

**THE WESTERN, RURAL RUSTBELT:
LEARNING FROM LOCAL FISCAL CRISIS IN OREGON**

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 A. The Problem

to be a painful liability for individuals and communities both.¹² Rural manufacturing jobs have been “especially vulnerable” to the automation of human labor and international competition.¹³ In Oregon, restructuring of the wood products industry in the early

meant lower revenue-sharing payments to Oregon counties, so in the 1990s, the federal government began to give direct subsidies to the timber counties that were unconnected with harvest receipts. Most of this money came through a nationwide program to support declining rural areas, but it has disproportionately supported Oregon counties.¹⁹ Over the past decade, with political pressure turning against earmarks,

Oregon's timber counties, the rich, forested landscape of "[t]owering mountains, deep canyons, rugged rims, plateaus, and rolling hills"²⁴ offered up thousands more acres of ancient trees held outside the reach of private or state hands. In these expansively large counties—most of which cover enormous land areas of 1,600 square miles (nearly the size of Delaware) to 6,100 square miles (nearly the size of Hawaii)—federal agencies own and manage from 11% to 62% of the land.²⁵ The federal government does not pay property taxes on its forest property (nor does any landowner in Oregon with property in pure "forest use"), but it does provide "payments in lieu of taxes" to cover whatever minimal local services the forests might require.²⁶ Far more significant than these payments, however, is the system of federal-local revenue-sharing described below.

The origin of federal land ownership in Oregon is salient once again, given the recent resurfacing of opposition to federal land ownership in the West.²⁷ The basic history of the "O&C Lands" (which make up most of the federal forest land in hard-hit timber counties) is that the federal government granted 3.7 million acres of public land to western railroad companies in 1866 in order to build an Oregon-to-California rail line and distribute acreage to "bona fide and actual settlers."²⁸ Over the ensuing decades, the railroad companies failed to distribute the land as agreed and tangled much of the acreage in a spectacular array of land fraud scandals, leading to a public outcry in Oregon led by a "'land hungry,' anti-monopoly" public and timber companies eager to obtain logging rights.²⁹ The Supreme Court determined that the railroad had violated the terms of its land grant, and Congress revoked 2.9 million acres of the original grant—

24. Gaid, *supra* note 9, at 33.

25. See 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 21, 26, 31, 36, 41, 46, 51. Only Polk County is smaller than this range at 745 square miles. See *id.* at 56.

26. See 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 14. These formal PILT payments make up a smaller share of local funds. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 10.

27. See, e.g., Peter Weber, *The contentious policy at the heart of Cliven Bundy's armed standoff with the government*, THE WEEK (Apr. 14, 2014), <http://theweek.com/article/index/259918/the-contentious-policy-at-the-heart-of-cliven-bundys-armed-standoff-with-the-government>.

28. See Michael C. Blumm & Tim Wigington, *The Oregon & California Railroad Grant*

for which the railroad company was compensated.³⁰

In 1937, federal agencies began sharing at least 50% of their net revenues from logging operations and contracts for timber harvests on their land with Oregon counties and local school districts.³¹ Until 1980, a bonanza of logging on federal land proceeded with few limits in sight,³² and the boom brought substantial timber harvest receipts into county coffers.³³ In the 1980s and 1990s, timber harvest receipts on federal lands declined, and this revenue stream slowed accordingly.³⁴ Even as the percentage of timber sale revenues shared with counties had remained the same, the absolute decline in sales meant falling federal funding for local governments.³⁵ Some of these revenue declines were attributable to the rise of environmental conservation movements and the growing awareness of the rarity, complexity, scientific significance, and, yes, beauty of the old growth forest ecosystems of the Pacific Northwest. Scientists in the 1980s began to discover that such forests constituted “a vital ecosystem teeming with diverse species,”³⁶ and environmentalists moved to protect the remaining old growth on federal land from the over-logging that had stripped state and private old growth holdings and replanted them with farm tree monocultures.³⁷ In 1990, the Northern Spotted Owl was listed as a threatened species under the Endangered Species Act, which curtailed logging in the birds’ southwestern Oregon habitats.³⁸ The Northwest Forest Plan attempted a treaty in the war over the forests, but it has been challenged again and again in

30. *Id.* at 18–21.

