiple by 100." IAAO *supra* at footnote 86, 13.

⁹³ *Id.* at 17.

⁹⁴ *Id.* at 14.

⁹⁵ While the median and mean give equal weight to each parcel in the sample, the weighted mean gives equal weight to each dollar.

⁹⁶ IAAO *supra* at footnote 86, 17.

⁹⁷ Quintiles are determined by dividing the data into five equal groups according to a variable (e.g. sale prices).

tical equity). In Michigan, if the mean and median are less than or equal to 0.5 *within* a quintile, then horizontal equity is present and the assessments are systematically legal. If mean and median assessment ratios are no higher than 0.5 *across* quintiles, then the assessments are vertically equitable, and legal.

Our proposed method of analysis is called an assessment ratio study (also known as ratio study or sales ratio study), which the IAAO defines as “a form of applied statistics, because the analyst draws conclusions about the appraisal of the population (the entire jurisdiction) of properties based only on those that have sold during the given time period.”⁹⁸ If the unsold parcels are appraised in the same manner as the sold ones, then it is valid to use the statistics derived from the sales ratio study to infer appraisal performance for unsold parcels.⁹⁹ Most importantly, ratio studies are the primary mechanism that assessors, taxpayers, appeal boards, and taxing authorities use to determine if assessments meet the legal requirements of a jurisdiction.¹⁰⁰

IV. DATA AND ANALYSIS

Since assessments in Detroit are calculated annually and are based on property values from the previous year, we divided assessed values with prior year sales information to produce assessment ratios. That is, we use assessment data from 2009-2015 and sales data from 2008-2014. Data Driven Detroit provided parcel-level information on assessed values for all Detroit properties from 2009 to 2014.¹⁰¹ We used the City of Detroit’s Open Data Portal to secure data on all property sales in Detroit from 2008 through 2014, as well as assessed

⁹⁸ IAAO *supra* at footnote 86, 8.

⁹⁹ *Id.* at 11.

¹⁰⁰ *Id.* at 7.

¹⁰¹ Data Driven Detroit (D3) is a Low-Profit Limited Liability Company (L3C) focused on providing access to information about and analyses for Detroit and the surrounding region. More information about D3 can be found at: <http://datadrivendetroit.org/>.

values for 2015.¹⁰² The full dataset includes 141,333 residential property transactions (we exclude empty lots and non-taxable properties). The breakdown of data by year can be viewed in column (1) of Table 3.

Table 3. Number of Observations by Year

Year	(1) All Transactions	(2) Arm's Length Transactions	(3) Trimmed Arm's Length Transactions	(4) % Trimmed
2009	25,217	2,718	2,699	0.70%
2010	21,359	1,483	1,460	1.55%
2011	18,516	237	218	8.02%
2012	17,325	264	249	5.68%
2013	21,241	682	661	3.08%
2014	20,924	500	477	4.60%
2015	16,751	466	447	4.08%
Total	141,333	6,350	6,211	

For several reasons, we excluded 134,983 observations from the sample, leaving a total of 6,350 arm's length property transactions in our analysis (column (2) of Table 3). First, our dataset included 22 different sales terms defined by the assessor's office, and we excluded properties that were not arm's length transactions (e.g. bank sale, city sale, county land bank sale, to bank).¹⁰³ Although the law states that only arm's length transactions should be included, there is an exception if non-arm's length transactions (distressed sales) "have become a common method of acquisition in the jurisdiction for the class of property being valued."¹⁰⁴ Given the low number of arm's length transactions shown in Table 3, there is a strong

¹⁰² Detroit's Open Data Portal provides access to public data and information about city governments and service delivery. More information about the Portal can be found at: <https://data.detroitmi.gov/>.

¹⁰³ Non-arm's length transactions excluded from our study are comprised of the following sales terms: bank sale, city sale, county land bank sale, court order, government transfer, HUD, land bank, land contract, create trust, multiple parcels, NEZ, NQ, death cert/estate, deed in lieu of FCL, deed of personal rep, family sale, review needed, sheriff/tax deed, investor sale, to bank, and to investor.

¹⁰⁴ MICH. COMP. LAWS § 211.27(1) (2013).

argument that distressed sales are, in fact, the norm for residential properties in Detroit. Nevertheless, we only include arm's length transactions so that our estimates provide the most conservative measure of illegality; scholars who include distressed sales in their analysis will find illegality that is markedly more pronounced. Second, we excluded properties that were bundled and sold as a single transaction because it is impossible to determine the price of any single property within the bundle. Bundled properties are different parcels with identical sellers, sale dates, and sale prices.¹⁰⁵ Third, we excluded properties that had a sale price of zero because it is unlikely that these were arm's length transactions; we also excluded properties with an assessed value equal to zero because these are likely to be non-taxable properties.

Although excluding 95% of the total observations may seem extreme, this is a result of the forced auctions and other non-arm's length transactions that have proliferated in Detroit's distressed real estate market. In addition, we further trim the data in accordance with IAAO's nationally recognized standards, which recommend trimming the sample of statistical outliers because very low or high ratios can severely distort the analysis.¹⁰⁶ Table 4 outlines the steps necessary to identify and trim outliers. We show the total observations after trimming in column (3) of Table 3, and the percentage of trimmed observations in column (4). The number of observations we exclude from our sample due to outlier trimming is below the IAAO's recommended standard of 10%.¹⁰⁷

¹⁰⁵It may seem reasonable to assign a portion of the total price to each property based on the parcel's size and characteristics; however, unobserved factors may prevent this split from accurately representing each property. For example, a parcel with a larger house and larger lot may be expected to have higher value, but the house may be in worse condition than a smaller property it is bundled with and should not automatically be granted a higher price.

