

ARE MUNICIPAL FINES AND FEES TOOLS OF STATEGRAFT?

DICK M. CARPENTER II,* JAIMIE CAVANAUGH** & SAM GEDGE***

Most, if not all, incorporated communities in the United States have municipal and traffic codes that delineate the powers and duties of local governments or provide rules and regulations for public activity in the community. The primary stated purpose of code enforcement is promoting and protecting public health and safety. Codes are commonly enforced through monetary fines and administrative fees. Recent years have seen growing concern about cities engaging in “taxation by citation”—that is, the use of code enforcement to raise revenue from fines and fees in excess of citations issued solely to protect and advance public safety. A significant focus of the concern is how taxation by citation violates rights in the pursuit of revenue. In this way, taxation by citation seems to illustrate Professor Bernadette Atuahene’s theory of stategraft: state agents transferring property from residents “to the state in violation of the state’s own laws or basic human rights,” often during times of budgetary austerity. But this Essay identifies important features of municipal codes and their enforcement that are not necessarily encompassed by this theory. It suggests how stategraft may be expanded to encompass laws, regulations, and systems that legally—if arguably unconstitutionally—allow or incentivize state actors to exploit their residents for the benefit of the bureaucrat’s budget.

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INTRODUCTION

On April 4, 2020, twenty-five-year-old Brittany Coleman was driving to her birthday breakfast when Brookside, Alabama, police officer Marcus Sellers pulled her over.¹ He said she was tailgating;

* Dick M. Carpenter II is a senior director of strategic research at the Institute for Justice and professor emeritus at the University of Colorado.

** Jaimie Cavanaugh is Legal Policy Counsel at the Pacific Legal Foundation.

*** Sam Gedge is a senior attorney at the Institute for Justice.

1. *Brittany Coleman*, INST. FOR JUST. (Apr. 5, 2022), <https://ij.org/client/brittany-coleman/>; Class Action Complaint at 25, *Coleman v. Town* <https://doi.org/10.59015/wlr.VSEH7511>

Coleman knew this was untrue.² During the stop, Sellers also claimed he smelled marijuana in Coleman’s car.³ He then ordered Coleman out of the car and immediately handcuffed her, which Officer Sellers stated was the Brookside Police Department’s “standard procedure” when searching a vehicle.⁴

Soon, two additional officers arrived and administered multiple field sobriety tests.⁵ Coleman passed them all.⁶ The officers told her she was free to go.⁷ But her car was not: The officers ordered it towed incident to arrest, even though Coleman was not custodially arrested.⁸ To retrieve it, she had to pay \$175 to Brookside and an additional \$160 to the towing company.⁹

Coleman was also forced to make three appearances in Brookside Municipal Court for her following-too-closely and marijuana charges.¹⁰ The first time, she waited two hours before officials told her to return at a later date with an attorney.¹¹ At her second court appearance, the attorney she hired asked for evidence supporting the marijuana charge.¹² Brookside produced none.¹³ Finally, at her third appearance, the court dismissed the marijuana charge for lack of evidence—but not before Coleman was forced to pay at least \$382 in court costs and \$195 for the following-too-closely citation.¹⁴

At first glance, Brookside typifies many sleepy small towns in the United States. Its roughly 1,000 people are served by a town hall, volunteer fire department, post office, community center, Boys and Girls Club, a handful of churches, a VFW, a Dollar General, and a smattering

of Brookside, 663 F. Supp. 3d 1261 (N.D. Ala. 2023) (No. 22-cv-00423), 2022 WL 1014169.

2. Class Action Complaint, *supra* note 1, at 25.

3. *Id.* at 26.

4. *Id.*

5. *Id.* at 27.

6. *Id.*

7. *See id.* at 28.

8. *Id.* Coleman, one of the officers said, was instead “considered arrested ‘on paper.’” *Id.*

9. *Id.*

10. *Id.* at 29.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 29.

of other small businesses.¹⁵ Its police jurisdiction covers six miles of roads—none with a traffic light—and a 1.5-mile stretch of Interstate 22.¹⁶

Crime is rare in this rural enclave north of Birmingham. From 2011 to 2018, the town reported a total of fifty-five serious crimes,¹⁷ none of which were rape or homicide.¹⁸ In 2017 and 2018, Brookside reported no serious crimes at all.¹⁹

Yet, beginning in March of 2018, the town’s policymakers systematically deployed its police force not to protect the public but to generate cash.²⁰ This led to a nearly 1,100 percent increase in revenue from “fines and forfeitures” between 2017 (\$51,473) and 2020 (\$610,307).²¹ Most of that money went “right back to the police department for . . . hiring, trainings, conferences, salaries, expensive unmarked SUVs, a new communications center and jail, [and] a K9 unit”²² (the dog’s name? “K9 Cash”²³)—all to patrol a tiny town “that sees essentially no serious crime.”²⁴ By 2020, fines and forfeitures made up approximately forty-nine percent of the city’s annual revenue.²⁵

Moreover, a state audit found that, between October 1, 2020, and February 2, 2022, the municipal court generated \$722,676, of which the city (including the court) retained \$500,494.²⁶ Those revenue numbers

15. John Archibald, *Police in This Tiny Alabama Town Suck Drivers into Legal ‘Black Hole,’* AL.COM, <https://www.al.com/news/2022/01/police-in-this-tiny-alabama-town-suck-drivers-into-legal-black-hole.html> [<https://perma.cc/6FUU-CEBM>] (Jan. 20, 2022, 3:00 PM); *Directions to Brookside*, BROOKSIDE, ALA., https://www.brooksidealabama.com/?page_id=1081 [<https://perma.cc/3YUH-NWZ3>]; *Post Roster*, VFW DEP’T ALA., <https://vfwal.org/di/vfw/v2/postroster.asp> [<https://perma.cc/3QHH-58E7>].

16. Archibald, *supra* note 15.

17. “Defined as assault, burglary, homicide, larceny, motor vehicle theft, rape, or robbery.” Class Action Complaint, *supra* note 1, at 9.

18. *Id.*

19. *Id.*

20. *See* Archibald, *supra* note 15.

21. Class Action Complaint, *supra* note 1, at 3.

22. *Id.* at 2. By 2021, Brookside’s police force had grown from only several part-time officers to nine full-time officers and several part-time officers. Archibald, *supra* note 15. Counting just the nine full-time officers, that per capita size is nearly five times larger than the national average. *See id.* The sheriff of Brookside’s home county (Jefferson) said of such numbers, “I could take over the whole county with numbers like that.” *Id.* And that was still not enough. In January 2022, Brookside posted on its Facebook page “that it had hired six more officers ‘in an effort to expand our dedication and commitment to provide superior community service & protection.’” *Id.*

23. Class Action Complaint, *supra* note 1, at 20.

24. *Id.* at 2.

25. *Id.* at 3.

