

Chicago-Kent Law Review

Volume 92

Issue 3 *Dignity Takings and Dignity Restoration*

Article 11

3-6-2018

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Recommended Citation

Andrew W. Kahrl, *Unconscionable: Tax Delinquency Sales as a Form of Dignity Taking*, 92 Chi.-Kent L. Rev. 905 (2018).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol92/iss3/11>

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UNCONSCIONABLE: TAX DELINQUENCY SALES AS A FORM OF DIGNITY TAKING

ANDREW W. KAHRL*

Oliver Wendell Holmes once called taxes “what we pay for civilized society.” When it comes to local government and its chief source of revenue—the property tax—African Americans have been forced to pay a disproportionate share of that cost. Almost from the moment African Americans ceased to be taxable property and began having their property taxed, they became subject to discriminatory administrative practices and the victim of structural inequities in its levying and enforcement, both of which allowed local governments to subtly shift the tax burden onto the backs of racial minorities, and in some states created opportunities for real estate speculators and investors to prey on hard-pressed homeowners through acquiring liens on tax-delinquent properties. Auctioned by local governments at tax sales, tax lien certificates entitle its holders to collect interest (which could run as high as twenty-four percent) and charge legal fees on a tax debt and, if the property owner fails to settle within the redemption period (which can range from six months to two years), acquire deed to the property—all for the price of a single missed tax payment. Despite efforts to abolish or drastically restrict the practice, predatory tax buying continues to flourish in gentrifying urban real estate markets and rural areas undergoing intensive land development, where sharp spikes in property assessments lead to higher rates of tax delinquency and create opportunities for investors to acquire valuable property at a bargain. Tax liens also generate high returns on investment in depressed or depreciating real estate markets, where investors can compel financially distressed homeowners to meet exorbitant debt repayments by holding what is often their most valuable possession—their home—ransom. Because minority neighborhoods have historically been subject to discriminatory over-taxation¹ and lower property values as result of segregation and

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1. See Andrew W. Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 J. S. HIST. 579, 581–82 (2016).



“redlining,”² African American homeowners have been and remain more vulnerable to predatory tax buying.

Tax buying has inflicted a significant, if underappreciated, economic toll on black America. It contributed, in no small measure, to the precipitous decline of black landownership over the second half of the twentieth century (from over 15 million acres in 1910 to 2.3 million acres in 1997³), prevented African American communities from becoming partners in and beneficiaries of real estate development in some of America’s most vibrant markets⁴, accelerated the deterioration of urban minority neighborhoods and stymied efforts at recovery⁵, and exacerbated the racial wealth gap.⁶ It has also left deep emotional scars on victims, robbing them of their dignity in the course of taking—or threatening to take—their property.

Dignity taking was both a consequence and an agent of tax lien profiteering, as well as a predictable result of the legal requirements for property redemption.⁷ From the moment they obtain a tax lien on another person’s property, tax buyers work to maximize the return on their investment by infantilizing their victims. First, they overwhelm victims with a barrage of deliberately confusing documents, requirements, and looming deadlines for compliance, in order to establish their superior

2. See generally DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); DAVID M. P. FREUND, *COLORED PROPERTY: STATE POLICY AND WHITE RACIAL POLITICS IN SUBURBAN AMERICA* (2007); BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (2009).

3. Miessha Thomas et al., *What Is African-American Land Ownership?*, FED’N OF S. COOPS./LAND ASSISTANCE FUND, <http://www.federationsoutherncoop.com/aalandown04.htm> [<https://perma.cc/RL74-4WAA>] (last updated 2004); see also ROBERT S. BROWNE, *BLACK ECON. RESEARCH CTR., ONLY SIX MILLION ACRES: THE DECLINE OF BLACK-OWNED LAND IN THE RURAL SOUTH* (1973); Roy W. Copeland, *The Rise and Fall of Black Real Property Ownership: A Review of Black Land Ownership from the Rough Beginnings to the Great Gains; Dispossession via the Use of ‘Legal’ Tactics and the Push for Black Land Retention*, 9 *BLACK L.J.* 51, 52–53 (1984).

4. See Andrew Kahrl, *Sumbelt by the Sea: Race and Nature in a Twentieth-Century Coastal Metropolis*, 38 *J. URB. HIST.* 488 (2012).

5. Andrew W. Kahrl, *Capitalizing on the Urban Fiscal Crisis: Predatory Tax Buyers in 1970s Chicago*, *J. URB. HIST.* (SPECIAL ISSUE) 1, 1 (2015).

6. According to a 2015 study by the policy think tank Demos, the median white household has nearly sixteen times more wealth than the median black household in America. See LAURA SULLIVAN ET AL., *DEMOS, THE RACIAL WEALTH GAP: WHY POLICY MATTERS 7* (2015), http://www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf [<https://perma.cc/8CRD-S5J5>].

7. See Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 *LAW & SOC. INQUIRY* 796, 820 (2016); BERNADETTE ATUAHENE, *WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM* (2014); Bernadette Atuahene, *Takings as a Sociological Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 *ANN. REV. L. & SOC. SCI.* 171, 178 (2016).



knowledge of the law and convince the delinquent taxpayer that the fate of their homes rests solely in the tax buyer's hands. They never fail to remind tax delinquent homeowners of their own carelessness and irresponsibility—and their status as a tax scofflaw—in order to create the impression that they should not expect to gain sympathy from others. That the debt in question is to government—seemingly unforgiving, and with the full weight of the law on its side—only reinforces this sense of helplessness. Psychologically traumatized and infantilized, the delinquent taxpayer becomes less likely to question the lien holder's authority, inquire about their legal rights, or seek outside assistance or legal counsel. Tax buyers do not merely benefit from delinquent taxpayers' humiliation and shame (over their failure to pay their taxes on time, and the personal or financial circumstances that led to it) and fear (of losing one's property), they seek to actively cultivate it so as to entrap victims in crippling debt repayment plans, keep them unaware of their legal rights, and keep themselves and their business practices shielded from public scrutiny. The current remedies for protecting homeowners from predatory tax buyers not only fail to restore the dignity of its victims; it instead imposes an additional, even more pernicious, form of dignity taking. That's because the laws regarding tax delinquency virtually necessitate victims to convince the courts of their own incompetency and inability to handle their own financial affairs in order to void a tax deed and save their home. In short, victims of predatory tax buyers must willingly sacrifice their own dignity in order to successfully recover their property.

The tax lien industry and the local government bodies that sanction—indeed, administer and enforce—these investment strategies routinely engage in what Bernadette Atuahene defines as a “dignity taking.” As this essay shows, a process of infantilization structures not only the relationship between delinquent taxpayers and tax lien investors, but also between delinquent taxpayers and the courts. These actions have far reaching consequences, for individual victims and their families as well as entire communities. As such, Atuahene's concept of “dignity restoration”—which involves “compensation that addresses both the economic harms and the dignity deprivations involved” in the process of taking one's property and aims to “rehabilitate [victims] and reintegrate them into the fabric of society”—offers a more appropriate remedy for addressing the harms caused by predatory tax buying than mere reparations, which fail to account for victims' experience of (threatened) dispossession.



If you don't pay your property taxes, the state can take your property. This simple rule applies to all real property in the United States. But while all states have laws that permit local governments to place liens on properties whose owners failed to pay their taxes, and allow for the eventual foreclosure on tax-delinquent properties, the manner in which local governments handle tax liens once a property falls into delinquency varies wildly.⁸ Some states allow local governments to auction the deeds to tax delinquent properties, with the remaining proceeds (after the tax debt and costs of the sale are satisfied) paid to the former owner.⁹ Other states require local governments to take eventual ownership of tax delinquent properties.¹⁰ But in the majority of states, local governments are not only permitted to initiate foreclosure of tax delinquent properties, they are also authorized to sell liens on tax delinquent properties to private investors. At these tax sales, bidders compete to pay someone else's tax debt¹¹; in return, they are entitled to charge interest on that debt at rates ranging from eighteen percent to as high as fifty percent and, in some states, add a host of other charges and fees to the delinquent taxpayer's final bill. The delinquent taxpayer must settle their debts within a predetermined period of time (known as the redemption period, which can range from six months to two years), or risk losing the property and all of its equity to the tax lien certificate holder (or "tax buyer").¹² Most "tax buyers" treat tax lien

8. For laws on tax delinquency by state, see JOHN RAO, NAT'L CONSUMER LAW CTR., *THE OTHER FORECLOSURE CRISIS: PROPERTY TAX LIENS SALES* 43–46 (2012).

9. *Id.* at 13.

10. *Id.* at 14.

11. Bidding procedures for tax lien certificate sales also vary by state. The two most common methods are the interest rate method (in which bidding starts at the maximum allowable interest rate and competitors bid down) and the overbid method (in which bidding starts at the amount of delinquent taxes plus costs and goes up). *See id.* at 14–15. Both methods are highly susceptible to collusion among bidders and corruption among officials. As early as the 1940s, investigations of the tax buying industry found collusive practices to be so pervasive as to be almost customary, implicitly condoned by treasurer's offices that were primarily concerned with maximizing the number of properties sold (and revenue brought in), not the interest penalties applied to delinquent taxpayers. *See* W. H. SPECK, *TAX SALES AND TAX TITLES IN ILLINOIS* 25–26 (1948). From the mid-1960s through the mid-1990s, roughly ninety-five percent of the tax lien certificates sold at Cook County, Illinois's annual tax sale went to bidders who demanded the maximum eighteen percent interest rate. *See Supreme Court Says Treasurer May Take Steps 'Reasonably Necessary' to Promote Competition*, COOK CTY. TREASURER'S OFFICE (Dec. 5, 2000), <http://www.cookcountytreasurer.com/newsarticle.aspx?articleid=195> [<https://perma.cc/2E9A-LCMT>]. In recent years, the Justice Department has taken steps to curb tax buyer collusion, successfully prosecuting tax buyers for violations of the Sherman Antitrust Act in Illinois in 2001, Maryland in 2011, and New Jersey in 2013. *See* Joe Tyrrell, *FBI Probe Snares Another Firm for Rigging Tax-Lien Auctions*, NJ SPOTLIGHT (Jan. 10, 2013), <http://www.njspotlight.com/stories/13/01/09/fbi-probe-snares-another-firm-for-rigging-tax-lien-auctions> [<https://perma.cc/WPB7-TNHX>].