¹⁰⁶The IAAO defines an outlier as an assessment ratio below the first quartile or above the third quartile by 1.5 times the interquartile range (IQR), where the IQR is the difference between the first and third quartiles. The first quartile is the median value of the lower half of the data and the third quartile is the median value of the upper half of the data (the second quartile is the median of the entire dataset). The IAAO also recognizes that ratio distributions are often skewed to the right (i.e. a greater number of high ratios may be present), so to prevent dropping a disproportionate number of high ratios, the IAAO suggests taking the logarithm of each assessment ratio prior to trimming the outliers. IAAO *supra* at footnote 86, 12.

¹⁰⁷ IAAO *supra* at footnote 86, 54.

Table 4. Steps for Trimming Outliers

Step	Action
1	Locate the first quartile (i.e. median value of the lower half of the data)
2	Locate the third quartile (i.e. median value of the upper half of the data)
	Compute the interquartile range (IQR) and multiply by 1.5 = (Step 2 – Step 1) x
3	1.5
4	Establish the Lower Boundary = (Step 1 – Step 3)
5	Establish the Upper boundary = (Step 2 + Step 3)

Table 5 shows the mean and median assessment ratios; the COD and PRD, which measure the uniformity and variability of the ratios; the average sale prices for each year, highlighting changing market conditions; and we also include the percentage of ratios that are above the 0.5 constitutional limit to evaluate the quantity of illegally assessed properties. Table 5 provides substantial evidence that Detroit assessors are illegally assessing properties in a systematic fashion. First, for properties sold between 2009-2013, the majority of assessments were above 50% of the property's market value: 2009 (65.5%); 2010 (84.7%); 2011 (54.6%); 2012 (71.4%); 2013 (78.2%); 2014 (83.2%); 2015 (64.7%). Second, to make inferences about the properties that were not sold during this period, an assessment ratio study is required;¹⁰⁸ and the data show that the mean and median assessment ratios are greater than the constitutionally permitted ratio of 0.5. While the 2011 and 2012 ratios are closer to 0.5, they remain statistically larger than 0.5 when the margin of error is set at the 95% confidence level. Third, the COD for each year is much higher than the recommended maximum of 15, evidence that assessments are not uniform. In addition, the PRD for each year is above 1.03, evidence of regressivity (i.e. higher-valued properties have lower ratios than lower-valued properties).¹⁰⁹ Again, we see the COD and PRD for 2011 and 2012 are closer to the recommended levels, yet remain above it.

¹⁰⁸ *Supra* at footnotes 98-100.

¹⁰⁹ *See supra* at footnotes 91 to 96 (explaining the process for calculating COD and PRD, respectively).

Upon examining Table 5, one question remains: Why are 2011 and 2012 closer to the constitutionally permitted ratio of 0.5 while in the other observed years the ratios suggest substantial illegality? We provide two potential explanations, both suggesting that Detroit assessors were “cherry picking” sales in those years. For one, the assessor classified fewer sales as arm’s length transactions in 2011 and 2012: it classified 1.3% and 1.5% of the total number of transactions as arm’s length for 2011 and 2012, respectively, whereas it classified 2.4%-10.8% of transactions as arm’s length in the other years. In addition, average sale prices derived from the assessor’s data are much higher in 2011 and 2012 compared with the surrounding years. More importantly, the assessor’s sales data from 2011 and 2012 are not consistent with sales information from Zillow market data in these years (See Figure 1: Median Sale Prices in Detroit) despite consistency between the two data sets in the other years. To check our cherry picking hypothesis, we did a separate analysis that included sales labeled as “Review Needed” (a sales term used for transactions that the assessor did not have enough information to classify), and the number of observations and the average sale prices became consistent with the surrounding years; in addition, the average sales prices for 2011 and 2012 were consistent with Zillow market data. With the stated correction, the average assessment ratios increased tenfold to 5.2 and 8.14 for 2011 and 2012, respectively, suggesting there was substantial illegality in 2011 and 2012.¹¹⁰

Table 5 also provides mixed results concerning the across-the-board assessment reductions discussed by Mayor Duggan.¹¹¹ There is no evidence of cuts in 2014 because the ratio increased by 17 percent. Furthermore, horizontal and vertical inequity worsened as the COD and PRD both increased in 2014. However, overall assessment ratios declined in 2015 by approximately 30 percent, resulting in reductions that were larger, on average, than the 5 to 20 percent reduction the mayor expected.¹¹² Despite the large reductions,

¹¹⁰ Other years experienced increases in mean assessment ratios when “Review Needed” sales were included. However, they were not as drastic as the increases in 2011 and 2012.

¹¹¹ See *supra* at footnote 83-84 (announcing Detroit’s tax cuts).

¹¹² The 30 percent reduction is calculated by using the percentage change formula: [(new value – old value)/old value]*100. In this case, the old value is 1.50 and the new value is

vertical inequity persisted as the PRD remained above 1.03 (at 1.97) and horizontal inequity actually worsened as the COD increased to 94.21 (up from 85.3).

