Race-Based Tax Weapons

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In the United States, the term "poll tax" often refers to a very specific tactic of white supremacy: the use of tax policy to prevent voting by Black citizens. While "poll tax" is an accurate descriptor of these taxes, poll taxes have a much more expansive history within the twentieth century. Following in the rich tradition of comparative tax scholarship that looks at multiple jurisdictions to arrive at broader tax policy conclusions, this Article examines four distinct poll taxes applied by Anglophone governments in the twentieth century to illustrate a broad phenomenon I call "tax weapons"—the use of tax policy to harm specific groups.

The primary contribution of this comparative research on twentieth-century poll taxes is to further demonstrate how universal language in tax statutes can be used to effectively target specific taxpayers, with a focus on the targeting of taxpayers by race, ethnicity, or ancestry. By contrasting two poll taxes where race, ethnicity, or ancestry are explicitly mentioned in the law with two poll taxes where there is no mention of race, ethnicity, or ancestry, I uncover that the poll taxes that do not mention specific targets can be equally effective—if not more effective—at achieving discriminatory goals than poll taxes that specify their targets. These insights about how nominally universal tax policies can target political rivals inform the analysis of tax policy beyond just poll taxes.

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INTRODUCTION

A poll tax is a tax on heads.[1] If you have a head, you pay the tax.[2] In theory, poll taxes apply to everyone since everyone has a head.[3] In practice, poll taxes are further narrowed to specific heads—heads of a certain age, heads of a certain gender, heads of a certain ancestry.[4] In some settings, poll taxes are also used to limit access to the franchise.[5] Connecting voting rights to the payment of a tax is a design feature that can be added to poll taxes but is not inherent to poll taxes, as will be discussed further below.[6]

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1. Another name for a poll tax where the taxable base is everyone who is a human being is a "head tax." SIMON R. JAMES & CHRISTOPHER NOBES, *Glossary of Tax Terms*, *in* THE ECONOMICS OF TAXATION: PRINCIPLES, POLICY, AND PRACTICE 303 (7th ed. 1999) ("Poll Tax: also known as a head tax . . . 'Poll' refers to the part of the head on which hair grows.").

2. Because individuals cannot decide whether or not to have a head, a poll tax is often considered to have limited distortions on taxpayer behavior. A "non-distortionary" tax is referred to as a "lump-sum tax." ANTHONY B. ATKINSON & JOSEPH E. STIGLITZ, LECTURES ON PUBLIC ECONOMICS 28 (1980) ("Lump-sum taxes are defined as those that do not depend on any action of the individual; there is no way that he can change the tax liability. An example would be a poll tax in a country where there is no emigration or immigration.").

3. *Id.*

4. *See infra* Part I (describing four twentieth-century poll taxes. All four poll taxes included in this Article limit assessment to certain age ranges, three are limited by gender, and two are limited by ancestry). *See also* Harvey Walker, *The Poll Tax in the United States*, 9 BULL. NAT'L TAX ASS'N 46, 46–50 (1923) (describing poll taxes based on age and gender).

5. *See infra* Part I.A (describing poll taxes in Texas where tax debtors were disallowed from voting).

6. *Id.*

Poll taxes easily lend themselves to racially targeted tax policy.[7] As one civil servant tasked with implementing a poll tax described it, a poll tax is a "person-based tax" rather than a "property-based tax."[8] To the extent persons can be sorted into *types* of persons, poll tax liability can be adjusted accordingly.[9] Two of the twentieth-century poll taxes examined by this Article are poll taxes that explicitly target taxpayers based on race, ethnicity, or ancestry.[10] That is, the statutes of these twentieth-century taxes specified the race, ethnicity, or ancestry of the persons to be taxed and subsequently exempted other groups from the tax.[11]

My account of such explicitly targeted tax policy becomes even more informative, however, when contrasting these taxes with poll taxes where the statutory text makes no mention of race, ethnicity, or ancestry. As this article demonstrates, racial targeting persists even when poll taxes make no mention of race, ethnicity, or ancestry. And because poll taxes nominally include everyone—all people with heads—their ability to target specific groups of taxpayers is even more striking. In some ways, these facially neutral poll taxes are even more effective at targeting than the poll taxes that specify their political targets explicitly. Thus, poll taxes are a powerful example of how a universalist tax policy can be weaponized to target political adversaries. I call such a category of taxes "race-based tax weapons."

My conclusion about the ability of nominally universal poll taxes to target vulnerable taxpayers builds on longstanding work in Critical Race Theory that documents the disparate impact of facially neutral law in the context of public law, including immigration law[12] and criminal law,[13] as well as private law, including

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7. *See, e.g.*, Sue Yong & Rob Vosslamber, *Race and Tax Policy: The Case of the Chinese Poll Tax*, 20 J. AUSTL. TAX'N 147, 147–64 (2018) (describing race-based poll taxes in Australia, Canada, New Zealand, and the United States that were designed to control immigration).

8. Letter from Brian Philip, Staff Member, Scottish Office, to Mr. Russell (Mar. 7, 1986) (on file with National Records of Scotland Archives).

9. With a poll tax, the rate schedule is generally based on demographic characteristics rather than amount of income, amount of property, or amount of consumption. *See supra* note 4.

10. *See infra* Part I.B–C (describing the Alien Poll Tax in California in 1921 and Native Hut and Poll Tax in British Colony and Protectorate of Kenya in 1934).

11. *Id.*

12. *See, e.g.*, Kevin R. Johnson, *Bringing Racial Justice to Immigration Law*, 116 NW. U.L. REV. ONLINE 1, 17 (2021) ("Immigration law was an ideal place for President Trump to pursue racial goals while denying that race has anything to do with the policy choices. The color-blind laws, as applied, disparately impact people of color.") (citing Kevin R. Johnson, *A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona's S.B. 1070 and the Failure of Comprehensive Immigration Reform*, 2 U.C. IRVINE L. REV. 313, 315 (2010)). *See also*, E. Tendayi Achiume, *Racial Borders*, 110 GEO. L.J. 445, 455 (2022) ("Not only were international mobility and migration regimes racially calibrated but also their racial calibration was an essential feature of the economic and political exploitation that characterized colonial intervention. Initially, this was achieved through explicitly racialized mechanisms and institutions of migration governance, but this would eventually give way to a facially race-neutral migration apparatus that nonetheless achieved the desired racialized ends.").

13. *See, e.g.*, Bennett Capers, *The Racial Architecture of Criminal Justice*, 74 SMU L. REV. 405, 415 (2021) (describing how, despite there being no explicit mention of race, "race being embedded in the Fourth Amendment itself—as part of its structure, its architecture, or at least the architecture we have built around it").

bankruptcy law[14] and property law.[15] Critical Race Theory has consistently demonstrated how the goals of white supremacy can be achieved with facially neutral laws.[16] In tax, over three decades of scholarship have demonstrated that facially neutral tax laws compound racial inequality.[17] My novel addition with this article is to revisit tax laws that are *not* facially neutral and directly contrast them with tax laws that are. This helps reveal the specific qualities in a tax policy design that enable racial targeting.

Before summarizing my findings about poll taxes as race-based tax weapons, a few introductory words about my research design are in order. This article provides a detailed account of four poll taxes imposed by Anglophone governments in the twentieth century: the poll tax imposed by the Constitutional Convention on voters in Texas in 1902; the poll tax imposed by ballot initiative on immigrants in California in 1921; the poll tax imposed by the British Empire on Black people in Kenya in 1934; and the poll tax imposed by the British Parliament on residents in Scotland in 1989.[18] I examine the statutory text of the poll taxes, the administrative guidance issued by the enforcers of the poll taxes, and the protest materials of those liable for the poll taxes.[19] I deploy a comparative study of four poll taxes to then arrive at broader conclusions about poll taxes specifically and tax policy more

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14. *See, e.g.*, Elizabeth Warren, *The Economics of Race: When Making It to the Middle Is Not Enough*, 61 WASH. & LEE L. REV. 1777, 1797–99 (2004) (drawing from bankruptcy court data to document heightened financial insecurity of Black and Hispanic borrowers).

15. *See generally* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (showing how property law developed in tandem with racial subordination and has been used to both define and maintain whiteness).

16. *See* Brandon Hasbrouck, *The Antiracist Constitution*, 102 B.U. L. Rev. 87 (2022).

17. For a near comprehensive account of this field of work as it pertains to Black taxpayers, see DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT (2021). *See also* TAXING AMERICA (Karen B. Brown & Mary Louise Fellows eds., 1996). For a single table summarizing empirical findings on disparate racial impact of facially neutral tax laws, see Jeremy Bearer-Friend, *Should the IRS Know Your Race? The Challenge of Colorblind Tax Data*, 73 TAX L. REV. 1, 41–42 tbl.1 (2019). These racial disparities have also been identified in the context of international tax policy. *See, e.g.*, Steven Dean, *Ten Truths About Tax Havens: Inclusion and the "Liberia" Problem*, 70 EMORY L.J. 1659 (2021).

18. Because three of the poll taxes included for study in this article are explicitly referred to as "poll taxes" in the statutory language, and one in the legislative history of its own framers and by virtually all of its taxpayers and commentators, I use the term "poll tax" to describe them. This is distinct from the use of the term in the 24th Amendment, where the jurisprudence surrounding the term "poll tax" is generally understood to mean a price on voting. Johnson v. Bredesen, 624 F.3d 742, 775 (6th Cir. 2010) (Moore, J., dissenting) ("[T]he Twenty–Fourth Amendment plainly intended that the Amendment reach those payments of money that placed a price on the franchise . . . ." (citing Harman v. Forssenius, 380 U.S. 528, 542 (1965))).

19. I am deliberate in moving beyond the positive law in my analysis due to the risks associated with comparative projects that only look to "superficial formal law." Kim Brooks, *An Intellectual History of Comparative Tax Law*, 57 ALTA L. REV. 649, 657 (2020). *See also id.* at 662. However, the breadth of cases included in this single Article necessarily limits the historical depth and context that can be achieved for each tax. For an account of some of the benefits and pitfalls of the historical comparative method, see Robert Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 76–79 (1984).

generally.[20] My primary audience is other tax law scholars who may only have a stylized or cursory understanding of poll taxes.[21] A secondary audience is those outside of tax who seek to understand poll taxes from a tax scholar's point of view.[22]

A concern with tax weapons is also consistent with the ambitions of the Law and Political Economy movement. This movement seeks to pivot the emphasis in legal scholarship from efficiency to power relationships.[23] Both empirically understanding and normatively evaluating a given public policy is achieved through a recognition of the ways public policies are produced through specific power structures and maintain or alter such power structures.[24] This lens can be extended to tax law, where the power dynamics that created a tax and that result from a tax are the central concern of the analysis.[25] Tax weapons exhibit this specific dynamic, whereby those with power use tax policy to harm those with less.

This article focuses on poll taxes because of their explanatory potential for broader tax policy choices. Poll taxes are consistently used in introductory public finance texts as a baseline against which other taxes are evaluated.[26] Although these

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20. As identified by Kim Brooks in her taxonomy of comparative tax law, the comparative method is well suited to this purpose. Kim Brooks, *A Hitchhiker's Guide to Comparative Tax Scholarship*, 24 FLA. TAX REV. 1, 22–23 (2020) ("Another purpose of comparative law is to enable the scholar to draw some general conclusions about legal regimes, law, and law's structures. This purpose is premised on the assumption that underlying tax law is a deep structure—a set of fundamental policy decisions that, when determined, become the basic (and common) building blocks of the particular legal regime. Comparative law is useful in achieving this purpose because in the absence of understanding a good deal about a number of systems, the deep structure would be difficult to discern."). *See also* Carlo Garbarino, *An Evolutionary Approach to Comparative Taxation: Methods and Agenda for Research*, 57 AM. J. COMPAR. L. 677 (2009) (entailing potential of comparative tax law to reach generalizable tax theory conclusions). *But see* Anthony C. Infanti, *The Ethics of Tax Cloning*, 6 FLA. TAX REV. 251 (2003) (expressing skepticism about ability to generalize across distinct cultures, with particular attention to colonial dynamics between Western and non-Western jurisdictions).

21. Brian Sawers, *The Poll Tax Before Jim Crow*, 57 AM. J. LEGAL HIST. 166, 167 (noting "the paucity of scholarly and contemporary detail" about non-Jim Crow poll taxes in the literature).

22. While poll taxes have been widely studied in the legal academy, such work is typically conducted by constitutional law scholars and election law scholars rather than by tax scholars. *See, e.g.*, Bertrall L. Ross II & Douglas M. Spencer, *Passive Voter Suppression: Campaign Mobilization and the Effective Disfranchisement of the Poor*, 114 NW. U. L. REV. 633 (2019) (identifying inaccuracies of Jim Crow analogies to current voting rights challenges but with limited attention to poll taxes specifically); Neil Walker & Christopher Himsworth, *The Poll Tax and Fundamental Law*, JURID. REV. 45, 46 (1991) (looking at challenges to poll tax collection as an opportunity to review the constitutional status of Treaty of Union); Bruce Ackerman & Jennifer Nou, *Canonizing the Civil Rights Revolution: The People and the Poll Tax*, NW. U.L. REV. 63 (2009). Such work is vital but rooted in a different field of law and with different points of emphasis.

23. *See* Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

24. *Id.*

25. *See generally* Jeremy Bearer-Friend, Ari Glogower, Ariel Jurow Kleiman & Clinton G. Wallace, *Taxation and Law and Political Economy*, 83 OHIO ST. L.J. 471 (2021).