12. RAO, *supra* note 8, at 17.

certificates as a form of investment, and use the threat of foreclosure to compel payments. Some tax buyers, however, treat tax lien sales as an opportunity to acquire real estate at a steep discount, often the price of a single unpaid tax bill.

As an instrument of local government, tax sales ostensibly serve two purposes under the law. They aim to ensure taxpayer compliance and deter property owners from shirking their tax obligations by threatening them with onerous interest payments and assorted fines and fees on their tax debts and, should they fail to settle within a predetermined period of time, the loss of their property. They also provide local governments with a source of revenue by allowing them to market unpaid tax bills (or, tax receivables) to third parties, in exchange for the right to accrue interest on that debt or acquire title to the property itself. The threat of tax foreclosure is the leverage these tax buyers use to compel payments, often from desperate, financially distressed homeowners.

The sale of tax liens to third parties first emerged as a mechanism of revenue collection in rural counties on the nineteenth-century Western frontier.¹³ From its inception, tax lien sales provided savvy investors steady, potentially lucrative, returns, and afforded ample opportunities for manipulation and abuse. This was due to the opaque, inscrutable manner in which sales were conducted (which, almost by design, worked to discourage amateur investors and allow small, tight-knit groups of bidders to dominate local auctions)¹⁴ and, relatedly, local government's administrative autonomy over tax assessment and collection procedures. As states began to adopt new methods of taxation—including, sales, inheritance, corporation, and income taxes—in the early twentieth century, they came to rely less on the property tax,¹⁵ which became strictly a county or municipal tax in support of local services, especially public schools.¹⁶ Simultaneously, the property tax itself became, in fact if not in name, a tax on real estate, as collectors steadily abandoned onerous and often futile attempts to locate and assess personal property, which could be easily

13. See generally Robert P. Swierenga, *The Tax Buyer as a Frontier Investor Type*, 7 EXPLORATIONS ECON. HIST. 257 (1970).

14. See RAO, *supra* note 8, at 5.

15. See W. Elliott Brownlee, *The Transformation of the Tax System and the Experts, 1870–1930*, 32 NAT'L TAX J. 47, 49 (1979); HENRY J. AARON, WHO PAYS THE PROPERTY TAX? A NEW VIEW 8 (1975).

16. By the 1920s, U.S. cities with populations over 30,000 generated over ninety percent of its revenue from property taxes. See DAVID T. BEITO, TAXPAYERS IN REVOLT: TAX RESISTANCE DURING THE GREAT DEPRESSION 1–2 (1989).

concealed, in favor of that one asset no owner could hope to hide: buildings and land.¹⁷

The local nature of the property tax's allocation was reflected in the regulation of its collection. While state tax commissions often established general guidelines for the collection and recording of tax assessments and payments, and state legislatures authored the provisions for enforcing payment and handling delinquency, counties and municipalities exercised a great deal of discretion in determining the assessed value of real property.¹⁸ Conversely, taxpayers had few legal options for contesting a property tax bill.¹⁹ This, in turn, allowed local tax assessors to engage in discriminatory practices with virtual impunity. Not surprisingly, the beneficiaries of artificially low assessments tended to possess political and economic influence, while victims of discriminatory over-assessment tended to be poorer, politically marginalized classes of taxpayers, and disproportionately racial and ethnic minorities.²⁰

As local control and administrative autonomy became hallmarks of property tax assessment and enforcement in America, the property tax emerged as a potent instrument of white supremacy. From the late nineteenth through the early twentieth century, African American landholdings in the South grew dramatically, and in inverse proportion to their civil rights.²¹ This was no coincidence. In pursuing property ownership, African Americans were not simply seeking shelter from Jim Crow; they were also claiming property rights. Stripped of their civil rights, cheated out of their wages, and subject to the constant threat of violence at the hands of the state or the mob, black Southerners found in landownership a measure of independence and a modicum of legal standing under the law. In the segregated South, owning property and paying property taxes gave, the historian N. D. B. Connolly argues, "the otherwise disempowered or disenfranchised certain political entitlements."²² To the generation of black Southerners who came of age under Jim Crow, the right

17. *Id.* at 3–4.

18. *See generally* HARLEY LEIST LUTZ, *THE STATE TAX COMMISSION: A STUDY OF THE DEVELOPMENT AND RESULTS OF STATE CONTROL OVER THE ASSESSMENT OF PROPERTY FOR TAXATION* (1918); John Shannon, *Conflict Between State Assessment Law and Local Assessment Practice*, in *PROPERTY TAXATION USA* 39 (Richard W. Lindholm ed., 1967).

19. *See* Robert F. Williams, *The Tax Injunction Act and Judicial Restraint: Property Tax Litigation in Federal Courts*, 12 *RUTGERS L.J.* 653, 655 (1981). *See generally* Daan Braveman, *Fair Assessment and Federal Jurisdiction in Civil Rights Cases*, 45 *U. PITT. L. REV.* 351 (1984).

20. *See* Kahl, *supra* note 1, at 592–93.

21. *See generally* LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH 1790–1915* (1990).

22. N. D. B. CONNOLLY, *A WORLD MORE CONCRETE: REAL ESTATE AND THE REMAKING OF JIM CROW SOUTH FLORIDA* 281 (2014).

to property and the rights of property owners seemed to carry greater weight, and provide its holders greater standing under the law, than abstract appeals for civil rights. Black property owners referred to their status as taxpayers as proof of their right to public spaces and amenities.²³ Indeed, it was not uncommon to find African Americans displaying their property tax receipts when making claims on the state.²⁴

But the rights that property ownership seemed to confer on black Americans were more illusory than real, subject at every moment to the judicial and bureaucratic machinations of a white supremacist state. And ironically, it was the very responsibility of property ownership that blacks used to make those claims on the state—payment of property taxes—that exposed them to new forms of discrimination and left them vulnerable to property loss. In the rural South, tax assessors routinely over- and undervalued farmland according to the race of its owner, disproportionately overburdening black property owners.²⁵ In addition to being forced to pay more than their white counterparts for far less of the public services their tax dollars paid to support, African American property owners were subject to a Jim Crow bureaucracy vested with the power to take the property of delinquent taxpayers, and with a variety of mechanisms for forcing otherwise compliant taxpayers into delinquency. Local tax collectors could simply fail to mail tax bills to targeted property owners²⁶, fail to record payments²⁷, or fail to notify persons that a lien had been placed on their property and had been auctioned to a third party.²⁸ These were among the charges leveled by black property owners who unwittingly fell into tax delinquency.

The tax lien and tax sale performed a variety of functions for the Jim Crow state. It could be used it to intimidate and punish the outspoken or recalcitrant. Persons such as Amy Mallard, who, following the lynching of her husband, Robert Mallard, a prosperous African American landowner and businessman in Toombs County, Georgia, in November 1948,

23. *Id.*

24. *Id.* at 208.

25. See Kahr, *supra* note 1, at 585.

26. *Staples Can't Rule on Jim Crow Tax List*, NORFOLK J. & GUIDE, May 12, 1934, at 9; P. Bernard Young Jr., *Slums and Taxes*, NORFOLK J. & GUIDE, Feb. 22, 1936, at 8; Jaunita Greene, *She Didn't Pay Her Tax Bill in 1947: So She's About to Lose Her Property*, DAYTONA BEACH MORNING J., Sept. 15, 1950.

27. P. Bernard Young, *The Melting Pot*, NORFOLK J. & GUIDE, Feb. 22, 1932, at 8.

28. See Joseph Brooks, *Emergency Land Fund: A Rural Land Retention and Development Model*, in *THE BLACK RURAL LANDOWNER—ENDANGERED SPECIES: SOCIAL, POLITICAL, AND ECONOMIC IMPLICATIONS* 77, 84–85 (Leo McGee & Robert Boone eds., 1979); Carl H. Marbury, *The Decline in Black-Owned Rural Land: Challenge to the Historically Black Institutions of Higher Education*, in *THE BLACK RURAL LANDOWNER—ENDANGERED SPECIES*, *supra*, at 65, 66.

embarked on a nationwide speaking tour for the NAACP, where she publicly named the persons who had abducted and shot her husband.²⁹ While in exile, Toombs County officials placed a lien on her family's farm, claiming nonpayment of property taxes for the previous three years, and announced plans to sell it at a tax auction.³⁰ Mallard produced tax receipts for the years in question, which attorneys for the NAACP delivered to county officials, halting its sale.³¹ A white mob subsequently descended on the Mallard farm, looted the home, stole the livestock, and burned the house and barn to the ground.³²

Along with declaring black-owned property tax delinquent and subjecting it to a tax sale, white tax officials also grossly over-assessed the value of individual black-owned parcels or, in some cases, all black-owned land in a town or county, in retaliation for protests or political activism. In the fall of 1966, the African American residents of Edwards, Mississippi, launched a boycott of white-owned businesses in response to a litany of injustices, including the lack of sewer lines, paved sidewalks, and street lights in black neighborhoods; town officials' failure to respond to complaints of toxic fumes emitted from a chemical plant located on the black side of town; and the town's decision to sell its swimming pool to a private, whites-only club immediately following court-ordered desegregation. The boycott lasted several months and inflicted considerable damage on local merchants' and town finances. The following year, white officials sharply raised the assessed value of nearly every black-owned property in the town, while maintaining or reducing the assessed value of white-owned property. Despite an abundance of evidence of intentional discrimination, the federal district court dismissed a class-action lawsuit against town officials, on the grounds that the 1937 Tax Injunction Act prevented the federal courts from interfering with local assessment practices.³³

More often, whites in the South manipulated tax assessments or forced people into tax delinquency in order to steal their land. In a letter to the *New Republic* in 1940, NAACP Special Counsel and future U.S. Supreme Court Justice Thurgood Marshall alerted readers to what he described as “a

29. *Georgia Lynch Victim's Wife May Move to Coast*, CHI. DEFENDER, Feb. 12, 1949, at 1.

30. *Mrs. Mallard Notified Property Up for Sale*, ATLANTA DAILY WORLD, Feb. 2, 1949, at 1.

31. *Georgia Lynch Victim's Wife May Move to Coast*, *supra* note 29.

32. *Kluxers Burn Mallard Home*, CHI. DEFENDER, Oct. 22, 1949, at 1.

