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

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I. INTRODUCTION

All eighty-eight employees of the Rough & Ready Lumber sawmill in Josephine County, Oregon received layoff notices in May of 2013.[1] Rough & Ready was the last sawmill in the county and finally yielded to decades of decline marked by the closure of one manufacturing plant after another in the rural area's industrial clusters.[2] As the sawmill owner put it after announcing the closure,

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1. Jeff Barnard, *Ore. Timber Country Ponders Future with Fewer Logs*, ASSOCIATED PRESS, May 18, 2013, http://bigstory.ap.org/article/ore-timber-country-ponders-future-fewer-logs.

2. *Id.*; Amy Hsuan, *Harney County Losing Jobs, Hopes*, OREGONIAN, June 28, 2009,

"[Josephine County] is a beautiful place to live. It's a hard place to make a living."[3] One in five of the county's residents live below the poverty line, and unemployment rates in the county are among the highest in the state.[4] Despite strong attachments to family property and regional landscapes, young people are leaving,[5] and the population is substantially older than state or national averages, with nearly one-fourth of the county population older than sixty-five.[6] Josephine County's remaining residents are less mobile and economically resilient—only 16% of the population has a bachelor's degree or higher, and 23% of the population aged eighteen to twenty-four has less than a high school degree or equivalent.[7] Yet the county's best shot for economic recovery is to build its high-skilled service sector.[8]

This is timber country: part of our western, rural rustbelt. Oregon's rural timber counties[9] have a great deal in common with the

http://www.oregonlive.com/news/index.ssf/2009/06/harney_county_losing_jobs_hope.html (describing shuttered local industries such as a recreational vehicle manufacturer, a sawmill, and a mineral processor).

3. Barnard, *supra* note 1. One year later, as described herein, a package of state and federal funds allowed the mill to reopen with expanded operations for processing small lumber. *See* Molly Young, *Rough & Ready Lumber to reopen in Cave Junction with $5 million government funding deal*, OREGONLIVE.COM (Mar. 7, 2014), http://www.oregonlive.com/business/index.ssf/2014/03/rough_and_ready_lumber_will_reopen_in_cave_junction_secures_5_million_government_funding.html.

4. *See* American FactFinder, Community Facts, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml (enter "Josephine County, Oregon" in the search box) [hereinafter American FactFinder (Josephine County)]; *see also* OR. SEC'Y OF STATE, OREGON'S COUNTIES: 2012 FINANCIAL CONDITION REVIEW 45 (May 2012), *available at* http://www.cooscountywatchdog.com/uploads/8/7/3/0/8730508/sos_or_counties_2012_financial_condidtion_review_2012-17.pdf [hereinafter 2012 FINANCIAL CONDITION REVIEW].

5. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 25, 30, 35, 40, 45, 50, 55, 60 (describing the aging population in all eight of the hardest hit timber counties).

6. The numbers are 23% in Josephine County compared to 14% in Oregon, or 13% in the U.S. *See* American FactFinder (Josephine County), *supra* note 4; *see also* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 45 (noting that in 1950, 75% of the Josephine County population was under age fifty; compared with only 54% of the population in 2010, and describing how this shift could drive up demand for health and social services while the local workforce is shrinking).

7. *See* American FactFinder (Josephine County), *supra* note 4.

8. *See* Josh Lehner, *Timber Counties*, OREGON OFFICE OF ECONOMIC ANALYSIS (May 28, 2013), http://oregoneconomicanalysis.com/2013/05/28/timber-counties/ [hereinafter *Timber Counties*] (referring to the importance of jobs and opportunities in medical and educational institutions (the so-called "meds and eds" sectors) which require "continued investments in the local workforce via education and training").

9. The term "timber counties" can broadly refer to all 33 counties in Oregon that receive some share of the federal timber payments described in Part II(*A*). But more commonly, the

historic, post-industrial towns and cities of the Midwest. In both settings, the Great Recession pressed more pain into areas already downtrodden by the automation of human labor and global marketplaces for construction materials like steel and timber. Gone are the olden days of plentiful jobs at livable wages, when hard, steady work—whether felling giant trees or tending a blast furnace—earned a man enough money to afford a patch of land and a safe, comfortable living for his children. When jobs are scarce long enough, individual hardship widens into collective hardship. Sinking revenues mean that local governments can no longer look out for people fallen on hard times, and public services drop to levels not seen since the days of the Wild West. Local voters, as well as state and federal legislators, face striking questions about how deep they are willing to cut back the public sector: Must there be police and ambulances available for emergency dispatch at night and on weekends? Do we need a safety net related to mental health disorders, poverty in old age, and drug addiction?

