Unconscionable: Tax Delinquency Sales as a Form of Dignity Taking

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SIR: Your readers might be interested in knowing that there is a practice and custom in the South of depriving Negroes of their property through subterfuge. 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.

This method is almost completely within the letter of the law although it violates the spirit of the law. Statutes differ in the several states. The Negro owners seldom consult a lawyer until after the period of redemption has passed after which they are without legal redress.

Thurgood Marshall
Special Counsel, NAACP
New York City

Future U.S. Supreme Court Justice Thurgood Marshall penned this letter to the editors of the New Republic in 1940. But it could have just as easily been written today, in reference to the plight of elderly and low-income homeowners in gentrifying urban neighborhoods, or that of rural landowners in areas experiencing intensive land speculation and development. That’s because, in spite of numerous attempts to abolish or drastically restrict the practice, laws governing the sale of tax liens by local governments to private investors have proven remarkably resilient. Backed by public officials who have come to rely on the revenue they generate, and championed by lobbyists for the multi-million dollar tax lien industry, tax sales continue to serve as an instrument of property tax enforcement and local revenue collection, and remain highly

vulnerable to manipulation and abuse. Indeed, the penalties tax delinquency laws impose on property owners have only become harsher, and instances of bureaucratic malfeasance more frequent, in the decades since Marshall sought to alert readers to the wholesale—and wholly legal—theft of black-owned land that was being carried out in courthouses and county administrative offices across the Jim Crow South.

In previous articles, I have chronicled the growth of tax lien investing in twentieth-century American cities\(^2\), the use of tax sales as a mechanism of land expropriation and African American removal in the booming real estate markets of the coastal South\(^3\), and the proliferation of various investment schemes and public-private partnerships involving property tax liens in the years leading up to and following the housing market crash and foreclosure crisis in 2008.\(^4\) Tax sale abuse, I argue, has inflicted a significant, if underappreciated, economic toll on black America. It played an instrumental role in 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 1997\(^5\)), prevented African American communities from becoming partners in and beneficiaries


of real estate development in some of America’s most vibrant markets, contributed to the
deterioration of inner-city neighborhoods in some of the nation’s poorest cities, and exacerbated
the racial wealth gap.6

In this essay, I call attention to the traumatic experiences of persons who have lost their
home to tax delinquency so as to provide a “fully loaded cost accounting” of the results of tax
delinquency sales.7 Employing Bernadette Atuahene’s concept of “dignity takings,” I assess the
total impact of predatory tax buying—a predictable outcome of tax delinquency laws that allow
for the sale of tax liens to private investors—on individual victims and entire communities. Tax
buyers, I argue, not only strip hard-pressed, often elderly or disabled, homeowners of their
savings and, should they fail to pay, their homes. They also rob them of their dignity.8 The
process of taking of other people’s property and their dignity, I argue, are inextricably bound and
mutually constitutive in making and sustaining this lucrative enterprise. Historically, predatory
tax buyers have exploited delinquent taxpayers’ shame and embarrassment to entrap them in
crippling debt repayment plans, keep them unaware of their legal rights, and keep themselves
and their business practices shielded from public scrutiny. Even when the unscrupulous tactics
and profiteering strategies of tax buyers come to light, the public’s moral outrage toward tax

6 According to a 2015 study by the policy think tank Demos, the median white household has nearly 16
times more wealth than the median black household in America. See Laura Sullivan et al., “The Racial
RacialWealthGap_1.pdf

7 Nell Irvin Painter, “Soul Murder and Slavery,” in Southern History across the Color Line (Chapel Hill:

8 See Bernadette Atuahene, “Dignity Takings and Dignity Restoration: Creating a New Theoretical
Framework for Understanding Involuntary Property Loss and the Remedies Required,” unpublished
manuscript (in author’s possession); Bernadette Atuahene, We Want What's Ours: Learning from South
buyers is invariably counterbalanced by their support of tax sales as a mechanism of taxpayer compliance and revenue generation. This, in turn, has stymied attempts to curb tax sale abuses and left the profit-making machinery of tax lien investing untouched.

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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. 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. Other states require local governments to take eventual ownership of tax delinquent properties. 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.