33. *See Bland v. McHann*, 463 F.2d 21, 23–24 (5th Cir. 1972); *see also Kahrl*, *supra* note 1, at 606.

practice and custom in the South of depriving Negroes of their property through subterfuge,” and noted that:

In many communities of the South, Negroes own property which becomes enhanced in value by either a real-estate development or expansion of business areas.

In many cases Negro property owners refuse to sell their property for low prices and in other cases they are not requested to sell.

But through cooperation with local tax officials, the Negroes owning the property are not sent tax bills on their property. The owners, most of whom are unfamiliar with legal procedure, believe they have to get a tax bill before they can be held liable for taxes.

When they do not receive those tax bills they do not pay their taxes. Others inquire about the tax bills and are either not given any information or are put off with the statement that “everything is all right.”

When the taxes are past due and are in arrears for the statutory period, the property is quietly sold at a tax sale without notice to the owners. The Negroes are not notified until after the statutory period of redemption has passed. They are then forced to leave the property.³⁴

Indeed, whenever black-owned land in the rural South suddenly became desirable, bureaucratic malfeasance soon followed. Shortly after the African American siblings James, William, and Elisha Warfield discovered oil and installed seven wells on their 160-acre farm in Adams County, Mississippi, in 1951, local officials uncovered missing tax payments and promptly sold a lien on the entire tract to speculator H. M. Marks.³⁵ Worth an estimated \$10 million, Marks paid \$8 per acre for the Warfield’s property, which he subsequently resold to the Sohio Petroleum Co. for an undisclosed sum.³⁶ This was a common experience for African Americans with the dubious fortune of owning land that white people wanted. “Time after time,” a reporter who interviewed blacks living in Mississippi in 1966, remarked, “Negroes told how their land had been taken over by white farmers by manipulation of tax sales or foreclosures.”³⁷ As investigators for organizations such as the Emergency Land Fund found, local officials often played an active role in facilitating the expropriation of black-owned land via tax sales.³⁸

34. Thurgood Marshall, *Cold, Cold Ground*, NEW REPUBLIC, Aug. 12, 1940, at 216.

35. *Brothers Claim Huge Oil Fraud*, N.Y. AMSTERDAM NEWS, Oct. 20, 1951, at 8.

36. *Id.*

37. William A. Price, *After Greenville: The Poor People of Mississippi*, NAT’L GUARDIAN, Mar. 5, 1966, at 3.

38. William E. Nelson Jr., *Black Equity Base and Political Power*, in BLACK RURAL LANDOWNER—ENDANGERED SPECIES, *supra* note 28, at 41, 54.

Nowhere was this more evident than in the rapidly appreciating real estate markets of the 1960s and 1970s coastal South. In the years after the completion of the Sea Pines Plantation on Hilton Head Island, South Carolina, in 1956, land values along the South Carolina and Georgia Sea Islands skyrocketed, as developers moved to replicate the resort's success and land speculators looked to capitalize on the demand for coastal property.³⁹ In South Carolina and across the coastal South, African Americans owned a significant amount of land in areas being targeted for development. For many of these families, their ownership claims dated back to the dawn of emancipation.⁴⁰ Land speculators ruthlessly exploited tax delinquency laws to defraud and dispossess poor, often elderly African Americans of their property holdings. In one instance, a white speculator befriended Evelina Jenkins, an African American woman who owned an entire island on the South Carolina coast, and convinced her to allow him to handle her financial affairs, including her property taxes. But instead of delivering Jenkins's property tax payments to the county treasurer's office, he purposely allowed her property to fall into tax delinquency, whereupon he successfully acquired the lien at the county's tax auction. Following the close of the redemption period, he obtained the deed and had Jenkins evicted. He subsequently sold the land to a developer.⁴¹ Today, dozens of vacation homes, each worth upwards of \$500,000⁴², fill the island Jenkins formerly owned. Jenkins, meanwhile, was forced to move into a trailer home with one of her daughters, where she died penniless at the age of ninety in 1997.⁴³ Investigators for the Emergency Land Fund reported other "[c]ases . . . of blacks having leased their land to whites with the understanding that the tenant would pay the taxes, whereas the tenant

39. See generally AM. SOC'Y OF PLANNING OFFICIALS, *SUBDIVIDING RURAL AMERICA: IMPACTS OF RECREATIONAL LOT AND SECOND HOME DEVELOPMENT* (1976); JUNE MANNING THOMAS, *BLACKS ON THE SOUTH CAROLINA SEA ISLANDS: PLANNING FOR TOURIST AND LAND DEVELOPMENT* (1977); June Manning Thomas, *Effects of Land Development on Black Land Ownership in the Sea Islands of South Carolina*, 8 REV. BLACK POL. ECON. 266 (1978); June Manning Thomas, *The Impact of Corporate Tourism on Gullah Blacks: Notes on Issues of Employment*, 41 PHYLON 1 (1980); MICHAEL N. DANIELSON, *PROFITS AND POLITICS IN PARADISE: THE DEVELOPMENT OF HILTON HEAD ISLAND* (1995).

40. See generally WILLIE LEE ROSE, *REHEARSAL FOR RECONSTRUCTION: THE PORT ROYAL EXPERIMENT* (1964).

41. Roy Reed, *Blacks in South Struggle to Keep the Little Land They Have Left*, N.Y. TIMES, Dec. 7, 1972, at 39; see also Marbury, *supra* note 28, at 99.

42. Real estate values on Horse Island, SC, found using trulia.com and author's observations of "for sale" signs. See TRULIA, https://www.trulia.com/SC/Horse_Island [<https://perma.cc/3WYT-7NYU>].

43. *Evelina Jenkins, Obituary*, SAVANNAH MORNING NEWS (Dec. 5, 1997), <http://savannahnow.com/stories/120597/NWSobits120597.html#.V-aUsjKZNPm> [<https://perma.cc/F5LJ-MMMR>].

deliberately failed to pay the taxes, concealed the tax notices, and ultimately purchased the property cheaply when it went up for auction.”⁴⁴

Along with the property, predatory tax buyers also took their victims’ dignity. After the initial shock of losing their land to tax foreclosure, feelings of shame soon followed. One scholar who documented black land loss on the South Carolina Sea Islands in the 1970s found that the number of cases of fraudulent land loss via tax sales far exceeded the number of reported complaints, a phenomenon she attributed, in part, to victims’ embarrassment at their predicament.⁴⁵ Given the importance of property ownership in the southern black political imagination—the ways in which owning land became synonymous with citizenship, how it conferred on its holders a certain status and recognition within their communities—and the pride black property owners had placed in paying their taxes, falling into tax delinquency could be a deeply humiliating experience and one that persons were often inclined to suffer in silence.

Fear, humiliation, and social isolation greased the wheels of tax buying operations. It diminished the chances of a tax delinquent property owner seeking legal counsel, inquiring of their legal rights, or contesting a tax deed in court, where they might stand before a judge highly sympathetic to their plight, contemptuous of the tax buying profession, and eager to find any legal rationale for voiding a deed.⁴⁶ Ashamed and embarrassed, the delinquent taxpayer was more likely to deal exclusively with the tax buyer and accept his terms and conditions without complaint, and less likely to reach out to those in a position to provide critical legal or financial assistance. Tax buyers, in turn, played an active role in stripping tax delinquent property owners of their dignity and convincing them of the futility of challenging them in court. “Delinquent taxpayers,” a circuit court judge in Wayne County, Michigan, commented in 1971, “often are not sophisticated about the law. They often don’t know their rights. So the tax buyer goes to see them and says: ‘Look, I don’t want to take you to court,’ then offers to forget the whole thing for a few hundred dollars. Quite often the taxpayer—afraid of losing his home—pays up. This results in tremendous windfalls for the tax buyer.”⁴⁷

44. Yvonne Shinhoster, *Growing Loss of Land Plagues Southern Rural Blacks*, ATLANTA DAILY WORLD, Aug. 28, 1975, at 1.

45. THOMAS, *supra* note 39, at 152.

46. Writing on tax sales in Wayne County, Michigan, one reporter noted that many judges were “aware of the injustice of the law, [and] go out of their way not to enforce it.” *Tax Sales: Legal Extortion*, PROP. TAX NEWSL., June 1971, at 5–6.

47. See generally Peter Benjamin, *How to Lose Your Home for \$18: The Law and the Tax Buyers*, DETROIT FREE PRESS, May 16, 1971.

Whether they operated in the booming real estate markets of the sunbelt South or in the distressed markets of deindustrializing northern cities, and whether they sought to saddle a distressed homeowner with onerous debt or take their property, tax buyers engaged in strategic forms of “dignity taking.” Indeed, as the following profiles of individual tax buyers reveals, infantilization did not merely accompany property loss; it often helped to initiate and facilitate that loss.

“[O]nly the ‘dumb and dim-witted’ lose their property [to tax foreclosure]”

—Chicago attorney Robert Cushman testifying before Illinois General Assembly (1969)⁴⁸

During the 1970s, John Barrow was a familiar face at tax sale auctions across the state of Florida. After having taught himself how to invest in tax liens by studying state statutes, Barrow traveled to county courthouses throughout the state to bid at auctions and to remote areas to personally inspect tax delinquent properties.⁴⁹ As he built capital and increased his volume of tax lien holdings, Barrow began to exhibit some of the character traits found among successful tax buyers. He was both braggadocious—he once claimed to a reporter to be “Florida’s foremost authority on tax deeds”⁵⁰—and inscrutable. “I know him, but I don’t know him,” a fellow Callahan resident said of Barrow.⁵¹

Barrow practiced a particularly vicious, but perfectly legal, form of tax lien investing. He purchased liens on owner-occupied properties whose owners, he speculated, were less likely to be able to redeem (or understand the consequences of nonpayment), whereupon he would acquire the deed and then attempt to sell the house back to its former owners.⁵² Fedo and Hattie Mae Kenon, an elderly African American couple in Gadsden County, Florida, were among the persons Barrow attempted to extort in this manner. The Kenons had bought their modest, three-bedroom house with

48. *Bill to End Tax-Delinquency Abuses OKd by House Unit*, CHI. SUN-TIMES, May 8, 1969, at 42.

49. *See generally Realtors Aiding Family Who Lost Home to ‘Wheeler-Dealer,’* LAKELAND LEDGER (Fla.), Sept. 14, 1979.

