

**‘ASSESSING’ DISCRIMINATION: THE INFLUENCE
OF RACE IN RESIDENTIAL PROPERTY TAX
ASSESSMENTS**

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I. INTRODUCTION

Residential property in majority-minority neighborhoods is assessed at higher effective rates than similar property in majority-white neighborhoods. That is, residents of minority neighborhoods — namely, African American and Latino neighborhoods — face assessments that are, on average, significantly higher than the market value of their residences, while residents of majority-white neighborhoods are, on average, assessed at significantly less than market value. These comparatively high assessments ultimately lead to high property tax bills for residents of minority neighborhoods.

The possibility of racialized property tax assessments is startling for several reasons. Most conspicuously, it means that residents of minority neighborhoods might be paying more than their fair share of public expenses that depend on property tax revenue. Or, put another way, residents of minority neighborhoods face higher effective property tax rates.¹

Less obvious is the effect high assessments would have on minorities who do not currently own their home: potential minority homebuyers. That is, if minorities are paying more in effective property tax rates, then, at the margin, the increased tax burden may discourage some minorities from becoming homeowners. High property taxes are a direct cost to potential homebuyers and, if too high, they will dissuade some minority non-homeowners from making home purchases. Already, minority groups nationally are far less likely to own a home than non-minorities.²

1. *See generally* JENS PETER JENSEN, PROPERTY TAXATION IN THE UNITED STATES 288-92 (1931). This point is particularly salient in New Haven, where residents pay some of the highest property taxes in the state. Residential property in New Haven is taxed at a mill rate (the rate per \$1,000 dollars of property owned) of \$34.78. Besides that, citizens of Connecticut pay out nearly the highest property taxes in the nation. In fact, at just over \$1,500 annually, the state has the second largest (after New Jersey) property tax liability per capita in the union, almost twice the national average of under \$800. For comparative data on mill rates in Connecticut, see Connecticut Office of Policy and Management, Municipal Fiscal Indicators, available at <http://www.opm.state.ct.us/database.htm> (last visited May 3, 2003). For data on total revenue generated from property taxes in Connecticut and other states, see US CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES (2002) [hereinafter 2002 STATISTICAL ABSTRACT].

2. In Connecticut, the numbers are lamentable. Only 31.4 % of African Americans and 25.9 % of Latinos are homeowners, compared to much higher national averages — 43.4 and 42.4 %, respectively. HOUSING STATISTICS OF THE UNITED STATES 240-44 (Patrick A. Simmons ed., 3d ed. 2000) (providing data on historical homeownership rates by race) [hereinafter 2000 HOUSING STATISTICS].

Lastly, minority homeowners in some cases may also suffer from relatively high tax assessments. If homeowners in, say, African American neighborhoods face unusually high property tax assessments, the value of their homes may ultimately decrease. Inordinately high property tax assessments tend to drive down the value of residential property, since property value is partly a function of the property tax liability that its owner can expect to pay. In other words, if the property tax liability is comparatively high, this expectation will be capitalized into the price of the home and prospective buyers will offer and, ultimately, pay less to the present homeowner to purchase such property.³

Over three decades ago, William Hendon set out to analyze whether African Americans in segregated neighborhoods in Ft. Worth were assessed at higher effective rates than whites.⁴ African American homeowners, he found, paid property taxes on assessments right at market value, while white owners paid taxes on assessments that were significantly less than the market value.⁵ With the insights of Hendon, one would expect other authors to have thoroughly canvassed the possibility of race-dependent property tax assessments. For instance, Hendon's study, which was based on a rigidly segregated housing market in the late sixties, warrants comparison to the more fluid housing patterns found in today's urban areas. Moreover, in a time before the ubiquity of computers, Hendon is only able to examine a small sample set of homes and only for two neighborhoods, which even a modest researcher might expand on today.

However, other analyses of the influence of race in assessments have, to date, largely amounted to merely noting the possibility of race-dependent property tax assessments. David Black, in an unpublished doctoral dissertation, explored the possibility of assessment discrimination in Boston, only to conclude that little assessment disparity, about 10%, is explained by race.⁶ Also in a study of Boston, authors Oldman and Aaron, both of Harvard, concluded that commercial properties were over-assessed, as compared to residential property.⁷ Importantly, the authors also

3. Kenneth K. Baar, *Property Tax Assessment Discrimination Against Low-Income Neighborhoods*, 13 URB. LAW. 333, 335 (1981); see JENSEN, *supra* note 1, at 54.

4. See William S. Hendon, *Discrimination Against Negro Homeowners in Property Tax Assessment*, 27 AM. J. ECON. & SOC. 125, 125 (1968).

5. *Id.* at 128-29.

6. DIANE B. PAUL, *THE POLITICS OF THE PROPERTY TAX* 35 (1975) (citing David E. Black, *Inequalities in Effective Property Tax Rates: A Statistical Study of the City of Boston* 150 (1969) (unpublished Ph.D. dissertation, M.I.T.) (on file with author)).

7. Oliver Oldman & Henry Aaron, *Assessment-Sales Ratios under the Boston Property Tax*, 18 NAT'L TAX J. 36, 43 (1965).

found that Roxbury, a majority-minority neighborhood in Boston, pay taxes on some of the highest tax assessments in the city.⁸ However, they never fully explore their finding of possible race-dependent assessments.⁹

Consequently, in this article, I explore the possibility of racialized property tax assessments. This is not a modern-day rehearsal of Hendon's study, but a more full and cogent analysis of race as an explanation of property assessment disparity. This article describes assessment disparity in twenty-eight neighborhoods in New Haven, Connecticut. I examined sales-ratio data for over 1400 home sales in New Haven, Connecticut in 2000-2001. Sales-ratio data compares the amount of cash a home sells for to the amount at which it is assessed (assessment/sales amount). Based on the sales data, I found that, indeed, residents of majority-minority neighborhoods are assessed at higher effective rates than residents of majority-white neighborhoods.

Although I found differential assessments against residents of minority neighborhoods, I am not so bold as to suggest abandonment of property taxes, which are regarded by most as the keystone of local public finance.¹⁰ I do suggest, however, that perhaps it is high time to rethink our allegiance to traditional market-tied property taxation. I suggest that perhaps residential property taxation ought not to be based on the purported market value of property, as it traditionally has been in most places, but based on the property's acquisition, or purchase, costs. Such costs are the only real measure of market value, since in the vast majority of cases it is the amount an unrelated party would (and did) pay for a piece of property.

After describing the research project in Part II, in Part III I describe my findings. Shortly put, residents of majority-African American and majority-Latino neighborhoods are assessed at higher effective rates than residents of other neighborhoods. For instance, on average, residents of majority-African American neighborhoods and majority-Latino neighborhoods are assessed at an effective rate sixty percent higher than residents of majority-white neighborhoods.

8. *Id.* at 40.

9. Provocatively, in the conclusion of the article, the authors ask, but provide no answer: "Are minority groups, the rich, the poor, or neighborhoods predominately of one race, religion, or political party systematically favored or discriminated against in property taxation? If so, do these patterns explain the Roxbury case?" *Id.* at 48.

10. See generally *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 527 (1980) (noting that "[t]he property tax is by far the most important source of tax revenue for cities and counties."). See also WILLIAM FISCHER, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES* (2001).

In Part IV, I try to put the findings in perspective, pointing to several factors that might explain the over-assessment of property tax for residents of minority neighborhoods. First, I suggest that over-assessments of minority neighborhoods might be a way to induce whites to stay in central cities, like New Haven. Second, I argue that assessment discrimination may be the result of politics, particularly the political nature of an assessor's duties. Last, I suggest that the structure of the law may disadvantage residents of majority-minority neighborhoods. In Part V, I explore the legal implications of my findings. I suggest that the current property tax regime, with all of its inequities, may be vulnerable to challenge under federal jurisprudence.

While there are many critiques on the property tax system, ideas about reforming the current system are wanting.¹¹ Thus, no critique of residential property taxes would truly be complete to my mind without sketching, however skeletal, the contours of a replacement. In Part VI, I begin that endeavor. I suggest that perhaps the best way to mitigate assessment discrimination, as evidenced by the case of New Haven, is to take the human element out of property taxation altogether. In other words, states and municipalities might consider replacing the market-tied assessments with "purchase assessments"; that is, assessments based on the actual cash costs (*i.e.*, purchase price) of residential parcels of property.

II. METHODOLOGY

On their face, property taxes can be described as market-tied taxes. Property tax assessments are intended to capture the market value of a particular piece of property, or how much the property would sell for in an arms-length transaction.¹² Connecticut is as good a case in point as any. According to the Connecticut code, for

11. GEORGE E. PETERSON ET AL., PROPERTY TAXES, HOUSING AND THE CITIES 6, 120 (1973) (proposing that "one of the most urgent tax "reforms" is to implement what is already legally prescribed").

12. In order to come to some conclusions about the correct market value, assessors have several arrows in their quiver. Under one approach, assessors look to the sale data of other nearby comparable properties. Second, under the cost approach, assessors look to the value of the underlying improvement to land. Third, under the income capitalization approach, assessors attempt to figure out what the present expected value of a future income stream from the property will be. Finally, I should note that assessors have increasingly turned to sophisticated computerized appraisal techniques, which allow assessors to control for wide range variables in valuations. See CONN. GEN. STAT. § 12-62(f)(3)(f) (2003) (providing for the creation of a board to oversee computer-assisted mass appraisal techniques); JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, STATE AND LOCAL TAXATION 93 (5th ed. 1988); Bonnie H. Keen, *Tax Assessment of Contaminated Property: Tax Breaks for Polluters?*, 19 B.C. ENVTL. AFF. L. REV. 885, 890-91 (1992). For a discussion of the problems with each approach, see Baar, *supra* note 3, at 347-52.

instance, all property in a municipality should be assessed on October 1 and at a uniform rate of seventy percent of “present true and actual value.”¹³ Another Section informs that the “present true and actual value” is the fair market value of the property.¹⁴ Connecticut even places a hard cap on the amount of tax assessment that can be found at one hundred percent of a property’s market value.¹⁵ Once assessments are determined, property taxes are meted out accordingly.

The remainder of this Part is divided into two sections. First, I describe the method used to ascertain whether assessors meet this mandate. Second, I describe the situs of the data: New Haven, Connecticut, a city that, as home of Yale University, has frequently captivated both student and academic authors.¹⁶

A. Method

In contrast to historical data on property sales, today records of realty sales are publicly available in many states.¹⁷ Current records of all real estate sales in the state of Connecticut are kept by the Office of Policy and Management and open to public view.¹⁸ Thus, as one Connecticut official put it, cities are required to report to the state “every step along the way.”¹⁹ The initial data set recorded

13. CONN. GEN. STAT. § 12-62(a)(b) (2003).

14. *Id.* § 12-63(a) (2003) (“The present true and actual value of all other property shall be deemed by all assessors and boards of assessments appeals to be the fair market value therefore and not its value at a forced or auction sale.”). The Connecticut statute is comparable to that found in other states. *See, e.g.*, W.VA. CODE § 11-3-1 (2003) (providing that “true and actual value” means “the price for which such property would sell if voluntarily offered for sale by the owner”).

15. CONN. GEN. STAT. § 12-64(a) (2003) (providing that all non-exempt property “shall be liable to taxation at a uniform percentage of its present true and actual valuation, not exceeding one hundred per cent of such valuation, to be determined by the assessors.”).

16. *See, e.g.*, ROBERT A. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961) (describing the power structure of New Haven); MALCOM M. FEELEY, THE PROCESS IS THE PUNISHMENT (1992) (analyzing the behavior of lower criminal courts by examining New Haven); Steven Gunn, Note, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL’Y REV. 385 (1995) (reporting the findings of a study of over 200 evictions in New Haven).

17. PAUL, *supra* note 6, at 10-12 (describing how city governments routinely keep assessment data secret from the public).

18. CONN. GEN. STAT. § 12-120(a) (2003) (providing that the Secretary shall present an annual report).

19. Interview with Terry Rodie Kennedy, Assessment Systems Manager in New Haven, Conn. (Apr. 21, 2003).

almost two thousand home sales (1,961) in New Haven in 2000, the vast majority of those (approximately 89%) were residential sales.²⁰ After dropping those home sales that did not include complete information,²¹ commercial sales, sales of vacant land, and sales seemingly for less than full consideration,²² the remaining data set included just over fourteen hundred residential sales (1,410).

As I have done on the following pages, one can measure how successful the market-tied taxation scheme is by comparing the assessed amount to how much homes actually sell for. Such a comparison — assessment over sales price — is usually referred to as an “assessment-sales ratio” or, more simply, “sales-ratio.” To simplify things, suppose that assessments are required to equal market value, as is required in a majority of states.²³ (This is a simplification only because in Connecticut, as mentioned, assessments are required to be 70% of market value, not 100%). In that case, sales price ought to equal the amount assessed; and, in turn, the sales ratio would be 100%, reflecting a one-to-one ratio of assessment value to sales amount. Thus, homes selling for less than 100% of the sales-assessment ratio have been over-assessed and property owners selling for more than 100% of the sales-ratio have been under-assessed.

Suppose a particular home has a sales-ratio of, say, 50%. Obviously the owner is paying only half the amount of property taxes she should be paying. Total assessments in this case are exactly one half the amount such owner could sell for on the open market. Conversely, when homes have sales-ratio greater than

20.

Summary of Property Sales in 2000 (New Haven, CT)					
Property Type	Commercial	Residential	Vacant Land	Mixed Land	Total
Number of Sales	96	1736	28	101	1961
Percentage of Total Sales	4.9	88.5	1.4	5.2	100

Source: Connecticut Office of Policy and Management (2000 Residential Sales Listing).

21. For example, some data did not include census tract information.

22. Sales for less than \$10,000 were removed from the data set on the theory that such low-cash sales were probably sales between related parties, such as sales between relatives, or sales for non-cash consideration that goes unrecorded. There were twenty-four such sales. Data set, available upon request, on file with author. *See also* Connecticut Office of Policy and Management (2000 Residential Sales Listing), available at <http://www.opm.state.ct.us/database.htm> (last visited May 3, 2003) (providing raw data on home sales in 2000).

23. *See* PAUL, *supra* note 6, at 4.