Table 5. Assessment Ratio Statistics, by Year

	2009	2010	2011	2012	2013	2014	2015
Mean	2.72*	3.63*	0.53*	0.71*	1.28*	1.50*	1.05*
Median	0.84	1.97	0.53	0.69	0.90	1.04	0.68
COD	272.0	141.4	25.34	34.74	83.43	85.30	94.21
PRD	3.88	3.27	1.07	1.12	1.73	2.15	1.97
Mean SP	\$48,451	\$26,143	\$60,622	\$41,568	\$33,764	\$32,875	\$26,847
% > 0.5	65.5%	84.7%	54.6%	71.4%	78.2%	83.2%	64.7%
# of Obs.	2,699	1,460	218	249	661	477	447

Notes: * denotes the mean is statistically different from 0.5 at the 5% level; SP = sale price; these statistics include residential, improved, taxable, non-bundled, arm's length transactions that have been trimmed for outliers

To further explore trends in over-assessments and the resulting horizontal and vertical inequities from assessment practices in Detroit, Table 6 provides simple snapshots of how assessments vary within and across sale price quintiles by showing the mean, median, minimum, and maximum assessment ratios. We highlight the average sale price of each quintile in the row labeled “Mean SP”, and the percent assessed above the constitutional 0.5 limit is in the row labeled “% > 0.5”. The most important finding shown in Table 6 is that average assessment ratios decline as property values increase, meaning that Detroit’s assessors are illegally assessing lower-valued properties by a substantial margin, while the assessment ratios for higher-valued property are at or even below the constitutionally permitted limit of 0.5. To give a specific example, the lowest valued properties in 2009 were, on average, assessed at levels eighteen times larger than the constitutionally permitted 0.5 limit (9.02), middle-value properties were assessed two times more than the constitutionally permitted limit (1.00), and the highest valued properties were assessed below the constitutionally permitted limit (0.38). In addi-

1.05. Therefore, $[(1.05 - 1.50)/1.50]*100 = [-0.45/1.50]*100 = [-0.3*100] = 30$ percent decrease.

tion to this stark evidence of vertical inequity, assessment ratios are less uniform for lower-valued property (ranging from 0.25 to 5.75) compared with higher valued property (ranging from 0.04 to 0.37), providing evidence of regressive horizontal inequity. These results are generally consistent across all years; however for reasons mentioned earlier,¹¹³ 2011 and 2012 ratios are closer to 0.5.¹¹⁴

Table 6 further explores how Mayor Duggan's across-the-board reductions in property assessments—ranging from 5% to 20% depending on the district—affected the ratios (Table 2). Table 6 provides no evidence of reductions in 2014 (i.e. mean assessment ratios increase for each quintile) while reductions were higher than the mayor projected for 2015. Specifically, Table 6 shows reductions ranging from 24% to 43% in 2015, depending on the quintile viewed.¹¹⁵ More importantly, Table 6 shows that even after the reductions, the vast majority of lower-valued properties did not even come close to the 0.5 level (average assessment ratio equal 2.42), while higher valued properties—which already had ratios closer to the constitutionally permitted limit of 0.5—received reductions that brought assessments below the 0.5 legal limit (equal 0.37, on average).

Table 6. Assessment Ratio Statistics by Sale Price Quintile for Each Year

		Quint 1	Quint 2	Quint 3	Quint 4	Quint 5
2009	Mean	9.02*	2.60*	1.00*	0.46*	0.38*
	Mdn	5.75	2.53	0.86	0.44	0.37
	Min	0.25	0.11	0.07	0.04	0.04
	Max	57.01	9.84	4.42	1.70	1.31
	Mean SP	\$4,363	\$14,139	\$35,910	\$71,752	\$120,000
	% > 0.5	99.6%	97.6%	80.3%	37.0%	12.7%
	2010	Mean	10.24*	3.63*	2.10*	1.01*

¹¹³ See *supra* at 110 (explaining that Detroit assessors may have been handpicking sales to include in 2011 and 2012).

¹¹⁴ Only in 2012 are the highest valued properties (Quintile 5) above 0.5.

¹¹⁵ The decrease is more than the 20% decrease that Duggan authorized, in part, due to our sample, which captures only properties sold (a much smaller subset of the total number of residential properties in each district).

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	Mdn	7.42	3.59	2.12	0.89	0.45
	Min	0.38	0.34	0.23	0.07	0.05
	Max	51.42	10.78	6.33	3.92	2.39
	Mean					
	SP	\$3,035	\$7,824	\$15,300	\$30,186	\$76,281
	% > 0.5	99.7%	99.3%	98.0%	84.8%	40.4%
2011	Mean	0.58*	0.58*	0.55*	0.45*	0.49
	Mdn	0.61	0.61	0.54	0.44	0.46
	Min	0.27	0.26	0.31	0.22	0.23
	Max	0.81	1.08	0.87	0.76	0.81
	Mean					
	SP	\$16,362	\$29,186	\$46,962	\$72,288	\$150,000
	% > 0.5	69.6%	63.6%	59.5%	35.6%	43.9%
2012	Mean	0.91*	0.74*	0.64*	0.67*	0.58*
	Mdn	0.81	0.76	0.61	0.68	0.54
	Min	0.27	0.24	0.20	0.21	0.23
	Max	2.17	1.52	1.13	1.19	1.19
	Mean					
	SP	\$11,638	\$22,223	\$30,595	\$44,735	\$100,000
	% > 0.5	82.7%	76.9%	66.0%	77.6%	53.1%
2013	Mean	2.70*	1.51*	0.95*	0.69*	0.47
	Mdn	2.82	1.22	0.90	0.67	0.48
	Min	0.22	0.26	0.23	0.13	0.11
	Max	8.64	4.77	2.64	1.74	1.14
	Mean					
	SP	\$6,464	\$12,919	\$23,719	\$38,866	\$89,949
	% > 0.5	95.5%	97.0%	83.0%	67.5%	44.6%
2014	Mean	3.19*	1.74*	1.17*	0.83*	0.49
	Mdn	2.77	1.68	1.15	0.79	0.49
	Min	0.34	0.10	0.27	0.12	0.16
	Max	11.66	3.87	2.35	2.21	1.35
	Mean					
	SP	\$3,924	\$8,831	\$16,525	\$30,942	\$110,000
	% > 0.5	98.9%	91.9%	96.7%	86.3%	42.1%

