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A THEORY OF STATEGRAFT

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Neoliberalism and its accompanying austerity measures are shrinking local and national government budgets, even though constituent needs remain pressing. In desperation, public officials sometimes replenish public coffers through illicit extraction from segments of the population poorly positioned to fight back. In Detroit, for example, city officials inflated property tax assessments in violation of the Michigan Constitution, leading to illegally inflated property taxes that many homeowners could not afford to pay. Consequently, since 2009, one in three homes have completed the property tax foreclosure process, the highest number of property tax foreclosures in American history since the Great Depression. These unlawful practices are not just occurring in Detroit, but also in other American cities such as Ferguson, Philadelphia, and New Orleans.

Nevertheless, because corruption is universally defined as corrupt acts that are for private or personal gain, there is currently no lexicon to describe illegal acts that principally benefit the public treasury. I have coined the term “stategraft” to describe this overlooked phenomenon: when state agents transfer property from persons to the state in violation of the state’s own laws or basic human rights. To establish stategraft as an essential theoretical framework, this Article elaborates its definitional elements, demonstrates its conceptual value, and shows how it extends existing discourses on corruption, state crime, and the predatory state.

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INTRODUCTION

Neoliberalism's aggressive global advance has required policy-makers worldwide to slash national and local budgets, leaving state actors in a desperate search for new sources of income.¹ Forced to sustain their constituents with ever-drier wells, local officials in cities like Detroit, Ferguson, Philadelphia, and New Orleans sometimes replenish public coffers through illicit extraction from segments of the population poorly positioned to fight back. While corruption scholars have written extensively about public officials who commit illegal acts that benefit themselves or other private actors, these commentators have largely ignored the phenomenon where public officials refill *public coffers* through illicit extraction.² In a series of articles, I have

¹ See, e.g., Kevin Farnsworth & Zoë Irving, *Austerity: Neoliberal Dreams Come True?*, 38 CRITICAL SOC. POL'Y 461, 466 (2018) ("[C]onsolidation is mostly moving towards expenditure cuts rather than revenue-raising options in the advanced economies.").

² See, e.g., Susan Rose-Ackerman, *The Political Economy of Corruption—Causes and Consequences*, VIEWPOINT, Apr. 1996 (describing corruption as occurring when "officials simply steal state assets" for private benefit or "when a private individual or organization bribes a state official"); BRUCE BUCHAN & LISA HILL, AN INTELLECTUAL HISTORY OF

attempted to correct this critical misstep by creating a concept called “stategraft,”³ which is when state agents transfer property from persons to the state in violation of the state’s own laws or basic human rights. This, however, is the first Article where I establish stategraft as a bona fide theoretical framework by defining its elements, demonstrating its conceptual value, and exhibiting how it extends existing discourses on corruption, state crime, and the predatory state.

One prominent example of stategraft is in Detroit, where rampant illegality has augmented city and county coffers at the expense of the City’s most vulnerable residents. According to the Michigan Constitution, no property can be assessed at more than 50% of its market value,⁴ but between 2009 and 2015, the City of Detroit assessed 53% to 84% of all its residential properties in violation of this constitutional limitation.⁵ Additionally, in this same time period, the City illegally inflated the assessed value of 95% or more of homes in the lowest two price quintiles.⁶ The *Detroit News* estimates that, between 2010 and 2016, the City overtaxed its homeowners by over \$600 million.⁷ Continuing this trend, the City illegally inflated the property tax assessment of 88%, 89%, 81%, and 58% of homes in the bottom price quintile in 2016, 2017, 2018, and 2019, respectively.⁸ Together, these data show that, from 2009 to 2019, the burden of the resulting illegally inflated property taxes fell disproportionately on

POLITICAL CORRUPTION 5–6 (2014) (offering two traditional connotations of corruption—“the misuse of office for private (typically pecuniary) gain,” and the “more dynamic process of decay or degeneration of . . . moral and political character”).

³ See generally Bernadette Atuahene & Timothy R. Hodge, *Stategraft*, 91 S. CAL. L. REV. 263 (2018) (introducing the concept of stategraft); Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 109 (2020) [hereinafter Atuahene, *Predatory Cities*] (introducing the concept of “predatory cities,” which is a particular geographic manifestation of stategraft pertaining to urban areas).

⁴ MICH. CONST. art. IX, § 3 (1963); see also *Brittany Park Apartments v. Twp. of Harrison*, 304 N.W.2d 488, 491 (Mich. Ct. App. 1981); *Shaughnesy v. Mich. Tax Tribunal*, 362 N.W.2d 219 (Mich. 1984); MICH. COMP. LAWS § 211.27a(1) (2022).

⁵ Atuahene & Hodge, *supra* note 3, at 286.

⁶ *Id.* at 289–90.

⁷ Christine MacDonald & Mark Betancourt, *Detroit Homeowners Overtaxed \$600 Million*, DETROIT NEWS (Jan. 11, 2020, 3:47 PM), <https://www.detroitnews.com/story/news/local/detroit-city/housing/2020/01/09/detroit-homeowners-overtaxed-600-million/2698518001> [<https://perma.cc/HDW7-V2RY>] (“Of the more than 63,000 Detroit homes with delinquent debts as of last fall, more than 90% were overtaxed—by an average of at least \$3,700—between 2010 and 2016 . . .”).

⁸ Data on file with author. To calculate these figures, I analyzed a joined full assessment role with sales role from 2016 to 2019, received via FOIA requests and open data from the City of Detroit. I applied filters to these data (Marked Arm’s Length by Assessor; Sales Price greater than \$1,000; IAAO Arm’s length standard; Class 401 property) and took the share of the bottom price quintile properties with assessment-to-sales-price ratios above 0.5 in the years 2016, 2017, 2018, and 2019.

homeowners in the lowest-valued homes—the most vulnerable homeowners.

Additionally, race is correlated with illegally inflated property tax bills and the resulting property tax foreclosures.⁹ Detroit is one of Wayne County's forty-three municipalities, of which thirty-three have a supermajority (70% or more) white population and three have a supermajority African American population: Detroit, Inkster, and Highland Park.¹⁰ One study finds that Wayne County's supermajority African American municipalities suffered unconstitutional property tax assessments and tax foreclosure at a substantially higher rate than its supermajority white ones.¹¹ Most importantly, inequitable property tax administration is not just a Michigan issue, but it is also a national racial justice issue.¹² A national study by Carlos Avenancio-León and Troup Howard found that the median Black and Hispanic homeowner pays, on average, a 10% to 13% higher tax rate than whites, which equates to about \$300 to \$400 more annually.¹³

Illegally inflated property taxes are just one example of statecraft. Police and court abuses in the City of Ferguson, Missouri, provide another example of illegality that fattens public coffers at the expense of vulnerable populations. In 2015, the Department of Justice Civil Rights Division found that the City of Ferguson violated the U.S. Constitution's First, Fourth, and Fourteenth Amendments when its police disproportionately issued tickets for minor offenses to African Americans, and its courts issued arrest warrants if defendants failed to pay the resulting fines and fees on time.¹⁴ Although all courts are sup-

⁹ For more background on the role of race and race-based vulnerability in law, see Sheila Foster & R.A. Lenhardt, *The Racial Subject in Legal Theory*, in *THE OXFORD HANDBOOK OF LAW AND POLITICS* 453 (Keith E. Whittington et al. eds., 2008); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

¹⁰ Bernadette Atuahene, *"Our Taxes Are Too Damn High": Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 NW. U. L. REV. 1501, 1544 (2018).

¹¹ *Id.* at 1553.

¹² Christopher Berry, *Reassessing the Property Tax* 13–15 (Mar. 9, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800536 [<https://perma.cc/7KXL-NXPM>] (finding that "properties located in tracts with lower median housing values according to the [national] census, as well as those in tracts with lower income and education and a larger proportion of African Americans, are assessed at higher levels on average").

¹³ Carlos F. Avenancio-León & Howard Troup, *The Assessment Gap: Racial Inequalities in Property Taxation*, 137 Q.J. OF ECON. 1383, 1384 (2022) <https://doi.org/10.1093/qje/qjac009> [<https://perma.cc/LX84-KCJ4>] (showing that, in a study of 118 million homes in the United States, Black and Hispanic homeowners face a significantly higher tax burden).

¹⁴ C.R. DIV., U.S. DEP'T OF JUST., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* 4 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/TB8L->

posed to consider defendants' ability to pay prior to confining them, the Ferguson courts did not. So, the City routinely jailed indigent African Americans for petty infractions, such as minor housing code violations, even if jail time was not a statutorily contemplated punishment for the offense.¹⁵ More importantly, research shows that Ferguson is just one of many cities engaging in unconstitutional racially targeted policing that leads to fines and jail time for petty infractions.¹⁶

Abuse of civil forfeiture laws is another example of illegality that profits public coffers. From 2002 to 2014, Philadelphia police systematically abused civil forfeiture laws, confiscating more than \$69 million in houses, electronics, vehicles, cash, and jewelry from citizens, which benefited district-attorney and police-department budgets.¹⁷ Owners trying to reclaim sums as small as \$100 had to attend as many as ten court dates before seeing a judge,¹⁸ and only after a class action lawsuit did the City of Philadelphia agree to reform its aberrant practices.¹⁹ Lawsuits and reports have identified further civil forfeiture

9PK2] ("Ferguson's approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson's police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race."); THOMAS HARVEY, JOHN MCANNAR, MICHAEL-JOHN VOSS, MEGAN CONN, SEAN JANDA & SOPHIA KESKEY, ARCHCITY DEFENDERS: MUNICIPAL COURTS WHITE PAPER 17–18 (2014), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [<https://perma.cc/J6UH-2PE9>] (noting that in Ferguson, 86% of stops were Black motorists and 12.7% were white motorists despite their comprising 67% of the population and 29% of it respectively, and "[a]fter being stopped in Ferguson, blacks are almost twice as likely as whites to be searched (12.1% vs. 6.9%) and precisely two times more likely to be arrested (10.4% vs. 5.2%)") (footnote omitted).

¹⁵ HARVEY ET AL., *supra* note 14, at 4.

¹⁶ Dan Kopf, *The Fining of Black America*, PRICEONOMICS (June 24, 2016), <https://priceonomics.com/the-fining-of-black-america> [<https://perma.cc/8TLG-HJAJ>] ("Among the fifty cities with the highest proportion of revenues from fines, the median size of the African American population . . . is more than five times greater than the national median."); *see also* U.S. COMM'N ON C.R., TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR: CIVIL RIGHTS & CONSTITUTIONAL IMPLICATIONS (2017), https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf [<https://perma.cc/HR9D-U4V5>].

¹⁷ DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON & JENNIFER McDONALD, INST. FOR JUST., POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE 16 (2d ed. 2015).

¹⁸ AM. C.L. UNION OF PA., GUILTY PROPERTY: HOW LAW ENFORCEMENT TAKES \$1 MILLION IN CASH FROM INNOCENT PHILADELPHIANS EVERY YEAR – AND GETS AWAY WITH IT 4 (2015), https://www.aclupa.org/sites/default/files/Guilty_Property_Report_-_FINAL.pdf [<https://perma.cc/S2VG-Y628>].

¹⁹ Darpana Sheth, *Class Action Lawsuit Challenges the Philadelphia Forfeiture Machine*, LIBERTY & L., Oct. 2014, at 5; *Sourovelis v. City of Philadelphia*, 515 F. Supp. 3d 321, 328 (E.D. Pa. 2021).

abuses in Washington, D.C.,²⁰ New York City,²¹ Albuquerque,²² Philadelphia,²³ Nebraska,²⁴ and Texas.²⁵ Indigent populations and racial minorities with poor access to justice are most vulnerable to abuses of civil forfeiture laws.

A U.S. district court in Louisiana highlighted another example of stategraft when it ruled that the City of New Orleans's debt collection practices violated the Fourteenth Amendment.²⁶ Since court debts served as a major source of revenue for the courts, judges routinely failed to consider defendants' abilities to pay delinquent court debts prior to jailing them, although required to do so by law.²⁷ Debtors' prisons have now been unconstitutional for decades,²⁸ yet these New Orleans courts resurrected this vile, anachronistic practice. New Orleans is not alone. A study found that the fifteen states with the highest prison populations are all violating the U.S. Constitution by jailing defendants who cannot afford to pay court fees and fines.²⁹

²⁰ See, e.g., *Simms v. Dist. of Columbia*, 872 F. Supp. 2d 90, 92 (2012) (discussing a class-action claim that D.C. police improperly prolonged the seizure of plaintiff's vehicle after he was acquitted of weapons violation charges).

²¹ See, e.g., Stipulation of Settlement and Order at 1, *Encarnacion v. City of New York*, No. 16-CV-00156 (S.D.N.Y. Feb. 12, 2018) (noting the plaintiffs' allegation that the New York City Police Department has a practice of failing to respond to requests for return of seized property and then disposing of the property).

²² See, e.g., *Harjo v. City of Albuquerque*, 326 F. Supp. 3d 1145, 1155 (2018) (arguing that Albuquerque's forfeiture ordinance, requiring that "proceeds go first to cover the costs of administering the ordinance," incentivized using the program as a revenue source).

²³ See, e.g., *Sourovellis*, 515 F. Supp. at 328 (arguing that a requirement to contest forfeiture before district attorneys rather than neutral arbiters violated due process).

²⁴ See generally AMY MILLER & JACKSON C. BLAIS, AM. C.L. UNION OF NEB., *GUILTY MONEY: CIVIL ASSET FORFEITURE IN NEBRASKA* 5 (2015), https://www.aclunebraska.org/sites/default/files/field_documents/guilty_money_civil_forfeiture-final.pdf [<https://perma.cc/5ACD-UE3K>] (finding that "significant amounts of money have been seized through the state system from people who have never been charged with a crime").

²⁵ See generally *Houston Forfeiture: Nurse Files Class Action Challenging CBP's Abusive Civil Forfeiture Practices*, INST. FOR JUST., <https://ij.org/case/houston-forfeiture> [<https://perma.cc/C8BG-WVA3>] (reporting a class action suit against U.S. Customs and Border Protection for unlawfully holding seized cash); *Eagle Pass Forfeiture*, INST. FOR JUST., <https://ij.org/case/eagle-pass-civil-forfeiture> [<https://perma.cc/UL5D-RYMV>] (reporting a class action suit against U.S. Customs and Border Protection for unlawfully seizing vehicles).

²⁶ *Cain v. City of New Orleans*, 327 F.R.D. 111, 118 (E.D. La. 2018).

²⁷ See *id.* (observing that approximately \$1 million in fines and fees went into the Orleans Parish Criminal District Court's general operating fund annually).

²⁸ *Williams v. Illinois*, 399 U.S. 235 (1970) (finding that imprisonment in excess of a statutory maximum sentence as a result of involuntary nonpayment violated equal protection); *Bearden v. Georgia*, 461 U.S. 660 (1983) (finding a revocation of probation based on failure to pay fines and restitution unconstitutional under the circumstances); *Tate v. Short*, 401 U.S. 395 (1971) (holding that the use of "prison farms" for those unable to pay fines violates equal protection).

²⁹ ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUST., *THE HIDDEN COSTS OF CRIMINAL JUSTICE DEBT* 1 (2010), <https://www.aclu-wa.org/>

Despite the compelling evidence that public actors are illicitly filling public coffers in U.S. cities such as Detroit, Ferguson, Philadelphia, and New Orleans, scholars currently do not have the vocabulary to describe, examine, and confront this particular phenomenon.³⁰ “Corruption” is certainly not the correct term. Although there is no universally agreed upon definition of corruption, the most cited definitions share one thing in common: They all stress that the corrupt act is for private or personal gain.³¹ Since standard definitions of corruption exclude instances when the corrupt act principally benefits public coffers rather than private purses, I have created the term “stategraft” to fill the gap. Stategraft is a new theoretical framework that applies to states where the rule of law is reputedly strong, as well as those where it is weak.³² Most importantly, the concept provides the lexicon necessary to ignite a conversation among scholars, policy-makers, and community activists about when public officials directly enrich the state through illicit actions.