26. *See, e.g.*, JOSEPH E. STIGLITZ, ECONOMICS OF THE PUBLIC SECTOR 111 (3d ed. 2000) (relying on poll tax as point of comparison in order to introduce foundational concept of deadweight loss); HARVEY S. ROSEN & TED GAYER, PUBLIC FINANCE 305 (9th ed. 2010) (using hypothetical head tax as point of comparison against income tax in order to measure incidence of tax); JAMES & NOBES,

introductory sources typically acknowledge that the hypothetical poll tax baselines are stylized caricatures, they nevertheless prove instructive for illustrating fundamental tax policy concepts.[27] I follow in this tradition of looking to poll taxes as instructive about tax policy more broadly but draw from the legislative text of actual poll taxes that were administered rather than hypothetical ones. These historical poll taxes offer important lessons for contemporary tax policy debates on tax administration, racial bias in tax policy, and the relationship between taxes and voting.[28]

The four poll taxes included in this article were selected deliberately. I limited my inquiry to poll taxes in the twentieth century because all four jurisdictions would then share a similar menu of available tax bases at their time of enactment. Some form of consumption tax, property tax, and income tax were in effect in all of the jurisdictions that also had poll taxes. This implies that poll taxes were a deliberate choice amongst multiple tax base options. Limiting the selected poll taxes to the twentieth century also meant looking at a period of rapid state expansion, with the rise of bureaucracy, professionalized civil servants, fiscal capacity, and fiscal needs of that time period.[29] Twentieth-century poll taxes may also feel more immediately familiar to my readers as relevant to tax policy challenges of today. All four poll tax jurisdictions are in Anglophone jurisdictions so that I could read the law in its original text. And all four poll taxes are historical and no longer in force, such that there is no current poll tax practitioner who would be better situated to conduct this inquiry.[30]

The poll taxes selected also vary in ways that are important for my conclusions. Two of the four poll taxes are explicit in their statutory language of targeting certain racial or ethnic groups, while two poll taxes make no mention of their intended

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supra note 1, at 25 ("The concept of a poll tax will be useful in order to isolate certain characteristics of the other taxes . . . our main method of analysis will be to compare taxes of equal yield, supposing that government expenditure remains the same, both in size and allocation. One of the best 'dummy' taxes for this purpose is the poll tax."); STUART ADAM, TIMOTHY BESLEY, RICHARD BLUNDELL, STEPHEN BOND, ROBERT CHOTE, MALCOLM GAMMIE, PAUL JOHNSON, GARETH MYLES & JAMES POTERBA, TAX BY DESIGN: THE MIRRLEES REVIEW 155 (1st ed. 2011).

27. *See, e.g.*, ATKINSON & STIGLITZ, *supra* note 2, at 28 ("Most of the taxes actually employed by government are not lump sum; and the main role of the concept is as a standard for comparison.").

28. Tax history is a recognized instrument for such a task. *See* Reuven S. Avi-Yonah, *Why Study Tax History?*, 48 INTERTAX 687 (2020) (reviewing 9 STUDIES IN THE HISTORY OF TAX LAW (Peter Harris & Dominic de Cogan eds., 2019)) ("But there is another, deeper reason why we should care about tax history: Solutions in tax tend to repeat themselves in cyclical fashion, and therefore studying the past can suggest remedies for current ills.").

29. These similarities have limits, of course, since the stage of political development was different in each jurisdiction. *See generally* AJAY K. MEHROTRA, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION 1877–1929 (2013).

30. In comparative tax scholarship, it is common for a tax scholar (typically also a former or current practitioner) in each selected jurisdiction to prepare that portion of the analysis. *See, e.g.*, HUGH J. AULT, BRIAN J. ARNOLD & GUY GEST, COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS (2010); TAX SYSTEMS IN NORTH AFRICA AND EUROPEAN COUNTRIES (Luigi Bernardi & Jeffrey Owens eds., 1994); A COMPARATIVE LOOK AT REGULATION OF CORPORATE TAX AVOIDANCE (Karen B. Brown ed., 2012). For example, someone who practices tax law in Germany would write the tax chapter on Germany. *Id.* A reliance on such a method for the poll taxes selected in this article would mean no article would be written at all, as none of the poll taxes included are currently in force.

political targets in the statutory text. Two of the poll taxes apply to taxpayers ineligible to vote, while two apply to potentially eligible voters. Two of the poll taxes were principally driven by revenue needs, while two of the poll taxes were not motivated by revenue. All four are locally enforced, though one was initially enacted by a national legislature, one by a state legislature, one by a subnational popular vote, and one by an appointed colonial government. These points of variation offer a rich setting for broader conclusions about poll taxes.[31]

While the detailed work of reviewing the statutory text of poll taxes through the lens of tax scholarship is a contribution in itself, this article then moves on to advance a theory of "tax weapons." The four poll taxes analyzed demonstrate the use of tax policy as a device to harm political rivals, distinguishing a concern with tax weapons from the evaluation of tax policy against the traditional goals of revenue, redistribution, and regulation.[32] Race-based tax weapons are tax policy instruments designed to harm political rivals based on their race, ethnicity, or ancestry.[33] More broadly, a tax weapon is the imposition of a targeted harm on a specific group.[34]

Tax weapons are worthy of particular scrutiny because taxes are an especially potent exercise of state power relative to other forms of weaponized government. A single tax can simultaneously constrain property rights,[35] invade privacy,[36] impose criminal liability,[37] and frustrate civic participation.[38] Citizens also have more limited protections in challenging taxes relative to other exercises of state power.[39] And tax is widely recognized as an area of reduced public understanding, making tax law an

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31. The United States and the United Kingdom are also designated as being in distinct "tax families" by the eminent tax comparativist Victor Thuronyi. VICTOR THURONYI, TAX LAW DESIGN & DRAFTING (1996). *See also* VICTOR THURONYI, COMPARATIVE TAX LAW 15–44 (2003) (expanding from eight tax families to ten tax families).

32. *See* Avi-Yonah, *supra* note 28 and accompanying text.

33. I rely on a counterfactual theory of harm that compares the impact of a poll tax with "what would have occurred had the putatively harmful conduct not taken place." *See* Craig Purshouse, *A Defence of the Counterfactual Account of Harm*, 30 BIOETHICS 251, 251 (2015). Such an assessment can be achieved under a *ceteris paribus* assumption that all other policies are held constant with the removal of poll taxes as the sole variation in the counterfactual, under an assumption that the counterfactual is all conditions that immediately preceded the enactment of the tax, or under an assumption that an alternative tax base has been adopted with equivalent revenue-raising effects but without the poll tax. For further discussion of my definition of a "tax weapon," *see infra* Part III.

34. A tax weapon thus overlaps with disparate impact analysis, since disparate impact "involves a facially neutral practice that disproportionately harms members of a protected class." Anya E.R. Prince & Daniel Schwarcz, *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, 105 IOWA L. REV. 1257, 1260 (2020). Tax weapons need not be facially neutral, however, and two of the tax weapons included in this Article are explicit in their targeting of a protected class.

35. *See, e.g.*, Andrew Kahrl, *The Power to Destroy: Property Tax Discrimination in Civil Rights-Era Mississippi*, 82 J. S. HIST. 579 (2016).

36. *See, e.g.*, Joshua Blank, *In Defense of Individual Tax Privacy*, 61 EMORY L.J. 265 (2011).

37. *See, e.g.*, Daniel C. Richman & William J. Stuntz, *Al Capone's Revenge: An Essay on the Political Economy of Pretextual Prosecution*, 105 COLUM. L. REV. 583, 630 (2005).

38. *See, e.g.*, *Felon Voting Rights*, NAT'L CONF. STATE LEG., https://www.ncsl.org/elections-and-campaigns/felon-voting-rights [https://perma.cc/66JH-V57U] (last visited May 23, 2024).

39. For example, a tax is not a taking. *See generally* Jeremy Bearer-Friend, *Tax Without Cash*, 106 MINNE. L. REV. 953 (2021) (describing tax remittance in noncash property).

easier location for legislators to conceal state activity without public accountability.[40] Each of these characteristics in turn makes the detection and disarming of tax weapons all the more important.[41]

Poll taxes reveal three specific design features to achieve racial targeting without mentioning such targets in a statute. First, poll taxes, despite being nominally universal, can still calibrate tax liability on racial proxies—characteristics that reliably correlate with race, ethnicity, or ancestry.[42] Second, poll taxes rely on tax localization to allocate higher tax liability to those in disfavored groups within a broader taxing jurisdiction.[43] Third, poll taxes rely on strategic administrative disfunction that encourages low compliance rates, in turn producing opportunities for targeted enforcement.[44] Poll taxes also demonstrate how the absence of explicit targeting can better *enable* targeting. Facially neutral statutes provide the imprimatur of fairness, dampening public disapproval.[45] Facially neutral statutes are also more resilient against legal challenges.[46]

Finally, twentieth-century poll taxes offer guidance for how to detect and disarm twenty-first-century tax weapons. Attention to the statutory text of historical race-based tax weapons leads to a better understanding for guarding against malicious racial targeting and weaponized tax policy today. Most crucially, improved tax data that includes demographic information about taxpayers can assist both ex-ante and ex-post disarmament of race-based tax weapons. The lessons of twentieth-century poll taxes and the irrelevance of racial language for assessing the harms of

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40. For a discussion of the ongoing challenges the public has in understanding tax law, see Joshua Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law*, 66 EMORY L.J. 189 (2017); Joshua Blank & Leigh Osofsky, *The Inequity of Informal Guidance,* 75 VAND. L. REV. 1093 (2022). For a discussion of the lack of public engagement with tax lawmaking, see Clinton G. Wallace, *Democracy Avoidance in Tax Lawmaking*, 25 FLA. TAX REV. 272 (2021).

41. Tax weapons also produce the harms identified as normatively undesirable by Ariel Jurow Kleiman in her condemnation of impoverishment by taxation. Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PA. L. REV. 1389, 1472 ("Protecting individual dignity thus requires shielding all persons from deprivation, degradation, and social exclusion . . . ."). The harms also violate the duties of the state. *Id.* at 1474 ("Generally speaking, the harm caused must be reasonably justified by a greater good achieved, or a graver harm forestalled."). In estimating the extent of a harm, the vulnerability of the impacted individual is a useful framework. *See* Martha A. Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L. J. 251, 269 (2010). It should be noted, however, that Fineman does not accept the "identity approach to equality" that is the primary lens of this Article. *Id.* at 254.

42. In the case of the Community Charge, the racial proxies were the number of adults in a single household and the likelihood of living in an urban area. *See* Part IV.A.

43. *See infra* Part IV.A.2 (discussing tax localization tactics in Texas, Kenya, and Scotland).

44. *See infra* Part IV.A.3 (discussing administrative disfunction in Texas and Scotland).

45. *See infra* Part IV.B.1 (discussing the public response to facially neutral poll taxes in Texas and Scotland).

46. *See infra* Part IV.B.2 (discussing legal challenges to facially neutral poll taxes in Texas and Scotland in contrast to California). The distinction between disparate treatment and disparate impact determines the legal analysis applied to a given statute and can determine the result. *See also* Deborah Hellman, *Defining Disparate Treatment: A Research Agenda for Our Times*, 99 IND. L.J. 205 (2023), available at https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11516&context=ilj [https://perma.cc/LA22-AMAP].

a tax may also encourage a new tolerance of racial language in statutes. This opens the door for race-based remedies, such as reparations policies that are explicitly targeted based on race, ethnicity, or ancestry. Lastly, a historical understanding of tax weapons informs the twenty-first-century debate over whether the current IRS has been "weaponized."[47]

This Article proceeds as follows. In Part I, four twentieth-century poll taxes are described in chronological order. In Part II, a theory of tax weapons is introduced, with a focus on race-based tax weapons as the foundational example of how such weapons operate in law. In Part III, I identify the tax design features that allow for racial targeting. I also argue that poll taxes that do not mention specific targets can be equally effective—if not more effective—at achieving discriminatory goals than poll taxes that specify their targets. In Part IV, I draw from my analysis of twentieth-century race-based tax weapons to offer a series of recommendations for how to detect and disarm twenty-first-century tax weapons.

I. TWENTIETH-CENTURY POLL TAXES

This Part presents four twentieth-century poll taxes imposed in Anglophone legal regimes.[48] In chronological order, they are Texas's Poll Tax of 1902, California's Alien Poll Tax Law of 1921, the British Colony of Kenya's Native Hut and Poll Tax of 1934, and Scotland's Community Charge of 1989. In all cases, the trigger for tax liability is being a person within the jurisdiction who meets specified demographic criteria.[49]

Each of the taxes included was selected because it is representative of a broader category of poll tax. The advantage of selecting a single tax for each category of poll tax is that it allows closer analysis of the positive law rather than merely summarizing general features. For example, rather than generalizing about all poll taxes in the Southeastern United States, this article looks at the poll tax in Texas. Similarly, the Community Charge was eventually imposed on England and Wales in addition to Scotland, and the poll tax imposed in Kenya was also common in many sub-Saharan African colonies, including Uganda and Tanzania.[50] And the California poll tax is just one example of the regular use of

47. *See infra* Part V (discussing current accusations that the Biden Administration has weaponized the IRS).

48. In addition to the selection criteria discussed *supra* Introduction, by only looking to Anglophone jurisdictions, I am limiting one additional variable in my research design.

49. In other words, they are not taxes on consumption, nor income, nor property. They are taxes on being a person. Despite their shared conceptual structure of taxing persons based on certain characteristics, however, it should be noted that the demographic categories used in these tax laws do not have common meaning across jurisdictions, since race, ethnicity, and ancestry are culturally specific concepts. *See, e.g.*, K. Anthony Appiah, *Race, Culture, Identity: Misunderstood Connections*, *in* COLOR CONSCIOUS: THE POLITICAL MORALITY OF RACE 30 (1996).

50. Odd-Helge Fjeldstad & Ole Therkildsen, *Mass Taxation and State-Society Relations in East Africa*, *in* TAXATION AND STATE-BUILDING IN DEVELOPING COUNTRIES: CAPACITY AND CONSENT 114 (Deborah Bräutigam, Odd-Helge Fjeldstd & Mick Moore eds., 2008), https://open.cmi.no/cmi-x

poll taxes to target immigrants.[51]

For each poll tax included, I provide a description of the fundamental tax design elements: who is liable, who is exempt, how much is owed, what are the filing obligations, who collects, who deals with noncompliance, and where the money goes.[52] While the statutory text serves as the foundation for the description of poll taxes in this Part, the tax is then elaborated by regulatory authorities issued by relevant tax administrators and the protest materials of taxpayers. All four taxes are no longer in force. A table comparing the primary features of all four poll taxes is also provided in Appendix A.

A. A Poll Tax in Texas

Many contemporary sources consistently misstate the origins of poll taxes in the former Confederate states, claiming that they were introduced only after Black suffrage as a means to disenfranchise Black citizens.[53] Poll taxes were, in fact, used throughout the United States prior to the Fifteenth Amendment, adopted by many colonies even prior to the formation of the Republic.[54] Poll taxes then evolved as an instrument of white supremacy after Reconstruction, their longstanding familiarity as a form of taxation and their prior inclusiveness assisting in the ruse of nondiscrimination.[55]

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mlui/handle/11250/2474955 [https://perma.cc/75T2-R629] (last visited May 23, 2024). These taxes were imposed by the British Empire as part of its campaign of racialized global domination. *See generally* KOJO KORAM, UNCOMMON WEALTH ("[T]he British Empire was not just a five-hundred-year world tour of being mean to brown people. It was about extracting resources and hoarding wealth. It was a global system of cultivated and coordinated armed robbery.").