50. *Id.*

51. *Id.*

52. *Couple Owing Tax Get Offers*, SARASOTA HERALD-TRIB., Sept. 12, 1979.*

the money they had earned from years of labor in tobacco fields.⁵³ The husband Fedo suffered from mental illness and periodically checked himself into the state mental hospital.⁵⁴ In 1975, he neglected to pay a \$3.05 special assessment tax to the county.⁵⁵ When the county notified the Kenons by mail of the outstanding tax payment, an embarrassed Fedo hid the letter from his wife.⁵⁶ The following year, Barrow successfully purchased a tax lien certificate on the Kenons home at the county's tax auction and then waited to see if the Kenons would redeem.⁵⁷ When they failed to redeem before the deadline, Barrow paid \$102 for the tax deed to the Kenons' home.⁵⁸

In a strict legal sense, Barrow's petition for a tax deed was airtight. Tax buyers like Barrow knew from experience that most judges found the practice of predatory tax buying abhorrent, and would void a tax deed for the slightest failure to follow procedures. As a result, successful tax buyers meticulously adhered to every legal requirement. Unable to find fault in the petition, the court granted Barrow a deed to the Kenons' home.⁵⁹

On July 11, 1979, Barrow visited his new property and introduced himself to its former owners. "You know you done lost everything but your furniture and clothes, even the stove and ice box?" he brusquely informed the bewildered couple.⁶⁰ Infantilizing the Kenons, Barrow made it clear that he now controlled their fate. "He gave me his card and said he'd be back in August and if I cooperated and did like he said, he wouldn't put me out," Hattie Mae recalled.⁶¹ "If I didn't, he said, 'I'll have the law put you out.'"⁶² The price for cooperating: \$10,000.⁶³

After Barrow left, Hattie Mae said she "cried some, and I prayed some."⁶⁴ She then reached out to North Florida Legal Services for

53. See generally *Friends Rally to Help Couple Facing Loss of Florida House*, BULLETIN, Sept. 12, 1979.*

54. See generally *Their Home Lost: For \$3.05 in Taxes*, ELLENSBURG DAILY REC. (Wash.), Sept. 11, 1979.*

55. *Id.*

56. See generally *Find Way to Avoid Another Kenon Case*, OCALA STAR-BANNER (Fla.), Sept. 14, 1979.*

57. See generally *Court Urged to Apply Reform Law*, DAYTONA BEACH NEWS-J., Nov. 26, 1980.*

58. *Id.*

59. *Id.*

60. *Couple Owing Tax Get Offers*, *supra* note 52.*

61. *Id.**

62. *Id.**

63. *Id.**

64. See generally *Couple, 7 Children May Lose Home over \$3 Tax*, OBSERVER-REP., Sept. 12, 1979.*

assistance.⁶⁵ The Kenons' attorneys alerted the press and within weeks the case began to attract national attention. A fundraising campaign to assist the Kenons in buying back their home generated over \$12,000 in donations.⁶⁶ Rallies and benefits for the Kenons were held across the state of Florida.⁶⁷ Reporters uncovered numerous examples of other families who had fallen delinquent on their homes (oftentimes, like the Kenons, by accident) and into the clutches of Barrow.⁶⁸

Despite being subject to withering attacks from the press and the recipient of numerous death threats and thousands of hate letters, Barrow remained defiant. "Fellows like me protect the American people," he told one reporter.⁶⁹ "The man who buys a tax deed is the backbone of this country."⁷⁰ Tax buying, he added, was like any other capitalist enterprise. "Everybody in this world, if they profit any, profit to the disadvantage of other folks and that's the way the world is built."⁷¹

As the Kenons' attorney built a case for voiding the tax deed, the state comptroller, bowing to the public pressure, announced plans to hold disciplinary hearings with the goal of revoking his mortgage broker's license.⁷² Barrow, meanwhile, continued to acquire tax deeds and force families into exploitative buy-back arrangements. In November 1979, Barrow sought to obtain the deed to a home owned by a single mother with four children who had failed to pay a \$552 property tax bill. Putnam County circuit court judge Charles Hood refused to issue the deed, telling Barrow, "In this situation, my moral obligations override my legal obligations."⁷³

The attorneys for the Kenons similarly appealed to Circuit Court Judge Ben Willis's conscience. "The court," Kenons' attorney George Clark argued, "should rule that . . . the inadequacy of price . . . is shocking to the conscience of the judiciary[,]"⁷⁴ and therefore exercise its general

65. See generally *Their Home Lost: For \$3.05 in Taxes*, *supra* note 54.*

66. See generally *Couple Who Lost Home Get Contributions*, SARASOTA HERALD-TRIB., Jan. 2, 1980.*

67. See generally *Support Grows for Quincy Family*, ST. PETERSBURG TIMES, Sept. 14, 1979.*

68. See generally *Realtors Aiding Family Who Lost Home to 'Wheeler-Dealer'*, *supra* note 49; see also *Couple Owing Tax Get Offers*, *supra* note 52.*

69. See generally *John Barrow Plans to Quit and Watch Taxpayers Suffer*, OCALA LAKE LAND LEDGER, Feb. 3, 1980.*

70. *Id.**

71. See generally *Their Home Lost: For \$3.05 in Taxes*, *supra* note 54.*

72. See generally *Investor Says Tax Deed Buy Turned Him into a Victim*, OCALA STAR-BANNER, Oct. 25, 1979.*

73. See generally *Barrow Is Foiled in Tax Deed Buy*, ST. PETERSBURG TIMES, Nov. 2, 1979.*

74. *Couple Who Lost Home for \$3.05 Asks Judge to Return Property*, ST. PETERSBURG EVENING INDEP., Mar. 20, 1980, at 3A.*

equitable power to void the deed. In effect, it tried to awaken the conscience of the judge, conceding that, while legal in a technical sense, the awarding of the deed in this case was so unfair it required extraordinary judicial intervention. In this case, it worked. Citing the common law doctrine of equity, Judge Ben Willis voided Barrow's tax deed and ordered the Kenons to repay Barrow \$102 plus twelve percent interest. "To set aside and rescind the tax deed," Willis wrote in his opinion, "will result only in the loss by Barrow of his bargain, which is an enrichment (that) a court of conscience may not sanction."⁷⁵ A court of appeals affirmed the ruling without comment.⁷⁶

The equity doctrine, when combined with intensive media exposure and public outrage, provided one of the few viable strategies for preventing the loss of property after the issuance of a tax deed. But its effectiveness was highly uncertain and applicable to only the most egregious cases and most sympathetic judges. Moreover, it required its victims to beg for mercy and present themselves before the public as impoverished, ignorant, and worthy of pity. Articles on the Kenons focused on Fedo's mental illness and illiteracy, the couple's lack of education, and the house's "ramshackle," dilapidated state.⁷⁷ It virtually necessitated victims to subject themselves to public humiliation. Rather than dignity restoration, this "hail Mary" strategy for property recovery required its victims to suffer another form of dignity taking.

Despite the flurry of media coverage, the Kenon case only resulted in modest reforms to Florida's tax delinquency sale laws. Passed by the Florida state legislature and signed into law soon after the case came to light, the "Kenon bill" (as it was dubbed) forbade the sale of tax certificates on homestead properties for tax delinquencies under \$100 and mandated that notices to delinquent taxpayers provide clear warning in "plain

75. Sam Miller, *Couple Gets Back Home Lost for a Pittance*, UNITED PRESS INT'L (Dec. 5, 1980), <http://www.upi.com/Archives/1980/12/05/Couple-gets-back-home-lost-for-a-pittance/6252344840400> [<https://perma.cc/ED3N-TKUM>]. Thanks to Thomas Joo for bringing this article to my attention and for explaining the equity doctrine and its application in this case to me.

76. *Just and Merciful*, SARASOTA HERALD-TRIB., Apr. 5, 1980;* *see also Hurrah! Couple Wins Home Back in Rip-Off Case*, BALT. AFRO-AM., Apr. 12, 1980, at 3*; *Court Returns to Couple Home Lost in Tax Sale*, SARASOTA HERALD-TRIB., Dec. 6, 1980*; *Couple Regains Home*, READING EAGLE, Dec. 7, 1980*; *Tax Deed Speculator Misses Deadline to Appeal Ruling Against Purchase*, DAYTONA BEACH MORNING J., Jan. 8, 1981.*

77. *See Their Home Lost: For \$3.05 in Taxes*, *supra* note 54;* *see also Couple, 7 Children May Lose Home over \$3 Tax*, *supra* note 64;* *Couple Owing Tax Get Offers*, *supra* note 52;* *Find Way to Avoid Another Kenon Case*, *supra* note 56;* *Kenons Plan to Repair House Nearly Lost in Tax Controversy*, UNITED OCALA STAR-BANNER, Dec. 19, 1980, at 2A.*

English” of the consequences of nonpayment.⁷⁸ Lawmakers later amended the bill to include a requirement that bids on tax delinquent properties be no less than fifty percent of the property’s assessed value.⁷⁹ It prevented the most outrageous injustices resulting from predatory tax buying, but left the key components of tax lien investing firmly intact.

Tax lien investors not only worked to defend existing laws. In some states, they helped to write the very laws they would later profit from. In 1951 attorneys and lobbyists for professional tax buyers helped draft a bill to overhaul Illinois’s tax delinquency sales law. The 1951 Illinois Revenue Act removed many of the legal hurdles tax buyers had to complete before being granted a tax deed and, along with it, vastly narrowed the range of legal options a tax delinquent property owner could employ in preventing loss of title.⁸⁰ It also empowered the courts to issue tax titles instead of county clerks, as had previously been the case, which made these deeds incontestable in court and, for the buyers, immediately merchantable.⁸¹

The tax delinquency sales reforms unleashed a wave of predatory tax buying, often targeted at low-income, disproportionately minority homeowners, across the state. In Hopkins Park, a historically African American town in Kankakee County, white real estate speculators colluded with county tax officials to force homeowners into tax delinquency and take their property.⁸² In 1959 the county sold over \$50,000 in tax certificates, a sharp increase over previous years.⁸³ Many of these tax delinquent homeowners reported to have not received their property tax bills or been notified that a lien on their home had been sold.⁸⁴ As interest and fees on the original debt accumulated, low-income homeowners struggled to redeem their properties. Across the town, homeowners lost the deeds to their homes, which they were subsequently compelled to rent back from a tax buying syndicate. Residents charged that the county had conspired with “a group of ten white men . . . who get rich by grabbing land from Negro property owners.”⁸⁵

78. *Senate Sends to Graham Bill to Protect Homeowners*, ST. PETERSBURG TIMES, Dec. 1, 1979; * see also *Tax Deed Issue Surfaces Again*, SARASOTA HERALD-TRIB., Apr. 17, 1981.*

79. *Changes May Weaken Remodeled Tax-Deed Law*, LAKELAND LEDGER, Apr. 17, 1981.*

80. See George E. Harbert, *Tax Foreclosures and Tax Titles*, 1952 U. ILL. L.F. 209, 209–25 (1952) (discussing changes to Illinois’ tax delinquency sales resulting from the 1951 Revenue Act); see also Kahr, *supra* note 5, at 3.