26. DEP’T OF EXAM’RS OF PUB. ACCTS., REPORT ON THE TOWN OF BROOKSIDE, JEFFERSON COUNTY, ALABAMA, OCTOBER 1, 2018 THROUGH FEBRUARY 2, 2022, at 16

do not show how much additional revenue Brookside brought in through its vehicle towing and impounding fee program, which operates outside of the municipal court system. (Indeed, the program runs without any oversight whatsoever.)²⁷

Brookside's avarice continued for years with little notice until 2022, when four reporters from AL.com wrote a series of articles that drew national attention, earned the authors a Pulitzer Prize, and spawned multiple lawsuits.²⁸ In one article, the Brookside police chief touted the town's policing as "a positive story" while the city's mayor nodded in agreement.²⁹ The chief's one regret? That the town could be raking in even *more* money. "I see a 600% increase – that's a failure," he said.³⁰ "If you had more officers and more productivity you'd have more. . . . I think it could be more."³¹

(2022), https://www.legislature.state.al.us/pdf/eopa/audit_reports/ExaminersPDFFiles/6500_22-221-Town%20of%20Brookside.pdf [https://perma.cc/YNG7-9ERB] [hereinafter REPORT ON BROOKSIDE]. "The municipal court relies on the Brookside City Council for its funding," Class Action Complaint, *supra* note 1, at 5, while simultaneously using the revenue it generates to fund municipal court and other Brookside salaries, as found by a state audit. REPORT ON BROOKSIDE, *supra* at 7–8, 16–17.

The Brookside City Council is responsible for appointing the lone municipal judge, fixing his salary, and financing the municipal court's operations. Between 2019 and 2021, the council more than doubled the salary of the Town's municipal judge.

During that same period, the council also increased the salary of the town attorney (the Town's sole prosecutor) by over \$50,000, including more than doubling the part of his salary attributable to prosecuting municipal-court cases.

Class Action Complaint, *supra* note 1, at 5.

27. See REPORT ON BROOKSIDE, *supra* note 26, at 19–20.

28. See Scott Shackford, *Coverage of Alabama Town's Predatory Fines and Seizures Earns Journalists a Pulitzer*, REASON (May 9, 2023, 12:15 PM), <https://reason.com/2023/05/09/coverage-of-alabama-towns-predatory-fines-and-seizures-earns-journalists-a-pulitzer/> [https://perma.cc/ET8W-U6V9]. For information about active lawsuits, see *Brookside, Alabama Fines*, INST. FOR JUST., <https://ij.org/case/brookside-alabama-fines/>; *Ward et al v. Brookside, Alabama, the Town of et al*, JUSTIA: DOCKETS & FILINGS, <https://dockets.justia.com/docket/alabama/alndce/2:2023cv00527/185314> [https://perma.cc/V8CN-85AL] (June 21, 2023); Josh Gauntt, *New LawsUIT Against Brookside Claims Man Was Left "Naked in Cold Cell" with Over \$15,000 in Fines and Court Costs*, WBRC (Feb. 23, 2023, 11:25 PM), <https://www.wbrc.com/2023/02/24/new-lawsuit-against-brookside-claims-man-was-left-naked-cold-cell-with-over-15000-fines-court-costs/> [https://perma.cc/BVL7-4FU3].

29. See Archibald, *supra* note 15.

30. *Id.*

31. *Id.* Following the AL.com story's release, the chief and several officers resigned. John Archibald, *Inside the Remarkable Rise and Fall of Alabama's Most Predatory Police Force*, AL.COM, <https://www.al.com/news/2022/04/inside-the->

To the casual reader, the actions of Brookside’s officials might seem like “a few bad apples” engaged in lamentable but familiar forms of corruption. Yet, contrary to traditional definitions of corruption—“lack of integrity or honesty (especially susceptibility to bribery); use of a position of trust for dishonest gain”³²—Brookside officials acted under color of law. They followed the policies, practices, and customs of the city, and former and current policymakers were involved at every conceivable level.³³ This includes Brookside’s mayor, its municipal court judge, its prosecutor, and its recently resigned police chief—and its former and current police officers.³⁴ Moreover, their actions (in the main) did not amount to bribery, extortion, or embezzlement. Rather, the fines and fees generated through their behavior appear to have primarily enriched the public coffers.

If traditional definitions of corruption fail to fully capture the state of affairs in Brookside, Professor Bernadette Atuahene has recently advanced the theory of “stategraft,”³⁵ which she argues is illustrated by cities that engage in revenue generation through fines and fees.³⁶ In brief, Atuahene defines stategraft as government agents transferring property from residents “to the state in violation of the state’s own laws or basic human rights.”³⁷ In other words, stategraft requires unlawful revenue-generating actions by government officials.

Below, this Essay defines and describes the fines-and-fees phenomenon and discusses how it seems to partially illustrate Atuahene’s concept of stategraft. We also consider disparities between the fines-and-fees phenomenon and stategraft and what those disparities mean for both the definition of stategraft and the relevant policy and legal implications.

remarkable-rise-and-fall-of-alabamas-most-predatory-police-force.html
[<https://perma.cc/XG2V-S9L9>] (May 10, 2023, 9:42 AM).

32. *Corruption*, VOCABULARY.COM, <https://www.vocabulary.com/dictionary/corruption> [<https://perma.cc/8TGE-XGUD>].

33. Archibald, *supra* note 15; Archibald, *supra* note 31.

34. See Archibald, *supra* note 15; Archibald, *supra* note 31. Just because some behavior is statutorily authorized or otherwise adopted as government policy does not mean it is normatively acceptable or, more to the point, outside the bounds of stategraft. We return to this point below. See *infra* Parts III–IV.

35. Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1 (2023) [hereinafter *A Theory of Stategraft*]. See also Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 170 (2020) [hereinafter *Predatory Cities*]; Bernadette Atuahene & Timothy R. Hodge, *Stategraft*, 91 S. CAL. L. REV. 263, 297 (2018).

36. Atuahene & Hodge, *supra* note 35, at 297.

37. *A Theory of Stategraft*, *supra* note 35, at 3.

I. TAXATION BY CITATION: THE FINES-AND-FEES PROBLEM

Most, if not all, incorporated communities in the United States have municipal and traffic codes that delineate the powers and duties of local governments or provide rules and regulations for public activity in the community. The primary purpose of code enforcement is commonly seen as the promotion and protection of public health and safety.³⁸ Codes also describe enforcement mechanisms that aid compliance. Although code enforcement will sometimes include incarceration, monetary fines and administrative fees are more common.³⁹

With apologies to Publius, if men were angels, no code enforcement would be necessary, so no revenue would be raised. In reality, however, code enforcement by cities generates substantial revenue—so much, in fact, that public concern is growing about cities engaging in “taxation by citation.”⁴⁰ This is when municipalities use their code enforcement powers to raise revenue from fines and fees in excess of what they would collect were they issuing citations solely to protect and advance public safety.⁴¹

When a city derives a large share of its revenue from fines and fees, this may indicate it engages in taxation by citation. There is no consensus as to what percentage of fines-and-fees revenue is excessive (or whether there even is such a percentage). However, one observer has suggested

38. *What Is Code Enforcement?*, CAL. ASS’N CODE ENF’T OFFICERS, <https://www.caceo.us/page/WhatIsCodeEnforcement> (last visited Mar. 20, 2024). For an example of a city identifying public health and safety as the purpose of codes, see CASTLE ROCK, COLO., MUN. CODE § 16.02.040(A) (2024), https://library.municode.com/co/castle_rock/codes/municipal_code [https://perma.cc/YX96-SPF8] (“These regulations are adopted to protect and to provide for the public health, safety and welfare of present and future residents of [Castle Rock] . . .”).

