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Fiscal Geography

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FISCAL GEOGRAPHY

Eric A. San Juan *

Abstract

While the newly published *Opportunity Atlas* maps the effect of hometown on children's life chances, this Article describes geographically sensitive tax provisions in a historical context. Under the recent Federal tax reform, the Opportunity Zone shadows predecessors like the Recovery Zone, GO Zone, Liberty Zone, and Empowerment Zone. While relief from unemployment and poverty attracts legislators' sympathy, underlying these provisions is the ideology of the enterprise zone, or the paradox of the governmentally created free market. This Article analyzes that ideal concept by tracing the history of taxation in barter as well as market economies. Wherever governments have collected tax on a national scale, the fiscal result has been geographic and ultimately economic redistribution. Then the question is whether that redistribution advances horizontal or vertical equity. The legal enforceability of socio-economic rights has become the philosophical afterthought. Classically, the rule of law was posed as freedom from government intervention, but the enterprise zone exemplifies freedom as a legislative artifact. In this context, the incentive effect of the tax zone legislation depends on the economic behavior of the taxpayer. The empirical studies on enterprise zones document modest take-up by the intended taxpayers, whose choices may reflect cultural psychology as much as calculated rationality. There may be neither free market nor rational actor in the enterprise zone. As a creation of tax law, the zone is monitored by the tax collector, who falls into the odd role of facilitator for the incentive provision. Governed by her own behavioral praxis, the revenue agent becomes a functionary on a larger economic stage. In particular, the desuetude of the American inner city and Rust Belt reflect the fiscal geography of Agricultural and Industrial Revolutions past and present. It may take an intervention more heroic than focused tax incentives to revive a "blighted" market.

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I. INTRODUCTION

A. *Economic Geography*

Recent research confirms the determinative effect of geography on residents' life chances. Collaborating with the United States Census, the *Opportunity Atlas* traces the roots of outcomes such as poverty and incarceration "back to the neighborhoods in which children *grew up*."¹ Following a five-year birth cohort, demographers can pinpoint where the thirty-five- to forty-year-old adults now live, whether in prison or at

1. Raj Chetty et al., *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 25147, 2018), <https://www.nber.org/papers/w25147.pdf> [<https://perma.cc/E9FM-MNNU>].

large.² It turns out that birthplace or hometown predicts adult success. Neighborhoods matter.

The *Opportunity Atlas* sheds new light on an old concern. An earlier notion in social science had posited that poverty “tends to perpetuate itself.”³ Then, the “setting [was] a cash economy, with wage labor and production for profit and with a persistently high rate of unemployment and underemployment, at low wages, for unskilled labor.”⁴ There, “the culture of poverty” was “both an adaptation and a reaction of the poor to their marginal position in a class-stratified, highly individuated, capitalistic society.”⁵ Where poverty was a stagnant milieu, one solution could be to leave.

If America was a land of opportunity, part of the attraction was the places to go. In the United States, a seminal thesis of cultural geography has been that “the traditional spatial and social allocation of individuals through the lottery of birth is being replaced gradually by a process of relative self-selection of lifestyle, goals, social niche, and place of residence.”⁶ Here, the advance of “voluntary regions” confirmed the economic influence of geography.⁷

There is more to a place than the effect of individual residence introduced above. “Geography matters because it affects the profitability of various kinds of economic activities, including agriculture, mining, and industry” and “the health of the population.”⁸ Writ large, the concern extends from birthplace or hometown to the movement of populations and production. Ultimately, productive populations form the tax base.

Now comes the Opportunity Zone (OZ). In this context, it should be no surprise that OZ is attracting attention as a provision of the Federal tax reform under implementation in the Tax Cuts & Jobs Act of 2017 (TC&JA '17).⁹ Like its precursors, the OZ legislation offers income tax reduction to businesses in impoverished zones.¹⁰ On one hand, the alleviation of poverty garners popular sympathy. On the other hand, the

2. *Id.* “For example, 44% of black men who grew up in the lowest-income families in Watts, a neighborhood in central Los Angeles, are incarcerated on a single day (April 1, 2010 – the day of the 2010 Census). By contrast, 6.2% of black men who grew up in families with similar incomes in central Compton, 2.3 miles south of Watts, are incarcerated on a single day.” *Id.* at 3.

3. Oscar Lewis, *The Culture of Poverty*, 215 SCI. AM. 19, 21 (1966).

4. *Id.*

5. *Id.*

6. WILBUR ZELINSKY, *THE CULTURAL GEOGRAPHY OF THE UNITED STATES* 111 (rev. ed. 1993).

7. *Id.*

8. Jeffrey D. Sachs, *Government, Geography, and Growth: The True Drivers of Economic Development*, 91 FOREIGN AFFAIRS 142, 148 (2012).

9. STAFF OF J. COMM. TAX’N, 115TH CONG., GENERAL EXPLANATION OF PUBLIC LAW 115-97 131, 316–17 (Jt. Comm. Print 2018).

10. *Id.*

incentive for entrepreneurs may satisfy those motivated by self-interest. The appeal across the aisle has made various forms of enterprise zone a legislative inevitability over the years. Yet the provisions' economic effectiveness remains an open question.¹¹

Already, news reports question who should land in OZ. The online retail behemoth Amazon.com planned to relocate a headquarter office to "Long Island City, the fast-gentrifying Queens neighborhood across the East River from the skyscrapers of midtown Manhattan."¹² There, the company was to enjoy the "Trump Tax Break" although the "[m]edian income around Amazon's planned campus is \$130,000, poverty is half the city average and new buildings were going up long before the tax overhaul."¹³ If the intent was to lift residents out of poverty, the reported gentrifying effect would be inefficient.¹⁴ Nevertheless, the provision follows a long history of geographically based taxation.

B. Overview

This Article will discuss the tax incentive zones in the context of revenue legislation as developed in various locations through history. While no particular provision of the Internal Revenue Code (IRC) need be reduced to any ancient antecedent, general principles may emerge regarding the national collection of revenue wherever producers may have been located. Whatever natural economies may have obtained, increasing complexity was eventually governed by the rule of law. That is, taxation always has been a diagnostic aspect of government inasmuch as the revenue law indicates the extent of horizontal and vertical equity in a national territory. In the end, fiscal geography may help describe the extent to which an advanced economy is distributive.

This Article is organized as follows: Section II begins with the local source of revenue.¹⁵ For reasons drawn from philosophy and social science, historical examples of taxes illustrate this Article. At least

11. See Scott Eastman & Nicole Kaeding, *Opportunity Zones: What We Know and What We Don't*, TAX FOUND. 8 n.26 (Jan. 2019) (warning of the possibility that the incentivized "investments generate employment opportunities that do not match the skills of existing residents").

12. Associated Press, *Amazon's NYC Home in "Opportunity Zone" for Trump Tax Break*, WTOP NEWS (Nov. 14, 2018, 1:18 AM), <https://wtop.com/real-estate/2018/11/amazons-nyc-home-in-opportunity-zone-for-trump-tax-break/> [<https://perma.cc/5CH2-4FD3>].

13. *Id.*

14. Dan Weil, *The Trump Administration Said These Tax Breaks Would Help Distressed Neighborhoods. Who's Actually Benefiting?*, WASH. POST (June 6, 2019, 6:30 AM), https://www.washingtonpost.com/realestate/opportunity-zones-are-loaded-with-tax-benefits-but-will-they-actually-help-residents/2019/06/05/0f80e1c6-7e68-11e9-8bb7-0fc796cf2ec0_story.html [<https://perma.cc/9WYG-YUBL>] (Although Amazon's N.Y.C. plan dissolved, "experts" continued to "worry that some of the investment may not benefit the intended targets.").

15. See *infra* Section II.

theoretically, if not archaeologically, pristine elements of taxation may be isolated.

Then Section II continues with the question of what the government must do to maintain the contributory capacity of the taxpayer population.¹⁶ Whether glossed as taxation with representation, consent of the governed, or otherwise, the fiscal state must contend with the rule of law and distributive justice. This historical and philosophical context sets the stage for OZ in Section III.¹⁷

If geographic and economic redistribution has always been a fiscal function, then tax zone legislation may be the latest iteration. The various statutes have combined the entrepreneurial spirit of the free market with the impulse to relieve poverty in a legislatively ingenious, if internally inconsistent, package. Empirically, the results have been modest at best, with respect to either increase in commerce or decrease in unemployment and poverty levels.¹⁸ The lasting effect may lie in law-makers' predilection for demarcating zones.

Section IV delves into the perspective of the individuals involved.¹⁹ The modest take-up rate is a question of behavioral economics for the entrepreneurial taxpayer. The tax incentive may not outweigh the perceived cost of opening a business in the inner city or blighted countryside. Given the business choice, the tax agency may serve as a mirror. Under the incentive provision, the tax collector appears as a collaborator rather than an adversary. This view allows Section IV to characterize the tax official more fully. Just as the taxpayer is not merely a rational actor, the tax collector is no fiscal automaton. Section IV adopts the anthropological innovation of para-ethnography to capture the self-awareness of the collaborator.²⁰ Where behavioral economics describes taxpayer psychology, para-ethnography describes the bureaucratic praxis of the tax authority. The coordinated actions of these individuals operationalize the tax provisions.

Section V discusses the tax zone legislation in the context of world historical industrial transformation.²¹ Incentives operate in an economic context, inasmuch as the federal income tax never drove commerce away from the zones in the first place. So-called urban blight and the Rust Belt were casualties of global industrialization. Consequently, it should be no surprise that tax incentives have not lured business back.

16. *See infra* Section II.

17. *See infra* Section III.

18. *Opportunity Zones: Facts and Figures*, ECON. INNOVATION GRP., <https://eig.org/opportunityzones/facts-and-figures/> [<https://perma.cc/VU2X-DAZ2>] (Jan. 2020).

19. *See infra* Section IV.

20. *See infra* Section IV.

21. *See infra* Section V.

Section VI concludes as follows: Whatever the flaws of the particular tax zone legislation, the provisions confirm the legislator's intuition that tax is geographically and economically redistributive.²² In this function, the taxpayer and tax collector may behave as a complementary couple rather than an adversarial pair. In the midst of today's trans-Pacific industrial revolution, the question is how much the fiscal apparatus can stabilize the people's life chances.²³ This harks back to fundamental questions of distributive justice attendant to the advent of "civilized society."²⁴

II. HISTORICAL & PHILOSOPHICAL BACKGROUND

To analyze taxation in its component parts, this Article begins with the local source of revenue. Both historically and theoretically, tax law applies to the productive taxpayer who has natural connections to home and culture. In this regard, scholars have observed that "law and ethnography are crafts of place: they work by the light of local knowledge [A]nthropology and jurisprudence . . . are alike absorbed with the artisan task of seeing broad principles in parochial facts."²⁵ This Section weaves together the relevant principles of law and social science.²⁶ Incorporating the essentially parochial taxpayer into a national economy has long been the problem of the social contract.²⁷ Even where the rule of law prevails, the maintenance of the taxpayer population raises the issue of distributive justice. Among the historical responses to this issue has been the extension of human rights from civil liberties to social entitlements, to wit, the welfare state.²⁸ While these governmental responses have appeared in advanced economies, they had antecedents in ancient civilizations.²⁹ The apparatus of fiscal geography has been long

22. See *infra* Section VI.

23. Jan Breman, Int'l Inst. Soc. Stud. Erasmus Univ. Rotterdam, The Great Transformation in the Setting of Asia, Address at the 57th Anniversary of the International Institute of Social Studies 3 (Oct. 29, 2009), https://www.wiego.org/sites/default/files/publications/files/Breman_Transformation.Asia_pdf [<https://perma.cc/3H9P-KPQA>].

24. *Compañía Gen. de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

25. CLIFFORD GEERTZ, *Local Knowledge: Fact & Law in Comparative Perspective*, in *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETATIVE ANTHROPOLOGY* 167 (1st ed. 1983).

26. See generally Daniel Blocq & Maartje van der Woude, *Making Sense of the Law & Society Movement*, 11 ERASMUS L. REV. 134 (2018) ("focus[ing] on the evolution of the Law and Society Movement (L&S) – an important alternative site for the empirical study of law and legal institutions").

27. See SALLY FALK MOORE, *POWER AND PROPERTY IN INCA PERU* 1 (1st ed. 1958) ("How was it possible for five million or more relatively primitive people to be organized under one ruler? How were they taxed, how were they governed? These are questions which have been asked since the 16th century and have, more often than not, been answered with extreme naiveté.").

28. See discussion *infra* Section II.E.

29. *E.g., id.*

in the making. The mechanism of national taxation with concomitant redistribution lays the philosophical foundation for the latter-day zone legislation.

A. *The Local Source of Revenue*

Throughout world history, civilizations arose where revenue flowed.³⁰ Specifically, this meant the “geographical and social concentration of a surplus product.”³¹ Where resources and agriculture were profitable, they could generate revenue that became the “life-blood of government.”³² In sum, government connects far-flung localities.

For example, anthropologists have studied taxation particularly in the sixteenth century Inca Empire in South America. This empire encompassed as many as five million people within a couple million square kilometers.³³ There, the source of wealth was epitomized by gold and silver mines in the first instance, subject to “a local, rather than a national control and exploitation.”³⁴ Nevertheless, “[e]ach region contributed what it specialized in geographically or professionally,” whether in crops or skilled handicraft.³⁵ Then those contributions “went in part to Cuzco [the imperial capital]; in part to support the provincial capital; in part to care for traveling armies and officials as they passed through; in part to maintain newly settled *mitimaes* [the imperially conscripted laborers], probably to support the local population when road work was undertaken, and to maintain some of the poor and people too old to do agricultural labor.”³⁶ To recapitulate, minerals and arable land gave rise to civilization extending beyond the local village, connected by ties, including taxation.

The Inca case is not unique in this respect. It was preceded by other primary examples, such as the South Asian civilization. Arising in the fourth century BCE, the Mauryan dynasty ruled as many as fifty million people in five million square kilometers (which then engulfed the original city of Mohenjo Daro).³⁷ According to Indian historians, “mines . . . were owned by the state, and were . . . let out to entrepreneurs, from whom the

30. See CHARLES ADAMS, *FOR GOOD & EVIL: THE IMPACT OF TAXES ON THE COURSE OF CIVILIZATION* xxi (2d ed. 1993).

31. David Harvey, *The Right to the City*, *NEW LEFT REV.* (2008), <https://newleftreview.org/issues/II53/articles/david-harvey-the-right-to-the-city> [<https://perma.cc/S7HK-9WXX>].

32. *Bull v. United States*, 295 U.S. 247, 259 (1935).

33. See MOORE, *supra* note 27; Peter Turchin et al., *East-West Orientation of Historical Empires and Modern States*, 12 *J. WORLD-SYS. RSCH.* 219, 222 tbl.1 (2006).

34. MOORE, *supra* note 27, at 40.

35. *Id.* at 124.

36. *Id.* at 34, 110–11.

37. Roger Boesche, *Kautilya's Arthaśāstra on War and Diplomacy in Ancient India*, 67 *J. MIL. HIST.* 9, 12 (2003); Turchin et al., *supra* note 33, at 222.

king claimed a percentage of their output as a royalty.”³⁸ In this case, the mineral resource was locally worked yet accrued to the benefit of the larger kingdom.

The inception of civilization governing an expanse that was national rather than local set forth fundamental issues of law and social science. Production occurred through naturally local agriculture. National collection and redistribution of revenue posed the problem of uniformity. In the Inca example, the *quipu*, a counting device composed of knotted cords (perhaps an American version of the abacus), has been featured in the social science literature as an artifact of accounting.³⁹ “[W]ell suited to recording the kind of numerical information necessary for an extensive tax and conscription program,” the *quipu* rendered a “universal method throughout the empire . . . entirely feasible.”⁴⁰ The *quipu* iconizes national accountability over a population which is still tied to the land.