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At these tax sales, bidders compete to pay someone else’s tax debt; in return, they are entitled to charge interest on that debt at rates ranging from 18 percent to as high as 50 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 6 months to 2 years), or risk losing the property and all of its equity to the tax lien certificate holder (or “tax buyer”). Most “tax buyers” treat tax lien 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...

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12 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 Rao, Other Foreclosure Menace, 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 (Chicago: University of Chicago Law School, Nov. 1948), 25-26. From the mid-1960s through the mid-1990s, roughly 95 percent of the tax lien certificates sold at Cook County, Illinois’s annual tax sale went to bidders who demanded the maximum 18 percent interest rate. See “Supreme Court says Treasurer may take steps ‘reasonably necessary’ to promote competition,” Cook County Treasurer’s Office, http://www.coocountytreasurer.com/newsarticle.aspx?articleid=195 (accessed 23 Sept. 2016). 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 Snare 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/ (accessed 23 Sept. 2016).

13 Rao, Other Foreclosure Menace, 17.
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.\(^\text{14}\) 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)\(^\text{15}\) 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,\(^\text{16}\) which became strictly a county or municipal tax in support of local services, especially public schools.\(^\text{17}\) Simultaneously, the property tax itself became, in fact if not in name, a tax on real estate, as collectors steadily


\(^\text{15}\) See Rao, *Other Foreclosure Crisis*, 5.


\(^\text{17}\) By the 1920s, U.S. cities with populations over 30,000 generated over 90 percent of its revenue from property taxes. See David T. Beito, *Taxpayers in Revolt: Tax Resistance during the Great Depression* (Chapel Hill: University of North Carolina Press, 1989), 1-2.
abandoned onerous and often futile attempts to locate and assess personal property, which could be easily concealed, in favor of that one asset no owner could hope to hide: buildings and land.\textsuperscript{18}

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.\textsuperscript{19} Conversely, taxpayers had few legal options for contesting a property tax bill.\textsuperscript{20} 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.\textsuperscript{21}

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

\textit{Ibid.}, 3-4.


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.”

To the generation of black Southerners who came of age under Jim Crow, the right 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. Indeed, it was not uncommon to find African Americans displaying their property tax receipts when making claims on the state.

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,

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24 Ibid., 281.

25 Ibid., 208.
disproportionately overburdening black property owners. 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 owners, fail to record payments, or fail to notify persons that a lien had been placed on their property and had been auctioned to a third party. 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, embarked on a nationwide speaking tour for the NAACP, where she publicly named the persons who had abducted and shot her husband. While in exile, Toombs County officials placed a lien on her

26 Kahr, “Power to Destroy.”


family’s farm, claiming nonpayment of property taxes for the previous three years, and announced plans to sell it at a tax auction.\textsuperscript{31} Mallard produced tax receipts for the years in question, which attorneys for the NAACP delivered to county officials, halting its sale.\textsuperscript{32} A white mob subsequently descended on the Mallard farm, looted the home, stole the livestock, and burned the house and barn to the ground.\textsuperscript{33}

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 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.\textsuperscript{34}

More often, whites in the South manipulated tax assessments or forced people into tax delinquency in order to steal their land. As Thurgood Marshall recognized in 1940, the laws


\textsuperscript{32} “Georgia Lynch Victim's Wife May Move to Coast.”


\textsuperscript{34} \textit{Bland v. McHann}, 463 F.2d 21 (1972). See also Kahrl, “Power to Destroy.”
governing property tax delinquency afforded rapacious land speculators and unscrupulous local officials ample opportunities to take valuable property from vulnerable landowners. 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. 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. 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.” 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.

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

35 Marshall, “Cold, Cold Ground.”


37 Ibid.


Sea Islands skyrocketed, as developers moved to replicate the resort’s success and land speculators looked to capitalize on the demand for coastal property.\textsuperscript{40} 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.\textsuperscript{41} 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.\textsuperscript{42} Today, dozens of vacation homes, each worth upwards of $500,000\textsuperscript{43}, fill the island Jenkins formerly owned. Jenkins, meanwhile, was forced to move into a trailer home.

\begin{footnotes}
\item[43] Real estate values on Horse Island, SC, found using trulia.com and author’s observations of “for sale” signs (17 April 2014).
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with one of her daughters, where she died penniless at the age of 90 in 1997. 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 deliberately failed to pay the taxes, concealed the tax notices, and ultimately purchased the property cheaply when it went up for auction.”