51. *See* Sue Yong & Rob Vosslamber, *Race and Tax Policy: The Case of the Chinese Poll Tax*, 20 J. AUSTL. TAX'N 147 (2018) (discussing the poll taxes established against Chinese immigrants in the United States and abroad).

52. To use a more technical vocabulary, for each poll tax I describe the taxable base, the tax rate, the administration of the tax, and the allocation of tax revenue.

53. *See, e.g.*, JOHN GIBSON, THE POLITICS AND ECONOMICS OF THE POLL TAX: MRS. THATCHER'S DOWNFALL 203 (EMAS Ltd. ed. 1990) ("In the USA, poll taxes started to be introduced in many southern states in the late nineteenth century . . . .").

54. *See* Alvin Rabushka, *The Colonial Roots of American Taxation*, *1607-1700*, HOOVER INSTITUTION, (Aug. 1, 2002), https://www.hoover.org/research/colonial-roots-american-taxation-1607-1700 [https://perma.cc/V2VJ-ST5D]. Poll taxes were often paid in kind, rather than in cash, requiring a certain number of days of labor per year. *See* Jeremy Bearer-Friend, *Tax Without Cash*, 106 MINN. L. REV. 954 (2021).

55. *See* Vanessa Williamson, *The Long Shadow of White Supremacist Fiscal Policy*, TAX POL'Y CTR. (Nov. 4, 2020). *See also supra* Part II (describing use of nominally neutral poll taxes to target political adversaries). Poor white taxpayers were also impacted by poll taxes. For additional insight on the evolving relationship between taxes and the franchise in the nineteenth century, see Rabia Belt, *Ballots for Bullets?: Disabled Veterans and the Right to Vote*, 69 STAN. L. REV. 435, 488 (2017) ("The nineteenth century saw a radical redefinition of what it meant to be dependent, as property-holding requirements gave way to taxpaying requirements, which themselves ultimately disappeared. In place of such restrictions, states added and redoubled explicit and implicit bars to voting based on race, sex, age, mental capacity, and institutional dependence."). *See also* ERIC FONER, THE SECOND FOUNDING (2019) (describing in detail the strategies used by former Confederate states to evade the Thirteenth, Fourteenth, and Fifteenth Amendments).

In Texas, the first poll tax was enacted in 1837.[56] This tax was limited to white men and had no implications for suffrage.[57] The broad features of the poll tax were repeated in 1845, but at a lower rate,[58] and again in the Texas Constitution of 1876, requiring "an annual poll tax of one dollar, on all male persons in this State, between the ages of twenty-one and sixty years, for the benefit of public schools."[59] Like the first poll tax in Texas, this provision was not connected to voting, though, unlike the first poll tax, there was no specification of race in the taxable base.[60]

In Texas, the key poll tax development in 1902 was to tie the right to vote to the payment of the poll tax. The legislatively referred constitutional amendment won with two-thirds of the popular vote.[61] Voters adopted an amendment to Article VI, Section 2 which read the following:

> [A]ny voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election.[62]

Poll taxes were then administered locally, with nonpayment to the county then limiting voting rights.[63] Texas was the second to last of the former Confederate states to adopt such a poll tax requirement for voting under its new constitution.[64] There were subsequent failed attempts to repeal the tax in 1949 and 1963.[65]

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56. John W. Mauer, *The Poll Tax, Suffrage, and the Making of the Texas Constitution of 1876* 11 (Dec. 1973) (M.A. thesis, Texas Tech University) (on file with author) ("The tax law of 1837 also provided, among other things, for a poll tax of one dollar on all white males between the ages of twenty-one and fifty. This poll tax provision, like all that followed it until 1902, did not act as a suffrage requirement. It served as merely one of many different measures designed to produce revenue.").

57. *Id.*

58. In 1845, the updated poll tax, at a lower rate of tax, persevered the limitation to white male residents. JAMES WILMER DALLAM, *Digest of the Laws of Texas: Containing a Full and Complete Compilation of the Land Laws; Together with the Opinions of the Supreme Court* 233 (1845) ("There shall be levied a poll tax of fifty cents on every white male of the Republic between the ages of twenty-one and fifty years inclusive").

59. TEX. CONST. of 1876, art. IX, § 6 (1876). This same language also appeared in TEX. CONST. of 1868, art. IX, § 6.

60. Donald S. Strong, *The Poll Tax: The Case of Texas*, 38 AM. POL. SCI. REV. 693, 693–709 (1944) ("The Texas constitution of 1876 . . . said in Art. VIII, Sec. 1: 'The legislature may impose a poll tax.' Nothing was said about the tax as a requirement for voting. When the first legislature under this constitution met, in 1877, it levied a poll tax as a purely financial measure having nothing to do with suffrage.").

61. *Texas Poll Tax Payment, Proposition 1 (1902)*, BALLOTPEDIA, https://ballotpedia.org/Texas_Poll_Tax_Payment,_Proposition_1_(1902) [https://perma.cc/GE9L-4LWF] (last visited May 23, 2024).

62. Strong, *supra* note 60, at 693.

63. *See, e.g.*, Linger v. Balfour, 149 S.W. 795 (Tex. Civ. App.–Amarillo 1912) ("[A] large number of persons voted illegally for prohibition, in that they owed and had not paid a poll tax to the county of Potter for the year 1906"); Savage v. Umphries, 118 S.W. 893 (Tex. Ct. App. 1909) (showing payment of Amarillo poll tax was relevant to suffrage).

64. Strong, *supra* note 60, at 695 ("Florida started with the poll-tax requirement in 1889, followed by Mississippi and Tennessee in 1890, Arkansas in 1892, South Carolina in 1895, Louisiana in 1898, North Carolina in 1900, Alabama and Virginia in 1901, and Georgia in 1908.").

65. Brianna Stone, *Why Did Texas Have a Poll Tax, and When Did It End?*, DALL. MORNING NEWS, (Sept. 25, 2018, 5:00 AM), https://www.dallasnews.com/news/curious-texas/2018/09/25/why-d

Although enforcement of the tax effectively ended in 1966, there was no ratification of a resolution ending the Texas poll tax until 2009.[66]

Under the poll tax enacted in 1877 to which the 1902 constitutional amendment applied, all men between the ages of twenty-one and sixty were liable.[67] Liability was based on residence in the state on January first. Exemptions applied to "Indians . . . insane, blind, deaf or dumb persons, or those who have lost one hand or foot."[68] Those exempt from the tax were required to petition for an exemption certificate, only enforced at the time of voting.[69] After subsequent litigation, "[t]hese exemptions, other than that for the insane, [had] been held invalid because [they were] not mentioned in the constitution."[70]

The cost of the poll tax was substantial for many Texans at the time. In the early twentieth century, "incomes for the bottom 76% of the population averaged only $55-64 . . . Moreover, the cash income of most Southerners was probably much smaller . . . a dollar or two amounted to a substantial proportion of a man's cash income."[71] Because the cost remained mostly static throughout the twentieth century, the cost declined over time relative to rises in income.

While the Texas poll tax was imposed under state law, the collection of the tax was delegated to local government.[72] County commissioners' courts were provided with a list of the poll tax precincts for which they were responsible and poll tax receipts to be distributed. Receipts were then to be delivered to the county collector of taxes, who issued the receipts on payment.[73] Despite the detailed statutory requirements for the design and delivery of poll tax receipts, "those in power made every effort not to collect the tax from men they deemed undesirable voters. There is no record of prosecution of a poll tax delinquent."[74] In addition to the high cost in the early twentieth century, this nonenforcement may also explain the low compliance rate. Only 53% of those liable for poll taxes paid their poll taxes in 1910.[75]

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id-texas-have-a-poll-tax-and-when-did-it-end-curious-texas-investigates/ [https://perma.cc/4EPF-BC7K] (last visited May 23, 2024).

66. *Id.*

67. *Revised Statutes of Texas: Adopted by the Regular Session of the Sixteenth Legislature, A.D. 1879* (1879), tit. XCV, ch. 1, art. 4664.

68. Act of April 1, 1903, 28th Leg., R.S., ch. 101, § 9, 1903 Tex. Gen. Laws 133, 134–35.

69. Act of April 1, 1903, 28th Leg., R.S., ch. 101, § 25, 135 1903 Tex. Gen. Laws 135.

70. Dickson Fagan, *Poll Tax and Voter Registration*, 35 TEX. L. REV. 1031, 1032 (1957) (citing Tondre v. Hensley, 223 S.W.2d 671, 674 (Tex. Civ. App. 1949)) ("The exemptions from the payment of a poll tax which the Legislature has provided in Sections 2959, 2960 and 7046 are not to be found in the Constitution and these exemptions cannot relieve a taxpayer of his obligation to pay the $1.00 constitutional poll tax which is levied by the Constitution itself.").

71. J. MORGAN KOUSSER, THE SHAPING OF SOUTHERN POLITICS 65 (1974).

72. TEX. GEN. TAX'N CODE art. 5.09 ("The tax shall be paid . . . in the county in which the taxpayer resides at the time of payment."); TEX. GEN. TAX'N CODE art. 2.01; Texas General Taxation Code art. 5.11 ("The poll tax must be paid . . . to the county tax collector.").

73. TEX. GEN. TAX'N CODE art. 5.11 ("[T]he tax collector shall mail the receipt to the taxpayer at the taxpayer's permanent address.").; *see also* TEX. GEN. TAX'N CODE art. 5.14.

74. KOUSSER, *supra* note 71, at 63.

75. *Id.* at 71. *See also* Strong, *supra* note 60, at 697:

The timing rules for poll taxes also betrayed a lack of interest in actual collection. The timing of collection did not overlap with elections most commonly in November or federal income taxes in April.[76] The convoluted timing rules, requiring payment long before election, were also a deliberate strategy to deter payment by lower-income voters.[77] All receipts were required, by the state, to include the following information:

> the name of the party for whom it was issued, the payment of the tax, the residence of the party, his age, his race, the length of time he has resided in Texas, the length of time lie has resided in the county, the voting precinct in which he lives, his occupation, if he lives in an incorporated city or town, the ward and street and number of his residence, and the length of time he has resided in such city or town.[78]

Unlike other taxes in the state, poll tax liability could not be paid by a third party.[79]

B. A Poll Tax in California

In 1920, 82% of California voters supported a poll tax on male immigrants of a certain age.[80] The text of the ballot initiative directed the legislature to create the following:

> Requires the Legislature to provide for the levy of an annual poll

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> Few taxes are as poorly enforced as the poll tax. The tax is actually enforced only against real estate owners who are delinquent in the payment of their general property taxes. The law requires that when settlement is finally made on these late taxes all back poll taxes shall be paid also. In all other cases, the tax is purely optional. No penalties are assessed against those who fail to pay; no policeman comes to the door to collect from delinquents. There is no doubt that considerably more revenue could be secured from the poll tax by enforcing it. If one is really concerned about money for the Texas schools, the answer is that a more vigorous effort should be made to collect the tax. But no one wants to see the tax enforced. The poll tax is essentially a "cover charge on the right to vote." Its main purpose is to limit the electorate; the money it brings in is a by-product. The fiscal aspect, of the tax is subordinated to the political.

76. Although the federal income tax was not ratified until 1913, the Texas Poll Tax would remain in effect until the 1960s.

77. KOUSSER, *supra* note 71, at 63–64. During this period, elites feared the growing political powers of propertyless voters as an assault on notions of classical republicanism. *See* Williamson *supra* note 55. *See also* KEYSSAR, *infra* note 182 and accompanying text.

78. Act of April 1, 1903, 28th Leg., R.S., ch. 101, § 22, 1903 Tex. Gen. Laws 133, 136–37 (Revised by 28th Leg.).

79. Act of April 1, 1903, 28th Leg., R.S., ch. 101, § 22, 1903 Tex. Gen. Laws 133, 135. ("[I]n no event shall any candidate for office, nor any one who is actively espousing the cause of any candidate for office, be allowed to pay any poll tax for another, and any person violating any of the provisions of this section shall be guilty of a felony, and upon conviction shall be punished by confinement in the penitentiary for a term of not less than two nor more than five years.")

80. *California Proposition 11, Alien Poll Tax Amendment (1920)*, BALLOTPEDIA, https://ballotpedia.org/California_Alien_Poll_Tax,_Proposition_11_(1920) [https://perma.cc/3BGP-JEQQ] (last visited May 23, 2024).

> tax, and the collection thereof by assessor of not less than four dollars on every alien male inhabitant of this state over twenty-one and under sixty years of age, except paupers, idiots and insane persons, such tax to be paid into county school fund in county where collected.[81]

The legislature then enacted the "Alien Poll Tax Law of 1921," increasing the poll tax to ten dollars per taxable person from the minimum of four dollars specified in the referendum.[82] This was equivalent to thirty hours of labor, as the minimum wage in California in 1920 was thirty-three cents per hour.[83]

The taxable category of "alien" spanned many distinct nationalities. According to data collected in administrative poll tax records and later reported on by sociologists:

> Italians show[ed] much the largest number (6,295), followed by the Chinese (4,710); the Japanese are third, but their number is only 40% of the Italians. Germans, Scandinavians, and Greeks follow in the order named. If the "British Colonies" and "Canada" be added to the numbers for England (including Scotland and Wales) and Ireland the total (2,915) would place this combined group (Great Britain) third on the list.[84]

Many of those liable for the poll tax had already been working in California for many years, with a plurality reporting ten years of residence and the second largest group reporting fifteen years of residence.[85]

Exempt taxpayers—those who would have met the criteria for poll tax liability *but for* additional characteristics—were as follows: "paupers, idiots, and insane persons."[86] This type of exemption is distinct from nonaliens being exempt. Here, the individual does have the characteristic that should make them liable but is then excluded on other grounds. A "nonalien" or a woman does not possess the necessary characteristics to ever have been liable.