100%, such homes can be said to be over-assessed — for example, 110%. In this situation, homeowners are paying too much in property taxes.²⁴ In New Haven, as it will be seen, homes in majority-white neighborhoods are significantly under-assessed, as compared to homes in majority-minority neighborhoods. This pattern of over-assessment of property in minority neighborhoods persists regardless of the type or residence (single family or multifamily residence), the tenure of the residents (owners or renters) or the value of the underlying property (inexpensive homes or expensive ones).

For instance, consider Table 1, which summarizes the data used in this study.²⁵ It shows that the highest home sale in New Haven in 2000 was over \$2,000,000 (see Max.=SALEPRICE). Reading that row across, from right to left, it shows that the average or mean selling price in New Haven was just over \$100,000. Meanwhile, the table also shows that average assessment was little more than \$81,000 (Mean=ASSESSMENT) or only about three-fourths of the average sale amount. Thus, it suggests that average assessment were right at about 70 % of market value, the amount incidentally prescribed by state statute.²⁶

24. At this point, a numerical example is warranted. Consider the property tax treatment of a single family home with a market value of \$90,000, which is the median selling price of single family homes in New Haven in 2000. Also note that the mill rate, or rate of taxation, in New Haven is \$34.78 per \$1,000 of Market Value. See Connecticut Office of Policy and Management (2000 Residential Sales Listing). Thus, if properly assessed, such a homeowner would owe property taxes of \$3,130.20 ($\$90,000 \times \$34.78/\$1,000$). However, if the same home were slightly over-assessed by 10% of its market value (sales-ratio equals 110 %) the owner would owe \$3,443.22 in taxes ($\$99,000 \times \$34.78/\$1,000$), a difference of more than three hundred dollars in property taxes.

25. The vast majority of data used in this study come from two sources: (1) a database of residential sales maintained by the Connecticut Office of Policy and Management; and (2) Census data maintained by the U.S. Census Bureau. See generally Connecticut Office of Policy and Management, Residential Sales Listings, available at <http://www.opm.state.ct.us/database.htm> (last visited May 3, 2003); U.S. Census Bureau, American Fact Finder, available at www.census.gov (last visited May 3, 2003).

26. CONN. GEN. STAT. § 12-62(a) (2003).

Code	N	Mean	S.D.	Min.	Max.
<i>Residential Type</i>					
CONDO	226	1	0	1	1
ONEFAMILY	818	1	0	1	1
TWOFAMILY	365	1	0	1	1
THREEFAMILY	228	1	0	1	1
ASSESSMENT	1410	\$81,742	35751	\$3,500	\$421,400
<i>Economic Variables</i>					
SALE PRICE	1410	\$105,442	99036	\$10,000	\$2,007,464
SALE RATIO	1410	116.38%	100.31	2.76%	1202.92%
<i>Race Variables</i>					
PERCENT ASIAN	1410	3.1%	4.40	0%	20%
PERCENT AF-AM	1410	33.5%	0.22	1%	91%
PERCENT LATINO	1410	22.8%	0.18	4%	56%
PERCENT NATIVE	1410	0.04%	0.00	0	1.0%
PERCENT WHITE	1410	38.8%	0.25	2.0%	89.0%

Sources: Connecticut Office of Policy and Management (2000 Residential Sales Listing). US Census Bureau (2000 Census).

Note: All cash values rounded to nearest dollar. All percent values rounded to nearest tenth percent. Values for residential type do not sum to 1410, since the vast majority of CONDO also count as single family home sales.

However, the Table also shows that the average sales ratio was high; on average, residents were over-assessed. It was much more than seventy percent ratio, as required by law and even slightly more than the market value of the home. Specifically, the third column (SALERATIO=Mean) of the Table shows that the average sale-ratio exceeded the sales (or market) price by some sixteen percent. This suggests that at least some homes in New Haven were over-assessed. Finally, I should point out, since I have eliminated all low-end sales, the Table also shows that the minimum selling price (fifth column) for a residential property was \$10,000.

B. Data Source

New Haven is ethnically and racially mixed. The city's ethnic population includes a large mix of Latinos (21.4%), African Americans (39.3%), and non-Latino whites (35.6%).²⁷ In fact, in addition to nine mixed-race neighborhoods,²⁸ seven neighborhoods in New Haven are majority-African American, eight majority-white (non-Latino), and three neighborhoods are majority-Latino²⁹. The city is divided into twenty eight census tracts, which correspond, roughly speaking, to neighborhoods in the city.³⁰ Accordingly, the data are able to demonstrate differences in residential property tax assessments across three of the country's largest ethnic/racial groups.

27. See Table 2; *see also* 2002 COUNTY AND CITY EXTRA: ANNUAL METRO, CITY, AND COUNTY DATA BOOK 940 (Deirdre A. Gaquin et al. eds., 11th ed. 2002).

28. "Mixed-race neighborhoods" are neighborhoods where no ethnic/racial group is in the majority.

29. See *infra* Table 2.

30. For a complete list of the census tracts in New Haven and their corresponding neighborhood names, see Part VIII.C at Table 18.

Census Tract	Total Population	Percent Latino	Percent White	Percent AFAM	Percent Indian	Percent Asian
1401	1919	14%	45%	25%	0%	13%
1402	1652	50%	20%	28%	0%	0%
1403	2496	47%	11%	38%	0%	1%
1404	3349	47%	19%	29%	0%	1%
<u>1405</u>	<u>3430</u>	<u>50%</u>	<u>6%</u>	<u>41%</u>	<u>0%</u>	<u>0%</u>
1406	4815	41%	8%	47%	0%	0%
1407	6619	21%	30%	37%	1%	9%
1408	4149	17%	16%	62%	0%	0%
1409	4684	9%	24%	60%	0%	2%
<u>1410</u>	<u>3641</u>	<u>5%</u>	<u>77%</u>	<u>14%</u>	<u>0%</u>	<u>2%</u>
<u>1411</u>	<u>2803</u>	<u>4%</u>	<u>60%</u>	<u>30%</u>	<u>0%</u>	<u>3%</u>
1412	4545	12%	27%	56%	0%	2%
1413	5313	11%	35%	51%	0%	1%
1414	4965	8%	24%	63%	0%	1%
1415	6478	5%	2%	91%	0%	0%
1416	5011	12%	12%	72%	1%	1%
<u>1417</u>	<u>6042</u>	<u>7%</u>	<u>62%</u>	<u>8%</u>	<u>1%</u>	<u>17%</u>
1418	4052	5%	41%	32%	0%	20%
<u>1419</u>	<u>4910</u>	<u>8%</u>	<u>71%</u>	<u>9%</u>	<u>0%</u>	<u>8%</u>
<u>1420</u>	<u>3088</u>	<u>6%</u>	<u>72%</u>	<u>8%</u>	<u>0%</u>	<u>11%</u>
1421	1446	30%	22%	44%	0%	1%
<u>1422</u>	<u>1465</u>	<u>8%</u>	<u>77%</u>	<u>9%</u>	<u>0%</u>	<u>2%</u>
<u>1423</u>	<u>4709</u>	<u>55%</u>	<u>20%</u>	<u>22%</u>	<u>0%</u>	<u>0%</u>
<u>1424</u>	<u>4831</u>	<u>56%</u>	<u>17%</u>	<u>23%</u>	<u>0%</u>	<u>1%</u>
1425	5329	43%	27%	27%	0%	0%
1426	11719	22%	45%	27%	0%	4%
<u>1427</u>	<u>5529</u>	<u>26%</u>	<u>52%</u>	<u>17%</u>	<u>0%</u>	<u>3%</u>
<u>1428</u>	<u>4637</u>	<u>7%</u>	<u>89%</u>	<u>1%</u>	<u>0%</u>	<u>1%</u>
Totals	123,626	21.4%	35.6%	39.3%	0%	4%

Source: US Census Bureau (2000 Census). Majority African American Neighborhoods are in bold. Majority-Latino Neighborhoods are underlined. Majority-white neighborhoods are double-underlined.

Additionally, in contrast to many urban areas, New Haven has a fairly mixed housing stock.³¹ Housing sales data, in a city littered

31. See PETERSON ET AL., *supra* note 11, at 3 (noting the uniformity of the housing stock in

with double- and triple-decker homes, were a mix of single- and multiple-family dwellings.³² Thus, it is possible to explore the implications of housing type of residential property tax assessment.

III. FINDINGS

There are three predominant explanations for disparities in property tax assessments, all of which omit the racial dynamic. The first non-racial explanation for assessment disparity holds that the relative value of the underlying property controls.³³ That is, high-value homes tend to get an assessment break, while low-value homes tend to be over-assessed.³⁴ Others, meanwhile, have pinned disparity in assessments on the type of residence in question.³⁵ For instance, commercial properties are customarily over-assessed as compared to residential properties. Third, some have suggested that the real discrimination is against renters and/or landlords.³⁶ Assessors are inclined to give owner-occupied residences a reduction, since homeowners are more likely to be politically active and keen to challenge high assessments. Renters, on the other hand, are more susceptible to over-assessment, since they face a high tax bill (if at all) only indirectly in the form of higher rent.

All that said, in the remainder of this Part I present my main findings. I compare the three most common explanations for disparity in assessments to the racial data available in New Haven. After describing each of these arguments, I demonstrate that, despite them, residents of majority-minority neighborhoods are assessed at higher percentages of market value than residents of majority-white neighborhoods.

many urban cities).

32. See generally ELIZABETH MILLS BROWN, *NEW HAVEN: A GUIDE TO ARCHITECTURE AND URBAN DESIGN* (1976) (describing the architecture of New Haven); see also DON METZ, *NEW ARCHITECTURE IN NEW HAVEN* (rev. ed. 1973) (describing the architecture of New Haven).

33. See, e.g., JENSEN, *supra* note 1, at 293-97; PETERSON ET AL., *supra* note 11, at 23.

34. *Id.*

35. See, e.g., DICK NETZER, *ECONOMICS OF THE PROPERTY TAX* 78 (1966) (finding that larger multi-family housing and commercial property is "much more heavily taxed than single family housing."); PAUL, *supra* note 6, at 5.

36. See, e.g., PAUL, *supra* note 6, at 18.

A. *General Evidence of Racial Disparity in Property Tax Assessments*

1. *A Correlation Matrix*

For starters, a general sense of the relationship of race to sales ratio can be had by referring to a correlation matrix, which simply compares the unadjusted movements among two or more variables and are routinely used to make an initial determination of the direction of a relationship.³⁷ Specifically, Table 3 shows the correlation between sales ratio and various variables used throughout. As seen, the relationship between sales ratio and percent minority is a generally positive one: the higher the percent minority a particular neighborhood, the higher the sales ratio. The first column, and perhaps the most important column for our purposes, suggests that every one percent increase in sales ratio corresponds with a nearly quarter percent (0.24) increase in percent African American. The same column also shows a positive relationship between sales ratios and LATINO — as the percent of Latino residents rises, so, too, does the sales ratio.

37. See, e.g., Daniel E. Ho, *Compliance and International Soft Law: Why Do Countries Implement the Basle Accord?*, 5 J. INT'L ECON. L. 647 (2002). If two variables are “perfectly correlated” they move in tandem and exhibit a one-to-one correlation. Cars, it might be said, are perfectly correlated with tires, for instance — the higher the number of cars, the higher the number of tires.

	SALES- RATIO	AF- AM	Latino	White	Asian	Native	Rent	Ass'd Value	Price
SALES- RATIO	1.00	--	--	--					
AF-AM	0.24	1.00	--	--					
LATINO	0.14	-0.13	1.00	--					
WHITE	-0.29	-0.76	-0.53	1.00					
ASIAN	-0.14	-0.27	-0.40	0.35	1.00				
NATIVE	0.11	0.20	-0.09	-0.14	0.09	1.00			
RENT	0.15	0.27	0.43	-0.58	0.16	0.23	1.00		
ASS'D VALUE	-0.04	-0.13	-0.26	0.27	0.19	0.10	-0.11	1.00	
SALES PRICE	-0.41	-0.26	-0.27	0.34	0.27	-0.02	-0.11	0.60	1.00

Sources: Connecticut Office of Management and Policy (2000 Residential Sales Listing). US Census Bureau (2000 Census).

Conversely, the table shows that WHITE exhibits generally a negative relationship to sales ratio. Put differently, increases in the “whiteness”, or percent white, of a neighborhood correlates with decreases (-0.29) in sales-ratio. Thus, without considering the effects of any other variables, the table shows that percent African American and percent Latino correspond with higher effective property tax rates, while percent white and percent Asian correspond with lower effective property tax rates.

In addition, the table shows that purchase price, PRICE, is negatively correlated with sales-ratio (first column, -0.41), which means that high-price homes tend to have low sales-ratios. Also, RENT, or percent renter, is positively related to sales-ratio (first column, 0.15): the higher the number of renters, the higher the sales-ratio tends to be. Last, the penultimate column of the table shows, as can be expected, a positive relationship between sales price and assessed value. Put differently, higher assessment amounts predictably increase with the higher amounts of total cash consideration paid.

Finally, it is interesting to note that the table can also be read to suggest that neighborhoods in New Haven are segregated. For instance, the second column of the Table suggest that for every percent increase of African Americans in a neighborhood, there is a large corresponding decrease of whites (0.76). Every one percent rise in LATINO population (column four) is correlated with a 0.53

percent decrease in the white population. With the exception of Asians, minority presence is negatively correlated with white presence; the higher the presence of whites, the lower the presence of African Americans, Latinos, and Native Americans (column five).

2. *Suggestive Evidence of Racial Disparity in Assessment*

Even more suggestive of discrimination against minorities in assessments than the correlation matrix is Table 4. The table breaks out the data by neighborhood and majority-ethnic/racial group. As Table 4 shows, eighteen of the twenty-eight Census Tracts in New Haven are comprised of one majority ethnic or racial group.³⁸ A majority of these (10) are majority-minority neighborhoods.

The table also suggests (but does not prove) that residents in these majority-minority neighborhoods, on average, pay significantly more in property taxes than their property is ultimately selling for. Assessments in majority-minority neighborhoods in New Haven are, on average, 40% higher than the market value of the home. Perhaps more troubling, assessments in majority-minority neighborhoods are a staggering 70% more than what is called for by law! This finding, of course, would not be as disturbing if residents of all neighborhoods were assessed equally high rates; that is, if all neighborhoods were equally over-assessed.