The Inca example shows how empires grow from villages. When their army “conquered people already grouped in some political unit, the Inca did not hesitate to employ the administrative machinery they found already functioning.”⁴¹ Then, “the folk community was forcefully linked both to a provincial capital and to Cuzco through the imposition of taxes, the Sun cult [the national religion], the Quechua language and the court and high government.”⁴² In anthropological terms, the connection between the local community and the national institutions was codified by culture. In sum, the “Inca political achievement is precisely in the extension of local government methods to an empire.”⁴³ The significance of the Inca example lies in the pristine connection between the local and the national.

Government on a national scale was inherently redistributive in scope. For the local official, “tenure may have depended on his ability to extract taxes.”⁴⁴ Tribute came in the form of crops harvested from farms “subdivided into small plots whose produce was allocated for many local purposes and local deities, only a part going to provincial capitals and to Cuzco, to support the official national religion of the realm.”⁴⁵ Thus, a local collector could have had the ability to divert revenue from imperial to local purposes. In particular, anthropologists have documented that “there were people who, by reason of not being in the family of an able-

38. A.L. BASHAM, *THE WONDER THAT WAS INDIA: A SURVEY OF THE CULTURE OF THE INDIAN SUB-CONTINENT BEFORE THE COMING OF THE MUSLIMS* 101 (1954).

39. See JACOB BRONOWSKI, *THE ASCENT OF MAN* 101 (1973); CAROLYN WEBBER & AARON WILDAVSKY, *A HISTORY OF TAXATION AND EXPENDITURE IN THE WESTERN WORLD* 39 (1986).

40. MOORE, *supra* note 27, at 102.

41. *Id.* at 122.

42. *Id.* at 26, 130.

43. *Id.* at 111.

44. *Id.* at 33.

45. *Id.* at 26.

bodied man, or being able to work themselves, were supported by the community.”⁴⁶ Accordingly, redistribution was both geographic and economic.

Again, the Inca example resonates with the evolution of civilizations around the world. “After the Mauryan period,” for example, “it became usual for kings to pay their officers and favourites not with cash, but with the right to collect revenue from a village or group of villages.”⁴⁷ Tax collection “often carried other privileges, and usually made the recipient the intermediary between king and taxpayer.”⁴⁸ Taxation implied delegation.

The redistributive aspect came with the territory of an imperial sovereign. Logistically, “the wider his empire the more power he must delegate to others.”⁴⁹ In particular, “[t]ax law tells much about the nature of government, the price it exacted and the price it had to pay for self-maintenance.”⁵⁰ To maintain the loyalty of the population, the government distributed and extracted.

Excessive extraction would have been self-defeating. Instead, the Sanskrit text metaphorically cautioned that “the king should tax as a bee sucks honey, without hurting the flower.”⁵¹ The taxpayer and tax collector were symbiotic.

In effect, supralocal taxation spreads the wealth of local taxpayers. Among the fifty states of the United States today, per capita federal liability is progressive.⁵² In the richest state of Connecticut, the per capita federal tax is \$10,364, and in the poorest state, Mississippi, \$2,883.⁵³ In American history, “the federal income tax has played a key role in enabling the federal government to redistribute the nation’s resources in a southward direction.”⁵⁴ From each, the tax takes according to the ability to pay.

The redistributive effect was no accident. From the inception of the Federal income tax, “Southern politicians supported the Sixteenth

46. MOORE, *supra* note 27, at 25–26.

47. BASHAM, *supra* note 38, at 96.

48. *Id.*

49. MOORE, *supra* note 27, at 106.

50. *Id.* at 2.

51. BASHAM, *supra* note 38, at 109; KUNWAR DEO PRASAD, *TAXATION IN ANCIENT INDIA: FROM THE EARLIEST TIMES UP TO THE GUPTAS* 27 (1987). From 200 BCE, the *Panchatantra* taught, “The king who tastes his kingdom like/Elixir, bit by bit/Who does not overtax its life,/Will fully relish it,” VISHNU SHARMA, *PANCHATANTRA* 3–4, 83 (Arthur W. Ryder trans., Univ. Chi. Press 1925).

52. See Richard Barrington, *Which States Pay the Most Federal Taxes?*, MONEYRATES (Mar. 6, 2019), <https://www.money-rates.com/research-center/federal-income-taxes-by-state.htm> [<https://perma.cc/QW6T-Y6V5>].

53. *Id.*

54. Robin L. Einhorn, *Look Away Dixieland: The South and the Federal Income Tax*, 108 NW. U. L. REV. 773, 780 (2014).

Amendment because they believed that the South would benefit.”⁵⁵ By the time of the New Deal, Progressives advocated for redistribution from the “Northeast” which they “understood essentially as a synonym for industrial and financial capital.”⁵⁶ After World War II, the income tax enabled “the federal budget to operate as a mighty engine of geographical redistribution.”⁵⁷ The combination of these fiscal facts and the anti-tax rhetoric mentioned below form an irony in American history.

Across the ideological spectrum, commentators have drawn their own inferences. Since the Inca empire, national taxation along with nationalized (royal) ownership of property (realty) have attracted labels as both *L’Empire socialiste des Inka* and *el estado feudal incaico*.⁵⁸ Even today, advocates for nationalized land reform in privatized agrarian economies ironically echo the “overt coercive apparatus” of pre-modern “serfdom.”⁵⁹ Redistribution may be alternatively socializing or totalizing.⁶⁰

B. Hypothetical Geography

In some respects, each civilization may be unique. At the same time, scholars have long presupposed a primordial state from which political evolution proceeded.⁶¹ “Thus in the beginning all the World was *America*—even more so than America is now, because in the beginning no such thing as money was known *anywhere*.”⁶² In these terms, the eighteenth-century European Enlightenment looked to the New World for a clean slate upon which to inscribe first principles.⁶³ In South America, before the Spanish arrival, it was true that the Quechua-speaking people conducted a barter economy.⁶⁴ From historical instances, philosophers hypothesized an ideal state.⁶⁵

55. *Id.* at 796.

56. *Id.* at 784.

57. *Id.* at 780.

58. MOORE, *supra* note 27, at 5. See generally LOUIS BAUDIN, *A SOCIALIST EMPIRE: THE INCAS OF PERU* (Arthur Goddard ed., Katherine Woods trans., 1961).

59. See ROBERTO MANGABEIRA UNGER, *PLASTICITY INTO POWER: COMPARATIVE-HISTORICAL STUDIES ON THE INSTITUTIONAL CONDITIONS OF ECONOMIC AND MILITARY SUCCESS* 126 (1987).

60. See ERICH FROMM, *THE FEAR OF FREEDOM* 35 (1942) (“One was born into a certain economic position which guaranteed a livelihood determined by tradition, just as it carried economic obligations to those higher in the social hierarchy.”).

61. See, e.g., HARRY ECKSTEIN, *REGARDING POLITICS: ESSAYS ON POLITICAL THEORY, STABILITY, AND CHANGE* 81 (1992).

62. JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* ch. V § 49 (C.B. Macpherson ed., Hackett Publ’g Co. 1980) (1689).

63. John A. Powell & Stephen M. Menendian, *Remaking Law: Moving Beyond Enlightenment Jurisprudence*, 54 ST. LOUIS U. L.J. 1035, 1055 (2010).

64. See MOORE, *supra* note 27, at 86.

65. Powell & Menendian, *supra* note 63, at 1037.

Subsequently, anthropologists coined “pristine state” as a term of material culture.⁶⁶ When the ancient valleys of the Yellow, Nile, Indus, Euphrates, and Tigris Rivers were yet untouched by other civilizations, states “emerged from stratified societies and experienced the slow, autochthonous growth of the specialized formal instruments of social control out of their own needs for these institutions.”⁶⁷ Additionally, anthropologists introduced Mesoamerica, Andean South America, and Polynesia as pristine states.⁶⁸ As evidence and analysis advanced, the concept of the pristine state became less pure.⁶⁹ Nevertheless, anthropologists still find comparison useful among archaeological sites of indigenous development, especially in Yoruba and Benin as well as those already mentioned above, including China, Egypt, India, Mesopotamia, Zapotec, and Inca.⁷⁰ Specifically in the Yellow River Valley, the original city was engulfed by the Xia dynasty arising in 1800 BCE over 450 thousand square kilometers⁷¹ encompassing 13.5 million people by the second century BCE.⁷² Although archaeology is different from the philosophical ideal, this Article refers to examples from civilizations around the world.

The comparability of civilizations throughout the world depends on the circumstances. As noted above, geography comes to life through the course of the historical movements of productive populations. In turn, boundaries move. “A hundred years ago, the frontier between West and East was located somewhere in the neighborhood of Bosnia-Herzegovina. Now it seems to run through every European city.”⁷³ In other words, people experience geography through culture.

Ancient, as well as modern, history reflects the cultural geography of world civilizations. For instance, classical Greece, located in what is now the European Union, had its significant “intellectual links” with the “ancient Egyptians, Iranians and Indians” rather than the

66. See Henri J.M. Claessen, *The Emergence of Pristine States*, 15 *SOC. EVOLUTION & HIST.* 3, 4 (2016).

67. MORTON FRIED, *EVOLUTION OF POLITICAL SOCIETY: AN ESSAY IN POLITICAL ANTHROPOLOGY* 231 (1967).

68. See generally ELMAN R. SERVICE, *ORIGINS OF THE STATE AND CIVILIZATION: THE PROCESS OF CULTURAL EVOLUTION* (1975).

69. See Michael E. Smith, *How Do Archaeologists Compare Early States?*, 35 *REVS. ANTHROPOLOGY* 5, 7 (2006).

70. See *id.* at 8 tbl.1; Claessen, *supra* note 66, at 23; see generally BRUCE G. TRIGGER, *UNDERSTANDING EARLY CIVILIZATIONS: A COMPARATIVE STUDY* (Cambridge Univ. Press 2003).

71. See Rein Taagepera, *Size and Duration of Empires: Growth-Decline Curves, 3000 to 600 B.C.*, 7 *SOC. SCI. RES.* 180, 189 T.5 (1978).

72. U.N. HUMAN SETTLEMENTS PROGRAMME, 2 *MITIGATION, MANAGEMENT AND CONTROL OF FLOODS IN SOUTH ASIA* 12 (2002).

73. NIALL FERGUSON, *THE WAR OF THE WORLD: TWENTIETH-CENTURY CONFLICT AND THE DESCENT OF THE WEST* 645 (2006).

contemporaneous Westerners.⁷⁴ Historical affinities reflect a changed economic order.

To be clear, the Inca empire was no egalitarian Eden. Rather, it was a “conquest state,” comprised of pre-existing tribes colonized by military force.⁷⁵ Similarly, other pristine states also arose from war. From the sixth century BCE, the *Taittiriya Upanisad* characterized the organic origin of a kingdom in these terms, “[for] they who have no king cannot fight.”⁷⁶ Here, history may falsify eighteenth century philosophy and conjecture.

Nowadays, political philosophers disclaim the state of nature. That was not “an actual historical state of affairs, much less . . . a primitive condition of culture.”⁷⁷ Instead, the “original position” of equality is an imagined pre-political status from which the provisions of the social contract derive by hypothesis.⁷⁸ The significance of the status lies in the rationale for leaving it.

C. *Social Contract*

In a civilization or political society characterized in part by taxation, revenue becomes a burden on the taxpayers. Assuming the original state of objective equality, the question of tax fairness arises. Then “it is hard to imagine . . . a successful income tax scheme on a voluntary basis,” because the “suspicion that others are not honoring their duties and obligations is increased by the fact that, in the absence of the authoritative interpretation and enforcement of the rules, it is particularly easy to find excuses for breaking them.”⁷⁹ Consequently, uniform implementation becomes imperative.

The moral implication was apparent at the outset. For example, the sixth century BCE Buddhist monarch Mahasammata stated that the king is entitled to tax his people only

if he protects them, and that he obtains in addition a share of the religious merit acquired by them, especially by his brahman subjects; if he fails in his duty he has no moral right to receive tax, and reaps a share of all the demerit accruing to his subjects.⁸⁰

The tax collector had to remain on high moral ground for the taxpayer to follow suit.

74. AMARTYA SEN, *COLLECTIVE CHOICE AND SOCIAL WELFARE* 397 (Harv. Univ. Press expanded ed. 2017).

75. MOORE, *supra* note 27, at 121.

76. BASHAM, *supra* note 38, at 81.

77. JOHN RAWLS, *A THEORY OF JUSTICE* 12 (Harv. Univ. Press 1971).

78. RONALD DWORKIN, *LAW'S EMPIRE* 164 (Harv. Univ. Press 1986).

79. RAWLS, *supra* note 77, at 240.

80. BASHAM, *supra* note 38, at 109.

A more calculated rationale for taxation is possible. A utilitarian “thinks that income taxes are just only if they . . . contribute to the greatest long-term happiness, and it does not matter to him whether or not they take the property without the owner’s consent.”⁸¹ Some civilizations may have been built in part on this premise.

On the other hand, that kind of calculus raises the question of vertical equity. “An economy can be optimal in this sense even when some people are rolling in luxury and others are near starvation as long as the starvers cannot be made better off without cutting into the pleasures of the rich.”⁸² In short, the persistence of taxes and the government it feeds depends on either coercion or consent.

D. *Rule of Law & Distributive Justice*

Assuming that consent is the desirable basis, taxation should come under the rule of law. There is a range of literature on liberal legality, yet the distinctive characteristic may be nomothetic order where even the sovereign holding political power “feels bound by the law.”⁸³ Accordingly, the New England counterparts to the eighteenth century Enlightenment established a “government of laws and not of men.”⁸⁴ When the British “Parliament proclaimed its sovereignty over the colonies by retaining a tax on tea of threepence a pound,” the Bostonians complained that taxation without representation is tyranny.⁸⁵ Currently, these historic slogans may be appropriated for anachronistic purposes, yet the propositions stand. Pre-existing legislation can preclude dictatorship.

Nevertheless, the rule of law would not guarantee fairness. Nineteenth century writers warned of the so-called “tyranny of the majority.”⁸⁶ Twentieth-century contractarians conceded that “[t]here seems to be no way to characterize a feasible procedure guaranteed to lead to just legislation.”⁸⁷ Similarly, “when an axiomatic structure, with reasonable-looking axioms, yields the existence of a dictator as an implication of jointly chosen—individually plausible—axioms, this is readily understood as a major embarrassment for that set of propositions.”⁸⁸ Instead, the question of substantive justice arises.

81. DWORKIN, *supra* note 78, at 73.

82. SEN, *supra* note 74, at 68–69.

83. FRANCIS FUKUYAMA, *THE ORIGINS OF POLITICAL ORDER: FROM PREHUMAN TIMES TO THE FRENCH REVOLUTION* 246 (2011).

84. MASS. CONST. pt. 1, art. XXX (1780).

85. WINSTON S. CHURCHILL, *3 HISTORY OF THE ENGLISH-SPEAKING PEOPLES: THE AGE OF REVOLUTION* 145 (1957).

86. See ALEXIS DE TOCQUEVILLE, *2 DEMOCRACY IN AMERICA* pt. 2, ch. 7 (Harvey C. Mansfield & Delba Winthrop, eds. & trans., Univ. Chi. Press 2002) (1840).

87. RAWLS, *supra* note 77, at 360.

88. SEN, *supra* note 74, at 269.

Where procedure falls short, substantive justice may begin. First comes “the intuitively appealing principle of fairness that if one person slices the cake and the other gets first pick the division of the cake will be fair even if it is unequal.”⁸⁹ Then comes the more subjective problem of “how to consolidate individual intentions into a collective, group intention.”⁹⁰ Here, the hermeneutics of jurisprudence may be unavoidable. It would be impossible to “ignore the questions about the internal character of legal argument . . . like innumerate histories of mathematics.”⁹¹ The rule of law must be internally consistent.

E. Social Entitlements

Extending the rule of law, subsistence, human, or social rights have deep and widespread conceptual roots if not a pedigreed intellectual genealogy. In fifth century BCE China, the *Analects* suggested that “[r]iches and honors acquired by unrighteousness” were unjust.⁹² Wealth (or lack thereof) has long been associated with justice (or lack thereof).⁹³ Nowadays, economists describe this as vertical equity.⁹⁴

Ancient civilizations developed social theories. In the third century BCE, the *Arthashastra* suggested that during “famine, the king shall show favour to his people by . . . distributing either his own collection of provisions or the hoarded income of the rich.”⁹⁵ For the state to persist, the population had to be maintained.