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. 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

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46 Thomas, “Blacks on the South Carolina Sea Islands,” 152.
sympathetic to their plight, contemptuous of the tax buying profession, and eager to find any legal rationale for voiding a deed. 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.”

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, infantalization did not merely accompany property loss; it often helped to initiate and facilitate that loss.

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

47 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,” Property Tax Newsletter, June 1971, p. 5-6.

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. 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”—and inscrutable. “I know him, but I don’t know him,” a fellow Callahan resident said of Barrow.

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. 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 the money they had earned from years of labor in tobacco fields.\textsuperscript{54} The husband Fedo suffered from mental illness and periodically checked himself into the state mental hospital.\textsuperscript{55} In 1975, he neglected to pay a $3.05 special assessment tax to the county.\textsuperscript{56} When the county notified the Kenons by mail of the outstanding tax payment, an embarrassed Fedo hid the letter from his wife.\textsuperscript{57} 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.\textsuperscript{58} When they failed to redeem before the deadline, Barrow paid $102 for the tax deed to the Kenon’s home.\textsuperscript{59}

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.\textsuperscript{60}

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

\begin{itemize}
\item \textsuperscript{56} \textit{Ibid.}
\item \textsuperscript{58} “Court Urged to Apply Reform Law,” \textit{Daytona Beach News-Journal}, Nov. 26, 1980.
\item \textsuperscript{59} \textit{Ibid.}
\item \textsuperscript{60} \textit{Ibid.}
\end{itemize}
ice box?” he brusquely informed the bewildered couple. 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. “If I didn’t, he said, ‘I’ll have the law put you out.’” The price for cooperating: $10,000.

After Barrow left, Hattie Mae said she “cried some, and I prayed some.” She then reached out to North Florida Legal Services for assistance. 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. Rallies and benefits for the Kenons were held across the state of Florida. 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.

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. “The man who buys a tax deed is the backbone of

61 “Couple Owing Tax Get Offers.”
62 Ibid.
63 Ibid.
64 Ibid.
66 “Their Home Lost: For $3.05 in Taxes.”
this country.”\textsuperscript{71} 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.”\textsuperscript{72}

As the Kenons’ attorney built a case for voiding the tax deed, the state comptroller, bowing the public pressure, announced plans to hold disciplinary hearings with the goal of revoking his mortgage broker’s license.\textsuperscript{73} 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.”\textsuperscript{74}

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.”\textsuperscript{75} For victims of a grave injustice that had been carried out in strict accordance with the law, the “doctrine of unconscionability” stood as one of the few plausible legal remedies. Embodied in Section 2-302.

\textsuperscript{71} Ibid.

\textsuperscript{72} “Their Home Lost: For $3.05 in Taxes.”


\textsuperscript{75} “Couple Who Lost Home for $3.05 Asks Judge To Return Property,” \textit{St. Petersburg Evening Independent}, March 20, 1980, p. 3A.
of the Uniform Commercial Code\textsuperscript{76}, this doctrine offered courts the opportunity to invalidate contracts deemed to be fundamentally unfair. Most commonly applied to contracts in which one party was subject to gross deception or outright oppression\textsuperscript{77}, the doctrine of unconscionability had never before been successfully used to invalidate an otherwise legally sound tax deed. Its conceptual capaciousness only matched by its legal imprecision, the doctrine’s applicability depended in large measure on the whims of the judge hearing a case. In this case, it worked.