The fact that Oregon's timber country is "rural" and we think of the Rustbelt as predominantly "urban" only reminds us how little those terms tell us about an area's employment. Manufacturing jobs account for a large share of the rural economy nationwide,[10] and even Oregon's wood products industry is dominated by manufacturing positions processing lumber.[11] Dependence on such jobs has proven

state's timber counties are defined as those in which at least 60% of the land is federally owned, such as Douglas, Jackson, Josephine, Klamath, and Lane counties in South and Southwestern Oregon, both Coos and Curry counties along the southern coast, and Grant county to the east. STATE OF OREGON, FINAL REPORT: GOVERNOR'S TASK FORCE ON FEDERAL FOREST PAYMENTS AND COUNTY SERVICES 12 (Jan. 2009), *available at* http://www.aocweb.org/aoc/Portals/0/FFP%20Final%20Report%20w%20Exhibits.pdf [hereinafter 2009 GOVERNOR'S TASK FORCE FINAL REPORT]. Among these, twenty-four counties stand to lose more than 20% of their general fund (i.e., discretionary) revenues or more than 20% of their road budgets if federal direct subsidies terminate. *Id.* at 4. Eight of these counties have been deemed at the highest risk of serious fiscal distress: Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, and Polk. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4 at 1.

10. Nationwide, agriculture, fishing, and forestry—the occupations traditionally idealized as rural—accounted in 2007 for a mere 6% of jobs in high-density rural areas, and only 12% in low-density rural areas. *See* EXECUTIVE OFFICE OF THE PRESIDENT COUNCIL OF ECONOMIC ADVISORS, STRENGTHENING THE RURAL ECONOMY 4 (Apr. 2010), *available at* http://www.usda.gov/documents/Rural_America_final.pdf.

11. *See Timber Counties*, *supra* note 8; *see also* Josh Lehner, *Historical Look at Oregon's Wood Product Industry*, OR. OFFICE OF ECON. ANALYSIS (Jan. 23, 2012), http://oregoneconomicanalysis.com/2012/01/23/historical-look-at-oregons-wood-product-industry/ [hereinafter *Historical Look*].

to be a painful liability for individuals and communities both.[12] Rural manufacturing jobs have been "especially vulnerable" to the automation of human labor and international competition.[13] In Oregon, restructuring of the wood products industry in the early 1980's recession meant that employment numbers did not recover even after industrial output was restored, because mills were retooled to be more automated and productive, requiring fewer workers.[14] In recent decades, job losses have been most acute in those communities, whether urban or rural, where low-skill manufacturing and service employment dominated the local economy.[15] Whatever the sector, the household economic insecurity caused by falling wages, seasonal employment, and stiff competition for any job at all are rural problems as well as urban ones, Western and Southern problems as well as Midwestern and Northeastern ones. We are all post-industrial now.

Of course, there are things that are different about restructuring, poverty, and local fiscal crisis in a rural western setting. First of all, this is a Tea Party stronghold. People are unlikely to embrace their shared ground with households in Detroit and Camden. The politics of who is rich and who is poor are reversed from the more familiar urban paradigm of "blue" poverty and "red" suburban affluence. In Oregon, conservative rural poverty seeks bailout money from taxpayers in liberal Metro Portland and from the nation as a whole. As a result of anti-federal government ideology as well as timber's tendency to divide labor from environmentalists, the narratives of blame for poverty and local fiscal distress in rural Oregon admit little

12. In 1970, more than 23% of jobs in high-density rural areas (and 10% in low-density rural areas) came from manufacturing, but these positions were even more widely displaced by globalization and automation than urban manufacturing jobs. *See* STRENGTHENING THE RURAL ECONOMY, *supra* note 10; *see also* ECON. RESEARCH SERV., U.S. DEPT. OF AGRIC., AGRIC. INFO. BULL. NO. 710, UNDERSTANDING RURAL AMERICA 4 (1995), *available at* http://webarchives.cdlib.org/sw1bc3ts3z/http://ers.usda.gov/Publications/AIB710/AIB710c.htm (stating that by 1995, nearly 17% of rural jobs, and one quarter of all rural earnings, came from manufacturing); ROBERT GIBBS, LORIN KUSMIN, & JOHN CROMARTIE, U.S. DEP'T OF AGRIC. ECON. RESEARCH REPORT NO. 10, LOW-SKILL EMPLOYMENT AND THE CHANGING ECONOMY OF RURAL AMERICA 25–27 (2005), *available at* http://www.ers.usda.gov/media/467569/err10_1_.pdf.