Stategraft intentionally combines the words statecraft and graft. While statecraft is the skillful management of state affairs,³³ stategraft pinpoints instances when public officials augment state coffers by intentionally or unintentionally stealing from those under their authority. More specifically, state agents achieve financial solvency, a key element in the management of state affairs, through predation. “Graft,” most often used as a synonym for corruption, is the abuse of

sites/default/files/media-legacy/attachments/Criminal_Justice_Debt_report_V8.pdf [https://perma.cc/9CCT-6RG7] (finding that “[f]ees, while often small in isolation, regularly total hundreds and even thousands of dollars of debt,” and that “inability to pay leads to more fees and an endless cycle of debt”).

³⁰ Stategraft is a current and historical phenomenon. When, for example, the U.S. government took ownership of Native American land in violation of established treaties, this was a classic instance of stategraft. Additionally, in the instance of several national parks, the state continues its ownership over these stolen lands. See David Treuer, *Return the National Parks to the Tribes*, THE ATLANTIC (Apr. 12, 2021), <https://www.theatlantic.com/magazine/archive/2021/05/return-the-national-parks-to-the-tribes/618395> [https://perma.cc/W46B-QNX9]; see generally ROBERT H. KELLER & MICHAEL F. TUREK, AMERICAN INDIANS AND NATIONAL PARKS 17–29 (1998) (detailing the history of the creation of the national parks).

³¹ Michael Johnston, *The Search for Definitions: The Vitality of Politics and the Issue of Corruption*, 48 INT’L SOC. SCI. J. 321, 321 (1996); Atuahene & Hodge, *supra* note 3, at 295 n.124 (presenting various examples of such definitions).

³² “State” here means a political community and not one of the fifty states in the United States.

³³ DAVID A. BALDWIN, ECONOMIC STATECRAFT 8 (1985) (“Statecraft has traditionally been defined as the art of conducting state affairs.”); Robbie Waters Robichau, *The Mosaic of Governance: Creating a Picture with Definitions, Theories, and Debates*, 39 POL’Y STUD. J. 113, 115 (2011) (“Statecraft can be characterized as the ‘exercise of distinctively governmental responsibilities’ and as ‘the art of acting according to duty, justice, and reason on behalf of a community of citizens.’”).

an entrusted power for private gain.³⁴ With stategraft, however, this abuse principally benefits public entities rather than private ones. Consequently, stategraft is a distinct yet underemphasized derivative of corruption for two primary reasons. First, the corrupt acts benefit public rather than private coffers. Second, the public actors' intent is not the focus. Since stategraft is most often a product of predatory systems rather than predatory people, investigating individual motives is a distraction, so stategraft places the focus where it belongs, which is on the actual theft and its impact on vulnerable populations.

This Article proceeds in three Parts. Part I explains the elements of stategraft because, without clarity, other scholars cannot critique and build upon this new theoretical concept. Part II illuminates the conceptual value of stategraft, arguing that it spotlights an invisible yet important component of liberal democracy, highlights important democratic deficits, and potentially generates novel opportunities for social movements. Part III distinguishes stategraft from three long-standing concepts—corruption, state crime, and the predatory state—in order to show how this new term provides a much needed extension of existing conversations in scholarship and policy.

I

ELEMENTS OF STATEGRAFT

The proliferation of unconstitutional property tax assessments, which sparked Detroit's property tax foreclosure crisis, is a quintessential example of stategraft. Mrs. Baines and her husband are proud Detroit natives, raising their seven children in their city, which has been battered by redlining, urban renewal, the decline of the automobile industry, predatory lending, the mortgage foreclosure crisis, and the largest municipal bankruptcy in U.S. history. Nevertheless, through it all, Mr. and Mrs. Baines have never deserted their beloved

³⁴ See *Corruption: A Baseline Definition*, UNITED NATIONS OFF. ON DRUGS & CRIME (Sept. 2019), <https://www.unodc.org/e4j/en/anti-corruption/module-1/key-issues/corruption---baseline-definition.html> [<https://perma.cc/3RQZ-BL69>]; *What Is Corruption?*, TRANSPARENCY INT'L, <https://www.transparency.org/en/what-is-corruption#define> [<https://perma.cc/D6UY-PFVN>]; THE WORLD BANK, *HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK* 17 (1997), <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf> [<https://perma.cc/WE44-2K7B>]; Susan Rose-Ackerman, *Political Corruption and Democracy*, 14 CONN. J. INT'L L. 363, 364–66 (1999); Andrei Shleifer & Robert W. Vishny, *Corruption*, 108 Q.J. ECON. 599, 599 (1993) (defining government corruption “as the sale by government officials of government property for personal gain”); Joseph Lapalombara, *Structural and Institutional Aspects of Corruption*, 61 SOC. RSCH. 325, 327–29 (1994) (defining corruption as “behavior by a public servant, whether elected or appointed, which involves a *deviation from his or her formal duties* because of reasons of *personal gain* to himself or herself or to other private persons with whom the public servant is associated” (emphasis in original)).

city. Even though Detroit has been recently experiencing a measure of economic resurgence,³⁵ authorities are not rewarding the Baines family and the tens of thousands of faithful Detroiters who endured the bad times. Instead, authorities are kicking them out of their homes because they have been unable to pay their illegally inflated property tax bills.

The Michigan Constitution, as well as concordant case law and legislation, provide that no property should be assessed at more than 50% of its market value.³⁶ The Baines family purchased their first home in 2012 for \$20,000, approximately the price of comparable homes in their neighborhood. In the same year, however, the Detroit Assessment Division valued their home at \$46,000 and taxed it accordingly—a clear violation of the Michigan Constitution. The Baines family could not afford this illegally inflated property tax bill, so in 2015, Wayne County completed the tax foreclosure process, gained title to their forfeited home, and sold it to an investor for the minimum bid of \$500.³⁷

The Baines family was not alone. Conservative estimates suggest that between 2009 and 2015, the City of Detroit overassessed up to 84% of homes in violation of the Michigan Constitution.³⁸ The poorest homeowners, like the Baines family, were most affected. For example, in 2009, while the assessment ratios for the highest-valued properties (top fifth) were at or even below the constitutionally permitted limit, the City of Detroit assessed the lowest-valued homes (bottom fifth), on average, at eighteen times above the permitted constitutional limit.³⁹ In my article *Predatory Cities*,⁴⁰ I explain the intricate factors that led to this systemic illegality, but I would like to highlight only two here.

First, lower-valued homes are significantly more difficult to value correctly because errors are more pronounced. If, for instance, an assessor miscalculates the market value of a home by \$1,000, this is 20% of a \$20,000 home's value but only 2% of a \$200,000 home's value. Second, during the 2008 Great Recession, Detroit's housing prices fell precipitously due, in large part, to the rampant predatory

³⁵ Confidential Interview with Mrs. Baines (Dec. 23, 2017) (on file with author) (cited in Atuahene, *Predatory Cities*, *supra* note 3, at 141).

³⁶ See *supra* note 4.

³⁷ Wayne County sold the Baineses' property in the second of two property tax auctions, where the starting bid is \$500. See Margaret Dewar, Eric Seymour & Oana Druță, *Disinvesting in the City: The Role of Tax Foreclosure in Detroit*, 51 URB. AFFS. REV. 587, 591 (2015) (explaining Wayne County's foreclosure and auction process).

³⁸ Atuahene & Hodge, *supra* note 3, at 286.

³⁹ *Id.* at 288.

⁴⁰ Atuahene, *Predatory Cities*, *supra* note 3.

lending perpetrated by banking institutions.⁴¹ Since Detroit was on the verge of the largest municipal bankruptcy in American history, its Assessment Division was under-resourced and did not have the personnel required to reduce assessed values accordingly. So the City systematically assessed properties at more than 50% of their market value.⁴² The onus was on individual taxpayers to protest incorrect tax assessments and rectify the illegality, but poor homeowners with limited education and no access to lawyers, like the Baines family, did not even know an appeals process existed.⁴³ They were helpless in the face of this systematic illegality.

When unable to pay their illegally inflated property tax bills, over 100,000 working families, like the Baines family, completed the tax foreclosure process.⁴⁴ While there are countless factors that can cause property tax foreclosure (such as poverty, divorce, and unemployment), one study estimates that, between 2009 and 2013, 10% of all tax foreclosures would not have happened but for one factor—the illegally inflated property tax assessments. This number jumps to 25% when considering only the homes in the lowest price quintile.⁴⁵ Since illegality is central to the dispossession in Detroit, stategraft is, without question, afoot.

To provide the theoretical scaffolding required to start a robust conversation about stategraft, in this Part, I use ethnographic data from Detroit to illustrate who qualifies as a state agent, what qualifies as a transfer of property to persons, when the state benefits, and how one determines if the state has violated its own laws. More specifically, I rely upon systematically collected observations from my three-year full-time residence in Detroit's 48214 zip code, an area hit hard by the property tax foreclosure crisis. My ethnographic data also include both top-down interviews with almost all policymakers involved in the various aspects of property tax administration in Detroit, and bottom-up interviews with over 100 Detroit homeowners

⁴¹ Bernadette Atuahene & Christopher Berry, *Taxed Out: Illegal Property Tax Assessments and the Epidemic of Tax Foreclosures in Detroit*, 9 U.C. IRVINE L. REV. 847, 853 (2019); see also Andrew Clark, *For Sale at \$1,250: The Detroit Houses Behind the Sub-Prime Disaster*, THE GUARDIAN (Oct. 24, 2008, 10:36 AM), <https://www.theguardian.com/business/2008/oct/24/subprime-crisis-usa-housing-detroit> [<https://perma.cc/G36B-PLZN>] (reporting a “spectacular” decrease in housing prices in Detroit, in part because some Detroiters were “lulled into unsuitable deals by predatory lenders”).

⁴² *Id.* at 862; Memorandum from Mark Lockridge, Deputy Auditor Gen., City of Detroit, to Honorable City Council, City of Detroit 3 (Sept. 10, 2012), <https://bit.ly/2hu2XJK> [<https://perma.cc/RES2-9VZ5>] (concluding that “the Division’s assessing operations are inefficient, ineffective, and lacking in some areas of its assessing activities”).

⁴³ Atuahene & Berry, *supra* note 41, at 866.

⁴⁴ See *id.* at 848.

⁴⁵ See *id.* at 884–85.

who forfeited their homes because they could not afford to pay their illegally inflated property tax bills.

A. *Who Qualifies as a State Agent?*

The police power is a government's authority to exercise reasonable control over persons and property within its jurisdiction for the benefit of the population's health, safety, and general welfare.⁴⁶ Through its police power, governments use fines, sanctions, detention, and other punitive mechanisms to compel obedience with its laws, administrative rules, and policies.⁴⁷ State agents are individuals or groups who use the state's police powers to regulate behavior while working within or on behalf of the state bureaucracy.⁴⁸ The most typical state agents are people directly employed by the state such as law enforcement officials, judges, politicians, and public sector employees. But state agents also include people such as contractors and unofficial intermediaries who work on behalf of the state while not directly employed by it.

Stategraft requires that state agents play a substantial but not sole role in the illegal property transfer, and they can intentionally or unintentionally work alongside private actors to accomplish stategraft. If intentional, the property transfer results from a jointly engineered effort. When unintentional, the actions of non-state actors establish the background conditions enabling state agents to complete the property transfer, although both parties are not deliberate accomplices.

In the case of Detroit, state agents played a starring role in the stategraft that occurred because Detroit's Assessment Division—charged with ensuring each property's assessment complied with the Michigan Constitution—was most immediately responsible for the unconstitutional property tax assessments and the resulting tax foreclosures. Both Alvin Horhn, Detroit's Chief Assessor, and Mayor Mike Duggan have admitted, on record, that Detroit's properties had been systematically overassessed for years.⁴⁹ In an interview, Horhn

⁴⁶ See Santiago Legarre, *The Historical Background of the Police Power*, 9 U. PA. J. CONST. L. 745, 794 (2007) (“[I]nsofar as the expression is used in American Constitutional law, the phrase ‘police power’ normally refers to the authority of the states for the promotion of public health, public safety, public morals, and public welfare.”).

⁴⁷ *Id.* at 75.

⁴⁸ See generally Colin Yeo, *Agents of the State: When Is an Official of the State an Agent of the State?*, 14 INT’L J. REFUGEE L. 509, 517 (2002) (elucidating the definition of an agent of the state).

⁴⁹ Interview with Alvin Horhn, Deputy Chief Fin. Officer, City of Detroit (Oct. 15, 2018) (on file with author); see also Atuahene, *Predatory Cities*, *supra* note 3, at 138–50 (discussing specific comments made by Mr. Horhn during the same interview); City of Detroit, *New Property Assessment Reductions*, YOUTUBE, at 0:33–0:42 (Jan. 28, 2015),

explained that the Division did not have the resources needed to ensure each property was assessed at no more than 50% of its market value as required by the Michigan Constitution.⁵⁰ Seemingly regretful, he said their calculations were consistently inaccurate because “with limited resources and limited access to data, you will come up with garbage.”⁵¹ Horhn acknowledged that the problem was longstanding and said even Detroit’s former Chief Assessor Linda Bade “knew it was wrong and burned herself to the ground trying to fix it.”⁵² He now has Bade’s job along with its palpable risk of burnout.

In addition to the City’s Assessment Division, which hastened stategraft in Detroit, private actors set the necessary preconditions and thus were also involved. The most notable private actors were the financial institutions and banks whose predatory lending practices culminated in the 2008 subprime mortgage crisis, which ignited the Great Recession and the subsequent collapse in home prices that vexed Detroit’s underfunded Assessment Division.⁵³ In addition, the investors who purchase homes from the County’s annual property tax foreclosure auction are key actors, enabling the merry-go-round of tax foreclosure to continue spinning.⁵⁴ So, as with most structural injustices, the story of Detroit’s property tax foreclosure crisis is intricate and involves both state and non-state actors. Scholars and policy-makers who wish to invoke stategraft should resist the temptation to tell a tidy narrative that brushes aside the role of private actors because despite the intermingling of public and private actors, stategraft has occurred so long as state agents play a substantial role.

<https://www.youtube.com/watch?v=OB4WiRUJzzg> [<https://perma.cc/D98B-5FYQ>] (showing Mayor Mike Duggan addressing the City of Detroit: “As I said when I was campaigning, I felt like the assessments in this city were higher than the actual sales price that people could sell their house for.”); Steve Neavling, *Mayor Duggan: Property Tax Bills to Be Substantially Reduced*, MOTOR CITY MUCKRAKER (Jan. 28, 2014), <http://motorcitymuckraker.com/2014/01/28/mayor-duggan-property-tax-bills-to-be-substantially-reduced> [<https://perma.cc/MQ94-NEWJ>] (discussing Mayor Duggan’s assertion, regarding the 2014 reductions, that “[w]hile some neighborhoods have maintained their sales value, most of the northwest side was over-assessed by a minimum of 20%”).

⁵⁰ Interview with Alvin Horhn, *supra* note 49.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOCIO. REV. 629, 629 (2010) (arguing that financial institutions took advantage of residential segregation in cities such as Detroit, which “created a unique niche of minority clients who were differentially marketed risky subprime loans that were in great demand for use in mortgage-backed securities”); see also Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 110 (2017) (describing these targeted, predatory lending practices as “reverse redlining”).