The poll tax filing obligations required an initial registration in addition to a subsequent tax remittance. The deadline for registration preceded the deadline for remittance.[87] The information required for registration was not identical to the information required for remittance:

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81. ALIEN POLL TAX California Proposition 11 (1920), http://repository.uchastings.edu/ca_ballot_props/140 [https://perma.cc/4G69-BJ6J]; *see also* CAL. CONST. art. 13, § 12 (1921).

82. Political Code of the State of California, tit. 9, pt. 3, ch. 9, § 3839 (1923).

83. *See History of California Minimum Wage*, DEP'T OF INDUS. REL., https://www.dir.ca.gov/iwc/MinimumWageHistory.htm [https://perma.cc/8K7E-S295] (last visited May 23, 2024). Presumably, many employers paid below this amount if they did not believe the law would be enforced.

84. Walter G. Beach, *Facts About San Francisco's Alien Population as Gleaned from the Poll Tax Registration of 1921*, 3 J. SOC. FORCES 321, 322 (1924–1925).

85. *Id.* at 324 ("Forty percent had been in California 15 years, while one-fifth had been here for only six years or less.").

86. CAL. CONST. art. XIII, § 12 (1921); *see also* Political Code of the State of California, tit. 9, pt. 3, ch. 9, § 3839 (1923).

87. Beach, *supra* note 84, at 321 ("The first registration was to be completed by July 31, 1921, and the tax was to be collected between August 1 and July 31 of the same year.").

> Registering aliens were to give information in regard to age, residence, country of nativity, period of residence in California, whether citizenship had been applied for . . . . The questions asked in the affidavits of registrations . . . : nativity; age; whether employed or not; kind of employment, and whether by self or other; length of residence in California; whether application for citizenship has been made; literacy (the basis for judging this being ability to sign the affidavit).[88]

Enforcement of the poll tax was delegated to local government.[89] Unlike Texas, there is a record of immediate criminal enforcement of nonpayment in California.[90] The poll tax was then struck down by the state supreme court within a year of enactment.[91] Like the poll tax adopted in Texas, California also previously had a poll tax on all males that did not mention ancestry. That prior tax lasted from 1879 until it was abolished by ballot initiative in 1914.[92] California also used poll taxes as a form of immigration policy throughout the nineteenth century, imposing taxes on "foreign miners" and a tax on Chinese immigrants.[93]

Because noncitizens could not vote in California, taxpayers subject to the California poll tax were not eligible to vote on the referendum that ratified the tax. These taxpayers also were not eligible to vote for the elected officials who then enacted the tax.

C. A Poll Tax in the British Colony and Protectorate of Kenya

The Native Hut and Poll Tax Ordinance of 1934 consolidated in one comprehensive ordinance the previous legislation regarding the collection of hut and poll tax together, with the rules detailing the procedure for such collection.[94] The poll tax was a backstop on the hut tax, pulling in taxpayers who did not have property tax liability into the taxable base.[95]

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88. *Id.*

89. CAL. CONST. art. XIII, § 12 (1921) ("Said tax shall be paid into the county school fund in which county is collected.").

90. In re Kotta, 187 Cal. 27 (Cal. 1921).

91. *Id.* at 28 ("The petitioner, an alien male inhabitant of the state of California of the age of about forty-eight years, and a citizen of the United States of Mexico, is held in custody by the chief of police of the city and county of San Francisco under a complaint charging him with failure to register as required by the terms of the act known as the alien poll tax law of 1921.").

92. CAL. CONST. of 1879, art. XIII, § 12 (1879) ("The legislature shall provide for the levy and collection of an annual poll tax, of not less than two dollars, on every male inhabitant of this state over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the state school fund."). *See also* Sarah Lim, *Sarah Lim: 100 Years Since the Poll Tax Was Enacted*, MERCED SUN-STAR (Nov. 1, 2014), https://www.mercedsunstar.com/living/liv-columns-blogs/article3503400.html#storylink=cpy [https://perma.cc/LHA9-5K6F].

93. *See* Shayak Sarkar, *Tax Law's Migration*, 62 B.C. L. REV. 2209, 2219–22 (2021).

94. A Bill to Provide for the Levy of a Native Hut and Poll Tax, No. 474 (1934) XXXVI THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA No. 33, [hereinafter "1934 Ordinance"].

95. *Id.* at § 2 ("'[P]oll tax' means a payment equivalent to the tax by this Ordinance leviable on huts to be made in any year by an adult male native who has not in respect of such year been liable to hut tax.").

The taxable base for the poll tax was all men over the age of sixteen who were deemed to be "native" and who had not paid hut tax. The Ordinance defines "native" as someone who is "native of Africa not of European or Asiatic extraction, and includes Swahili."[96] The age of liability for payment of poll tax was later raised from sixteen to eighteen years by the Native Hut and Poll Tax (Amendment) Ordinance, 1936, and the Northern Frontier Province Poll Tax (Amendment) Ordinance, 1936.[97]

The poll tax was capped in statute at twenty shillings per annum.[98] The governor then had discretion to set the amount below this cap.[99] Poll tax liability varied by region, with eight distinct regions each having their own rate.[100] The highest rate in 1934 was fourteen shillings and the lowest rate was zero shillings.[101] Tax rates then varied year to year.[102] Stated in terms of hours that would need to be worked in order to have sufficient income to pay the tax, a poll tax payer would need to work twenty-three days in order to afford the average poll tax liability in 1934.[103] This tax was designed, in part, to compel adult men of African descent to work on plantations in Kenya.[104] The tax also contributed to the goal of "financial self-sufficiency" for the installed governments in the British colonies in Africa.[105] Revenue from the combined Native Hut and Poll tax comprised nearly 50% of total tax revenue for the colony.[106] "The yield of [N]ative [H]ut and [P]oll [T]ax in 1934 amounted to £514,480."[107]

The poll tax was collected by District Officers.[108] These officers were required to issue a receipt for poll taxes paid and also keep a register of taxpayers.[109] In 1936 a stamp system was introduced, whereby taxpayers were issued a personally identifiable poll tax card and would purchase stamps to cover their poll tax liability and affix them to the card.[110] Some large plantations also sold these stamps.[111] The

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96. *Id.*

97. *Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate*, Colonial Report No. 1920 (1938), at 60–61 ("A poll tax at the prescribed rate is now payable by all able-bodied male natives of the apparent age of 18 years who are riot liable to pay the hut tax.").

98. *See supra* note 94, at § 3.

99. *Id.*

100. *Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate*, Colonial Report No. 1722, at 51.

101. *Id.*

102. Maria Fibaek & Erik Green, *Labour Control and the Establishment of Profitable Settler Agriculture in Colonial Kenya, c. 1920–45*, 34 ECONOMIC HISTORY OF DEVELOPING REGIONS 72, 72–110 (2019).

103. *Id.* at 84.

104. *Id.*

105. LEIGH A. GARDNER, TAXING COLONIAL AFRICA (2012).

106. *Supra* note 100. The tax on a hut was at the same rate as the tax on a person, and the person who paid the hut tax was exempt from the poll tax, so functionally all the revenue was still from the hut tax. *Id.* at 51. By contrast, "non-natives" were subject to a graduated tax rate based on income. *Id.* at 50.

107. *Id.* at 51.

108. *Supra* note 97, at 61.

109. *Id.*

110. *Id.*

111. *Id.*

poll tax ordinance also specified the timing rules for remittance, collection actions in the case of nonpayment, and criminal enforcement:

> The amount due from each native for hut tax or poll tax shall become due and payable on the first day of January in each year, and shall, if not paid on or before the thirty-first day of January in that year on conviction be recoverable by distress at any time after the latter date, and in default of distress the Court may order imprisonment or detention for any period not exceeding three months.[112]

The Native Hut and Poll tax allowed the governor to have discretion over exempting categories of otherwise liable taxpayers.[113] Issuing exemptions was a regular strategy for managing unrest in the colony. For example, in 1942, the governor and commander-in-chief of the Colony and Protectorate of Kenya exempted the members of the Masai tribe from the payment of the hut tax (but not the poll tax).[114] The 1934 Ordinance also widened the scope for the exemption of deserving persons who are unable to pay.[115] District officers also had discretion to exempt taxpayers "without sufficient means to pay."[116] Lifetime exemption from the poll tax was available to those who were "on active service against an enemy or otherwise on active service or owing to a disease contracted on such active service or as a result thereof, becoming totally or partially disabled to such an extent as materially to affect his wage-earning capacity."[117]

Taxpayers liable for the poll tax had no formal democratic voice in the enactment of the tax. The text of the statute was introduced in the Legislative Counsel and announced in the Official Gazette of the Colony and Protectorate of Kenya, published under the Authority of His Excellency the Governor of the Colony and Protectorate of Kenya.[118] The members of the legislative council that voted on the legislation introduced by the governor were themselves appointed to the Counsel by the governor.[119]

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112. *See* 1934 Hearings, *supra* note 94, at § 6.

113. Colonial Report No. 1722, at 51 ("The Governor has power to reduce the amount of the tax payable by the natives of any specified area, and in certain districts temporary reductions have been made."); *See supra* note 94, at § 9.

114. *Proclamation No.* 5, *in* KENYA PROCLAMATIONS, RULES AND REGULATIONS 5, 5 (1942).

115. Reduction of poll tax rate in 1922. ANNUAL REPORT ON THE SOCIAL AND ECONOMIC PROGRESS OF THE PEOPLE OF THE KENYA COLONY & PROTECTORATE, (1935); Annual Colonial Reports No. 1722, at 45.

116. *See supra* note 94, at § 8.

117. *See supra* note 94, at § 10.

118. *See, e.g.*, A Bill to Amend the Non-Native Poll Tax Ordinance (1934) THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA No. 77 (announcing introduction of a bill to amend the Non-Native Poll Tax Ordinance of 1933).

119. *See, e.g.*, Legislative Council Appointment (1935) THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA No. 63 (announcing the appointment to the Legislative Council Montagu Richard Reynolds Vidal by His Excellency the Governor).

D. A Poll Tax in Scotland

In 1989, a local property tax system called the "domestic rates" was replaced with a poll tax in Scotland, officially called a "Community Charge," on all individuals eighteen or older.[120] After one tax year in Scotland, the poll tax regime was then installed in England and Wales.[121] The taxpayer protests against the poll tax in the United Kingdom have been called "the biggest mass movement in British history"[122] and "involved over 17 million people."[123] The tax proved so unpopular, it was abolished within three years.[124]

Like the other poll taxes included in this Part, the Community Charge was a tax on personhood, with the taxable base being determined by the number of people within specific categories who are present in the taxing jurisdiction. The three required elements for the personal Community Charge were to be an individual aged eighteen or over,[125] who has sole or main residence in the area of the taxing authority at any time of the day,[126] and is not exempt.[127] The amount of the charge is determined *per day*.[128] So if a taxpayer were to turn eighteen at some point in the year, she would become "chargeable" that day and onward in the tax year. There was also joint and several liability for spouses.[129] In its final year of operation, the total number of people on the Community Charge register in Scotland, as of June 1st, 1991, was 3,834,276.[130]

The Community Charge provided for multiple exemptions. These exemptions were persons in detention, visiting forces, international headquarters, and defense organizations, the severely mentally impaired, eighteen-year-olds still receiving child welfare benefits, certain members of religious communities, hospital patients, patients in care homes, care workers, and residents of certain Crown buildings.[131]

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120. In addition to the "personal Community Charge" that applied to most taxpayers, the legislation also included a "standard Community Charge" for nonresident property owners, c. 41 §§ 3–4, and a "collective Community Charge" for designated building that include transient residents for whom the registration determines would be difficult to maintain a register. Local Government Finance (Scotland) Act 1988, *Id.* at § 5(3).

121. DAVID BUTLER, ANDREW ADONIS & TONY TRAVERS, FAILURE IN BRITISH GOVERNMENT: THE POLITICS OF THE POLL TAX (1995).

122. DANNY BURNS, POLL TAX REBELLION (1992).

123. *Id.*

124. The Council Tax system that replaced the poll tax has components of both a property tax and an income tax, based proportionally on the value of property within specific bands and with rebates for low incomes.

125. Local Government Finance (Scotland) Act 1988, c. 41 § 2(1a) (UK).

126. *Id.* at § 2(1b).

127. *Id.* at § 2(1c).

128. *Id.* at § 2(1) ("A person is subject to a charging authority's personal Community Charge *on any day if* . . . .").

129. *Id.* at § 16.

130. P.A. Scrimngeour, *PQ's: ALISTAIR DARLING*, Local Government Finance Statistics Branch, Scottish Office (May 21, 1992).

131. Local Government Finance (Scotland) Act 1988, Schedule 1. In response to the immediate unpopularity of the tax, the number of exemptions expanded in the next year. Local

The "charging authority" was each respective local government, otherwise known as "councils," whose rate of tax was based on the amount of revenue needed.[132] This revenue target was entered into a formula set by statute.[133] Students received a reduced rate, paying one-fifth the rate of tax for any days of full-time study.[134] Because the amount of the Community Charge was based on the overall expenses of the local government jurisdiction in which the taxpayers resided, there was wide variation across Scotland for how much the charge would be.[135] Urban jurisdictions had higher expenses than rural jurisdictions, and this was reflected in the poll tax rates.[136]

Taxpayers had multiple filing obligations under the Community Charge, with both a requirement to register and a separate requirement to remit. Registration officers were required to compile and maintain a Community Charge register that recorded the name of the taxpayer, the type of charge, the address of the residence, the day the taxpayer became subject to the charge, and if the individual was a student undertaking full-time course of education.[137] A single individual would be designated a "responsible person who has to provide the list of people living on the premises."[138] In Scotland, some of this registration was conducted via correspondence by mail, with follow-up in person. The personnel who were previously responsible for property assessments became responsible for maintaining the poll tax registers.[139] The poll tax registration staff were also responsible for maintaining the electoral registers, though these were kept as separate books.[140] A penalty applied for nonregistration that was distinct from penalties for nonpayment. Enforcement of the tax liability initiated with Community Charge registration officer, with noncompliant taxpayers being referred to the Court of Session and, if necessary, private contractors hired by the Council, referred to as "Sheriffs."[141]

II. POLL TAXES AS TAX WEAPONS

This Article defines a "tax weapon" as the use of tax policy to harm a political adversary. The identification of a tax weapon thus requires identification of the

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Government and Housing Act 1989, c. 42 (UK).

132. Local Government Finance (Scotland) Act 1988, c. 41 §§ 9–10.

133. *Id.* at § 12 (A x B / C, where 'A' is the amount set by the authority for its personal Community Charge, 'B' is the number of days the taxpayers is subject to the charge in the financial year, and 'C' is the number of days in the financial year.).