81. See Paul O’Connor, *A Plague on All Your Houses*, CHICAGOAN, Sept. 1974, at 47–49, 78–81.*

82. *Charge ‘Land Grab’ in Hopkins Park; Negroes Lose*, CHI. DEFENDER, Sept. 9, 1961, at 1.*

83. *Id.**

84. *Id.**

85. *Id.**

In Chicago, attorney Allan Blair, who had helped to draft the 1951 bill, made a fortune through acquiring title to tax delinquent properties. Beginning in the early 1960s, Blair signed an agreement with the Interstate Bond Company, one of the largest tax lien investment firms in the nation and the first to extend its operations across multiple states, to buy from the firm all of its unredeemed tax certificates near the close of the two-year redemption period following a tax sale.⁸⁶ The arrangement was mutually beneficial. Whereas tax buyers like Interstate Bond Company were solely interested in profiting from interest and fees, and used the threat of property merely as a means of compelling payments, tax buyers like Blair wanted the properties, and ruthlessly exploited various provisions of the law to ensure that tax certificates ultimately became tax deeds. Under the Illinois law, tax certificate holders could pay subsequent tax bills on the property without the owner's knowledge, and apply those charges plus interest to the final bill.⁸⁷ Blair paid these additional taxes, but did not, as a matter of course, inform the property owner afterward. In many instances, tax delinquent homeowners did not discover these additional charges until the final date of redemption, when they attempted to pay their bill, only to learn that it had increased (sometimes by as much as four times the amount listed on the notice sent to property owners following a tax sale).⁸⁸ Unable to secure the additional funds, the tax delinquent property owner watched helplessly as Blair obtained the deed to their home.⁸⁹ Such was the case with William Parks, an elderly African American living on Chicago's South Side, who lost his house valued at \$15,000 to Blair in 1968 after arriving at the treasurer's office on the final date of redemption with insufficient funds.⁹⁰ Blair offered to sell the house back to Parks for \$13,000. Parks was forced to suffer the indignity of having to repurchase his own house.⁹¹

By the very nature of their enterprise, Blair and his business partner, David R. Gray, preyed on Cook County's most vulnerable homeowners.

86. On Blair and Interstate Bond Company's business arrangement, see generally William Clements & Terry Shaffer, *Tax-Sale Evictee Gets Reprive*, CHI. DAILY NEWS, Apr. 25, 1969*; see also Frank Maier, *Revival of Bill to Curb Tax-Sale Abuses Sought*, CHI. DAILY NEWS, June 20, 1969*; Alvin Nagelberg, *Buyers Zero in on Tax-Delinquent Sites*, CHI. TRIB., Jan. 21, 1973, at A1.

87. Clements & Shaffer, *supra* note 86.

88. *Id.**

89. Blair, one investigation found, acquired many deeds "by this method." See ILL. LEGISLATIVE INVESTIGATING COMM'N, DELINQUENT TAX SALES: A REPORT TO THE ILLINOIS GENERAL ASSEMBLY (1976).

90. Paul O'Connor, First and Second Drafts of Article on Allan Blair (1974) (unpublished manuscript) (on file with the Chicago Historical Society Research Center, Paul O'Connor Papers, Box 4).*

91. *Id.**

While property owners fell delinquent on their taxes for a variety of reasons—personal, financial, sometimes intentional—persons who failed to redeem within two years were often in dire financial straits, simply did not understand the law and the penalties for noncompliance, or were incapable of handling their own financial affairs. Persons like Catherine Catoor, a widow suffering from dementia who lost her house in Lake Forest, Illinois, valued at over \$85,000, to Blair in 1969.⁹² Or Robert Rosborough, a mentally unstable man who lost his South Side house to Blair that same year and was subsequently arrested for sending threatening letters to the Cook County Sheriff's Office.⁹³ Friends later said that the loss of his home drove him over the edge.⁹⁴ Or Veronica Micetich, an eighty-three-year-old immigrant from Yugoslavia who spoke little English, had depended on her husband to handle tax and financial matters, and fell delinquent on her property taxes following his death.⁹⁵ (Tax delinquency following the death of a spouse was a common occurrence.⁹⁶) In June 1968, Blair moved to evict her from her home. "The old lady was out in the back yard screaming," a neighbor described. "She was screaming, 'Save my house, save my house.'"⁹⁷

For tax buyers like Blair, these were relatively easy evictions. As often, tax buyers faced the prospect of violence from desperate homeowners with little left to lose. In July 1963, sixty-one-year-old Claire Hammond of Ferndale, Michigan (a suburb of Detroit) shot and killed the son of one of the city's largest tax buyers on her front porch after he offered her the choice of renting her own home or facing eviction.⁹⁸ The court found Hammond unfit to stand trial and committed her to a state mental institution.⁹⁹ Blair, for his part, carried a handgun when inspecting tax delinquent properties. On at least one occasion, he brandished the

92. Memorandum from Marshall Patner on Blair v. Patner Complaint (1973) (on file with the University of Illinois at Chicago, Special Collections)*; Marshall Patner, Factual Allegations and Refutations (1973) (on file with the University of Illinois at Chicago, Special Collections, Folder 5, Box 1).

93. Memorandum from Marshall Patner to Chi. Bar Ass'n Comm. on Inquiry, Re: Letter of Allan L. Blair, File No. X929-70 (Mar. 2, 1971) (on file with the University of Illinois at Chicago, Special Collections, Folder 5, Box 1).

94. Jack Schnedler & Terry Shaffer, *Housing 'Tax Buys' by Blair Hit*, CHI. DAILY NEWS, Apr. 24, 1969, at 1.

95. Hugh Hough, *How an Aged Widow Was Evicted for Back Taxes*, CHI. SUN TIMES, Apr. 24, 1969, at 1, 62.*

96. ILL. LEGISLATIVE INVESTIGATING COMM'N, *supra* note 89, at 27.

97. *Id.*

98. Peter Benjaminson, *How to Lose Your Home for \$18: The Law and the Tax Buyers*, DETROIT FREE PRESS, May 16, 1971, at 1.

99. *Id.*

weapon during a dispute. “He said he would kill . . . one of us niggers,” the nephew of Lillian Ware, an elderly African American woman whose home Blair and Gray attempted to acquire in 1973, testified in court.¹⁰⁰

To homeowners facing eviction, predatory tax buying was a cruel, vicious, indeed unconscionable, act. But to Blair and other tax buyers, it was just a business, albeit one that presented its own workplace hazards. Blair rated the tax certificates he purchased from Interstate Bond Company according to the value of the underlying property. In a deposition, he testified that he personally inspected the properties and “decided which items we were taking early, and which items we were taking after the redemption period—the ones we were hoping would be redeemed, the junk.”¹⁰¹ If a home had significant market value, Blair quickly moved to evict the former homeowners. If it was located in a depressed market, and its owner was elderly, Blair often agreed to rent the house back to its occupant, then sell it upon their death. In most cases, the former owner’s descendants were left unaware of these arrangements, only to later discover that what they thought was part of their inheritance had in fact been lost to a tax buyer.¹⁰² When Blair obtained title to Emily Sisko’s house in the South Side neighborhood of Bridgeport in 1969, he offered to allow her to live in the house rent-free for the remainder of her life if she agreed to pay current taxes and insurance. When she refused, Blair quickly moved to have her evicted and her belongings dumped in a pile by the curb.¹⁰³

In predominantly African American neighborhoods, where prospective homeowners struggled to obtain financing, Blair sold homes he had acquired via tax deeds on contract.¹⁰⁴ This, in turn, allowed Blair to defraud another class of victims, extracting a substantial down payment from a buyer and then moving to have them evicted, and pocketing the contract buyer’s investment. This is what happened to Rufus Thomas, who

100. Dolores McCahill, *Blair Brandished a Gun, Hearing is Told*, CHI. SUN TIMES, Oct. 18, 1974, at 34.

101. Clements & Shaffer, *supra* note 86.

102. Mike Royko, *Chicago: City with ‘I Will,’* CHI. DAILY NEWS, Mar. 4, 1969, at 3.

103. Daniel Egler, *74, Confused, Out on Street*, CHI. TRIB., Mar. 6, 1974, at 2.

104. The subject of historian Beryl Satter’s book *Family Properties*, contract sellers exploited African Americans’ effective exclusion from federal home financing programs and inability to obtain home mortgage loans in the decades following World War II, buying up properties in black neighborhoods and then selling them to desperate homebuyers on highly usurious and deceptive terms. Though contract sales held out the prospect of eventual ownership, few contract buyers ever obtained title to their homes and most instead lost their entire investment. The practice reaped rich rewards for white attorneys and investors, and destroyed the lives of countless numbers of victims. *See generally* BERYL SATTER, *FAMILY PROPERTIES: RACE, ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (2009).

purchased a house from Blair on contract in 1965.¹⁰⁵ Shortly thereafter, Thomas received several citations for building code violations, which, as stipulated in the contract, he was required to correct.¹⁰⁶ (Contract sellers often sold homes that were in violation of numerous building codes, which the buyer was legally obligated to repair. This, as the historian Beryl Satter notes, often led contract buyers to miss payments and allowed sellers to repossess their homes.¹⁰⁷) An unskilled laborer, Thomas drained his savings in an attempt to complete the repairs. When he failed to do so, he was hauled back into court and fined \$2000.¹⁰⁸ Prior to the hearing, Blair—acting as Thomas’s counsel—duped him into signing an affidavit stating that he was the sole owner of the property, which absolved Blair’s corporation of any liability.¹⁰⁹ Unable to pay the fine, Thomas was sentenced to six months in jail.¹¹⁰ Upon sentencing, Blair served Thomas with a notice of forfeiture on his contract and moved to repossess the home.¹¹¹ “In my dream, I’m caught in quicksand,” Thomas told a reporter. “I have my hands raised for help, but no help ever comes.”¹¹²