⁵⁴ Atuahene, *Predatory Cities*, *supra* note 3, at 165.

B. What Counts as a Transfer of Property from Persons?

To understand the dispossessory aspects of stategraft, one must identify: (1) whose property is appropriated; (2) what constitutes property; and (3) how state agents can accomplish its transfer. First, since a state's abuse of its police power is a defining feature of stategraft, "persons" are anyone who is subject to a particular state's police powers, whether or not they are physically located within its geographic boundaries.

Second, property includes tangible and intangible property such as money, wages, real property, personal property, intellectual property, digital property, cultural property, entitlements, cryptocurrency, debt, and licenses.⁵⁵ It also includes less conventional forms of property like the body, which is rightfully under the ownership and control of each person.⁵⁶ There is also open access property (no owner),⁵⁷ collective property (shared ownership),⁵⁸ and common property (public ownership).⁵⁹ There is no threshold amount of property required for the stategraft designation to apply because the scale of the dispossession speaks to the severity of the stategraft rather than its existence. Third, property transfer occurs when a person or entity diminishes, destroys, or takes an entire unit of property or any portion thereof. It most typically entails dispossession (confiscating, diminishing, or destroying property rights), displacement (separating people from their property), or both forms of deprivation. It can also involve temporary forms of deprivation that interfere with an owner's right to use,

⁵⁵ See generally Charles Reich, *The New Property*, in PRIVATE AND COMMON PROPERTY 73, 78 (Richard A. Epstein ed., Routledge 2011) ("[T]oday more and more of our wealth takes the form of rights or status rather than of tangible goods."); BARLOW BURKE & JOSEPH SNOE, PROPERTY 13 (6th ed. 2019) ("Tangible personal property includes property of a physical nature. . . . Intangible personal property includes assets that cannot be touched or seen but that have value nonetheless.").

⁵⁶ John Felipe Acevedo, *Dignity Takings in the Criminal Law of Seventeenth-Century England and the Massachusetts Bay Colony*, 92 CHI.-KENT L. REV. 743, 748 (2017) (noting that "[t]he idea that you have a property interest in your own body can be traced to . . . the seventeenth century"); see also Radhika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359 (2000) (exploring areas where the law treats the human body as a form of property).

⁵⁷ Hanoch Dagan & Michael A. Heller, *The Liberal Commons*, 110 YALE L.J. 549, 552 (2001) (defining "open access" as when "anyone at all may use a resource and no one may be excluded").

⁵⁸ JEREMY WALDRON, THE RIGHT TO PRIVATE PROPERTY 40 & n.30 (1990) (defining "collective property" or "state property" as "material resources [that] are answerable to the needs and purposes of society as a whole").

⁵⁹ Dagan & Heller, *supra* note 57, at 557 (defining "common property" as "resources that are owned or controlled by a *finite* number of people who manage the resource together and exclude outsiders").

exclude, or transfer her property. The transfer can be a one-time occurrence or happen gradually over a longer time horizon.

Most importantly, the individual motivations underlying the transfer can be either pernicious or benign. Since, with stategraft, the property is illegally transferred to public coffers, it is shifted from one segment of society to another. Consequently, if the state illicitly takes money from a privileged group and uses it for virtuous purposes (like feeding indigent children), the initial taking is still an inappropriate act of theft. Unlike many forms of corruption that require some form of intentional wrongdoing, stategraft does not. As such, it provides the language necessary to switch the conversation from one about predatory people to one about predatory systems.

In this regard, stategraft is most akin to the tort of conversion, which is an act that denies or otherwise violates a person's dominion over her property.⁶⁰ Conversion is a strict liability offense that does not require intentional wrongdoing and is not excused by good faith or lack of knowledge.⁶¹ Significant damage and loss arise from dispossession acts done even with the noblest intentions or by mistake. Consequently, stategraft is well-suited to explore racist policies (otherwise known as institutional or structural racism) and other forms of structural injustice in which malicious intentions are secondary to the harm institutional processes inflict on vulnerable groups.

Since stategraft is not contingent upon the intentions of the public actors who illicitly transferred property, it well describes the complexities of what occurred in Detroit, where the actors involved in initiating the property tax malfeasance were several, their intentions were varied, and the reasons that it continued were complex.⁶² The unconstitutional property tax assessments caused the illegitimate transfer of three types of property from owners to public coffers. The first was money transferred to the City of Detroit—specifically, the difference between the property tax liability homeowners rightfully owed and the inflated amount resulting from the unconstitutional tax assessment.⁶³ Second, Wayne County transferred additional monies from property owners to its own account by charging fees, fines, and

⁶⁰ DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBBLICK, *HORNBOOK ON TORTS* § 6.3, at 107 (2d ed. 2016) (defining basic conversion as redress for “the plaintiff’s possessory rights in personal property when the defendant intentionally exercises a substantial dominion over the property, interfering seriously with the plaintiff’s rights”).

⁶¹ See, e.g., *Regent All. Ltd. v. Rabizadeh*, 180 Cal. Rptr. 3d 610, 614 (Ct. App. 2014) (citing *RESTATEMENT (SECOND) OF TORTS* § 229 (AM. L. INST. 1977)).

⁶² See generally Atuahene, *Predatory Cities*, *supra* note 3 (discussing the contributing factors to Detroit’s property tax foreclosure crisis).

⁶³ *Id.* at 178.

an 18% interest penalty on delinquent balances.⁶⁴ The third type of property state actors took was homes. When homeowners could not afford to pay their illegally inflated property tax bills, the Wayne County Treasurer foreclosed upon their homes, acquired ownership, and sold them through its property tax foreclosure auctions.⁶⁵

C. When Does the State Benefit?

Stategraft is charting unmapped territory because scant work has been done on illegal acts that mainly bolster public purses rather than individual pockets. As a result, it is essential to demarcate clearly when the state is a beneficiary of an unjust property transfer and when it is not. If the connection between the property theft and the state's gain is too attenuated, then this becomes "political corruption," which is when government officials use their offices or influence illegitimately for private gain.⁶⁶

Stategraft occurs most obviously when the state is a direct beneficiary of illegitimately acquired property, which goes directly and entirely into state coffers. There also will be less straightforward instances where multiple state and non-state beneficiaries attenuate the nexus between the property confiscation and the state's gain. Nevertheless, so long as state coffers substantially benefit from the illicit transfer, it counts as stategraft.

Identifying whether the state is the principal beneficiary is more complicated when unjust property transfers enter the state's coffers indirectly. The property can go, for instance, first to a private entity that funnels all of it back to the state. Here, the state is the primary beneficiary and stategraft has occurred. But, if the property does not all go directly back to the state, and the intermediary has autonomy over where the property goes, how it is used, and when it is transferred, then stategraft has not occurred because this is less likely to be

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Mark Philp, *Conceptualizing Political Corruption* (recognizing that political corruption takes place where "a public official . . . in violation of the trust placed in him . . . knowingly engages in conduct which exploits the office for clear personal and private gain in a way which runs contrary to the accepted rules"), in *POLITICAL CORRUPTION: CONCEPTS & CONTEXTS* 41–42 (Arnold J. Heidenheimer & Michael Johnston eds., 3d ed. 2002); Zephyr Teachout, *The Anti-Corruption Principle*, 94 *CORNELL L. REV.* 341, 373–74 (2009) (defining "political corruption," as the Framers understood, as "self-serving use of public power for private ends, including, without limitation, bribery, public decisions to serve private wealth made because of dependent relationships, public decisions to serve executive power made because of dependent relationships, and use by public officials of their positions of power to become wealthy").

a mere pass-through scheme. These determinations are appropriately made on a case-by-case basis.

In Detroit, both the inflated and legitimate portions of the property tax collected go, in their entirety, directly into the City of Detroit's treasury and account for about 14% of the City's total revenue.⁶⁷ The fines, fees, and interest on delinquent property taxes go directly, and in their entirety, to the Wayne County Treasurer. In fact, between 2009 and 2016, Wayne County secured a \$339 million surplus from the fees and interest charged to delinquent property owners.⁶⁸

The story of the forfeited homes, however, is a bit more complicated. Wayne County sells the forfeited homes at two annual property tax foreclosure auctions.⁶⁹ In the auction held each September, the minimum bid is the sum of unpaid taxes, interest, and fees combined.⁷⁰ The homes that do not sell in the first auction move to the second auction, customarily held the following month, where the minimum bid is set at \$500.⁷¹ Private investors, such as the father-son duo Stephen and Stevie Hagerman, purchase these homes at radically discounted prices, resulting in steep profits for themselves and for Wayne County.⁷² *HBO's VICE News's* feature on Detroit's property tax foreclosure crisis asserted that, in the 2017 auction alone, Stephen and Stevie spent just over \$2 million to purchase 310 homes at drastically reduced prices, making significant profit at the expense of Detroiters who were unable to afford their unconstitutionally inflated property taxes.⁷³ That same year, Wayne County collected \$31,899,086 for 3,911

⁶⁷ See generally *Financial Reports*, CITY OF DETROIT, <https://detroitmi.gov/departments/office-chief-financial-officer/financial-reports> [<https://perma.cc/JZ67-J82X>] (providing the City's Comprehensive Annual Financial Reports (CAFR) from 2002 to 2021).

⁶⁸ See Alex Alsup, *A Recent History of Tax Foreclosure*, REGRID: THE REGRID BLOG (Nov. 9, 2015), <https://regrid.com/blog/a-recent-history-of-tax-foreclosure> [<https://perma.cc/PP5J-LCMG>] (estimating the total amount "owed in delinquent taxes, fees, & penalties by properties sold at auction between 2011 and 2014" to be about \$85 million); Loveland Techs., *Wayne County Delinquent Tax Fund Graph*, PATREON (June 11, 2018, 12:01 PM), <https://www.patreon.com/posts/wayne-county-tax-19383149> [<https://perma.cc/S5VU-RPXD>] (estimating a surplus from 2009 to 2016 of between \$29,342,843 and \$60,457,170 each year).

⁶⁹ *Auctions and Claims*, CHARTER CNTY. OF WAYNE MICH., <https://www.waynecounty.com/elected/treasurer/auction.aspx> [<https://perma.cc/UEW2-JM8R>].

⁷⁰ *Id.*

⁷¹ Dewar et al., *supra* note 37 (noting that Wayne County has set \$500 as the cost-recovery amount).

⁷² See *VICE News, People Are Making Big Money Kicking Detroit Residents Out of Their Homes (HBO)*, YOUTUBE, at 00:33–01:12 (Dec. 7, 2017), https://youtu.be/gHLaWw_PnQY [<https://perma.cc/K6CV-RYQ4>].

⁷³ *Id.*

properties sold at auction.⁷⁴ Despite the fact that both state and non-state actors financially benefited from the forfeited homes, stategraft occurred because the state benefit was substantial, although not exclusive.

D. How Does One Determine If the State Has Violated Its Own Laws?

The law provides protection for those who can access it while leaving groups without access vulnerable and ripe prey. While plenty of state predation benefiting state coffers is legal, stategraft stands apart because it describes instances where the profit is illegal. This is not, at all, to say that illegal acts are worse than legal state predation. It is just to say that illegal acts are distinct and hence require a distinct discourse. This Section, therefore, answers four key questions: (1) What is law? (2) Who decides illegality? (3) What are the obstacles to securing a formal or informal declaration of illegality? And (4) why is the focus on illegality rather than injustice?

1. What Is Law?

Law includes formal and informal policies, legislation, judicial decisions, and administrative rules that use the state's police power to bind constituents and regulate their actions.⁷⁵ Laws can be national in scope or international, such as basic human rights guarantees. Illegality is any violation of these various forms of law through direct or indirect action as well as through inaction. Illegality can be a one-time occurrence, or it can be systemic.

In the Detroit case, the City's Mayor, Mike Duggan, and Chief Assessor, Alvin Horhn, openly admitted that their property tax assessments routinely exceeded state constitutional limits.⁷⁶ The City has, however, taken the position that in a mass appraisal process there is no way any city can be expected to get 100% of its property tax assessments correct. Consequently, if Detroit homeowners believe there are errors, they have a legal duty to file appeals during the fifteen-day

⁷⁴ Wayne County Tax Auction Results 2017, CITY OF DETROIT OPEN DATA PORTAL, <https://data.detroitmi.gov> [<https://perma.cc/T6ZT-6CQG>] (type "Wayne" in the box labeled "Find Data" and select "Wayne County Tax Auction 2017"); *see also* Atuahene, *Predatory Cities*, *supra* note 3, at 167–68 (“[F]rom 2002 to 2017, the Wayne County Treasurer has transferred \$571 million . . . to the county’s general fund.”).

⁷⁵ *See generally* Legarre, *supra* note 46, at 794 (stating that the phrase “police power” “normally refers to the authority of the states for the promotion of public health, public safety, public morals, and public welfare”).

⁷⁶ City of Detroit, *supra* note 49.

window provided by city ordinance.⁷⁷ The City argued that there was, therefore, no due process violation, although many homeowners did not, for several reasons, take advantage of the appeal process.⁷⁸ But, although there is arguably no due process violation, the City of Detroit still violated the Michigan Constitution when it overassessed the properties, so stategraft still occurred. That is, stategraft can occur as a due process violation or despite the provision of due process.

2. *Who Decides Illegality?*

When determining illegality, there are two important factors at play: whether or not analysts (such as lawyers or subject matter experts) can make an informal yet credible claim of illegality and whether or not there has been a formal declaration of illegality, which various public and private arbiters can make. The expressive power that a formal declaration of illegality entails is a bonus,⁷⁹ but it is not necessary for a claim of stategraft. Contrastingly, dispossession is a deplorable form of state predation, but without at least a claim of illegality, it is not stategraft.

Various types of neutral arbiters can make formal declarations of illegality. The state could declare an act illegal through its administrative or court rulings. Beyond judicial and quasi-judicial tribunals, there are also a series of local entities created by the legislative and executive branches to bolster the system of checks and balances and ensure fidelity to law, such as state-level comptrollers, departments of investigations, and ombudsmen.⁸⁰ International tribunals such as the World Trade Organization Dispute Settlement Body or the International Criminal Court could also serve as arbiters.⁸¹ In addi-

⁷⁷ DETROIT, MICH., CODE OF ORDINANCES §§ 44-4-2, -3 (2019) (stating that Detroit's assessment rolls become available for inspection on February 1st, and that Detroit's homeowners must file their assessment appeal with the Board of Assessors by February 15th of each year).

⁷⁸ Relying on appeal processes is problematic for at least two reasons. First, "appeal processes are intended to remedy errors in individual cases, not systemic and normalized errors"; second, poor people are less likely to appeal and have lower success when they do. Atuahene & Berry, *supra* note 41, at 865–69.

⁷⁹ See generally Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024 (1996) (discussing "the expressive function of law," i.e., law's ability to "mak[e] statements" rather than "control[] behavior directly").

⁸⁰ See, e.g., *Office of the Controller*, CITY OF DETROIT, <https://detroitmi.gov/departments/office-chief-financial-officer/ocfo-divisions/office-controller> [<https://perma.cc/NDX8-KBUR>]; *Ombudsman*, CITY OF DETROIT, <https://detroitmi.gov/government/ombudsman> [<https://perma.cc/KA4P-E7X4>].