Similarly, legal penalties have long recognized wealth, poverty, or socio-economic status. In the first century BCE, the *Laws of Manu* prescribed penalties for theft proportionate to the caste of the thief, lowest for the poorest. Thus, the “guilt of a Sudra shall be eightfold, that of a Vaisya sixteenfold, that of a Kshatriya two-and-thirtyfold . . . That of a Brahmana sixty-fourfold.”⁹⁶ The punishment fit not only the crime but the social station of the criminal.

At the dawn of the Christian Era, the underprivileged again rose to the fore. The Bible emphasized “the least of these my brethren.”⁹⁷ In the late

89. RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 437 (3d ed. 1986).

90. DWORKIN, *supra* note 78, at 336.

91. *Id.* at 14.

92. CONFUCIUS, *THE ANALECTS OF CONFUCIUS* 25 (James Legge trans., Global Grey) (1893).

93. *Cf.* Yan Xu, *No Taxation Without Representation: China’s Taxation History & Its Political-Legal Development*, 39 HONG KONG L.J. 515 (2009).

94. *See, e.g.*, Louis Kaplow, *An Economic Analysis of Legal Transitions*, 99 HARV. L. REV. 509, 580 (1986) (“vertical equity . . . refers to the distribution of costs and benefits across different income groups”).

95. KAUTILIYA’S *ARTHASHASTRA* book IV, ch. III (R. Shamasastri trans. 1915).

96. *THE LAWS OF MANU* ch. VIII ¶¶ 337–38 (George Bühler trans., Oxford Clarendon Press 1886).

97. *Matthew* 25:40 (King James).

twentieth century, an encyclical would revisit the proposition that “men are obliged to come to the relief of the poor and to do so not merely out of their superfluous goods. If one is in extreme necessity, he has the right to procure for himself what he needs out of the riches of others.”⁹⁸ Relief from poverty was cast as a right.

Before the theory of consent by the governed, the support of the population may have appeared as a practical consideration. Returning to the Inca example, the pristine fiscal order was inclusive in an imperial style.⁹⁹ In particular, some “taxes harvested for the Inca were not even taken to the provincial capital, but remained in local storehouses.”¹⁰⁰ From there, the poor, “namely those members of the community too old or ill to do agricultural labor,” were “supported in part by the Inca storehouses, as was the whole local population in a year of famine.”¹⁰¹ Additionally, these “local stores were also used to maintain the agriculturalists when they served in local segments of provincial or national projects such as the building and repairing of storehouses, roads, and irrigation works near their own communities.”¹⁰² As previously observed, taxation was both economically and geographically redistributive.¹⁰³

In the Inca Empire, acts pursuant to subsistence were sanctioned.¹⁰⁴ According to reported cases, the theft of food from a royal farm resulted in the death penalty; likewise, theft out of vice was punishable by torture.¹⁰⁵ By contrast, theft because of poverty resulted in “slight punishment” or pardon, while theft out of necessity when traveling on the road was forgiven.¹⁰⁶ While these legal cases are older, they were precursors of what was to come.

Originally, the rule of law was associated with the Enlightenment.¹⁰⁷ Then, the individual asserted rights as against the state.¹⁰⁸ At the time of the Industrial Revolution, the concept of the rule of law comported with

98. SECOND VATICAN COUNCIL, *GAUDIUM ET SPES* pt. II, ch. III, § 2 ¶ 69 (1965).

99. MOORE, *supra* note 27, at 106.

100. *Id.* at 62.

101. *Id.*

102. *Id.*

103. *Id.* at 25–26.

104. *See id.*

105. MOORE, *supra* note 27, at 171.

106. *Id.*

107. *See* ROBERTO MANGABEIRA UNGER, *LAW IN MODERN SOCIETY: TOWARD A CRITICISM OF SOCIAL THEORY* 54 (1976) (“The legal order emerged with modern European liberal society.”); *History*, DEMOCRACY WEB, <http://www.democracyweb.org/rule-of-law-history> [<https://perma.cc/A8MU-YA3X>] (last visited July 31, 2021) (discussing “The Rule of Law as Bulwark Against Government Tyranny”).

108. *See* AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION & RECONSTRUCTION* xii (Yale Univ. Press 1998) (acknowledging the “conventional” view that “[i]ndividual and minority rights did constitute a motif of the Bill of Rights”).

participation in the free market.¹⁰⁹ At that point, the significant legal rights were those applicable to civil society, or civil liberties, as constitutionalized (for instance, the 1789 Bill of Rights).¹¹⁰ Civil rights had yet to face expansion.¹¹¹

After World War II, the Universal Declaration of Human Rights stated:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹¹²

Consequently, social entitlements became rights.¹¹³ The question is, then, whether these rights are enforceable.

If the people in the original state could legislate a fair tax code, hypothetically they would apply certain principles. Specifically, taxation “can be justified only as promoting directly or indirectly the social conditions that secure the equal liberties and as advancing in an appropriate way the long-term interests of the least advantaged.”¹¹⁴ This presumes objective (blind) equality.

Hypothetically, the fair tax code would develop detailed provisions. For example, the fiscal regime could guarantee “a social minimum either by family allowances and special payments for sickness and employment, or more systematically by such devices as a graded income supplement (a so-called negative income tax).”¹¹⁵ Soon after Professor Rawls made this observation, the U.S. Congress enacted the earned income tax credit (EITC), a refundable wage supplement for low-income workers and their

109. See, e.g., *Com. v. Hunt*, 45 Mass. 111, 133 (1842) (“[*Boston Glass Co.*] acknowledges the established principle, that every free man, whether skilled laborer, mechanic, farmer or domestic servant, may work or not work, or work or refuse to work with any company or individual, at his own option, except so far as he is bound by contract.”) (citing *Boston Glass Manufactory v. Binney*, 21 Mass. 425 (1827)); *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J. dissenting) (“It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract.”).

110. See U.S. CONST. amends. I–X.

111. *Civil Rights*, CORNELL L. SCH., https://www.law.cornell.edu/wex/civil_rights [https://perma.cc/DC5W-PU6C] (last visited Mar. 1, 2020).

112. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25, ¶ 1 (Dec. 10, 1948).

113. See *id.*

114. RAWLS, *supra* note 77, at 332.

115. *Id.* at 275.

children.¹¹⁶ Thus, future tax equity could have both historical and philosophical foundations.

The rationale for social entitlements is that without them, civil rights are hollow. The social entitlements include “the provision of living conditions that are socially, technologically, and ecologically safeguarded, insofar as the current circumstances make this necessary if citizens are to have equal opportunities to utilize the civil rights.”¹¹⁷ As a practical matter, the impecunious cannot enjoy rights like those to private property.

For example, consider a contemporary case of implementation. In Southeast Asia, Judge Pangalangan writes that international human rights like those to health may be “advanced through domestic legislation,” yet “have rarely given rise to justiciable rights.”¹¹⁸ In “a fragile democracy like the Philippines, where State institutions are weak,” health “was hitherto a family matter, and its burdens absorbed by the private sphere. The international indicia assume that the costs are borne through social security and health insurance, and properly shift them to the public sphere.”¹¹⁹ To the extent that human rights encompass social entitlements, they imply a need for development of the welfare state.

Thus, social justice obtains where the “poor and disadvantaged” people have recourse to the rule of law.¹²⁰ Conversely, the rule of law would not accede to reading into “welfare and taxation schemes provisions equality of resources would approve,” unless codified in the legislation.¹²¹ Uniform implementation is still necessary.

The various historical sanctions may not form a direct lineage. Nevertheless, precursors to social rights were widespread throughout world civilizations. The social entitlements create “the much further-reaching obligation for the state to use its power for the benefit of its citizens, giving them a right to food, shelter, education,” and so forth.¹²² “Whether such needs should be formulated in the form of rights is a question often debated, but practically speaking more or less settled in

116. See Tax Reduction Act of 1975, Pub. L. No. 94-12, 89 Stat. 30 § 204 (enacting the predecessor to IRC § 32).

117. JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 123 (William Rehg trans., MIT Press 1996).

118. Raul C. Pangalangan, *The Domestic Implementation of the International Right to Health: The Philippine Experience*, in *ADVANCING THE HUMAN RIGHT TO HEALTH* 155 (José M. Zuniga et al. eds., Oxford Univ. Press 2013).

119. *Id.*

120. Adriaan Bedner & Jacqueline A.C. Vel, *An Analytical Framework for Empirical Research on Access to Justice*, L. SOC. JUST. & GLOBAL DEV. J. 7 (Feb. 6, 2011), https://warwick.ac.uk/fac/soc/law/elj/lgd/2010_1/bedner_vel/bedner_vel.pdf [<https://perma.cc/XCC5-Q2TG>].

121. DWORKIN, *supra* note 78, at 404.

122. Adriaan Bedner, *An Elementary Approach to the Rule of Law*, 2 HAGUE J.R.L. 48, 66 (2010).

favour with the adoption of these rights into international rights treaties and many constitutions worldwide.”¹²³ A century ago, the “richer countries devoted one percent of their wealth to supporting children, the poor, and the aged; today they spend almost a quarter of it.”¹²⁴ Philosophically, these social rights may be grounded on the concept of blind justice that favors the least advantaged.

F. Summary

History established redistribution as a fundamental fiscal function. From the parochial location of the taxpayer, redistribution was inevitable when states imposed national tax law. Philosophically, the original position of blind equality may have served to naturalize the social contract. Rather than interventions in the hypothetically free market, the organic precursors to socio-economic entitlements may have been the redistributive mechanisms to maintain the productive taxpayer population. Ancient civilizations exemplified geographic as well as economic redistribution. In national taxation, the Inca made efforts “to keep the burden from falling more heavily on one community than another, and demands which could be distributed equally or borne in turn were dealt with this way.”¹²⁵ Meanwhile, “[l]ocal building and road projects were financed locally, though done in the name of the Inca and Sun” national religion.¹²⁶ Thus, geographically sensitive taxation had prehistoric antecedents.

III. LAND OF OPPORTUNITY

In North Atlantic history, the usage of geography followed the needs of the state as it had in other world civilizations. In early twentieth-century Britain, for example, the “activities of the Royal Geographical Society” supported “the technics and mechanics of the management of Empire.”¹²⁷ By the end of the Century, “[g]eographers now seek, by and large, to contribute to what can best be called ‘the technics and mechanics of urban, regional and environmental management.’”¹²⁸ The latter may account for the origin of the concept of the enterprise zone in urban planning.

This Section traces the enterprise zone from concept to tax legislation. Harking back to the Enlightenment concept of the state of nature, this

123. *Id.*

124. STEVEN PINKER, ENLIGHTENMENT NOW: THE CASE FOR REASON, SCIENCE, HUMANISM, AND PROGRESS 322 (2018).

125. MOORE, *supra* note 27, at 67.

126. *Id.* at 68.

127. DAVID HARVEY, *What Kind of Geography for What Kind of Public Policy?*, in SPACES OF CAPITAL: TOWARDS A CRITICAL GEOGRAPHY 27, 30 (2001).

128. *Id.*

zone was a kind of hypothetically free market.¹²⁹ On islands or oases around the world, commerce was to flourish unfettered by tax or other laws. Ironically, the delineation of the zone was a legislative act.

Revisiting the historical and philosophical background, consider the following: In England, the classical political economists had referred to “a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature.”¹³⁰ Even then, the rule of law enforced property and contractual obligations between private parties.

The ideology of free trade has been authoritatively commemorated in the West.¹³¹ Nowadays, economic historians acknowledge a greater extent of government support for markets. Starting in the seventeenth century, the “creation of global markets for spices, textiles, coffee, tea and sugar were the work of monopoly companies like the Dutch and English East Indian companies, simultaneously engaged in a commercial and a naval contest for market shares.”¹³² The English effort was “intimately linked to the expansion of British imperial power.”¹³³ Then the British Crown supported the “successful creation of the world’s largest textile market and cotton-supply chains in the 18th century, which made the nationwide adoption of the spinning jenny and factory system profitable and inevitable.”¹³⁴ In the nineteenth century, U.S. tax subsidies “drove much of the industrialization of this country, especially the creation of the railroad industry.”¹³⁵ Twentieth-century social scientists depicted economic development as a “take-off” that they could engineer.¹³⁶ Since inception, the free market was an artifact of the social contract.

Who pays for the free market? Today, economists observe that the “‘free’ market is not free. It is a fundamental public good that is extremely costly to create.”¹³⁷ This is particularly relevant to the current industrialization in China. Organized as the People’s Republic in 1949, China is now the most populous country with 1.38 billion people in 9.6

129. See Bruce Bartlett, *Enterprise Zones: The Good, the Bad, and the Muddled*, 142 TAX NOTES 331, 332 (2014).

130. LOCKE, *supra* note 62, at ch. II, § 4.

131. See DOUGLASS C. NORTH & ROBERT THOMAS, *THE RISE OF THE WESTERN WORLD: A NEW ECONOMIC HISTORY* (Cambridge Univ. Press 1976).

132. NIALL FERGUSON, *COLOSSUS: THE PRICE OF AMERICA’S EMPIRE* 185 (2004).

133. *Id.*

134. See Yi Wen, *THE MAKING OF AN ECONOMIC SUPERPOWER: UNLOCKING CHINA’S SECRET OF RAPID INDUSTRIALIZATION* xii (2016).

135. See Kary L. Moss, *The Privatizing of Public Wealth*, 23 FORDHAM URB. L.J. 101, 106 (1995).

136. W.W. ROSTOW, *THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO* 36 (1960).

137. Wen, *supra* note 134, at 11.

million square kilometers.¹³⁸ Per capita, China's gross domestic product (GDP) is \$16,700.¹³⁹ Of GDP, 21.3 percent is captured by tax or other revenue.¹⁴⁰ This is the powerhouse of the ongoing trans-Pacific industrial revolution, supported by the "mercantilist" stance of the PRC.¹⁴¹ The affirmative creation of the free market may have become a cosmopolitan understanding. If so, the legislation of the enterprise zone forms a logical outgrowth.

Just as the state of nature may never have existed, the free market was a hypothetical condition. By the twenty-first century, American social scientists could observe that capitalism "has lost its capitalists: too much investment is tied up in 'gray capital,' controlled by institutional managers who seek safe returns for retirees."¹⁴² This would pose the entrepreneurial question as under the tax zone incentives: whether corporate investment is the appropriate target.

Inspired by British urban planning, the American tax bills began with relief of economic distress. On one hand, the bills may have contributed to redistributive welfare; on the other hand, their intention was to unleash free enterprise. Over several iterations, the Federal legislation layered incentives to conduct business in distressed areas. In turn, these extended to zones struck by terrorism or natural disaster as well as market failure. While the tax relief may have increased employment, it likewise may have raised rent or the cost of living.¹⁴³ Through numerous economic studies cited below, the net effect on impoverished residents has been modest at best. Nevertheless, the popularity of tax zones has not diminished among legislators. In part, this may be due to the enduring conceptual attraction to the state of nature.

A. Enterprise Zone

The predecessor of OZ was a brainchild of urban planners.¹⁴⁴ Geographically, "it was Hong Kong's example," which "gave birth to the enterprise zone," or, in other words, a "tax- and regulation-free

138. See *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/the-world-factbook/> [<https://perma.cc/XZN3-WHU3>] (last visited July 29, 2021).

139. *Id.*

140. *Id.*

141. See Wen, *supra* note 134, at 59.

142. See PINKER, *supra* note 124, at 329.

143. See Jennifer Forbes, Note, *Using Economic Development Programs as Tools for Urban Revitalization: A Comparison of Empowerment Zones & New Markets Tax Credits*, 57 UNIV. ILL. L. REV. 177, 199 (2006).