However, the table also shows that residents of minority neighborhoods pay effective rates greater than residents of mixed neighborhoods and majority-white neighborhoods. Residents of mixed neighborhoods (fifth column) also pay too much in property taxes, although not as much as residents of majority-minority neighborhoods. At the same time, residents of majority-white neighborhoods are assessed, on average, 20% less than the market value.

38. The majority-white Census Tracts (neighborhoods) in New Haven, CT are: 1410 (Westville); 1411 (Westville); 1417 (Yale); 1419 (East Rock); 1420 (East Rock); 1422 (Wooster Square); 1427 (East Shore-Annex); and 1428 (East Shore-Morris Cove). Those that are majority African American are: 1408 (Edgewood-West River); 1409 (Edgewood-West River); 1412 (Westhills); 1413 (Westhills); 1414 (Beaver Hills); 1415 (Newhallville); and 1416 (Dixwell). Those that are majority Latino are: 1405 (4 City Point); 1423 (Fair Haven); and 1424 (Fair Haven). See Table 18 and Table 2.

	Majority White	Majority AF-AM	Majority Latino	Mixed Race	Totals
Number of Census Tracts	8	7	3	10	18
Average Sales Ratio	80.64	140.26	140.00	123.27	116.38
Average Sales Amount	\$153,760	\$87,814	\$ 69,535	\$88,130	\$105,442
Number of Sales	432	315	208	453	1410

Sources: Connecticut Office of Management and Policy (2000 Residential Sales). US Census Bureau (2000 Census).

Interestingly, the table also shows that there were significantly more home sales in majority white neighborhoods than in, say, majority African American neighborhoods (432 compared to 315). Assuming that homes turnover in both neighborhoods with similar frequency, this suggests that there are more homes, as an absolute number, in majority white neighborhoods. Perhaps, as a result, assessors may be better able to judge the market in majority white neighborhoods, because there is more raw sales data to go on.³⁹ However, the table also shows that residents of mixed race neighborhoods (i.e., those without a single majority ethnic or racial group) are over-assessed significantly higher than the market value of the home, although such neighborhoods had more home sales than those in majority white neighborhoods (453 compared to 432). Thus, for some reason other than the sheer volume of home sales, residents of majority-white neighborhoods are, on average, significantly under-assessed, while residents of minority and mixed race neighborhoods are significantly over-assessed in New Haven.

To illustrate quickly, consider the case of two neighborhoods in the city: Edgewood-West River (census tract 1408) and East Rock (census tract 1420).⁴⁰ That is, the most over-assessed neighborhood in the city is the Edgewood-West River neighborhood. Judging by the sales-ratio data, residents there were assessed, on average, nearly two and one half times (248%) more than their homes' market value. This neighborhood is majority African American (62%) with a significant Latino presence (17%).

39. See NETZER, *supra* note 35, at 56.

40. The data referred to in this paragraph can be found in the Part VIII.A at Table 16.

At the same time, the data suggests that the East Rock community, one of the richest communities in the state and nation, is the polar opposite of Edgewood-West River. The data suggests that residents of East Rock have, on average, some of the lowest assessments in the city. East Rock is almost three-fourths white, with Latino and African American presences combined making up less than twenty percent of the area's residential population. It remains to be seen whether the unadjusted evidence of racial disparity in property tax assessments holds when one takes into account things such as the type of residence chosen, the relative wealth of the neighborhood, or the absolute assessment amount.

B. Residential Type

It has been suggested that differential property tax assessments are a natural consequence of different types of properties.⁴¹ Single family homes, as others have found, are routinely under-assessed compared to other residential property types.⁴² Thus, even if the law requires uniformity, since properties are of different types, there will be different evidence to base assessments upon.⁴³ For example, one cannot expect assessors using sales data to come up with similar results for commercial sales and residential sales, since there are very few commercial sales from year to year.⁴⁴ As noted in New Haven, there were only ninety-six such commercial sales, compared to almost two thousand residential sales.

41. NETZER, *supra* note 35, at 78-80 (arguing that multi-family homes are over-assessed compared to single family units); PAUL, *supra* note 6, at 5 (distinguishing assessments of residential properties and income-producing properties).

42. PAUL, *supra* note 6, at 25 (“[T]he effective tax rate on residential property rises with the number of units. Single-family homes are assessed at an average of approximately 34 %, two-family at 41 %, three-to-five family at 52 %, six-or-more family at 58 %, and multi-unit residences of more than one structure at 65 %.”).

43. NETZER, *supra* note 35, at 78-79.

44. See Interview with Terry Rodie Kennedy, *supra* note 19.

	Condo	One Family Homes	Two Family Homes	Three Family Homes	Totals
Average Sales Ratio	105.51	104.00	126.43	145.08	116.38
Average Sales Amount	\$83,807	\$110,478	\$98,080	\$98,790	\$105,442
Number of Sales	226	818	365	228	1410

Source: Connecticut Office of Management and Policy (2000 Residential Sales Listing).

Note: Total number of home sales exceeds 1410, since Condo is also counted as single family homes.

As shown in Table 5, most home sales in New Haven were single family homes. However, the table shows that there were a large percentage of two family home sales (representing almost one quarter of total residential home sales), not to mention a good portion of sales of condominiums or three family residences. The table also shows the average sales ratio and sales amount for different types of residential properties.

Regardless of the type of residence, most home sales have high average assessments relative to market value, although condos and single family homes have the lowest sales ratio, assessed at only slightly more than market value. Again, this may be because they are the largest segment of the residential property population. As the data shows, for example, they represent the largest number of residential property sales (N equals 818). Thus, property tax assessments may be closer to correct market assessments (or a 100 % sales-ratio) for these sales, because there are more properties to compare.⁴⁵ It may also be the case that assessors give a break to owner-occupied homes, because such homeowners represent a large share of the voting population. Single family homes are more likely owner-occupied. Multi-family homes, by contrast, are likely disproportionately renter-occupied. Renters realize high tax bills only indirectly through higher rents and are, therefore, less likely to challenge an adverse assessment.

45. See NETZER, *supra* note 35, at 56 (noting that there is greater ease in assessing more numerous properties).

However, the data also shows that residents of minority neighborhoods are over-assessed, regardless of the residential type of residential home minorities chose. For instance, Table 6 shows that residents in majority-minority neighborhoods and mixed neighborhoods paid higher property taxes for each of the residential types.

Residential Type	Majority-African American Neighborhoods	Majority Latino Neighborhoods	Majority White Neighborhoods	Mixed-Race Neighborhoods
Condo	107.24 (24)	114.73 (16)	75.35 (82)	127.46 (104)
One Family	124.94 (188)	130.01 (66)	77.5 (307)	113.64 (257)
Two Family	145.91 (73)	142.72 (90)	89.31 (86)	129.06 (116)
Three Family	185.95 (54)	147.98 (52)	86.29 (39)	144.3 (83)

Sources: Connecticut Office of Management and Policy (2000 Residential Sales Listing). US Census Bureau (2000 Census).

Note: The number of residential sales is in parentheses.

For all three neighborhood types — majority-minority, majority-white, and mixed neighborhoods — the data shows that multiple family homes are assessed at higher effective rates, on average, than single family homes. Residents of both majority-African American neighborhoods and majority-Latino neighborhoods in three family residences have sales-ratios that are, on average, significantly higher than the market value of the homes. Meanwhile, residents of majority-white neighborhoods are assessed, on average, at rates lower than the market value of their home for each of the residential types. Perhaps a caveat is in order. One possible shortcoming of the data is that it does not include the age of the properties, which may also explain the disparate property tax assessments.⁴⁶ However, at least one commentator has found that age accounts for little of the variation in effective tax rates.⁴⁷

46. See generally Hendon, *supra* note 4, at 131.

47. See PETERSON ET AL., *supra* note 11, at 26.

C. Tenure

Another story is that renters, but not necessarily minorities, are more likely to be over-assessed, because renters never physically see their tax bills and, therefore, are not likely to make a political fuss; as one commentator puts it, “renters are politically inert.”⁴⁸ Similarly, landlords are less likely to challenge high assessments because they, unlike owner-occupied residents, may be able to pass along the sizeable property tax bills to tenants in the form of higher rents.⁴⁹

In another view, since some landlords may plan to abandon their realty, in which case the relative size of their tax bill is irrelevant; such landlords do not intend to pay the property taxes in any event. More concretely put, the profitable strategy for some landlords, as Duncan Kennedy observed early on, is to collect as much revenue (in the form of rental payments) as possible, but make no payments for maintenance or upkeep, such as taxes that may accrue on the property.⁵⁰ Once they have “milked” their building of all its cash value, they simply abandon it, tax bill and all.⁵¹ Shortly, residents of minority neighborhoods may also be adversely treated in assessments because they are more often renters, not because they are minorities per se. Consistent with this theory, the data show (Table 7) that residents of majority-owner occupied units face markedly lower sales-ratios. This holds true regardless of the residential type.

48. PAUL, *supra* note 6, at 15.

49. See JENSEN, *supra* note 1.

50. Duncan Kennedy, *The Effect of the Warranty of Habitability on Low-Income Housing: “Milking” and Class Violence*, 15 FLA. ST. U.L. REV. 485, 489-92 (1987) (describing the landlord “milking” strategy).

51. *Id.*

TABLE 7: Sales Ratio by Tenure and Residential type		
	Majority-Owner Occupied Neighborhoods (N=3)	Majority-Renter Occupied Neighborhoods (N=25)
Condo	72.24 (24)	109.46 (202)
One Family	78.70 (170)	110.63 (648)
Two Family	83.26 (18)	128.67 (347)
Three Family	101.02 (3)	145.67 (225)
Total	79.48 (191)	122.16 (1219)

Sources: Connecticut Office of Management and Policy (2000 Residential Sales Listing). US Census Bureau (2000 Census).

Note: In the top panel the number of neighborhoods is in parentheses. In the bottom panel, the number of residential sales is in parentheses.

Further, Table 8 suggests that in New Haven, residents of minority groups are significantly more likely to live in renter-occupied than in owner-occupied units. Less than one-third of residents in majority-minority neighborhoods are owners, compared to nearly half of residents in majority-white neighborhoods. All three of the neighborhoods in New Haven that are majority owner-occupied are majority white neighborhoods.⁵²

52. The three majority-owner occupied neighborhoods in New Haven are census tract 1410 (Westville-Eastern portion), 1411 (Westville -Western portion), and 1428 (East Shore/Morris Cove).

TABLE 8: Ownership v. Rental by Neighborhood Type								
	Majority-Black Neighborhoods (N=7)		Majority Hispanic Neighborhoods (N=3)		Majority White Neighborhoods (N=8)		Mixed Race Neighborhoods (N=10)	
Tenure Type	Rent	Own	Rent	Own	Rent	Own	Rent	Own
Percent Tenure Type	31.1	68.9	24.9	75.1	47.5	52.5	25.0	75.0

Source: US Census Bureau (2000 Census).

However, the fact that minorities are more likely renters and renters are more likely to be over-assessed than owners does not completely explain the initial finding of racialized disparity in assessments. As mentioned, none of the neighborhoods in New Haven that are majority-owner occupied are also majority-minority. Thus, it is impossible to compare whether owner-occupied residences across racial and ethnic groups are assessed at differential effective rates. However, it is possible to compare sales ratios for majority-rental neighborhoods, as shown in Table 8. Indeed, there are a number of “rental neighborhoods” for each ethnic group.

TABLE 9: Sales Ratio in Majority-Renter Neighborhoods				
	Majority-Black Neighborhoods (N=7)	Majority Hispanic Neighborhoods (N=3)	Majority White Neighborhoods (N=5)	Mixed Race Neighborhoods (N=10)
Sales Ratio	140.00 (315)	140.00 (208)	81.57 (241)	123.27 (453)

Sources: Connecticut Office of Management and Policy (2000 Residential Sales). US Census Bureau (2000 Census).

Note: Number of residential sales in parenthesis.

Again, racialized assessments emerge. Table 9 shows that, in rental neighborhoods, those that are majority-white are assessed at the lowest ratios. Yet, homes in both majority-African American and majority-Latino neighborhoods, which are also majority rental, are assessed at exactly double (140 %) the rate called for by law. Thus, even when one looks solely at majority-renter neighborhoods, residents of both majority-African American and Majority-Hispanic neighborhoods face higher effective rates than residents of majority-white neighborhoods.

D. Sales Price

A third plausible theory of disparate assessments is stagnant prices in low-income neighborhoods.⁵³ Commentators have argued that assessors simply give breaks to high-value properties.⁵⁴ Frequently trumpeted, some commentators have argued that any observed racial disparity is explained by the fact that minorities tend to live disproportionately in low-value properties.⁵⁵ Put differently, assessors tend to inflate the market value of properties in majority-minority neighborhoods, not because they are majority-minority, but because homes in such neighborhoods tend to have lower relative value. An interesting corollary to this high-value argument, as Dick Netzer has noted, is that high-value homes are under-assessed simply because there are fewer of them.⁵⁶ Thus, because assessors have fewer such homes to compare, they “minimize litigation by erring on the low side.” Regardless of the reason, the argument is that property tax assessment disparity is explained by the relative price of homes.⁵⁷

Indeed, the data I collected does seem to substantiate the claim that assessment disparity is explained, at least in part, by sales price. For example, although there were less than a handful of sales,

53. See JENSEN, *supra* note 1, at 293-97 (noting discrimination against low-value properties); Baar, *supra* note 3, at 341 (also noting discrimination against low-value properties); PAUL, *supra* note 6, at 32-35 (finding under-assessment of rehabilitated neighborhoods in Boston); PETERSON ET AL., *supra* note 11, at 23 (finding under-assessment of “upward transitional” neighborhoods and over-assessment of “blighted neighborhoods”).

54. JENSEN, *supra* note 1, at 293 (describing several of the earliest studies to claim discrimination in favor of high value properties and against low value properties).

55. See PAUL, *supra* note 6, at 34 (noting that neighborhoods with declining values tend to be African American); see also PETERSON ET AL., *supra* note 11, at 119 (“[I]n the older cities of our sample it was not unusual for properties in blighted neighborhoods to bear an effective tax rate ten times as great as properties in the upward transitional neighborhoods of the same city. Assuming that any or all of these tax differentials are passed along to tenants, this assessment bias is distinctly prejudicial to the poor and in most cases to the black population as well.”).