31. *See id.* at 21 (describing the history of timber receipt revenue-sharing on O&C lands); Bruce Sorte et al., *Economic Impacts on Oregon Counties of the Termination of the Secure Rural Schools and Community Self Determination Act (P.L. 106 393)* 3 (Or. State Univ. Rural Studies Program, Working Paper No. RSP 0805, 2008) (noting that the Timber Counties “have depended on shared revenues from Federal forest lands for significant portions of their county government revenues”).

32. *Id.* at 18–21.

33. *See* Rice, *supra* note 16 (“The management paradigm of the day was to log it all.”).

34. *See* Sorte et al., *supra* note 31, at 3.

35. For a more extensive background on the slow demise of shared Federal forest payments, see Gaid, *supra* note 19, at 14.

36. Rice, *supra* note 16.

37. *Id.* (describing that by World War II, most old growth on private land had been logged, and describing clear-cut logging practices on state and private property) (“[The land is] managed more like plantations than forests: Almost everything is mowed down and sprayed with herbicide so that only reidt(pr)-1(r)13o.mhr)13.1)0.007 Tc 0 Tw -8.267 1.169 Td(37.)Tj08005 T2.84 8.52 177.599 197.041256m[

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cut and processed big trees—and no one can deny the anxiety and hardship of that experience the day it comes—logging today does not fuel as many families' livelihoods as it used to.

Falling timber receipts alone might not be so worrisome if not accompanied by larger, national trends of falling local government revenues. The Great Recession has been extremely bad for local government budgets around the country. It caused income tax receipts and other federal and state revenues to fall, and those governments accordingly reduced aid to local governments.

thirty-three Oregon counties totaled \$230.2 million, with another \$35.8 million for county schools.⁵² In 2012, this reauthorization and its payments terminated,⁵³ only to rise again, phoenix-like, in October 2013 under a one-year reauthorization of the SRS Act.⁵⁴ When and if these heightened subsidies end without Congressional reauthorization, counties would continue to receive their historic percentage of federal timber receipts, but that figure is estimated to be 10% of what they are receiving under the supplemental subsidy program.⁵⁵ The loss of federal subsidies currently directed at timber county schools will be spread across the state rather than the timber counties alone, due to school funding equalization formula that will spread those losses on a per capita basis.⁵⁶

Cutting the timber counties off “the federal dole” without releasing federal land to a new logging boom (for however long it could last) has been devastating to local budgets.⁵⁷ The counties have overwhelmingly relied on these subsidies to pay for basic services—in recent years, federal funds accounted for an average of 53% of the general fund revenues collected in Curry County, and 4% to 24% of the general fund revenues collected in the other seven hardest hit timber counties.⁵⁸ Before federal funding started falling, Douglas County generated only \$224 per capita in locally generated revenues, compared with \$320 per capita in federal timber subsidies.⁵⁹

Availability of these funds has meant that voters have been able to secure basic services with much lower rates of taxation than in other counties in the state.⁶⁰ In particular, the distressed counties of

52. See 2009 GOVERNOR’S TASK FORCE REPORT, *supra* note 9, at 16.

53. Bruce Weber et al., *Economic Impacts on Oregon of the Termination of the SRS Act*, 14 *J. Rural Stud.* 852 (2007), at 2–3 (Or. State Univ. Rural Studies

Program, Working Paper No. RSP 1101, 2011).

54. *Seureal Schools*, U.S. FOREST SERV. (Nov. 25, 2013), http://www.fs.usda.gov/forestmanagement/forests/seureal_schools/faqs. See also Helium Stewardship Act 3.5

2013, Pub. L. No. 113-40, §10(a), 127 Stat. 534. (The Helium Stewardship Act is obviously not the only law that affects timber counties’ revenues.)