	0.5					
2015	Mean	2.42*	1.18*	0.67*	0.51	0.37*
	Mdn	2.10	1.11	0.63	0.49	0.33
	Min	0.31	0.32	0.14	0.11	0.07
	Max	7.25	3.23	2.45	1.47	2.49
	Mean					
	SP	\$4,423	\$10,356	\$17,488	\$26,844	\$76,614
	% >					
	0.5	97.9%	95.1%	71.4%	42.7%	15.9%

Notes: * denotes the mean is statistically different from 0.5 at the 5% level; SP = sale price; these statistics include residential, improved, taxable, non-bundled, arm's length transactions that have been trimmed for outliers

As a final mechanism for examining assessment trends in Detroit, Table 7 highlights the changes in average assessment ratios across districts. Because it is district specific, Table 7 is the one place we see evidence of Mayor Duggan's 2014 assessment reductions: District 2 (10%), District 8 (24%), and District 10 (17%). The remaining districts experienced persistent over-assessment with no correction. In 2015, assessments decreased between 15% and 50% for all districts excluding District 8 (29% increase).¹¹⁶

In sum, we find that the Detroit assessor is systematically assessing Detroit homeowners at levels that violate the Michigan State Constitution. Even though we argue that the assessor's office cherry picked 2011 and 2012 sales data to make the illegality look less severe in these years,¹¹⁷ we nevertheless use this data and still find substantial illegality. The lingering question is: Why did the Detroit assessor's office flagrantly violate the state constitution when instead it could have maintained property tax revenues through legal means like increasing the property tax rate? This question, however, is beyond this Article's scope, so we leave it for future researchers.

Table 7. Average Assessment Ratio Percent Changes by District

¹¹⁶ One potential explanation for the District 8 increase in 2015 is that there was a correction by the assessor for incorrectly decreasing assessments the previous year.

¹¹⁷ See Section IV *infra*

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District	2009 to 2010	2010 to 2011	2011 to 2012	2012 to 2013	2013 to 2014	2014 to 2015
1	25%	-90%	19%	69%	93%	-50%
2	56%	-90%	77%	138%	-11%	-35%
3	63%	-82%	29%	76%	6%	-31%
4	-26%	-68%	-3%	13%	129%	-32%
5	12%	-70%	15%	5%	140%	-43%
6	53%	-89%	26%	102%	8%	-15%
7	37%	-86%	71%	150%	0%	-31%
8	11%	-83%	58%	42%	-24%	29%
9	38%	-84%	49%	68%	4%	-40%
10	3%	-74%	30%	80%	-17%	-32%

V. STATEGRAFT

The findings of this Article are clear: The City of Detroit is illegally assessing its citizens. More significantly, city and county coffers have benefitted greatly from this theft. But, in many ways, Detroit's illicit actions are not unique. It is not uncommon for state agents to increase state revenues using illegal means, and we create the term *stategraft* to describe this phenomenon.¹¹⁸ *Stategraft* is when state agents transfer property from residents to the state in violation of the state's own laws. The term intentionally combines the words *statecraft* and *graft* or *corruption*. A widely agreed upon definition of

¹¹⁸ According to searches using Google Scholar and JSTOR, we only found three previous authors who have used this term in the last 100 years, but none defined or developed the term. Thomas Barnett, *Big-War Thinking in a Small-War Era*, 6 CHINA SECURITY 3, 4 (2010) ("And to the extent that America eschews such responsibilities, other rising powers seeking to protect their expanding network of economic interests will inevitably step into that void—albeit with less militarized delivery systems. China may do so, but, as is now becoming apparent, it prefers *stategraft* to nation-building, paying upfront from its sizeable cash coffers."); Stephen S. Wise, *The Return of Roosevelt*, 191 N. AM. REV. 738, 742-742 (1910) ("When, for example, the corrupt followers of the Quay-Stone regime in the Keystone State desperately sought to avert the crushing defeat that even apathetic Pennsylvania seemed ready to inflict upon its betrayers, these masters of *Stategraft* rather than *Statecraft* brazenly utilized the name and prestige of Roosevelt in order to stave off the day of wrath."); Art, Buchwald, *The Fine Points of Stategraft, er, Statecraft*, WASHINGTON POST, Feb. 25, 2003 (discussing US foreign policy; "stategraft" used in title only).

corruption is “the abuse of an entrusted power for private gain,”¹¹⁹ but statecraft is different because there is no private gain. Instead, the abuse of state power primarily benefits the state itself. Statecraft is the art of conducting state affairs,¹²⁰ but statecraft highlights instances when state agents advance the state’s financial interests by stealing from those under its authority.

