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Dispossessing Detroit: How the Law Takes Property

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DISPOSSESSING DETROIT: HOW THE LAW TAKES PROPERTY

Mary Kathlin Sickel*

In 1817, the University of Michigan was founded as the result of the Foot of the Rapids Treaty when three Native American tribes—Ojibwe (Chippewa), Odawa (Ottawa), and Bodewadimi (Potawatomi)—ceded land to the University.¹ That land was later sold to provide a significant part of the University of Michigan’s permanent endowment.² Today, government and private industry continue to take land through various legal mechanisms: eminent domain, foreclosure, privatization, and eviction. Although these legal mechanisms are constrained by public use necessities and local laws,³ the ramifications of these actions can leave individuals and groups displaced and without full—or any—compensation.⁴ These issues and questions about what it means to lose one’s house, community, or ancestral land are at the forefront of political discourse in Michigan today as Detroit tries to recover from a property tax foreclosure crisis that has affected 55-85% of Detroit homeowners.⁵ The issues do not have clear cut answers, but academics and policymakers from across the country came together to discuss their causes and possible reforms at the *University of Michigan Journal of Law Reform*’s Symposium “Dispossessing Detroit: How the Law Takes Property,” hosted on November 9 and 10, 2019.

* J.D. 2020, University of Michigan Law School. On behalf of myself and the Volume 53 Symposium Office, I would like to extend a heartfelt thank you to Professor Bernadette Atuahene. The Symposium could not have been such a success without her scholarship and unwavering support and guidance throughout the process.

1. See *Foot of the Rapids (Fort Meigs), 1817*, CLARKE HIST. LIBR., [https://www.cmich.edu/library/clarke/ResearchResources/Native_American_Material/Treaty_Rights/Text_of_Michigan_Related_Treaties/Pages/Foot-of-the-Rapids-\(Fort-Meigs\)-1817.aspx](https://www.cmich.edu/library/clarke/ResearchResources/Native_American_Material/Treaty_Rights/Text_of_Michigan_Related_Treaties/Pages/Foot-of-the-Rapids-(Fort-Meigs)-1817.aspx) (text of the treaty).

2. See Judy Steeh, *Plaque Honors Land Gift from Three Native American Tribes*, U. RECORD, http://www.ur.umich.edu/0102/Nov18_02/16.shtml.

3. See, e.g., *Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (stating that the Court must determine whether the “city’s decision to take property for the purpose of economic development satisfies the ‘public use’ requirement of the Fifth Amendment”); MICH. COMP. LAWS §§ 213.1-365 (2018).

4. See *Child. of Chippewa, Ottawa & Potawatomy Tribes v. Regents of Univ. of Mich.*, 305 N.W.2d 522, 526 (Mich. Ct. App. 1981) (holding that the language of the Treaty of Fort Meigs “reflect[ed] the likelihood of a present donative intent on the part of the Indians at the time of the Treaty’s execution,” and thus there was no actual or constructive trust in favor of plaintiff tribes).

5. Laura Herberg, *Think Your Detroit Property Taxes Are Too High?*, WDET (Jan. 29, 2019), <https://wdet.org/posts/2019/01/29/87784-think-your-detroit-property-taxes-are-too-high/>.

The goals of the Symposium were to provide historical and political context for current issues of property dispossession and to consider how governments, private industry, and private citizens can seek reform. The Symposium consisted of two days of events: the first was focused on scholarship and panel discussions, and the second was an opportunity for attendees to get involved with community activists by working with the United Community Housing Coalition based in Detroit.

“Dispossessing Detroit” began early on a crisp November Saturday with a look at dispossession in historical and geographic context. Scholars welcomed attendees to the University and described how the land we were on at that very moment was University property as the result of dispossession. Professor Michael Witgen compared the gradual settlement of the eastern colonies with the rapid dispossession of a majority native Michigan to white colonizers in less than twenty-five years.⁶ The other scholars on the panel described how land is racially differentiated, how predatory lending practices prevented African Americans from owning homes in Chicago, and how South Africans’ experiences with trying to shift land ownership in Johannesburg, a majority Black city, mirrored the experiences of Detroiters.⁷

Bankruptcy scholars continued the discussion by considering the role of municipal bankruptcy and how it can either support or hinder targeted communities.⁸ The question of whether municipal bankruptcy works elicited varied responses. Professor Michelle Anderson relayed a story about the real-life toll of austerity measures and reminded us that these measures were happening across the state of Michigan.⁹ Professor John Pottow acknowledged that the causes of municipal bankruptcy are manifold and that, while it can allow a city to restructure its debts, a bankruptcy proceeding cannot solve issues of governance disfunction or turn a city into a community where people want to live.¹⁰ Audience questions concluded the panel by probing the speakers on the issue of whether oversight can be accomplished in a truly just and democratically accountable manner.¹¹

6. University of Michigan Journal of Law Reform, *Property Dispossession is Nothing New: A Historical Overview*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=UTr7EgbZuz8&feature=emb_logo.

7. *Id.*

8. University of Michigan Journal of Law Reform, *Municipal Bankruptcy: Who Gets What?*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=UTr7EgbZuz8&feature=emb_logo.