134. *Id.* at § 13.

135. Michael Lavalette & Gerry Mooney, *The Struggle Against the Poll Tax in Scotland*, 9 CRITICAL SOC. POL'Y 82, 87 tbl.5 (1989).

136. *Id.*

137. Local Government Finance (Scotland) Act 1988, c. 41 § 6(1–5).

138. PETER TAYLOR, KEEPING TRACK OF YOUR WHEREABOUTS: THE POLL TAX AND CIVIL LIBERTIES 11 (The Scottish Civil Liberties Council) (1989).

139. *Id.*

140. *Id.*

141. *Id.*

harm of a tax and the constituency targeted for harm. Although tax weapons are not limited to racial targets, racial targets are instructive for understanding the broader phenomenon of tax weapons and are the focus of this Article.

My choice of the term "weapon" is deliberate. A defining characteristic of a weapon is that it is used to cause harm.[142] And while weapons can be used for additional goals, such as domination, that domination is achieved as a direct result of the imposed or threatened harm. Similarly, a tax weapon is a distinct type of tax policy instrument where harming taxpayers is a goal in and of itself.

Many objects can be used as weapons without inherently being weapons.[143] Accordingly, this article does not presume that all taxes are inherently weapons. A citizen can pay income tax, for example, without the remittance itself being a harm.[144] Rather, a tax weapon imposes a targeted harm on a member of a targeted class that exceeds what otherwise similarly situated individuals of other groups endure. All four of the poll taxes described in this article exhibit the features of a tax weapon.

Under a counterfactual theory of harm, a tax weapon imposes harm on a targeted group relative to various counterfactual scenarios.[145] The selection of counterfactuals has implications for the extent of the harm assessed. One counterfactual would be an identical world but without the tax. A separate counterfactual would be an identical world but without the individual being a member of the targeted group. A third counterfactual would be a world with an equivalent revenue-raising tax that did not produce the targeted harm. Not all of these counterfactuals require acceptance of the idea of a pretax baseline.[146]

Outside of tax, the law provides a variety of definitions of harm. Standing doctrine offers one of the most robust definitions of harm that can be extended to the idea of tax weapons. This analysis generally looks to the concreteness of a harm, sorted between tangible and intangible harms.[147] For example, the standing doctrine

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142. Criminal law offers a typology of weapons, with differing legal consequences depending on the weapons categorization. For example, a "weapon" is distinct from a "deadly weapon," and some weapons can be "deadly weapons *per se*." *See, e.g.*, Acers v. United States, 164 U.S. 388 (1896) (determining that a rock can be a deadly weapon which is then relevant to determining the *mens rea* of the defendant). In all cases, however, a weapon is something used to injure, defeat, or destroy. It is this general concept of a weapon that I deploy when referring to tax policy as a weapon.

143. *See supra* note 138.

144. Indeed, many taxpayers take a personal pride in their remittance as a civic act. *See, e.g.*, LAWRENCE ZELENAK, LEARNING TO LOVE FORM 1040 (2013); VANESSA WILLIAMSON, READ MY LIPS: WHY AMERICANS ARE PROUD TO PAY TAXES (2019). Some have also argued that exclusions from taxpaying can also be a form of harm. *See* Maxmillien Zahnd, *Not "Civilized" Enough to Be Taxed: Indigeneity, Citizenship, and the 1919 Alaska School Tax*, 48 L. & SOC'L INQUIRY 937 (2023).

145. *See* Purshouse *supra* note 33 and accompanying text (describing the theory of harm and applying to the analysis of tax policy).

146. *See* LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP 164 (2002) ("The real question of fairness should be about after-tax results, not about their relation to the pretax situation.").

147. *See* Rachel Bayefsky, *Constitutional Injury and Tangibility*, 59 WM. & MARY L. REV. 2285 (2018) (offering "particularity" as a more useful analysis than "tangibility" when assessing harm for purposes of standing).

distinguishes between dignitary harms and economic harms.[148] While this sorting has implications for the legal redress available to a plaintiff claiming injury, it is not necessary for determining whether a given tax imposes a harm. Both tangible and intangible harms constitute harm.

The harms imposed by a tax weapon vary. That is, they are not limited to coercive resource extraction and impinged property rights, though that is a consistent feature of many poll taxes. For example, in the case of the Alien Poll Tax in California, local tax collectors seized roughly one week of wages only from the targeted class of noncitizens.[149] A tax weapon can also infringe privacy rights, as in the case of the United Kingdom poll tax register where individuals had to report the names of all other adults living in their household.[150] Tax weapons also generally impose criminal liability for noncompliance, resulting in restrictions on liberty.[151] Tax weapons can also impede voting rights.[152] And tax weapons can impede the free movement of persons.[153]

The vulnerability of the taxpayer is also relevant to determining the harm of a tax weapon. Were a populist government to enact a yacht tax or some other luxury tax, the targeted group of elites would also have access to the resources that sustain resiliency under a theory of vulnerability, mitigating the harm.[154]

The use of tax policy to harm makes the analysis of tax weapons distinct from the three conventional accounts of the goals of taxation: revenue, redistribution, and regulation.[155] The revenue function is straightforward: to provide state fiscal capacity. The redistributive function is "aimed at reducing the unequal distribution of income and wealth that results from the normal operation of a market-based economy."[156] It is explicitly understood as progressive. Lastly, "[t]axation also has a regulatory component: It can be used to steer private sector activity in the directions desired by governments."[157] A tax weapon can overlap with these goals, but it is distinct in that

148. *Id.*

149. *See supra* Part II.B (describing the financial cost of Alien Poll Tax relative to one month of wages in California).

150. *See supra* Part II.D (describing the personal information households were required to report to poll tax collection agencies in Scotland). This specific requirement led to various civil liberties groups challenging the tax and had particular implications for LGBTQ households that were already facing legal persecution under Section 28.

151. *See supra* Part II.C (describing imprisonment for nonpayment of Native Hut and Poll Tax).

152. *See, e.g.*, *supra* Part II.A (describing the selective enforcement of poll tax against Black citizens to prevent voting). *See, e.g.*, *supra* Part II.D (describing the incentive for avoiding voter registration rolls in order to avoid a tax that was beyond the financial means of many low-income citizens in Scotland).

153. *See supra* Part II.B (discussing the use of tax policy to deter immigration).

154. *See* Fineman, *supra* note 41, at 269. Perhaps more crucially, a taxpayer who owns a yacht is not similarly situated to a taxpayer who does not own a yacht. A rate structure that distinguishes taxpayers based on ability to pay is assessing tax liability differently for those who are differently situated.

155. Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 3 (2006).

156. *Id.*

157. *Id.*

the primary focus of analysis is the harm imposed on a targeted group.[158]

Detecting and disarming tax weapons is especially important relative to other forms of state violence because tax policy is generally less transparent to the public and citizens generally have fewer protections to challenge taxes.[159] Tax law is viewed as both complex and boring, leading to minimal public scrutiny.[160] And the taxing power, while not limitless, generally offers the state more immunity from legal challenge than other forms of regulation.[161]

While the subsequent Part on the mechanics of race-based tax weapons will further detail the specific harms of four distinct twentieth-century poll taxes, a few examples may be helpful to illustrate the importance of identifying and disarming tax weapons. In the case of harms that limit personal freedom, the poll tax imposed on "natives" in Kenya compelled labor on colonial plantations in order for workers to afford the one month of wages required for the annual poll tax.[162] Nonpayment yielded imprisonment.[163] Colonial subjects thus could choose between laboring on a plantation or enduring prison. In the case of harms that limit voting rights, the poll tax in Texas prevented individuals who did not, eight months prior to Election Day, find a local tax collector, remit payment, and receive a receipt.[164]

The designation of a tax as a tax weapon is not a comprehensive appraisal of the desirability of a tax that deserves primacy over all other normative criteria. Proposing the question "who does this tax harm?" as a necessary question for evaluating tax policy is not the same as declaring the answer dispositive for whether a tax should be adopted or repealed. For example, recognizing that an income tax may have a disparate impact on a targeted group does not necessarily lead to the conclusion that an income tax should be abolished, in part because remediation may be available to address the disparate impact while retaining an income tax, and in part because the normative criteria for tax policy span beyond any single measure.[165]

An informed reader will see the overlap between the identification of tax weapons and a concern with horizontal equity. The principle of horizontal equity is that similarly situated taxpayers should be taxed similarly.[166] It should not be

158. Although they do not use the terminology of "tax weapons," contemporary tax scholarship has begun to look at the harms caused by taxation as distinct from the revenue, redistributive, and regulatory functions. *See, e.g.*, Ariel Jurow Kleiman, *Impoverishment by Taxation,* PENN. L. REV. (forthcoming 2023); CAMILLE WALSH, RACIAL TAXATION (2018).

159. Perhaps the redistributive potential of tax law explains its omission from critical theories that otherwise regard law as a possible site of violence. *See, e.g.*, Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986).

160. *See* Blank & Osofsky *supra* note 36.

161. *See* Bearer-Friend, *supra* Bearer-Friend note 39. *See also* Eduardo Moisés Peñalver, *Regulatory Taxings*, 104 COLUM. L. REV. 2182, 2183 (2004).

162. *See infra* Part II.C.

163. *Id.*

164. *See infra* Part I.A.

165. As noted previously, tax policy is typically evaluated for its impact on public revenue, redistribution, and behavior. *See* Avi-Yonah, *supra* note 155.

166. In a now famous debate between two of tax law's most prominent figures, Richard

surprising that, in a discipline now reckoning with race after decades of exclusion, the tax equity criterion most closely associated with equal protection analysis—horizontal equity—also fell into disfavor.[167] A casual disregard for horizontal equity as a meaningful criterion also made it easy for disparate racial impact to slip from the radar of tax policy analysis.[168] The vanguard of this hostility to horizontal equity also came from a field of research that has long positioned poll taxes as a hypothetical ideal form of tax.[169]

Horizontal equity has not been entirely rejected amongst tax scholars. Efforts to resuscitate horizontal equity point to procedural aspects of the criterion.[170] Others position horizontal equity as a compromise between those with differing priors about the appropriate level of redistribution.[171] Even skeptics of horizontal equity have tried to salvage a concern with discrimination as one aspect of the normative standard still relevant to tax policy analysis.[172] This Article contributes an additional defense of horizontal equity by demonstrating its role in identifying the harms of tax weapons.[173]

A tax weapon becomes a "race-based" tax weapon when the targeted political

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Musgrave and Louis Kaplow consider whether horizontal equity is a meaningful dimension to evaluate tax policy. *See* Richard A. Musgrave, *Horizontal Equity: A Further Note*, 1 FLA. TAX REV. 354 (1993); Louis Kaplow, *A Note on Horizontal Equity*, 1 FLA. TAX REV. 191 (1992).

167. *See* Ira K. Lindsay, *Tax Fairness by Convention: A Defense of Horizontal Equity*, 199 FL. TAX REV. 79 (2016) ("Although horizontal equity remains a textbook criterion for tax fairness, scholarly literature is largely hostile. Scholars ranging from the legal theorist Louis Kaplow to philosophers Thomas Nagel and Liam Murphy question its conception coherence and normative significance."). *But see* David Elkins, *Horizontal Equity as a Principle of Tax Theory*, 24 YALE L. & POL'Y REV. 43, 46 (2006) ("As a constitutional principle, equal protection does not prohibit horizontal inequity.").

168. For a summary of efforts to elevate race and ethnicity in tax scholarship, see Jeremy Bearer-Friend, Ari Glogower, Ariel Kleiman & Clinton G. Wallace, *Taxation and Law and Political Economy*, OHIO S. L.J. 471 (2020) (describing the works of Critical Tax scholars from the 1990s to the present); for an example of how the shape of academic commentary on tax policy was mirrored by "colorblind" IRS data practices, see Jeremy Bearer-Friend, *Should the IRS Know Your Race? The Challenge of Colorblind Tax Data*, TAX. L. REV. (2018).

169. *See, e.g.*, ANTHONY. B. ATKINSON & JOSEPH E. STIGLITZ, LECTURES ON PUBLIC ECONOMICS 28 (McGraw-Hill) (1980) ("Lump-sum taxes are defined as those that do not depend on any action of the individual; there is no way can change the tax liability. An example would be a poll tax in a country where there is no emigration or immigration. . . The impact of a lump-sum tax is however a pure *income* effect, and we say that it is non-distortionary. All other taxes are distortionary, and the nature of the distortion is related to the difference between the effects of the given tax and a comparable (say, in revenue) lump-sum tax.").

170. *See* James Repetti & Diane Ring, *Horizontal Equity Revisited*, 13 FLA. TAX REV. 135 (2012).

171. Lindsay, *supra* note 167, at 83 ("I argue that horizontal equity is best understood as compromise principle for people who disagree about the justice of redistributive taxation.").

172. *See* LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP 39 (2002) ("[A] ban on invidious discrimination through the tax system is not the same as a blanket ban on taxing differently those who earn the same."). *See also id.* at 164 ("This is not the general problem of horizontal equity but the more restricted problem of *tax discrimination*.").

173. For additional defenses of horizontal equity, see LAWRENCE ZELENAK & AJAY MEHROTRA, A HALF CENTURY WITH THE INTERNAL REVENUE CODE: THE MEMOIRS OF STANLEY S. SURREY (2022); Alice G. Abreu, *Racial Issues in Tax Law: Identification, Redress, and a New Vision of Horizontal Equity*, *in* A RESEARCH AGENDA FOR TAX LAW 105 (Leopoldo Parada ed., 2022).

rival subject to harm that exceeds what similarly situated taxpayers experience has been targeted based on their race, ethnicity, or ancestry. As is evident in the taxes included in this Article, the categories of race, ethnicity, and ancestry are culturally specific concepts that are not constant across or within jurisdictions, nor over time.[174] For example, the boundary between who was deemed "native" and "non-native" in the context of Colonial Kenya fluctuated consistently throughout the first half of the twentieth century, with various groups vying for reclassification and its attendant social, political, and tax consequences.[175] But the definition of each category need not be fixed or common across jurisdictions for poll taxes to illuminate how facially neutral and nominally universal tax law can target specific groups based on their race, ethnicity, or ancestry.[176]

Poll taxes exhibit all the potential harms of a race-based tax weapon. All four poll taxes extracted resources from specific racial groups at higher rates than similarly situated taxpayers.[177] Criminal liability also attached to failure to pay poll taxes in California, Scotland, and Kenya.[178] These penalties were often specific to nonpayment rather than a general crime like defrauding the government. For example, after its first enactment in 1934, the colonial government of Kenya passed an amendment in 1935 specifying the time a taxpayer would be imprisoned for failure to pay as there was a conflict of laws with the detention schedule under the Criminal Procedure Code versus the poll tax ordinance.[179] Poll taxes also invade privacy, principally through the registration process, where personal information is collected, and the collections process, where private dwellings are entered.[180]

The most challenging question for defining and then subsequently detecting whether a given tax is a race-based tax weapon is the extent to which there is an

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174. *See, e.g.*, IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996).