55.

See 2009 GOVERNOR’S TASK FORCE REPORT, *supra* note 9, at 16.

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Josephine, Curry, Coos, and Douglas have the four lowest property tax rates (and thus the four lowest rates of locally generated revenue per capita) in the state of Oregon.⁶¹ Four other counties in distress (including Lane, Polk, Klamath, and Jackson Counties) are not far behind—their tax rates and per capita local revenues are all less than one-fourth of the per capita local revenues in the Oregon counties with the highest tax rates.

⁶¹ 2014] cL c s 4nl..EV c26C8(I)-19.4(EWs 4nl.) 2.es.INC7-6aIA c s 4nl..ONDa.17J3(I)7J4(T)ION s 4nl..EV c9(6(I)-19

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that would have funded only public safety, including the sheriff's office, the district attorney, and the juvenile department.⁹⁶ Campaigns warned voters that if they rejected the public-safety levy, the current revenues of \$1.3 million from property taxes were likely insufficient to cover "just the cost of running its jail," even if the county also eliminated "*every service it provides from its general fund budget over the next two years*—juvenile, patrol deputies, 9-1-1, the DA, commissioners, the treasurer's office, the county clerk and so on."⁹⁷ Commissioners later proposed a small sales tax on goods and meals.⁹⁸ The tax came close to passing, because even the most conservative voters "like[d] the idea of tourists helping pay for services."⁹⁹ But it too failed.

Maybe the expectancy of extensions on the federal funds was just too hard-wired. "Always in the past people felt the federal government would come through," Curry County Commission Chairman David Itzen said, but "the federal cavalry is not coming[.] In fact it's so far away, you can't hear the bugle."¹⁰⁰

proposed a system of financial control boards to govern county budgets in cases of insolvency.¹¹⁰ No such boards have been created to date, but by 2013, the Oregon legislature was “preparing for the worst.”¹¹¹ An “unprecedented number of bills” established the terms for counties to announce a “fiscal emergency” that would trigger state provision of critical services, including elections, tax collection, and public safety.”¹¹²

According to one reporter, “[m]unicipal bankruptcy was unthinkable just a few years ago.”¹¹³ That is clearly no longer the case. Legislators have floated bills that would allow municipalities to file for Chapter 9 bankruptcy,¹¹⁴ and some commentators have been endorsing this reform.¹¹⁵ (Oregon currently only permits “irrigation or drainage” districts to file for Chapter 9 bankruptcy).¹¹⁶ In 2008, Governor Kulongoski had proposed financial control boards as an alternative to bankruptcy.¹¹⁷ In 2011, legislative lawyers confirmed that municipal bankruptcy was not an option, but offered county mergers as an alternative.¹¹⁸ By 2013, however, the loss of shared

110. Bolt, *supra* note 91.

111. Yuxing Zheng, *Oregon Lawmakers Prepare for Worst-Case Scenarios in Near-Broke Timber Counties*, OREGONIAN, Feb. 27, 2013, http://www.oregonlive.com/politics/in dex.ssf/2013/02/oregon_lawmakers_prepare_for_w.html.

112. *Id.*

113. Tracy Loew, *Recession Ravaged Local Counties*, STATESMAN JOURNAL (Salem, Or.), June 23, 2013, at A1, *available at* <http://www.freewsp.com/news/article/a/430558/Financial/recession-ravaged-local-counties>.

114. *Id.*; Zheng, *supra* note 111.