39. Legally, the justifications for fines and fees are different. Fees are intended to reimburse the government for the cost of a specific service “which benefits the party paying the fee in a manner ‘not shared by other members of society.’” *Emerson Coll. v. City of Boston*, 462 N.E.2d 1098, 1105 (Mass. 1984) (quoting *Nat’l Cable Television Ass’n v. United States*, 415 U.S. 336, 341 (1974)). And fees must be roughly proportionate to the cost of the service provided. See *United States v. Sperry Corp.*, 493 U.S. 52, 60 (1989) (citing *Massachusetts v. United States*, 435 U.S. 444, 463 n.19 (1978)). Fines, however, are intended to punish criminal behavior and are authorized by the government’s general police powers. See *Waters-Pierce Oil Co. v. Texas*, 212 U.S. 86, 111 (1909). Taxes, not fines or fees, are used to increase “revenue for the general support of the government.” *Jacksonville Port Auth. v. Alamo Rent-A-Car, Inc.*, 600 So. 2d 1159, 1162 (Fla. Dist. Ct. App. 1992) (citing *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 621–22 (1981)).

40. Fred Foldvary, *Taxation by Citation*, PROGRESS (Nov. 15, 2015), <https://www.progress.org/articles/taxation-by-citation> [https://perma.cc/LS82-CVFT].

41. *Id.*

when the figure surpasses ten percent of a city's revenue, this is "a reasonable indicator that you should look further" at how the city uses citations.⁴² A 2019 *Governing* magazine report used the same ten percent figure as an indicator of cities engaged in taxation by citation.⁴³

Taxation by citation is problematic (and even unconstitutional) primarily because of the conflicts of interests it creates. The first way it does so is by cities funding their municipal courts, including through fees attached to fines and other punishments.⁴⁴ Judges should not have a financial or other personal interest in cases they decide, and municipalities should not have a financial interest in obtaining convictions. Financial arrangements of this sort undermine a defendant's right to a neutral tribunal in civil and criminal cases. The U.S. Supreme Court has long held judges cannot hear a case either when they stand to personally benefit from convicting defendants or (in certain circumstances) when the city would benefit from the income generated by their rulings.⁴⁵ Similarly, the Supreme Court has said prosecutors' duty to exercise their discretion neutrally can be compromised if their office has a financial stake in convicting people.⁴⁶ The same reasoning applies to law enforcement.⁴⁷ Nonetheless, such conflicts of interest remain common.

A second conflict of interest is created through a distortion of law enforcement priorities, diverting them away from protecting and advancing public safety and toward raising revenue, which poses a problem when it threatens to become a primary motivation for creating

42. Andria Simmons, *Atlanta's Ticket Traps: Slow Down or Pay up*, ATLANTA J.-CONST. (Oct. 17, 2014), <https://www.ajc.com/news/transportation/atlanta-ticket-traps-slow-down-pay/6JZfycaeaKQ3jYJGRxtHII/> [https://perma.cc/TW95-EG4T].

43. Mike Maciag, *Addicted to Fines: A Special Report*, GOVERNING (Aug. 16, 2019), <https://www.governing.com/archive/fine-fee-revenues-special-report.html> [https://perma.cc/2BU5-HAQ2].

44. See, e.g., C.R. DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 42-62 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/5AFD-WEJV] [hereinafter INVESTIGATION OF FERGUSON POLICE DEPARTMENT].

45. See, e.g., *Ward v. Village of Monroeville*, 409 U.S. 57, 59, 61-62 (1972); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927); *Cain v. White*, 937 F.3d 446, 451 (5th Cir. 2019); *Caliste v. Cantrell*, 937 F.3d 525, 531-32 (5th Cir. 2019).

46. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980).

47. See *Brucker v. City of Doraville*, 38 F.4th 876, 887-88 (11th Cir. 2022). See also Dear Colleague Letter from the Off. of the Assoc. Att'y Gen., U.S. Dep't of Just. to Cts. Regarding Fines & Fees for Youth & Adults (Apr. 20, 2023), https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf [https://perma.cc/7E2X-PZ2X].

or enforcing ordinances.⁴⁸ Indeed, courts have noted that “[r]evenue production is not a legitimate basis for imposing a fine.”⁴⁹ Nor is it a legitimate basis for creating an ordinance: “The primary purpose of an ordinance cannot be the raising of revenue in lieu of taxation”⁵⁰ As one court has cautioned, “[i]t must be remembered that courts generally, and traffic courts in particular, are not collection agencies and should not be made such.”⁵¹ Yet empirical analyses strongly suggest that in many cities, traffic tickets generate more revenue than would be expected were the cities enforcing traffic codes merely to promote public safety.⁵²

Courts have found that, in creating unconstitutional conflicts of interest, financial incentives to convict or prosecute defendants can even violate due process. In *DePiero v. City of Macedonia*,⁵³ for example, the Sixth Circuit held that “the plaintiff was deprived due process when [the defendant city’s mayor] tried his contested traffic and criminal contempt charges.”⁵⁴ The plaintiff alleged the Ohio city’s “Mayor’s Court” violated due process because the mayor “was not a ‘neutral and detached’ magistrate.”⁵⁵ The appeals court agreed, reasoning the mayor’s “executive powers and his sweeping administrative responsibilities necessarily puts him in ‘two practically and seriously inconsistent positions, one partisan and the other judicial.’”⁵⁶ The court noted the mayor “retained ultimate responsibility for law enforcement and preparation of the city’s budget, and appointed the officer who issued plaintiff’s parking ticket” and therefore faced a “possible temptation” to bias even if he “possessed no ‘actual’ temptation or bias.”⁵⁷ Even that

48. See Richard A. Ginkowski, *Beyond Ferguson: Community-Based or Cash-Register Justice?*, CRIM. JUST., Spring 2018, at 14, 15. Similarly, law enforcement compensation or promotions may depend on ticketing prowess. See, e.g., INVESTIGATION OF FERGUSON POLICE DEPARTMENT, *supra* note 44, at 2.

49. *State ex rel. Pedersen v. Blessinger*, 201 N.W.2d 778, 781 n.1 (Wis. 1972).

50. *Village of Sister Bay v. Hockers*, 317 N.W.2d 505, 508 (Wis. Ct. App. 1982).

51. *Pedersen*, 201 N.W.2d at 784.

52. See, e.g., Daniel Hummel, *Traffic Tickets: Public Safety Concerns or Budget Building Tools*, 47 ADMIN. & SOC’Y 298 (2015); Michael D. Makowsky & Thomas Stratmann, *Political Economy at Any Speed: What Determines Traffic Citations?*, 99 AM. ECON. REV. 509, 510 (2009) (finding that “fines for speeding are not solely determined by an objective standard of law enforcement”).

53. 180 F.3d 770 (6th Cir. 1999).