56. NETZER, *supra* note 35, at 56.

57. *Id.*

the average selling price in Yale, the neighborhood with the lowest property tax assessments in the city, is spectacularly high at over \$500,000. In East Rock, a majority-white community with a significant number of sales, it is more than \$200,000. At the same time, the average selling price of residences in Edgewood-West River, the neighborhood paying out the highest amount in property tax assessments, was relatively low at just over \$50,000.

Furthermore, Table 10 shows a nearly perfect linear relationship between sales ratio and sales price, with the highest value properties getting the lowest assessments. Specifically, the table shows that the seventeen most expensive home-sales in the cities (>\$500,000) also had the lowest sales-ratio - 34.49 %. Thus, homeowners in those cases faced an effective property tax rate that was only around one-third of the actual market value, assuming the seventeen transactions were at market value. Moreover, those home-owners paid property taxes at about one-half of the 70 % required by Connecticut statute.

Sales Price Range	Frequency	Avg. Sales Amount	Sales-Ratio
\$10,000-\$50,000	24.2% (341)	\$30,868	237.57
\$50,001-\$100,000	32.9% (464)	\$76,644	94.64
\$100,001-\$150,000	27.0% (381)	\$123,175	70.28
\$150,001-\$200,000	9.1% (128)	\$172,422	62.78
\$200,001-\$250,000	2.8% (40)	\$222,432	48.55
\$250,001-\$300,000	1.2% (17)	\$276,500	45.91
\$300,001-\$350,000	0.9% (13)	\$324,962	46.10
\$350,000-\$400,00	0.2% (3)	\$362,900	49.06
\$400,001-\$450,000	0.3% (4)	\$430,000	57.60
\$450,000-\$500,000	0.1% (2)	\$487,450	37.78
>\$500,000	1.2% (17)	\$704,592	34.49

Source: Connecticut Office of Policy and Management (2000 Residential Sales Listing).

Note: The raw number of sales is in parenthesis. All cash values are rounded to the nearest dollar.

The table indicates that low-value homes faced the highest sales ratio. It suggests that those with homes worth between ten and fifty thousand dollars (first row) were assessed at nearly two and one-half times the actual value of their residence and, more troubling, face an effective property tax rate significantly more than three times that required by statute.

Still, even with these statistics, the relative value argument does not completely explain the over-assessment in majority-minority neighborhoods. For instance, while the average selling price in Edgewood-West River is on the low side, the area it is in is not, by far, the lowest selling priced area in the city. Residents of other neighborhoods, such as Fair Haven and East Shore, all had average selling prices below the median selling price of \$89,900 (\$77,146 and

\$88,066 , respectively), but were both assessed at near perfect market levels (119.28 and 107.49, respectively). Residents of one Westhills neighborhood were, on average, even slightly under-assessed (98.24) even though residences there sold for less than the median (\$81,248).

Furthermore, even if the data is broken out into sales for relatively little, such as those selling for less than the median of \$89,900 (or “low-end home sales”) and “high-end home sales.” Racialized assessments emerge. For example, Tables 11 and 12 below record the major differences between these two camps.

	Majority White	Majority AF-AM	Majority Latino	Mixed Race	Totals
Number of Census Tracts	8	7	3	10	18
Average Sales Ratio	63.57	72.94	70.74	68.87	67.28
Average Sales Amount	\$180,875	\$138,571	\$111,267	\$149,494	\$158,492
Number of Sales	335	134	69	171	710

Sources: Connecticut Office of Management and Policy (2000 Re-Sales Listing); US Census Bureau (2000 Census). All cash values are rounded to the nearest dollar.

Generally, Table 11 suggests that New Haven assessors are getting the assessments very close to the 70% of the market value for relatively high-end residential properties. The average sales ratio for home sales above \$89,900, which represents half of all home sales, is only less than three percentage points from the perfect statutory levels of 70 %. In majority-Latino communities assessors are dead on, levying an average assessment rate right at 70 %. However, the table still shows racialized assessments, although the differences are much smaller than in some of the other instances discussed. High-end home sales in majority-Latino neighborhoods were assessed more than in majority-white neighborhoods. And high-end homes in majority African American neighborhoods were assessed, on average, nearly 10% of what was charged in high-end home sales in majority-white neighborhoods.

	Majority White	Majority AF-AM	Majority Latino	Mixed Race	Totals
Number of Census Tracts	8	7	3	10	18
Average Sales Ratio	137.76	187.97	173.90	156.25	165.30
Average Sales Amount	\$61,004	\$51,093	\$49,112	\$50,919	\$52,064
Number of Sales	100	185	140	282	708

Sources: Connecticut Office of Management and Policy (2000 Re-Sales Listing); US Census Bureau (2000 Census). All cash values are rounded to the nearest dollar.

Moreover, once we eyeball the other “half” of the market, homes that sell for less than \$89,900, we find that these homes are assessed at higher than the market value. Homes in this half of the market are assessed, on average, greater than 65 % more than the market value of their home (last column). The two tables read together appears to claim that assessment discrimination is against low-income homeowners. As the first table shows, all high-end home sales were under-assessed, paying, on average, little more than 67 % of the market value in property taxes. At the same time, low-income neighborhoods are, on average, wildly over-assessed. Nevertheless, while all low-end residential homes are over-assessed, including residences in majority-white neighborhoods, such home sales are even more flagrantly over-assessed in majority-minority neighborhoods. Homes in majority-African American neighborhoods, for example, are assessed at nearly twice the market value of their homes and 50% more than homes in majority-white neighborhoods. In sum, each of the two tables shows a racial differential impact in property assessments. Even with the sales price argument, there is still evidence of racial differences in assessments.

E. Assessments

The natural companion argument of the sales price argument is that assessors give a break to relatively large assessments.⁵⁸ The intuition is that assessors tend to give breaks to those with comparatively high assessments, since such persons will already have a high tax bill. Table 13 provides lukewarm evidence to this argument, since it shows that homes with relative low total assessments are assessed at the highest ratios.

Assessment Range	Sales-Ratio
\$3,500-\$50,000	142.09 (177)
\$50,001-\$75,000	118.65 (500)
\$75,001-\$100,000	105.75 (440)
\$100,001-\$125,000	107.11 (197)
>\$125,000	124.91 (96)

Sources: Connecticut Office of Management and Policy (2000 Re-Sales Listing); US Census Bureau (2000 Census).

Note: The raw number of sales in parenthesis is in the respective assessment range.

Certainly those with total assessments above the median assessment of \$76,352 seem to be assessed at lower rates. Table 13 seems to suggest that the vast majority of homeowners, those owning homes with total assessments between \$50,001 and \$125,000, were assessed at market value. Interestingly, the table also suggests that the presumed inverse relationship to total assessment and property tax liability may actually be “forward bending.” Put differently, at very high levels of assessments (i.e., assessments greater than \$125,000), the table suggests that

58. Regardless of “companionship,” the relationship of assessment to sales-ratio is distinct, and ought not to be confused with the relationship of sales price to sales ratio. That is, assessors may give low assessments to homes in neighborhoods with high value. Alternatively, they may pass assessment breaks to homes with relatively high assessments. One does not preclude the other. Thus, homes that have relatively high unadjusted (or raw) assessments may have low sales-ratios, regardless of whether they have very high market value. Conversely, homes with relatively high value may have low sales-ratios, regardless of their unadjusted assessment. Shortly, the income and assessments arguments are somewhat different methods of explaining disparate sales ratios.

property assessments increase; consequently those few properties with extremely high total assessments are charged an exorbitant amount in property taxes.

However, when the assessment to sales-ratio results are broken down by majority-ethnic neighborhood, the same racialized effects emerge. In fact, with the exception of very low assessments, homes in majority-white neighborhoods are assessed at rates significantly less than market value. Residents of majority-white neighborhoods tend to pay out less in property taxes than residents of minority neighborhoods, for all levels of total assessments. At the lower levels of total assessments (i.e. <\$100,000), residents of majority-Latino neighborhoods trail residents of African American neighborhoods, who are assessed at the highest rates. Although there were only fifteen home sales in Latino neighborhoods with total assessments above \$100,000, the data suggests that at these relatively high levels residents of Latino neighborhoods face higher assessments than residents of any other neighborhood type.

	Majority-African American Neighborhoods	Majority Latino Neighborhoods	Majority White Neighborhoods	Mixed-Race Neighborhoods
Assessment Range	Sales Ratio	Sales Ratio	Sales Ratio	Sales Ratio
\$3,500-\$50,000	151.4 (40)	134.56 (34)	100.6 (24)	153.23 (79)
\$50,001- \$75,000	147.51 (103)	142.03 (114)	76.74 (95)	110.40 (186)
\$75,001- \$100,000	122.1 (103)	122.14 (45)	78.71 (158)	119.57 (134)
\$100,001- \$125,000	134.1 (55)	154.74 (11)	80.86 (93)	118.48 (38)
>\$125,000	212.9 (14)	288.69 (4)	83.53 (62)	167.33 (16)

Note: Number of residential sales in parentheses. All cash values rounded to the nearest dollar.

The table also shows that in both majority-white and mixed-race neighborhoods, sales ratios drop significantly for property that has a total assessment of more than \$50,000. In mixed neighborhoods assessments drop, on average, from 153.23 % to 109.83 %. In majority-white neighborhoods, average assessments drop to a near

perfect 76.4 % when total assessments exceed \$50,000. However, there is no similar drop in majority-minority neighborhoods. In fact, in majority-Latino neighborhoods, the sales ratio increases around 7 %.

Last, consistent with our prior inkling, the table shows that the number of sales seems to bear no relationship to the sales ratio. For instance, the first row of the table shows that homes in both majority-African American and majority-Hispanic neighborhoods were highly over-assessed (151.4 % and 134.56 %, respectively) compared to home sales in majority-white neighborhoods, although in both cases there was an absolute higher number of sales than in white neighborhoods.

F. Regression Analysis

Finally, using regression analysis, it is possible to control or equalize differences in tenure, assessment amounts, residential types and sales prices, and come to arguably more powerful conclusions. Accordingly, in this section, I have turned to regression analysis to ascertain whether the percentage of African Americans or of Latinos bears a statistically significant relationship to sales ratio. As seen in Table 15, both the percent of African Americans and the percent of Latinos exhibit a positive relationship to sales ratio, which is consistent with all my findings so far. In other words, the higher the percentage of minorities in neighborhoods in New Haven, the higher the sales ratio. Further, this relationship is statistically significant for increases in the percent of African Americans.

For example, the first column shows that for one percentage point increase in African Americans, there is a corresponding 0.698 increase in sales ratio, holding tenure, assessment amount, residential type, and sales price constant. The table implies that for one percentage point increase in Latino population there is a corresponding 0.413 increase in sales ratio. However, the putative relationship with respect to percent Latino is not statistically different from zero.

TABLE 15: Regression: Sales Ratio			
	Un-standardized Coefficient	T-Statistics	Betas
Intercept	-19.218 (14.650)	-1.31	
Explanatory Variables			
PRICE	-0.001** (0.000)	-2.32	-0.544
ASSESSMENT	0.001** (0.000)	2.25	0.325
PERCENTRENT	0.217 (0.250)	0.87	0.038
PERCENTASIAN	0.121 (0.656)	0.18	0.005
PERCENTAF-AM	0.698*** (0.200)	3.49	0.157
PERCENTLATINO	0.413 (0.277)	1.49	0.074
PERCENTNATIVE	13.417 (17.477)	0.77	0.027
R-squared	0.273		
N	1410		
*p<0.1**p<0.05		***p<0.01	
<p>Note: Sales Ratio is the dependant Variable. Robust standard errors in parentheses. All regressions include dummies for the four main residential types (condo, single family, two family, and three family).</p>			

The table (still first column) also confirms the non-racialized arguments of most commentators on property tax assessment disparity. To be more specific, the table shows that sales price, residential type (not shown), and assessment amount are also powerfully related to the sales ratio and statistically significant. As expected, for example, sales price is negatively related to the sales ratio: high sales price is causally related to lower sales ratio. Assessments, by contrast, are positively related to sale-ratio. Although the regression suggests that the percent rent is positively related to sales ratio as predicted, the data does not show that this relationship is statistically significant.

In the third column of the table, I simply report standardized coefficients of each of the variables in order to evaluate the relative strength of each on sales ratio. As seen in that column, sales price

has the biggest effect on sales-ratio. The regression predicts that a one standard deviation increase in sales price results in a 0.55 standard deviation decrease in sales ratio. Total assessment is also much stronger than any of our race variables. Interestingly, however, the table suggests that percent Latino and percent African American have a stronger effect than tenure on the sales ratio.⁵⁹

G. Potential Criticisms

Before continuing, it is important to preempt (to the extent possible) some of potential shortcomings of the conclusions I have drawn from the data. For one thing, I should note that my research, which includes virtually all residential sales in New Haven in 2000, does not completely eliminate error from the inclusion of some non-market sales. The data likely includes, for instance, some sales of property under duress, such as foreclosure sales and sales that follow bankruptcy proceedings.⁶⁰ Such sales are not likely for full consideration. The data also treats equally arms-length residential sales and those between related parties, such as sales between relatives. Sales between related parties, however, are not a good measure of market value,⁶¹ since homeowners may sell to a related party for less than full consideration. Last, the sales data is the data that is reported on the deed after a sale. Since the amount reported is controlled by parties close to the sale, it is possible that parties misreport the sale amount in order to avoid taxation or some other reason.⁶² For all these reasons, in some cases the sales ratio may not be as overstated as it appears to be in the data.

Admittedly, one cannot completely eliminate the possibility of some non-market sales creeping into the data. However, the data set excludes sales for obviously low value (*i.e.* <\$10,000).⁶³ Second, the number of non-market sales is probably very small. The vast majority of home sales in the data, one suspects, sell for full consideration. Third, whatever the number of such sales, it is reasonable to presume that there are just about as many sales in majority-white neighborhoods as in majority-minority neighborhoods. For instance, there is no reason to believe, *a priori*,

59. At this point, a brief caveat is in order. The table only explains a small proportion of the sales-ratio; the variance explained or "R-squared" only equals 0.273. Thus, it is likely that there are other variables that explain variation in sales-ratio.

60. For example, Table 1 shows the high and low sales ratio (third and fourth column respectively). These sales are likely for non-cash consideration or sales between related parties.

61. See Baar, *supra* note 3, at 364-67 (describing some of the problems with sales-ratio data); see also JENSEN, *supra* note 1, at 285-86 (same).