175. *See, e.g.* E.R. Turton, *The Isaq Somali Diaspora and Poll-Tax Agitation in Kenya, 1936-41*, 73 AFR. AFF. 325, 327 (1974) ("Isaq Somali aspirations were partially fulfilled in 1919, when they achieved limited non-native status through the Somali Exemption Ordinance of that year.").

176. Indeed, poll taxes are also state instruments for constituting specific racial identities. *See* Maximilien Zahnd, *Not "Civilized" Enough to Be Taxed: Indigeneity, Citizenship, and the 1919 Alaska School Tax*, 47 L. & SOC. INQUIRY 937 (2022).

177. *See supra* Section I.B–D. The precise mechanics of this will also be elaborated in Part III.

178. *See supra* Section I.B–D. For example, the plaintiff in *In Re Kotta* was "held in custody by the chief of police of the city and county of San Francisco under a complaint charging him with failure to register as required by the terms of the act known as the alien poll tax law of 1921." *In re Kotta*, 187 Cal. at 28.

179. A Bill to Amend the Native Hut and Poll Tax Ordinance, GN 369 of GG xxx (May 21, 1935), https://gazettes.africa/archive/ke/1935/ke-government-gazette-dated-1935-05-21-no-25.pdf [https://perma.cc/F6XL-A38L] ("It has been held by the Supreme Court that the period of detention which may be awarded in default of payment of hut and poll tax due under the repealed Native Hut and Poll Tax Ordinance (Chapter 51 of the Revised Edition) is subject to the scale prescribed by the Schedule to the Detention Camps (Amendment) Ordinance, 1926. The object of this Bill is to render defaulters under that Ordinance subject to the penalties laid down for non-payment of tax under the Native Hut and Poll Tax Ordinance, 1934.").

180. Some critics raised administration concerns related to enforcement of the Alien Poll Tax in California (inquisitorial methods required to determine who is an "alien"). *See* Herbert W. Clark.

intent requirement.[181] Must all tax weapons be deliberately so? That is, must the enacting body be purposeful in its intent to harm a specific constituency in order for the statute to be a tax weapon? Under an intent requirement, the Texas Poll Tax, the California Poll Tax, and the Kenyan Poll Tax all would still meet the definitional criteria.

For the Alien Poll Tax and the Native Hut and Poll Tax—two poll taxes that base tax liability on the race, ethnicity, or ancestry of the taxpayer—the de facto targeting is self-evident. The intent appears not only in the statutory text but also in the material that proponents of the taxes distributed publicly.

That leaves two poll taxes where the statutory text is not explicit: Texas and Scotland. In the case of Texas, the record is also clear that the enactment of the tax was designed to target Black citizens.[182] There is a large historical record documenting that the expanded use of poll taxes in former Confederate states was racially motivated.[183] For Scotland, the question of intent is less clear. Some of this is due to the climate of political life at the time, where explicit denigration of racial groups was less tolerated and so any public record or even private written correspondence expected to be archived would avoid disclosing malicious intentions. The record is clear, however, that the Community Charge was designed to target political adversaries.[184] And, to the extent a political benefit inured to the party that inflicted harm on constituencies that were opposed to their candidacy, then further motivation can be inferred. For many, this will still be too speculative.

The ambiguity of the Community Charge as a race-based tax weapon recedes if the primary concern is the harm caused by the tax. Speculation over intent isn't as important for identifying tax weapons if the fundamental concern with race-based tax weapons is that they create targeted race-based harm enacted by the state. Instead, the priority is to remove that harm.[185] And doing so requires

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181. This deliberate motivation also distinguishes tax weapons from the implicit legislative bias documented by Delaney Thomas and Leigh Osofsky in the context of the mortgage interest deduction. Leigh Osofsky & Kathleen DeLaney Thomas, *Implicit Legislative Bias*, 56 UC DAVIS L. REV. 641 (2022). For a discussion of the relevance of intent to the assessment of discrimination in the case of digital service taxes, see Reuven Avi-Yonah, Young Ran (Christine) Kim & Karen Sam, *A New Framework for Digital Taxation*, 63 HARV. INT'L. L.J. 279, 320–26 (2022).

182. It is also well documented that poor whites were impacted by the poll tax, and that this inured to the benefit of political parties favoring elites. *See* ALEXANDER KEYSSAR, THE RIGHT TO VOTE (2009). The fact that two constituencies were effectively targeted does not dilute the reality that one of those targets was Black citizens.

183. *See, e.g.*, KOUSSER, *supra* note 71, at 66–67 (1974) (citing proponents of poll tax legislation describing its advantages specifically in terms of racial targeting and also pointing to election results). *See also* FONER, *supra* note 55.

184. For the most authoritative White Hall account of the poll tax, see DAVID BUTLER, ANDREW ADONIS & TONY TRAVERS, FAILURE IN BRITISH GOVERNMENT: THE POLITICS OF THE POLL TAX (1995). For the perspective of community organizers, see, e.g., DANNY BURNS, POLL TAX REBELLION (1992). Local Council governments were a center of Leftist political power relative to Parliament and the poll tax disrupted their ability to function. For additional commentary on the historical context surrounding the adoption of the poll tax, see *infra* Section IV.B.

185. In Critical Race Theory, outcome measures untethered to intent requirements are consistently favored as tools for achieving racial justice. *See, e.g.*, Joshua Sellers, *Race, Reckoning, Reform*

identifying the policy instruments that inflict harm and disarming them.

III. THE MECHANICS OF RACE-BASED TAX WEAPONS

Two of the poll taxes included in this Article can be described as "unconcealed" tax weapons: the evidence and intent of targeting are self-evident. The statutory text of the Californian Poll Tax and the Kenyan Poll Tax both specify that tax liability is contingent on the race, ethnicity, or ancestry of the individual. Yet all four of the poll taxes examined in this article are forms of race-based tax weapons. This point of contrast is helpful for appreciating the specific mechanics of race-based tax weapons.

The first conclusion from comparing four twentieth-century poll taxes is that the absence of language about racial targeting in a tax statute does not result in the absence of racial targeting. The second conclusion is that racial targeting can be even more viable under universalist language in a tax statute because it has the public image of fairness and the legal validity of nondiscrimination while still achieving the political goals of supremacy for an already politically empowered group, in this case, white supremacy.

Poll taxes illustrate how racial targeting can be achieved within universalist tax policy through three specific techniques: tax localization, the use of racial proxies, and strategic dysfunction. Just as federalism was a strategy for embedding racial discrimination into New Deal social safety net programs, tax localization is a mechanism for dividing tax jurisdictions into weapons of white supremacy.[186] Targeting can also be achieved through basing tax liability on proxies for race rather than on a taxpayer's race itself. And design choices that inevitably guarantee noncompliance then allow enforcers the discretion to target adversaries. The first section of this Part describes how such targeting is achieved in the context of nominally universalist poll taxes in Texas and Scotland.

Poll taxes also illustrate how racial targeting can be more effective when concealed. Such targeting is enabled by public impressions of fairness.[187] Concealed targeting also avoids legal challenges that protect against overt discrimination. The second Section of this Part demonstrates how two poll taxes relied on such benefits to achieve the goals of harming specific groups of taxpayers based on race.

Poll taxes are a uniquely advantageous way to study this specific phenomenon of targeting within universal policy because they are understood to be "one person,

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& the Limits of Law of Democracy, 169 U. PA. L. REV. ONLINE (2021) ("[L]et's use black equity as the most important outcome criteria."). A preoccupation with discriminatory intent has also stymied impact litigation in pursuit of racial justice. *See, e.g.*, *Marnika Lewis* v. *Governor of Ala.,* No. 17-11009 (11th Cir. 2020) (regarding constitutional race-discrimination claims against Alabama's state preemption of Birmingham's efforts to increase the minimum wage).

186. IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE (2006).

187. *See* Noël B. Cunningham & Deborah H. Schenk, *The Case for a Capital Gains Tax Preference*, 48 TAX L. REV. 319, 368–70 (discussing the importance of perceptional equity).

one tax."[188] Poll taxes illustrate how legislators can enact a policy design that is nominally universal yet yields greater tax liability for groups based on their race or ethnicity. Taken together, this Part illustrates the ability of nominally universal taxes to target and the fact that such taxes can be even more effective at targeting.

A. Targeting within Universal Statutory Language

1. Reliance on Racial Proxies for Determining Tax Liability

Joel Slemrod eloquently summarizes the use of proxies to create racial targets in tax policy: "If someone were looking to effectively but implicitly discriminate against a group, the strategy would be to identify how the choices or characteristics of that group differed from the average and then find a way to penalize those choices or characteristics through the tax system."[189]

In the case of the Community Charge, tax liability was directly tied to two racial proxies: the number of adults in a single home and the likelihood of living in an urban area.[190] Taxpayers with larger, intergenerational households and taxpayers in urban areas would see substantial tax increases under the new Community Charge. In a report issued by the Association of London Authorities, "Each of these factors will be looked at, and it will be shown that Black and ethnic minorities are more likely to be worse off under each of them."[191]

Under the Community Charge, the number of adults in a household determined the amount of tax to be paid by the household. This was a shift from a property tax system where the value of the dwelling determined the amount. In the United Kingdom, household size varied by ethnic group "Only 4.6 percent of white people live in households with more than 3 adults, while 10 percent of Afro-Caribbeans do and 13.1 percent of Asians do."[192] This produced a predictable result of white households more likely to enjoy a tax cut from the transition to a poll tax.

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188. John Walker Mauer, The Poll Tax, Suffrage, and the Making of the Texas Constitution of 1876 (1973) (M.A. thesis, Texas Tech University).

189. Joel Slemrod, *Group Equity and Implicit Discrimination in Tax Systems*, 75 Nat'l Tax J. 203 (2022). Whether the use of racial proxies should be sorted into disparate treatment or disparate impact analysis remains an open question. *See* Hellman, *supra* note 46, at 210 ("Neither statutory nor constitutional text contain the concept of a proxy or explain why proxies matter, for example.").

190. Association of London Authorities, *Black People, Ethnic Minorities and the Poll Tax* 1 (1988) (in NLS collection), https://www.jstor.org/stable/pdf/community.28314752.pdf?refreqid=fastly-default%3A9c56cc81cb7c141010ca946cedd177dd&ab_segments=&origin=&initiator=&acceptTC=1 [https://perma.cc/XZ4Q-TQ5D] [hereinafter "ALA Report"] ("The main factors which affect whether a household will be better or worse off under Poll Tax are: (a) The size of household – the more adults, the more likely you are to lose; (b) The area in which you live – London and other metropolitan areas tend to have higher Poll Tax levels; (c) The type of house you live in – people living in low ratable value houses are more likely to lose."). This shift in tax base has been described as a reliance on the benefit principle rather than the ability to pay principle for designing a tax system. *See* William Gale, *What Can America Learn from the British Tax System*, 50 NAT. TAX J. 753, 773 (1997).

191. ALA Report, *supra* note 190.

192. *Id.* at 2.

It also produced a rich protest literature commenting on the painful dilemmas that intergenerational households would now face. In one comic, a taxpayer explains to their grandparent, "Sorry Granny you'll have to go. . . [sic] we can't avoid your poll tax!"[193]

Likelihood to live in an urban area was also a proxy for race, and there was a wide range in poll tax liability depending on which council someone lived in. "It is precisely in the areas where the Poll Tax will be highest that the great majority of ethnic minorities live."[194] For example, 31% of ethnically white people in Britain lived in London or Metropolitan counties, while 80% of ethnically West Indian people did.[195] "It is fair to say that the Poll Tax will discriminate against Black people and people of other ethnic minorities."[196]

Altogether, 69% of Black households were worse off, and overall 67% of all ethnic minority households worse off under the shift to a poll tax from a property tax.[197] These estimates are based on initial calculations by ALA against a baseline of the current rate structure. This is in contrast to "the Government's estimate that in London as a whole, 54% of households will lose from Poll Tax."[198]

2. Reliance on Tax Localization to Target Discriminately

Two aspects of tax localization facilitate racial targeting within nominally universal poll tax statutes. First, a narrower tax base created through localization enables targeted rate setting.[199] Second, localized enforcement can enable discriminatory tax administration in a manner that may be interceded at a federal level.

The Texas Poll tax achieved its discriminatory goals primarily through targeted enforcement. Poll taxes marry well with a discriminatory enforcement strategy because the potential nexus with the law is broad—the tax is guaranteed to reach a target population because it reaches nearly everyone. With a tax that is nominally applied to everyone, those empowered to enforce it have a broad pool to target within.

Despite the absence of statutory language assessing liability based on race, there is no dispute about the racial motivations of Southern poll taxes in the wake of Reconstruction.[200] These motivations were then acted on through racially

193. All Britain Anti-Poll Tax Federation Bulletin, No. 2, 2 (March 1990).

194. ALA Report, *supra* note 190, at 2.

195. The designation of "ethnic groups" are the categories used in the survey data provided by ALA. *Id.* at 3.

196. *Id.*

197. *Id.* at 5.

198. *Id.*

199. While poll taxes typically require all taxpayers within the same jurisdiction to pay the same rate, localization allows for multiple tax jurisdictions. In both Scotland and Kenya, different rates applied depending on the taxing subdivision where the taxpayer lived. Even with the poll taxes without localized rates, there is still a rate structure in that there is a zero bracket for exempt taxpayers and then the full tax for nonexempt ones. In no setting included in this article was there a poll tax that did not have at least two rates.