The term statecraft was born from the Detroit case.¹²¹ Detroit assessors are state agents who imposed inflated property tax assessments on Detroit property owners, and this act has transferred millions of dollars from property owners to city and county coffers in violation of Michigan’s state constitution. Although the term statecraft was developed using the Detroit case, its relevance goes far beyond Detroit. For instance, property tax assessors in West Virginia and other jurisdictions have violated state laws by levying inequitable property tax assessments.¹²² Also, statecraft applies to the case

¹¹⁹ TRANSPARENCY INTERNATIONAL, THE ANTI-CORRUPTION PLAIN LANGUAGE GUIDE (July 28, 2009) <http://bit.ly/1MitqRH>; THE WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK, 12 (Sep. 1997) <http://bit.ly/2b4hOnV>, (“We settled on a straightforward definition—the abuse of public office for private gain.”); UNITED NATIONS, HANDBOOK ON PRACTICAL ANTI-CORRUPTION MEASURES FOR PROSECUTORS AND INVESTIGATORS, 23 (Sep. 2004), <http://bit.ly/2bdNwUv> (internal quotation marks and citation omitted) (“There is no comprehensive, and universally accepted definition of corruption. The origin of the word is from the Latin *corruptus* (spoiled) and *corumpere* (to ruin; to break into pieces). The working definitions presently in vogue are variations of the misuse of a public or private position for direct or indirect personal gain.”); Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, 91 (1999) (defining corruption as the “misuse of public power for private gain.”).

¹²⁰ David A. Baldwin, *Economic Statecraft*, 8 (1985); Robbie W. Robichau, *The Mosaic Of Governance: Creating A Picture With Definitions, Theories, And Debates*, 39 POL’Y STUD. J. 113, 115 (2011) (internal citation omitted) (“Statecraft can be characterized as the ‘exercise of distinctively governmental responsibilities’ and a ‘the art of acting according to duty, justice, and reason on behalf of a community of citizens.’”); Roy Coleman, et al., *Capital, Crime Control and Statecraft in the Entrepreneurial City*, 42 URB. STUD. 2511, 2512 (2005) (internal citation omitted) (“The definitional struggles that determine the trajectory of the governing process take place within the alliances between locally powerful agencies that—through the partnerships between city centre managers, chief executives, developers, local authorities, senior police and growth spokespeople—herald a form of neo-liberal statecraft.”).

¹²¹ In law review articles, it is customary to start with the theory; but, in this case, the theory comes from the empirical analysis, and so the theory is most appropriately placed at the end of the paper. Singer argues that this bottom-up methodological approach is part of the reflective equilibrium discussed by John Rawls. Joseph William Singer, *Normative Methods for Lawyers*, 56 UCLA L. REV. 899 (2009).

¹²² *Allegheny Pittsburgh Coal Co. v. Cty. Comm. of Webster Cty.*, 488 U.S. 336 (1989).

of misappropriated cigarette settlement funds. The tobacco industry entered into the Master Settlement Agreement (MSA) with 46 states and the District of Columbia.¹²³ The MSA provided about \$206 billion in revenue over a 25-year period, but did not stipulate that these revenues must be dedicated to anti-smoking efforts.¹²⁴ Ohio, New Mexico, North Dakota, Hawaii, and North Carolina are among the states that passed laws requiring themselves to use MSA revenue exclusively for very particular projects, including anti-smoking efforts.¹²⁵ Several states have, however, used these funds for unauthorized uses in violation of its own laws. For example, in North Carolina, Governor Mike Easley signed a 2003-2004 budget that diverted \$65 million from the MSA revenue in violation of North Carolina law, which allows only certain uses of that revenue.¹²⁶ Similarly, New Mexico's legislature has slowly stopped depositing half of its annual MSA payments in its Tobacco Settlement Permanent Fund

¹²³ CTRS. FOR DISEASE CONTROL AND PREVENTION, STATE TOBACCO REVENUES COMPARED WITH TOBACCO CONTROL APPROPRIATIONS – UNITED STATES, 1998-2010, <http://bit.ly/2b4hu8Y> (accessed July 27, 2016).

¹²⁴ *Id.* (“However, although the intent of the lawsuit was to reimburse states for Medicaid costs related to tobacco use and to prevent youth initiation of smoking, the agreement did not stipulate that MSA revenues be dedicated to tobacco prevention and cessation efforts.”)

¹²⁵ See 2000 OHIO LAWS FILE 132 (S.B. 192) (repealed 2007) (establishing a fund for revenue from the MSA and stipulating how it will be used—“All payments received by the state pursuant to the tobacco master settlement agreement shall be deposited into the state treasury to the credit of the tobacco master settlement fund, which is hereby created”—and creating set-asides for tobacco use prevention, law enforcement improvements, community development, public health, biomedical research and technology, education, and other funds); 1999 NEW MEX. LAWS CH. 207 (H.B. 501) (establishing a fund for 50% of the revenue from the Master Settlement Agreement and stipulating how it will be used: “Money may be appropriated from the tobacco settlement income fund for health and educational purposes”); 2000 N.C. SESSION LAWS (S.L. 2000-147, repealed 2011) (creating a Health and Wellness fund for Master Settlement Agreement revenue and specifying limited ways in which the funds can be spent); N.D. CEN. CODE ANN. § 54-27-25 (creating a Tobacco Settlement Trust Fund and enumerating four possible uses of the fund balance: enforcing the MSA, community health trust fund, common schools trust fund, water development trust fund); HAW. REV. STAT. ANN. § 328L-2 (establishing the Hawaii Tobacco Settlement Special Fund and requiring certain percentages be used for different state budgetary purposes such as the emergency and budget reserve fund, the tobacco prevention and control trust fund, and the university revenue-undertakings fund); see generally Nat’l Governors’ Assoc. Ctr. for Best Practices, *State Tobacco Plans*, <http://bit.ly/2b4ixpk>, 42 (accessed July 27, 2016) (describing each state’s plan for its MSA funds).