⁸¹ See, e.g., *Dispute Settlement Body*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/dispu_body_e.htm [<https://perma.cc/28HN-DB9V>]; INT'L CRIM. CT., <https://www.icc-cpi.int> [<https://perma.cc/9NBV-F2NB>].

tion, a formal declaration of illegality can come from private arbitration.⁸²

Since a formal declaration of illegality is not always required to establish that an act is illegal, analysts of different types can provide informal yet well-substantiated readings of a law. In Detroit, for example, given the law's clarity and limited room for discretion, scholars have used residential housing data to prove that the City systematically violated the Michigan Constitution, which clearly states that local assessors cannot assess a property at more than 50% of its market value.⁸³ Although relevant laws state that studies can include only arm's-length transactions, there is an exception if non-arm's-length transactions (otherwise known as distressed sales) "have become a common method of acquisition in the jurisdiction for the class of property being valued."⁸⁴ While the evidence that distressed sales are the norm for residential properties in Detroit is clear, Timothy Hodge and I completed a study in which we intentionally included only arm's-length transactions so that our estimates of illegality are conservative.⁸⁵ Scholars who include distressed sales in their analyses, as allowed under the circumstances, will find illegality that is

⁸² There are, however, limits to arbitration. State, international, and private arbiters have different jurisdictions, and their decisions apply either to distinct parties or to all members of the relevant jurisdiction. See William W. Park, *Determining an Arbitrator's Jurisdiction: Timing and Finality in American Law*, 8 NEV. L.J. 135 (2007). Also, most arbiters can declare something illegal only from the time of the judgment, and their declarations are limited to the parties named in the legal action, limiting their ability to rectify widespread illegality. See 31 Moore's Federal Practice - Civil § 903.06 (2022) ("Expansion of an arbitration agreement to include other parties, however, appears to be at odds with the principle of freedom of contract that generally controls in consensual arbitration.").

⁸³ See *supra* note 4; Great Lakes Div. of Nat'l Steel Corp. v. City of Ecorse, 576 N.W.2d 667, 672 (Mich. Ct. App. 1998); see also, e.g., Atuahene & Hodge, *supra* note 3; Atuahene & Berry, *supra* note 41; Ctr. for Mun. Fin., *An Evaluation of Property Tax Regressivity in Wayne County, Michigan*, UNIV. OF CHI. HARRIS SCH. OF PUB. POL'Y, https://s3.us-east-2.amazonaws.com/propertytaxdata.uchicago.edu/nationwide_reports/web/Wayne%20County_Michigan.html [<https://perma.cc/GK74-LDPW>]; Andrew Hayashi, Juan Carlos Suarez Serrato & Carlos Fernando Avenancio-León, *Public Letter Re: The University of Chicago Study*, <https://drive.google.com/file/d/1vRvbYeffuexd32NsqwIuP4Op6HWQ42Gw/view> [<https://perma.cc/8X8S-NZWZ>] (supporting the Center for Municipal Finance at the University of Chicago's study on the overtaking of the lowest-valued properties in Detroit); WAYNE CNTY. DEP'T OF EQUALIZATION, CITY OF DETROIT FORM L-4015: 2017-2020 (on file with author) (providing a template for recording property appraisals that can track violations of the Michigan state law on property tax assessments); Jason Grotto, *How Unfair Property Taxes Keep Black Families from Gaining Wealth*, BLOOMBERG (Mar. 9, 2021, 1:00 AM), <https://www.bloomberg.com/news/features/2021-03-09/racial-inequality-broken-property-tax-system-blocks-black-wealth-building> [<https://perma.cc/4MQC-7DVA>].

⁸⁴ MICH. COMP. LAWS § 211.27(1) (2022).

⁸⁵ Atuahene & Hodge, *supra* note 3, at 283-84 (showing that between 2009 and 2015 there were 123,400 transactions, but only 6,186 were arm's-length transactions).

markedly more pronounced. Even the most conservative estimates of illegality, however, were shocking. Between 2009 and 2015, the City of Detroit inflated the property tax assessments of 53% to 84% of all homes in each year.⁸⁶ As a result, even without a formal declaration of illegality from a tribunal, the empirical evidence decisively proves that stategraft is afoot in Detroit.

3. *What Are the Obstacles to Securing a Declaration of Illegality?*

While a defining feature of stategraft is that it occurs when a property transfer is illegal, determining what is illegal is not always easy because sometimes the law is unclear and produces genuine uncertainty. As Michael McCann highlights, “[S]ocial movement struggles often entail struggles over the very meaning of indeterminate, contradictory legal principles.”⁸⁷ In other instances, however, the law is perfectly clear yet out of step with a society’s evolving morality. At one time, de jure segregation was legal,⁸⁸ and it was only after the Civil Rights Movement shifted societal perceptions of what was acceptable that the courts repudiated Jim Crow laws and discredited the doctrine of separate but equal.⁸⁹ Now, even the idea that there were once separate drinking fountains for Blacks and whites offends deeply. Like morality, the line of legality can ebb and flow with the tide of the times.

It is important to note that many acts of state predation, however severe, will never rise to the level of stategraft because the affected population cannot secure an informal or formal declaration of illegality. Severe asymmetries of power and insurmountable barriers to accessing justice can prevent people from attaining legal knowledge or neutral arbiters.⁹⁰ Making credible claims of illegality can be difficult for vulnerable populations and securing formal declarations of illegality even more difficult. And when the affected population is able to overcome access to justice challenges and reach an arbiter, the arbiter may be in cahoots with the state rather than neutral, and the judgment

⁸⁶ *Id.* at 287.

⁸⁷ Michael W. McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANN. REV. L. & SOC. SCI. 17, 25 (2006).

⁸⁸ *Brown v. Bd. of Educ.*, 347 U.S. 483, 488 (1954) (noting that the petitioners “ha[d] been denied admission to schools attended by white children under laws requiring or permitting segregation according to race”).

⁸⁹ GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 156 (1991) (describing *Brown v. Board* as a reaction to the Civil Rights Movement rather than a catalyst).

⁹⁰ See generally Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443 (2016) [hereinafter Sandefur, *What We Know*] (exploring access to justice barriers in civil justice); ACCESS TO JUSTICE (Rebecca L. Sandefur ed., 2009) (collecting works discussing access to justice).

can reinforce the state predation instead of declaring it illegal.⁹¹ Also, even if parties make it to a neutral arbiter, procedural hurdles can prevent the arbiter from hearing their case, which is precisely what happened in Detroit.

On June 13, 2016, the ACLU of Michigan, NAACP Legal Defense and Educational Fund, Inc., and the law firm of Covington & Burling filed *Morningside v. Sabree*, a class action lawsuit against the City of Detroit and Wayne County.⁹² The plaintiffs settled their lawsuit against the City of Detroit for obstructive administration of the Poverty Tax Exemption.⁹³ But Judge Robert Colombo dismissed the case against Wayne County, which alleged it breached the Fair Housing Act by allowing unconstitutional property tax assessments to exist in its predominantly African American cities but not in its predominantly white ones.⁹⁴ Colombo ruled that plaintiffs should have brought the case to the Michigan Tax Tribunal instead of the Wayne County Circuit Courts.⁹⁵ The Michigan Court of Appeals affirmed Colombo's ruling, and the Michigan Supreme Court denied leave to appeal.⁹⁶

Despite the abundant empirical evidence of systemic unconstitutional property tax assessments in Detroit, a procedural ruling that forced plaintiffs to bring the action before the Michigan Tax Tribunal has prevented courts from addressing this systemic problem for three reasons. First is the statute of limitations. Plaintiffs could not reach the Tax Tribunal unless they had first challenged their assessments during the two-week Assessor's Review period each February.⁹⁷ In contrast, the case in the circuit court relied on the Fair Housing Act, which has a two-year statute of limitations because it takes a great deal of time,

⁹¹ Cf., e.g., Keith Swisher, *Pro-Prosecution Judges: "Tough on Crime," Soft on Strategy, Ripe for Disqualification*, 52 ARIZ. L. REV. 317 (2010) (arguing for judicial disqualification of elected "tough on crime" judges based on their pro-prosecution biases and opposition "to the rules of judicial ethics and even ethics in general"); see also Susannah Camic Tahk, *Spillover Tax Precedent*, 2021 WIS. L. REV. 657, 662–63 (2021) (describing a phenomenon where repeat litigators, such as the state, can strategize to push precedent in a favorable direction).

⁹² Complaint, *Morningside Cmty. Org. v. Sabree*, No. 16-008807-CH (Mich. Cir. Ct. Wayne Cnty. July 13, 2016).

⁹³ Stipulation and Order of Settlement and Dismissal, *Morningside Cmty. Org. v. Sabree*, No. 16-008807-CH (Mich. Cir. Ct. Wayne Cnty. July 3, 2018).

⁹⁴ *Morningside Cmty. Org. v. Wayne Cnty. Treasurer*, No. 336430, 2017 WL 4182985, at *3 (Mich. Ct. App. Sept. 21, 2017) (per curiam) (explaining the trial court's reasoning); see also Complaint, *Morningside Cmty. Org. v. Sabree*, No. 16-008807-CH (Mich. Cir. Ct. Wayne Cnty. July 13, 2016).

⁹⁵ *Morningside Cmty. Org. v. Wayne Cnty. Treasurer*, 2017 WL 4182985, at *4.

⁹⁶ *Id.*, *appeal denied*, 905 N.W.2d 597 (Mich. 2018).

⁹⁷ DETROIT, MICH., CODE OF ORDINANCES § 44-4-3(a) (2019).

data, and expertise to build a disparate impact case.⁹⁸ Second, because the Tax Tribunal is not a court of law, it has no authority to issue the injunctive relief that plaintiffs sought.⁹⁹

Third, like many other administrative bodies, the Tax Tribunal has no ability to hear class actions, leaving plaintiffs with only the possibility of individual justice that leaves the structural shortcomings of the assessment process untouched.¹⁰⁰ Additionally, even apart from the Detroit case, many formal court cases settle prior to adjudication,¹⁰¹ forfeiting a public declaration of illegality in favor of privately negotiated settlements that benefit only a few individuals. That is, even when parties reach a neutral arbiter, the law has limits and thus sometimes leaves well-documented structural injustices intact.

4. *Why Is the Focus on Illegality Rather than Injustice?*

Given that proving illegality is difficult, the question becomes: Why does stategraft focus specifically on state predation that is illegal? Illegality is a central element of stategraft for four succinct reasons, in addition to the more nuanced elaboration that I provide in the next Part of this Article. First, the idealized version of liberal democracy does not acknowledge that liberal democracies are at once liberal and predatory.¹⁰² Illegal property transfer by public officials to public coffers is a flagrant form of state predation that the Washington Consensus claims is exceptional in advanced liberal democracies, where the protection of private property and the rule of law are cornerstone principles.¹⁰³ The stategraft discourse provides the lexicon

⁹⁸ 42 U.S.C. § 3610(a)(1); Stacy E. Seicshnaydre, *Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act*, 63 AM. U. L. REV. 357, 412 (2013).

⁹⁹ *Wikman v. City of Novi*, 322 N.W.2d 103, 114 (Mich. 1982).

¹⁰⁰ *Perry v. Vernon Twp.*, 404 N.W.2d 755, 757 (Mich. Ct. App. 1987).

¹⁰¹ Theodore Eisenberg & Charlotte Lanvers, *What Is the Settlement Rate and Why Should We Care?*, 6 J. EMPIRICAL LEGAL STUD. 111, 128 (2009).

¹⁰² See generally Christopher Hobson, *The Limits of Liberal-Democracy Promotion*, 34 ALT.: GLOB., LOC., POL. 383, 398 (2009).

¹⁰³ The Washington Consensus is a package of neoliberal reforms often forced upon economically vulnerable nations in the global south by Washington, D.C.-based institutions such as the International Monetary Fund, the World Bank, and the United States Department of the Treasury. See Alicia Girón, *International Monetary Fund: From the Stability to the Instability of the Washington Consensus and the Reforms in Latin America*, in GLOBALIZATION AND THE WASHINGTON CONSENSUS 43, 51 (Gladys Lechini ed., 2008) (stating that in the Washington Consensus, “emphasis is given to the respect of private property and processes of privatization which mean a diminished role of the state so that companies, together with a free workforce, can take charge of national and international economic projects”); Carlos Santiso, *The Contentious Washington Consensus: Reforming the Reforms in Emerging Markets*, 11 REV. INT’L POL. ECON. 828, 831 (2004) (listing “secure property rights” as one of the Washington Consensus’s policy objectives).

necessary to move beyond these idealized notions in order to systematically investigate whether theft by public officials for public gain is an ordinary characteristic of liberal democracies or an aberration.

Second, when a state engorges its treasury in violation of its own laws, this is a distinctive moral offense that requires a distinct discourse. In a liberal democracy, one function of law is to reflect the collective morality as it has been determined through the democratic process.¹⁰⁴ Consequently, illegality communicates that an individual or entity has breached a moral standard that has been deliberated, concretized, and privileged.¹⁰⁵ In contrast, when an act is labeled unjust (although not illegal), this too is a moral claim, but in a world of competing moralities, this lends itself to the question, according to whom?

There are two sides to every story, and frequently people do not know whom to believe: citizens' claims that the state has overreached or the state's denials of a violation. Power asymmetries between citizens and states often muffle the citizens' side of the story. But moving beyond a mere claim of injustice and securing a declaration of illegality can serve as an amplifier, balancing the scales. It can be a trustworthy broadcast in a cacophony of competing messages.¹⁰⁶ For this reason—while declarations of illegality from a variety of arbiters are valuable—perhaps the most valuable declaration that the state has abused its power comes from an entity of the state itself, like the courts.

Third, a formal or informal declaration that an act is *illegal*—and not just *unfair*—imbues that claim with the legitimacy of the body or individual making the declaration.¹⁰⁷ If the body or individual making the declaration of illegality holds sizable moral power, the declaration can make the state's abuse of power more visible and condemnable than merely declaring it unjust.

¹⁰⁴ See MICHAEL J. PERRY, *THE POLITICAL MORALITY OF LIBERAL DEMOCRACY* 11 (2010) (“[A] democracy is committed to a human right against government, understood as a *moral* claim of a special sort . . . if in the legal system of the democracy the moral claim is recognized and protected as a fundamental *legal* claim.”).

¹⁰⁵ See *id.*

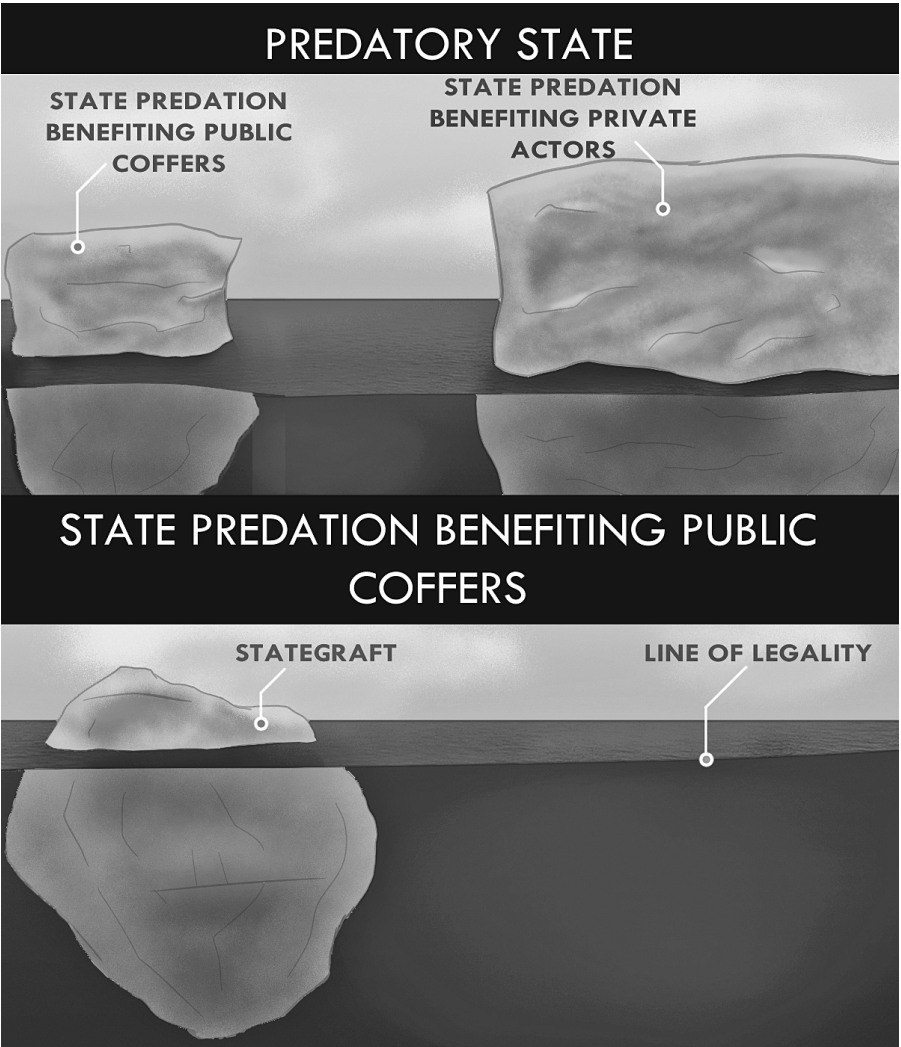
¹⁰⁶ In places like the United States, for example, legal challenges, both inside and outside of the courts, are a known repertoire and the media is especially comfortable with broadcasting rights claims. See MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* 22 (1998) (describing media's importance in generating attention for causes by reporting on rights claims).