115. Sarah Filcher, *Filin' 9 to 5: Municipal Bankruptcy and Oregon*, OR. DEBTOR-CREDITOR NEWSLETTER (Or. State Bar, Tigard, Or.), Winter 2013, at 2, 5 (on file with the Oregon State Bar Association) (“As th-14f(e) wo-13.1(r)d10.2().7(e)_fs2().e Bankrupt7(ac)-13.2().6(n’)-10..6(c)-13on2(at)-10.2(i)-1

federal subsidies posed such grave shortfalls in some counties that lawmakers introduced, but failed to pass, legislation permitting general purpose local governments like counties to file for bankruptcy or receive state assistance to carry out basic functions.¹¹⁹

III. LESSONS FOR (AND FROM) OREGON

On a Saturday morning in August of 2012, a terrified woman in Josephine County called 911 to report a violent ex-boyfriend trying to break into her home.¹²⁰ Budget cuts meant that the local sheriff's department did not have anyone on duty on weekends, and the dispatcher had no state police available to send. The powerless 911 operator stayed on the phone for ten minutes trying to coach the woman—to hide, to ask the man to go away—until the assailant finally broke into her home where he raped and choked her.¹²¹ The county sheriff issued an official press release warning victims of domestic violence to “consider relocating to an area with adequate law enforcement services”—an option that, a local domestic violence counselor reported, is both unavailable and dangerous for many victims.¹²²

As an observer of the state of local public services in fiscally troubled cities and counties, I find that incident both tragic and tragically unsurprising. Across the post-industrial Midwest Northeast, and West towns and cities have slashed services so deeply

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In 2010, the executive director of the Association of Oregon Counties suggested that fiscally stressed counties “simply ratchet back services to the point the budget is balanced.”¹²⁵ With no good alternatives, counties are following that plan. Josephine County, for instance, cut its budget by 10% between fiscal years 2012–13 and 2013–14, and over the last decade Josephine County has cut deeply into its reserves while nonetheless having to cut 400 positions from its staff (including sixty-two from the sheriff’s department). The county’s budget message described a pattern of outsourcing some services to non-profits, even at the risk of higher costs later on, while “other programs were drastically cut to minimum levels of service.”¹²⁶ One could easily take issue with this characterization: a county with mass release from its jail due to staffing cuts and weekly hours of non-operation at the sheriff’s

services that would be morally and politically tolerable. For instance, in 2009 the state established an unusual fiscal intervention process for distressed counties. Rather than making debt levels, structural deficits, and other fiscal factors

county.”¹³⁵

The law thus requires assessment of what those critical services are, and how much the county needs to take in and spend in order to meet minimum services. One state government report took on that task, attempting to calculate the minimum amount of per capita funding necessary to run a county’s most basic services. It used numbers based on a county hosting only a skeleton crew of sheriffs and no library system.¹³⁶ The report disclaimed: “These are not measures of adequacy; they are indicators of survival at best.”¹³⁷

Another widely discussed option in Oregon is for the state to take over service provisions directly—paying for it from state coffers by performing services directly with state employees. For instance, proposed state legislation has called for property tax assessment and collection to be performed by the state Department of Revenue, local elections to be administered by the Secretary of State, and county veterans’ services to be run by the Department of Veterans’ Affairs.¹³⁸ In addition, proposed bills would allow the governor to declare a “public safety fiscal emergency” in consultation with local officials and enact an intergovernmental agreement between the state and the county to share responsibility for providing and funding law enforcement in the county.¹³⁹ Community corrections services have also been turned back to the state in Douglas and Linn counties.¹⁴⁰ The determination of which services require backup provision by the state (a list limited to elections, taxes, veterans’ services, and public safety) represents a thin vision of local government. That list lacks commitments to many other services considered core functions of county government, such as ameliorating the effects of poverty, supporting local libraries or youth services, and investing in infrastructure.

If the state assumes these responsibilities, it is functionally enacting an “in-kind” bailout of the distressed local government. Such a decision expresses a state commitment to certain minimum services, but it comes with a cost to local autonomy. When the state

135. *See id.* § 203.095(7); *id.* § 203.100(10).

136. 2009 Governor’s Task Force Final Report, *supra* note 9, at 33.