13. *See* AMY GLASMEIER & PRISCILLA SALANT, CARSEY INST., POLICY BRIEF NO. 2, LOW-SKILL WORKERS IN RURAL AMERICA FACE PERMANENT JOB LOSS 2 (2006), http://files.eric.ed.gov/fulltext/ED536116.pdf (describing heavy job losses in manufacturing in rural areas from 1997-2003).

14. *Timber Counties, supra* note 8.

15. *See* GLASMEIER & SALANT, *supra* note 13, at 1.

common ground with larger patterns facing post-industrial America. Instead, the explanations for fiscal crisis in Oregon mention only the closure of the federal land in the state to mass logging in old growth forests, a policy that dates back to the listing of the Northern Spotted Owl under the Endangered Species Act—one of the hardest fought political wars in American environmental history.[16] The lore of that fight makes federal logging policy an easy target for local anger, even as it drastically oversimplifies the problems facing the region.

With histories of decline that have more in common than meets the eye, our Western and Midwestern rustbelts are also similar in the public revenue shortages that now plague their local governments. The woes of local governments in Oregon are, like much of the local fiscal stresses in the country today, a revenue problem more than a spending or mismanagement problem. Their public coffers simply do not take in enough locally generated revenues to keep services afloat. In the Rustbelt, federal funding for basic services was unavailable, so insolvent cities raised taxes, sold public assets, and issued new and more risky forms of debt—whether deferred compensation for employees, overleverage in the bond markets, or gambles with high-risk instruments like swap derivatives.[17] The rural timber counties were fortunate to make up this shortfall without approving new taxes or issuing extensive debt—instead, the timber counties received direct assistance from the federal government to fund basic public services like law enforcement.

Since the early 1990s, the federal government has been making large, unrestricted appropriations to Oregon's timber counties. The full story of these subsidies is explained here in Part II, but the gist is this: For decades, the federal government has passed a sizable share of receipts from logging on federal land in Oregon to those lands' county governments. That revenue sharing agreement has remained unchanged, but revenues generated by timber harvests have fallen due to reduced logging on federal land—reduced logging that, as mentioned, results from competition in global timber markets as well as from federal environmental policy.[18] Fewer timber harvests have

16. For a worthy exception, see Nathan Rice, *Seeking Balance in Oregon's Timber Country*, HIGH COUNTRY NEWS (Apr. 29, 2013), http://www.hcn.org/issues/45.9/45.7/seeking-balance-in-oregons-timber-country.

17. *See generally* Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L. J. 1118 (2014) [hereinafter *New Minimal Cities*] (documenting the primary causes and coping mechanisms for fiscal distress in our insolvent, post-industrial cities).

18. The history of legislation behind these subsidies is described in detail in the next

meant lower revenue-sharing payments to Oregon counties, so in the 1990s, the federal government began to give direct subsidies to the timber counties that were unconnected with harvest receipts. Most of this money came through a nationwide program to support declining rural areas, but it has disproportionately supported Oregon counties.[19] Over the past decade, with political pressure turning against earmarks, the federal government has warned Oregon and other rural states that these payments were coming to an end. Strong anti-tax sentiment empowered by extremely strict constitutional tax controls, however, have made it difficult for counties to replace threatened federal revenues with revenues generated by local taxpayers.

Even where the embattled, tenacious, embittered, and resilient people of American post-industrialism have different explanations for how they got where they did, events have definitively brought them to a similar collapse in their household economic security and local government solvency. In the hard reality of the present, the only way to avoid deficits and debt is to obtain bailouts from state or federal governments, or to cut public services below levels ever thought imaginable. Voters and legislators face similar questions about salvaging local government. Should the state intervene to subsidize its hardest hit cities and counties, or begin to provide public services directly? Should the state make fiscal oversight boards and receiverships, or Chapter 9 bankruptcy, an option for local governments that cannot make ends meet? Is there a floor beneath cuts to public services, the way some states set ceilings on new taxes? Can voters enact controls on the rate of government shrinkage the way some states control the rate of government growth? How much can charities and private individuals do to replace local government?