¹⁰⁷ Randy E. Barnett, *Constitutional Legitimacy*, 103 COLUM. L. REV. 111, 116 (2003) (“[M]ost citizens think that when a command is called a ‘law,’ it carries with it a moral duty of obedience . . .”).

Fourth, unlike an act that is solely unjust, a formal declaration of illegality opens the door to the adjudicative entity's institutional remedies. If the arbiter is a state, then remedial action through its judicial and administrative courts and its law enforcement agencies is possible. Likewise, if the arbiter is an international organization, its enforcement mechanisms come into play. For those who have access, these institutional channels provide an additional avenue to resist the state's power abuse. Conversely, informal declarations of illegality do not automatically activate specific institutional remedies, but activists and commentators can use them to leverage the media in a grassroots "name and shame" campaign that can eventually remedy the wrong.¹⁰⁸

¹⁰⁸ See Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 689, 690–91 (2008) ("The evidence shows that naming and shaming is not all cheap talk. On the one hand, governments named and shamed as human rights violators often improve protections for political rights after being publicly criticized—they hold elections or pass legislation to increase political pluralism or participation.").

FIGURE 1



A glacier analogy is a useful way to highlight the role of illegality in the theory of stategraft. The glacier is state predation that complies with existing rules or policies and chiefly benefits private actors. But state predation that engorges public coffers is tantamount to an iceberg, the broken edge of a glacier floating freely in the ocean. The fluid water line is the line of legality, so state predation that primarily benefits the state, but is legal, is just below the water line where the largest portion of any iceberg exists. Stategraft is the tip of the iceberg made visible by the formal or informal declaration of illegality. Once the tip of an iceberg is spotted, seafarers can skillfully navigate around it because they know that below the water line a more severe danger

lurks, hidden from sight, cloaked by legality. Consequently, stategraft is important, not because it describes the most economically or socially devastating acts, but instead because the illegality signals a distinctive moral offense has occurred, rendering the state's abuse of power more visible and opening institutional and grassroots avenues for resistance.

II

THE CONCEPTUAL VALUE OF STATEGRAFT

Stategraft is a valuable theoretical construct because it brings three specific factors into sharp focus. First, stategraft spotlights an overlooked yet vital component of liberal democracies. Second, stategraft distinctly unsettles the democratic agreement between citizen and state. Third, stategraft can present unique opportunities for social movements. In this Part, I use ethnographic data on Detroit's property tax foreclosure crisis to illustrate each of these three arguments.

A. *Stategraft Spotlights an Overlooked Yet Vital Component of Liberal Democracy*

While liberal democracy is configured differently in each nation, there are certain core elements of its ascendant version, which the global north has been systematically exporting to the global south since the end of the Cold War.¹⁰⁹ A liberal state is built upon a representative democracy where officials are elected, subject to the law, and accountable to the electorate.¹¹⁰ Unlike in a rule *by law* nation—where officials are not subject to the laws they are charged with promulgating—liberal democracies are predicated upon rule *of law*, which constrains all individuals and institutions in the society.¹¹¹ Through baseline protections of liberty, such as due process and the freedoms of speech, assembly, and religion, the legal order protects individuals against the will of the majority and the arbitrary actions of the state or other powerful actors, such as corporations.¹¹² Addition-

¹⁰⁹ Hobson, *supra* note 102, at 383–84.

¹¹⁰ *Id.* at 386 (citing Larry Diamond, *Is the Third Wave Over?*, 7 J. DEMOCRACY 386 (1996)).

¹¹¹ See BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 91–94 (2004) (comprehensively reviewing philosophical conceptions of the “rule of law”); Margaret Jane Radin, *Reconsidering the Rule of Law*, 69 B.U. L. REV. 781, 809 (1989) (“The point of ‘the Rule of Law, not of individuals’ is that the rules are supposed to *rule*. . . . ‘Individuals’—judges, police, administrators—are needed to make sure these self-evident applications are carried out, but these individuals are not supposed to *rule*.”).

¹¹² See Hobson, *supra* note 102, at 386–88 (identifying and critiquing theoretical underpinnings of liberal democracy).

ally, the protection of private property is an essential bulwark against incursions on one's liberty.¹¹³ While there are certain things citizens cannot do on public property or in public spaces—such as redecorate them to express important features of their identity or walk around stark naked—they have the freedom to do these things on their private property, a place where individual autonomy and freedom flourish.¹¹⁴

This is the idealized understanding of liberal democracy, which International Financial Institutions routinely export to emergent economies through a process that international politics has gradually institutionalized.¹¹⁵ As the vanguard of this liberal democracy promotion agenda, the United States and other Western democracies hold themselves out as models worthy of imitation. Teivo Teivainen observes that, in a pedagogy of power, the democracy promotion agenda situates nations in the global north as primary school teachers who must instruct the child-like countries in the global south.¹¹⁶ But if public officials in the vanguard nations routinely transfer property from their constituents to public coffers in violation of existing laws, this would complicate the liberal democracy promotion agenda, which is centered upon the rule of law and protection of private property.¹¹⁷ Consequently, to uphold the teachers' integrity in this pedagogy of power, they peddle a sanitized version of liberal democracy, which ignores the fact that state predation has been integral to the development and perpetuation of Western social orders.

It is, for example, no secret that state predation is an integral part of America's history. The United States is a nation built upon the shameful foundation of chattel slavery—the most sinister form of predation.¹¹⁸ Slavery was followed by sharecropping, convict leasing, redlining, and several other forms of state-supported predation that

¹¹³ Bernadette Atuahene, *Property Rights & the Demands of Transformation*, 31 MICH. J. INT'L L. 765, 797–98 (2010).

¹¹⁴ *Id.*

¹¹⁵ See generally Devesh Kapur & Moisés Naím, *The IMF and Democratic Governance*, 16 J. DEMOCRACY 89 (2005) (evaluating IMF efforts to promote democracy); THE UN ROLE IN PROMOTING DEMOCRACY: BETWEEN IDEALS AND REALITY (Edward Newman & Roland Rich eds., 2004) (describing and providing examples of the UN's role in promoting democracy).

¹¹⁶ Teivo Teivainen, *The Pedagogy of Global Development: The Promotion of Electoral Democracy and the Latin Americanisation of Europe*, 30 THIRD WORLD Q. 163, 164–65 (2009).

¹¹⁷ See Girón, *supra* note 103, at 51; Santiso, *supra* note 103, at 831.

¹¹⁸ See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK PEOPLE IN AMERICA FROM THE CIVIL WAR TO WORLD WAR II* 41–42 (2008) (describing how slavery was fundamental to the early United States and how hegemony over African Americans was reinvented after the Civil War).

subjugated former slaves and their descendants.¹¹⁹ If state predation is routine, then the question is, how has it coexisted with the idealized image of the liberal state?

There are two different moves that make this synchronism possible. The first is that predation is legitimized through law, so the state uses its police powers to make unjust property transfers legal. For instance, the unconscionable sharecropping arrangements that replaced slavery were legal.¹²⁰ The second move is that dominant discourses conceal the structural injustices that make the predation possible and instead focus on failures of personal responsibility, situating the victim as the morally reprehensible entity. When, for instance, African American sharecroppers could not escape debilitating cycles of debt after slavery, the dominant discourse painted them as lazy, blaming the debt on their moral shortcomings, while ignoring the structural inequities of the sharecropping arrangements themselves.¹²¹ Similarly, during the Great Recession, dominant narratives blamed widespread mortgage foreclosures on individuals who took out mortgages they could not afford, rendering them blameworthy and the focus of political ire.¹²² The dominant narratives did not focus on how banks and other financial institutions specifically targeted certain vulnerable communities for risky loans even when many individuals within the community qualified for less risky products.¹²³

¹¹⁹ See Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 928–50 (2019) (describing Black Codes, crop liens, debt peonage, sharecropping, convict leasing, coercion, fraud, and apprenticeship laws); DAVID M. OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 57 (1996) (“In a region where dark skin and forced labor went hand in hand, leasing would become a functional replacement for slavery, a human bridge between the Old South and the New.”); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2018) (describing the process of redlining).

¹²⁰ See JERROLD M. PACKARD, *AMERICAN NIGHTMARE: THE HISTORY OF JIM CROW* 134–35 (2002) (describing the injustices of sharecropping in the early twentieth century).

¹²¹ Wesley Allen Riddle, *The Origins of Black Sharecropping*, 49 MISS. Q. 53, 56 (1995) (“Planters also found that without the power of compulsion, the overall supply of labor had shrunk dramatically [P]lanters often interpreted this phenomenon as evidence of the Negro’s inherent laziness and unwillingness to work without coercion”).

¹²² Max Ehrenfreund, *It’s Time to Stop Blaming Poor People for the Financial Crisis*, WASH. POST (June 15, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/06/15/its-time-to-stop-blaming-poor-people-for-the-financial-crisis/> [<https://perma.cc/Y8B7-GL9Z>] (arguing that the poor receive outsized blame for the crisis and that loans to more affluent borrowers inflated the housing bubble and citing Manuel Adelino, Antoinette Schoar & Felipe Severino, *Dynamics of Housing Debt in the Recent Boom and Great Recession* (Nat’l Bureau of Econ. Rsch., Working Paper No. 23502, 2017), https://www.nber.org/system/files/working_papers/w23502/w23502.pdf [<https://perma.cc/2X5V-Z9YC>]).

¹²³ See Douglas S. Massey, Jacob S. Rugh, Justin P. Steil & Len Albright, *Riding the Stagecoach to Hell: A Qualitative Analysis of Racial Discrimination in Mortgage Lending*,

In the Detroit case, the dominant narrative, which blamed over-taxed residents for their predicament by painting them as irresponsible individuals, cloaked the pervasive illegality and thus allowed it to persist.¹²⁴ For example, David Szymanski, who was once Wayne County's Chief Deputy Treasurer and Detroit's Treasurer, explained the property tax foreclosure crisis by saying, "when people had a choice between buying purses and paying their taxes, unfortunately they chose to buy the purse."¹²⁵ These types of statements formed the dominant narrative, which strategically shifted the focus from malfunctioning institutions to allegedly morally inept individuals, rendering the structural injustice invisible and allowing unconstitutional property tax assessments to advance at scale.

In short, state predation has long coexisted alongside liberal democracy because either legality legitimates the predation or dominant victim-blaming discourses obscure the predation. The Detroit example shows that the illegality discourse can overpower the personal irresponsibility discourse, which routinely allows structural injustice to hide in plain sight.

Additionally, the stategraft lexicon allows scholars to examine critically the assumption that the abuses it describes routinely happen in authoritarian regimes or nascent democracies but are exceptional in advanced liberal democracies. That is, by linking occurrences in mature democracies with a strong rule of law reputation, such as the United States, with events in authoritarian states or embryonic democracies reputed to have a more tenuous commitment to the rule of law, the stategraft discourse can challenge the sanitized versions of liberal democracy that have become ascendant.

B. Stategraft Distinctly Unsettles the Democratic Agreement Between Citizen and State

There is a robust literature arguing that corruption is both a symptom and a cause of dysfunctional democracies.¹²⁶ While corruption certainly disrupts the democratic project in fragile democracies, scholars have argued that corruption can undermine even strong democracies for a bevy of reasons: It impairs the rule of law, delegiti-

15 CITY & CMTY. 118, 133–35 (2016) (finding evidence of racially-biased subprime mortgage lending).

¹²⁴ Atuahene, *Predatory Cities*, *supra* note 3, at 174.

¹²⁵ *Id.* at 148 (quoting Interview with David Szymanski, former Treasurer of Detroit (Mar. 14, 2017) (on file with author)).

¹²⁶ See generally Rose-Ackerman, *supra* note 34 (examining how democratic electoral and legislative systems may incentivize corruption); STEPHEN M. GRIFFIN, *BROKEN TRUST: DYSFUNCTIONAL GOVERNMENT AND CONSTITUTIONAL REFORM* (2015) (analyzing the issue of distrust in Madisonian representative democracy).

mates the state, diminishes trust between citizens and their states, spurs unrest, impedes equal inclusion, obstructs delivery of public services, subverts the culture of democracy, and causes economic and political inefficiencies.¹²⁷ Since the state is doubly implicated in stategraft—public officials are the primary perpetrators, and the state treasury is the primary beneficiary—it distinctly unsettles the democratic agreement between citizen and state. Stategraft is predicated on the assertion that when state agents precipitate dispossession it is markedly different from forfeiture at the hands of individuals, corporations, or other private entities. Democracy is government by the people, for the people, and the state's primary role is to facilitate this self-governance.¹²⁸ The state morphs from facilitator to predator when public officials illicitly take property from citizens to enrich the state. While the predatory actions of private actors can cause more acute economic damage to the citizenry, by transforming citizens into prey, stategraft uniquely attenuates confidence in democratic institutions, which is the anchor of a functioning democracy.

Additionally, unlike people in authoritarian states, citizens in liberal democracies have various tools at their disposal to contest stategraft and other predatory practices, including courts, street protests, and elections.¹²⁹ But even in liberal democracies, vulnerable populations often are unable to fight back effectively against breaches of the rule of law because of wealth asymmetries, limited access to

¹²⁷ See, e.g., Rose-Ackerman, *supra* note 2, at 4 (arguing that “[s]ystemic corruption undermines the legitimacy of governments, especially in democracies,” and that it prevents government benefits from going to the most efficient bidders); LESLIE HOLMES, *ROTTEN STATES? CORRUPTION, POST-COMMUNISM, AND NEOLIBERALISM* 143 (2006) (arguing that to “accept corruption . . . can amount to acceptance of unjust inequalities and the absence of the rule of law”) (footnotes omitted); Ina Kubbe & Annika Engelbert, *Corruption and the Impact of Democracy*, 70 CRIME L. & SOC. CHANGE 175, 175 (2018) (arguing that corruption, “[b]y diverting rare resources from disadvantaged people, . . . damages the rule of law, social justice and lowers the trust of citizens in political institutions and processes”); Rose-Ackerman, *supra* note 34, at 374 (noting that corruption may lead to a situation where “government inefficiency . . . threatens its hold on power”); Mark E. Warren, *What Does Corruption Mean in a Democracy?*, 48 AM. J. POL. SCI. 328, 328 (2004) (“[C]orruption undermines the culture of democracy. When people lose confidence that public decisions are taken for reasons that are publicly available and justifiable, they often become cynical about public speech and deliberation.”).