54. *Id.* at 782.

55. *Id.* at 774.

56. *Id.* at 782 (quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972)).

57. *Id.* See also *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017).

appearance of judicial bias was enough to create an unconstitutional conflict of interest.

Residents of Pagedale, Missouri, filed a similar case in 2015. Their class action lawsuit challenged “‘the City’s institutional reliance on revenue from fines and fees,’ claiming this reliance incentivizes ‘the City’s unconstitutional conduct of ticketing, convicting, and fining defendants in order to generate revenue.’”⁵⁸ The residents alleged the city’s revenue goals motivated the police to write tickets—and the municipal court to convict—for absurd violations, including “failing to install screens on every door and window opening to the outside, hang drapes or blinds that match and ‘are neatly hung, in a presentable appearance,’ repair driveway cracks or chipped or aging paint on a home’s exterior, or paint foundations and wood fences.”⁵⁹ After the federal district court denied the city’s motion to dismiss,⁶⁰ the parties agreed to a consent decree under which Pagedale would significantly reform its code and ticketing practices and submit regular reports regarding its finances.⁶¹

II. WHAT TAXATION BY CITATION LOOKS LIKE

As shown above, taxation by citation can take several different forms. The most common include aesthetics-driven code enforcement, speed traps, and impound rackets.

Non-traffic municipal codes generally fall under two broad types: property and conduct. Well-crafted property codes promote health and safety by dictating standards for building maintenance and regulations (*e.g.*, emergency escapes, smoke alarms, mold, plumbing and electrical, and structural integrity issues). Some municipal codes, however, focus more on aesthetics, such as a property’s cleanliness, a building’s exterior condition, tall grass, fences, outdoor storage, the appearance, content, or placement of signs, and whether a property meets neighborhood standards.⁶² Conduct codes prohibit socially maladaptive behavior, such

58. *Whitner v. City of Pagedale*, No. 15-cv-01655, 2016 WL 915303, at *1 (E.D. Mo. Mar. 10, 2016) (quoting plaintiffs’ complaint). *See also* Monica Davey, *Lawsuit Accuses Missouri City of Fining Homeowners To Raise Revenue*, N.Y. TIMES (Nov. 4, 2015), <https://www.nytimes.com/2015/11/05/us/lawsuit-accuses-missouri-city-of-fining-homeowners-to-raise-revenue.html>.

59. *Whitner*, 2016 WL 915303, at *1.

60. *Id.*

61. *See generally* Consent Decree, *Whitner v. City of Pagedale*, No. 15-cv-01655 (E.D. Mo. May 21, 2018), [https://clearinghouse.net/doc/98548/\[https://perma.cc/B3XL-WAMF?type=standard\]](https://clearinghouse.net/doc/98548/[https://perma.cc/B3XL-WAMF?type=standard]).

62. DICK M. CARPENTER II, KYLE SWEETLAND & JENNIFER McDONALD, INST. FOR JUST., *THE PRICE OF TAXATION BY CITATION: CASE STUDIES OF THREE GEORGIA*

as public indecency and shoplifting. Such codes can, however, also regulate more trivial behavior, such as walking a dog without a leash, operating a business without a permit, or soliciting.⁶³

The codes most likely to produce taxation by citation tend to be aesthetic or trivial. For example, Hilda Brucker of Doraville, Georgia, was fined by the city for cracks in her driveway, chipped paint on her house, and weeds in her backyard.⁶⁴ Each code violation was a separate charge with its own fines and other punishments.⁶⁵ Brucker appeared in court and pleaded no contest to the driveway charge (the court dismissed the other two charges).⁶⁶ She paid a \$100 fine and was sentenced to six months' probation.⁶⁷ This required her to report to a probation officer, avoid alcoholic intoxication, and "cooperat[e] with code enforcement upon request."⁶⁸ Only after Brucker hired an attorney was the driveway charge dismissed, although the \$100 was not refunded.⁶⁹ Doraville's budgets indicate it plans to receive between seventeen and thirty percent of its overall expected revenue from fines produced through code enforcement.⁷⁰ City leaders appear proud of Doraville's taxation-by-citation scheme: a 2015 city newsletter bragged that "[a]veraging nearly 15,000 cases and bringing in over \$3 million annually, the court system contributes heavily to the city's bottom line."⁷¹

CITIES THAT RELY HEAVILY ON FINES AND FEES 21 (2019), <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf> [<https://perma.cc/43KJ-88AR>]. There is a strong argument that the government's police powers do not include the power to interfere with property rights based on aesthetic concerns only. *See, e.g.*, Kenneth Regan, Note, *You Can't Build That Here: The Constitutionality of Aesthetic Zoning and Architectural Review*, 58 *FORDHAM L. REV.* 1013, 1026–29 (1990).

63. CARPENTER, SWEETLAND & McDONALD, *supra* note 62, at 37.

64. Plaintiffs' Complaint for Declaratory & Injunctive Relief at 17, *Brucker v. City of Doraville*, 391 F. Supp. 3d 1207 (N.D. Ga. 2019) (No. 18-CV-02375), 2018 WL 2364078.

65. *Id.* at 16–17.

66. *Id.*

67. *Id.* at 16.

68. *Id.* at 17.

69. *Id.* at 17–18.

70. Christine Fonville, *Fines and Fees: Is Doraville Ticketing for Revenue? A Lawsuit that May Move Forward States the City Is in Serious Violation*, *MARIETTA DAILY J.: NEIGHBOR* (July 23, 2019), https://www.mdjonline.com/neighbor_newspapers/dekalb/is-doraville-ticketing-for-revenue-a-lawsuit-that-may-move-forward-states-the-city-is/article_3bfc5a8e-a96d-11e9-b891-0f20afc94d8f.html [<https://perma.cc/33K3-LZDV>].

71. Corally Rivera and Her Team Help Keep Administrative "Order in the Court," *CITY DORAVILLE INSIGHT*, Spring 2015, at 1, 3, <https://cms1files.revize.com/doravillega/Departments/Public%20Information/spring2015.pdf> [<https://perma.cc/4ASK-KQUL>].

Likewise for traffic codes, empirical analyses strongly suggest many cities exploit traffic tickets to generate revenue.⁷² Famously, for example, the tiny town of Ludowici, in southeast Georgia, was such a “notorious speed trap in the 1960s” that then-Governor Lester Maddox erected billboards warning drivers to be on the alert.⁷³ The governor even assigned highway patrol officers to make sure locals did not tear the signs down.⁷⁴ More recently, the tranquil town of Warwick, Georgia, (population: 400) made the news for exploiting traffic codes to fund the town’s new police headquarters, renovations to its community center (which also serves as the town’s municipal court), and two newly purchased Chevrolet Tahoe patrol vehicles.⁷⁵ “We had the opportunity to generate revenue on Highway 300,” said then-city Councilman Ronnie Fennell.⁷⁶ “And that’s what we did.”⁷⁷ According to the *Atlanta Journal-Constitution*, between 2008 and 2012, the city took in \$3,113 for every resident.⁷⁸ “I knew what revenue was being generated,” Fennell said.⁷⁹ “And let me tell you something. I liked it.”⁸⁰

Even some law enforcement officials have acknowledged their role in generating revenue. As James Tignanelli, President of the Police Officers Association of Michigan union, explained, “When elected officials say, ‘We need more money,’ they can’t look to the department of public works to raise revenues, so where do they find it? Police departments.”⁸¹ Similarly, Michael Reaves, then-Chief of the Utica, Michigan, Police Department, said, “When I first started in this job 30 years ago, police work was never about revenue enhancement, but if

72. See, e.g., Hummel, *supra* note 52, at 302; Makowsky & Stratmann, *supra* note 52.

73. Simmons, *supra* note 42.

74. Tom Zoellner, *The Ludowici Trap*, OXFORD AM. (June 2, 2014), <https://oxfordamerican.org/magazine/issue-85-summer-2014/the-ludowici-trap> [<https://perma.cc/4B3Q-U85Z>].