Attorney and activist Marshall Patner came to the aid of Thomas and other victims of Blair’s tax buying scheme. Executive director of the legal watchdog and research organization Business and Professional People for the Public Interest (BPI), Patner represented Thomas in a civil suit against Blair, where he alleged that Blair had committed fraud at the time of the sale when he failed to inform Thomas of the numerous building code violations and had taken advantage of Thomas’s “ignorance of real estate matters” in order to reap “unconscionable” profits.¹¹³ Patner succeeded in having Thomas’s fine vacated.¹¹⁴ Blair, instead, was ordered to pay a reduced fine of \$1,000.¹¹⁵ Media coverage of the case, highlighted by a series of devastating articles by *Chicago Daily News* columnist Mike

105. William Clements & Terry Shaffer, *Blair Home Buyer Faces Jail, Eviction*, CHI. DAILY NEWS, Apr. 28, 1969, at 3–4.*

106. *Id.*

107. SATTER, *supra* note 104, at 148–50.

108. Memorandum from Marshall Patner, *supra* note 92.

109. Memorandum from Marshall Patner, *supra* note 93.

110. Memorandum from Marshall Patner, *supra* note 92.

111. *Id.**

112. Hugh Hough, *Conflict Charge Faces Realty-Tax Buyer*, CHI. SUN TIMES, Apr. 28, 1969, at 3, 10.

113. William Clements, *Suit Names Blair in Building Fraud*, CHI. SUN TIMES, Apr. 29, 1969.

114. Memorandum from Marshall Patner, *supra* note 93.

115. Memorandum from Marshall Patner, *supra* note 92.

Royko on Blair's business practices¹¹⁶, forced Blair to resign his position as chairman of the Chicago Bar Association's ethics committee.¹¹⁷

Patner spent the next decade battling Blair in court and fighting to have the state's tax delinquency law declared unconstitutional. Shortly after the Thomas case, Patner represented Louis and Doretta Balthazar, a couple who had lost their home to one of Blair's "dummy" corporations, in a federal lawsuit that sought to challenge the provision in the law that allowed tax buyers "whose sole contribution is payment of existing tax liabilities" from acquiring the "surplus value" of tax delinquent properties.¹¹⁸ In *Balthazar v. Mari Ltd.*, Patner argued that the state's tax delinquency sales law deprived property owners of the right to due process under the law in violation of the Fourteenth Amendment and resulted in the taking of private property without just compensation in violation of the Fifth Amendment.¹¹⁹ The victims in the case had invested over \$16,000 in a three-flat apartment and lost it as a result of a \$500 missed tax bill.¹²⁰ "There is no parallel in law where people can be deprived of more than they owe," Patner remarked. "Instead of only selling the property and paying the tax debt and penalties—as is the case with a foreclosed mortgage—they take everything."¹²¹ The state, Patner argued, cannot sell tax delinquent properties to a private purchaser "unless there is a provision for unrestricted public bidding based on the value of the property."¹²² The U.S. District Court for Northern Illinois rejected Patner's argument and ruled that the state's law, while harsh, passed constitutional muster because the two-year redemption period provided the owner with sufficient opportunity to sell the property and recover its surplus value. In its opinion, the three-judge panel commented: "[O]ppressive statutes must be tempered by the legislature, not the court."¹²³

In the years that followed and until Blair's untimely death in an airplane accident in 1979¹²⁴, the press reported several more cases of poor,

116. Royko, *supra* note 102; Mike Royko, *Meet a Ghost: Henry Riedl*, CHI. DAILY NEWS, Apr. 30, 1969, at 3; Mike Royko, *Compassion: A Lost Virtue*, CHI. DAILY NEWS, July 1, 1969, at 3.

117. *Blair Quits Bar Ethics Probe*, CHI. SUN TIMES, Apr. 24, 1969, at 62.

118. Clements & Shaffer, *supra* note 86.

119. *Balthazar v. Mari Ltd.*, 301 F. Supp. 103, 105 (N.D. Ill. 1969), *aff'd*, 396 U.S. 114 (1969).

120. Clements & Shaffer, *supra* note 86.

121. O'Connor, *supra* note 90.*

122. Guerino J. Turano, *Equitable Relief, Collateral Attack and the Illinois Tax Deed*, 51 CHI.-KENT L. REV. 725, 734 (1974).

123. *Balthazar*, 301 F. Supp. at 106.

124. *Chi. Lawyer Killed in Wisconsin Plane Crash*, CHI. TRIB., Jan. 28, 1979, at 12.

elderly, and often minority homeowners losing their homes to Blair.¹²⁵ Each case inspired a new round of public outcry over the state's tax delinquency sales law, eventually leading to a state legislative investigation into tax sale abuse.¹²⁶ But while lawmakers in Illinois rushed to condemn Blair, they were reluctant to scrap a law that, lobbyists for the tax lien industry argued, encouraged taxpayer compliance. Defenders of the law pointed to the fact that, prior to the 1951 reforms, the state suffered from a 30 percent tax delinquency rate, which had since been reduced to one-half of one percent.¹²⁷ The "horror stories" of delinquent taxpayers who lost their homes to tax buyers, defenders argued, actually worked to ensure strict compliance. "One of the main things which helps collection now is total loss of deed," Maurice Scott of the Taxpayer's Federation of Illinois told state lawmakers.¹²⁸ The argument that harsh penalties for property tax delinquency encouraged compliance was, Patner countered, a "myth perpetuated by the tax purchasers themselves who, of course, are often awarded a piece of property outright if a delinquent taxpayer fails to redeem."¹²⁹ The Illinois-Legislative Investigating Commission similarly found "no relation between the threat of total forfeiture and the rate of tax collection[.]"¹³⁰ But state lawmakers, caught between local governments' fiscal needs and a burgeoning taxpayer revolt sweeping the nation, were reluctant to pass reforms that might discourage taxpayer compliance or, more ominously, participation in local tax delinquency sales, which had increasingly become a vital source of annual revenue for local governments. Ultimately, the state legislature chose not to adopt any of the recommendations of the legislative committee, and the law remained intact.

Rather than curb abusive practices, many states have, in recent decades, enacted reforms aimed at incentivized tax buying. In 1995 the

125. Mike Royko, *Blair 'Disease' Is Still With Us*, CHI. DAILY NEWS, June 6, 1974, at 3; *Complaint Filed against Tax Buyer and His Lawyer*, CHI. TRIB., June 13, 1974, at 3; Edith Herman, *Blair Problems Increase*, CHI. TRIB., Oct. 18, 1974, at B7; Edith Herman, *Tax Buyer is Censured by State Unit*, CHI. TRIB., Nov. 7, 1974, at C15; Edward McManus, *Order Tax Buyer's License Revoked*, CHI. TRIB., Dec. 19, 1974, at A1; Basil Talbott Jr., *Tax Dispute May Cost Man His Home*, CHI. SUN TIMES, May 1, 1976, at 4, 16; *Tax-Delinquent Buyers, Firms are Sued*, CHI. TRIB., Feb. 17, 1978, at 16.

126. Jack Fuller, *2 Urge Reforms in State Tax Collection Laws*, CHI. TRIB., June 17, 1974, at 5; ILL. LEGISLATIVE INVESTIGATING COMM'N, *supra* note 89, at v-vii.

127. ILL. LEGISLATIVE INVESTIGATING COMM'N, *supra* note 89, at 38.

128. *Id.* at 44.

129. *Id.* at 29.

130. ILL. LEGISLATIVE INVESTIGATING COMM'N, ANNUAL REPORT OF 1976: A REPORT TO THE ILLINOIS GENERAL ASSEMBLY 24 (1977).

state of Georgia enacted reforms to its tax delinquency laws that increased the penalty on delinquent property taxes from ten to twenty percent at the time of a tax sale, allowed tax buyers to charge an additional twenty percent interest after one year and another twenty percent once a tax buyer initiates legal proceedings to obtain title to the property. Within 13 months of purchasing a tax lien, buyers in Georgia netted a sixty percent profit on investment.¹³¹ In 2001 Washington, DC, passed a reform requiring tax buyers to file foreclosure cases. Previously, tax foreclosures were handled by the District's tax office. This cost-cutting measure, in turn, authorized tax buyers to add an unlimited amount of legal fees and court costs to a homeowner's cost of redemption.¹³² Two years later, the Maryland state legislature removed a \$400 cap on legal fees and permitted tax buyers to charge "reasonable fees," subject to court approval.¹³³

By increasing caps on interest rates and allowing tax lien holders to saddle delinquent property owners with legal fees and other charges, such reforms have vastly increased the profitability of tax lien investing and the probability of property acquisition. Georgia's tax delinquency reforms, for example, encouraged tax lien investors to avoid contacting a property owner and initiating repayments, since the profitability of their investment increased dramatically the longer their wait.¹³⁴ Thanks to the reforms enacted by the District of Columbia and Maryland, tax buyers seeking to acquire properties could, by charging excessive legal fees, virtually ensure that a financially distressed homeowner would be unable to redeem.¹³⁵

Whenever states and localities enact reforms favorable to the tax lien industry, vulnerable homeowners suffer. For Atlanta's Charles W. Spiller, a fifty-nine-year-old disabled diabetic, a \$1200 missed property tax payment quickly became, following the sale of the tax lien in 1999, a \$28,000 debt.¹³⁶ Unable to repay, Spiller watched as the house he had built himself on one leg was sold on the courthouse steps in December 1999 to an

131. Richard Whitt, *Investors Can Reap 60 Percent Profit on Tax Liens: Predatory 'A Very Kind Word' for State Law*, ATLANTA J.-CONST., Apr. 1, 2002, at 1D.

132. Michael Sallah et al., *Left with Nothing*, WASH. POST (Sept. 8, 2013), <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing> [<https://perma.cc/W6FV-V2FB>].