Citing the doctrine, Judge Ben Willis voided Barrow’s tax deed and ordered the Kenons to repay Barrow $102 plus 12\% interest. A court of appeals affirmed the ruling.\textsuperscript{78}

The doctrine of unconscionability, 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

\textsuperscript{76} UCC § 2-302 states: (1) If the court as a matter of law finds the \textit{contractor} any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (2) When it is claimed or appears to the court that the \textit{contractor} any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. See UCC § 2-302, Unconscionable Contract or Clause, Cornell University Law School, Legal Information Institute, \url{https://www.law.cornell.edu/ucc/2/2-302} (accessed 30 Sept. 2016).


education, and the house’s “ramshackle,” dilapidated state.\textsuperscript{79} Aside from its questionable applicability to tax deed cases, the unconscionability doctrine virtually necessitated victims to subject themselves to public humiliation. As the legal scholar Audrey G. McFarlane points out, the “doctrine’s narrow definition of inequality of bargaining power … requires subjects of exploitation to prove they were dumb and weak … in order to fit within the doctrine’s guidance to judges about when to scrutinize a transaction more closely[.]”\textsuperscript{80} 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 English” of the consequences of nonpayment.\textsuperscript{81} Lawmakers later amended the bill to include a requirement that bids on tax delinquent properties be no less than 50 percent of the property’s assessed value.\textsuperscript{82} It prevented the most outrageous injustices resulting from predatory tax buying, but left the key components of tax lien investing firmly intact.


\textsuperscript{82} “Changes May Weaken Remodeled Tax-Deed Law,” \textit{Lakeland [Fla.] Ledger}, April 17, 1981.
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.\(^{83}\) 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.\(^{84}\)

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.\(^{85}\) In 1959 the county sold over $50,000 in tax certificates, a sharp increase over previous years.\(^{86}\) 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.\(^{87}\) 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

\(^{83}\) On the changes to Illinois’s tax delinquency sales resulting from the 1951 Revenue Act, see George E. Harbert, “Tax Foreclosures and Tax Titles,” *University of Illinois Law Forum* (Summer 1952), 209-25. See also Kahrl, “Capitalizing on the Urban Fiscal Crisis.”


\(^{86}\) *Ibid.*

\(^{87}\) *Ibid.*
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.”

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. 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. 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

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88 Ibid.


90 “Tax-Sale Evictee Gets Reprieve.”
sent to property owners following a tax sale). Unable to secure the additional funds, the tax delinquent property owner watched helplessly as Blair obtained the deed to their home. 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. 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.

By the very nature of their enterprise, Blair and his business partner, David R. Gray, preyed on Cook County’s most vulnerable homeowners. 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. Or Robert Rosborough, a mentally unstable man who lost his South Side house to Blair that same year and was

91 Ibid.


93 Paul O’Connor, First and second drafts of article on Allan Blair (1974), Box 4, Paul O’Connor Papers, Chicago Historical Society Research Center (Chicago, Ill.).

94 Ibid.

95 Marshall Patner, Memorandum, Re: Blair v. Patner, 1973; Factual Allegations and Refutations (1973), folder 5, box 1, Marshall Patner Collection (Special Collections, University of Illinois at Chicago).
subsequently arrested for sending threatening letters to the Cook County Sheriff’s Office.96

Friends later said that the loss of his home drove him over the edge.97 Or Veronica Micetich, an 83-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.98 (Tax delinquency following the death of a spouse was a common occurrence.99) 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.’”100

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, 61-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.101 The court found Hammond unfit to stand trial and committed her to a state mental institution.102 Blair, for his part, carried a handgun when inspecting tax delinquent properties. On at least one occasion, he brandished the weapon during a dispute. “He said he would kill … one of us niggers,” the nephew of Lillian Ware, an elderly


100 Ibid.

101 “How to Lose Your Home for $18: The Law and the Tax Buyers.”

102 Ibid.
African American woman whose home Blair and Gray attempted to acquire in 1973, testified in court.\textsuperscript{103}

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.”\textsuperscript{104} 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.\textsuperscript{105} 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.\textsuperscript{106}

In predominantly African American neighborhoods, where prospective homeowners

\textsuperscript{103} Dolores McCahill, “Blair Brandished a Gun, Hearing is Told,” \textit{Chicago Sun Times}, Oct. 18, 1974, p. 34.

\textsuperscript{104} “Tax-Sale Evictee Gets Reprieve.”


struggled to obtain financing, Blair sold homes he had acquired via tax deeds on contract.107 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 purchased a house from Blair on contract in 1965.108 Shortly thereafter, Thomas received several citations for building code violations, which, as stipulated in the contract, he was required to correct.109 (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.) 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 $2,000.111 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.112 Unable to pay the fine, Thomas was sentenced to six

107 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 Beryl Satter, Family Properties: Race, Estate, and the Exploitation of Black Urban America (New York: Metropolitan Books, 2009).