200. KOUSSER, *supra* note 71, at 66–67 (1974) (citing proponents of poll tax legislation describing its advantages specifically in terms of racial targeting and also pointing to election results). Nevertheless, there is a longstanding debate over the scale of the *impact* of poll taxes relative to other

targeted enforcement.[201] In turn, one of the clearest examples of racial targeting in tax law is a law where no mention of race is made at all—in neither the constitutional provision ratifying the poll tax nor the statutory language adopted by the state legislature.

In the United Kingdom, racial targeting was achieved in part through place-based rate setting. The disparate impact by region of the new poll tax was already known to policymakers by at least as early as November 1985 for a tax that was ultimately imposed in 1989.[202] "Even the average effects of the introduction of the poll tax will be dramatic, with a clear differentiation between areas which accords with a common conception of affluence. Thus the largest average gains are residents of affluent London boroughs."[203] Wealthy and whiter areas enjoyed a substantial tax cut, while poorer and more diverse areas faced tax increases.

Racial targeting via the local enforcement of the Community Charge was also possible, but there is not extensive documentation of it relative to the enforcement in the former Confederate states. One area of discretion in enforcement was the decision to go from a poinding, when law enforcement enters a home and values all personal property, to a warrant sale, where the property is seized to recover the tax debt.[204] According to a spokesman for the Regional Council, "Whilst there have been many poindings, only about half a dozen people in three years have been forced into a warrant sale," and he admitted that with 200,000 nonpayers in Lothian alone, there would be "difficulties." Tax administrators sought to demonstrate goodwill by pursuing poindings without warrant sales, but tax protestors rejected this distinction, viewing both as unconscionable.[205]

3. Strategic Disfunction Enabling Targeted Enforcement

Racial targeting can also be achieved through cumbersome design elements and dysfunctional administration. These dysfunctions that produce broad noncompliance then shift discretion to tax enforcers to pick and choose on which taxpayers to apply the law.[206] In statute, a poll tax weapon applies broadly, but

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non-tax related efforts to prevent Black suffrage. V.O. KEY, SOUTHERN POLITICS IN STATE AND NATION (1984). For a contemporary look at the debate between Kousser and Key, see Daniel Jones et al., *A Poll Tax by Any Other Name*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 19612, 2013).

201. *See, e.g.*, Vanessa Williamson, *The Long Shadow of White Supremacist Fiscal Policy*, Tax Policy Center, Urban Institute & Brooking Institution (2020); FONER, *supra* note 55; Keyssar, *supra* note 182.

202. John Gibson & Tony Travers, *Measuring the Effects of a Poll Tax*, Inst. Local Gov. Stud. (November 1985), at 6.

203. Matthew Goodwin & Oliver Heath, *Briefing, Low-Income Voters in UK General Elections, 1987* (July 2019) 9–10, fig. 4–5, https://www.jrf.org.uk/political-mindsets/low-income-voters-in-uk-general-elections-1987-2017 [https://perma.cc/R5VZ-FXBN].

204. Newsletter of Cumbernauld and Kilsyth Anti Poll Tax Union, Issue No. 3, 1989.

205. Letter from Tommy Sheridan, Sec'y of Scot. Anti-Poll Tax Fed'n, to Campbell Christie, STUC General Sec'y, (Sept. 20, 1989) [hereinafter *The Letter*] ("We believe no differentiation should be made between poindings and warrant sales.").

206. In non-poll tax contexts, dysfunction in tax administration can also be a tool of racially targeted resource extraction. ANDREW W. KAHRL, THE LAND WAS OURS: HOW BLACK BEACHES BECAME WHITE WEALTH IN THE COASTAL SOUTH (2016).

confusing or inconvenient filing requirements produce inevitable miss-filings, errors, or other timing issues that allow targeting. Here, the harm of the tax weapon is not in the resource extraction of the tax but in the entanglement with state law enforcement, penalty assessments, or truncated voting rights.

In the case of the Texas Poll Tax, barriers to remittance achieved the primary goal of then, limiting suffrage. As designed, the deadline for remittance in April was eight months prior to state and federal elections in November.[207] Black voters were then asked for documentation of payment of a poll tax that could not be paid retrospectively. Poll workers would also selectively ask for poll tax receipts based on the targeted category, with permissive nonenforcement for preferred groups. The uncoordinated deadlines and disparate enforcement were then combined with ad hoc and mostly absentee poll tax collection.[208] Because the primary policy aim was to prevent voting, enforcement of poll tax remittance would be counterproductive. This partially explains the selection of poll taxes rather than other tax bases for constraining voting rights. Poll taxes were a reliably dysfunctional gateway to voting given Texas' longstanding poll tax administrability issues in the nineteenth century.[209]

In the case of the Community Charge, unfamiliar and convoluted filing obligations fomented noncompliance and separate penalties applied to nonregistration in addition to nonremittance. Nonpayment of nonregistration fines could lead to enforcement actions like poindings.[210] With the layers of complexity, even proponents of the tax couldn't avoid elaborate explanations. In a guide published by the Scottish Office, "You and the Community Charge: A Step By Step Guide," a twenty-four-page booklet still specified on the final page that "[t]his booklet is intended to help you understand how you will be affected by the new system. It does not cover every detail and should not be regarded as a comprehensive statement of the law."[211] The political parties that controlled the local councils, in turn, were in a position to decide about enforcement of warrant sales and benefits arrestments.[212]

B. Targeting More Effective When Universal

Poll taxes that make no mention of race, ethnicity, or ancestry also have the potential to be more effective at discriminatory aims than taxes with explicit targeting. The mechanisms that allow for such efficacy are the perceived equity of the tax, due to nominal universality and protection against litigation challenges

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207. *See supra* Section II.A.

208. *See* Strong, *supra* note 60, at 47 ("Few taxes are as poorly enforced as the poll tax.").

209. *See* Mauer, *supra* note 56, citing EDMUND THORNTON MILLER, A FINANCIAL HISTORY OF TEXAS 219 (1916).

210. *The Letter*, *supra* note 205 ("[O]ur Federation has been instrumental in organising two successful demonstrations against planned poindings for non-payment of non-registration fines.").

211. Scottish Office, *You and the Community Charge* (1988), NLS archive.

212. Strathclyde Anti-Poll Tax Federation Bulletin No. 17, (Oct 26, 1989), NLS archive.

under nondiscrimination doctrine. Both concealed tax weapons—the Community Charge and the Texas Poll Tax—illustrate these comparative advantages.

1. Easier to Deny is Targeting in Public Messaging

Whether Thatcher was personally motivated to persecute taxpayers based on their race or ethnicity is a psychological question I will not attempt to answer. A track record of policy choices that harmed communities of color, combined with public statements that denigrated people of color, seems sufficient to identify a clear pattern. As summarized by one observer, "Racism lies at the heart of the Thatcherite project."[213]

The most famous public statement by Thatcher on race was made early in her political career. On immigration policy towards formerly colonized subjects, Thatcher stated:

> If we went on as we are, then by the end of the century there would be four million people of the new Commonwealth or Pakistan here. Now, that is an awful lot and I think it means that people are really rather afraid that this country might be rather swamped by people with a different culture. The British character has done so much for democracy, for law and done so much throughout the world that if there is any fear that it might be swamped, people are going to react and be rather hostile to those coming in.[214]

This posture then softened after race riots in twenty-six cities in the United Kingdom, when Thatcher pivoted to "an ethnic policy of appeasement."[215]

It is within this context that a low-salience way to target a racial group is politically most appealing. A party with an interest in persecuting immigrants from former colonies in order to make the United Kingdom a more uncomfortable place to immigrate to, but not wanting to aggravate that population to the point of racial violence, would seek to conceal the targeted harms through nominally universal tax devices that yielded disparate impact.[216]

The universality of the Community Charge was an important part of the political messaging in support of its enactment—that nearly *everyone* pays. In a letter, Scottish MP Lord James Douglas-Hamilton, who represented West Edinburgh, mailed to his entire constituency statistics on who was currently paying rates in full

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213. David Gillborn, *Racism and Reform: New ethnicities/old inequalities?*, 23 BRIT. ED. RSCH. J. 3 (1997).

214. Jenny Bourne, '*May We Bring Harmony'? Thatcher's Legacy on 'Race'*, 55 RACE & CLASS 87, 88 (2013). These remarks continue to have echoes in the twenty-first century stances of the Tory party, with the current UK Home Secretary describing "an invasion on our southern coast." *See,* Paul McGilchrist*, Suella Braverman's Incendiary Rhetoric is Truly Shameful*, THE GUARDIAN (Nov. 2, 2022), https://www.theguardian.com/politics/2022/nov/02/suella-braverman-incendiary-rhetoric-is-truly-shameful [https://perma.cc/65Z3-9PRV].

215. Bourne, *supra* note 214.

216. For an example of how such tax strategies have been deployed in the United States, see Shayak Sarkar, *Capital Controls as Migrant Controls*, 109 CAL. L. REV. 709 (2021).

(29% of the public) and partial rates (10% of the public). Noting that "non-householders" and "householders with full rebate of rates" comprised 61% of the public.[217] He then goes on to state, "[T]he Community Charge will obviously broaden the base of those contributing to the costs of local government facilities but make no contribution to their cost."[218] Notably, this rationale was also used to justify the expansion of a property tax to a poll tax in the British Colony and Protectorate of Kenya earlier in the twentieth century.[219]

The Thatcher government also tried to obscure the impact of the tax on taxpayers. In a heated dispute over the statutory instruments necessary for the implementation of the new tax, the Scottish Office Solicitor nearly rescinded all regulations out of frustration:

> I hope that these will be the last amendments which we will ever require to make on these Regulations because the position is fast becoming farcical. It does not, in any way, diminish the unfair perception of this tax to make the amount payable only ascertainable by reference to the purely arbitrary formula and figures which can scarcely be worked out without the aid of a computer. I firmly give you notice that, if any other amendments require to be made to these Regulations, I will insist that all the existing Regulations are revoked and, if need be, replaced with something better.[220]

The Thatcher government knew there was substantial public unrest as a result of the tax and sought to obscure the cost from the public.

The most visible feature of targeting in the Community Charge also became one of its greatest political liabilities. The targeting that was visible—the choice to impose a tax on Scotland before the rest of the United Kingdom—was precisely one of the political missteps credited with leading to failure of the tax and resignation of the Prime Minister.[221] Concealed targeting achieves the goals of harming a specific group without the same political liabilities.

In Texas, public denial of racial targeting also helped sustain the practice. The Texas poll tax had initially been limited to white men.[222] The poll tax statute was then expanded to include *all* men precisely at the time when it was intended to limit the franchise of Black men. The revision was combined with outright denial of white supremacist intentions. Despite intermittent periods of scrutiny by the federal government, "Southern propagandists seeking to persuade Yankees not to invoke the Reconstruction Amendments often denied that they had meant to discriminate

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217. Lord James Douglas-Hamilton, Letter to Constituents, July 1985 (citing Community Charge Green Paper for the underlying statistics presented).

218. *Id.*

219. *See supra* Section II.C.

220. Letter from J. L. Jamieson, Solicitor's Office, to Mr. Batho (Nov. 29, 1990) (on file with NRS).

221. *See* DAVID BUTLER, ANDREW ADONIS & TONY TRAVERS, FAILURE IN BRITISH GOVERNMENT: THE POLITICS OF THE POLL TAX (1995).

222. *See* Mauer, *supra* note 56.

on the basis of race."[223] Even after the Twenty-Fourth Amendment abolished poll taxes, they remained on the books in Texas.[224]

2. More Resilient Against Legal Challenge

Taxpayers have stronger protections against race-based tax liability when they can bring de jure discrimination claims rather than de facto claims.[225] A doctrine of "colorblindness" has made racial specification in statute presumptively unconstitutional.[226] Race-based tax weapons are then necessarily concealed to comply with such doctrine.

For example, in the case of the Alien Poll Tax, the tax was held to be in violation of the Fourteenth Amendment and "therefore ineffective for any purpose" by California's Supreme Court.[227] By making tax liability contingent on the status of being an "alien," the tax violated the Equal Protection Clause.[228]

By contrast, in the case of the Texas Poll Tax, ratification of a new constitutional amendment was required before the tax was no longer collected. Neither Fourteenth Amendment nor Fifteenth Amendment claims were sufficient, in part because the tax statute did not specify that liability was contingent on the race or ethnicity of the taxpayer. This race-based tax weapon was thus enforceable from 1902 until 1964 and applied to three entire generations of Black voters in Texas.

Within the United Kingdom, the statutory targeting of Scotland one tax year prior to other parts of the United Kingdom also raised the possibility of legal challenges; judicial intervention loomed due to potential violation of the Treaty of Union.[229] This legal question became moot after widespread civil unrest ultimately proved sufficient for repeal. The explicit targeting, by country, of one group for disparate tax treatment led to the widespread conclusion that such a tax was unfair and should be replaced.[230]

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223. KOUSSER, *supra* note 71, at 69.

224. *See* Stone, *supra* note 65.

225. *See, e.g.*, Washington v. Davis, 426 U.S. 229 (1976).

226. Elise C. Boddie, *The Muddled Distinction Between* De Jure *and* De Facto *Segregation*, *in* THE OXFORD HANDBOOK OF U.S. EDUCATION LAW (Kristine L. Bowman ed., 2021). To be sure, courts have been tolerant of explicit bias when conduct is by individual actors (as distinct from when embedded in statute). Jessica A. Clarke, *Explicit Bias*, 113 NW. U.L. REV. 505 (2018).

227. *In re* Kotta, 187 Cal. at 29 ("The law thus imposes an additional burden in the matter of taxation upon such aliens solely because of their alien character, and in this way discriminates against them.").

228. *Id.* at 29 ("[T]his act . . . denies to persons within the jurisdiction of the state the equal protection of the laws, in violation of a provision of section 1 of article XIV, amendments to the constitution of the United States."). This type of targeting has been described as "the core constitutional violation against which the U.S. Equal Protection Clause guards." Hellman, *supra* note 46. The constitutionality of this type of targeting hinges in part on what Hellman refers to as the "proxy paradox." *Id.* at 9.

229. *See* Neil Walker, *The Poll Tax and Fundamental Law*, 1991 JURID. REV. 45 (1991) (discussing possible legal challenges to the Abolition of Domestic Rates Act).

230. *See* Stephen J. Bailey, *A Poll-Tax for Scotland*, 7 CRITICAL SOC. POL'Y 57 (1987); Michael Lavalette & Gerry Mooney, *The Struggle Against the Poll Tax in Scotland*, 9 CRITICAL SOC. POL'Y 82 (1989); Peter Smith, *Lessons from the British Poll Tax Disaster*, 44 NAT'L TAX J. 421 (1991).