¹²⁸ See generally Philippe C. Schmitter & Terry Lynn Karl, *What Democracy Is . . . and Is Not*, 2 J. DEMOCRACY 75 (1991) (providing an overview of the underlying concepts, procedures, and principles of democracy).

¹²⁹ See Aziz Z. Huq & Jon D. Michaels, *The Cycles of Separation-of-Powers Jurisprudence*, 126 YALE L.J. 346, 404 (2016) (“[The] democratic public votes, assemblies, protests, petitions Congress, speaks, and sues the government. These opportunities for public engagement empower various factions, marginal and median, across a heterogenous and fractious electorate.”).

justice, social vulnerabilities, and uneven political power.¹³⁰ That is, even in advanced liberal democracies, the rule of law is porous, and vulnerable groups are the most likely to fall through its ever-present cracks. While stategraft can affect all members of society, only the populations that are least able to mobilize their legal protections will be unable to resist and forced to endure. For the sake of those forced to endure, all societies must investigate whether this type of predation consistently occurs instead of trying to sanitize or ignore it.

If they do not, ethnographic evidence from Detroit suggests that stategraft can further erode trust and weaken vulnerable people's attachments to democratic institutions. One man, who completed the tax foreclosure process after he failed to pay his illegally inflated property taxes, summed up the sentiments of many of those I interviewed when he said that "the City got away with murder. The City is literally stripping legacy away from people. The City took so much from people that they will never get back."¹³¹ Through stategraft, the City of Detroit not only robbed its citizens of their money and houses, but it also plundered their trust and hijacked their faith in the democratic institutions that govern them.

C. *Stategraft Can Present Unique Opportunities for Social Movements*

The fact that an analyst or neutral arbiter declares a predatory act illegal does not automatically mean that act will cease.¹³² This is only one step in deconsecrating the state and delegitimizing its predatory actions. Social movements—which form when ordinary people create a durable coalition and make demands on existing power structures to achieve a common cause¹³³—are sometimes required. I hypothesize

¹³⁰ See generally Sandefur, *What We Know*, *supra* note 90 (describing barriers to access to justice that disproportionately affect poor people and racial minorities).

¹³¹ Confidential Interview with Mr. Harris (April 2017) (on file with author). The Author's Institutional Review Board (IRB) study protocol requires her to employ pseudonyms for all confidential interviews.

¹³² See, e.g., Radley Balko, Opinion, *Albuquerque Concedes Forfeiture Was Illegal, Continues with Illegal Forfeitures*, WASH. POST (Dec. 22, 2016), <https://www.washingtonpost.com/news/the-watch/wp/2016/12/22/albuquerque-concedes-forfeiture-was-illegal-continues-with-illegal-forfeitures> [<https://perma.cc/48AP-45B7>] (describing Albuquerque's continued use of civil asset forfeitures despite the state legislature banning the practice).

¹³³ See Mario Diani, *The Concept of Social Movement*, 40 SOCIO. REV. 1, 13 (1992) (defining "social movement" as "a network of informal interactions between a plurality of individuals, groups and/or organizations, engaged in a political or cultural conflict, on the basis of a shared collective identity"); Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 COLUM. L. REV. 1436, 1439 (2005) (defining "social movements" as "politically insurgent and participatory campaigns for relief from socioeconomic crisis or the redistribution of social, political, and economic capital").

that there are two ways the concept of stategraft can be an asset to social movements: when it functions as a collective action frame and when it highlights a political opportunity structure.

In social movements, leaders must convince potential supporters that an injustice worthy of their ire and time has occurred. Scholars describe collective action frames as interpretive frameworks that allow individuals and groups to locate, perceive, identify, and label sociopolitical activity happening around them, simplifying complex occurrences in order to unify and mobilize supporters.¹³⁴ There are three types of collective action frames: diagnostic (identifying the problem and its attributes), prognostic (offering potential solutions), and motivational (inspiring sustained participation).¹³⁵ When activists appropriately translate the concept of stategraft for their constituents, it is a potentially powerful diagnostic frame because it intentionally centers the illegal act committed by state actors. Fighting illegality is an unimpeachable cause and powerful unifier that can create common cause among both strangers and friends.¹³⁶

While using stategraft as a diagnostic frame centers the law, this does not mean that movement leaders must prioritize legal strategies above other movement tactics. In fact, legal action is most effective when it occurs in tandem with other mobilization tactics and is not the exclusive avenue of resistance.¹³⁷ By emphasizing illegality, movement leaders can forge a durable collective identity that inspires both legal and non-legal forms of collective action.¹³⁸ It is also important to note that a legal framing, while capable of empowering, has its downsides

¹³⁴ See ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE* 21–39 (Northeastern Univ. Press 1986) (introducing frame analysis as a means of understanding the significance of perception in constructing action); Martha F. Davis, *Law, Issue Frames and Social Movements: Three Case Studies*, 14 U. PA. J.L. & SOC. CHANGE 363, 366–67 (2011) (reviewing collective action frame literature).

¹³⁵ David A. Snow & Robert D. Benford, *Ideology, Frame Resonance, and Participant Mobilization*, 1 INT'L SOC. MOVEMENT RSCH. 197, 199 (1988) (citing JOHN WILSON, *INTRODUCTION TO SOCIAL MOVEMENTS* (1973)).

¹³⁶ See McCann, *supra* note 87, at 25–26 (arguing “legal norms and traditions can become important elements in the process of explaining how existing relationships are unjust, in defining collective group goals, and in constructing a common identity” for social movements).

¹³⁷ See *id.* at 28 (“One common critique is that legal tactics divert resources to lawyers who focus on litigation rather than on grassroots mobilization and other forms of potentially more effective political organizing.”). See generally Aaron Samsel, *Toward a Synthesis: Law as Organizing*, 18 CUNY L. REV. 375 (2015) (arguing that movement lawyers should not focus solely on litigation but also work as community organizers and educators).

¹³⁸ See Anna-Maria Marshall, *Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment*, 28 LAW & SOC. INQUIRY 659, 661–62 (2003) (describing the power of legality as a framework in disputes over whether an injury has taken place).

as well. For example, highlighting the illegality component of complex social problems can downplay other essential aspects of the injustice.¹³⁹ Also, deploying a legal frame can validate the justice system and crowd out more radical change, including dismantling the system altogether.¹⁴⁰ Consequently, stategraft's potential to be a powerful diagnostic frame is contingent and contextual.

In addition, when state agents illicitly take property from people to fill public coffers, this may create a political opportunity structure upon which social movements can capitalize.¹⁴¹ Sidney Tarrow argues that political opportunity structures are “dimensions of the political environment” which either encourage or discourage people from using collective action.¹⁴² They are external factors that explain why groups with bountiful internal resources may fail to mobilize while groups with limited organizational capacity somehow succeed.¹⁴³ Political opportunities “lower the costs of collective action, reveal potential allies, [and] show where elites and authorities are most vulnerable”¹⁴⁴

Stategraft presents a potential political opportunity structure when the illegality involved makes authorities vulnerable, causes divisions within the elite, and serves as a large umbrella with ample room for people who subscribe to various political ideologies. Stategraft can resonate with people who champion increased law enforcement, as well as those who are concerned with how laws are discriminatorily enforced against subordinated populations. It potentially speaks to people who want to protect against governmental abuses by minimizing the state's role in society, while it also can strike a chord with those committed to defending populations made vulnerable by threadbare social safety nets.

¹³⁹ See McCann, *supra* note 87, at 19.

¹⁴⁰ See Cary Coglianese, *Social Movements, Law, and Society: The Institutionalization of the Environmental Movement*, 150 U. PA. L. REV. 85, 105–06 (2001) (describing radical environmentalists' rejection of institutionalist advocacy).

¹⁴¹ See Jane Jenson, *What's in a Name? Nationalist Movements and Public Discourse*, in *SOCIAL MOVEMENTS AND CULTURE* 107, 114 (Hank Johnston & Bert Klandermans eds., 1995) (quoting SIDNEY G. TARROW, *STRUGGLE, POLITICS, AND REFORM: COLLECTIVE ACTION, SOCIAL MOVEMENTS, AND CYCLES OF PROTEST* 36 (1989)) (arguing “movements ‘make opportunities,’ in part by framing codes of meaning, promoting ideological packages, and creating new models of collective action,” and that movements then “couple this knowledge” with the insight that there is variation across time and space in how movements might “frame” themselves).

¹⁴² See SIDNEY G. TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 163 (rev. and updated 3d ed. 2011).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 33.

Detroit serves as an excellent case in point because the claim that property tax assessments were illegal, rather than merely unjust, jump-started a social movement. Before evidence of unconstitutional property tax assessments came into the public realm, people knew for years that property taxes in Detroit were “too damn high.”¹⁴⁵ As one Detroit resident said, “[B]eing illegally assessed makes me so angry. I knew [my high property tax bill] was wrong. I did not know that it was in the Constitution. Michigan’s Constitution. But I knew it wasn’t right.”¹⁴⁶ When someone does not know about unconstitutional property tax assessments, they are left to think it was purely their fault that they lost their home or their family home, often referred to as “mama’s house” or “grandaddy’s house.” Being able to declare reliably that the property tax assessments were not only high but also illegal shifted the discourse from one centered upon individual irresponsibility to one based upon structural injustice.¹⁴⁷ It allowed Detroit residents to throw away the mantle of shame that had been weighing them down and forcing them to operate in the shadows, hiding their financial problems from friends and family, and move towards an empowered position of righteous anger and action.

Additionally, the declaration of illegality made the state’s predation highly visible and catalyzed citizens and activists from a broad array of backgrounds to unite and fight against the injustice, using both legal and extra-legal strategies. Under a clear and morally uncontested banner of stopping illegal property tax assessments and their subsequent impact, seventeen Detroit grassroots organizations formed the Coalition for Property Tax Justice.¹⁴⁸ The coalition’s member organizations include groups that fight for housing, water, and criminal justice reforms, as well as groups that organize around their Muslim, Jewish, and Christian identities.¹⁴⁹

The Mackinac Center, a right-wing libertarian think tank, was also an ally in the work because it also wanted to end unconstitutional property tax assessments and the resulting foreclosures, although on most issues, many of the grassroots organizations in the Coalition

¹⁴⁵ Atuahene, *supra* note 10, at 1503.

¹⁴⁶ Illegal Foreclosures Detroit, *The Human Impact of Illegal Foreclosures: Interview with Sonja Bonnett*, YOUTUBE (Dec. 8, 2017), <https://www.youtube.com/watch?v=zpfvs-VAMJc> [<https://perma.cc/P2PR-S3LS>].

¹⁴⁷ See Atuahene, *Predatory Cities*, *supra* note 3, at 174 (noting that narratives about irresponsible homeowners were a false flag that drew attention away from the structural injustices of the system, such as systemic illegal property tax assessments).

¹⁴⁸ See *About Us*, COAL. FOR PROP. TAX JUST., <https://illegalforeclosures.org/about> [<https://perma.cc/F4SK-X5CZ>] (listing the goals and members of the coalition).

¹⁴⁹ See *id.*

oppose Mackinac's policy proposals and positions.¹⁵⁰ The fight against unconstitutional tax assessments allowed several groups that had not previously worked together to link arms to address a glaring violation of the collective morality.

But only once the stategraft discourse switched the spotlight from irresponsible individuals to illegal and predatory systems could these new alliances form. Without this rhetorical move, the structural injustice may have remained hidden, leaving vulnerable individuals and communities hamstrung by blame and the accompanying guilt. Lastly, the illegality frame placed institutional remedies, such as the class action lawsuit and the administrative appeal process, within reach.¹⁵¹

III

SITUATING STATEGRAFT WITHIN THE CURRENT LITERATURE

This dominance of neoliberalism—which seeks to reduce the public sector by slashing taxes and retrenching social services—has left many national and local governments with less funding to address social needs that are increasingly severe.¹⁵² As they are squeezed, cash-strapped governments have an incentive to, in turn, squeeze the populations they govern, securing their financial survival at the expense of vulnerable populations. With its emphasis on public officials who augment state coffers by using the state's outsized power to take property illegally, stategraft is a unique derivative of corruption that deserves deep interrogation. But it has, instead, received scant attention in scholarship and policy circles.¹⁵³ This Part reviews the literature to demonstrate how stategraft is distinct from, but builds upon, existing scholarly conversations about corruption, state crime, and the predatory state.

A. Corruption

One of the most discussed forms of corruption is “bribery,” which is when public or private officials receive benefits from a person or

¹⁵⁰ E-mail from Jarrett Skorup, Pol’y Analyst, to Bernadette Atuahene, Professor of L., Chicago-Kent Coll. of L. (Mar. 10, 2017, 02:59 PM CST) (on file with author).

¹⁵¹ See *supra* notes 92–101 and accompanying text.

¹⁵² See, e.g., Farnsworth & Irving, *supra* note 1, at 462, 468; A.M. Viens, *Neo-Liberalism, Austerity and the Political Determinants of Health*, 27 HEALTH CARE ANALYSIS 147, 149 (2019).

¹⁵³ See Atuahene & Hodge, *supra* note 3 (exposing the illegality of Detroit's tax assessments); Atuahene, *Predatory Cities*, *supra* note 3 (introducing a scholarly discourse about predatory cities and calling for further research).

institution in exchange for tangible or intangible private benefits.¹⁵⁴ Several scholars have defined and discussed bribery in the public sector,¹⁵⁵ commonly known as “political corruption,” which is when “an individual or group acts in such a way as to exploit public office for personal gain.”¹⁵⁶ The personal gain could be monetary, or it could come in the form of heightened social status. These corrupt acts range from “grand corruption” (also known as state capture), occurring at the political system’s highest levels,¹⁵⁷ to “petty corruption” (also known as administrative or bureaucratic corruption), which involves small-scale offenses by low-level bureaucrats charged with implementing the system’s laws and policies.¹⁵⁸

Another prevalent form of corruption is “clientelism,” which is when powerful actors abuse their discretion to promote the interests of their allies.¹⁵⁹ Asymmetric power relations and reciprocity are key elements of clientelism because in order to access certain resources, vulnerable populations must relinquish their associational autonomy and bind themselves to a relatively powerful patron who delivers

¹⁵⁴ See James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 823 (1988) (synthesizing the common definitions of bribery as “a corrupt benefit given or received to influence official behavior”).

¹⁵⁵ See, e.g., POLITICAL CORRUPTION: CONCEPTS & CONTEXTS, *supra* note 66 (collecting works discussing bribery in government and politics); Deborah Hellman, *A Theory of Bribery*, 38 CARDOZO L. REV. 1947, 1974 (2017) (citing James Lindgren, *The Theory, History, and Practice of the Bribery-Extortion Distinction*, 141 U. PA. L. REV. 1695 (1993)) (distinguishing between extortion and bribery). Federal criminal bribery includes when “a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value” in return for “influence[] in the performance of any official act.” 18 U.S.C. § 201.

¹⁵⁶ BUCHAN & HILL, *supra* note 2, at 9 (defining political corruption as “[p]erversion or destruction of integrity in the discharge of public duties by bribery or favour”); *Corruption*, OXFORD ENGLISH DICTIONARY ONLINE, <https://www.oed.com/view/Entry/42045> [<https://perma.cc/ZJ95-GCJP>]; see also *Introduction to Part I of POLITICAL CORRUPTION: CONCEPTS & CONTEXTS*, *supra* note 66, at 7–12 (evaluating several definitions of political corruption, including public-office-centered, market-centered, and public-interest-centered definitions).