109 Ibid.


months in jail.\textsuperscript{113} Upon sentencing, Blair served Thomas with a notice of forfeiture on his contract and moved to repossess the home.\textsuperscript{114} “In my dream, I’m caught in quicksand,” Thomas told a reporter. “I have my hands raised for help, but no help ever comes.”\textsuperscript{115}

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.\textsuperscript{116} Patner succeeded in having Thomas’s fine vacated.\textsuperscript{117} Blair, instead, was ordered to pay a reduced fine of $1,000.\textsuperscript{118} Media coverage of the case, highlighted by a series of devastating articles by \textit{Chicago Daily News} columnist Mike Royko on Blair’s business practices\textsuperscript{119}, forced Blair to resign his position as chairman of the Chicago Bar Association’s ethics committee.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{113} Patner, Blair Complaint v. MP.
\item \textsuperscript{114} \textit{Ibid}.
\item \textsuperscript{115} Hugh Hough, “Conflict Charge Faces Realty-Tax Buyer,” \textit{Chicago Sun Times}, April 28, 1969, p. 3, 10.
\item \textsuperscript{117} Patner, To Committee on Inquiry, Chicago Bar Association, Re: Letter of Allan L. Blair, File No. X929-70.
\item \textsuperscript{118} Patner, Blair Complaint v. MP
\item \textsuperscript{120} “Blair Quits Bar Ethics Probe,” \textit{Chicago Sun Times}, April 24, 1969, p. 62.
\end{itemize}
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.\textsuperscript{121} In \textit{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 14\textsuperscript{th} Amendment and resulted in the taking of private property without just
compensation in violation of the 5\textsuperscript{th} Amendment.\textsuperscript{122} 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.\textsuperscript{123} “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.”\textsuperscript{124} 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.”\textsuperscript{125} 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

\begin{itemize}
\item \textsuperscript{121} “Tax-Sale Evictee Gets Reprieve.”
\item \textsuperscript{122} \textit{Balthazar v. Mari Ltd.} (1969).
\item \textsuperscript{123} “Tax-Sale Evictee Gets Reprieve.”
\item \textsuperscript{124} O’Connor, First and second drafts of article on Allan Blair.
\end{itemize}
and recover its surplus value. In its opinion, the three-judge panel commented, “[O]pressive statutes must be tempered by the legislature, not the court.”

In the years that followed and until Blair’s untimely death in an airplane accident in 1979, the press reported several more cases of poor, elderly, and often minority homeowners losing their homes to Blair. 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. 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. 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.

The argument that harsh penalties for property tax delinquency encouraged compliance was,


130 Ibid., 38.

131 Ibid., 44.
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.” The Illinois-Legislative Investigating Commission similarly found “no relation between the threat of total forfeiture and the rate of tax collection[.]” 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.

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Rather than curb abusive practices, many states have, in recent decades, enacted reforms aimed at incentivized tax buying. In 1995 the state of Georgia enacted reforms to its tax delinquency laws that increased the penalty on delinquent property taxes from 10 to 20 percent at the time of a tax sale, allowed tax buyers to charge an additional 20 percent interest after one year and another 20 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 60 percent profit on investment. 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

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132 Ibid., 29.


134 Richard Whitt, “Investors can reap 60 percent profit on tax liens: Predatory 'a very kind word' for state law,” Atlanta Journal and Constitution, April 1, 2002, p. 1D.
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.135 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.136

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.137 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.138

Whenever states and localities enact reforms favorable to the tax lien industry, vulnerable homeowners suffer. For Atlanta’s Charles W. Spiller, a 59-year-old disabled diabetic, a $1,200 missed property tax payment quickly became, following the sale of the tax lien in 1999, a $28,000 debt.139 Unable to repay, Spiller watched as the house he had built himself on one leg

137 Whitt, “Investors can reap 60 percent profit on tax liens.”
139 Whitt, “Investors can reap 60 percent profit on tax liens.”
was sold on the courthouse steps in December 1999 to an investment company for $46,000.\textsuperscript{140} In 1999, sixty-six-year-old Dorothy Stewart missed a $1,500 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 $1,446 in back taxes.\textsuperscript{141}