144. See Robert W. Benjamin, *The Kemp-Garcia Enterprise Zone Bill: A New, Less Costly Approach to Urban Redevelopment*, 9 FORDHAM URB. L.J. 659, 660 (1981); David L. Callies & Gail M. Tamashiro, *Enterprise Zones: The Redevelopment Sweepstakes Begins*, 15 URB. L. 231, 233 (1983).

commercial zone.”¹⁴⁵ If these Southeast Asian islands were a kind of natural experiment in the free-market economy, urban planners modeled the zone as an area for “all kinds of initiative, with minimal governmental interference or control.”¹⁴⁶ Since the initial suggestion in the British urban planning literature a few decades ago, various kinds of zones have been promulgated in Europe and America, including the Netherlands and the United States.¹⁴⁷ A brief comparative profile of the several countries just mentioned will be instructive.

Hong Kong is an island of 1,108 square kilometers.¹⁴⁸ Hong Kong became part of the Qin Empire in the third century BCE, before occupation by the United Kingdom from 1842 to 1997.¹⁴⁹ Now, the Special Administrative Region of the People’s Republic of China, Hong Kong has a population of 7.2 million, a per capita GDP of \$61,400, and revenue of 23 percent of GDP.¹⁵⁰

By the fourteenth century, a Malay trading port existed on the 719 square kilometers of Singapore.¹⁵¹ In 1819, the United Kingdom occupied Singapore, which joined the Malaysian Federation in 1963 but became independent in 1965.¹⁵² Now the population of 5.9 million enjoys a per capita GDP of \$94,100.¹⁵³ Revenue amounts to 15.7 percent of GDP.¹⁵⁴

In 1707, the United Kingdom incorporated England and Wales with Scotland.¹⁵⁵ The British Isles now occupy more than 243 thousand square kilometers with a population of 65.6 million people.¹⁵⁶ The per capita GDP is \$44,300 while revenue is 39.1 percent of GDP.¹⁵⁷

In 1579, the Union of Dutch Provinces declared independence from the Hapsburg monarchy in Spain.¹⁵⁸ In 1815, the Dutch formed the Kingdom of the Netherlands.¹⁵⁹ After the 1830 secession of the Kingdom

145. Callies & Tamashiro, *supra* note 144, at 233

146. Peter Hall, *Enterprise Zones: British Origins, American Adaptations*, 7 BUILT ENV’T 5, 6 (1981).

147. See Jeffrey M. Euston, *Clinton’s Empowerment Zones: Hope for the Cities or a Failing Enterprise*, 3 KANS. J. L. & PUB. POL’Y 140, 141 (1994).

148. See *World Factbook*, *supra* note 138, at Hong Kong.

149. Yi-Zheng Lian, *Is Hong Kong Really Part of China?*, N.Y. TIMES (Jan. 1, 2018), [nytimes.com/2018/01/01/opinion/hong-kong-china.html](https://www.nytimes.com/2018/01/01/opinion/hong-kong-china.html) [<https://perma.cc/4EY6-8MET>].

150. *World Factbook*, *supra* note 138, at Hong Kong.

151. *World Factbook*, *supra* note 138, at Singapore.

152. *Id.*; see also CHURCHILL, *supra* note 85, at 277.

153. *World Factbook*, *supra* note 138, at Hong Kong.

154. *Id.*

155. CHURCHILL, *supra* note 85, at 54.

156. *World Factbook*, *supra* note 138, at United Kingdom.

157. See *id.*

158. See John Lothrop Motley, 3 RISE OF THE DUTCH REPUBLIC: A HISTORY 411 (N.Y., Harper & Bros. Publishers 1856).

159. *World Factbook*, *supra* note 138, at Netherlands.

of Belgium, Holland occupies 41.5 thousand square kilometers and is home to 17.2 million people.¹⁶⁰ The per capita GDP is \$53,900 while revenue takes up 43.4 percent of GDP.¹⁶¹

In 1776, the thirteen North American colonies declared independence from the United Kingdom.¹⁶² The United States expanded westward to encompass fifty states and over 9.8 million square kilometers by 1959.¹⁶³ As the third-largest country, the U.S. population is 335 million.¹⁶⁴ The per capita GDP is \$62,530 while revenue as a percentage of GDP is only 17 percent (22 percent including Social Security).¹⁶⁵

To compare these five countries: three are insular or archipelagic; one is continental; one is a city-state; two are constitutional monarchies; one is a republic; one is a semi-autonomous province of a communist state—yet four are sovereign nation-states. The five countries are all subject to the various effects of physical geography, such as the ecological volatility associated with tropical rather than temperate latitude, or the fact that in “most countries, people cluster near coasts and navigable rivers.”¹⁶⁶ In both Hong Kong and Singapore, the marine location for entrepôts may have been as attractive to commercial transshipment as their regulatory status. Despite the heterogeneous physical and political geography, all these countries impose tax regimes that may be legally comparable.

For example, in 1996 the Netherlands enacted a special measure for metropolitan problems.¹⁶⁷ This rule authorized cities to designate *kansenzones* (Opportunity Zones).¹⁶⁸ Among other municipal benefits, reduction of property tax was a potential incentive.¹⁶⁹ At least among the countries profiled above, a comparatively high tax burden prevails in Holland, making tax reduction attractive there. Across heterogeneous jurisdictions, zones of tax relief remain popular.¹⁷⁰ In a kind of binary opposition, those zones support taxation as an overall structure.

160. *Id.*

161. *See id.*

162. *The Declaration of Independence, 1776*, OFF. HISTORIAN, <https://history.state.gov/milestones/1776-1783/declaration> [<https://perma.cc/9C9Y-9W5H>] (last visited Feb. 26, 2020).

163. *See World Factbook*, *supra* note 138, at United States; Eric Foner & John A. Garraty eds. *READER'S COMPANION TO AMERICAN HISTORY 1025* (Eric Foner & John A. Garraty, eds., 1991).

164. *See World Factbook*, *supra* note 138, at United States

165. *Id.*

166. Sachs, *supra* note 8; *See* Jeffrey D. Sachs, *Tropical Underdevelopment 1* (Nat'l Bureau of Econ. Research, Working Paper No. 8119, 2001).

167. F.A.M. HOBMA & P. JONG, *PLANNING AND DEVELOPMENT LAW IN THE NETHERLANDS* 11 n.23 (2016).

168. *Id.*

169. *Id.*

170. For example, the *Zones Franches Urbaines* incentivize costly relocation. *See* Thierry Mayer et al., *The Impact of Urban Enterprise Zones on Establishments' Location Decisions: Evidence from France*, 17 *CATH. UNIV. LOUVAIN J. ECON. GEOGRAPHY* 709, 710 (2015).

B. Federal Legislation

In America, tax incentives have a long history.¹⁷¹ During the nineteenth century Industrial Revolution, state tax exemptions were “aimed at specific industries and regions, [and] were the ideological predecessors of the enterprise zone.”¹⁷² Now that industry has waned in many places, the zones have had a series of reincarnations. In 1989, a survey of state enterprise zones concluded that the states benefited from job growth, especially in the inner cities and other areas that otherwise would have suffered from low employment.¹⁷³ Enterprise zones were yet to enter federal legislation.

At the end of the twentieth century, members of Congress introduced a series of bills.¹⁷⁴ In 1992, economists speculated about “the likely effects of some of the proposed federal EZ initiatives” based on “the U.S. state and British experiences,” particularly that “limited U.S. survey evidence . . . indicates that start-up firms average about 25 percent of ‘new’ zone businesses.”¹⁷⁵ Whatever the uncertainty, President Bill Clinton, “in response to the Los Angeles Riots,” the inner city unrest that year, “offered a variation of former legislative proposals.”¹⁷⁶ Then Congress adopted the enterprise zone bill.

Congress enacted Empowerment Zones within the Omnibus Budget Reconciliation Act of 1993 (OBRA '93).¹⁷⁷ The legislative history acknowledged that the “Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment.”¹⁷⁸ Forbearance from targeting comported with uniformity in taxation and federal law generally. Constitutionally, “all Duties, Imposts and Excises shall be uniform throughout the United States.”¹⁷⁹ Otherwise, pre-existing provisions of tax law favored Puerto Rico and the other territorial possessions of the U.S. but arguably reflected their suzerain political status as much as their insular locations.¹⁸⁰ Expressly geographic tax zones were new.

171. See Kary L. Moss, *The Privatizing of Public Wealth*, 23 *FORDHAM URB. L.J.* 101, 106 (1995).

172. Benjamin, *supra* note 144, at 672-73.

173. See RODNEY A. ERICKSON ET AL., PA. ST. UNIV., CTR. FOR REG'L BUS. ANALYSIS, *ENTERPRISE ZONES: AN EVALUATION OF STATE GOVERNMENT POLICIES* 103 (1989).

174. See Benjamin, *supra* note 144 at 661, 674.

175. Leslie E. Papke, *What Do We Know About Enterprise Zones?*, 7 *TAX POL'Y & ECON.* 37, 62 (1993).

176. Forbes, *supra* note 143, at 183.

177. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 543.

178. Legislative History of the Omnibus Budget Reconciliation Act of 1993, H.R. REP. NO. 102-1034, at 690 (1993).

179. U.S. CONST. art. I, § 8.

180. See Ellen P. Aprill, *Caution: Enterprise Zones*, 66 *S. CAL. L. REV.* 1341, 1347 (1993).

Nevertheless, the Congress noted that “low-income housing credit [LIHTC] and qualified mortgage bond provisions target certain economically distressed areas.”¹⁸¹ As of the Tax Reform Act of 1986 (TRA ’86), credit had been allocable by state housing agencies toward investors in the cost-basis of the residences of low-income tenants.¹⁸² From 1987–1991, LIHTC was worth \$3,246 million as estimated in foregone Federal revenue.¹⁸³ Three decades later, commentators would question the efficiency of a tax provision that may have benefited landlords as much as tenants.¹⁸⁴

In the same legislation, Congress authorized state and local mortgage revenue bonds.¹⁸⁵ These bonds would generate tax-free interest, in the manner of so-called municipal bonds, where the issuer would lend the proceeds to purchasers of homes in low-income Census tracts or other economically distressed areas.¹⁸⁶ Thus, the previous legislation had targeted poor neighborhoods without delineating geographic zones.

C. Zone of Empowerment

The first legislative iteration of a zone of empowerment focused on local entrepreneurs. In creating Empowerment Zones or Enterprise Communities out of Census tracts that had significant poverty rates, Congress stated: “[r]evitalization of economically distressed areas through expanded business and employment opportunities, especially for residents of those distressed areas, should help alleviate both economic and social problems, including distress resulting from narcotics and crime.”¹⁸⁷ This is because “[i]ncome taxes . . . represent a current cost only if the business is profitable.”¹⁸⁸ Nevertheless, tax incentives were the federal answer to local poverty and unrest.

181. H.R. REP. NO. 102-1034, at 690 (1993).

182. See I.R.C. § 42 (2019).

183. STAFF OF J. COMM. ON TAX’N, 99TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986 1361 tbl.A-2.II (Comm. Print 1987).

184. See Laura Sullivan & Meg Anderson, *Affordable Housing Program Costs More, Shelters Fewer*, NAT’L PUB. RADIO (May 9, 2017, 12:31 PM), <https://www.npr.org/2017/05/09/527046451/affordable-housing-program-costs-more-shelters-less> [<https://perma.cc/DH8F-9FKU>] (stating that “This program has been described as a subterranean ATM, and only the developers know the PIN.”); Chris Edwards & Vanessa Brown Calder, *Kill the Loopholes, Including the One for ‘Low-Income Housing,’* WALL ST. J. (Sept. 18, 2017, 6:47 PM), <https://www.wsj.com/articles/kill-the-loopholes-including-the-one-for-low-income-housing-1505774844> [<https://perma.cc/M7JL-UGXY>]; U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-784T, LOW-INCOME HOUSING TAX CREDIT: ACTIONS NEEDED TO STRENGTHEN OVERSIGHT & ACCOUNTABILITY (2017).

185. See H.R. REP. NO. 102-1034, at 690 (1993).

186. See IRC § 143.

187. Legislative History of the Omnibus Budget Reconciliation Act of 1993, H.R. REP. NO. 103-111, at 791 (1993).

188. Aprill, *supra* note 180, at 1356.

The Empowerment Zones were located around the country. Initially, the urban zones included: Atlanta, Georgia; Baltimore, Maryland; Chicago, Illinois; Detroit, Michigan; New York, New York; Philadelphia, Pennsylvania; and Camden, New Jersey.¹⁸⁹ Then the rural zones included: Kentucky Highlands, Kentucky; Mid-Delta, Michigan; and Rio Grande Valley, Texas.¹⁹⁰ These were the sites of quantified poverty.

One question was how to keep the economic benefits in these Zones. OBRA '93 contained an "anti-churning" clause.¹⁹¹ This clause concerned the state governor who applied to the Secretary of Housing & Urban Development (HUD) or of Agriculture for an urban or rural designation, respectively.¹⁹² The governor was to propose a strategic plan that *inter alia* would refrain from assistance with relocation except in the case of a new branch of a business that essentially would not compete against existing employers.¹⁹³ Notwithstanding this requirement of the state plan, it remained unclear whether the legislation authorized the Internal Revenue Service (IRS) to deny a tax claim from a relocated business. With respect to the taxpayer, the effect of the state plan may have been merely precatory. Moreover, the original concept of enterprise zones was to attract commerce to otherwise unattractive locales.¹⁹⁴

In the Empowerment Zones, businesses enjoyed tax reductions. Employers received a 20-percent credit on up to \$15,000 of the wages paid to each employee in the Zone.¹⁹⁵ Business owners received a \$35,000 increase to the allowance for immediate expensing which covered otherwise depreciable assets.¹⁹⁶ Private business activity could benefit from tax-exempt financing through state or municipally issued exempt facility bonds.¹⁹⁷ From 1994 to 1998, the value of these benefits was \$2.492 billion.¹⁹⁸ In sum, the incentives were to employ and invest in infrastructure.

189. DEP'T OF HOUS. & URBAN DEV'T, INTERIM ASSESSMENT OF THE EZ/EC PROGRAM: A PROGRESS REPORT 1 n.2 (2001).

190. STAFF OF J. COMM. ON TAX'N, 111TH CONG., INCENTIVES FOR DISTRESSED COMMUNITIES: EMPOWERMENT ZONES & RENEWAL COMMUNITIES 3 n.10 (2009).

191. See Mildred Wigfall Robinson, *Empowerment Zones & Enterprise Communities Under OBRA '93: A Promising Concept with some Modifications*, 11 J.L. & POL'Y 345, 349 (1995).

192. See I.R.C. § 1391(e).

193. See I.R.C. § 1391(f)(2)(F).

194. See Audrey McFarlane, *Empowerment Zones: Urban Revitalization Through Collaborative Enterprise*, 5 J. AFFORDABLE HOUS. & CMTY. DEV'T L. 35, 36 (1995).

195. See I.R.C. § 1396.

196. See I.R.C. § 1397A.

197. See I.R.C. § 1394.

198. STAFF OF J. COMM. ON TAX'N, 103D CONG., SUMMARY OF THE REVENUE PROVISIONS OF OMNIBUS BUDGET RECONCILIATION ACT OF 1993 39 app. A.II.G (Comm. Print 1993).

In particular, the employer credit was the job incentive. Rather than offering jobs or income directly to the employees, the legislation credited the job creator. This mechanism ensured that the federal subsidy supported the “deserving poor” who worked.¹⁹⁹ Harking back to the Enlightenment theory, the provision favored labor as the source of added value.²⁰⁰ Despite the significant cost in foregone federal revenue, it remained unclear whether the various provisions would be enough to create a free market oasis.

Additionally, the legislation offered direct grants. In particular, OBRA '93 authorized social service block grants administered by the States.²⁰¹ Nevertheless, critics on both ends of the spectrum faulted the legislation where the distressed zones still needed capital.²⁰² Tax relief and even social service may have been an inapposite response to those who lacked money.²⁰³

In 1997, urban planners evaluated certain state and federal provisions. They wrote that neither “tax incentives, nor nontax incentives, nor enterprise zone incentives operate to offset the effects of basic state-local tax systems. The locations that offer the highest returns without incentives are pretty much the locations with the highest returns after incentives are included.”²⁰⁴ Evidently, this reported ineffectiveness did not deter legislation that year.