137. *Id.*

138. *See* ASSOCIATION OF OREGON COUNTIES, COUNTY FISCAL DISTRESS: RECOMMENDATIONS, LEGISLATION, AND BILLS 3 (2013), <http://www.aocweb.org/aoc/Portals/0/Todd's%20Dummy%20Page/Co%20%20fiscal%20distress%20bills%207-13.pdf>.

139. *See id.*

140. Sickinger, *supra* note 77.

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spending.¹⁴¹ Could this model be turned on its head to control and counterbalance the rate of local government *shrinkage*? A state could determine, for example, that if a county government's staffing levels or total budget has fallen below a critical per capita threshold and it is nonetheless facing additional cuts of more than, say, 3% in the coming fiscal year, the county property tax rate will automatically float to the level of the statewide average until the minimum level of per capita service levels is restored.¹⁴² If carefully drafted in per capita terms based on minimal rather than optimal service levels, such a measure would not incentivize overspending or disincentivize

A more advisable but surely even less popular approach would be to amend Measure 5, Measure 50, or both to include greater flexibility for local governments—something that, given the unpopularity of recent local budget cuts, might be more viable today than ten years ago, when local governments were flush with federal subsidies. As described in Part II.A., these two property tax controls in the Oregon state constitution create a permanent tax rate derived from county property tax levels set in 1997.¹⁴⁴ Unfortunately, however, the permanent tax rates were fixed at a time when the timber counties enjoyed the external cushion provided by federal subsidies. While repeals to Measures 5 and 50 may be infeasible in Oregon, a more modest reform might amend them to permit larger single year property tax rate hikes, pending local approval, in the face of a “public services emergency,” defined by triggering conditions like those contained in Oregon’s state fiscal intervention law.¹⁴⁵ An alternative amendment model would suspend electoral supermajorities required for tax approval in favor of simple majorities when services fall below a minimally adequate level.

Of course, any talk of infusing the timber counties with funds generated from statewide taxpayers raises difficult issues of redistribution from taxpayers (primarily those in the Portland Metro area) who bear higher rates of property taxes towards regions with the lowest property tax rates in the state. Direct subsidies from the federal government enabled this gap between property tax rates to diverge without plummeting levels of local services in the low-tax counties. When those subsidies end, it is of course understandable that taxpayers in high-tax counties would balk at taking the federal government’s place with a new source of subsidies. It makes sense that an area must support a degree of tax effort comparable to at least the statewide average—given that property taxation is progressive, it is not unreasonable to expect comparable rates of taxation in any timber counties receiving special funds redistributed from statewide or national taxpayers.

To deal with these issues of equity, Oregon lawmakers are wisely experimenting with temporary, timed bailouts, after which further state funding would require local voter authorization of increased local tax rates or specific levies to support necessary services like law enforcement. If voters continue to reject new taxes,

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the state will find itself in the same game of chicken facing the federal government: Who will yield first and consent to producing new revenues to be spent on timber county services? Will it be the central government trying to protect public safety for political minorities outvoted in their support of local government? Or will the requisite local majorities authorize new reve

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any of the timber counties peel away their county government entirely, reverting to the status of “unincorporated territory” directly under state jurisdiction?

public and private, and the region is used for both recreation as well as limited commercial timber production.¹⁵⁴ The areas are overwhelmingly undeveloped, but not purely so: Approximately 9,000 people live there and larger numbers of seasonal residents come and go.¹⁵⁵

Though the unorganized territories of Maine lie within a county's boundaries for purposes of taxes and some services, they are not governed by their county and do not have a municipal government. The Maine Legislature serves as their "local" governing body.¹⁵⁶ This means that the state determines land use regulations applied to the unorganized territories as a whole, and the state purchases services, including schools, from the county.¹⁵⁷ The statewide-land use commission for Maine's unorganized area is specifically charged with balancing ecological and human values. On the one hand, they must support the state's "natural resource-based economy," "encourage appropriate residential, recreational, commercial and industrial land uses," and "honor the rights and participation of residents and property owners" in the territory.¹⁵⁸ On the other hand, the body is expressly charged with environmental protection goals, including to "prevent the despoliation, pollution and detrimental uses of the water in these areas," to "conserve ecological and natural values," and to "recognize[e] the unique value of these lands and waters to the State."¹⁵⁹ Land use in the territory may not