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.\textsuperscript{142} 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 \textit{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.\textsuperscript{143} In 2006, nearly one in three of the approximately 8,000 liens the city offered for sale were for non-tax debts, and of those, roughly one in ten were for $500 or less.\textsuperscript{144} 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 $3,600. Unemployed, caring for her elderly parents, and lacking any savings, Valentine was unable to settle her mounting debt. In February 2010 the Florida-based

\textsuperscript{140} Ibid.
\textsuperscript{141} Ibid.
\textsuperscript{142} Schulte and Arney, “Small unpaid bills put residents at risk.”
\textsuperscript{143} Ibid.
\textsuperscript{144} Ibid.
tax lien investment firm Sunrise Atlantic took possession of her home.\textsuperscript{145}

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 2012 D.C. tax buyers foreclosed on nearly 200 houses.\textsuperscript{146} In 2013 alone, tax buyers foreclosed on over 1,200 properties.\textsuperscript{147} The vast majority of these properties were located in heavily minority neighborhoods. A 2013 investigation by the \textit{Washington Post} found that 72 percent of the pending tax foreclosures in the city were in neighborhoods where less than 20 percent of the population was white.\textsuperscript{148} Between 2005 and 2008, tax buyers purchased liens on 33 properties along a single street in the historically black neighborhood of Deanwood.\textsuperscript{149} Tax buyers quickly resold properties acquired via tax foreclosure for massive profits. The \textit{Post} investigation found examples of houses with liens of less than $300 resold for nearly

\begin{footnotesize}
\begin{enumerate}
\item[146] Sallah et al., “Left With Nothing.”
\item[147] \textit{Ibid}.
\item[148] \textit{Ibid}.
\item[149] \textit{Ibid}.
\end{enumerate}
\end{footnotesize}
$130,000.150 “This is highway robbery,” an outraged homeowner whose tax bill quadrupled as a result of legal fees commented.151

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.152 The city sold the lien to a company owned by Steve Berman.153 During these years, Berman operated a bid-rigging scheme that allowed him to dominate the city’s annual tax sales.154 Upon acquiring the lien to Coleman’s home, Berman demanded $4,999 in legal fees and expenses.155 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


151 Ibid.

152 Ibid.

153 Ibid.


155 Sellah et al., “Left With Nothing.”
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.\textsuperscript{156}

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 \textit{Post} investigation told of properties acquired by tax buyers while the owners lay dying in Hospice care\textsuperscript{157}, in a nursing home\textsuperscript{158}, or suffering from Alzheimer’s.\textsuperscript{159} 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.\textsuperscript{160} (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.\textsuperscript{161}) 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.

\textsuperscript{156} \textit{Ibid.}

\textsuperscript{157} \textit{Ibid.}


\textsuperscript{159} Sellah et al., “Left With Nothing.”

\textsuperscript{160} Driessen, “D.C.’s tax-sale system lacks notice to homeowners, attorneys say.”

\textsuperscript{161} Cenziper et al., “She Lost Her Home.”
“How could they do this to us?” 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 81-year-old woman who lost her home to a tax buyer after failing to pay a $150 sewer 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. 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. 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 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. 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

162 Driessen, “D.C.’s tax-sale system lacks notice to homeowners, attorneys say.”
amount” and increase “expenditures for debt service … by a significant amount.” The bill never made it out of committee.166

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.”167 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 most vulnerable citizens.”168 In the wake of the Post’s investigation, city officials cancelled all liens sold at that summer’s tax sale169 and Mayor Vincent Gray hastily proposed a series of reforms. These included a $2,200 cap on legal fees, a ban on sales of liens of less than $2,500 on primary residences, and the appointment of a new

166 Fiscal and Policy Note, SB 145, Department of Legislative Services, Maryland General Assembly (2013 Session).


property tax ombudsman. 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 $2,500. 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.

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 government revenue. Lobbyists for


171 Sallah et al., “D.C. Council orders review of cases where people lost homes over small tax debts.”

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. 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.

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,

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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 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 disposssession.