75. Andria Simmons, *Some Rural Georgia Towns Policing for Profit*, ATLANTA J.-CONST. (Oct. 22, 2014), <https://www.ajc.com/news/local/some-rural-georgia-towns-policing-for-profit/wdYjcTlZsqUo8Px07C48VJ/> [<https://perma.cc/DFK6-77RL>].

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*; *Warwick Directory*, GA. MUN. ASS’N, <https://www.gacities.com/Directories/Cities/WARWICK/80676> [<https://perma.cc/89XK-4MJG>].

81. George Hunter, *More Tickets in Hard Times*, CAR & DRIVER, <https://www.caranddriver.com/features/a15148830/more-tickets-in-hard-times/> [<https://perma.cc/ZHG6-R8NB>] (Jan. 31, 2009).

you're a chief now, you have to look at whether your department produces revenues"⁸²

Impound rackets are just as pernicious. Chicago's impound system, for example, proves so malevolent it was featured in *Car and Driver* magazine.⁸³ The City of Big Shoulders "tows and holds tens of thousands of vehicles each year."⁸⁴ Drivers can have their cars impounded for littering, playing music too loudly, and many other offenses.⁸⁵ To get their vehicles back, owners face a lengthy process that includes multiple hearings, hefty administrative penalties, and towing and storage fees that can compound quickly.⁸⁶ "The innocent and the guilty alike . . . face[] this expensive, uphill battle."⁸⁷

Jerome Davis and Veronica Walker-Davis learned this lesson the hard way. Not long after the couple had their car towed to an auto shop for repairs, an employee went joyriding in it.⁸⁸ When Chicago police stopped the vehicle, they discovered the shop employee was driving on a revoked license, so they impounded the car.⁸⁹ The Davises tried to show they, the owners, were blameless for the shop employee's actions, but it did not matter. Chicago officials told them they still had to pay the fine, the towing fee, and the rapidly mounting storage fees.⁹⁰ Finally, after saving up more than \$1,000 to retrieve their car, the Davises were shocked to discover it was gone—Chicago's municipal code allows the city to sell seized vehicles for scrap, auction them off, or keep them for police use.⁹¹

82. *Id.*; Marina Cracchiolo, *David Farber Named Utica Police Department's Interim Chief*, PATCH, <https://patch.com/michigan/shelby-utica/david-faber-named-utica-police-departments-interim-chief> [https://perma.cc/7297-HEQ9] (June 16, 2011, 1:19 AM).

83. John Pearley Huffman, *An Inside Look at Chicago's Seedy Car-Impound Netherworld*, CAR & DRIVER (Aug. 25, 2019), <https://www.caranddriver.com/features/a28776512/impounded-cars-chicago/>.

84. *Chicago Impound*, INST. FOR JUST., <https://ij.org/case/chicago-impound/> (last visited Mar. 20, 2024). *See also* Huffman, *supra* note 83 (noting that in 2017 the City of Chicago impounded 93,000 vehicles and sold 24,000 of them).

85. *Chicago Impound*, *supra* note 84.

86. *Id.*

87. *Id.*

88. Huffman, *supra* note 83.

89. *Id.*

90. *Id.* ("Chicago doesn't accept an 'innocent owner defense' in impound cases.")

91. *Chicago Impound*, *supra* note 84. Chicago is not the only city with the ability to auction off vehicles, see, for example, *Woman Stuck with Impound Fees After Stolen Cars Recovered*, 11 ALIVE, <https://www.11alive.com/article/news/local/woman-stuck-with-impound-fees-afterstolen-car-recovered/85-560722384> [https://perma.cc/2X7T-CSCG] (June 1, 2018, 6:04 PM).

Even cities that do not directly operate impound lots reap financial rewards from them. Wilmington, Delaware, for instance, allows private companies to tow any vehicle with more than \$200 in outstanding fines.⁹² Rather than pay money to those companies for their services, the city contractually empowers them to keep and scrap cars.⁹³ The towing companies can keep the full value of the cars;⁹⁴ if the value exceeds the amount of ticket debt, the towing companies can pocket the difference. In fact, proceeds from scrapping a vehicle are not even used to pay off the tickets.⁹⁵ Instead, the city continues to pursue the car owner for the fines.⁹⁶

In addition to municipal codes and traffic laws, taxation by citation also takes the form of exploiting codes to levy excessive fines and fees. For example, the city of Dunedin, Florida, fined resident Jim Ficken tens of thousands of dollars because it deemed his grass too long.⁹⁷ In May 2018, Ficken left his home in Dunedin, a suburb of Tampa, to settle his late mother's affairs in South Carolina.⁹⁸ While away, the friend he hired to cut his lawn unexpectedly died.⁹⁹ Grass grows quickly in Florida, and the lawn soon grew taller than the ten inches allowed by the city.¹⁰⁰ Dunedin noticed the grass in July, and immediately began fining Ficken, having classified him as a "repeat-offender" because of a warning he had received years earlier.¹⁰¹ Ficken finally discovered he was being fined on August 20, when a code inspector told him he would be getting "a big bill."¹⁰² And, indeed, big it was: \$500 per day—the same as the fine for

92. Amy Cherry, *Residents Sue Wilmington over 'Predatory' Towing Practices*, WDEL (Sept. 22, 2021, 5:41 PM), https://www.wdel.com/news/residents-sue-wilmington-over-predatory-towing-practices/article_ca36b980-1be3-11ec-9298-379082c9acc5.html [https://perma.cc/VF4X-FDDJ].

93. *See id.*

94. Andrew Wimer & Inst. for Just., *The City Scrapped Her Car over a Handful of Tickets and Left Her with Nothing but a Bill*, FORBES (Sept. 30, 2021, 11:21 AM), <https://www.forbes.com/sites/instituteofjustice/2021/09/30/the-city-scrapped-her-car-over-a-handful-of-tickets-and-left-her-with-nothing-but-a-bill/?sh=56f8ddc841c0> [https://perma.cc/UX4T-ZE6P].

95. *See* Cherry, *supra* note 92.

96. *Id.*

97. Selene San Felice, *Not Cutting Grass Cost a Dunedin Man His Home*, AXIOS (July 20, 2022), <https://www.axios.com/local/tampa-bay/2022/07/20/dunedin-man-grass-fines>.