62. See JENSEN, *supra* note 1, at 285.

63. See *supra* note 22.

that there would be substantially more residential sales between related parties in majority white neighborhoods than in majority-minority neighborhoods. Thus, any errors likely offset; errors should inflate sales ratios in white and minority neighborhoods equally. Finally, despite the incidence of forced sales and sales between related parties, comparison of sales values to assessment values is the common approach to research on property tax discrimination.⁶⁴

IV. PROBABLE EXPLANATIONS

At least three explanations give a good account for race-dependent assessments. First, assessors might instigate discriminatory practices in order to keep white residents from fleeing the city for the suburbs. Second, differential property tax assessments may be the upshot of local politics. Since assessors want to maximize public revenue, but, more important, want to stay in office, they may give favorable treatment to white homeowners whom they perceive as more likely to vote or otherwise complain if assessments go up. Third, racialized assessments could be the consequence of the legal regime, which, for instance, seems to favor large residential homeowners who are more likely to challenge erroneous over-assessments. These large residential homeowners tend to be residents of majority-white neighborhoods.

A. Assessments as Inducement

New Haven, like many cities and states,⁶⁵ explicitly grants property tax exemptions to favored groups, like Veterans and their spouses, businesses providing day care, disabled persons, the elderly or those willing to try out solar home-heating alternatives.⁶⁶ Similarly, differential property tax assessments may be a sop to another favored group: whites.⁶⁷

As Diane Paul has observed, property assessors in central cities may be concerned with white flight to the surrounding suburbs.⁶⁸ At

64. JENSEN, *supra* note 1, at 285-86 (noting that “a survey of a state tax system is hardly deemed complete unless it contains a comparison of sales values with assessed values”); *see also* PETERSON ET AL., *supra* note 11, at 97 (noting that, for public policy purposes, it is more important to examine sales-ratio data than other types of property tax data).

65. For example, California provides exemptions from revaluations for transfer to spouses, or transfer by elderly persons. CAL. CONST. art. XIII A §2(g) (providing that “the terms “purchased” and “change in ownership” do not include the purchase or transfer of real property between spouses”).

66. *See* NEW HAVEN, CONN., MUN. CODE §§ 28.11-17 (2003).

67. *See* PAUL, *supra* note 6, at 27.

68. *Id.* at 27-28. For one of the most thoughtful discussions of how cities compete with one another, *see* PAUL PETERSON, CITY LIMITS (1981). *See also* PAUL KANTOR, THE DEPENDENT CITY (1988).

the same time, African Americans are generally less able to make any real threat of leaving the city.⁶⁹ Although whites represent less than a third of the population in New Haven, more than half of all home sales were made by residents of majority-white neighborhoods, supporting the inference that whites are selling their residences more frequently and perhaps even fleeing the central city. Indeed, the city has seen a substantial decline in its white population (and simultaneous increase in the Latino population) over the last twenty-five years.⁷⁰ Thus, the perception — and indeed the reality — might be that if residents of white neighborhoods are charged too much in taxes (by way of relative high property assessments), they will move to suburbs.⁷¹ Shortly, assessors may see favorable assessments to white homeowners as a way of retaining white residents and competing with the surrounding suburbs.⁷²

B. *Politics of Assessments*

The differential treatment of residents in minority neighborhoods could also be the upshot of local property assessor politics. That is, assessors, as political actors, may have political incentives to over-assess residents of majority-minority neighborhoods.

69. PAUL, *supra* note 6, at 42.

70. In fact, in 1980, the city was majority white non-Latino, while Latinos represented only around eight percent of the population. (Over the same period the city's total population has changed very little and the percentage of African Americans living in the city has increased only slightly). See 1983 COUNTY AND CITY DATA BOOK, at 680 (providing 1980 Census data).

71. See NETZER, *supra* note 35, at 82 ("Most big city officials publicly express concern at the rapid rate at which white middle-class families with children have been leaving the big cities Deliberately favorable treatment of the housing which such families might choose within the city limits may serve the real purpose of enhancing the city's competitive position vis-à-vis the suburbs."); see also PAUL, *supra* note 6, at 27-28 (noting that "city officials fear that department stores, theaters, and other central city businesses will follow the middle class to the suburb.").

72. Admittedly, favorable assessments of white neighborhoods may cut exactly the other way, since such property tax breaks may be capitalized into the costs of homes purchases in such neighborhoods. See NETZER, *supra* note 35, at 82-83. In other words, it is conceivable that favorable tax treatment may actually drive up the demand, and (more importantly) the price, for homes in majority white neighborhoods. However, it is not clear that homeowners or potential homeowners realize the connection, if it exists at all, between low taxes and increased purchases prices, nor that this connection is ultimately convincing taxpayers that should be apathetic or opposed to preferential tax treatment.

1. "Home-voters"

Most obvious, assessors, who are often elected, want to stay in office and may view assessments as related to their ability to maintain a good relationship with their constituency.⁷³ For instance, assessors have incentives to forego increases in property taxes, since increases (more so than decreases) are more likely to alienate voting constituencies.⁷⁴ If white homeowners make up a good share of voters, as they do in New Haven, assessors may rationally be inclined to under-assess their properties in order to accommodate white homeowners' interests. As one commentator notes, at the prospect of increased assessments "homeowners write complaining letters to the editor, call their city councilors, sometimes even stage demonstrations and otherwise generate unfavorable publicity, and even vote the offending politicians out of office."⁷⁵

Another commentator has analogized homeowners to "home-voters" to suggest that changes in the market value of their most important asset, their home, will be met with keen resistance.⁷⁶ In smaller settings, the analogy of homeowners to home-voters is a particularly apt one, since such homeowners may be able to exert large amounts of influence.⁷⁷

Indeed, in Connecticut property tax assessments seem to be politically sensational issues. For example, when the city of Norwalk, Connecticut conducted its decennial revaluation and realized that property tax liability on residential homeowners would increase, the Mayor promptly moved to postpone execution of the revaluation and ordered the city to continue to use the old numbers.⁷⁸ Similarly, in the city of New Haven, where the Mayor appoints the assessor,⁷⁹ when a revaluation would have resulted in an increase in the assessments of residential homeowners, the city took advantage of state statutes that allowed it to phase in the increases over five years, a signal that the administration was wary of political backlash for increased assessments.⁸⁰ Last, among

73. GLENN W. FISHER, *THE WORST TAX? A HISTORY OF THE PROPERTY TAX IN AMERICA* 197 (1996) (providing that assessors are elected in twenty two states, appointed by municipal officers in fourteen states, and some combination in the other states).

74. See Baar, *supra* note 3, at 346-47 (discussing the propensity of assessors to maintain the status quo during the Great Depression).

75. PAUL, *supra* note 6, at 29 (discussing the uproar in Boston at the prospect of property tax increases).

76. FISCHER, *supra* note 10.

77. *Id.* at 21.

78. See *Stafford Higgins Indus., Inc. v City of Norwalk*, 245 Conn. 551, 596 (1998) (Berdon, J. dissenting).

79. Interview with Terry Rodie Kennedy, *supra* note 19.

80. See *United Illuminating Co. v. City of New Haven*, 179 Conn. 627 (1980); see also NEW HAVEN, CONN., MUN. CODE § 28-7 (2003) (providing for staged increases in property taxation).

residential properties, my data suggests that multi-family residents pay the highest, on average, in sales ratio. At the same time, single-family homeowners pay the least, on average. This result is fairly predictable given that, as a group, single-family homeowners represent such a large share of the residential populace. Assessors are likely aware of the political repercussions that would follow charging high property taxes to such a politically influential group.

2. *Minority Politics*

Additionally, minority politics may play a role in explaining why minority politicians and minority interest groups do not raise the issue of differential treatment in assessments. For one thing, since such discrimination is relatively “mild,” minority groups may not think it is worth the expense of political capital. There was a similar reluctance to challenge purported over-assessments in the majority African-American Roxbury community in Boston some thirty years ago, even after Oldman and Aaron found evidence that African American residents were routinely over-assessed.⁸¹ Diane Paul suggests that Roxbury residents were more concerned about bread-and-butter issues: more police protection, jobs, and city services.⁸² This argument has some undeniable force, since New Haven has one of the largest minority communities in the state and yet is one of the poorest places in terms of employment, poverty, and income.⁸³

At the same time, other minority groups may view over-assessment as a net benefit, since it suggests that the property in minority neighborhoods is worth more to potential buyers.⁸⁴ Potential homeowners look to assessments as trends in home market values. Assessments, in other words, are largely self-fulfilling prophecies. That is, high market value equals high assessments; but, more importantly, high assessments can equal high market value.⁸⁵ If property in a neighborhood is over-assessed, it creates a positive impression of the value of the property in the

81. PAUL, *supra* note 6, at 56.

82. *Id.* at 69-70 (“Interviews with black politicians and interest group representatives indicate that assessing is far down on the list of their priorities, certainly below problems of unemployment, schooling, crime, and police protection, housing, and city services such as garbage collection and code enforcement.”).

83. See US DEPARTMENT OF COMMERCE, COUNTY AND CITY DATA BOOK: STATISTICAL ABSTRACT SUPPLEMENT 214, 702 (13th ed., 2000) [hereinafter CITY DATA BOOK].

84. For example, neighborhood groups, where property values have been on the decline, have attempted to keep assessors from reducing valuations for fear that such valuations would shatter consumer confidence in the neighborhoods. See PETERSON ET AL., *supra* note 11, at 68.

85. *Id.* at 67 (“Given small investors’ reliance on assessed valuation as an indication of property values, if reassessment lags far behind market trends, there will be a resultant lag in investors’ awareness of the declining value of their property.”).

minds of the buying public and/or improves public expectations about neighborhood land values.⁸⁶ Thus, it is conceivable that even erroneously high assessments can lead to speculation and an artificially high demand for property.

C. Law

Finally, there are several different ways in which the law of property tax assessment might favor residents of majority-white neighborhoods, or, more simply put, white homeowners. At a minimum, the law might insulate racially differential property tax practices.

Until recently, Connecticut had one of the longest intervals for revaluation in the nation: 10 years.⁸⁷ As such, the last revaluation in New Haven was in 1991.⁸⁸ Revaluations in New Haven (and the rest of Connecticut) are now required once every four years.⁸⁹ Even though this is an improvement, property taxes, right or wrong, are levied based on the same numbers for four years.⁹⁰ Even worse, physical inspections, where assessors actually go out and eyeball the property, only occur once every dozen years.⁹¹ All this means that there is an “assessment lag,” although relatively small, in Connecticut that could lead to assessment disparities caused by movements in the market demand for properties, such as rising home values in some neighborhoods. In other words, assessment lag creates a “tax benefit” to those homeowners whose property values are rising and creates a “tax harm” to residents of neighborhoods where home values are declining.⁹²

Conceivably, benefits of assessment lag could redound to majority-white neighborhoods, if property values in those neighborhoods rise faster than in other neighborhoods, all else being equal. Further, though the state does require that assessors be certified to perform assessments,⁹³ it is possible that during a long gestation time, assessor skills may become rusty.⁹⁴ Lastly, the long

86. See Karl E. Case, *Volatility, Speculation, and the Efficiency of Land Markets*, in *LAND USE & TAXATION* 34-35 (H. James Brown ed., 1997).

87. JENSEN, *supra* note 1, at 332 (finding that as of 1930, Connecticut had one of the longest intervals between revaluation in the nation).

88. Interview with Terry Rodie Kennedy, *supra* note 19.

89. CONN. GEN. STAT. § 12-62 (b)(2) (2003). Historically, the state has had one of the longest intervals in the nation. See JENSEN, *supra* note 1, at 332.

90. CONN. GEN. STAT. § 12-62 (a)(1) (2003).

91. CONN. GEN. STAT. § 12-62 (a) (3) (2003).

92. Notably, this was just the argument that led a group of residents in a majority-minority neighborhood in Pennsylvania to file suit little more than a quarter century ago. See *Garrett v. Bamford*, 538 F.2d 63 (3d Cir. 1976) (seeking an order requiring annual assessments).

93. See CONN. GEN. STAT. § 12-40a (2003).

94. JENSEN, *supra* note 1, at 337-38.

lag in physical inspection may allow homeowners to easily not report improvements to property that ought to affect property tax liability.

Furthermore, as another author has argued, vague statutes may lead to discrimination in property tax assessment.⁹⁵ That is, the requirement that property assessments be marked to fair market value is relatively unspecific. Tax assessors, with this ambiguous charge to go by, may usurp too much discretion. This could lead back to the political incentives for differential assessments in favor of residents of white homeowners just discussed.

Also, white homeowners may be more likely to challenge high assessments. In Connecticut, residents have the right to appeal erroneous assessments to the Board of Assessment Appeals,⁹⁶ which can amend the assessment.⁹⁷ The statutes further provide that the decisions of the Board of Assessment can also be appealed to a superior court in Connecticut.⁹⁸ However, as a general matter, there are probably few challenges to assessments and even this right probably benefits residents of non-minority neighborhoods.⁹⁹ The challenges that are brought against property tax assessments are more likely brought by high-value property owners, since the incentive is greater for them to bring suit than other property owners.¹⁰⁰ As I have noted earlier, assessors may err on the low side for such properties as a way of preempting such challenges. The average home sale amount in majority-minority neighborhoods (\$87,814) is significantly less than in majority-white neighborhoods (\$153,760). Thus, minorities may challenge fewer assessments, since the incentives may be duller. Accordingly, assessors may overvalue since they do not expect to be challenged in minority communities.¹⁰¹

Finally, the differential impact on minority homeowners might be compounded in light of residential housing patterns that tend to segregate minority and majority communities. As Peter Schuck has

95. *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 344-47 (1958) "A useful if elusive concept for the judiciary, "value" provides a less-than-satisfactory framework for legislative policy making." *Id.* at 356.

96. CONN. GEN. STAT. § 12-111 (2003).

97. CONN. GEN. STAT. § 12-113 (2003).

98. CONN. GEN. STAT. § 12-117(a) (2003).

99. A somewhat early study of the appeals process in Hartford, a city comparable in size to New Haven, finds that only two percent of all assessments were challenged. THEODORE REYNOLDS SMITH, *REAL PROPERTY TAXATION AND THE URBAN CENTER: A CASE STUDY OF HARTFORD, CONNECTICUT* 46 (1972).