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including education and forest fire protection, payments to the county

symbolic: The forests and open lands of Oregon, whether in the more populated southeastern area or the east, require their share of supervision. Complete depopulation creates its own hazards, such as the use of public land for criminal activities like drug production and smuggling, or the early stages of a wildfire that goes unnoticed. Federal rangers and staff are officially charged with oversight of federal lands, but their work is made more effective by the rural equivalent of “eyes on the street.” Even beyond these gains, perhaps there is existence value to rural living, just as there is existence value to the forest ecosystems themselves—humankind made spiritually and morally more whole through the existence of households *and* environments beyond the hustle bustle of urban materialism. Perhaps we are made more whole not only by preserving ecological diversity, but also by preserving knowledge—everything from animal husbandry to the DIY of home goods to survivalism.

Similar values are alive in the preservation of historic cities as well. Detroit, for instance, is the symbolic birthplace of the American middle class, in addition to embodying a significant chapter of American industrial, political, and military history. To let Detroit depopulate and decline is to erode an important heritage for current and future generations: our accountability to the values of livable wage jobs, upward mobility, and American ingenuity it once stood for. Whether a struggling place is a historic capital of American industry or a rural area, we have a moral imperative to protect that place and its people from the slow ravages of abandonment and disintegration.

C. Distinguishing political will from fiscal incapacity

Because the fiscal problems in the timber counties are due to political will (i.e., strategic behavior to avoid self-taxation and summon external subsidization) as well as fiscal incapacity (i.e., local poverty and economic decline), neither a pure bailout nor pure local taxation response would be appropriate. Nor is it wise to rely only on spending cuts, rather than new local taxes, for struggling communities facing long-term economic decline.

One could tell two opposing narratives of fiscal crisis in the timber counties. On the one hand, the fiscal struggle is self-imposed: voters and their representatives have decided not to approve the property taxes necessary to sustain rudimentary government services, because they are waiting for state or federal taxpayers to bail them

out. The rolling over and reauthorization of federal payments has created something of “a cry-wolf scenario, where voters refuse to make up the gap until it’s certain the government money has dried up.”¹⁷³ Viewing the timber counties’ fiscal problems in this way ascribes the crisis to anti-tax, anti-government politics tinged with the hypocrisy of dependence on the federal government. Consistent with this story is the reality that it would be the heavily taxed counties around Portland—“blue” voters—who would be sending their dollars to bail out “red” voters in rural areas with dramatically lower tax rates.¹⁷⁴

An opposing narrative, however, could easily read the crisis in timber country as a story of rural poverty. Whatever their politics, the timber counties do suffer from high rates of poverty and unemployment alongside low education levels, as discussed in Part II. The timber counties are less prosperous than the Portland area counties, and their trajectory of economic decline and restructuring may make new taxes as unwise as they are unpalatable. Although property taxes are progressive (in other words, they would not hit lower value properties as much as higher value ones) the high rates of homeownership and the aging population in the timber counties, alongside the high rates of poverty, indicate that any new generally applicable property taxes could create new hardships for fixed income and struggling households.

There is truth in both of these narratives, making the timber counties’ fiscal stress the blended result of political will and fiscal

counties. The municipal bankruptcy literature has pushed lawmakers to be more mindful about the basic principle that bailouts are most appropriate when the underlying entity suffers from a lack of political will, rather than fiscal incapacity.¹⁷⁶ A problem of political will exists when voters or politicians behave strategically with the hope of state or federal rescue measures (whether bailout money or debt relief through bankruptcy)—for instance, where a local government overspends on discretionary projects (creating a spending problem) or defeats new taxes (creating a revenue problem) because it expects subsequent relief from the state capital. Fiscal incapacity, by contrast, captures the idea that some voters cannot bear new taxes without economic hardship, but in theo2ddld[(Tceme ulnxes wm(Tca)]Ttpm005 Tc d[(cTc 0.n2(at soSre

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problems, but a population that refuses to exert new tax effort within the limits of its fiscal capacity is a much less sympathetic candidate for funds than a population whose distress is caused primarily by a long-term slide into poverty.