In the Taxpayer Relief Act of 1997 (TpRA '97), Congress extended similar incentives.²⁰⁵ These covered impoverished Census tracts in the District of Columbia, to be known as the D.C. Enterprise Zone (DCEZ).²⁰⁶ There the provisions included the following: Employers received the 20-percent wage credit.²⁰⁷ Business owners received the \$35,000 increase to the allowance for immediate expensing.²⁰⁸ Private business activity could benefit from certain tax-exempt bonds issued by

199. See Anne L. Alstott, *The Earned Income Tax Credit & the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 538 n.13 (1995).

200. See LOCKE, *supra* note 62, at ch. V § 27. ADAM SMITH, 1 AN INQUIRY INTO THE NATURE & CAUSES OF THE WEALTH OF NATIONS 5 (Edwin Cannan, ed., Methuen & Co. 1904) (1776); FRIEDRICH ENGELS, THE PART PLAYED BY LABOUR IN THE TRANSITION FROM APE TO MAN 7 (1876).

201. See 42 U.S.C. §§ 1397–1397n-13.

202. See Euston, *supra* note 147, at 146–48.

203. See generally JAMES FERGUSON, GIVE A MAN A FISH: REFLECTIONS ON THE NEW POLITICS OF DISTRIBUTION (2015).

204. Peter S. Fisher & Alan H. Peters, *Tax & Spending Incentives & Enterprise Zones*, NEW ENGLAND ECON. REV. 109, 128 (1997).

205. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788.

206. See I.R.C. § 1400 (2010) (repealed 2018).

207. See I.R.C. § 1400(d) (2010) (repealed 2018).

208. See I.R.C. § 1400(a)(2) (2010) (repealed 2018).

D.C.²⁰⁹ These provisions were worth \$582 million in foregone federal revenue.²¹⁰

Additionally, capital gain became tax-free. Technically, a 0-percent rate applied to gain on the sale of qualified DCEZ business assets held for more than five years.²¹¹ This provision was worth \$502 million in foregone federal revenue.²¹² In short, the incentives were to invest, expand, and sell an enterprise.

For individuals, the provisions included the following: A moderate-income taxpayer purchasing his or her first home in D.C. could receive up to \$5,000 in tax credit.²¹³ The latter provision assumed that the homebuyer generated enough income tax to use the credit. While the former provisions were to benefit business, this credit could attract middle-class homeowners. This provision was worth \$74 million in foregone federal revenue.²¹⁴

Moreover, TpRA '97 created a tax-credit bond. The qualified zone academy bond (QZAB) was an alternative to tax-exempt bonds.²¹⁵ The legislation allowed to the QZAB holder a credit, rather than an exclusion of interest, at a rate permitting issuance without discount or interest cost.²¹⁶ Given a ten percent private business contribution, state and local governments could incur interest-free debt to support elementary or high schools.²¹⁷ In effect, the Treasury paid the bondholders by reducing the federal liability that they otherwise had accrued. The legislation allocated \$400 million annually for a decade as the face amount of QZABs to be issued by the states in proportion to their impoverished populations.²¹⁸ The credit mechanism corresponded dollar-for-dollar to the bondholder's investment return. Yet tax-credit bonds retained the inefficiency of tax-exempt bonds by subsidizing wealthy investors as well as pupils in the needy zone.²¹⁹

Ironically, the ineffectiveness of the original Empowerment Zone legislation was confirmed. The Community Renewal Tax Relief Act of 2000 (CRTRA '00) extended the provisions in Zones that remained economically distressed.²²⁰ The available tax incentives were similar to

209. See I.R.C. § 1400A (2010) (repealed 2018).

210. STAFF OF J. COMM. ON TAX'N, 105TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 1997 519 (Comm. Print 1997).

211. See I.R.C. § 1400B (2010) (repealed 2018).

212. STAFF OF J. COMM. ON TAX'N, *supra* note 210, at 519.

213. See I.R.C. § 1400C (repealed 2018).

214. STAFF OF J. COMM. ON TAX'N, *supra* note 210, at 519.

215. See I.R.C. § 1397E (2016) (repealed 2017).

216. See I.R.C. § 1397E(a) (2016) (repealed 2017).

217. See I.R.C. § 1397E(d) (2016) (repealed 2017).

218. See I.R.C. § 1397E(e) (2016) (repealed 2017).

219. See DANIEL L. SIMMONS ET AL., FED. INCOME TAX'N 269 (7th ed. 2017).

220. See Consolidated Appropriations—FY 2001, Pub. L. No. 106-554, 114 Stat. 2763.

those in the original legislation. Employers received the wage credit in the amount of fifteen percent.²²¹ Business owners received the \$35,000 increase to the allowance for immediate expensing.²²² The zero percent rate applied to gain on the sale of qualified business assets held for more than five years.²²³ Additionally, CRTRA '00 created an incentive for building in the commercial revitalization zone by allowing either a deduction of half the expenses or a ten year amortization.²²⁴ Toward this end, the legislation allocated \$12 million per state annually for 8 years.²²⁵

Innovatively, CRTRA '00 enacted the New Markets Tax Credit (NMTC).²²⁶ This provision was essentially an incentive to invest in low-income Census tracts.²²⁷ In foregone federal revenue, the estimated cost was \$4.391 billion over a decade.²²⁸

In 2001, the Department of Housing & Urban Development (HUD) reported on the Empowerment Zones.²²⁹ Job growth occurred, while the number of resident- and minority-owned businesses increased substantially.²³⁰ In the late 1990s, business boomed across the country, but it was unclear if the tax incentives were the cause. Of the businesses in the Zones, only eleven percent reported using the employment credits, four percent reported using the expensing provision, and three percent reported using Work Opportunity Tax Credits (WOTC), while sixty-five percent of all the businesses reported no benefits of location in the Zone.²³¹ The report did “not reach definitive conclusions.”²³²

At this point, Congress had enacted a couple of iterations of tax zone legislation that recognized zones of poverty by attempting to attract investors. The provisions were a novel use of taxation to effectuate redistribution, a recurring theme throughout world history. At the same time, the legislation neither pulled the residents out of the impoverished zone nor granted them seed capital.²³³

221. See I.R.C. § 1400H (repealed 2018).

222. See I.R.C. § 1400J (repealed 2018).

223. See I.R.C. § 1400F (repealed 2018).

224. See I.R.C. § 1400I (repealed 2018).

225. See I.R.C. § 1400I(d) (repealed 2018).

226. See I.R.C. § 45D.

227. See I.R.C. § 45D(e).

228. STAFF OF J. COMM. TAX'N, 107TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 106TH CONG. 188 app. at 188, JCS-2-01 (Comm. Print 2001).

229. U.S. GOV'T ACCOUNTABILITY OFF., GAO/RCED-98-203, COMMUNITY DEVELOPMENT: INFORMATION ON THE USE OF EMPOWERMENT ZONE AND ENTERPRISE COMMUNITY TAX INCENTIVES (1998).

230. DEP'T OF HOUS. & URBAN DEV'T, *supra* note 189, at ii.

231. *Id.* at iii.

232. *Id.* at Foreword.

233. See BRUCE K. MULOCK, CONG. RSCH. SERV., RS20381, EMPOWERMENT ZONE/ENTERPRISE COMMUNITIES PROGRAM: OVERVIEW OF ROUNDS I, II & III (2002).

D. *Zones of Crisis*

Then the Congress was overtaken by geopolitical events. The Job Creation & Worker Assistance Act of 2002 (JC&WAA '02) created the New York Liberty Zone—not to remedy endemic poverty—but to help rebuild after the terrorist hijacking that destroyed the World Trade Center on September 11, 2001.²³⁴ At the same time, this tax bill delineated a geographic zone.

In New York City, the legislation enhanced several pre-existing provisions by: increasing WOTC (*i.e.* the credit to employers for wages paid);²³⁵ allowing thirty percent additional depreciation;²³⁶ accelerating depreciation recovery periods especially for commercial leaseholds;²³⁷ allocating \$8 billion toward realty bonds;²³⁸ expanding the availability of advance refunding bonds;²³⁹ widening the scope of the immediate expense deduction;²⁴⁰ and extending from two to five years the period for deferral of gain on involuntary conversion.²⁴¹ The estimated cost of the New York Liberty Zone was \$5.029 billion in federal revenue to be foregone over a decade.²⁴² These provisions reflected a private-public partnership to rebuild commercial real estate.

Despite sympathy for the victims, critics faulted the legislation. Legal scholars commented that “it would be difficult to find five square miles on earth less in need of enhanced development incentives than the southern tip of Manhattan, which has a credible claim to being the business and financial capital of the planet.”²⁴³ This observation echoes the inefficiency concern with previous provisions, such as LIHTC or tax-advantaged bonds, which benefited the investors as well as the low-income beneficiaries.

234. Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21. This followed the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, which offered tax reduction to affected individuals without delineating a geographic zone for purposes of this Article.

235. See I.R.C. § 1400L(a) (repealed 2018).

236. See I.R.C. § 1400L(b) (repealed 2018).

237. See I.R.C. § 1400L(c) (repealed 2018).

238. See I.R.C. § 1400L(d) (repealed 2018).

239. See I.R.C. § 1400L(e) (repealed 2018).

240. See I.R.C. § 1400L(f) (repealed 2018).

241. See I.R.C. § 1400L(g) (repealed 2018).

242. STAFF OF J. COMM. ON TAX'N, 107TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 107TH CONG. 326 app. (2003).

243. Ellen P. Aprill & Richard Schmalbeck, *Post-Disaster Tax Legislation: A Series of Unfortunate Events*, 56 DUKE L.J. 51, 77 (2006).

Thereafter, empirical research on the effect of various tax zone programs reflected incomplete results.²⁴⁴ In 2003, economists reported that state incentives “tend to increase the rate of business failures in the target areas, offsetting their positive impact in attracting new businesses in the target areas and favoring the growth of EZ businesses that remain on the market.”²⁴⁵ This was the paradoxical result of a policy premised at least in part on displacement.

In 2004, scholars conducted research in various states. The state “[z]ones did lead to new business activity inside the zones. The number of births [of new businesses] and employment, payroll, and shipments due to those births all increased significantly in the zones post-designation.”²⁴⁶ The incidence of new business was consistent with prior evaluation. In California, “the enterprise zone designation raises employment growth about three percent each year during the first six years after the designation,” although “this effect does not persist in later years. The number of employees at each business in an enterprise zone also rises more than employment at businesses that do not have the same tax incentives.”²⁴⁷ At least according to these studies of local programs, the net effect was positive.

Another external event ushered in the next major bill. In the wake of Hurricanes Katrina, Rita, and Wilma, the Gulf Opportunity Zone Act of 2005 (GOZA '05) turned the parishes and counties designated by the federal disaster declaration—some of which were already impoverished—into a tax haven of sorts.²⁴⁸

After the legislation of the New York Liberty Zone, GOZA '05 poses the question whether tax relief should be the response to disaster. Historically, taxation has been redistributive. Metaphorically, the contributions of highland compatriots could balance those of flooded lowlanders. As civilizations progress, “a richer and more technologically advanced society can prevent natural hazards from becoming human catastrophes.”²⁴⁹ Here, aid to devastated areas by the federal government may be viewed as an implicit form of insurance—the country as a whole

244. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-03-1102, TAX ADMINISTRATION: INFORMATION IS NOT AVAILABLE TO DETERMINE WHETHER \$5 BILLION IN LIBERTY ZONE TAX BENEFITS WILL BE REALIZED 2 (2003).

245. Daniele Bondonio, *Do Tax Incentives Affect Local Economic Growth? What Mean Impacts Miss in the Analysis of Enterprise Zone Policies*, CTR. ECON. STUD., Sept. 2003, at 5.

246. Robert Greenbaum & John B. Engberg, *The Impact of State Enterprise Zones on Urban Manufacturing Establishments*, 23 J. POL'Y ANALYSIS & MGMT. 315 (2004).

247. Suzanne O'Keefe, *Job Creation in California's Enterprise Zones: A Comparison Using a Propensity Score Matching Model*, 55 J. URB. ECON. 131 (2004).

248. See Gulf Zone Opportunity Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577. This added to and codified provisions similar to those in the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73.

249. PINKER, *supra* note 124, at 187.

acts to spread the risk of the cost of natural disasters. Specifically, “the income tax system provides a certain level of implicit insurance which emanates from provisions which allow for deduction of losses and, in some instances, deduction of insurance payments, as well as the exclusion of recoveries from insurance companies or the tortfeasors themselves.”²⁵⁰ Inherently, federal government spreads risk across the country, yet this begs the question of taxation. Preference for the disaster zone may convey congressional sympathy for the victim but “distorts tax policy, by, for example, favoring the temporarily afflicted wealthy over the permanently poor.”²⁵¹ As in the Empowerment Zone where enhancements such as those to depreciation were a bonus inaccessible to the poor, tax relief could be little comfort to a displaced tenant. Nonetheless, GOZA ’05 offered numerous provisions.

Incentives to rebuild after the Gulf Coast hurricanes supplemented a score of pre-existing provisions. These included: allowing a credit relative to the wages paid to an employee retained in the GO Zone,²⁵² enhancing depreciation,²⁵³ allocating toward tax-exempt and tax-credit bonds,²⁵⁴ expanding the availability of advance refunding bonds,²⁵⁵ and widening the scope for immediate deduction of demolition expenses.²⁵⁶ GOZA ’05 enhanced, within the disaster zone, the LIHTC and NMTC enacted in TRA ’86 and CRTRA ’00 respectively.²⁵⁷ As in the Empowerment Zones, the employment incentive was deployed in the GO Zone. As in the New York Liberty Zone, public-private infrastructure incentives applied in the GO Zone.

GOZA ’05 reflected the ecological nature of the disaster. Consequently, businesses in the GO Zone benefited from increased deductibility of: disaster loss of utilities,²⁵⁸ net operating loss (NOL) on timberland,²⁵⁹ reforestation expenses,²⁶⁰ and environmental remediation cost.²⁶¹ Builders who restored historic structures received an enhanced rehabilitation credit in the GO Zone.²⁶² Employers who offered housing to displaced employees received a credit for the cost, which became an

250. Terrence Chorvat & Elizabeth Chorvat, *Income Tax as Implicit Insurance Against Losses from Terrorism*, 36 IND. L. REV. 425, 425–26 (2003).

251. Aprill & Schmalbeck, *supra* note 243, at 87.

252. I.R.C. § 1400R(a) (repealed 2018).

253. I.R.C. § 1400N(d) (repealed 2018).

254. I.R.C. § 1400N(a), (l) (repealed 2018).

255. I.R.C. § 1400N(b) (repealed 2018).

256. I.R.C. § 1400N(f) (repealed 2018).

257. *See* I.R.C. § 1400N(c), (m) (repealed 2018).

258. *See* I.R.C. § 1400N(j) (repealed 2018).

259. *See* I.R.C. § 1400N(i)(2) (repealed 2018).

260. *See* I.R.C. § 1400N(i)(1) (repealed 2018).

261. *See* I.R.C. § 1400N(g) (repealed 2018).

262. *See* I.R.C. § 1400N(h) (repealed 2018).

excludable benefit.²⁶³ Employers could take an extended period to amend their retirement plans to facilitate loans and other withdrawals by hurricane victims.²⁶⁴ The victim-employees received relief from the ten percent additional tax on early distributions and expanded ability to recontribute withdrawals applied to the purchase of a home.²⁶⁵ Residential as well as commercial real estate was the object in the GO Zone. In foregone federal revenue, the estimated cost of GOZA '05 was \$8.668 billion over a decade.²⁶⁶

GOZA '05 was unlike the previous legislation that focused almost exclusively on business. Instead, the hurricane legislation responded to the human tragedy with a number of provisions for individuals, especially low-income taxpayers. GOZA '05 effectively increased the refundable earned income (EITC) and additional child tax credits (ACTC), in part by allowing otherwise excludable combat pay of soldiers to increase earned income.²⁶⁷ Both the EITC and ACTC supplement the wages of low-income workers, so these provisions are qualitatively distinct from most of the provisions that were for business. Of the overall cost of GOZA '05, \$28 million was for the EITC and ACTC enhancements, while another \$14 million was attributable to the combat pay provision.²⁶⁸ These refundable credits were the direct measures of poverty alleviation within the almost \$9 billion bill.