IV. DISARMING RACE-BASED TAX WEAPONS

This Part draws from my insights about the mechanics of race-based tax weapons to inform how to detect twenty-first-century tax weapons and prevent the ongoing or future imposition of such tax weapons. While the four poll taxes analyzed in Parts II, III, and IV are no longer in force, the ongoing threat of race-based tax weapons remains.[231] There are three important corollaries that extend from the recognition that nominally universal poll taxes are able to target taxpayers based on their race, ethnicity, or ancestry.

First, removal of explicit targeting in a tax law is wholly insufficient to protect against harmful targeting by that law.[232] In the case of Texas, the statutory text of the poll tax evolved from applying exclusively to white men to applying to all men precisely at the time that the tax was being adopted as a technique to entrench white supremacy after Reconstruction.[233] Both the Texas Poll Tax and the Community Charge excluded explicit racial targeting while achieving racially targeted harms.[234] The inadequacy of abolishing explicit targeting for disarming race-based tax weapons is not a surprising conclusion for those already familiar with racial targeting in non-tax contexts, but documenting this pattern within a new area of tax—poll taxes—serves as a foundation for the subsequent proposed interventions to address race-based tax weapons.

Because assessing the distribution of the burdens and benefits of a tax code cannot be complete with statutory analysis alone, the second corollary is that detecting tax weapons requires improved tax data practices that include race and ethnicity.[235] Voters, who are responsible for electing legislators and from whom the power of the state extends, should be informed about the distribution of tax liabilities.[236] Administrators implementing a tax should be aware of racial disparities in enforcement.[237] And legislators voting on a tax proposal should know the projected impact of the law by race.[238] Recent revelations of racial targeting in IRS

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231. This Part presumes that race-based tax weapons are undesirable, as established by the analysis presented in Part III.

232. This finding is consistent with the longstanding work of Critical Race Theory in areas of law outside of tax. *See supra* notes 12–16 and accompanying text. It also further illustrates the statutory mechanisms that result in the nonneutrality of tax law as established by the Critical Tax movement. *See supra* note 17 and accompanying text.

233. *See supra* Section II.A.

234. *See supra* Part IV.

235. *See* Bearer-Friend, *supra* note 17 (arguing against the longstanding practice of colorblind tax data).

236. *See Id.* at 46 (describing how colorblind tax data undermine goals of transparency and democracy).

237. *See* Jeremy Bearer-Friend, *Colorblind Tax Enforcement*, 97 NYU L. REV. 1 (2022) (documenting the potential for racial bias in seven distinct tax enforcement settings under three distinct theories of racial bias). Disparate racial impact has been documented in the selection of households for audit. Jacob Goldin, Hadi Elzayn, Evelyn Smith, Thomas Hertz, Arun Ramesh, Robin Fisher & Daniel E. Ho, *Measuring & Mitigating Racial Disparities in Tax Audits*, STAN. INST. ECON. POL'Y RSCH. (Working Paper, 2023), https://siepr.stanford.edu/publications/measuring-and-mitigating-racial-disparities-tax-audits [https://perma.cc/PH27-MD2V].

238. *Id.*

audit selection procedures further illustrate the instrumental role of race data in uncovering racially targeted harms in nominally neutral tax laws.[239]

Some readers may draw the opposite conclusion about the importance of including race and ethnicity in tax data for the goal of disarming tax weapons. Even accepting the observation that tax law can be used as a race-based weapon and that such race-based weapons are undesirable along multiple normative criteria, one could argue that more demographic information in tax data could enable *more* targeting. While such targeting is surely possible, the four poll taxes studied here demonstrate that such targeting can *already* be accomplished without improved data. But advocates who seek to undo the harms of race-based tax weapons, or prevent their future enactment, are hindered in their identification of such harms. The absence of demographic information in tax data thus limits the ability of those committed to preventing the harms of racial targeting without providing adequate protection against racial targeting.

Improved tax data practices can be useful for disarming race-based tax weapons ex-ante and ex-post. That is, the adoption of new tax weapons can be addressed preemptively through tax estimates that project the impact of tax legislation on specific constituencies.[240] Awareness of the impact is not a sufficient condition for preventing targeting, but it equips impacted constituencies and legislative allies with clear criticisms of the proposed weapon and its relative priority to other campaigns.[241] Consistent reporting of the impact of a tax after enactment also equips those concerned with racial inequality to address the inequality.[242] The data can also be used for statutory safeguards that explicitly prohibit certain levels of disparity, realignment of tax enforcement practices that produce disparities inconsistent with the underlying distribution of taxpayer behavior, and potential litigation by taxpayers disparately impacted.

Third, because the design choice of leaving out targeted language from a tax statute is so wholly insufficient to protect against malicious targeting, the omission

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239. *See* Emily Black, Hadi Elzayn, Alexandra Chouldechova, Jacob Goldin & Daniel Ho, *Algorithmic Fairness and Vertical Equity: Income Fairness with IRS Tax Audit Models*, Proceedings of the 2022 ACM Conference on Fairness, Accountability and Transparency (June 2022), available at https://dl.acm.org/doi/pdf/10.1145/3531146.3533204 [https://perma.cc/D5DU-ATLW].

240. These estimates are a routine component of the tax legislative process in the United States, colloquially referred to as "scores" prepared by economists at the Joint Committee on Taxation (JCT), a bicameral, nonpartisan committee. JCT publications do not typically include race or ethnicity. *See* Bearer-Friend, *supra* note 17, at 27.

241. For example, were Redeemer governments able to document the disparate racial impact of poll tax legislation ex-ante, this would not have prevented enactment. However, the delay in federal intervention was aided in part by the longstanding obfuscation of the disparate racial impact of the taxes.

242. The Statistics of Income Division at the IRS and the Office of Tax Analysis at the U.S. Treasury Department are responsible for these regular publications. *See* Bearer-Friend, *supra* note 17, at 13–27 (describing the omission of race and ethnicity from tax data publications produced by IRS and the Treasury Department). In response to the creation of an Equitable Data Working Group created by Executive Order in 2021, both Treasury and IRS have begun piloting new data techniques that include race and ethnicity in their publications. Exec. Order No. 13,985 § 9, 86 Fed. Reg. 7009, 7011 (Jan. 20, 2021).

of racial language in a statute becomes an irrelevant criterion for assessing racial discrimination.[243] This opens the possibility for race-based remedies by weakening the necessity of the prohibition of racial language in statutes by pivoting to a concern with the imposition of harms.

Race-based language is often a key component of proposals for racial justice, such as reparations for slavery.[244] Under various reparations proposals, beneficiaries are provided public benefits based on their ancestry.[245] And, while this very Article has demonstrated how targeting can be achieved without such language, another conclusion of this research is that the omission of racial language is a *distraction* from the ultimate ambitions and effects of any given policy. To the extent legislators remain unwilling to include racial language in statute, they occlude public awareness of the targeting the policy is intended to achieve. This undermines many core goals of reparations: public recognition of a past and ongoing harm and public atonement.[246] Outside the legislative branch, unwillingness to directly target benefits based on racial or ethnic identity has also constrained the racial equity efforts of the Biden Administration.[247] A shift from statutory language for evaluating racial justice to assessing material impact would also contribute to the affirmative vision of an antiracist constitution proposed by Professor Hasbrouck, including race-based redress for the badges and incidents of slavery.[248]

Beyond the detection and disarmament of race-based tax weapons, poll taxes also demonstrate the importance of recognizing tax weapons more generally. Poll taxes help us understand tax policy as a potential weapon for harming political adversaries. In the twenty-first century, this is a growing area of public concern with elected officials regularly commenting on a "weaponized" IRS. For example, in the Senate confirmation hearing for a new IRS Commissioner, Senator Barrasso made

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243. In the twenty-first century, discriminatory targeting of tax enforcement with excessive force resulted in the murder of Eric Garner. *See* Steven A. Dean, *Filing While Black: The Casual Racism of the Tax Law*, 2022 UTAH L. REV. 801 (2022).

244. *See, e.g.*, WILLIAM DARRITY & A. KRISTEN MULLEN, FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE 21ST CENTURY (2020) (offering a detailed proposal for reparations). *See also,* DAYNA BOWEN MATTHEW, JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA (2022) (proposing direct compensation payments as a component of structural reparations).

245. DARRITY & MULLEN, *supra* note 244. Notably, the funding mechanism for this proposal does not require race-based imposition of harm but could be achieved through borrowing or issuance of new currency. The delivery of a race-based benefit in compensation for a harm is not equivalent to the imposition of a harm based on racial categorization.

246. *See, e.g.*, ALFRED L. BROPHY, REPARATIONS: PRO AND CON (2006).

247. *See* Goldburn P. Maynard Jr., *Biden's Gambit: Advancing Racial Equity While Relying on a Race-Neutral Tax Code*, 131 YALE L.J. F. 656 (2021–2022) ("While I do not argue that race consciousness is necessary for every economic-assistance program, it is necessary for some.").

248. *See* Hasbrouck, *supra* note 16. Perhaps most crucially, Hasbrouck distinguishes race-based harms from race-based efforts to repair past harms. *Id.* at 152–53. For further elaboration on this distinction, see Amy Gutmann, *Responding to Racial Injustice*, *in* COLOR CONSCIOUS: THE POLITICAL MORALITY OF RACE 172–73 ("Fairness obligates us to help disadvantaged individuals as we and others have been helped before, are being helped, and are capable of helping in the future . . . the color blind principle of fairness leads to race consciousness.").

the following statement: "The American people have seen examples of political targeting at the IRS, a weaponization of the tax code . . . People feel we have an administration that is woke and weaponized against them."[249] This Article offers a robust definition of tax weapons that can then be applied to such twenty-first-century claims that the IRS has been weaponized. Evaluating this allegation requires moving beyond a conception of taxpaying as a harm in itself and toward a consideration of disparities of enforcement or incidence relative to similarly situated taxpayers.[250] As this Article has demonstrated, evaluating the desirability of a tax policy requires an analysis not just about revenue, regressivity, or efficiency but about targeted harms.[251]

CONCLUSION

In an era where poll taxes are widely derided, pursued only underhandedly, and denied by their own framers, any criticism of poll taxes is an easy case. Rather than adopting a predictable normative position of rejecting poll taxes, this article has sought to extract what tax scholars and tax policymakers still have to *learn* from poll taxes. What emerged is new evidence of the ways neutrality in statutory language cloaks the use of tax law as a political weapon, including how nominal universality can increase the political viability and discriminatory impact of race-based tax weapons. These insights speak to poll taxes and non-poll taxes alike, with the lessons of twentieth-century race-based tax weapons offering clear guidance for how to detect and disarm tax weapons in our twenty-first century.

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249. *Hearing to Consider the Nomination of the Honorable Daniel I. Werfel of the District of Columbia to be the Commissioner of Internal Revenue*, 118th Cong. 16 (2023) (statement of Sen. John A. Barrasso), https://www.finance.senate.gov/hearings/hearing-to-consider-the-nomination-of-the-honorable-daniel-i-werfel-of-the-district-of-columbia-to-be-commissioner-of-internal-revenue-for-the-term-expiring-november-12-2027 [https://perma.cc/QB84-LGJS]

250. For a full definition of "tax weapon," see *supra* Part III. Evaluating the accuracy of Senator Barrasso's allegation is beyond the scope of this article, though future scholars may be interested in extending my analysis of twentieth-century tax weapons to the current Republican Party claims made in response to increased IRS funding under the Inflation Reduction Act of 2022.

251. This approach is consistent with the ambitions of CRT and LPE. For a discussion of the relevance of CRT to my analysis of the poll tax, see *supra* notes 12–16 and accompanying text. For a discussion of the relevance of LPE, see *supra* notes 23–25 and accompanying text.

APPENDIX

	Jurisdiction	Taxable Base	Time Period[252]	Statute Specifies Ancestry	Exempt Taxpayers[253]	Filing Obligations	Subnational Enactment	Linked to Voting	Revenue Allocation
Poll Tax	Texas	Men, aged 21 to 60, resident in Texas on January 1 of the tax year	1902 to 1964[254]	No	The "insane," the blind, disabled veterans	Payment six months prior to voting; retain receipt to vote	Yes	Yes	Two thirds to local school district, one third to state general fund
Native Hut and Poll Tax	British Colony and Protectorate of Kenya	Men, aged 16 or over, who are "native of Africa"	1910 to 1948[255]	Yes	Men of "European or Asiatic Extraction"; disability; by discretion of Governor	Registration process, then payment in monthly stamps	No	No	Unapportioned general fund of the Colony Government
Alien Poll Tax Law of 1921	California	"Alien" men, aged 21 to 59[256]	1921	Yes	"Paupers, idiots, and insane persons"	Registration process, then annual payment	Yes	No	Unapportioned county school fund, less the costs of poll tax collection up to 12%[257]
Community Charge	Scotland	Aged 18 or over, for each day sole or main residence in JDX	1987 o 1991	No	Fourteen exemptions, including visiting forces, severe mental impairment	Registration process, then monthly or annual payment at discretion of taxpayer	No	Yes	Unapportioned general fund of Local Council Government

252. The years included are date of enactment to date of abolition. Effective date was typically later than enactment. Some tax liabilities spanned beyond abolition if taxpayers were in arrears.

253. In all jurisdictions, corporate personhood did not apply for purposes of poll tax assessment. Hence, incorporated businesses could be viewed as "tax-exempt" for all four jurisdictions since they otherwise did have legal personality. This tax benefit was a priority for Thatcher, since businesses were subject to property taxes (called "domestic rates" at the time) but not the poll taxes she sought to replace them with.

254. Texas does not tie suffrage to tax payment until 1902. See supra Section I.A.

255. Augustus Mutemi, History of Income Tax Law in Kenya 4–5 (2015). The analysis in Section I.C looks to the poll tax applied in 1934.

256. The statute appears to use the terms "inhabitant", "reside", and "domicile" interchangeably and tax liability is contingent on this status. Political Code of the State of California, tit. 9, pt. 3, ch. 9 §§ 3839–40. While the deadlines for registration and remittance are specified in statute, there is no stated duration for when an individual becomes an "inhabitant" in the law. Hence, mere presence at any point in the tax year is likely to be sufficient to trigger tax liability. Id.

257. Id. at § 3853, Payment of Proceeds (1923).