Thus, rural Oregon has a great deal to learn from—and teach to—state and local governments of Michigan, Pennsylvania, Ohio, New York, and other hubs of steel and coal country. A more complete and nuanced picture of local fiscal crisis emerges from viewing the two regions together, a picture that overturns some of the settled political expectations and alignments created by viewing the

section. *See infra* text accompanying notes 26–38.

19. While thrity-nine states began receiving payments through this program in 2000, Oregon counties have received more than half of the total payments made. Dawn Marie Gaid, *Changing Federal County Payments and Rural Oregon Counties: Analysis of Policy Impacts and Responses from Loss of Secure Rural Schools Funding in Selected Oregon Counties* 10 (Or. State Univ. Rural Studies Program, Working Paper No. RSP 0904, 2009), *available at* http://ruralstudies.oregonstate.edu/sites/default/files/pub/pdf/RSP09-04.pdf.

traditional Rustbelt alone. In support of remedial efforts by legislators, scholars, and courts, in the present article, I seek to synthesize such a national exchange of experiences and policy experiments related to local government fiscal management. After briefing the local fiscal crisis in Oregon's timber counties in Part II, including the counties' and state's responses to it, I offer five lessons for and from the region when, set in dialogue with the American Rustbelt.

II. FISCAL CRISIS IN OREGON'S TIMBER COUNTIES

A. The Problem

Oregon's timber counties grew up around the work and resources of the forests in their midst,[20] and their "[c]ommunities founded on timber remained tied to the industry as if by an umbilical cord."[21] Timber harvests sustained a local wood products industry, from logging jobs to wood products manufacturing, as well as jobs in an economic cluster of related industries like pulp, paper mills, and trucking.[22] Local private income secured by these jobs, as well as public revenues from the system of timber-related payments to counties and school districts from the federal government, meant that rural county governments also came to rely on federal logging. As described further below, both the private and public sectors in these counties depended on forest wealth.

Some of these forests were on private or state-managed land. Nearly every acre of old growth trees on these non-federal properties was clear-cut by World War II—meaning no new big trees to cut, and very few jobs along the way, until second growth regeneration that takes many decades to grow and yields only smaller, lower value trees.[23] To clear-cut a forest offers a burst of work at and off site, but like the trees themselves, the work is finite, then followed by decades of dormancy.

That is, logging work comes to an abrupt end after a major cut unless that end can be postponed by moving to new acreage. In

20. More than 50% of Oregon's land (generally in the southern and eastern parts of the state) is federal property managed by the Bureau of Land Management, the U.S. Forest Service, and other federal agencies. *See* 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 12.

21. Rice, *supra* note 16.

22. *See Historical Look*, *supra* note 11.

23. *See* Rice, *supra* note 16.

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

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

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

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

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

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

28. *See* Michael C. Blumm & Tim Wigington, *The Oregon & California Railroad Grant Lands' Sordid Past, Contentious Present, and Uncertain Future: A Century of Conflict*, 40 B.C. ENVTL. AFF. L. Rev. 1, 8–10 (2013).

29. *Id.* at 16–17.

for which the railroad company was compensated.[30]

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

30. *Id.* at 18–21.

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

32. *Id.* at 18–21.

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

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

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

36. Rice, *supra* note 16.

37. *Id.* (describing that by World War II, most old growth on private land had been logged, and describing clear-cut logging practices on state and private property) ("[The land is] managed more like plantations than forests: Almost everything is mowed down and sprayed with herbicide so that only replanted trees will grow.").

38. *See* Blumm & Wigington, *supra* note 28, at 26–39 (describing the larger history around the spotted owl and forest management on O&C Lands).

efforts to increase harvest levels.[39] Environmentalists and the timber industry are still, so to speak, at loggerheads.