¹⁵⁷ Susan Rose-Ackerman, *When Is Corruption Harmful?* (describing “grand” corruption as the more high-level cases of corruption, such as awarding government contracts or exporting bribes to offshore accounts), in POLITICAL CORRUPTION: CONCEPTS & CONTEXTS, *supra* note 66, at 353, 356.

¹⁵⁸ See *Petty Corruption*, UNESCO INT’L INST. FOR EDUC. PLAN., <https://etico.iiep.unesco.org/en/petty-corruption> [<https://perma.cc/K8YX-SFJJ>] (explaining that petty corruption “usually involves smaller amounts of money, but the damage may be significant in social terms”).

¹⁵⁹ See Jonathan Fox, *The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico*, 46 WORLD POL. 151, 153 (1994) (broadly defining clientelism as “a relationship based on political subordination in exchange for material rewards”).

those public or private resources.¹⁶⁰ Fear of losing those resources, or worse, keeps the asymmetric relationship intact. Quid pro quo exchanges are essential to many forms of corruption, such as clientelism and bribery, but fraud, extortion, and embezzlement are not based on reciprocity.¹⁶¹

“Fraud” is a broad category that entails one person sustaining a loss because of intentional deceit by another.¹⁶² “Extortion” is when one party obtains something of value from another through the actual or threatened infliction of harm.¹⁶³ “Embezzlement” is when a person exploits her lawful or authorized access to resources for personal gain.¹⁶⁴ As shown in Table 1, all existing forms of corruption—bribery, clientelism, extortion, fraud, and embezzlement—are distinct from stategraft in two ways. One, the focus is on acts that result in private gain and hence corruption is not the correct term to discuss illicit acts resulting in direct financial benefit to state coffers. Two, most existing forms of corruption require malicious intent and hence do not encompass structural wrongs where intent is less important than consequence.

While institutional corruption encompasses both public and private gain,¹⁶⁵ it is in many ways the opposite of stategraft. According to

¹⁶⁰ See DERICK W. BRINKERHOFF & ARTHUR A. GOLDSMITH, CLIENTELISM, PATRIMONIALISM AND DEMOCRATIC GOVERNANCE: AN OVERVIEW AND FRAMEWORK FOR ASSESSMENT AND PROGRAMMING 3 (2002), https://pdf.usaid.gov/pdf_docs/Pnac426.pdf [<https://perma.cc/LX4Y-UKPW>].

¹⁶¹ David Jancsics, *Corruption as Resource Transfer: An Interdisciplinary Synthesis*, 79 PUB. ADMIN. REV. 523, 527 (2019) (distinguishing activities like fraud, embezzlement, and theft from more traditional conceptions of corruption “because they can be conducted by only one person without the necessity of resource transfer between partners”).

¹⁶² See, e.g., DANIEL L. FELDMAN & DAVID R. EICHENTHAL, THE ART OF THE WATCHDOG: FIGHTING FRAUD, WASTE, ABUSE, AND CORRUPTION IN GOVERNMENT 10 (2014) (defining fraud generally as involving intentional deceit that creates a loss and explicating different types of fraud).

¹⁶³ See, e.g., Lindgren, *supra* note 155, at 1695–96 (drawing a distinction between bribery and extortion from public officials and defining extortion as a seeking of corrupt payment from the official because of his ability to influence government action); THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA 345 (Wilbur R. Miller ed., 2012) (defining extortion as “when a government official demands money in exchange for performing a certain act or failing to execute a duty”).

¹⁶⁴ See, e.g., Susan W. Brenner, *Is There Such a Thing as “Virtual Crime”?*, 4 CAL. CRIM. L. REV. 1, 23–24 (2001) (distinguishing embezzlement from theft because both result in unlawful takings of property but embezzlement relies on exploiting a relationship with another); THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA, *supra* note 163, at 532 (defining embezzlement as “a form of white-collar crime that involves the misappropriation of assets by an individual or group of individuals to whom those assets have been entrusted,” which “typically involves the abuse of power that results from one’s position within an occupational structure”).

¹⁶⁵ See Dennis F. Thompson, *Two Concepts of Corruption* 6 (Edmond J. Safra Rsch. Lab Working Papers, No. 16, 2013) (institutional corruption “involves political gain or

Lawrence Lessig, “Institutional corruption is manifest when there is a systemic and strategic influence which is legal, or even currently ethical, that undermines the institution’s effectiveness by diverting it from its purpose or weakening its ability to achieve its purpose”¹⁶⁶

With institutional corruption, the act in question can be legal so long as it diverts the institution from its stated purpose, but stategraft is contingent on the illegality of the act. Also, because public coffers are the beneficiaries of the illegal act, stategraft may actually strengthen the institution’s ability to achieve its stated purpose. Consequently, stategraft is distinct from institutional corruption as well as other forms of corruption and hence worthy of dedicated scholarly exploration.

TABLE 1. TYPES OF CORRUPTION

Type of Corruption	Definition
Bribery	Individual or group improperly influences an action or decision by conferring a benefit in exchange for private gain.
Clientelism	Official abuses discretion to promote the interests of those linked to them.
Embezzlement	Entrusted agent of property takes it improperly.
Extortion	Individual or group secures cooperation through coercion.
Fraud	Individual or group uses false or misleading information to induce the owner to part with her property voluntarily.
Institutional corruption	Any systemic influence (even though legal or ethical) diverting an institution from its purpose.
Political corruption	Official exploits public office for private gain.
Stategraft	State agent <u>transfers property from persons to the state</u> in violation of the state’s own laws or basic human rights.

B. State Crime

Stategraft is a new theoretical framework most closely related to the longstanding idea of state crime, which is crime committed by (or with the complicity of) state agents. William Chambliss first introduced the term to criminologists when he argued that

[t]he most important type of criminality organized by the state consists of acts defined by law as criminal and committed by state officials in the pursuit of their job as representatives of the state State-organized crime does not include criminal acts that benefit only individual officeholders, such as the acceptance of bribes or the

benefit by a public official under conditions that in general tend to promote private interests”).

¹⁶⁶ Lawrence Lessig, “Institutional Corruption” Defined, 41 J.L. MED. & ETHICS 553, 553 (2013).

illegal use of violence by the police against individuals, unless such acts violate existing criminal law and are official policy.¹⁶⁷

Several scholars have built upon Chambliss's work,¹⁶⁸ but most notable among them are Penny Green and Tony Ward, who define state crime as "state organisational deviance involving the violation of human rights."¹⁶⁹ They argue that only certain types of corruption qualify as state crime:

The widely used definition of corruption as "the abuse of public office for private gain" is appropriate to this kind of individual deviance. Other corrupt acts, however, are either committed in pursuit of the organisational goals of state agencies, or are tolerated for organisational reasons. It is that kind of corruption that we class as state crime.¹⁷⁰

State crime is a sprawling category that involves state actors who commit human rights violations of various kinds,¹⁷¹ including criminal and negligent state practices that exacerbate the damage from natural disasters,¹⁷² police officers who abuse their power,¹⁷³ state torture,¹⁷⁴ genocide,¹⁷⁵ war crimes,¹⁷⁶ and state terror.¹⁷⁷

In the limited context of corruption, however, state crime is similar to stategraft. Both focus on crimes that benefit the state rather

¹⁶⁷ William J. Chambliss, *State Organized Crime: The American Society of Criminology, 1988 Presidential Address*, 27 CRIMINOLOGY 183, 184 (1989).

¹⁶⁸ See generally David Kauzlarich, Christopher W. Mullins & Rick A. Matthews, *A Complicity Continuum of State Crime*, 6 CONTEMP. J. REV. 241 (2010) (constructing a conceptualization of state crime that encompasses omissions in addition to explicit criminal actions initiated by states); ROSS COOMBER, JOSEPH F. DONNERMEYER, KAREN McELRATH & JOHN SCOTT, *KEY CONCEPTS IN CRIME AND SOCIETY* 126–29 (2015) (summarizing the evolution of state crime literature briefly and providing examples of state crime actions); *STATE CRIME IN THE GLOBAL AGE* (William J. Chambliss et al. eds., 2010) (applying criminology to the examination of state crime in order to examine large-scale state crimes beyond corruption of individuals, discussing domestic and international examples, and proposing strategies); *CONTROLLING STATE CRIME* (Jeffrey Ian Ross ed., 2d ed. 2000) (offering a diversity of views on controlling state crime, ranging from reforming the state, prosecuting states under international laws, or abolishing states entirely); *STATE CRIME: CURRENT PERSPECTIVES* (Dawn L. Rothe & Christopher W. Mullins eds., 2011) (offering case studies on state crime and focusing on sources of accountability for state crime).

¹⁶⁹ PENNY GREEN & TONY WARD, *STATE CRIME: GOVERNMENTS, VIOLENCE AND CORRUPTION* 2 (2004) (emphasis omitted).

¹⁷⁰ *Id.* at 11.

¹⁷¹ See generally *id.* at 2 (defining state crime "as state organisational deviance involving the violation of human rights").

¹⁷² See *id.* at 52.

¹⁷³ See *id.* at 68.

¹⁷⁴ See *id.* at 124.

¹⁷⁵ See *id.* at 165.

¹⁷⁶ See *id.* at 147.

¹⁷⁷ See *id.* at 105.

than private individuals. Stategraft, however, spotlights one crime in particular: illegal property transfers executed by state agents that result in financial gain to state coffers. With its focus on dispossession, stategraft is a distinct and important subcategory of state crime, bringing the state's plunder of vulnerable populations from the cobweb-festooned basement of socio-legal theory to its center stage.¹⁷⁸

C. *The Predatory State*

Stategraft is not only derivative of corruption, but it is also a form of state predation. Joshua Page and Joe Soss argue that the “predator state” subverts the political relationship between state and citizen, transforming this fiduciary union into one predicated upon dominance and subordination.¹⁷⁹ In this warped political reconfiguration, the state's principal role is not as a caretaker accountable to its citizens, but rather as the initiator or facilitator of citizen subjugation through mechanisms such as indebtedness.¹⁸⁰

I use the term “state predation” to describe coercive resource extraction that exploits vulnerable populations and is initiated or facilitated by state actors and institutions often in concert with market actors. “Vulnerable populations” are those susceptible to wrongs, exploitation, or threats that undermine their ability to satisfy basic needs.¹⁸¹ Stategraft is a form of state predation that introduces a particular type of vulnerability: state actors who violate the law, robbing victims of their basic rights and resources. While some scholars discuss

¹⁷⁸ See generally Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171 (2016) (attempting to expand the concept of “takings” beyond constitutional takings and into a more inclusive sociolegal concept).

¹⁷⁹ Joshua Page & Joe Soss, *Criminal Justice Predation and Neoliberal Governance*, in RETHINKING NEOLIBERALISM: RESISTING THE DISCIPLINARY REGIME 139, 154–55 (Sanford F. Schram & Marianna Pavlovskaya eds., 2018) [hereinafter Page & Soss, *Criminal Justice Predation and Neoliberal Governance*] (examining financially predatory criminal justice practices and arguing that they are reflective of the neoliberalization of governance); see also Joshua Page & Joe Soss, *The Predatory Dimensions of Criminal Justice*, 374 SCIENCE 291, 291–94 (2021) (discussing the predatory practices of the criminal justice system).

¹⁸⁰ See *id.*

¹⁸¹ E-mail from Martha Albertson Fineman, Robert W. Woodruff Professor of L., Emory Univ. Sch. of L., to Bernadette Atuahene, Professor of L., Chicago-Kent Coll. of L. (Oct. 29, 2018, 01:44 PM CDT) (on file with author) (defining vulnerability as “the universal and constant susceptibility to change, both positive and negative, in our physical and social well-being that exists over the life course”).

forms of state predation that are morally questionable,¹⁸² stategraft is unique because its focus is *illegal* predation.

In addition, without diminishing the importance of predatory extraction that primarily benefits private actors, the stategraft discourse focuses on predation that chiefly benefits the public purse. But, since predation often benefits both public and private actors, this line can be difficult to police. To reconcile this tension, I place the predatory act in the public benefit category so long as it substantially (not exclusively) benefits the state and augments the public purse. Below I give examples of predation that principally benefits private coffers versus predation that primarily benefits public coffers.

1. *Predation for Private Benefit*

As with corruption, existing discussions of state predation largely focus on state-sanctioned private extraction that benefits private actors. This is observable in the most frequently cited definitions of the predatory state penned by Douglas North and James Galbraith.¹⁸³ According to North, there are generally two ways to explain why states exist: contract theory and predatory/exploitation theory.¹⁸⁴ While the contract state sets property rights to maximize wealth for society, the predatory state designs property rights to maximize the wealth of elites.¹⁸⁵ The predatory state therefore can exist only if there is an unequal distribution of power, leaving certain segments of society vulnerable to predation. Galbraith defines the predator state as a coalition of public and private actors, purposefully and insidiously dismantling the state for private gain.¹⁸⁶ For both North and Galbraith, the predatory state's key feature is that elites use their con-

¹⁸² See, e.g., JAMES K. GALBRAITH, *THE PREDATOR STATE: HOW CONSERVATIVES ABANDONED THE FREE MARKET AND WHY LIBERALS SHOULD TOO* 131 (2008) (“[A predator state] is a coalition . . . that seeks to control the state partly in order to prevent the assertion of public purpose and partly to poach on the lines of activity that past public purpose has established.”); Page & Soss, *Criminal Justice Predation and Neoliberal Governance*, *supra* note 179, at 152, 154–55 (“Through predation, the indentured citizen is brought into being as a different kind of governable subject; the state-citizen relation is rewritten around a market model of creditor-debtor relations.”). See generally DOUGLASS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* 124–42 (1981) (discussing feudalism as transactional and not illegal).

¹⁸³ See NORTH, *supra* note 182, at 22 (“The predatory state would specify a set of property rights that maximized the revenue of the group in power, regardless of its impact on the wealth of the society as a whole.”); see also GALBRAITH, *supra* note 182, at xiii (writing that our system of government is rotting from the “systematic abuse of public institutions for private profit”).

¹⁸⁴ NORTH, *supra* note 182, at 21.

¹⁸⁵ *Id.* at 22.

¹⁸⁶ GALBRAITH, *supra* note 182, at 131.

trol of the state apparatus to enrich themselves at the expense of society.

Financial practices that prey on the poor are prime examples of predatory behavior executed by private actors and hastened by the state's regulatory and legal frameworks. Specific examples are the abuses that routinely occur in the context of payday lending,¹⁸⁷ high-interest-rate credit cards,¹⁸⁸ for-profit college student loans,¹⁸⁹ bail bonds,¹⁹⁰ and the extraction of debts owed to private actors through abuse of civil contempt proceedings.¹⁹¹

Chattel slavery is a historical example of predatory extraction facilitated by the state for the benefit of private actors.¹⁹² The predation continued after the Civil War through the practice of sharecropping, in which landlords commonly subjected tenants to high interest rates,¹⁹³ low prices for their harvests,¹⁹⁴ and exorbitant costs for neces-

¹⁸⁷ See Eric A. Stewart, *Crime, Local Institutions, and Structural Inequality: The Cost of Payday Lending Institutions*, 10 CRIMINOLOGY & PUB. POL'Y 467, 469 (2011) (arguing that payday lending establishments entrench inequality).

¹⁸⁸ See Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071 (2017) (examining racism in charging Black and Latino credit card consumers with disproportionately high interest rates).

¹⁸⁹ See Jason N. Houle & Fenaba R. Addo, *Racial Disparities in Student Debt and the Reproduction of the Fragile Black Middle Class*, 5 SOCIO. RACE & ETHNICITY 562, 572–74 (2019) (finding significant racial disparities in student debt that may later result in an exacerbated wealth gap); see also Stephanie Hall, Ramond Curtis & Carrie Wofford, *What States Can Do to Protect Students from Predatory For-Profit Colleges*, THE CENTURY FOUND. (May 26, 2020), <https://tcf.org/content/report/states-can-protect-students-predatory-profit-colleges> [<https://perma.cc/U429-6XXL>] (“[P]eople who identify as women, people who identify as Black or Hispanic, and people who are over 25 years of age are all overrepresented at for-profit colleges.”).