98. *Jim Ficken*, INST. FOR JUST. (May 8, 2019), <https://ij.org/client/jim-ficken/>.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

driving fifty miles per hour in a school zone.¹⁰³ Moreover, the city assessed the fine for all fifty-seven days Jim was out of town.¹⁰⁴ With the addition of fees, Ficken owed almost \$29,000.¹⁰⁵ He asked Dunedin officials to reconsider—to fine him something fair—but the city refused.¹⁰⁶ Because Ficken was unable to pay, the city voted in May 2019 to authorize foreclosure on his home.¹⁰⁷

Even when fines are reasonable, the fees attached to them can be excessive. In 2015, for example, Ramona Morales of Indio, California, received a \$75 citation in the mail after a city inspector noticed a chicken in the backyard of a home she rents out.¹⁰⁸ Morales “went to court, explained that her tenants were confused about the legality of raising chickens in Indio, and ultimately agreed to pay the nominal fine.”¹⁰⁹ She thought the matter was settled, but almost a year later, Morales received a bill in the mail for \$3,030 in attorney fees.¹¹⁰ The bill came from Silver & Wright, a private law firm hired by Indio to serve as the city’s official prosecutor for code enforcement cases.¹¹¹ “The firm’s pitch was appealing. It offered ‘cost neutral or even revenue producing’ prosecution services, so long as the city changed its ordinances to allow the firm to directly bill property owners for its full attorney fees”¹¹²

The communication to Morales from Silver & Wright also threatened to sell her home if she refused to pay.¹¹³ Morales “appealed the fees, lost, and was billed an additional \$2,628 for the cost of the appeal.”¹¹⁴ In the end, she paid almost \$6,000 in attorney fees on a \$75 fine for a minor infraction.¹¹⁵ When cities turn over their justice systems to private law firms, they inherently create a perverse financial incentive to police for profit, not justice.

103. Ari Bargil, *Mowing down Abusive Fines in Florida*, INST. FOR JUST. (July 22, 2019), <https://ij.org/ll/mowing-down-abusive-fines-in-florida/>.

104. *Jim Ficken*, *supra* note 98.

105. *Id.*

106. *Id.*

107. *Id.*

108. J. Justin Wilson, *Class Action Lawsuit Challenges California Cities’ For-Profit Prosecution Scheme*, INST. FOR JUST. (Feb. 14, 2018), <https://ij.org/press-release/class-action-lawsuit-challenges-california-cities-profit-prosecution-scheme/>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (quoting *Receiverships, Code Enforcement and Police Services*, SILVER & WRIGHT LLP, https://yorbalinda.granicus.com/MetaViewer.php?view_id=4&clip_id=536&meta_id=62502 (last visited Mar. 20, 2024)).

113. *Id.*

114. *Id.*

115. *Id.*

This arrangement is also present in a practice called “health and safety receiverships.”¹¹⁶ Traditionally, receiverships allow a city to take temporary ownership of a property to fix an imminent danger to a community, like a structurally unsound building.¹¹⁷ The owner then receives a bill for the work done.¹¹⁸ The bill is attached to the property as a property lien.¹¹⁹ If the homeowner cannot pay the bill, the receiver can sell the property.¹²⁰ The revenue potential of this practice is not lost on government officials, and so states like California now increasingly use receiverships to address even minor code violations.¹²¹ Even a few code infractions can justify seizing a property, “flipping” it, and reaping the financial proceeds.¹²² The matter is made worse when cities include private firms in the process.

Such was the case for Ron Mugar of Norco, California.¹²³ Mugar received a notice that the city was going to put his home into a receivership and move to seize it because his yard was too cluttered with tools, machinery, and other project materials.¹²⁴ “After digging into his life savings for a lawyer and cleaning up his property,” Mugar “successfully stopped the receivership from going into effect. He thought

116. Lauren Hepler, *‘They’re Trying To Steal My House’: A Berkeley Family’s \$1.1 Million City Renovation Nightmare*, S.F. CHRON., <https://www.sfchronicle.com/eastbay/article/Berkeley-home-renovation-receivership-16948814.php> (Mar. 3, 2022, 2:00 PM).

117. See, e.g., Liam Dillon & Doug Smith, *Evictions, Homelessness, Debt: Skid Row Housing Trust Receiver Has Checkered History*, L.A. TIMES (May 17, 2023, 5:00 AM), <https://www.latimes.com/homeless-housing/story/2023-05-17/skid-row-housing-trust-mark-adams-receiver> [<https://perma.cc/6W6B-CDR4>].

118. Hepler, *supra* note 116.

119. *The DNS Code Violation Process*, CITY OF MILWAUKEE: DEP’T NEIGHBORHOOD SERVS., <https://city.milwaukee.gov/DNS/About-Us/CodeViolationProcess> (last visited Mar. 20, 2024) (noting that, once a property is declared a nuisance, the city can appoint a receiver that “may be authorized to collect rents, evict tenants who are causing problems, and make any repairs necessary to meet the building code” and that the “cost of a receivership action may become a lien on the property”).

120. See, e.g., *City of Fontana v. U.S. Bank, N.A.*, No. E075481, 2022 WL 1043647 (Cal. Ct. App. Apr. 7, 2022) (affirming the use of sale proceeds to pay the receiver’s fees and costs before other creditors).

121. See, e.g., Joshua House, *Receiverships and Conservatorships Are Ripe for Abuse in California*, Opinion, ORANGE CNTY. REG., <https://www.oregister.com/2021/07/27/receiverships-and-conservatorships-are-ripe-for-abuse-in-california/> (July 27, 2021, 8:36 AM); Hepler, *supra* note 116; Dillon & Smith, *supra* note 117.

122. See Hepler, *supra* note 116.

123. See *Norco, CA Enforcement Fees*, INST. FOR JUST., <https://ij.org/case/norco-ca-enforcement-fees/> (last visited Mar. 20, 2024).

124. *Id.*

he had won.”¹²⁵ Then, in November 2018, the city filed a motion asking for more than \$60,000 in attorney fees for the time spent on Mugar’s case.¹²⁶ The payment would go, in part, to the law firm Dapeer, Rosenblit & Litvak, which the city hired to process such cases.¹²⁷ Like Silver & Wright, Dapeer, Rosenblit & Litvak promised cost-neutral code enforcement and financial benefits from its involvement.¹²⁸

State statutes and local ordinances allow municipalities to seek fees for the cost of prosecuting nuisance violations. The city defended the fees by alleging Mugar “had engaged in ‘obstructive tactics’: that is, he had tried to defend himself in court.”¹²⁹ Mugar asked the court to reconsider the receivership because it was unnecessary, and he disputed some of the city’s allegations.¹³⁰ For this, Mugar owed tens of thousands of dollars.¹³¹ He challenged these abusive receivership practices under both the United States and California Constitutions but lost before California Court of Appeal.¹³² The state supreme court declined to hear his appeal.¹³³

III. IS TAXATION BY CITATION AN EXAMPLE OF STATEGRAFT?

In some ways, the “taxation by citation” phenomenon illustrates Atuahene’s stategraft framework. Indeed, she has previously identified fines and fees specifically as an example of stategraft.¹³⁴ As described above, Atuahene defines stategraft as government agents transferring property from residents to the government in ways that violate the law or human rights,¹³⁵ often during times of budgetary austerity. With taxation by citation, public officials use their power to levy fines and fees (and sometimes take property from people, as in impound rackets) and use the proceeds to fill their agency accounts.¹³⁶ Moreover, they seem to

125. *Id.*

126. *Id.*

127. *See id.*

128. *Id.* *See also supra* notes 111–12 and accompanying text.