Temptingly simple as it would be to blame environmental law and policy for timber country woes, they are not the only reasons for the falling harvest receipts and the loss of jobs dependent on timber. The recessions of the early 1980's and 2008 reduced demand for housing lumber.[40] NAFTA facilitated timber imports that brought down the value of domestic lumber (and thus harvest receipts), and a global market for timber brought the Oregon woods product industry into competition with tree farms and forests across the world.[41] Automation unleashed its share of economic hardship too. Timber-related employment declined even across the housing boom that preceded the 2008 recession because of technological advances and automation that allowed a less labor-intensive lumber manufacturing process.[42] The Paul Bunyan years of a logging industry characterized by men with axes had long gone by, as new technologies reduced the number of jobs required for forestry and wood processing.[43] By 2011, unemployment in each of the state's eight most distressed counties had climbed to or above the state's average, and in seven of the counties at least one in ten working adults was unemployed.[44] While the conservation of federal old growth forests can be rightly accused of hastening the hour of obsolescence for workers who had

39. 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 4, at 13; *see also* Gaid, *supra* note 19; Vincent Adams & Dawn Marie Gaid, *Federal Land Management and County Government: 1908-2008*, at 9–10 (Or. State Univ. Rural Studies Program, Working Paper No. RSP 0804, 2008) [hereinafter *Land Management*], *available at* http://oregonstate.edu/cla/mpp/sites/default/files/RSP-08-04.pdf.

40. *Land Management*, *supra* note 39, at 5; Blumm & Wigington, *supra* note 28, at 63 (noting the timber industry's dependence on new housing starts).

41. *See* Blumm & Wigington, *supra* note 28, at 63; Gaid, *supra* note 19, at 15; *see also* 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 14 (mentioning counties in Eastern Oregon that "suffer[ed] declining harvests from federal lands unrelated to the spotted owl listing").

42. *See* Nick Beleiciks, *Oregon Labor Trends: Oregon Sees Third Month of Modest Job Gains*, WORKSOURCE OR. EMP'T DEP'T, Dec. 2011, at 3, *available at* http://www.qualityinfo.org/pubs/olt/11/olt-1211.pdf; *see also Historical Look*, *supra* note 11 (describing the intensive automation of timber processing in the 1980s, in which "[t]echnology advances, more automation, and less labor intensive manufacturing processes all conspired to reduced demand for employment, despite the ramp-up in lumber production").

43. *See* Rice, *supra* note 16 (describing the increased mechanization of logging and automation in sawmills).

44. Douglas, Josephine, Klamath, Curry, Jackson, Coos, and Lane counties were above the state average; only Polk's rate was below it. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 19.

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

Falling timber receipts alone might not be so worrisome if not accompanied by larger, national trends of falling local government revenues. The Great Recession has been extremely bad for local government budgets around the country. It caused income tax receipts and other federal and state revenues to fall, and those governments accordingly reduced aid to local governments.[45] With a public that is largely unaware of falling state and federal aid, local governments' service cuts or local tax hikes look to residents like inefficiency. The nature of the recession as a housing bust not only hit the demand for timber, but it diminished local government property tax revenues in ways that will, due to tax controls in place in Oregon and other states, last well beyond housing recovery.[46]

To soften the blow of falling harvest receipts and rural decline in general, Congress began a wave of safety net payments—i.e., federal payments that were much higher than what counties would get if payments remained pegged to actual harvest receipts.[47] In 1993, through the so-called "spotted owl safety net," Congress decoupled federal subsidies in the region from harvest revenues in Western counties with the Omnibus Reconciliation Act of 1993, and then statewide with the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393) ("SRS Act").[48] All but three of the state's counties receive SRS payments, and Oregon's share of the national SRS program (which serves thirty-nine states) accounts for about half of its total funds.[49]

In 2006, the original SRS Act expired.[50] In 2008, Congress passed a limited SRS Act reauthorization with a four-year phase out period, warning an absolute end to the payments in 2012.[51] Even during this ramp down period, the subsidies were substantial: In 2007–08, federal subsidies for roads and discretionary spending in

45. *See New Minimal Cities*, *supra* note 17, at 1141–51.

46. *Id.* at 1142.

47. *Land Management*, *supra* note 39, at 10–11 (detailing the safety net system under the SRS Act).

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

49. *See* 2009 GOVERNOR'S TASK FORCE REPORT, *supra* note 9, at 16; Gaid, *supra* note 19, at 10.

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

51. *Id.*

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

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

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

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

53. Bruce Weber et al., *Economic Impacts on Oregon of the Termination of Secure Rural Schools Payments to Counties: 2011 Update*, at 2–3 (Or. State Univ. Rural Studies Program, Working Paper No. RSP 1101, 2011).