¹²⁶ Eric Dyer, *In Change of Heart, Easley Signs Budget*, THE GREENSBORO NEWS & RECORD, June 30, 2008, <http://bit.ly/2bcuzA8>.

as required by its MSA law.¹²⁷ In both North Carolina and New Mexico, the state took funds from tobacco companies and used the funds in violation of their own laws. Another example of stategraft occurred in early America. State agents entered into legally binding treaties with the Oneidas, Lakota Sioux, and other Native American ethnic groups, but then later broke these treaties and commandeered native lands, illicitly increasing the nascent nation's territory.¹²⁸

In addition, the Department of Justice (DOJ) has filed suit against the City of Ferguson for stategraft, claiming that the city's focus has been on raising revenues rather than public safety needs in violation of the Constitution's Due Process and Equal Protection Clauses.¹²⁹ The DOJ argues that police have engaged in unconstitutional policing that targets African-Americans and unfairly imposes civil and criminal fines on them; and courts have issued arrest warrants when these fines go unpaid.¹³⁰ Also, abuse of civil forfeiture

¹²⁷ NEW MEXICO STATE INVESTMENT COUNCIL, TOBACCO SETTLEMENT PERMANENT FUND, <http://bit.ly/2aRBiRT> (accessed July 27, 2016) (describing how while New Mexico's Tobacco Settlement Permanent Fund was originally supposed to receive half of annual MSA payments to the state, the fund has not received any funds since 2008. *See also* Citizens above Government Waste, *State Tobacco Settlement Funds Go Up in Smoke*, <http://bit.ly/2b08qoj> (accessed July 27, 2016).

¹²⁸ *See* Timothy Egan, *The Nation; Mending a Trail of Broken Treaties*, N.Y. TIMES, June 25, 2000, <http://nyti.ms/2bou1VL> ("The Oneidas, who once occupied six million acres in New York, treated with President Washington himself. But over the next century, state officials bought and sold their land, in violation of laws and court cases requiring federal approval of Indian land transfers. By 1919, the tribal land had shrunk to 32 acres."); *U. S. v. Sioux Nation of Indians*, 448 U.S. 371, 373 (1980) (internal citation and quotation marks omitted) (The court ruled that the state confiscated "tribal property which had been set aside by the Fort Laramie Treaty for the Sioux' exclusive occupation, which taking implied an obligation on the Government's part to make just compensation to the Sioux. That obligation, including an award of interest, must now be paid.").

¹²⁹ U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, 15, 42, (Mar. 4, 2015) <http://bit.ly/11V31kb> ("The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety").

¹³⁰ *Id.* at 3 ("Most strikingly, the court issues municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments. 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

laws in places like Detroit, New York, and Washington D.C. is yet another example of stategraft.¹³¹ Although these laws are meant to allow law enforcement to confiscate property obtained illicitly and use it for the fight against crime, in many cities, civil forfeiture has been used to seize the property of people never charged or convicted of any crimes.¹³² When the opaque legal process that individuals must traverse to regain their property is more costly than the property taken, the police department often keeps the property. For instance, Washington D.C. required people to post bonds of up to \$2,500 before they were permitted to challenge the seizures; if the bond was not posted, the car would become city property.¹³³

This list of examples is not meant to be exhaustive; instead, the goal is to highlight the pervasiveness of stategraft, which comes in different varieties. The most identifiable type unlawfully bolsters public revenues, as in the case of land stolen from Native Americans, the discriminatory fines in Ferguson, and the abuse of civil forfeitures laws. In contrast, the more subtle type of stategraft illicitly increases flexibility in public spending, as in the case of misused cigarette settlement funds. Citizens will likely view the latter type of stategraft as less offensive than the former. Despite its different varieties, stategraft has four principle elements:

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."').¹³¹ *Mobley v. City of Detroit*, 938 F. Supp. 2d 669, 686 (E.D. Mich. 2012) (holding that a 2008 police raid of the Contemporary Art Institute of Detroit, in which officers detained patron's cars despite having no proof that the patrons committed any crime, was unconstitutional); *Encarnacion et al v. City Of New York*, No. 1:16-CV-00156 (S.D.N.Y.) (litigation still active) (Public defenders initiated a class-action in 2016 alleging the City of New York's civil forfeiture practices are unconstitutional); Sarah Stillman, *Taken*, THE NEW YORKER, 19, Aug. 12, 2013 ("The Public Defender Service for the District of Columbia won the release of Moreira's car last summer, and in May filed a lawsuit against the city on behalf of approximately three hundred and seventy-five car owners like Moreira. Describing the policy as 'devastating for hundreds of families who depend on their cars for many of the urgent and important tasks of daily life,' it called for higher standards of proof and the end of penal-sum fees."').

¹³² See *Id.*; Laura Sullivan, *Police Can Seize and Sell Assets Even When the Owner Broke No Law*, NPR, Nov. 10, 2014, <http://n.pr/2bdNsnt> ("It is legal for law enforcement agencies to take property from people who haven't been convicted of a crime."').

¹³³ *Simms v. Dist. of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012); Stillman *supra* at footnote 131; Robert O'Harrow Jr. & Steven Rich, *D.C. Police Plan for Future Seizure Proceeds Years in Advance in City Budget Documents*, THE WASHINGTON POST, Nov. 15, 2014, <http://wapo.st/2bdNV5g>.