129. *Norco, CA Enforcement Fees, supra* note 123.

130. *Id.*

131. *Id.*

132. Appellant’s Opening Brief at 22–33, *City of Norco v. Mugar*, 59 Cal. App. 5th 786 (2020); *Mugar*, 59 Cal. App. 5th 786.

133. *Norco, CA Enforcement Fees, supra* note 123.

134. *See Predatory Cities, supra* note 35, at 111–12, 170; Atuahene & Hodge, *supra* note 35, at 294–97.

135. *Theory of Stategraft, supra* note 35, at 2–3.

136. Dick M. Carpenter II, Chelsea Lawson & Courtney Deuser, *What the Great Recession Revealed About Taxation by Citation and What Can Be Done About It*, 54 U. MICH. J. L. REFORM 893, 894 (2021).

do so to a greater extent during periods of economic distress.¹³⁷ However, similar to a critique by Diller, Nagrecha, and Bannon¹³⁸ taxation by citation potentially diverges from Atuahene's concept of stategraft in some important ways.

First, taxation-by-citation actions by officials are usually authorized by law. In contrast, Atuahene defines stategraft, in part, as illicit activity by public officials. She writes, "While some scholars discuss forms of state predation that are morally questionable, stategraft is unique because its focus is *illegal* predation."¹³⁹ Yet enforcing municipal codes and traffic laws has always been legal (as a statutory matter, if not a constitutional one).

Second, Atuahene defines stategraft as a structural problem not a behavioral one. She does so particularly by contrasting a common understanding of corruption with stategraft: "[M]ost existing forms of corruption require malicious intent and hence do not encompass structural wrongs where intent is less important than consequence."¹⁴⁰ Yet taxation by citation is not purely a structural problem; it is a behavioral one as well.

One of its most significant structural issues is the incentives it creates, and public officials respond accordingly, but officials may not *always* respond to those incentives. Instead, they choose when to do so. For example, Professors Josh Pacewicz and John N. Robinson III interviewed city officials in suburbs around Chicago that had collected significant amounts of fines-and-fees revenue after 2007, when many municipalities faced economic headwinds.¹⁴¹ Results indicated city leaders resorted to code enforcement during periods of fiscal stress to generate funds when other forms of revenue were unobtainable. As one official acknowledged: "We got to a point that was like, 'There's nowhere left to cut, so we have to go to the revenue side.' . . . That's when we looked at our fee and fine structure."¹⁴² Another city leader told a similar story: "[We had a] meeting with all the police officers and said, 'This is what we're [doing]. We're enforcing all of these now. We're not

137. *Id.* at 910.

138. Rebekah Diller, Mitali Nagrecha & Alicia Bannon, *Reflections on Fees and Fines as Stategraft*, 98 N.Y.U. L. REV. ONLINE 262 (2023), https://www.nyulawreview.org/wp-content/uploads/2023/05/NYULawReview98_DillerNagrechaBannon-1.pdf [<https://perma.cc/243U-HMGB>] (applying the stategraft framework to the imposition of fines and fees in the criminal legal system).

139. *Theory of Stategraft*, *supra* note 35, at 40–41 (footnote omitted).

140. *Id.* at 37.

141. Josh Pacewicz & John N. Robinson III, *Pocketbook Policing: How Race Shapes Municipal Reliance on Punitive Fines and Fees in the Chicago Suburbs*, 19 SOCIO-ECON. REV. 975 (2021).

142. *Id.* at 988.

slacking off and not enforcing things. . . . And we got our housing inspectors out there to start fining and warning people.”¹⁴³

Other suburbs in similar circumstances paid retired police officers to write parking tickets and issue other minor fines, increased the rate of vehicle impounding (and hiked up impound fees), installed red light cameras, and appropriated the income tax returns of people with outstanding fines and fees.¹⁴⁴ Officials saw such actions as undesirable but still preferable to increasing tax rates—a politically unpalatable option—or worse, fiscal collapse.¹⁴⁵ As Professor Beth Colgan notes, “[M]any lawmakers use economic sanctions in order to avoid increasing taxes while maintaining governmental services”¹⁴⁶ Thus, whereas Atuahene defines stategraft as inherently structural, taxation by citation is arguably both structural and behavioral.

IV. IMPLICATIONS FOR THE DEFINITION OF STATEGRAFT

This review of taxation by citation suggests a couple of implications for the definition of stategraft. First, Atuahene wants stategraft to describe a systemic and systematic problem amenable to structural reform, rather than merely the behavior of bureaucrats: “[I]t is important to resist simple explanations that pin the blame for the evolution of a predatory city on a few scoundrels because doing so masks deeper truths.”¹⁴⁷ Yet some acknowledgment of behavior seems unavoidable. As Pacewicz and Robinson found, city leaders make conscious decisions to capitalize on long-established—and in some cases, largely unenforced—laws for the express purpose of taxation by citation.¹⁴⁸ Such policies are not merely self-executing.

Second, Atuahene’s definition of stategraft may be too narrow (or imprecise) to the extent it excludes taxation by citation or other mechanisms that are statutorily authorized (*i.e.*, legal) yet allow for—and perhaps even induce—unethical or unconstitutional behavior by government officials. For example, Pacewicz and Robinson describe cities where police were expressly told to prioritize revenue generating actions which, although not expressly told so, presumably means less serious crime fighting occurred.¹⁴⁹ The same occurred in Ferguson,

143. *Id.* at 996 (second alteration added).

144. *Id.* at 989, 996.

145. *Id.* at 991, 996–97.

146. Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. REV. 2, 22 (2018).

147. *Predatory Cities*, *supra* note 35, at 173.

148. *See* Pacewicz & Robinson, *supra* note 141.

149. *See id.* at 996–97.

Missouri, in the months and years leading up to the shooting of Michael Brown and the unrest that followed.¹⁵⁰ At the very least, this distortion of law enforcement is unethical and arguably unconstitutional given the conflict of interest created when officials have a direct or indirect institutional or personal financial interest in a proceeding.

V. IMPLICATIONS FOR POLICY AND LEGAL REFORM

It can be tempting to address problems like taxation by citation by adopting more laws to limit or prevent undesirable behavior. But a simpler and perhaps more productive approach would be to examine the problem through the lens of incentives. For example, when considering the actions of public officials, one should ask: What policy-based incentives are officials responding to? What behaviors are the laws rewarding, formally and informally? And when creating and adopting new policies, officials should ask: what incentives are we creating with this policy?