54. *Secure Rural Schools FAQ's*, U.S. FOREST SERV. (Nov. 25, 2013), http://www.fs.usda.gov/main/pts/securepayments/faqs. The reauthorization was passed as an unrelated amendment to HR 527, the Helium Stewardship Act. *See also* Helium Stewardship Act of 2013, Pub. L. No. 113-40, §10(a), 127 Stat 534. (The Helium Stewardship Act is obviously completely unrelated to SRS—the SRS reauthorization is in section 10, "Amendments to Other Laws").

55. *See* 2009 GOVERNOR'S TASK FORCE REPORT, *supra* note 9, at 8.

56. *Id.* at 9.

57. Rice, *supra* note 16.

58. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 22, 27, 32, 37, 42, 47, 52, 57 (giving the 2004–2011 average percentage of county general fund revenues from federal timber payments).

59. *Id.* at 32.

60. *See, e.g.*, William Yardley, *Timber (and Its Revenues) Decline, and Libraries Suffer*,

Josephine, Curry, Coos, and Douglas have the four lowest property tax rates (and thus the four lowest rates of locally generated revenue per capita) in the state of Oregon.[61] Four other counties in distress (including Lane, Polk, Klamath, and Jackson Counties) are not far behind—their tax rates and per capita local revenues are all less than one-fourth of the per capita local revenues in the Oregon counties with the highest tax rates.[62] All eight of these distressed counties pay property tax rates dramatically below the rates in the counties of Portland's Metro government and the state's more urbanized counties of the Willamette Valley.[63] Across a period of time in which federal subsidies were slated to end and state and local governments were on extremely high alert for fiscal pain ahead, per capita locally generated revenues nonetheless fell in six of eight of the most distressed counties, suggesting that no new sources of locally generated revenue were identified to offset the expected losses of the subsidies.[64]

The fiscal distress facing Oregon's county governments is essentially this: Year after year, rural timber county governments struggle to generate sufficient revenue, and cut enough expenditures, so that they can meet their financial obligations in each budgetary period without incurring deficits.[65] They simply do not have the revenues to "maintain existing service levels, withstand local and regional economic disruptions, and meet the demands of natural growth, decline, and change."[66] In addition to timber payment

N.Y. TIMES, May 5, 2007, http://www.nytimes.com/2007/05/05/us/05timber.html?pagewanted=print&_r=0; *see also Timber Counties*, *supra* note 8.

61. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 7–8.

62. *Id.*

63. *Id.* at 8 (indicating permanent property tax rates of $2.25, $2.98, and $4.34 per $1,000 of assessed value in Washington, Clackamas, and Multnomah Counties respectively, compared to tax rates from $0.59 to $2.00 for the distressed counties of Josephine, Curry, Coos, Douglas, Lane, Polk, Klamath, and Jackson); *see also Timber Counties*, *supra* note 8, at Exh. 5 (for all distressed counties except Polk, depicting 2012-13 effective property tax rates well below the statewide average, and particularly below the counties of the Portland metropolitan area).

64. For instance, federal timber payments to Douglas County fell from $320 per capita in 2004 to $203 per capita in 2011, while local revenues stayed flat across this period—$224 in 2004 up to only $228 in 2011. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 32; *see also id.* at 22, 27, 32, 37, 42, 47, 52, 57 (comparing locally generated revenues in 2004 and 2011 in all eight hardest hit timber counties, with per capita increases identified only in Douglas County (by $4 and $22 in Polk County).

65. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 5 (defining ways to assess and measure fiscal condition).

66. *Id.* at 5. The state's 2012 assessment of local government fiscal condition defined the following indicators of financial health, and found some combination of them lacking in

dependence, low levels of locally generated revenue, and low property tax rates, the state's most distressed counties are linked by low levels of public safety spending and aging populations.[67] These counties are not, by and large, affected by excessive debt burden, short-term liquidity problems, inefficiencies associated with population loss, or extreme problems with unfunded pension liabilities.[68]

So what to do about the precipitous declines in local budgets? Whatever their cause, their consequences are worrisome. Of course, the federal government could decide to bail the counties out, as it has in the past, by reauthorizing cash subsidies. But with the tight budget and DC's current political climate, federal dollars may not ride to the rescue this time. The counties themselves and the state of Oregon are scrambling for solutions.

B. The Local Response

At the local level, governments and their constituents have two sets of tools available: cut spending or raise new revenue. The first strategy is going better than the second.