100. For a review of several studies that have concluded that only owners of high value property appeal erroneous assessments, see PAUL, *supra* note 6, at 37-39. See also PETERSON ET AL., *supra* note 11, at 106-07.

101. In fact, this was the finding of a study. PAUL, *supra* note 6, at 6.

observed recently, the law may countenance segregated housing patterns;¹⁰² minimally at least, laws have failed to promote residential housing diversity.¹⁰³ Where you live is, mostly, where your friends and colleagues live. In these circumstances, it is difficult for homeowners to compare property tax “prices” for similar homes in other neighborhoods and thus gain evidence to pursue a challenge. Particularly when neighborhoods are racially stratified, minority homeowners may not have good information about comparative prices in majority-white neighborhoods.¹⁰⁴ Since the reverse is also true — residents of majority groups may not have access to inter-neighborhood information — this might explain findings by other commentators that residents of majority-white neighborhoods all-too-frequently challenge their assessments even though they are paying out obscenely, even illegally, low rates.¹⁰⁵ Shortly, residents of minority neighborhoods may challenge improper assessments less frequently because they do not have access to good information about property prices in adjoining communities.

In the end, it seems that no one motive decisively explains racialized assessment practices. Rather, differential assessment by race is likely borne of several causes. As I have noted, differential treatment may be an important financial incentive for the city to encourage desirable groups (*i.e.* whites) to move in (or stay in) city limits. Additionally, assessors, like other high-ranking public officials, want to maximize public revenues, without alienating voting constituencies.¹⁰⁶ Finally, the law, as it presently stands, may also insulate discriminatory practices. Of course, the fact that there are several explanations may make it difficult for the Courts to grapple with assessment disparity, the subject to which I turn now.

102. See generally Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 HARV. C.R.-C.L. L. REV. 289, 293 (2002) (discussing how the residential diversity in public policy takes a backseat to ideals of nondiscrimination and “classism”).

103. For a good recent review of the literature on the segregation of neighborhoods, see *id.* at 295-303.

104. PAUL, *supra* note 6, at 10, 43.

105. *Id.* at 55-56 (noting that survey of Boston renewal that “those residential neighborhoods which enjoyed the lowest assessments were those where property taxes were of greatest concern, while the only neighborhood in which less than half the residents considered property taxes a very serious problem is the most heavily over-assessed”).

106. Baar, *supra* note 3, at 341 (noting the pressure from other municipal officials to keep assessments as high as possible).

V. COURT-ORDERED REFORM

Market-tied schemes, like New Haven's, may be on precarious legal footing. To remedy the over-assessment of property in minority neighborhoods, courts are not without power to order a reduction in assessments in those neighborhoods where the data show that residents are over-assessed. As a general matter, the Connecticut Supreme Court has given localities free reign to devise tax schemes that meet their own unique needs, desires, and demands.¹⁰⁷ However, the U.S. Supreme Court has suggested in three important decisions that a court-ordered reduction in cases of over-assessment is a real possibility, if not a probable one.

The U.S. Supreme Court, for instance, has ordered a reduction remedy for plaintiffs when they could show that their property was assessed at market value, which while consistent with statute, was almost twice as high as the assessments assigned to other property owners in the same state.¹⁰⁸ Additionally, the Court has ordered a reduction remedy when assessors failed to take into account market costs that reduced the value of certain parcels of property.¹⁰⁹ Last, the Court has ordered reduction when assessors failed to provide timely assessments to all classes of property and formulated many assessments based on stale numbers.¹¹⁰ Based on such precedents, the current property tax scheme in New Haven and other municipalities may be susceptible to courtroom challenge and court-ordered reduction of assessments of property in minority neighborhoods.

A. *Sioux City v. Dakota County, Nebraska*

Sioux City was the first time the Court suggested that plaintiffs could receive a judicial remedy for property tax over-assessment.¹¹¹ Before *Sioux City*, the prevailing idea among many courts was that there was no cure for plaintiffs seeking to reduce their assessments below the amount mandated by statute even if the vast majority of other properties in the area were under-assessed.¹¹² For example, in

107. See, e.g., *Stop & Shop Co., Inc. v. Town of East Haven*, 210 Conn. 233, 242 (1989) (holding that personal property may be assessed annually while real property is assessed decennially); *Stafford Higgins Indus., Inc. v. City of Norwalk*, 245 Conn. 551 (1998) (passing off on a city plan that sought to assess residential property at lower rate than commercial properties, despite the relative market value of either).

108. See *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441 (1923).

109. See *Cumberland Coal Co. v. Bd. of Revision*, 284 U.S. 23 (1931).

110. See *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989).

111. For a discussion of the cases that led up to the historical *Sioux City* decision, see Baar, *supra* note 3, at 356-60.

112. See, e.g., *Greene v. Louisville & Interurban R.R. Co.*, 244 U.S. 499; see also *Sioux City*, 260 U.S. at 446 (noting that federal authorities have frequently taken the view that the

its *Sioux City* decision, the Supreme Court of Nebraska ruled that it could not legally lower one's property below statutory provisions.¹¹³ Rather, the only remedy available to a plaintiff, according to the state's highest court, was to bring a suit to require the state to raise everyone's property taxes to the statutory requirements.¹¹⁴

In this case, the property of the plaintiff, Sioux City Bridge Co., was assessed at its "true value," while other surrounding property was customarily assessed at fifty-five percent of true value.¹¹⁵ However, state statutes and the constitution of Nebraska required that *all* property be assessed at its actual value, making no classifications among property owners.¹¹⁶ Since plaintiff's property was assessed at its actual value, as provided by statute, the lower courts found there was nothing the judiciary could do to give plaintiff relief, even though the Court acknowledged that the custom of not enforcing the statute with regard to other property-owners created a disparate taxation regime.¹¹⁷

The U.S. Supreme Court overturned the Nebraska Court, holding that plaintiffs do have a remedy even when they file suit to obtain a reduction in valuation, even though it may be "a departure from the requirement of statute."¹¹⁸ The Court argued that it would be impractical for a plaintiff bringing suit to require that assessments of other property-holders be increased such that the plaintiff is not differentially assessed. In such a circumstance, the Court held that a reduction in assessment for the plaintiff is the appropriate remedy. In commenting on the ruling of the Nebraska Supreme Court, which denied plaintiff any remedy and mused that a leveling up of property tax assessments of under-assessment property might be the appropriate remedy, the U.S. Supreme Court responded:

[S]uch a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in

injured taxpayer ought to be denied any remedy since it is impossible to secure an increase in assessments of the great mass of under-assessed properties); *Lincoln Telephone & Telegraph Co. v. Johnson County*, 102 Neb. 254 (Neb. 1918).

113. *Sioux City*, 260 U.S. at 444.

114. *Id.* ("[W]hen property is assessed at its true value, and other property in the district is assessed below its true value, the proper remedy is to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced.")

115. *Id.*

116. *Id.* at 444-45.

117. *Id.* at 46.

118. *Id.*

the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute.¹¹⁹

Under *Sioux City*, therefore, customary under-valuation of certain classes of property contrary to state statute may afford a reduction remedy to plaintiffs. In light of the holding in *Sioux City*, residents of majority-minority neighborhoods may have a right to bring suit to have their assessments reduced. Residents of majority-minority neighborhoods in New Haven, may be able to bring a suit to have their assessments reduced to a level equal to the average assessments of residential property in majority white neighborhoods.

B. Cumberland Coal Co. v. Board of Revision

Eight years later, in *Cumberland Coal Co.*, the Court held that purportedly neutral property tax assessment schemes are susceptible to courtroom challenges and, ultimately, a court-order reduction remedy. In *Cumberland Coal Co.*, county commissioners in Pennsylvania implemented a plan that valued all coal in the same township at a uniform market rate.¹²⁰ However, the petitioner, Cumberland Coal Co., argued that the uniform system overstated the actual value of their coal properties, since, among other things, it did not take into account the high transportation costs for properties that lay far from the market.¹²¹

The Court agreed with the plaintiffs and ordered the assessors to reduce the plaintiff's assessments.¹²² The holding in *Cumberland Coal Co.*, simply put, requires state legislators to get it right. States are not insulated from judicial review just because the law, on its face, is neutral. According to the court, the value assigned for assessment purposes must reflect the actual market value of the underlying property, regardless of the purported neutrality of the assessment scheme, since otherwise some property would be undervalued relative to other property. By way of example, the court in *Cumberland Coal Co.* instructs:

119. *Id.*

120. *Cumberland Coal Co. v. Bd. of Revision*, 284 U.S. 23, 26 (1931).

121. *Id.* at 24.

122. *Id.* at 30.

[I]f the petitioners' property had been valued at 100 per cent. of its actual value, the like property of the other owners, having a higher actual value, would in effect have been valued at less than 100 per cent. The discrimination is essentially the same, and is equally repugnant to constitutional right, when both assessments are made on the basis of 50 per cent. of assigned values and differences in actual values are deliberately and systematically disregarded.¹²³

Accordingly, *Cumberland Coal Co.* seems to require local policy-makers to take into account the actual market, or selling price, of properties when making assessments or, as the court puts it, assigning value. In New Haven, *Cumberland Coal Co.* seems to require assessors to assign values that take into account actual sales figures of property in the neighborhoods where the property sits. Thus, under the holding of *Cumberland Coal Co.*, residential property in minority neighborhoods may be susceptible to court-ordered reduction, since the assigned or assessed value of property in majority-minority neighborhoods, on average, exceeds the sales price in such neighborhoods. Like in *Cumberland Coal Co.*, residential property in majority-white neighborhoods in New Haven (and perhaps other jurisdictions) seems to be systematically undervalued relative to market value, while residential property in majority-minority neighborhoods seems to be overvalued relative to its market value.

C. *Allegheny Pittsburgh Coal Co. v. County Comm'n*

Finally, in a more recent Court opinion, *Allegheny Pittsburgh Coal Co.*, the Court held that assessor-driven schemes that produce differential impact also provide injured plaintiffs a reduction remedy.¹²⁴ In this case, county assessors valued recently-sold property on the basis of its purchase price, while making only small increases in valuation to land that was not sold as recently.¹²⁵ This

123. *Id.* at 30.

124. *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989); *see also* *Charleston Fed. Sav. & Loan Ass'n. v. Alderson*, 324 U.S. 182, 190 (1945) (noting that the equal protection clause bars "taxation which in fact bears unequally on persons or property of the same class"); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918) ("[I]t must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."). For a good discussion in the wake of the case, see John Vitha, Comment, *The Supreme Court Gives "Welcome Stranger" Tax Assessments a Cold Reception*, 56 *BROOK. L. REV.* 1383 (1991).

125. *Allegheny*, 488 U.S. at 338.

system led to wide disparities in property tax liability for virtually identical properties, since those that were recently sold were assessed at, in essence, the going market price, while other property was assessed based on old numbers. The court found, for instance, that a local assessor was assessing the property of Allegheny, and other coal companies, which had recently purchased several properties in the state, at thirty-five times the rate of similar properties not recently sold.¹²⁶ According to the Court, the county scheme was not sanctioned by the West Virginia legislature or “any other authoritative source.”¹²⁷ Rather, Webster county’s assessor had acted “on her own initiative” to create a scheme that produced disparate assessments and directly contravened state law.¹²⁸ As a result, the Court held that the system violated the Equal Protection Clause.¹²⁹ Importantly, since the assessor was not acting based on state law, but rather administrative necessity, *Allegheny Pittsburgh Coal Co.* stands for the proposition that, even when based on a non-discriminatory criteria (in *Allegheny Pittsburgh Coal Co.*, administrative ease), differential assessments may create a cause of action for property-owners adversely affected by comparatively high over-assessments. The opinion in *Allegheny Pittsburgh Coal Co.* may be support for a cause of action based on comparative over-assessments of property in majority-minority neighborhoods, even when there is no significant evidence of discriminatory purpose.

D. Nordlinger v. Hahn

The one case that seemingly cuts against a court-ordered reduction remedy for over-assessment is *Nordlinger v. Hahn*.¹³⁰ In this case, the Court appears to give its stamp of approval to differential property tax assessments. In *Hahn*, perhaps the most famous property assessment case reviewed by the current Court, plaintiff Nordlinger brought suit to overturn California’s method of allocating property taxes, which after passage of Proposition 13 based property assessments on a parcel’s most recent purchase price. Shortly, like the informal system the court rejected in *Allegheny*, California codified a property taxation system that would assess recently-sold property based on the purchase price of their property, while other homeowners who had not recently sold faced assessments tied to the historic value of the underlying property.¹³¹

126. *Id.* at 341.

127. *Id.* at 345.

128. *Id.*

129. *Id.* at 342.

130. *Nordlinger v. Hahn*, 505 U.S. 1 (1992).

131. *Id.* at 6 (“For that reason, Proposition 13 has been labeled by some as a ‘welcome

Nordlinger brought suit on the theory that the California scheme discriminated against late-comers *contra* the Equal Protection Clause, since those who recently-purchased property in California would face higher effective property tax rates that reflected more recent, market values. Nordlinger also argued that the system infringed on the right to travel.¹³² The Court rejected both of the plaintiff's arguments and ruled in favor of the state, finding several reasons to justify the system, such as "interest in local neighborhood preservation, continuity, and stability."¹³³

The holding in *Hahn*, however, does not overturn the Court's rejection of informal schemes, as described in *Allegheny* or *Sioux City*. In fact, the Court was very careful to distinguish *Allegheny*, emphasizing that *Allegheny* was a case where county assessors had departed from state statute.¹³⁴ In fact, the Court goes out of its way to point out what is problematic about the differential system in *Allegheny* is that it went against West Virginia law:

We are not advised of any West Virginia statute or practice which authorizes individual counties of the State to fashion their own substantive assessment policies independently of state statute. The Webster County assessor has, apparently on her own initiative, applied the tax laws of West Virginia in the manner heretofore described, with the resulting disparity in assessed value of similar property. Indeed, her practice seems contrary to that of the guide published by the West Virginia Tax Commission as an aid to local assessors in the assessment of real property.¹³⁵

However, the evidence suggests that the New Haven case is not similar to a formal scheme of the sort held permissible by the court in *Hahn*, because in *Hahn* the differential assessment was pursuant to a constitutional amendment and, as such, safe from court-ordered reduction.

stranger' system — the newcomer to an established community is 'welcome' in anticipation that he will contribute a larger percentage of support for local government than his settled neighbor who owns a comparable home.").