1. State agents

State agents are individuals or groups who officially or unofficially use the state's police powers to compel people to act or refrain from taking certain actions.¹³⁴ When working in their official capacity, state agents are implementing the explicit directions of those with the power to make laws, policies, and administrative rules. But, in their unofficial capacity, state agents promote the state's financial interests without explicit permission from lawmakers, who either look the other way or support their actions without directly authorizing them. In Ferguson, for example, the targeting of African-Americans for fees and fines was not an official written policy, but it was a pervasive practice that used the police and courts to enlarge city coffers.¹³⁵ Lastly, it is important to understand that the motives of state agents who commit stategraft vary widely. It is easy to think of these state agents as evil people committing evil acts, but sometimes it is more complicated than this, and the state agents may have good intentions, although their acts are illegal.

2. Transfer property

Property includes tangible property such as money, financial instruments, real property, and personal property.¹³⁶ It also includes intangible property like entitlements, licenses, and intellectual property.¹³⁷ Property transfer can involve taking away the right to use, exclude, or transfer property or taking the property itself. In the examples discussed, the American government took land from native Ameri-

¹³⁴ Steven Maynard-Moody & Michael Musheno, *State Agent or Citizen Agent: Two Narratives of Discretion*, 10 J. OF PUB. ADMIN. RESEARCH & THEORY 329, 332 (2000) (describing state agents as those people working in the state bureaucracy entrusted with actually enacting law and policy). See also Colin Yeo, *Agents of the State: When is an Official of the State an Agent of the State?*, 14 Int'l J. of Refugee L., 517 (2003); Clare Finkelstein, *Changing Notions of State Agency in International Law: The Case of Paul Touvier*, 30 Tx. Int'l L. J., 270 (1995).

¹³⁵ See *supra* at footnote 129-130 (describing Ferguson's discriminatory fees and fines).

¹³⁶ See Robert C. Ellickson, *Property in Land*, 102 YALE LAW JOURNAL 1315 (1993); Pierre-Joseph Proudhon, *What is Property?: An inquiry into the principle of right and of government* (1876).

¹³⁷ Justin Hughes, *The Philosophy of Intellectual Property*, 77 GEO. LJ 287 (1988).

cans;¹³⁸ the city of Ferguson took money away from its African-American citizens using discriminatory fees and fines;¹³⁹ through civil forfeiture, many cities have taken all types of real and personal property away from people not charged with a crime;¹⁴⁰ certain states diverted cigarette settlement funds and used it for unauthorized purposes;¹⁴¹ and illegal property tax assessments have led to inflated property tax bills in Detroit.

3. From residents to the state

For these purposes, a *resident* is anyone who is subject to the state's police powers, even if the person is not physically within the state's geographic boundaries.¹⁴² A resident includes both documented and undocumented citizens, and corporations. To qualify as stategraft, property must be transferred from residents directly or indirectly to state accounts; and if the money does not go to the state's accounts, then the property transfer must somehow redound to the state's short or long-term financial interests. Since stategraft is about public gain at the expense of certain individuals or groups, the ill-gotten gains most often are going from one group of residents to another. For instance, land usurped from Native Americans benefited whites;¹⁴³ and property taken through civil forfeiture most often benefits the law enforcement agencies that confiscate the property.¹⁴⁴ To understand why stategraft is occurring, it is important to follow the money and

¹³⁸ See *supra* at footnote 128.

¹³⁹ See *supra* at footnote 129-130.

¹⁴⁰ See *supra* at footnotes 131-133.

¹⁴¹ See *supra* at footnote 125-127.

¹⁴² The tax code's definition of "resident" is also expansive. Harry A. Shannon III, *The General Definition of Residence under United States Income Tax Treaties*, 8-9 INTERTAX 204, 206 (1988) ("Under Article 4(1) [of the 1976 Treasury Department's Model Income Tax Treaty], a person is a resident of a contracting state if he is subject to tax in that state on the basis of his domicile, residence, citizenship, place of management, place of incorporation or any other criterion of a similar nature. 'Person' is defined in Article 3(1)(a) to include an individual, a partnership, a company, an estate, a trust and any other body of persons. Both natural and juridical persons can be 'residents' for treaty purposes.").

¹⁴³ See *supra* at footnote 128.

¹⁴⁴ Stillman at *supra* at footnote 131 ("Many states, facing fiscal crises, have expanded the reach of their forfeiture statutes, and made it easier for law enforcement to use the revenue however they see fit. In some Texas counties, nearly forty per cent of police budgets comes from forfeiture.").

recognize that there are always winners and losers involved in the illegal transfer of property from residents to the state.

4. In violation of the state's own laws

Laws include legislation, judicial decisions, and written administrative rules and policies that have the power to bind residents and regulate their actions.¹⁴⁵ Only the law in effect at the time the property was taken is relevant. In the examples above, states broke laws determining how cigarette settlement funds were to be spent; the US government abrogated legally binding treaties with Native peoples; the DOJ has argued that the City of Ferguson contravened the Equal Protection and Due Process clauses of the US Constitution; and the Detroit assessor violated its state constitution's property tax assessment limits.

Stategraft is a valuable concept because existing categories do not well describe this phenomenon. The most common definitions of corruption are predicated on private gain, and there is currently no concept to describe unlawful private to public transfers.¹⁴⁶ Also, although the Takings Clause is intended to prevent the state from taking private property for public use, constitutional takings is a category ill equipped to describe the phenomenon because sometimes instances of stategraft qualify as a takings, but other times not. For instance, while courts have ruled that certain broken treaties with Native Americans violated the Fifth Amendment's Takings Clause,¹⁴⁷ the misappropriation of cigarette settlement funds in North Carolina and illegal property tax assessments in Detroit would most likely not qualify because courts have ruled that the state's tax and spend powers do not infringe upon the takings clause.¹⁴⁸ Courts have also

¹⁴⁵ Jeremy Waldron, *The Concept and the Rule of Law*, 43 GA. L. REV. 1 (2008).