Additionally, the Hope Scholarship and lifetime learning credits increased for disaster victims.²⁶⁹ Of the overall cost of GOZA '05, \$55 million was attributable to the education credits.²⁷⁰

Under GOZA '05, the deductibility of personal losses and charitable contributions increased.²⁷¹ In the case of corporate donations, they had to be for hurricane relief to qualify for the increased deduction limit.²⁷² Of the overall cost of the bill, \$1.174 billion was for the expansion of personal losses, while \$91 million was for charitable deductions.²⁷³ Procedurally, the legislation confirmed the extension of tax filing and payment deadlines in the zone.²⁷⁴ Although GOZA '05 did not target

263. See I.R.C. § 1400P (repealed 2018).

264. See I.R.C. § 1400Q(d) (repealed 2018).

265. See I.R.C. § 1400Q(a), (b) (repealed 2018).

266. STAFF OF J. COMM. ON TAX'N, 109TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 109TH CONG. 792 app. (Comm. Print 2007) [hereinafter JCT STAFF 2007].

267. See I.R.C. § 1400S(d) (repealed 2018); I.R.C. § 32(c)(2)(B)(vi).

268. JCT STAFF 2007, *supra* note 266.

269. See I.R.C. § 1400O (repealed 2018).

270. JCT STAFF 2007, *supra* note 266.

271. See I.R.C. § 1400S(a), (b) (repealed 2018).

272. See I.R.C. § 1400S(a)(4)(A)(ii) (repealed 2018).

273. JCT STAFF 2007, *supra* note 266.

274. See I.R.C. § 1400S(c) (repealed 2018).

zones by poverty rate, it effectively delineated a geographic area for economic assistance.²⁷⁵

Meanwhile, researchers continued to measure the effect of prior legislation. In 2006, the Government Accountability Office (GAO) reported that “improvements in poverty, unemployment, and economic growth had occurred,” although the analysis “could not tie these changes definitively to the [empowerment zone (EZ)] designation.”²⁷⁶ At the same time, independent research on the empowerment zones in Baltimore, Chicago, Detroit, and New York, which were otherwise undergoing an urban renaissance of sorts, found that “zone initiatives had little impact.”²⁷⁷ Thus, the results continued to be ambiguous.

Then regional studies captured countervailing effects within local zones. State “EZ property values are bid up by businesses seeking to expand or locate operations in the EZs” effectively reducing “amounts that these businesses would otherwise spend on capital assets or labor.”²⁷⁸ At least in the case of these state programs, the paradox of displacement may have persisted.

Likewise, further study revealed offsetting effects. In 2008, economists found evidence in the empowerment zones of decrease in unemployment and poverty by a few percentage points, accompanied by an increase in the value of housing.²⁷⁹ Similarly, a 2009 study of the Empowerment Zones confirmed “a sizeable and significant positive effect on home values.”²⁸⁰ Subsequent research would confirm that Texas “EZ designation is associated with increases in home values.”²⁸¹ Increased housing value may relate to an increase in rent, which in turn could disadvantage tenants, raising the question of the net effect of zone incentives.²⁸²

275. See I.R.C. § 1400N(i)(1) (repealed 2018).

276. U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-727, EMPOWERMENT ZONE AND ENTERPRISE COMMUNITY PROGRAM: IMPROVEMENTS OCCURRED IN COMMUNITIES, BUT THE EFFECT OF THE PROGRAM IS UNCLEAR 5 (2006).

277. Dierdre Oakley & Hui-shien Tsao, *A New Way of Revitalizing Distressed Urban Communities? Assessing the Impact of the Federal Empowerment Zone Program*, 28 J. URB. AFF. 443, 443 (2006).

278. Jim Landers, *Why Don't Enterprise Zones Work? Estimates of the Extent that EZ Benefits are Capitalized into Property Values*, 36 J. REG'L ANALYSIS & POL'Y 15, 15 (2006).

279. See Matias Busso & Patrick Kline, *Do Local Economic Development Programs Work? Evidence from the Federal Empowerment Zone Program* 21 (Yale Univ. Econ. Dep't, Working Paper No. 36, 2008).

280. Douglas J. Krupka & Douglas S. Noonan, *Empowerment Zones, Neighborhood Change & Owner-Occupied Housing*, 39 REG'L SCI. & URB. ECON. 386, 395 (2009).

281. Matthew Freedman, *Targeted Business Incentives & Local Labor Markets*, 48 J. HUM. RESOURCES 311, 311 (2013).

282. See Edward L. Glaeser & Joshua D. Gottlieb, *The Economics of Place-Making Policies*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2008, at 155, 201–03.

Researchers analyzed the relocation incentive of NMTC. The researchers inferred that “corporations have most likely shifted investment funds from higher income communities to NMTC-eligible communities.”²⁸³ Later, a think-tank would quantify significant “NMTC investments per job generated for early-year projects.”²⁸⁴ While the relocation incentive was confirmed, the overall effect may have remained in question.²⁸⁵

E. Zone of Recovery

Next, Congress continued to respond to events. In 2008, the housing and financial markets crashed in what became known as the Great Recession. Then the tax subtitle of the American Recovery & Reinvestment Act of 2009 (ARRA '09) contained provisions for the Recovery Zone (RZ).²⁸⁶ In particular, the legislation expanded the portfolio of tax-credit bonds introduced by TpRA '97.²⁸⁷ The legislation allocated \$1.4 billion for each of 2009 and 2010 as the face amount of QZABs to be issued by the states in proportion to their unemployment rates.²⁸⁸ Similarly, ARRA '09 allocated \$10 billion to RZ economic development and \$15 million to RZ facility tax-credit bonds.²⁸⁹ The Zone related to a new incidence of unemployment.

Despite decades of legislation, the economic effects of the various types of zones continued to be indeterminate. In 2010, California researchers stated that “the evidence indicates that enterprise zones do not increase employment.”²⁹⁰ More cautiously, GAO reported: “Although improvements in poverty, unemployment, and economic growth had occurred in the EZs and ECs, our econometric analysis of the eight urban EZs could not tie these changes definitively to the EZ designation.”²⁹¹ To the extent that some evidence was positive, other evidence was not.

283. Tami Gurley-Calvez et al., *Do Tax Incentives Affect Investment? An Analysis of the New Markets Tax Credit*, 37 PUB. FIN. REV. 371, 371 (2009).

284. MARTIN D. ABRAVANEL ET AL., NEW MARKETS TAX CREDIT (NMTC) PROGRAM EVALUATION 122 (2013).

285. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-913, GULF OPPORTUNITY ZONE: STATES ARE ALLOCATING FEDERAL TAX INCENTIVES TO FINANCE LOW-INCOME HOUSING & A WIDE RANGE OF PRIVATE FACILITIES X (2008).

286. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.

287. H.R. REP. NO. 111-16, at 582 (2009) (Conf. Rep.).

288. See I.R.C. § 54E (repealed 2017).

289. See I.R.C. § 1400U-1 (repealed 2018).

290. Jed Kolko & David Neumark, *Do Some Enterprise Zones Create Jobs?*, 29 J. POL'Y ANALYSIS & MGMT. 5, 5 (2010).

291. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-464R, REVITALIZATION PROGRAMS: EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES & RENEWAL COMMUNITIES 11 (2010).

More recent studies emphasized positive effects. In 2011, economists found that state and federal programs had “positive, statistically significant impacts on local labor markets in terms of the unemployment rate, the poverty rate, the fraction with wage and salary income, and employment.”²⁹² In 2012, a study of the NMTC found “modest” but “positive effects of subsidized investment in disadvantaged neighborhoods.”²⁹³

In 2013, economists announced that the Federal “EZ designation substantially increased employment in zone neighborhoods and generated wage increases for local workers without corresponding increases in population or the local cost of living.”²⁹⁴ Other experts on the Empowerment Zone countered: “If the goal of policy makers is to induce relocation, it seems that even this modest objective may come at a cost of destroying jobs and establishments in areas that compete with targeted places.”²⁹⁵ The offsetting effect persisted.

In 2014, regional scholars concluded that in the Empowerment Zone, “the tax incentives offered by the program notably enhance the quality of business environment for firms in the area while modestly improving the quality of life for the individuals living in the area.”²⁹⁶ Decades of studies seemed to point to modest effects at best.²⁹⁷

F. Land of OZ

Nevertheless, the current Zone followed the previous versions.²⁹⁸ TC&JA '17 repealed the tax-credit and advance refunding bonds while carving new OZs out of low-income Census tracts.²⁹⁹ If nominated by the Governor and certified by the Treasury Secretary,³⁰⁰ an OZ also may be a tract whose median family income does not exceed 125 percent of that

292. John C. Ham et al., *Government Programs Can Improve Local Labor Markets: Evidence from State Enterprise Zones, Federal Empowerment Zones & Federal Enterprise Community*, 95 J. PUB. ECON. 779, 779 (2011).

293. Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1013 (2012).

294. Matias Busso et al., *Assessing the Incidence & Efficiency of a Prominent Place Based Policy*, 103 AM. ECON. REV. 897, 897 (2013).

295. Andrew Hanson & Shawn Rohlin, *Do Spatially Targeted Redevelopment Programs Spill Over?*, 43 REG'L SCI. & URB. ECON., 86, 99 (2013).

296. C. Lockwood Reynolds & Shawn Rohlin, *Do Location-Based Tax Incentives Improve Quality of Life & Quality of Business Environment?*, 54 J. REG'L SCI. 1, 1 (2014).

297. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-500, NEW MARKETS TAX CREDIT: BETTER CONTROLS & DATA ARE NEEDED TO ENSURE EFFECTIVENESS 24 (2014).

298. See SEAN LOWRY & DONALD J. MARPLES, CONG. RSCH. SERV., R45152, TAX INCENTIVES FOR OPPORTUNITY ZONES: IN BRIEF (2019).

299. See Budget Fiscal Year, 2018, Pub. L. No. 115-97 §§ 13404, 13532, 131 Stat. 2054.

300. See I.R.C. § 1400Z-1(b).

of the contiguous low-income community.³⁰¹ Thus, an OZ need not itself be poverty stricken.

The tax benefits in OZ include the following:³⁰² An exclusion applies to gain on an investment in a qualified opportunity fund (QOF), while a deferral applies to reinvestment.³⁰³ The legislation effectively deems basis to increase the longer an investment remains in the QOF.³⁰⁴ In turn, the QOF is a corporation or partnership that invests in OZ business.³⁰⁵

Already, the Treasury has certified zones. There “are roughly 8,700 opportunity zones throughout the U.S. spanning aging Rust Belt towns, low-income areas of major cities and rural swaths of the West.”³⁰⁶ Like landscapes everywhere, the North American fiscal geography is an artifact of Agricultural and Industrial Revolutions past and present. Over a decade, the estimated value of the provisions is \$1.6 billion in foregone Federal revenue.³⁰⁷

Less than a year after enactment, a journalist editorialized as follows: “Opportunity Zones weren’t created as a way to achieve specific social goals but as a way to lower taxes on real estate ventures and shares of stock that are usually held by the rich.”³⁰⁸ This commentary resonates with that on LIHTC—the first generation of poverty zone tax legislation—now dubiously associated with “slum-lords.”³⁰⁹

Notwithstanding the lack of empirical confirmation, the presentation of business tax cuts as a potential relocation incentive has proven irresistible to legislators over the decades. Through the legislation, Congress has delineated geographic zones of poverty as the beneficiaries of tax redistribution. Economists have observed modest take-up by entrepreneurs.

301. See I.R.C. § 1400Z-1(e).

302. See H.R. REP. NO. 115-466, at 537–38 (2017) (Conf. Rep.).

303. See I.R.C. § 1400Z-2.

304. See H.R. REP. NO. 115-466, *supra* note 302, at 400.

305. See I.R.C. § 1400Z-2(d).

306. Laura Davison, *IRS Unveils Proposed Rules for Tax Law’s Big Capital Gains Break*, BLOOMBERG (Oct. 19, 2018), <https://pbn.com/irs-unveils-proposed-rules-for-tax-laws-big-capital-gains-break-opportunity-zones/> [<https://perma.cc/5UXQ-7E42>]. See also Brett Theodos *et al.* *An Early Assessment of Opportunity Zones for Equitable Development Projects*, URBAN INST. (June 2020), https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report [<https://perma.cc/WX5H-ATAB>]; Patrick Kennedy & Harrison Wheeler, *Neighborhood-level Investment from the U.S. Opportunity Zone Program: Early Evidence*, U.C. BERKELEY (Apr. 12, 2021), https://www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report [<https://perma.cc/56DX-TYQJ>].

307. H.R. REP. NO. 115-466, *supra* note 302, at 688.

308. Alex Daniels, *Will New Tax-Law Policy Help Needy Communities or Luxury Condo Developers?*, CHRON. PHILANTHROPY (Oct. 15, 2018), <https://www.philanthropy.com/article/Opportunity-Zones-Help-for/244790> [<https://perma.cc/G2SH-UXHQ>].

309. Sullivan & Anderson, *supra* note 184.

G. Summary

Inescapably, federal taxation is geographically redistributive. Where a place is economically determinative, federal taxation also may redistribute economically. Paradoxically, the free-market potential may have spurred the proliferation of the legislative intervention in the poverty zone. The welfare state grew to accommodate commercial investors. As codified, taxation is incorporated into the rule of law. Yet questions of equity and efficiency persist. The tax zone legislation deliberately disrupts the horizontal equity between similarly situated taxpayers, incentivizing relocation. The question is whether the resulting effect on vertical equity was worth it. Geographically, the legislation targeted distressed areas but not necessarily the low-income residents. Beyond some incentives to earn income, most of the benefits accrued to outside investors, whose businesses could have the effect of raising rent and the cost of living for poor locals. If this was not the intended result, the legislation was inefficient in allocating benefits.

This is not to mention the complexity and distortion of business choices by the tax incentive. As the legislative premise, tax reduction was the incentive for the entrepreneur to do business in the zone rather than a similarly situated site. Yet exponents of free trade characterize “the invisible hand of free markets” as “the force through which individuals and businesses put economic resources to their greatest value.”³¹⁰ In the enterprise zone as well as elsewhere in fiscal geography, the “tax code . . . gets in the way of free commerce . . .”³¹¹ In sum, the legislative creation of a market may not be free. While there is no return to the state of nature, the land of OZ may not be the home of rationality.

IV. TRAVELERS IN THE LAND OF OZ

Generally, national tax law operates on the local taxpayer. Traditionally, the discipline of public finance assumed a rational actor who, as an enlightened individual, optimized the benefit for the cost. In the case of the zoned incentives, the tax benefit may have been infrequently worth the cost of doing business in the inner city or blighted countryside. In the perception of the entrepreneurial taxpayer who was the subject of the incentives, the cost of doing business in an inhospitable market may have been too high. This Section considers the perspective of the taxpayer whose behavior is not merely economic but also psychological. The question of the take-up rate of tax incentives becomes one of behavioral economics.

310. PRESIDENT’S ADVISORY PANEL ON FED. TAX REFORM, SIMPLE, FAIR & PRO-GROWTH: PROPOSALS TO FIX AMERICA’S TAX SYSTEM, at 8 (2005).

311. *Id.*

Once the taxpayer is characterized as a psychological actor, this Section extends that characterization to the tax collector. Neither are government officials automatons. Instead, they too have a behavioral rationale that in their case may be described as bureaucratic praxis. Assuming the reality of the welfare state where the roles of taxpayer and tax collector are not diametrically opposed, the issue becomes one of coordination. In the case of the zones and other taxes, the legislation may not neatly fit the needs of the targeted taxpayer. As a practical matter, it may fall to the tax collector or other revenue agent to tailor the results. The accommodation of local needs within federal law returns to historic themes in fiscal geography.