¹⁹⁰ See Cynthia E. Jones, “Give Us Free”: Addressing Racial Disparities in Bail Determinations, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 919 (2013) (examining racial inequalities in bail determinations and pretrial detentions); David Arnold, Will Dobbie & Crystal S. Yang, *Racial Bias in Bail Decisions*, 133 Q.J. ECON. 1885 (2018) (finding racial bias in bail decisions based on inaccurate racial stereotypes).

¹⁹¹ See AM. C.L. UNION, A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT 4 (2018), https://www.aclu.org/sites/default/files/field_document/022318-debtreport_0.pdf [<https://perma.cc/2FKE-LV6W>] (detailing how the criminalization of private debt is being used to “punish debtors and terrorize them into paying even when a debt is in dispute or when a debtor has no ability to pay”).

¹⁹² See Peter Kolchin, *Slavery, Commodification, and Capitalism*, 44 REVS. AM. HIST. 217 (2016) (examining slavery as a capitalistic endeavor).

¹⁹³ See Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 FLA. L. REV. 807, 848 (2003) (“With no available cash source, black agricultural workers were forced to turn to high-cost credit to survive. Interest rates on supplies and money loaned to Southern blacks were high, often exceeding fifty percent.”).

¹⁹⁴ See PACKARD, *supra* note 120, at 134–35 (“The landowner . . . paid the tenant out of the proceedings after he had deducted whatever goods he had put out . . . all the accounting for which debts was entirely in the landowner’s hands. . . . [Croppers] were being cheated every year, but were unable to do much about it.”).

sities (e.g., housing, clothing, and food) as well as supplies required for a bountiful harvest (e.g., mules, seed, fertilizer, and tools).¹⁹⁵ Using debt as a substitute for brute violence, white landowners ensnared former slaves, ensuring they continued to work the land.¹⁹⁶ Most crucially, the law permitted and facilitated these unjust practices,¹⁹⁷ making sharecropping a form of state-sanctioned predation that mainly benefited private purses.

2. Predation for Public Benefit

The criminalization of private debt offers some of the most penetrating examples of state predation that principally benefits state coffers. Tonya Brito describes how certain states use child support obligations to unjustly extract resources from indigent men who cannot afford to pay.¹⁹⁸ When custodial parents receive welfare, many states recoup their costs by aggressively pursuing and commandeering child support payments from noncustodial parents.¹⁹⁹ States are supposed to conduct ability-to-pay hearings to determine whether noncustodial parents have means to pay, but they frequently do so only tentatively.²⁰⁰ Consequently, poor men are vilified for not paying child support even when they do not have the money, saddled with addi-

¹⁹⁵ See generally Ralph Shlomowitz, *The Origins of Southern Sharecropping*, 53 AGRIC. HIST. 557, 563 (1979); BLACKMON, *supra* note 118, at 294; Note, *Cultivating Farmworker Injustice: The Resurgence of Sharecropping*, 62 OHIO ST. L. J. 1665, 1668 (2001) (“By overcharging the farmworkers for the land they rented as well as other supplies that had been advanced to the farmers as part of the initial deal, landowners were able to ensure that the workers’ debts exceeded their portion of the profits from the harvest.”).

¹⁹⁶ *Id.* at 25; see also PACKARD, *supra* note 120, at 39–89.

¹⁹⁷ See PACKARD, *supra* note 120, at 42 (“[T]he Black Codes were deliberately designed to be restrictive and harsh in their application. One famous tactic involved convicting blacks of some [minor] crime . . . and when such victims were unable to pay the fine . . . they were classified as convicted ‘vagrants’ and sentenced to hard labor to pay off the ‘debt.’”); *id.* at 135 (“[T]he sharecropper often ended up owing more than his share of the cash received by the farmer, keeping him—the sharecropper—in perpetual indebtedness, unable to leave, but liable to being thrown off the land whenever he did something the farmer didn’t like . . .”).

¹⁹⁸ See, e.g., Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 IOWA J. GENDER, RACE & JUST. 617, 620–22 (2012) [hereinafter Brito, *Fathers Behind Bars*] (highlighting South Carolina’s denial of request for appointed counsel in a civil contempt proceeding against a father for failure to pay child support, where counsel would be appointed in criminal proceedings); Tonya L. Brito, David J. Pate, Jr. & Jia-Hui Stefanie Wong, “*I Do for My Kids*”: *Negotiating Race and Racial Inequality in Family Court*, 83 FORDHAM L. REV. 3027, 3028–30 (2015) (examining racial inequality in family court and critiquing judicial colorblindness that ignores existing racial inequalities).

¹⁹⁹ See Brito, *Fathers Behind Bars*, *supra* note 198, at 656.

²⁰⁰ See *id.* at 640. (“A court typically imputes income and enters a default order when a noncustodial father does not appear for his child support. . . . If they fail to appear, courts enter default paternity establishments and child support orders.”).

tional fines and fees when their payments become delinquent, and ultimately incarcerated if they do not pay the mounting debt.²⁰¹ By squeezing poor men to secure its reimbursement, the state treasury becomes the principal beneficiary of the state's predatory practices.

Additionally, because they are captive markets, incarcerated populations are especially vulnerable to state predation that distends state coffers. When correctional facilities can treat prisoners as consumers, the facilities customarily employ monopoly pricing and charge exorbitant fees.²⁰² The inflated prices of prison phone calls and commissary items serve as prime examples. For a normal customer, an unlimited long-distance plan from Verizon costs about \$55 a month,²⁰³ but according to a report by the Prison Policy Initiative (PPI), a one-hour long conversation from jail costs about \$68.²⁰⁴ The annual value of the prison phone call industry—approximately \$1.2 billion—entails profits made by capitalizing on a vulnerable population's desperation to maintain familial ties with incarcerated loved ones.²⁰⁵

The prison commissary—the only place prisoners can purchase personal items such as personal hygiene products—is equally exploitative. In Massachusetts, for example, prisoners get one free bar of soap per week, which is insufficient, so many prisoners purchase additional soap.²⁰⁶ Even though Walmart sells soap for about \$0.50 per bar, a PPI report found that in 2016, prisoners paid an average of \$22 per

²⁰¹ See *id.* at 619.

²⁰² See Stephen Rahe, *The Company Store: A Deeper Look at Prison Commissaries*, PRISON POL'Y INITIATIVE (May 24, 2018), <https://www.prisonpolicy.org/reports/commissary.html> [<https://perma.cc/V3RJ-YNMR>] (analyzing commissary sales reports from state prisons in Illinois, Massachusetts, and Washington; comparing commissary prices to free-world stores; and finding evidence of price-gouging for some products, particularly digitally-delivered products).

²⁰³ *Get Our Best Unlimited Plans Ever.*, VERIZON, <https://www.verizon.com/plans/unlimited> [<https://perma.cc/LKT7-DFP3>] (unlimited local and long-distance plan for \$55 per month).

²⁰⁴ See Drew Kukorowski, Peter Wagner & Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, PRISON POL'Y INITIATIVE (May 2013), https://www.prisonpolicy.org/phones/please_deposit.pdf [<https://perma.cc/9YT6-88BD>] (listing the prices for phone calls by different prison phone providers).

²⁰⁵ See, e.g., Bianca Tylek & Connor McCleskey, Commentary, *This Call May Be Monopolized and Recorded*, THE MARSHALL PROJECT (July 11, 2018, 5:15 PM), <https://www.themarshallproject.org/2018/07/11/this-call-may-be-monopolized-and-recorded> [<https://perma.cc/9BXA-QAA6>] (commenting on a prison phone company merger in the \$1.2 billion revenue industry); Timothy Williams, *The High Cost of Calling the Imprisoned*, N.Y. TIMES (Mar. 30, 2015), <https://www.nytimes.com/2015/03/31/us/steep-costs-of-inmate-phone-calls-are-under-scrutiny.html> [<https://perma.cc/8948-9PBL>] (highlighting cases where relatives of prisoners faced financial strain in communicating with the family member in prison, and reporting on a Federal Communications Commission investigation into prison phone companies).

²⁰⁶ Rahe, *supra* note 202.

bar at the commissary.²⁰⁷ The plunder is patent. In publicly owned correctional facilities, the state benefit is direct, but in private facilities, the state still benefits through commissions and kickbacks, which totaled more than \$460 million in 2012.²⁰⁸

In *A Pound of Flesh*, Alexes Harris highlights another predatory practice that enriches the state—monetary sanctions for crimes.²⁰⁹ In addition to incarceration, courts often charge defendants fines, fees, and restitution as part of their sentences.²¹⁰ Many of those convicted are indigent and cannot afford to pay this double debt (time served and monetary sanctions) to society. Courts, nevertheless, continue to collect fines, fees, and restitution, which accrue interest during the prison term.²¹¹

After release, incarceration makes securing employment difficult because it causes a lapse in work history, and employers stigmatize formerly incarcerated individuals,²¹² and when they cannot find employment to pay their ballooning debt, the delinquency triggers surcharges and collection fees.²¹³ Since employers, banks, and landlords routinely search credit and legal backgrounds, formerly incarcerated individuals are trapped in a perpetual cycle of debt. In short, monetary sanctions, which principally benefit the state itself, prevent them from reintegrating into society, transforming them into second-class citizens.²¹⁴

This exploitation of incarcerated individuals to fill the state's own purse is nothing new. In the wake of the American Civil War, the South was physically and economically devastated with little money to fund education, public works, or prisons. To solve the prison problem, Southern states relied on convict leases.²¹⁵ In exchange for profit,

²⁰⁷ *Id.*

²⁰⁸ James Kilgore & Brian Dolinar, “*Carceral Conglomerate*” Makes Millions from Incarcerated, Their Friends and Families, TRUTHOUT (Feb. 13, 2015), <https://truthout.org/video/carceral-conglomerate-makes-millions-from-incarcerated-their-friends-and-families> [<https://perma.cc/M3Y2-4HJ6>].

²⁰⁹ ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016) (examining the rise of criminal monetary sanctions across the United States and the negative and ongoing impacts on indigent defendants, the legal justifications for criminal monetary sanctions, and focusing on defendant outcomes in Washington State in particular).

²¹⁰ *Id.* at 14.

²¹¹ *Id.* at 21, 23.

²¹² *Id.* at 23, 28.

²¹³ *Id.* at 39.

²¹⁴ See REUBEN JONATHAN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF MASS INCARCERATION* 13 (2021) (“The supervised society has produced a new form of citizenship through practices of punishment and exclusion that target our nation’s poorest families.”).

²¹⁵ See BLACKMON, *supra* note 118, at 53.

localities leased convicts out to industrialists and agriculturalists who housed and fed them but also systematically subjected them to sub-human conditions.²¹⁶ Local police participated in this system by incarcerating African American men for conduct like loitering and vagrancy and other baseless offenses, thereby ensuring a steady stream of cheap labor for local enterprises.²¹⁷ Those in power turned a blind eye to the injustices of convict leasing because the system was highly profitable for both local governments and private employers.²¹⁸

There are many contemporary and historical examples of state predation begetting financial gain for state coffers. Interestingly, these occur alongside legitimate takings such as eminent domain.²¹⁹ Constitutional takings of this sort do not amount to state predation so long as the state has a legitimate public purpose and it pays just compensation because this is resource *exchange* rather than coercive resource *extraction*. But if the compensation is not truly just and the purpose is not legitimate, then it is at this point that eminent domain morphs into state predation.

In sum, what distinguishes stategraft from other forms of state predation and corruption are two factors: The extraction is illegal, and the extraction principally benefits state coffers (see Table 2). “Stategraft” is not a term intended to describe the most economically or socially devastating acts because these are often, in fact, legal. Stategraft is meant to illuminate a noteworthy yet understudied phenomenon: predatory extractions that illegally swell state coffers.

TABLE 2. DISTINGUISHING STATEGRAFT

	Legal	Illegal
Private profit	State predation such as racially targeted payday lending, high-interest-rate credit cards, bail bonds, sharecropping, and slavery.	Various forms of corruption such as bribery, extortion, fraud, and embezzlement.
Public profit	State predation such as the criminalization of private debt, monopoly pricing of phone calls and commissary items for incarcerated populations, monetary sanctions for crimes, and convict leasing.	Stategraft

²¹⁶ See *id.* at 56–57.

²¹⁷ See RISA GOLUBOFF, *VAGRANT NATION: POLICE POWER, CONSTITUTIONAL CHANGE, AND THE MAKING OF THE 1960S* 15 (2016) (stating that by the end of the nineteenth century, vagrancy and other laws were passed in the South, and were directed at the mobility of freed enslaved people).

²¹⁸ See *id.* (stating that vagrancy laws were directly economically motivated).

²¹⁹ See U.S. CONST. amend. V, cl. 5 (allowing for the taking of private property not “without just compensation”).

CONCLUSION

Mrs. Phillips is a lifelong Detroit resident who inherited her grandparents' sturdy brick bungalow from her parents. She adored the home and many times during our interview referred to it as her legacy and inheritance. Mrs. Phillips fell behind on her property tax payments because she was under severe financial strain from being the primary breadwinner for her children, sister, nephew, and disabled ex-husband. Then, she lost her job. Since her inherited home was dated and dilapidated, daunting utility bills further contributed to her financial woes.

Mrs. Phillips is college educated and knew that Detroit's assessor had overvalued her home, which needed over \$25,000 in improvements. Nevertheless, she did not appeal her property taxes because she was overwhelmed by her numerous caretaking responsibilities and did not have the mental or emotional space to deal with yet another crisis or injustice. Instead, she thought she could endure the inflated tax payments because she reasoned that since the house was already paid off, the tax payments were cheaper than rent. Eventually, she no longer could afford to pay her illegally inflated property taxes, and the Wayne County Treasurer foreclosed on her home and sold it at auction to an investor. As tears ran down her cheek, Mrs. Phillips said that, because of the tax foreclosure process, "I felt confused. I felt helpless and I just gave up."²²⁰ Mrs. Phillips was a victim of stategraft, a distinct type of corruption that warrants a distinct discourse.

By giving a name to an important yet understudied problem—public officials who illicitly take property from citizens to augment public coffers—stategraft is charting untrodden territory. Scholars and policymakers have ignored the plight of Mrs. Phillips and millions of other people who are unable to identify illicit predation and stop it in its tracks, but the stategraft discourse gives their struggles visibility. Most importantly, it gives scholars a framework to empirically explore questions such as: Why does stategraft occur, how have victims of stategraft responded to it, who is most likely to be subject to stategraft, what can authorities do to remedy stategraft, where and when is stategraft likely to occur, and are there differences in how the phenomenon presents in rural versus urban areas and developed versus emerging economies?²²¹

In conclusion, the theoretical framework for stategraft makes two important moves. It describes illegal acts that benefit public rather

²²⁰ Confidential interview with Mrs. Phillips (Nov. 2017) (on file with author).

²²¹ See Atuahene, *Predatory Cities*, *supra* note 3, at 170 (explaining that "Predatory Cities" are one urban manifestation of stategraft).

than private coffers, and it does not focus on public actors' intent, placing the focus on the actual theft and its impact on vulnerable populations instead of obsessing over individual culpability and motives. As a result, stategraft is a valuable theoretical framework that allows scholars and policy makers to initiate a long-overdue conversation about an overlooked phenomenon, occurring in various geographic locations and throughout time. Mrs. Phillips and others like her deserve a discourse to describe the unjust circumstances that have beset them.