¹⁴⁶ See *supra* at footnote 119.

¹⁴⁷ *U. S. v. Sioux Nation of Indians*, 448 U.S. 371, 424 (1980) ("...the 1877 Act effected a taking of tribal property, property which had been set aside for the exclusive occupation of the Sioux by the Fort Laramie Treaty of 1868. That taking implied an obligation on the part of the Government to make just compensation to the Sioux Nation, and that obligation, including an award of interest, must now, at last, be paid.").

¹⁴⁸ 26 U.S.C. §7421 (With few exceptions, this law prohibits federal suits that restrain the assessment or collection of state level taxes). See also Lee Anne Fennel & Eduardo M. Penalver, *Exactions Creep*, 1 SUPREME COURT REV. 287 (2013) ("Courts and commentators alike have read *Eastern Enterprises* to mean that general obligations to pay money do not

ruled that civil forfeiture does not run afoul of the taking clause.¹⁴⁹ Lastly, because stategraft, by its definition, involves an illegal transfer of property, the due process clauses of the Fifth and Fourteenth Amendments will always apply.¹⁵⁰ Stategraft, however, is a unique type of due process violation that deserves focused analysis, although other scholars have overlooked it. Consequently, stategraft is a theoretical framework that fills an important gap in the literature. Our modest goal in this Article is to provide the theoretical scaffolding for the concept of stategraft, upon which other scholars can build.¹⁵¹

VI. CONCLUSION

By illegally assessing properties, Detroit has been robbing its citizens and engaging in stategraft. The illegality is systemic and has persisted since 2009, which is when property values in Detroit declined precipitously. In 2014, the City of Detroit recognized the need to comply with its state constitution by correctly aligning assessments with property values. Consequently, in 2014 and 2015 Mayor Duggan announced across-the-board cuts to property assessments. Nevertheless, lower-valued properties are still assessed far in excess of 50% of their market value, while the assessed values for higher-valued properties have fallen below this constitutional limit. We leave it for other scholars to investigate why the Detroit assessor has

fall within the ambit of ‘private property’ protected by the Takings Clause”); Eduardo M. Penalver, *Regulatory Taxings*, 104 COLUM. L. REV. 2182 (2004) (“the broad legal consensus is that legislatures effectively have unlimited authority to impose tax burdens.”)

¹⁴⁹ See e.g. *Bennis v. Michigan*, 516 U.S. 442, 453 (1996); *AmeriSource Corp. v. United States*, 525 F.3d 1149 (Fed. Cir. 2008) (holding that government seizing pharmaceutical drugs under its police power did not constitute a taking).

¹⁵⁰ Eduardo Peñalver & Lior Strahilevitz, *Judicial Takings or Due Process*, 97 CORNELL L. REV. 305, 324 (2011) (arguing that, in contrast to the Takings Clause, the “Due Process Clause has a broader and more foundational focus. It protects property owners against lawless and arbitrary treatment at the hands of the state.”). U.S. CONST. AMEND. V ([N]or shall any person . . . be deprived of life, liberty, or property, without due process of law); U.S. CONST. AMEND. XIV ([N]or shall any State deprive any person of life, liberty, or property, without due process of law).

¹⁵¹ Other scholars can explore other instances of stategraft and the remedies necessary. *Id.* at 310 (“Where the government violates the Takings Clause, the remedy is compensation for the period the violation is in place, but when its action deprives an owner of property without due process, compensation is not sufficient and the government action must be invalidated.”)

assessed property owners in violation of the state constitution instead of pursuing legal means of raising revenue (such as raising the property tax rate).

The illegal assessments in Detroit have severe consequences; the most dire being that it has unleashed a torrent of property tax foreclosures not witnessed in the US since the Great Depression.¹⁵² Based on our analysis, we recommend that Detroit place a moratorium on property tax foreclosures until it can re-assess all properties and ensure that it is in compliance with Michigan's constitutional and statutory laws. Detroit should move forward with property tax foreclosures only for those properties where the assessor can definitely prove that it was not illegally assessed. More significantly, we encourage the City of Detroit to begin a dialogue with its citizens about how to heal from the social, economic, and psychological consequences of stategraft.

¹⁵²Joshua M. Akers, *Making Markets: Think Tank Legislation and Private Property in Detroit*, 34 URB. GEOGRAPHY 1070 (2013) (analyzing the tax foreclosure crisis in Detroit and the legislative process that led to it.); Ellen Kirtner, *Interrupting the Blight Cycle: Managing the Future of Properties in Tax Foreclosure Sales through Pre- and Post-Sale Interventions*, 66 CASE WESTERN L. REV. 1083 (2016) (offering legal suggestions for local governments to put foreclosed properties to productive use); Dewar at *supra* 79; James Alm, et al., *Detroit Property Tax Delinquency: Social Contract in Crisis*, 14 PUB. FIN. & MGMT. 280 (2014) (concluding that properties with certain characteristics are more likely to be tax-delinquent); Margaret E. Dewar, *Selling Tax-Reverted Land: Lessons from Cleveland and Detroit*, 72 J. OF THE AM. PLAN. ASS'N 167 (2006) (comparing Cleveland's land bank system for disposing of abandoned land with Detroit's method).