133. Fred Schulte & June Arney, *Small Unpaid Bills Put Residents at Risk*, BALT. SUN (Mar. 25, 2007), http://articles.baltimoresun.com/2007-03-25/business/bal-taxsale-small-032507_1_fees-from-private-debt-ground-rent-unpaid-bills-put-residents [<https://perma.cc/N345-T3GW>].

134. Whitt, *supra* note 131.

135. Katherine Driessen, *D.C.'s Tax-Sale System Lacks Notice to Homeowners, Attorneys Say*, WASH. POST (May 28, 2012), https://www.washingtonpost.com/local/dcs-tax-sale-system-lacks-notice-to-homeowners-attorneys-say/2012/05/28/gJQAr4cRxU_story.html [<https://perma.cc/66QV-V2ER>].

136. Whitt, *supra* note 131.

investment company for \$46,000.¹³⁷ In 1999, sixty-six-year-old Dorothy Stewart missed a \$1500 property tax bill on her Atlanta home. Later that year, Fulton County auctioned the tax lien to Vesta Holdings, one of the nation's largest tax lien investors. When Stewart failed to redeem, Vesta acquired the tax deed, which it subsequently sold to another investor for \$31,895 plus \$1446 in back taxes.¹³⁸

In Baltimore, even an unpaid water bill left homeowners vulnerable to unscrupulous investors. Maryland is one of the few states that allow local jurisdictions to include charges other than taxes in lien sales.¹³⁹ This, combined with the lifting of caps on legal fees, has resulted in hundreds of Baltimore homeowners losing their homes over miniscule debts. Between 2004 and 2007, the *Baltimore Sun* found, at least 400 homes in the city were lost as a result of debts other than property taxes. Roughly one-half of those foreclosures, it found, stemmed from unpaid bills of \$500 or less.¹⁴⁰ In 2006, nearly one in three of the approximately 8000 liens the city offered for sale were for non-tax debts, and of those, roughly one in ten were for \$500 or less.¹⁴¹ In 2010, a tax lien investor gained title to Vicki Valentine's West Baltimore home after she had failed to pay a \$362 water bill. In the months after the sale of the lien, the original bill jumped to over \$3600. Unemployed, caring for her elderly parents, and lacking any savings, Valentine was unable to settle her mounting debt. In February 2010, the Florida-based tax lien investment firm Sunrise Atlantic took possession of her home.¹⁴²

In Washington, DC, reforms to the city's tax sale foreclosure process coincided with rising demand for urban real estate. As real estate values escalated, so too did property assessments. Low-income homeowners in gentrifying neighborhoods struggled to meet annual property tax bills. As tax delinquency rates rose, tax buyers invested heavily in tax delinquent properties in many of the city's historically African American neighborhoods. In this marketplace, investors came in search of property, not to collect interest. From 2001 through 2013, the annual number of tax sale foreclosures in the District of Columbia skyrocketed. From 2005 to

137. *Id.*

138. *Id.*

139. Schulte & Arney, *supra* note 133.

140. *Id.*

141. *Id.*

142. Fred Schulte et al., *The Other Foreclosure Menace: Mortgage Paid Off, Woman Loses Home—Over a Small Water Bill*, CTR. FOR PUB. INTEGRITY (May 18, 2010), <http://www.publicintegrity.org/2010/05/18/7082/other-foreclosure-menace> [<https://perma.cc/245V-D997>].

2012 D.C. tax buyers foreclosed on nearly 200 houses.¹⁴³ By 2013 alone, the *Post* found, tax buyers were poised to foreclose on over 1200 additional properties, “many” of which were “owned free and clear by families for generations.”¹⁴⁴ The vast majority of these properties were located in heavily minority neighborhoods. A 2013 investigation by the *Washington Post* found that seventy-two percent of the pending tax foreclosures in the city were in neighborhoods where less than twenty percent of the population was white.¹⁴⁵ Between 2005 and 2008, tax buyers purchased liens on thirty-three properties along a single street in the historically black neighborhood of Deanwood.¹⁴⁶ Tax buyers quickly resold properties acquired via tax foreclosure for massive profits. The *Post* investigation found examples of houses with liens of less than \$300 resold for nearly \$130,000.¹⁴⁷ “This is highway robbery,” an outraged homeowner whose tax bill quadrupled as a result of legal fees commented.¹⁴⁸

Tax buyers did not simply rob homeowners of their assets. They also robbed victims of their dignity. Take the case of Bennie Coleman. A decorated Marine Corps veteran of the Vietnam War and D.C. resident, Coleman adorned his duplex house with medals and commendations from his military service, pictures of his deceased wife, and other mementos from his life. By the early 2000s, the elderly African American had begun to suffer from dementia, and in 2006 forgot to pay a \$134 property tax bill.¹⁴⁹ The city sold the lien to a company owned by Steve Berman.¹⁵⁰ During these years, Berman operated a bid-rigging scheme that allowed him to dominate the city’s annual tax sales.¹⁵¹ Upon acquiring the lien to Coleman’s home, Berman demanded \$4999 in legal fees and expenses.¹⁵²

143. Sallah et al., *supra* note 132.

144. *Id.*

145. *Id.*

146. *Id.*

147. Michael Sallah et al., *Bidder With a ‘Checkered Past’*, WASH. POST (Sept. 9, 2013), <http://www.washingtonpost.com/sf/investigative/2013/09/09/bidder-with-a-checkered-past> [<https://perma.cc/96Y6-4CRH>].

148. Sallah et al., *supra* note 132.

149. *Id.*

150. *Id.*

151. Between 2005 and 2007, Berman’s various corporate entities won over fifty percent of all liens sold in the District. One estimate pegged the total value of these liens at over \$540 million. Debbie Cenziper et al., *Less Than 1 in 1,000*, WASH. POST (Sept. 9, 2013), <http://www.washingtonpost.com/sf/investigative/2013/09/09/suspicious-bidding> [<https://perma.cc/VB64-Y7FP>]. In 2010, Berman pled guilty to one count of felony conspiracy for a similar bid-rigging scheme he conducted in Maryland. See generally Fred Schulte, *Baltimore Lawyer Admits to Rigging Tax Sales*, BALT. SUN (Mar. 4, 2011), http://articles.baltimoresun.com/2011-03-04/news/bs-md-tax-lien-auctions-20110228_1_tax-liens-property-tax-debts-tax-sales [<https://perma.cc/W5VZ-LYA8>].

152. Sallah et al., *supra* note 132.

A confused Coleman struggled to comprehend his predicament. Berman wasted no time in initiating tax foreclosure proceedings and evicting Coleman. U.S. Marshalls arrived at Coleman's house and ordered him to vacate the property. Seated in a folding chair across the street, Coleman watched as movers dumped his belongings on the curb. For months afterward, Coleman slept on the front porch of his former home. Neighbors brought over blankets and plates of food. On several occasions, one neighbor reported seeing Coleman flag down police squad cars, telling officers he was locked out of his home and asking for their assistance.¹⁵³

Coleman was far from the only elderly D.C. homeowner to suffer the indignity of being evicted from their home over an unpaid tax bill in recent years. The 2013 *Post* investigation told of properties acquired by tax buyers while the owners lay dying in Hospice care¹⁵⁴, in a nursing home¹⁵⁵, or suffering from Alzheimer's.¹⁵⁶ The lucrative rewards D.C. tax liens offered turned neighbors into predators. Such was the case with Theresa Bollech, whose house in Northwest D.C. fell into tax delinquency when she unwittingly failed to pay a special assessment tax. Bollech claimed she never received a notice that a lien on her home had been sold.¹⁵⁷ (This was not uncommon, as the District's poor record-keeping practices resulted in large numbers of property owners not receiving notices as well as numerous instances of liens being placed on properties by mistake.¹⁵⁸) A neighbor bought the lien to Bollech's home and was weeks away from initiating foreclosure proceedings when Bollech uncovered the plot. "There's no way to describe what it feels like to think you're going to lose your home," Bollech said afterward. "How could they do this to us?"¹⁵⁹ One might add: how could a government not only sanction but design and administer such a scheme?

In recent years, state and local governments have been forced to address the predatory practices that resulted from tax delinquency sales laws and procedures. In 2006 Rhode Island Governor Donald L. Carcieri signed the Madeline Walker Act, named after the eighty-one-year-old woman who lost her home to a tax buyer after failing to pay a \$150 sewer

153. *Id.*

154. *Id.*

155. Debbie Cenziper et al., *She Lost Her Home: Mistakes Put Homes in Peril*, WASH. POST (Sept. 10, 2013), <http://www.washingtonpost.com/sf/investigative/2013/09/10/mistakes-put-homes-in-peril> [<https://perma.cc/MJT8-6F4X>].

156. Sallah et al., *supra* note 132.

157. Driessen, *supra* note 135.

158. Cenziper et al., *supra* note 155.

159. Driessen, *supra* note 135.

bill. The Act required state authorities to notify homeowners who have fallen behind on their taxes before a lien is sold and offer assistance in setting up a repayment plan.¹⁶⁰ After the Center for Public Integrity reported on Vicki Valentine, who lost her family's West Baltimore home over a \$362 unpaid water bill, Baltimore's city council passed a resolution calling on state lawmakers to restrict the sale of liens for debts less than \$750.¹⁶¹ In January 2013, State Senator James Brochin introduced a bill "in the Maryland General Assembly [that] would have prohibited tax collections in the City of Baltimore and suburban Baltimore County from including residential property in tax sales when the lien 'arises solely from any unpaid water, sewer and other sanitary systems charges' and is less than \$750 in total."¹⁶² In its Fiscal and Policy Note on the bill, the Department of Legislative Services warned that the bill threatened to "decrease [revenues] by a significant amount" and increase "expenditures for debt service . . . by a significant amount." The bill never made it out of committee.¹⁶³

In Washington, DC, the *Washington Post's* September 2013 investigative series on tax sale abuse generated an unprecedented level of public outrage. The NAACP's Legal Defense Fund called on Gray and the D.C. City Council to enact "systemic reforms" to its tax lien sales system, noting that "people of color, and particularly African Americans, have suffered the most" because of this "unfair and predatory practice."¹⁶⁴ A group of twelve U.S. Senators called on the newly created Consumer Financial Protection Bureau to investigate tax lien sale abuse. "While we understand that some state and local governments are struggling in the current economic climate," the senators wrote in a letter to the Bureau, "it is never acceptable to make up such a shortfall on the backs of some of our

160. Kelsey Gee, *Tax Liens Trigger More Foreclosures; Weak Economy Cited as Local Property-Tax Increases—Needed to Balance Budgets—Strain Homeowners' Ability to Pay*, WALL ST. J. (July 13, 2012), <https://www.wsj.com/articles/SB10001424052702303644004577523020991281452> [<https://perma.cc/U3BR-Q8L9>].