9. *Id.*

10. *Id.*

11. *Id.*

Over the course of an hour, attendees participated in a choose your own adventure style of breakout sessions by attending up to three of the four Detroit-focused sessions. Each session lasted twenty minutes and was repeated three times with different attendees in the audience. During the five minutes between each session, the law school hallways were buzzing with reflections on the sessions that participants had just attended and chatter about which session to attend next. The breakout session scholars and practitioners discussed: how city government and community organizations can work together to create ownership opportunities for renters;¹² how the mortgage and tax foreclosure crises, in combination with the lack of access to credit, resulted in large instances of dispossession;¹³ how impact litigation methods were used to cut through bureaucratic red tape that prevented homeowners from accessing debt relief;¹⁴ and how individual parcel data information can empower both private citizens and city governments to push for change.¹⁵ With smaller audience numbers, the breakout sessions created a space for attendees to dive into the weeds with the experts in the room.

The day continued in a standing-room-only classroom where a panel of community activists focused on their lived experiences as Detroit-area residents.¹⁶ With large pictures of the former Black Bottom neighborhood in Detroit wrapping the room,¹⁷ the activists spoke of their own challenges and resistance to erasure. Their experiences and voices grounded the questions that hovered over every panel: Who has been dispossessed, and for whom are we making reforms? Although community voices are often absent in litigation, bankruptcy proceedings, and development conversations, the three activists emphasized that community voices need to be included in these spaces.¹⁸

12. University of Michigan Journal of Law Reform, *Dispossession in Other Forms | Right of Refusal*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=dbrnpjuPg5c&feature=emb_logo.

13. University of Michigan Journal of Law Reform, *Dispossession in Other Forms | Changes in the Detroit Real Estate Market*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=h9QAUU5E6TQ&feature=emb_logo.

14. University of Michigan Journal of Law Reform, *Dispossession in Other Forms | MorningSide v. Sabree: The Tax Foreclosure Crisis*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=y-DWsDFZCvM&feature=emb_logo.

15. University of Michigan Journal of Law Reform, *Dispossession in Other Forms | How Data Informs Policy*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=f4Rvov_3VMA&feature=emb_logo.

16. See “*Dispossessing Detroit*” Videos, U. MICH. J.L. REFORM (Nov. 18, 2019), <https://mjlr.org/category/symposia/2019/>.

17. See BLACK BOTTOM STREET VIEW, <https://www.blackbottomstreetview.com/> (last visited Apr. 10, 2020).

18. *Id.*

The afternoon panel discussions concluded with speakers discussing the role of revitalization today.¹⁹ After a full day of examining how we arrived here, the panelists were eager to share their views of where we can go from here. They encouraged us to look at how city governments and private industry can reform prior instances of dispossession without neglecting the past.²⁰ Speakers discussed the roles of urban renewal, eminent domain, zoning, and development as tools and impediments to reform.²¹ The day's conversations came full circle when Councilmember Castañeda-Lopez encouraged us to remember that the question of "who is qualified to own property" has its roots in the nation's colonial history.²² As Professor Michael Witgen mentioned in the first panel of the day, land theft was the root of this process.²³

Throughout the Symposium, speakers and participants discussed the myriad ways in which property ownership can be manipulated, and the panelists reminded us that questioning existing structures and the status quo is our responsibility as citizens seeking reform. Additionally, this Introduction provides just a glimpse of the activity and excitement that encompassed the weekend's events. For a further look into the content of the panel discussions, please visit the *Michigan Journal of Law Reform's* website.²⁴

To build on the work done at the Symposium, we are proud to present in this Issue Juliet M. Moringiello's piece, "Dispossessing Resident Voice: Municipal Receiverships and the Public Trust." Professor Moringiello participated in the Symposium panel discussion on bankruptcy, and her piece reflects on that discussion while diving further into the possible proceedings available to resolve municipal financial distress. Her piece highlights a central theme of the Symposium: individual city residents acutely experience dispossession.

We are also thrilled to present in this Issue two timely pieces: Fran Quigley's article, "Tell Me How It Ends: The Path to Nationalizing the U.S. Pharmaceutical Industry," which proposes nationalizing the United States pharmaceutical industry, and Tirza A. Mullin's note, "Eighteen Is Not a Magic Number: Why the Eighth

19. University of Michigan Journal of Law Reform, *Revitalization Today: Urban Renewal and Eminent Domain*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=Jiif3FcAhXU&feature=emb_logo.

20. *Id.*

21. *Id.*

22. *Id.*

23. See University of Michigan Journal of Law Reform, *Property Dispossession is Nothing New: A Historical Overview*, YOUTUBE (Nov. 18, 2019), https://www.youtube.com/watch?v=UTr7EgbZuz8&feature=emb_logo.

24. "Dispossessing Detroit" Videos, U. MICH. J.L. REFORM (Nov. 18, 2019), <https://mjlr.org/category/symposia/2019/>.

Amendment Requires Protection for Youth Aged Eighteen to Twenty-Five,” which argues that the criminal justice system should consider eighteen- to twenty-five-year-olds as “youths.”