132. *Id.* at 10-11.

133. *Id.* at 9-10.

134. *Id.* at 14-15.

135. *Allegheny*, 488 U.S. at 345 (citations omitted).

E. Summary

New Haven's pattern of differential impact is more similar, indeed perhaps identical, to the decision to differentially assess property found in the prior Supreme Court cases in which the remedy was court-ordered reduction: namely, *Allegheny*, *Cumberland Coal*, and *Sioux City*. Under the holdings in those cases, the purported market-tied property taxation in New Haven and elsewhere may, despite *Hahn*, still be susceptible to a legal challenge on the grounds that substantial evidence suggests such schemes result in over-assessments of property in majority-minority neighborhoods.

In New Haven, like in *Allegheny*, assessors, at most, are required by the respective state constitutions to assess based, at most, on market value. Moreover, the disparate treatment is not the result of "mere error," since disparities hold regardless of the level of assessment, the value of the underlying properties, or the tenure of the residents. Rather, in both New Haven and *Allegheny*, the differential assessment is against a specific class of properties. The evidence suggests that in New Haven it is directed against residential property in majority-minority neighborhoods and in *Allegheny* the Court found over-assessment directed at out-of-state coal properties.

Furthermore, the scheme in Connecticut is noticeably similar to the scheme in *Cumberland Coal*, in which the Court also orders a reduction remedy. In both cases, the states (Pennsylvania and Connecticut) act pursuant to a putatively neutral taxation scheme. Again, the scheme Connecticut calls for makes "true and actual value" the test.¹³⁶ Similarly, the scheme discussed by the Court in *Cumberland Coal* uses language indicative of true market value. In both cases, the purported neutral test ended in consistent discrimination against certain classes of properties: in *Cumberland Coal* the discrimination was against classes of property situated geographically distant from the market; and in New Haven, the evidence suggests it is residents of minority communities.

Finally, like the residents of Nebraska discussed in *Sioux City*, residents of Connecticut are to be assessed at a uniform rate, without distinction. However, the data show that residents of minority neighborhoods at least in New Haven are over-assessed as compared to residents of majority-white neighborhoods. Importantly, in *Sioux City* the Court held that a reduction may be appropriate even when it proves incompatible with state statutes. Thus, like in *Sioux City*, this may mean that some minority

136. CONN. GEN. STAT. § 12-62(a)-(b) (2003).

residents are entitled to a reduction remedy, even though the state statutes in Connecticut are facially neutral.

VI. STATUTORY REFORM AND PURCHASE ASSESSMENTS

As mentioned, currently Connecticut statutes require that property taxes be based on “true and actual valuation.”¹³⁷ Before closing, it is worthwhile to discuss briefly a replacement to the purported market-tied property assessment scheme, which is relied on by New Haven and most other jurisdictions. The object here is not to fully develop a new assessment regime for localities, but is far less ambitious. Instead, the goal is to merely delineate the contours of a local taxation regime that seems to reduce the racialized impact of market-tied assessments heretofore described.

A. Purchase Assessments

One seemingly non-discriminatory statutory replacement to the market-tied assessment scheme in place in the vast majority of localities is to assess parcels of property based on the amount the last buyer paid to purchase it. Put another way, assessments should be a function of the purchase price or acquisition cost, not the purported market value of the property formulated by local assessment offices. Under this policy, residents of minority and non-minority neighborhoods alike are assessed based on how much they actually paid to purchase a piece of property. To arrive at municipal revenue, a locality’s property tax rate is applied to the “purchase assessments.”

This is similar to the scheme passed in California when voters adopted Proposition 13 in 1978, the subject of Nordlinger’s lawsuit in *Hahn*.¹³⁸ In that case, voters in California passed a referendum to lock-in property tax values at one percent of the purchase price.¹³⁹ The only major difference in the scheme that I advocate and the California one is that my scheme limits purchase assessments to residential properties, while California’s scheme applies to all real property subject to the property tax.¹⁴⁰

137. See CONN. GEN. STAT. REV. § 12-64 (2003).

138. *Hahn*, 505 U.S. at 4-6 (describing the events leading up to the adoption of proposition 13).

139. FREDERICK D. STOCKER, PROPOSITION 13: A TEN-YEAR RETROSPECTIVE 3 (1991).

140. CAL. CONST. XIII(a). The main reason to limit this proposal to residential properties is because I found no evidence from the sales data that assessments of commercial properties are race-dependent. Thus, while commercial properties might face discrimination, it is not similar to the invidious discrimination of minority homeowners. One other reason to limit this to residential properties is that nonresidential properties do not change hands as frequently as residential property. See Marion S. Beaumont, *Proposition 13 Winners and Losers: Were First-time Home Buyers Affected Adversely*, in STOCKER, *supra* note 139, at 151. Thus,

Making assessments a function of purchase price may eliminate the possibility of racialized assessments. That is, except for cases of improvements to property or non-market sales (discussed *infra*), the human element of property tax assessments, which likely creates differential assessment, would be removed. The process of assessing residential property would be reduced to a largely mechanical process of simply confirming the last sales price. Individuals could rely on the fact that what they paid for a piece of property is the sole factor for determining assessments and, ultimately, effective property tax rates.

For instance, the data shows that the effective property tax breaks that single-family homeowners receive should disappear. Additionally, owners of high- and low-value residential property under such a regime would be treated exactly alike and assessments would be the same function of purchase price, regardless of the amount paid. Additionally, because assessors will not have much discretion under this scheme, homeowners will not be able to exert undue political influence and thereby ensure themselves favorable assessments. Accordingly, any discrimination based on residential type, tenure, value, or race should end, since all property owners would be assessed based on the cash consideration paid.

B. Other Advantages

Further, purchase assessments might produce other benefits worth noting.

1. Public Resources

First, assessments based on the purchase price save fiscal resources of the state. Purchase assessments seem to do away with the need for a specialized corps to conduct assessments and specialized technologies. Assessors usually have to have specialized training to ascertain the market value of a piece of property.¹⁴¹ In

commercial properties would get a bigger tax break than others, all else being equal. Furthermore, commercial property discrimination, if any, is not as widespread as the discrimination against minority homeowners, since commercial properties represent only a small minority of total assessed properties. For example, in New Haven, commercial sales comprised less than 5 percent of all sales. See Summary of Property Sales in 2000, *supra* note 20. In any event, commercial enterprises that do experience discrimination are able to pass along at least some of the extra taxes to their consumers in the form of higher prices. See NETZER, *supra* note 35, at 36, 81 (discussing the distinction between high property taxes for businesses and homeowners).

141. Killen v. Logan County Comm'n, 170 W. Va. 602, 608 (1982) (noting that the "term 'assessor' implies that such officials possess special knowledge and capacity to appraise property and to assign a market value to it. Without such expertise, accurate valuation of property cannot occur").

the New Haven assessor's office, out of a staff of seven, five are certified assessment specialists.¹⁴² Further, urban areas, like New Haven, have recently turned to computer assisted market valuation techniques and began to outsource revaluations to private companies.¹⁴³ However, as one author finds in California, a purchase assessment scheme make appraisal technologies obsolete and unnecessary.¹⁴⁴ Additionally, since purchase assessments merely focus on the sale price (which, in virtually all cases, should equal the market price), there is little need for an expansive cadre of assessors.¹⁴⁵ Thus, the process of assessment becomes more of a mechanical process that takes fewer skilled employees and little software. It also alleviates the need for challenges, which, incidentally, I have noted might also work to the disadvantage of minority neighborhoods. If assessments are based solely on purchase or acquisition costs, the need for such challenges and a board of tax review to adjudicate them is diminished.

2. *Economic Efficiency*

Second, purchase assessments of residential properties has minimal distortionary effect.¹⁴⁶ For instance, in *Hahn*, the dissent notes that Proposition 13 "inhibits the transfer of unimproved land, abandoned buildings, and substandard uses."¹⁴⁷ In other words, property taxes may even impede good investments.¹⁴⁸ Businesses may forego new investment because of high property taxes; homeowners without access to liquid resources may forego making improvements to property expecting that such improvements would generate a higher property tax bill.¹⁴⁹

However, since my proposed regime would be limited to residential properties, non-residential property would still change hands according to its best uses. The lock-in effect that residential

142. Interview with Terry Rodie Kennedy, *supra* note 19.

143. *Id.*

144. Ronald B. Welch, *Property Tax Administrative Changes Resulting from Proposition 13*, in STOCKER, *supra* note 139, at 113.

145. *But see* Welch, *supra* note 144, at 131 (arguing that, immediately after the passage of Proposition 13 in California, there were significant administrative needs in order to provide a statewide revaluation at 1975-76 levels).

146. *Id.* By contrast, some economists would argue that using the market-tied property taxation may even impede good investments. *See* NETZER, *supra* note 35, at 36; RICHARD A. MUSGRAVE & PEGGY B. MUSGRAVE, *PUBLIC FINANCE IN THEORY AND PRACTICE* 419 (5th ed. 1989). *But see* PETERSON ET AL., *supra* note 11, at 52-54.

147. *Hahn*, 505 U.S. at 37 (Stevens, J., dissenting).

148. *See* PETERSON ET AL., *supra* note 11, at 2.

149. *See* MUSGRAVE & MUSGRAVE, *supra* note 146, at 52-54 ("[I]t would seem that the economic literature may have exaggerated the actual disincentive effect of property taxation on the maintenance and upgrading of the housing stock.").

properties face, furthermore, would be counter-balanced by the positive effects of long-term residency. Lastly, purchase assessments seem to be an accurate way of assessing residences. Periodic assessments to determine the market price were only a proxy (an ineffective one at that) for market value — how much a willing buyer would pay for a piece of property. However, the best determinant of the current market value, is not how much a willing buyer *would* pay for a piece of property, but how much a willing buyer *does* pay for it.

3. Legal

Third, market-tied property assessment, as noted, may be susceptible to legal challenge, since the evidence suggests that it results in an adverse impact on residents of minority neighborhoods. By contrast, purchase assessments have already received the imprimatur of the Supreme Court. That is, the Court passed off on the legality of a scheme similar to the one I propose in *Hahn*, in which the Court opined on California's Proposition 13.¹⁵⁰

4. Progressive Taxation

Fourth, market-tied assessments, as others have noted, may also be regressive.¹⁵¹ Assessments based on acquisition costs, however, are somewhat progressive. For starters, such a regime may stall gentrification. In other words, purchase assessments create a lock-in effect; it dissuades some people from moving because of the concomitant increase in property taxes. This lock-in effect, according to the Court in *Hahn*, impedes, among others, the displacement of lower income families.¹⁵²

Furthermore, purchase assessments remedy liquidity problems associated with the current property tax regimes.¹⁵³ Put differently, purchase assessments elide the problem of not having enough

150. *Hahn*, 505 U.S. at 1 (1992). For a good analysis of the case, see Miller, *infra* note 153, at 109-34.

151. For instance, commentators bemoan that property taxes are regressive, because wealthy homeowners spend smaller proportions of their income on home buying. See Edward A. Zelinsky, *The Once and Future Property Tax: A Dialogue with My Younger Self*, 23 CARDOZO L. REV. 2199, 2202 (2002); see also NETZER, *supra* note 35, at 57 (reporting a negative correlation between income and housing expenditures).

152. *Hahn*, 505 U.S. at 12.

153. See also John A. Miller, *Rationalizing Injustice: The Supreme Court and the Property Tax*, 22 HOFSTRA L. REV. 79, 86. Zelinsky, *supra* note 151, at 2201-02 ("The classic example is the retiree living on a fixed income whose home appreciates significantly in value and whose local property tax obligation rises commensurately. Since the retiree's income is static, rising property taxes absorb increasingly large percentages of that income, creating liquidity problems for the fixed-income retiree.").

money to pay property taxes. As with sales taxes, if persons have enough to make the original purchase, it reasons that they have enough to pay the tax on such purchase.

C. Alternatives

It is worth mentioning at least two other alternatives that will likely reduce the racialized impact that flows from market-tied assessment schemes, such as that found in New Haven. However, as discussed below, both alternatives have significant defects.

1. Eliminate Property Taxes

One solution to assessment discrimination may be to simply eliminate taxes on residential property. One might also lower residential property taxes so as to mitigate the net effect of differential assessments. However, to change the tax system mid-course would be unfair to many, because much of the lifetime expected costs have already been capitalized into the value of the underlying property asset.¹⁵⁴ Previous owners of residential property deducted from the sale price to the current owner the costs of property taxes, and the current owner, since there is no reason to expect residential property tax abatement, factored in such costs when he made the offer. As Jensen succinctly explains:

No hope has been held out that property taxes would ever decline, and he must have been a reckless taxpayer who would have pinned his faith to such a hope had it been offered. Until recently no alternative source of revenue worth mentioning has been available. The property owner, who bought property on the basis of its yield before taxes, did so at his peril and often to his grief. There have undoubtedly been hundreds of thousands of property owners who purchased property without reckoning adequately for taxes, who have suffered from their neglect. But that is not due to lack of warning.¹⁵⁵

For two reasons, the benefits of these breaks would go disproportionately to white homeowners. First, giving a property tax break to current homeowners would rebound predominately to white owners, who are more likely in New Haven (and elsewhere)

154. For an explanation of capitalization, see NETZER, *supra* note 35, at 33-40 (discussing the literature on capitalization and property taxes).

155. JENSEN, *supra* note 1, at 76 (citation omitted).

to own a home. Second, because minorities tend to own less expensive homes than whites and thus owe overall small property tax bills, most of the largest benefits will go to non-minority groups.

In any event, jettisoning residential property taxes seems far too drastic a solution, like using a baseball bat to swat a determined fly. It is not clear if there is another good source of revenue. As most finance experts agree, it is not clear what sort of tax can raise equal amounts of revenue; no other tax comes close to raising such large amounts.¹⁵⁶ Property taxes account for over fifty percent of New Haven's revenue. Nationally, property taxes, according to the most recent figures, account for almost three-fourths of locally raised revenue.¹⁵⁷ Finally, the federal government favors property taxes through tax breaks, and it is not clear that such favorable treatment would be forthcoming with an alternative tax source.