A. *The Psychological Taxpayer*

If a zone of opportunity offers tax reduction, will people move there? While a cost-minimizing rational actor would move, the experience detailed above has yielded mixed results. What else drives people? While ancient history began with agricultural subsistence, a more nuanced analysis may help.³¹² First, “the meaning of subsistence cannot be established independent of particular historical and cultural circumstances if . . . definitions of social wants and needs were produced under a given mode of production rather than immutably held down by the Malthusian laws of population.”³¹³ Where even subsistence is an artifact, lower tax may not be enough incentive to move to a bad neighborhood.

Second, people are not rational actors. Especially in industrial society, “[e]conomic man himself has given way to the psychological man of our times—the final product of bourgeois individualism.”³¹⁴ Psychology raises “a more primitive question as to whether individuals actually do behave in the manner postulated, i.e., maximizing the expected utility . . . by considering the probabilistic impact”³¹⁵ Instead, “the individuals are guided . . . by something much simpler, viz., just a desire to record one’s true preferences.”³¹⁶ Individuals in the bourgeois society appear to express themselves rather than their calculated best interest.

312. SARAH BLAFFER HRDY, *MOTHERS & OTHERS: THE EVOLUTIONARY ORIGINS OF MUTUAL UNDERSTANDING* 4–5 (2009) (explaining that, as early as the Pleistocene, anthropologists observe, ecological pressure to survive through cooperation yielded “[r]eflexively altruistic impulses” that turned out to be “better than” the “self-interested” calculus of “rational actors”).

313. DAVID HARVEY, *ECONOMIC GEOGRAPHY* (1974), *reprinted in* POPULATION, RESOURCES & THE IDEOLOGY OF SCIENCE, SPACES OF CAPITAL: TOWARDS A CRITICAL GEOGRAPHY 61 (2001).

314. CHRISTOPHER LASCH, *THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS* xvi (1979).

315. SEN, *supra* note 74, at 195.

316. *Id.* at 259.

In the twenty-first century, commercial consumption has become experiential. “Social media have encouraged younger people to show off their experiences rather than their cars and wardrobes, and hipsterization leads them to distinguish themselves by their tastes in beer, coffee, and music.”³¹⁷ The millennial generation may lead an advance beyond acquisitive accumulation.

At the same time, the marketplace of ideas is flooded. Through the mass media, “[t]ruth has given way to credibility, facts to statements that sound authoritative without conveying any authoritative information.”³¹⁸ According to American historians, “[t]rust in journalism began to weaken during the Vietnam War, when reporters dutifully repeated the government’s lies about the trajectory of the conflict.”³¹⁹ Then journalistic credibility “rebounded during Watergate, but it never returned to its 1950s and 1960s heights, when Walter Cronkite was dubbed the most trusted man in America.”³²⁰ When even the news may be fake, a reader needs to become a consumer advocate.

The reactions have been defensive. In particular, psychologists diagnose “identity-protective cognition, in which people cling to whatever opinion enhances the glory of their tribe and their status within it.”³²¹ Then it becomes critical which “intuition of ‘tribe’ we are born with”³²² Naturally, this instinctive notion “cannot be a nation-state, which is a historical artifact of the 1648 Treaties of Westphalia.”³²³ Nevertheless, people may seek solace in received social identities especially during periods of economic distress and disruption.³²⁴

Defensive reactions may relate to risk aversion. Generally, psychological actors “fight harder to prevent losses than to achieve gains.”³²⁵ Risk aversion may be more motivating than opportunity.

On the other end of the spectrum, money may not be enough. At higher income levels, “there is consumption satiation” when “work is done for reasons barely connected with the income it provides to the

317. PINKER, *supra* note 124, at 135.

318. LASCH, *supra* note 314, at 74.

319. Nicole Hemmer, *Five Myths About Cable News*, WASH. POST (Nov. 9, 2018), https://www.washingtonpost.com/outlook/five-myths/five-myths-about-cable-news/2018/11/09/59e0b088-e3aa-11e8-ab2c-b31dcd53ca6b_story.html [<https://perma.cc/J4EY-JB5Y>] [hereinafter *Five Myths*]; see NICOLE HEMMER, *MESSENGERS OF THE RIGHT: CONSERVATIVE MEDIA & THE TRANSFORMATION OF AMERICAN POLICY* (2016).

320. *Five Myths*, *supra* note 319.

321. PINKER, *supra* note 124, at 379.

322. *Id.* at 450.

323. *Id.*

324. See generally KWAME ANTHONY APPIAH, *THE LIES THAT BIND: RETHINKING IDENTITY* (2018).

325. DANIEL KAHNEMAN, *THINKING: FAST & SLOW* 305 (2011).

‘labourer’.”³²⁶ Those reasons include “self-regard and achievement” for which “money is a proxy” in the case of “the billionaire looking for the extra billion.”³²⁷ This sentiment is captured in a best-selling journalist’s interview of an executive, who explained: “A man wants to get to the top of the corporation . . . how much more money can you make? . . . It’s the power, the status, the prestige.”³²⁸ A land of opportunity may not attract a seeker of prestige locations.

In the tax incentive zones, decades of economic studies reflected modest take-up rates. Evidently, the reduction in tax itself has not been enough to induce the significant establishment of business in the inner city or blighted countryside. That is, the tax reduction may not outweigh the expense or perceived cost of locating in an unattractive area. In this equation, the psychological identity of the taxpayer subject to the incentive cannot be ignored.

B. *The Practical Bureaucrat*

To mirror the economic or rather psychological behavior of taxpayers, consider the behavior of tax collectors.³²⁹ They enforce the rule of law, assuming a modern salaried bureaucracy. In the popular imagination, enforcement has fueled the “mutually hostile views held by tax collectors and taxpayers.”³³⁰ In the case of the IRS, the bureaucracy developed as follows.

In the twentieth century, the theory fit the problem. When the U.S. taxpayer population expanded exponentially, mass production became an inevitable solution to processing the myriad tax returns. Early in this century, the leading socio-legal scholar who visited America from Germany observed that standardization enabled government offices to process a great volume of cases with formal disinterest at the cost of substantive discretion, *viz* “without regard for persons” in a “dehumanized” manner.³³¹ At the time, bureaucracy meant efficient modernization.

Mass production expanded under a model of scientific management.³³² Eponymously, American engineer Frederick Winslow Taylor articulated this, describing an operation that “divided skills into a

326. J. A. Mirrlees, *An Exploration in the Theory of Optimum Income Taxation*, 38 REV. ECON. STUD. 175, 176 (1971).

327. KAHNEMAN, *supra* note 325, at 342.

328. STUDES TERKEL, *WORKING: PEOPLE TALK ABOUT WHAT THEY DO ALL DAY & HOW THEY FEEL ABOUT WHAT THEY DO* 538 (1974).

329. See Eric A. San Juan, *Bureaucratic Praxis*, 83 MISS. L.J. 1, 2 (2014) (Supp.).

330. DAVID BURNHAM, *A LAW UNTO ITSELF: POWER, POLICY AND THE IRS* 42 (1989).

331. MAX WEBER, *Bureaucracy* (1913), in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 215–16 (H.H. Gerth & C. Wright Mills eds. & trans., 1946).

332. TAXPAYER ADVOCATE SERV., 2012 ANNUAL REPORT TO CONGRESS, 206–07 (2012).

sequence of simple procedures to be taught to workers and monitored by management.”³³³ In 1911, Taylor recommended “accurate records . . . of the amount of work done by each man and of his efficiency,” to justify adjustments of “each man’s wages” to be “raised as he improves, [while] those who fail to rise to a certain standard are discharged”³³⁴ In 1925, the Bureau of Internal Revenue established an Efficiency-Record Section for personnel functions as well as training of income tax examiners and technicians.³³⁵ Even today, any particular revenue agent may develop efficiency in one skill or program, but few IRS employees (mostly high-level executives) understand the tax code as a whole. As a result, a treasury functionary may not comprehend how a provision affects the taxpayer’s circumstances. Then critics complained that Taylorism induced a clerk to “‘forget’ or not think about the intellectual content of the text he is reproducing.”³³⁶ Despite the alienation inherent in Taylor’s scientific management, it programmed adherence to the rules.

By the same token, the expanding inventory of tax returns made examination of any one rare. As a practical matter, the tax collectors would have to exercise tolerance. The latter turns out to be an administrative prescription for accepting at face value a taxpayer’s return or claim below a statistical threshold.³³⁷ The result is not lawless but rather a “gapless” effect.³³⁸ Contrary to the crude version of legal realism, administrative law depends not merely on what the official “ate for breakfast.”³³⁹ If their advisors knew what would constitute an acceptable return, coordination between the taxpayers and the tax collector substantiates the rule of law.

If the taxpayer and the tax collector effectively coordinate, the tax bureaucracy may be a locus where the rule of law is realized. Traditionally, social scientists may have focused on courts, but

333. Smithsonian Institute, *Carbons to Computers: A Short History of the Birth & Growth of the American Office*, SMITHSONIAN EDUC., <http://www.smithsonianeducation.org/scitech/carbons/scimgmt.html> [https://perma.cc/9LMU-JF32] (last visited Aug. 1, 2021).

334. FREDERICK W. TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* 23 (1919) (quoting from presentation to American Society of Mechanical Engineers, June 1903).

335. The Efficiency-Record Section later merged into the Personnel Div. See IRS, *HISTORICAL FACT BOOK: A CHRONOLOGY, 1646-1992*, at 99, 109, 114; 1920 Comm’r of Internal Revenue Ann. Rep., at 12–13; 1922 Comm’r of Internal Revenue Ann. Rep., at 11; 1924 Comm’r of Internal Revenue Ann. Rep., at 7.

336. ANTONIO GRAMSCI, *Taylorism & the Mechanization of the Worker*, in *THE GRAMSCI READER: SELECTED WRITINGS, 1916-1935* (David Forgacs ed. 1988). See Robert Kanigel, *Taylor-made*, 37 *SCI. 18* (N.Y. Acad. of Sci. 1997); MICHAEL MACCOBY, *THE LEADERS WE NEED* 22–23 (2007).

337. See Treas. Inspector Gen. Tax Admin. Rep. 2008-30-158 (Sept. 16, 2008) (“IRS Needs to Evaluate Tolerance Levels to Ensure that Program Objectives Are Met”).

338. MAX WEBER, *Economy & Law (Sociology of Law)*, in 2 *ECONOMY AND SOCIETY* 657 (Guenther Roth et al. eds., 1978).

339. DWORKIN, *supra* note 78, at 153.

“institutions of justice” refers not only to “institutions specially assigned the task of resolving disputes, but rather applies to all institutions addressed to provide a remedy.”³⁴⁰ (This is not to mention that “many people prefer to bring their grievances to non-state institutions, including traditional or religious leaders, trade unions, NGOs,”³⁴¹ or the like). As anthropologists have noted, “[t]ax law tells much about the nature of government,” not just about revenue.³⁴²

C. *The Para-Ethnographer*

Just as taxpayers are psychological actors rather than cost-benefit calculators, tax collectors are not mere automatons. On one hand, it would be “low-minded sentimentalism” to assume “that everyone is constantly motivated only by simple self-interest—and nothing else.”³⁴³ On the other hand, it would be “high-minded sentimentalism” to assume that “all human beings (and public servants in particular) try constantly to promote some selfless ‘social good.’”³⁴⁴ Instead, tax collectors and other bureaucrats have their own behavioral praxis.

Assuming the rule of law, bureaucrats act in an official, not personal, capacity. In particular, tax collectors must “treat all members of their community as equals, and the individual’s normal latitude for self-preference is called corruption in their case.”³⁴⁵ Like other officials who make determinations of fact, the tax collector “will develop, in the course of his training and experience, a fairly individualized working conception of law on which he will rely, perhaps unthinkingly, in making these various judgments and decisions, and the judgments will be, for him, a matter of feel or instinct rather than analysis.”³⁴⁶ Official judgment, subject to administrative oversight by inspectors general as well as judicial review by courts, is different from personal preference. As a precursor of government oversight, even “the Inca could take any matter out of the governor’s hands if he chose.”³⁴⁷ An official judgment must be consistent with the position of the government as a whole.

Nevertheless, human judgment has been deemed necessary whenever rules and regulations were not internally consistent. In the United States and other industrial economies, the complexity of the revenue code is

340. Bedner & Vel, *supra* note 120, at 6.

341. *Id.* at 8.

342. MOORE, *supra* note 27, at 2.

343. SEN, *supra* note 74, at 38.

344. *Id.*

345. DWORKIN, *supra* note 78, at 174.

346. *Id.* at 256.

347. MOORE, *supra* note 27, at 113.

legendary.³⁴⁸ The bureaucrat's experience at negotiating bewildering complexity *vis-à-vis* the taxpayer can be ethnographic in nature. This type of experience has been captured by the journalist's now historic interview of a social insurance worker, who said, "After I got to OEO [the Office of Economic Opportunity] it became more and more obvious to me that a lot of these rules were wrong, that rules were not sacrosanct."³⁴⁹ In some cases, the bureaucrat may sympathize with the taxpayer more than with the government.

Anthropologists have captured the self-awareness of the bureaucrat. For an informant like the one interviewed, they have coined the term "para-ethnography."³⁵⁰ The latter describes bureaucratic praxis much as behavioral economics describes taxpayer psychology.

When and where the rule of law has codified the concept of economic opportunity or social rights, bureaucratic judgment becomes more important. If the question is the affirmative obligation of the government rather than merely a check on executive power, "the judiciary alone is not sufficient to protect citizens, which is a logical result of the rise of the welfare state."³⁵¹ Consequently, ombudsmen "have been adopted by many countries."³⁵² In the United States, the Social Security Administration employs approximately 1,500 administrative law judges in 166 hearing offices across the country.³⁵³ By comparison, the IRS stations a Local Taxpayer Advocate in each of the fifty states.³⁵⁴ These quasi-judicial bureaucrats play an intermediary role between the government and taxpayers.

For example, the IRS deploys administrative discretion in various ways. In the context of natural disaster, the IRS instructs its operators to accept at face value a telephone call asserting that the caller is an "affected taxpayer" although not domiciled in the federally declared disaster zone.³⁵⁵ Consequently, the caller avails him- or herself of extensions of time to file returns and pay taxes.³⁵⁶ In routine tax

348. See STAFF OF J. COMM. ON TAX'N, 114TH CONG., COMPLEXITY IN THE FEDERAL TAX SYSTEM (Comm. Print 2015).

349. TERKEL, *supra* note 328, at 345.

350. See DOUGLAS R. HOLMES & GEO. E. MARCUS, FAST CAPITALISM: PARA-ETHNOGRAPHY & THE RISE OF THE SYMBOLIC ANALYST 44 (2006).

351. Bedner, *supra* note 122, at 70.

352. *Id.*

353. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-37, SOCIAL SECURITY DISABILITY: ADDITIONAL MEASURES & EVALUATION NEEDED TO ENHANCE ACCURACY & CONSISTENCY OF HEARINGS DECISIONS 9 (Dec. 2017).

354. See I.R.C. § 7803 (2019).

355. IRM 25.16.1.8.1 (June 26, 2018).

356. See I.R.C. § 7508A (2019).

examinations, receipts or documentation may be required.³⁵⁷ In disaster, IRS protocols recognize the exigency of the circumstances.

More generally, the IRS can waive penalties for failure to timely file returns or pay taxes.³⁵⁸ The grounds would be reasonable cause, based on ordinary business care and prudence, which the IRS has applied to a range of circumstances from illness to ignorance of the law.³⁵⁹ “Death, serious illness, or unavoidable absence of the taxpayer, or a death or serious illness in the taxpayer’s immediate family, may establish reasonable cause for filing, paying, or depositing late[.]”³⁶⁰ Logistically, these facts are natural events in human life. In the case of ignorance, the IRS will consider the taxpayer’s education as well as the objective facts of the case relevant to taxation.³⁶¹ The latter includes: any previous application of the tax to the taxpayer; any previous penalty on the taxpayer; recent changes in the tax forms or law which the taxpayer could not reasonably be expected to know; and the level of complexity of the tax or compliance issue.³⁶² On the other hand, the level of education may characterize an individual as a participant in society and not merely as a taxpayer. As discussed above, social entitlements, such as those to health, education, and welfare, may enable citizens to avail themselves of the rule of law. To the extent that the IRS can grant relief in view of personal characteristics, the bureaucracy may become more humane if more subjective.