For example, moving fines-and-fees revenue away from municipal general funds and into specific funds inaccessible to those enforcing or imposing the fines and fees could change the incentive structure. This could include, for instance, requiring municipalities to deposit fines-and-fees revenue into funds that support local public schools. Alternatively, all municipal fines and fees could go to the state budget.¹⁵¹ Even directing revenue into a special state fund that distributes grants to municipalities through a competitive application process could help break the conflict-of-interest cycle.

An even more specific application of this principle would be to change the structure of the judiciary so municipal courts are not funded from cities' general funds and judges do not serve at the will of mayors and council members. The proper role of municipal courts, like all courts, is to ensure justice is done. This is a public function that is properly borne by tax revenue. Yet a municipal court's structural dependency on its host city may encourage the pursuit of revenue at the expense of justice and induce judges to engage in stategraft (at least under a more expansive definition of it consistent with our comments above).

A related approach would be to invoke Brozen's Law: if you see a problem and think the solution is more government regulation, find the

150. INVESTIGATION OF FERGUSON POLICE, *supra* note 44, at 2.

151. For example, the Fifth Circuit has stated that “[a]ll revenues from fines, penalties, and forfeitures levied by a court should be transferred to the state general fund, and should not be appropriated to the court receiving them or by a local unit of government that supports such a court.” *Brown v. Vance*, 637 F.2d 272, 277 (5th Cir. Jan. 1981) (quoting STANDARDS RELATING TO CT. ORG. § 1.53 (AM. BAR ASS’N 1974)).

existing regulation causing the problem and change or abolish it.¹⁵² For example, municipal code enforcement often focuses on aesthetic issues with little relationship to public health and safety.¹⁵³ A simple solution would be to streamline municipal codes to focus on genuine public health and safety concerns, not aesthetics and, by extension, economic development or propping up faltering city budgets.

Contrast this with the Alabama Legislature's response to the Brookside example described above, which was to cap revenue from fines and fees at ten percent of the budget.¹⁵⁴ Who can say that ten percent is the correct number? While that reduces the incentive, it does so only above ten percent. Below that, incentives encourage the same greedy behavior, which means the process may violate rights.

There is also reason to believe municipal leaders will still find ways to evade restrictions such as revenue caps. This was the case in Pagedale, Missouri. Like many municipalities, Pagedale historically generated revenue from traffic citations, but when the state capped traffic fines, the number of non-traffic citations in the city spiked by 495 percent.¹⁵⁵ Its vigorous and excessive code enforcement ended only after significant reforms sparked by the class action lawsuit and 2018 consent decree described before. Those changes included:

- Repealing sections of the Pagedale Municipal Code that made many harmless conditions illegal and replacing some of those sections with the St. Louis County Property Maintenance Code;
- Refraining from ticketing people for conditions absent from the city's municipal code;
- Creating both morning and evening court sessions so attendance does not affect defendants' jobs;

152. Yale Brozen, *Regulatory Excess*, in REGULATION AND DEREGULATION 80, 89–91 (Jules Backman ed., 1981) (coining “Brozen’s law,” based on the premise that government regulation may not be the solution but the problem).

153. CARPENTER, SWEETLAND & McDONALD, *supra* note 62, at 10–11; Dick M. Carpenter II, Kyle Sweetland & Jennifer McDonald, *A Case Study of Municipal Taxation by Citation*, 33 CRIM. JUST. POL'Y REV. 3, 12 (2022).

154. See Heather Gann & Mary Sell, *Municipal Court Fine Reporting, Fee Revenue Cap Bills Pass Legislature*, ALA. DAILY NEWS (Apr. 12, 2022), <https://aldailynews.com/municipal-court-fine-reporting-fee-revenue-cap-bills-pass-legislature/> [<https://perma.cc/H4RF-TS43>]. See also S.B. 282, 2022 Legis., Reg. Sess. (Ala. 2022); S.B. 203, 2022 Legis., Reg. Sess. (Ala. 2022).

155. Jennifer S. Mann, *Municipalities Ticket for Trees and Toys, as Traffic Revenue Declines*, ST. LOUIS POST-DISPATCH (May 24, 2015), https://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article_42739be7-afd1-5f66-b325-elf654ba9625.html [<https://perma.cc/S9WT-BPND>].

- Holding a contempt hearing before imposing any penalty for failure to pay a fine or fee;
- Sentencing defendants to incarceration only if they are represented by counsel or have knowingly and voluntarily waived their right to counsel.¹⁵⁶

Such reforms could be adopted in other cities to protect citizens from taxation by citation and perhaps stategraft. Other reforms could be added requiring municipal courts—where many fines-and-fees cases are adjudicated—to provide jury trials when requested by a defendant; offer discovery to defendants; hold ability-to-pay hearings;¹⁵⁷ consider non-jail alternatives to fines and fees, such as reasonable community service, educational or job training programs, or school or work attendance; end incarceration and driver license suspensions for failure to pay fines and fees; and notify defendants of their fundamental constitutional rights.¹⁵⁸

CONCLUSION

At least two such reforms could have prevented the threatened foreclosure of Jim Ficken’s home and no small amount of embarrassment for the city of Dunedin. A circumstance so outrageous was bound to catch the attention of at least one reporter, and this one did, eventually making national headlines. Journalists inundated city leaders with questions. One reporter asked Dunedin Mayor Julie Bujalski whether she thought it extreme that people could lose their homes over uncut grass.¹⁵⁹ Citing state-established fines for ordinance violations, Bujalski said the code enforcement board was just applying state law, concluding: “Doesn’t mean it’s right. It just means it’s legal.”¹⁶⁰

Ficken’s case and the principle expressed by Mayor Bujalski neatly capture why Atuahene may want to consider a broader definition of stategraft. The actions of government officials engaged in taxation by

156. See *Pagedale Municipal Fines*, INST. FOR JUST., <https://ij.org/case/pagedale-municipal-fines/> (last visited Mar. 20, 2024).

157. Arguably, this should happen automatically in every case. See April D. Fernandes, Michele Cadigan, Frank Edwards & Alexes Harris, *Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform*, 15 ANN. REV. L. & SOC. SCI. 397, 402–04 (2019).

158. See Dick M. Carpenter II, Ricard Pochkhanawala & Mindy Menjou, *Municipal Fines and Fees: A 50-State Survey of State Laws*, INST. FOR JUST. (Apr. 30, 2020), <https://ij.org/report/municipal-fines-and-fees/>.

159. See Liz Crawford, *Dunedin Mayor Answers Questions About Excessive Fines*, WTSP, <https://www.wtsp.com/article/news/dunedin-mayor-answers-questions-about-excessive-fines/67-74b842e2-1d19-4d80-ac1a-6b0d9001c066> [<https://perma.cc/8PDZ-FXVP>] (Jul. 26, 2019, 6:56 PM).

160. *Id.*

citation are often in fact legal—or at least statutorily authorized—while also often violating ethical or moral norms of civic leadership. By leaving the definition of stategraft with its current narrow application, Atuahene runs the risk of describing a set of circumstances so limited as to be dismissed as outliers, possibly relegating the stategraft concept to the dark corner of arcane theories. That would be a shame; legions of rapacious government actors deserve to have a light shined on them.