Where an area's problems are socioeconomic and structural, state interventions must address those issues in order to be useful. Bailouts are easier than economic development or legal reforms, but they provide only a temporary solution infected with bitter politics. Even where there seems to be some kind of "easy" solution that is blocked by political majorities at the state or federal level (i.e., in

On one hand, efforts like these can be constructive and positive, drawing residents' time toward their community, supporting and building relationships, and supplementing weakness in the public sector. For these reasons, scholars and advocates have argued for an increased role for the voluntary sector in law enforcement and other local government fields, and they have directed renewed attention at historic systems for providing law enforcement, investigation, and even prosecution services outside the realm of the state. "The kind of policing we have today," one scholar has argued, "is not the only inevitable form for urban, industrialized societies. . . . [T]he boundary between state and civil society in this area should not be taken as fixed and determined, now or historically."¹⁹² Voluntary alternatives, this argument asserts, can supplement state action in whole or in part.

Looking back to English models from the eighteenth and nineteenth century, prior to the advent of the modern police, these scholars have described private systems of investigation (advertisements and rewards for evidence and information), policing (private local patrols and watches), and prosecution (opt-in, mutual assurance associations in which members' dues payments funded investigation and prosecution).¹⁹³ Under these English models, "enhanced private provision" supplemented enforcement, in contrast to American vigilante systems during this period, which "typically performed the entire function of the law—including trial, sentence, and punishment as well as detection, arrest, and prosecution."¹⁹⁴ The American system was thus fully privatized, and "the entire lawmaking system of the state was absent."¹⁹⁵

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volutnary policing in his community:

. . . people are getting more and more angry. Some people are taking the law into their own hands, which obviously scares the heck out of me. . . . I just hope that [volunteer law enforcement groups] don't make a mistake. I admire them for stepping up to the plate. . . . People need to band together, now more than ever, to protect each other.¹⁹⁶

George Zimmerman's shooting of unarmed Trayvon Martin in Florida provided a tragic reminder of these risks—and the incident is on the minds of volunteers in Oregon.¹⁹⁷ Residents may also come to expect more from these systems than they can realistically deliver, thus leading voters to refuse tax levies that support critical hiring and equipment for public personnel.¹⁹⁸

As a historical matter, the vigilantism of early American contexts should not be romanticized, given that most vigilante efforts “sooner or later crossed ‘the fine line between filling a vacuum of authority and outright terrorism.’”¹⁹⁹ Even proponent's historical accounts of these systems note downsides to private policing, including: a sense of unfairness due to free riders who did not opt into paying dues or volunteering, displacement of crime to areas not covered by private patrols, and a lack of uniformity or consistency in coverage.²⁰⁰

Actions and advocacy moving to supplement, if not supplant, the local public police should renew our interest in the roots of modern American policing and the

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caricatured.²⁰¹ The public police was founded in response to, among other concerns, the ideal among urban Americans that “‘freedom from crime and disorder is a right, not just a privilege of the privileged.’”²⁰² Private police systems layered onto a thin public sector raised significant concerns not only regarding the fairness of policing coverage, but about the adequacy and efficacy of an uneven quilt of private protection. As they argued for professional, public police forces in early nineteenth century London, British leaders like Robert Peel “‘appropriate[ed] and transform[ed] the idea of liberty—in ‘teach[ing] people,’ in Peel’s words, ‘that liberty does not consist in having your house robbed by organised gangs of thieves, and in leaving the principal streets of London in the nightly possession of drunken women and vagabonds.’”²⁰³

Interestingly, these nineteenth century public policing systems served only urban areas—“outside city limits there thus was virtually no public police protection.”²⁰⁴ Nineteenth century English rural estates had gamekeepers to protect their property, early American railroads and industrial operations hired “company police” to protect their property, and others presumably fended for themselves.²⁰⁵ Today, after an intervening century that blurred the lines between urban and rural, it’s not at all clear that the small, unincorporated town of O’Brien, Oregon (population of 600 people) doesn’t need some presence of public police as much as a neighborhood in a small town like Grants Pass, Oregon (population of about 35,000 people).