In the twenty-first century, proposals emerged for the IRS role in social entitlements. Provisions such as the EITC, first-time home buyer credit, and refundable premium tax credit for low-income patients under the Affordable Care Act highlighted the tax collector’s role in welfare administration.³⁶³ Incidentally, the Health Insurance Marketplace Exchange may be the grandest federal act of market creation in this century.³⁶⁴

Consequently, commentators proposed that the IRS create a new office of Deputy Commissioner for social benefits.³⁶⁵ Although neither the Congress nor the Administration acted on the proposal, it underscored the extent to which tax expenditures had made the revenue agency an all-around fiscal facilitator of both collection and disbursement. Change in bureaucratic behavior would become inevitable.

357. See I.R.C. § 6001 (1982).

358. See I.R.C. § 6651 (2019).

359. See 26 C.F.R. § 301.6651-1(c) (2004).

360. IRM 20.1.1.3.2.2.1 (Nov. 25, 2011).

361. IRM 20.1.1.3.2.2.6. (Nov. 25, 2011).

362. *Id.*

363. See I.R.C. §§ 32, 36, 36B (2010).

364. See I.R.C. § 36B(b)(2)(A).

365. See TAXPAYER ADVOCATE SERV., 1 2010 ANN REP. TO CONG. 23.

If the IRS and other government agencies conduct themselves according to internal rationales, critics may fear the “Deep State.”³⁶⁶ Conspiracy theorists demonize “the government’s massive security apparatus as conducted by the federal defense and intelligence agencies.”³⁶⁷ Other skeptics “see ordinary imperfect human beings and ordinary human institutions, acting too often with greed, fear, and with messy self-interests.”³⁶⁸ Both view the Deep State as “a vast, self-perpetuating bureaucracy whose aim is singular: to exist again tomorrow and the day after, to replicate itself, to be indestructible and nearly impossible to disrupt.”³⁶⁹ It is an important sociological observation that organizations, especially governmental entities, exist independently of their members.³⁷⁰ Nonetheless, government bureaucracies in particular are creatures of law. As exemplified above, reasonable cause is a statutory concept. Consequently, lawmakers can regulate the bureaucracy. Self-perpetuation of the Deep State should not become the legislator’s excuse.

In the tax incentive zones, Congress intended to encourage commerce. Originally, the Empowerment Zones were for local business rather than those that relocated. Yet the face of the tax code allowed the relevant credits and deductions based on the prescribed criteria. In processing the applicable returns, the IRS would not have seen who relocated or not. As a mass data processor, the IRS mechanically allowed the claims that met the requirements. In microcosm, the tax collector was merely a programmed mechanism. Had Congress wished the IRS to apply broader criteria, the legislature could have done so. Of course, that could have led to differing judgments and potential disputes. As it happened, the tax legislation resulted in mechanical application. Whether particular enterprises attracted community enthusiasm, the credits and deductions fell where they did.

D. Summary

The effect of the zone incentives, like other tax legislation, depends on the reaction of the taxpayer. In turn, a taxpayer acts in tandem with a revenue agent. Traditionally, the taxpayer and tax collector were

366. JASON CHAFFETZ, *THE DEEP STATE: HOW AN ARMY OF BUREAUCRATS PROTECTED BARACK OBAMA AND IS WORKING TO DESTROY THE TRUMP AGENDA* 9 (2018).

367. *Id.*

368. *Id.*

369. *Id.*

370. See MICHAEL HERZFELD, *THE SOC. PRODUCTION OF INDIFFERENCE: EXPLORING THE SYMBOLIC ROOTS OF W. BUREAUCRACY* (Bruce Kapferer & John Gledhill eds., 1992); EMILE DURKHEIM, *THE DIV. OF LABOR IN SOCIETY* 329 (George Simpson trans., 1960). Bureaucracies may be creatures of law to the extent that the “legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.” *THE FEDERALIST* No. 48 (James Madison).

conceptualized as an adversarial pair. When a tax provision makes an incentive rather than a liability, it becomes easier to see the revenue agent as a reflective partner of the taxpayer. This characterization more easily extends to other official functionaries in the welfare state. The collectors may see themselves as collaborators who navigate the bureaucracy on behalf of the taxpaying citizen. Both taxpayers and tax collectors are people under economic and legal parameters that condition but do not preempt their decision-making. This calls to mind the symbiosis between taxpayer and tax collector as described by ancient texts.

V. GLOBAL TRANSFORMATION

Geographic redistribution always has been the effect of national tax law. At the same time, economic redistribution has been the practice of civilizations that sought to maintain their productive taxpayer population. The tax zone provisions fit into this history. However, instead of redistributing from rich to poor, much of this legislation seeks to lure capital into poor neighborhoods. The results have been modest at best.

There may be no surprise here. The modest incentive effect of the tax reduction offered in the poverty zones may be no surprise to the extent that the federal income tax never drove business out in the first place. In U.S. history, the so-called urban blight and heartland Rust Belt developed in the context of industrial transformation. While the complete economic history lies beyond the scope of this Article, an overview of the relevant context follows.

In the mid-twentieth century, the Great Migration occurred.³⁷¹ This led a largely African American population from obsolescent agrarian work northward to new manufacturing jobs. Subsequently, the inner city became the site of “‘white flight,’ a process by which white households left central cities to avoid living in racially diverse neighborhoods or jurisdictions.”³⁷² It’s unclear if this flight may have been motivated in part by increasing property tax rates which in America are state rather than federal imposts.³⁷³ Recent econometric research confirms that “whites responded to this black influx by leaving cities” where any “indirect effect on housing prices” accompanying a migration-induced

371. See JAMES R. GROSSMAN, *LAND OF HOPE: CHICAGO, BLACK SOUTHERNERS, AND THE GREAT MIGRATION* 3 (1989).

372. Leah Platt Boustan, *Was Postwar Suburbanization “White Flight”? Evidence from the Black Migration*, 125 Q.J. ECON. 417, 418-19 (2010) [hereinafter Boustan I]. See also LEAH PLATT BOUSTAN, *COMPETITION IN THE PROMISED LAND: BLACK MIGRANTS IN NORTHERN CITIES & LABOR MARKETS* 148 (Princeton Univ. P. 2017) (“white households left central cities to avoid fiscal/political interactions with black arrivals through shared municipal elections and public schools”).

373. Boustan I, *supra* note 372, at 420.

increase in demand was not the “sole cause” of their departure.³⁷⁴ Assuming the pre-existing population was not merely rational optimizers, it may be no surprise that their geographic decision reflected their psychological identity. To the extent that the empirical studies have not applied this reasoning to the tax zone legislation, a topic for future research persists.

A case in point is the Rio Grande Valley. Designated an Empowerment Zone, the formerly agrarian area remains impoverished.³⁷⁵ “When agricultural jobs were plentiful along the border, generations of people came to South Texas for work.”³⁷⁶ Now, “sectors such as agriculture have shrunk.”³⁷⁷ Many *colonia* communities that remain in the “vast, arid region” have “no access to drinkable water.”³⁷⁸ Physical geography may be as much to blame for the barren landscape as any federal income tax burden.

As of the late twentieth century, American industry was in decline. Geographers observed that the “manufacturing sectors of central cities, which have always been more vulnerable to expressions of organized discontent or political regulation, have been reduced to zones of . . . high unemployment.”³⁷⁹ In particular, “cities like Chicago, New York, Los Angeles, and Baltimore have seen their traditional blue-collar manufacturing employment cut in half in the last 20 years” of the past Century.³⁸⁰ If so, it is no wonder that the first Empowerment Zone legislation was a response to the Los Angeles Riots.

As American industry declined, technology proliferated across the Pacific. Specifically, the “rise of China” became “no doubt one of the most important events in world economic history since the Industrial Revolution.”³⁸¹ Like the eighteenth and nineteenth century Great Transformation in the North Atlantic, the current industrialization in Asia would be disruptive on a world-historic scale.³⁸² This is the context in which the U.S. landscape changed.

Similarly, the Rust Belt formed upon the obsolescence of the heavy industry that had dotted the American countryside. Geographers noted that the “dispersal and creation of many new jobs in rural settings has

374. *Id.* at 417.

375. See JORDANA BARTON ET AL., FED. RESERVE BANK OF DALLAS, *LAS COLONIAS IN THE 21ST CENTURY: PROGRESS ALONG THE TEXAS-MEXICO BORDER 2* (2015).

376. *Id.*

377. *Id.* at 10.

378. *Id.* at 1, 3.

379. DAVID HARVEY, *JUSTICE, NATURE & THE GEOGRAPHY OF DIFFERENCE* 337 (1996).

380. *Id.*

381. Wen, *supra* note 134, at ix.

382. See generally KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLICY & ECONOMIC ORIGINS OF OUR TIMES* (1944).

facilitated capitalist control over labor.”³⁸³ Thus, rural and urban facilities had been the location not only of agriculture but also “electronics and other supposedly ultra-modern industries.”³⁸⁴ Those jobs were superseded by world-wide industrialization, especially in Asia. Economists confirm the developing “global middle [class], which mostly consists of Chinese and Indians, has enjoyed massive growth over the past few decades.”³⁸⁵ Social scientists agree “the world’s poor have gotten richer in part at the expense of the American lower middle class.”³⁸⁶ This is not to mention that “Japan’s lost decade and the collapse of the Soviet Union are largely responsible for the slow growth of this cohort.”³⁸⁷ Lower middle-class resentment, caused by economic displacement, can fester in the East as well as in the West. The Rust Belt was a casualty of economic history.

Federal income taxation would not have been the cause of the technological transformation of the world economy. Consequently, it may be no surprise that the tax zone incentives have not lured commerce back to the mines and industrial plants in the hinterland or inner cities. To the extent that the empirical studies have not analyzed the legislation in this light, the topic remains open for future research.

Meanwhile, the geographic intuition of the legislature is undeniable. Since the time of the first lawmakers, the legislature has imposed taxation not merely to collect the revenue for public functions but effectively to redistribute the national wealth. Any flaw in the tax zone concept by exception proves the rule of redistributive taxation over the long course of economic history. The lesson may be that market creation requires an intervention more heroic than narrow tax incentives.

At the dawn of the twenty-first century, the American political economy had reached an equilibrium. The post-World War II bipolarity had subsided, yet the United States remained a superpower. At that point, the reigning consensus between the major electoral parties was such that third-party candidates could describe themselves as “Demicans” versus “Republocrats.”³⁸⁸ Among other world-historical events, the Sinocentric industrial revolution emerged. Lately, the U.S. presidential election featured perhaps the most notorious socialist candidate since Eugene

383. MICHAEL KEITH & STEVE PILE, PLACE AND THE POLITICS OF IDENTITY 43 (1993).

384. *Id.*

385. Homi Kharas & Brina Seidel, *What’s Happening to the World Income Distribution? The Elephant Chart Revisited* 15 (Brookings Inst. Global Econ. & Dev. Program, Working Paper No. 114, 2018).

386. PINKER, *supra* note 124, at 113.

387. Kharas & Seidel, *supra* note 385.

388. A prominent supporter of the 3rd-party candidate said, “I am going to vote for Ralph” Nader, who “will draw votes from Bush as well as Gore . . . both Republocrats and Demicans.” ROB ROSENTHAL & SAM ROSENTHAL, PETE SEEGER: IN HIS OWN WORDS (2015); *see supra* note 10 and accompanying text.

Debs as well as a victor associated with white nationalism.³⁸⁹ In the end, the electorate had stark ideological choices (both voiced by white, patriarchal authority figures).³⁹⁰

Meanwhile, the Rust Belt and urban blight had become economic casualties. Then the disruption would afford political opportunities for previously marginalized interests across the spectrum.³⁹¹ To the extent that disruption of entrenched power itself opens opportunity, the future had begun.

VI. CONCLUSION

This Article has described the OZ provision as the latest in a series of tax zone incentives enacted over the past few decades. To evaluate the effectiveness of these bills, this Article reviewed the relevant economic literature. Moreover, the theory underlying the legislation is understandable in the context of the historical and philosophical foundation in local and national taxation, or fiscal geography. Thus, tax zones represent a nexus of law and social science.

Taxation begins with the taxpayer, wherever he or she lives. There the taxpayer produces revenue on the farm, in the shop, or elsewhere. When production generates a surplus over subsistence, taxpayers build civilizations. These complex states require coordination by law and economic distribution throughout the society. Fundamental questions of justice arise.

Historically, solutions followed. The maintenance of the parochial population was a natural exigency, and national taxation was geographically and economically redistributive. Anthropologists observed that the “interlocking of local and national interests has a contemporary (one might even say a universal) flavor of competition for resources and power.”³⁹² Since geography may determine where there is a feast or a famine, the national fiscal function could equalize life chances.

Currently, the tax incentive zones reflect the long-standing propositions. Where a population forms a pocket of poverty, lawmakers

389. James Hohmann, *Bernie Sanders Has a Eugene V. Debs Problem*, WASH. POST (Jan. 22, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/01/22/the-daily-202-bernie-sanders-has-a-eugene-v-debs-problem/> [<https://perma.cc/X3AR-VF2G>]; Jonathan Allen, *In the Dark Corners of White Nationalism, the Talk is of Trump*, NBC NEWS (Oct. 30, 2018), <https://www.nbcnews.com/politics/politics-news/dark-corners-white-nationalism-talk-trump-n926221> [<https://perma.cc/U2ZW-E34N>].

390. See Dana Milbank, *Bernie is the Left's Version of Trump*, WASH. POST (Apr. 3, 2019), https://www.washingtonpost.com/opinions/bernie-sanders-has-emerged-as-the-donald-trump-of-the-left/2019/04/02/66a516f4-5576-11e9-8ef3-fbd41a2ce4d5_story.html [<https://perma.cc/YM C8-CEJH>].

391. See ROBERTO UNGER, SOCIAL THEORY: ITS SITUATION AND ITS TASK 70 (2004).

392. MOORE, *supra* note 27, at 72.

may be inclined toward relief of economic distress. Federal tax legislation may be a suitable vehicle for geographic redistribution. At the same time, the legislators may wish to create markets for commercial production. Thus, the Empowerment Zones were supposed to incentivize local entrepreneurs. Responding to acts in the nature of war and disaster, the Liberty and GO Zones were for reconstruction in rich and poor cities, respectively. In the Great Recession, the Recovery Zone was for areas of unemployment. Now the OZ is for equity investment in poverty zones. Over decades of experience, the economic effect of the various tax incentives has proven modest at best.

The effect of the tax incentive zones fits into a larger analytic context. At a microeconomic level, incentives apply to rational actors. Yet the taxpayer to whom the zone offered the incentive may have behaved psychologically rather than rationally. Among the psychological factors would have been the perception of the inner city or “blighted” countryside. At this point, the role of the tax collector was to allow the applicable credits or deductions mechanically. It remained with Congress to authorize proactive welfare or business administration.

As a matter of fiscal geography, taxation is not merely the measurement of the codified ability to pay. The preparation of returns and collection of revenue are the government’s center of gravity. The counterposed behavior of taxpayers and officials is an essential encounter in the state’s expansion or contraction. Taxation needs to balance between psychological and cultural as well as economic and legal norms.

At a macroeconomic level, global transformation has occurred. By the twenty-first century, American industrial growth was on the decline relative to that in China. Although focused federal income tax reduction could shift some economic distress among the 50 states, the zone provisions may be no match for world-historic forces. In the ongoing trans-Pacific industrial revolution, socioeconomic disruption is certain. The question remains which measures the countries may adopt to ensure the life chances of their inhabitants.