2. Centralization

Another solution might be to forgo local control and make the state government responsible for property tax collections, so as to remove incentives for differential assessments. However, there are political benefits to leaving property tax collection to localities. In the words of one state supreme court, assessments are farmed out to local jurisdictions in order to promote democratic participation in taxation and "to avoid oppressive government practices."¹⁵⁸ Local collection efforts both maximizes "political participation" and amplifies "support for the political system."¹⁵⁹ Centralization may also reduce incentives to raise property taxes. Further, centralization of collection does not ensure that property tax assessments will not be racially discriminatory. State officials and local officials may have identical incentives to discriminate against minorities.

156. See PETERSON et. al., *supra* note 11, at 119; FISCHEL, *supra* note 10; PAUL, *supra* note 6, at 3.

157. 2002 STATISTICAL ABSTRACT, *supra* note 1, at 286 (providing that total local governments raised nearly \$316 billion, of which \$228 billion was from property taxes).

158. *Killen*, 170 W. Va. at 602.

159. FISHER, *supra* note 73, at 120.

*D. Criticisms**1. Revenue*

Possibly the most pungent criticism to purchase assessments is that it would reduce the amount of revenue generated from property taxes. A market-tied residential property taxation scheme putatively tracks market values; thus public coffers are directly sourced by demands on local land values. However, property tax assessments based on acquisition costs substantially inhibit a locality's ability to mark residential property to market values, since sales of such properties will be scattered and infrequent at best. Those localities may have to decrease public spending on things dependent on the property tax to make up for the shortfall.

To be certain, purchase assessments, in all probability, will limit the ability of municipalities to grow as the value of residential property taxes increase. However, how much revenue a municipality generates from property taxes is determined not simply by the level of assessments, but also by the taxation rate. In other words, New Haven can still continue to increase revenue from property taxes, if it wishes, by simply raising the statutory rate of taxation.

In any event, purchase assessments do not completely shackle local governments, cut public programs, or force them to find alternative sources of revenue. For one thing, while a purchase assessment scheme locks-in an assessment for residential property, it is not tantamount to suggesting that the value of local taxation is eroded. That is, even assuming there are no subsequent sales, local governments can still maintain current spending, so long as residential property taxation is increased at the rate of inflation. In California, Proposition 13 does just this, giving the legislature room to increase all property taxes by the rate of inflation.¹⁶⁰ Thus, pegging fixed property taxes to inflation ensures that current spending does not have to decrease. Further, because properties in Connecticut are evaluated only once every four years, it is an exaggeration to suggest that the normal system of property taxation instantly produces more income when property taxes rise. At best, the current system can be described as a delayed market-to-market system.

Finally, as a normative matter, it is not clear that municipalities should profit from increases in property values, when there has been no ostensible change in the liquid lifetime economic resources of homeowners. That is, since most homeowners do not rent out

160. *Hahn*, 505 U.S. at 5 (noting that assessment may reflect from year to year the inflationary rate not to exceed 2 percent for any given year).

their residential properties for “profit”, they realize no direct economic benefit from rising home values that merits increased taxation and or expansion in government spending. Of course, upon sale, if there has been appreciation, current homeowners will realize a windfall, but the state will be able to collect is portion of increased wealth as well. The purchasing homeowners will pay the appreciated price and, forever forward, the increased taxes. Additionally, selling homeowners, assuming they spend the same portion of their income on another residence, will also pay out the windfall when they invest in a subsequent home purchase.

2. Non-Market Sales

Second, it is easy under my proposed assessment scheme, for related parties to transfer property between one another for little consideration in order to reduce the property tax bill. Admittedly, the scheme does not handle non-market sales, such as those between related parties or for non-cash consideration. It would still have to be policed by a regulatory office similar to the current assessor’s office, particularly to monitor sales between related parties. However, the propensity to create sham sales in order to get a property tax break could be checked by high penalties. Alternatively, as in California, sales between related parties could be disregarded for property tax purposes.

As to bankruptcy auctions and foreclosure sales, municipalities would still have to perform assessments for properties that are sold in forced sales. Otherwise, buyers would not only get to buy at fire-sale prices, they would also get to avoid appropriate taxation. Such sales, however, are fairly easy to monitor, because auctions are generally public events and the government can require notification. Further, because such sales presumably occur infrequently, a municipality like New Haven would have to retain few assessors to perform these tasks. Thus, even with this regime, there is a need to force sales, sales between related parties and perhaps even improvements to property, since the cost of improvements might not always be a matter of public record.

3. Tenure, Revisited

Finally, it will result in discrimination against renters, since landlords, in a tight rental market, will have little incentive to pass along the benefits of the reduction to tenants by lowering rents.¹⁶¹ Many people in large cities, like New Haven, rent. As noted,

161. See PETERSON ET AL., *supra* note 11, at 17.

relatively few residences in New Haven's twenty-eight neighborhoods (32%) are owner-occupied.¹⁶² Since minorities are more likely to rent, this will cause a differential impact against minorities. Shortly put, in some markets renters, which are disproportionately minority, will be disadvantaged relative to purchasers under such a scheme.

However, it is not clear that municipalities, like New Haven, are tight rental markets. In fact, although vacancy rates have been recently declining, throughout the 1990's the Connecticut rental vacancy rate has exceeded the national average.¹⁶³ Even more basic, it is not clear that landlords will not pass along cost savings to tenants, as most economists agree, that will pass along cost increases in the form of higher rents.¹⁶⁴

In any event, this problem is far different from the problem of residential property tax discrimination. In the case of a tight rental market, minorities are able to substitute away from rentals. In the case of home ownership, the only way to escape the discrimination is to move to majority-white neighborhoods. Of course, it is impossible for all minority members to migrate to such neighborhoods, because there is simply not enough of them. Further, increases in the minority population in such communities are directly related to increases in effective property tax rates. Shortly, the fact that minorities disproportionately rent should give us pause, but, more troubling is the fact that minority members cannot escape discrimination based on property tax assessments.

Additionally, the scheme discriminates against "late-comers." Thus, those who bought their property late would have to pay property taxes closer to the market value of the property. Indeed, according to the Court in *Hahn*, a majority of the property tax burden in California was paid by the late-comers, a disparity under Proposition 13 that was expected to grow.¹⁶⁵ My proposal might even be somewhat regressive, since, as an empirical matter, there is an inverse relationship between home changes and wealth.¹⁶⁶ In other words, low-income homeowners are more likely to change homes than high-income homeowners, all else being equal. It follows, therefore, that low-income homeowners will more frequently pay out

162. See *supra* Part VI.B.

163. See 2000 HOUSING STATISTICS, *supra* note 2, at 236. Compared to its neighbors, New York and Massachusetts, over the same period, Connecticut has consistently posted higher vacancy rates. See 2002 STATISTICAL ABSTRACT, *supra* note 1, at 596.

164. See generally RICHARD POSNER, ECONOMIC ANALYSIS OF THE LAW 482-85 (6th ed. 2003).

165. *Hahn*, 505 U.S. at 6 (noting that in 1989, 44% of pre-Proposition 13 homeowners pay only around 25% of the residential property taxes).

166. See 2002 STATISTICAL ABSTRACT, *supra* note 1, at 30 (providing data showing that with increases in household income, the frequency of home changes decreases).

taxes closer to the market value of their home rather than a largely fixed sum had they not changed homes. Moreover, since members of minority groups are less likely to own a home, they are less likely to realize an immediate appreciable benefit from the policy change.¹⁶⁷ In other words, many of the benefits would go to current homeowners, who are disproportionately white.

However, the propensity of low-income homeowners to change homes frequently and thus pay out a more market-type property tax might cut in their favor. Minorities frequently live in low-value neighborhoods, neighborhoods where the market value of homes are often declining.¹⁶⁸ As a result, if they are changing homes from one low-value community to another, my purchase assessment scheme ought to “save” them money each time they change homes; as long as home values are declining, the market value of their current home will always be less than the market value of their future home.

Incidentally, it is unlikely that this scheme will have a large impact, since, in absolute terms, few members of minority groups are moving to places like New Haven. For starters, only around fifteen percent of Americans move in a given year.¹⁶⁹ The state of Connecticut, for instance, has not witnessed an influx of minority groups, like it did yesteryear. In fact, the population growth of Connecticut has somewhat slowed in recent decades.¹⁷⁰ There are few new people moving into the state from other states; there is, instead, negative migration.¹⁷¹ The data also suggest that few minorities are moving to New Haven from other cities within the state. In fact, in the past decade, almost one thousand African Americans moved out of the city.¹⁷² Although the city has seen significant growth in the Latino population,¹⁷³ there is no good way to determine how many of these are non-citizens from abroad. In short, overall, there are few new comers to the state and there is reason to believe that few of these are members of minority groups.

167. See Miller, *supra* note 153, at 119 (“[B]lack homeowners will bear a comparatively greater tax burden than their white counterparts who were able to purchase homes earlier because they did not have to overcome the barrier of racial discrimination.”).

168. See generally PETERSON ET AL., *supra* note 11.

169. 2002 STATISTICAL ABSTRACT, *supra* note 1, at 29.

170. *Id.* at 23 (providing that the population of the state grew by 5.8 % in 1980-1990, 3.6 % in 1990-2000, and 0.6 % in 2000-2001).

171. *Id.* at 24.

172. Compare US DEPARTMENT OF COMMERCE, COUNTY AND CITY DATA BOOK: STATISTICAL ABSTRACT SUPPLEMENT 698 (1994) (providing that, in 1990, there were 47,157 African Americans in New Haven) [hereinafter 1994 CITY DATA BOOK] with CITY DATA BOOK, *supra* note 83, at 648 (providing that, in 2000, there were 46,181 African Americans in New Haven).

173. Compare 1994 CITY DATA BOOK, *supra* note 172, at 698 (providing that, in 1990, there were 17,243 Latinos in New Haven) with CITY DATA BOOK, *supra* note 83, at 648 (providing that, in 2000, there were 26,443 Latinos in New Haven).

VII. CONCLUSION

Residential property taxes are the chief source of revenue for chalk and blackboards, playgrounds and park benches, sanitation and sewage, police uniforms and fire trucks, sidewalk pavement and streetlights, lifeguards and public beach cleanups.¹⁷⁴ Still, the public,¹⁷⁵ the press, and the academy¹⁷⁶ loathe these perennial invasions of local duty. Save for passing observations, critics have largely overlooked another failing of market-tied property taxation: racialized assessments.¹⁷⁷ As I have argued throughout, residents of majority-minority neighborhoods — African American and Latino, to be specific — are assessed at higher effective rates than residents of majority-white neighborhoods. Furthermore, evidence of racialized assessments persists regardless of whether minorities choose to live in an expensive mansion or low-value, ramshackle apartment building. Perhaps the solution to racialized assessments, therefore, is to take out the human aspect of property tax assessment altogether.

174. See FISHER, *supra* note 73, at 4 (detailing major property tax revenue uses).

175. See STOCKER, *supra* note 139.

176. See, e.g., E.R.A. SELIGMAN, *ESSAYS IN TAXATION* (5th ed. 1905) (“[T]he general property tax is so flagrantly inequitable that its retention can be explained only through ignorance or inertia.”); see also FISHER, *supra* note 73; Note, *supra* note 95, at 336.

177. For instance, in one of the earliest treatments of property taxation in the United States, Jens Jensen devotes a whole chapter to “Undervaluation and Inequalities in Valuation.” See JENSEN, *supra* note 1, at 281-306. However, nowhere, in what is otherwise a comprehensive discussion, does Jensen mention the possibility of inequality on the basis of race. To his credit, however, at the time of Jensen’s writing, there were probably few good sources of statistics on property ownership by race.

VIII. APPENDIX

A. Selected Sales Data

Census Tract	Number of Residential Sales	Mean Sale Amount	Mean Total Assessment	Mean Sales Ratio
1401	3	25500	48130	191.13
1402	2	100500	53431	57.14
1403	19	63030	69132	159.68
1404	43	77640	69895	133.51
1405	47	55343	61232	173.52
1406	41	60502	67526	158.32
1407	23	93602	105883	175.11
1408	24	80313	67849	248.84
1409	37	119142	105591	153.27
1410	49	196826	112545	63.53
1411	41	139439	101711	99.69
1412	68	99277	80126	92.32
1413	31	81248	71347	98.24
1414	48	136029	95931	98.22
1415	75	58231	67073	172.16
1416	32	58732	83972	174.66
1417	3	501833	199197	39.72
1418	52	140891	87294	93.07
1419	77	202047	105883	62.95
1420	57	205464	105278	60.54
1421	22	103718	82340	102.12
1422	16	138476	92068	111.45
1423	85	77146	69098	119.28
1424	76	69799	73772	142.45
1425	77	84932	73563	101.87
1426	173	83982	68537	121.38
1427	88	88066	77974	107.49
1428	101	122009	89030	79.01

B. Tenure by Census Tract

Census Tract	Percent Own	Percent Rent
1401	1.1	98.9
1402	3.0	97.0
1403	23.1	76.9
1404	33.1	66.9
1405	28.8	71.2
1406	25.3	74.7
1407	9.3	90.7
1408	21.7	78.3
1409	22.8	77.2
1410	62.6	37.4
1411	76.2	23.8
1412	46.1	53.9
1413	14.0	86.0
1414	46.3	53.7
1415	35.8	64.2
1416	22.5	77.5
1417	2.0	98.0
1418	29.5	70.5
1419	28.5	71.5
1420	22.5	77.5
1421	11.6	88.4
1422	29.8	70.2
1423	24.5	75.5
1424	22.5	77.5
1425	29.2	70.8
1426	36.5	63.5
1427	37.3	62.7
1428	78.8	21.2
Totals	32.0	68.0

C. Census Tracts and Popular Names

Census Tract	Popular Name.
1401	CBD (Central Business District)
1402	Long Wharf-Church Street South
1403	Hill (4 City Point)
1404	Hill (4 City Point)
1405	Hill (4 City Point)
1406	Hill (4 City Point)
1407	Dwight
1408	Edgewood-West River
1409	Edgewood-West River
1410	Westville
1411	Westville
1412	Westhills
1413	Westhills
1414	Beaver Hills
1415	Newhallville
1416	Dixwell
1417	Yale
1418	Prospect Hill
1419	East Rock
1420	East Rock
1421	Wooster Square
1422	Wooster Square
1423	Fair Haven
1424	Fair Haven
1425	(No Name)
1426	Heights
1427	East Shore (Annex)
1428	East Shore (Morris Cove)