Our modern system of public law enforcement reflects not only the idea that public police may be preferable to private police, but that policing itself is among the most precious and core functions of government. Protecting property, keeping the peace, and enforcing law “are often considered the clearest examples of functions that are essentially and necessarily public, and therefore essentially and necessarily the job of government.”²⁰⁶ Even for libertarian and conservative theorists, modern American government rests on the

201. For one seminal work exploring this issue with care and depth, see Sklansky, *supra* note 199.

202. *Id.* at 1210 (quoting ERIC MONKKONEN, POLICE IN URBAN AMERICA, 1860–1920, 111 (1981)).

203. *Id.* at 1203 (quoting T.A. CRITCHLEY, A HISTORY OF POLICE IN ENGLAND AND WALES 900–1966, 54 (1967)).

204. *Id.* at 1211.

205. *Id.* at 1201, 1211.

206. *Id.* at 1188.

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attract alternative service providers, and to attract residents and business through their profile of taxes/services.²¹⁴ Rural and central city urban areas are thus both disadvantaged in a policy environment that favors decentralization and interlocal competition.²¹⁵ As Mildred Warner, one of the foremost national experts on local government privatization has written:

expansion of drug production and dealing.²¹⁹ One resident recounted a dealer “hawk[ing] meth and heroin along the town’s commercial strip like they were Thin Mints and Samoas,” and another one mused: “It’s the Wild, Wild West out there.”²²⁰ The county has been unable to keep up with rising crime. After layoffs of 65% of the staff, the county sheriff closed its major crimes unit, and it has only two deputies available to patrol a county territory that is considerably larger than the state of Rhode Island.²²¹ Meanwhile, the caseload of crimes has increased 1600%, leading the Sheriff to lament that the county has become a “magnet for criminal activity.”²²²

Laurie Houston lost her twenty-one-year-old son Jared in one of the recent deaths in Cave Junction, after a hit-and-run on a two-lane highway outside the town.²²³ Witnesses said the driver did not apply his brakes or attempt to stop, but the county sheriff has too few deputies to spend much time investigating the incident.²²⁴ Ms. Houston has been devastated by the absence of investigation. “‘I won’t let my son be swept under the carpet like he was nobody,’ she said. ‘He was somebody.’”²²⁵ In coming years, local, state, and federal voters have to decide whether there is a local government for her and others in the timber counties of Oregon. Is it actually the Wild West there—an area whose people are left on their own when it comes to crime, mental illness, youth development beyond the schoolhouse, and poverty in old age? That is the same question we are being across the strained post-industrial local economies of the country.

When states pursue the “greater good” of the state’s economy or majoritarian voter preferences at the expense of local economies, households, and governments, we should soften the blow of the consequences that flow to individuals and local governments. Suburbanization and urban flight, for instance, have winners (those who want more space, new homes, and less class diversity) and losers

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automation supports American manufacturing companies' competitiveness in that global market, even as it intensifies the hardship facing American workers. Environmentalism too—the scientific value of ecosystem diversity, the imperative for forest carbon storage in the face of climate change—is a lifeline for the common good, but the losses it passes to workers in extractive industries are our moral responsibility. “Just transition” is a phrase used in the context of moving away from a coal-powered economy, but so too does it capture the joint responsibility that we bear for our transition beyond an industrial economy, whether that transition is taking place in Detroit, Michigan or O'Brien, Oregon.