161. Fred Schulte, *Follow-Up: Baltimore Lawmakers Seek Overhaul of Tax Lien Sale*, CTR. FOR PUB. INTEGRITY (July 7, 2010), <http://www.publicintegrity.org/2010/07/07/7092/follow-baltimore-lawmakers-seek-overhaul-tax-lien-sale> [<https://perma.cc/5FH5-G8C5>].

162. Fred Schulte, *Maryland Bill Would Protect Homeowners from Investors Buying Debt*, CTR. FOR PUB. INTEGRITY (Jan. 18, 2013), <http://www.publicintegrity.org/2013/01/18/12051/impact-maryland-bill-would-protect-homeowners-investors-buying-debt> [<https://perma.cc/7UJ5-SRKL>].

163. DEP'T OF LEGISLATIVE SERVS., FISCAL AND POLICY NOTE, S.B. 145, 2013 Sess. (Md. 2013).

164. Press Release, NAACP Legal Defense Fund, LDF Urges D.C. Mayor and Council to Change D.C.'s Property Tax Lien Sales System (Sept. 25, 2013), <http://www.naacpldf.org/press-release/ldf-urges-dc-mayor-and-council-change-dc-s-property-tax-lien-sales-system> [<https://perma.cc/6YDW-HDR3>].

most vulnerable citizens.”¹⁶⁵ In the wake of the *Post*’s investigation, city officials cancelled all liens sold at that summer’s tax sale¹⁶⁶ and Mayor Vincent Gray hastily proposed a series of reforms. These included a \$2200 cap on legal fees, a ban on sales of liens of less than \$2500 on primary residences, and the appointment of a new property tax ombudsman.¹⁶⁷ The D.C. Council held an emergency session and unanimously passed legislation ordering the review of all tax foreclosures resulting from liens of less than \$2500.¹⁶⁸ Later that month, attorneys representing Bennie Coleman filed a class-action lawsuit in federal court seeking compensation for Coleman and other victims who had lost their homes to tax buyers and challenging the constitutionality of tax lien sales.¹⁶⁹

As a chilling example of tax buyers’ greed and cruel indifference to their victims, Coleman’s case brings the most unsavory aspects of the tax lien industry and unconscionable outcomes of tax sale laws into focus. The image of a confused elderly man sleeping on the porch of a home he once owned but had unwittingly lost to a tax buyer demonstrates how this state-sanctioned form of predatory investing can rob society’s most vulnerable citizens of their dignity in the course of expropriating their property. Tax sale reformers have sought to use extreme examples of predatory tax buying to shock the public’s conscience, sway the courts, and spark legislative reform.

It has been an uphill battle. Defenders of tax sales laws have consistently argued that cases such as Coleman’s (like the many others that came before it) are the rare exception, that existing laws afford homeowners sufficient protections from property loss, and that tax sales play a vital role in ensuring taxpayer compliance and generating

165. Debbie Cenziper & Michael Sallah, *Citing Abuses, Federal Lawmakers Call for Examination of Tax-Lien Programs Nationwide*, WASH. POST (Sept. 19, 2013), http://www.washingtonpost.com/investigations/citing-abuses-federal-lawmakers-call-for-examination-of-tax-lien-programs-nationwide/2013/09/19/c4f74b76-212b-11e3-b73c-aab60bf735d0_story.html [https://perma.cc/5RLY-67Z4].

166. Michael Sallah et al., *D.C. Council Orders Review of Cases where People Lost Homes over Small Tax Debts*, WASH. POST (Sept. 17, 2013), http://www.washingtonpost.com/local/dc-council-orders-review-of-cases-where-people-lost-homes-over-small-tax-debts/2013/09/17/2719a5fc-1fd2-11e3-b7d1-7153ad47b549_story.html [https://perma.cc/WH4B-2SEQ].

167. Mike DeBonis et al., *Mayor Vincent Gray Proposes Broad Reforms to D.C. Tax Lien Sales*, WASH. POST (Sept. 13, 2013), http://www.washingtonpost.com/local/dc-politics/2013/09/13/a0933688-1cc0-11e3-8685-5021e0c41964_story.html [https://perma.cc/9Y3B-KNNJ].

168. Sallah et al., *supra* note 166.

169. Michael Sallah et al., *Lawsuit Challenges the District’s Tax-Lien Program, Seeks Compensation for Families*, WASH. POST (Sept. 24, 2013), http://www.washingtonpost.com/investigations/lawsuit-challenges-the-districts-tax-lien-program-seeks-compensation-for-families/2013/09/24/5aab87b4-252c-11e3-b3e9-d97fb087acd6_story.html [https://perma.cc/2E5Y-Y8G6].

government revenue. Lobbyists for the tax lien industry stress the revenue tax sales generate (which, they argue, is dependent on laws that incentivize tax lien investing), and raise the specter of widespread tax delinquency should lawmakers eliminate sales of tax liens to private investors, cut interest rates, or relax other penalties. The National Tax Lien Association, the industry's leading professional organization, closely monitors and quickly launches intensive counterattacks against negative reports and investigations of tax buying. In lobbying elected officials, the NTLA stresses the community benefits of tax buying.¹⁷⁰ Perhaps most importantly, it has worked hard to forge close ties with local governments. At the 2016 annual meeting of the National Tax Lien Association, held in Fort Lauderdale, Florida, public officials representing eight county and municipal governments spoke at the two-day conference, including one mayor, one city councilman, and two revenue commissioners.¹⁷¹

While instances of homeowners losing their homes over a paltry tax bill are the exception, they are not as rare as the tax lien industry claims. And while most professional tax buyers profess no desire to kick people out of their homes, they rely on that very threat to profit on their investments. Tax liens derive their value from the threat of foreclosure and the fear it instills in desperate homeowners. Even when tax delinquent homeowners are able to redeem their property, they often emerge from the experience traumatized. Throughout the redemption process, owners are forced to navigate a deliberately opaque bureaucratic maze where they are subject to intimidation and shaming from private investors and public officials alike. Confused, scared, and ashamed, they are less likely to challenge the tax buyers' authority or question the metastasizing fees and charges they demand. While harsh penalties for tax delinquency are justified as an effective enforcement mechanism, the vast majority of owner-occupied properties that fall into delinquency are the result of a mistake or oversight by the taxpayer or due to severe financial distress, not because an owner actively seeks to avoid payment yet retain the property.

It is unconscionable, but perhaps not surprising, that many states allow private investors to take someone else's property and all of its equity over a debt that often originates from an accident or oversight. By situating private investors as a key source of revenue and helping to create a for-profit industry out of one of the most basic duties of government (tax

170. *Community Benefits*, NAT'L TAX LIEN ASS'N, <https://ntlainfo.site-ym.com/?page=CommunityBenefits> [https://perma.cc/XS5L-3JNL].

171. *2016 Annual Conference and Meeting*, NAT'L TAX LIEN ASS'N, <http://www.ntla.org/events/EventDetails.aspx?id=697958> [https://perma.cc/TY2S-7W6P].



enforcement and collection), tax lien sales embody core features of neoliberal governance in modern America, while serving as a stark reminder of the entwined nature of property and dignity dispossession. Indeed, the forms of infantilization described in this essay are not unique to tax buying, but rather a core feature of predatory financial practices, in general. These industries all utilize deliberately complex, mystifying, but legally binding contracts to not only entrap victims, but to defend their practices before judges and the public. When challenged by lawmakers, subjected to unflattering media attention, or threatened with a class-action lawsuit, practitioners or spokespersons for predatory industries invariably point out that the victims had signed a contract, and as such should have done their due diligence before agreeing to its terms. But the terms of these contracts, like the laws regarding tax delinquency, are designed to reduce the victim to the position of a child, incapable of fully comprehending the finer details and dependent on the lender or lien holder for explanation and guidance. As the victim becomes increasingly aware of the asymmetry of knowledge and information between themselves and the other party, they become less likely to exercise their autonomy or seek outside assistance. Negotiations instead become supplications, as the debt collector or lien holder assumes the position of the adult admonishing a child for their carelessness, with the courts and the general public often nodding in agreement. Tax lien investing differs in one important respect in that local governments play a central role in operating these enterprises. In recent decades, many of the most flagrant abuses of tax delinquency laws have been the result of government deregulation and privatization, as thus fit the characteristics of many “neoliberal” governances. But as the long history of tax lien investing also suggests, some of the reforms associated with neoliberalism might not be that “neo” at all. Indeed, local governments have long had a material interest in facilitating tax lien investing and, as a result, have condoned predatory behavior.

Tax delinquent properties, as the cases cited in this article underscore, are more than just real estate. They are the place where families formed, where parents raised children, where memories assumed a tangible form. For an unwitting delinquent taxpayer, the emotional value of a home far exceeds its value on the open market. For the tax lien investor, the intangible value of a home to its owners can serve as a powerful tool for enforcing compliance and extracting profit. For the homeowner, it can be a traumatic experience, regardless of the ultimate outcome. Indeed, as the cases cited in this essay show, victims of tax lien investors must sacrifice

their dignity in order to achieve a favorable result in court, by presenting themselves as ignorant, infantile, pitiful, and deserving of sympathy.

This last point underscores the problem with models of reparations that do not also include dignity restoration. By focusing on the outcome rather than the process that resulted in the loss of property, reparations models tend to not only underestimate the value of the property to its victim, but also discount the total cost resulting from the experience of dispossession. The cases described in this essay also suggest that public repudiation and ostracism of the perpetrators should form a part of the process of dignity restoration. In order for victims of predatory tax buyers to feel fully restored, government and the courts need to clearly and unequivocally reject and take measures to undermine the culture of economic predation that allowed such practices to flourish and made its victims feel shame and embarrassment rather than outrage.