County government in rural Oregon was narrowly defined even before deep cuts began. Budgets were spent primarily on the sheriff's department to run law enforcement, including the county jail and juvenile detention, with a smaller share for human services. Even though the most distressed counties spend among the lowest amounts per capita on public safety in the state,[69] they have needed to cut deeply into public safety budgets, resulting in extreme contractions in county sheriffs' staffs.[70] Layoffs have brought one wave of bad news after another. In Lane County, among others, more than a thousand inmates were released in the early months of 2013 as sections of jail

the counties facing most acute distress: locally generated revenues, dependence on timber payments, debt burden, liquidity, general fund balance, retirement benefit obligations, public safety needs and spending, per capita resident income, population demographics, and unemployment rates. *Id.* at 6.

67. *See id.* at 7, 8, 15, 18.

68. *Id.* at 11, 12, 14, 17.

69. *Id.* at 15 (listing all eight most distressed counties in the state among the bottom half of counties in terms of per capita spending on public safety).

70. *See id.*; Stephanie McNeal, *Citizens take law into own hands after cash-strapped Ore. county guts sheriff's office*, FOXNEWS.COM (Dec. 28, 2013), http://www.foxnews.com/politics/2013/12/28/citizens-take-law-into-own-hands-after-cash-strapped-ore-county-guts-sheriff/ (describing the North Valley Community Watch group, a distinct armed patrol and response group in Josephine County).

facilities were closed due to a lack of personnel.[71] After downsizing most of the sheriff's department, Josephine County reduced its sheriff's staff hours to one shift—eight a.m. to four p.m. Monday to Friday.[72] New "cite and release" policies took hold across the state,[73] alternative incarceration programs (like a forest camp and community service program) closed,[74] and criminal investigative efforts languished.[75]

Cuts to non-law enforcement services were at least as dramatic. As in most states, Oregon's counties are (and have historically been) critical players in delivering poverty and social services programs.[76] The county is "where the social safety net hits Main Street."[77] Services related to seniors, alcohol and drug treatment, child protection, mental health, veterans, developmental disabilities, and public health all flow through the states' county governments.[78] Deep cuts in these areas have been made even amidst rising caseloads caused by the recession. Services related to aging and disabilities in

71. *See* Rice, *supra* note 16; Dan Springer, *Budget cuts force Oregon jail to give prisoners get-out-of-jail-free cards*, FOXNEWS.COM (July 16, 2012), http://www.foxnews.com/us/2012/07/16/budget-cuts-force-oregon-jail-to-release-prisoners/; *see also* Lane County Sheriff's Department, *News Releases-2013*, http://www.lanecounty.org/Departments/Sheriff/Pages/CurrentNewsReleases-2013.aspx (posting sheriff's office press releases disclosing weekly "capacity based releases" from county jail facilities until voters passed a July 2013 levy to reopen beds in the county jail) (last visited Aug. 27, 2014).

72. *See, e.g.*, Shane Dixon Kavanaugh, *Unsolved Josephine County deaths illustrate small-town crisis stemming from law-enforcement cutbacks*, OREGONIAN, Mar. 11, 2014, http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/03/crime_cave_junction_josephine.html; *see also* Paul Feine & Alex Manning, *DIY Law Enforcement in Cash-Strapped Oregon County*, REASON.COM (Apr. 25, 2013), http://reason.com/reasontv/2013/04/25/citizens-against-crime-diy-law-enforceme. Josephine County Sheriff Gil Gilbertson stated that the department staffing had fallen from ninety-eight people to thirty-nine people, including staffing of the county jail. The department thus had only three patrol deputies available, and they worked only one shift, five days per week. They can respond only to "life-threatening calls," leaving numerous burglaries and thefts uninvestigated. *Id.*

73. *See* 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at Exh. E (assessing the policy questions and quandaries raised by staffing cuts for pre-trial detention procedures); *see also* Lane County Sheriff's Department, *supra* note 71.

74. 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 78 (describing program cuts in Lane County).

75. *See, e.g.*, Kavanaugh, *supra* note 72.

76. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 3 (describing counties' original function in the state as including law enforcement, the operation of jails, "poor relief," and public health).

77. Ted Sickinger, *Financial Crisis Hits Hard at the County Level, Too*, OREGONIAN, Dec. 3, 2010, http://www.oregonlive.com/business/index.ssf/2010/12/financial_crisis_hits_hard_at.html.

78. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 4.

Multnomah County, for instance, faced staffing cuts of 5% while caseloads grew 13%.[79] Some cuts create costly, long-term inefficiencies, such as reduction of in-home nursing services for indigent seniors, which will increase demand for a more expensive system of public nursing homes.[80]

In April of 2007, Jackson County—the sixth most populous county in the state—closed all fifteen of its public libraries.[81] In a sparsely and low-income populated rural county, such closures may hurt even more. As one bookstore's bulletin board in Douglas County, Oregon poignantly said: "We read to know we're not alone."[82] After Josephine County eliminated 250 of its 650 total employees between 2005 and 2010, one commissioner remarked: "We're past cutting . . . . We're talking about providing what normal American citizens would expect in a First World nation."[83]

For reasons of ideology as well as tight economic margins for some voters, new taxes are apparently even less popular with residents of Eastern and Southern Oregon than spending cuts.[84] Majoritarian voter sentiment on taxes is determinative in Oregon due to the state's particularly strong limitations on increasing taxes. The state has two constitutional limitations on increasing property taxes, which are the most significant source of locally-generated revenue for cities and counties in Oregon.[85] Measure 5, which Oregon voters approved in 1990, "limits the amount of property taxes that can be collected from each property tax account."[86] Measure 50, which voters approved in 1997, "assigned a permanent rate to each taxing district that cannot be raised without statewide-voter approval" and limited "the rate of growth of property value subject to taxation."[87] These rules mean, "All Oregon counties are saddled by a property tax system that has tied local tax rates to rates in effect more than a

79. Sickinger, *supra* note 77.

80. *Id.*

81. Yardley, *supra* note 60.

82. Rice, *supra* note 16.

83. Sickinger, *supra* note 77.

84. *See* Dave Hogan, *Loss of Timber Payments Cuts Across Oregon*, OREGONIAN, June 24, 2008, http://www.oregonlive.com/news/oregonian/index.ssf?/base/news/121427970261960.xml&coll=7; Joel Millman, *Without Timber Money, Budgets Face Buzzsaw*, WALL ST. J., Feb. 3, 2012, http://online.wsj.com/news/articles/SB10001424052970203920204577195021513951312.

85. *See* Gaid, *supra* note 19, at 18.

86. *Id.* at 18–19.

87. *Id.* at 19 (footnotes omitted).

decade ago and fails to capture the full value of economic activity and growth."[88] Oregon voters have also historically shunned sales taxes, rejecting statewide sales-tax proposals nine times in the past.[89] Federal timber funds were influential both in locking in low property tax rates and in avoiding a sales tax—both votes were taken when local coffers were flush with enough federal funds to pay for basic services without high rates of state and local taxes.[90]

Proposals to increase property taxes have failed again and again. Despite warnings from the state capital that bailouts would not make up the service gaps and calls for citizens to tax themselves locally, residents have "routinely" voted down increases that would have provided more money for local government and schools.[91] Tillamook County, for instance, has the "worst roads in the state of Oregon," but voters in 2008 overwhelming rejected a local tax for road improvements.[92] In Lane County, voters have rejected tax increases fourteen times until finally passing a levy to fund law enforcement in 2013.[93]

Curry and Josephine counties' "community of loggers, hippies, survivalists and retirees" similarly rejected ballot measures to fund law enforcement in 2013.[94] In Curry County, which locals characterize as "deeply conservative, anti-tax and suspicious of government,"[95] the 2013 defeat came as no surprise. Commissioners have tried various approaching to raising revenues at the ballot box. In 2010, voters in Curry County "overwhelmingly rejected" a levy

88. *See* 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 10.

89. *See* Millman, *supra* note 84; Eric Mortenson, *Rural Oregon Counties Scramble as Timber Payments Dry Up, While Critics Say It's Time They Paid for Services*, OREGONIAN, Mar. 4, 2012, http://www.oregonlive.com/environment/index.ssf/2012/03/oregon_timber_counties_scrambl.html.

90. *See* Blumm & Wigington, *supra* note 28, at 23 (regarding the sales tax): 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 39 (regarding property taxes).

91. *See* Eric Mortenson, *Loss of Federal Forest Payments Has Oregon Counties Looking for Revenue While Having Millions that Can't Be Tapped*, OREGONIAN (Jan. 21, 2012), http://www.oregonlive.com/environment/index.ssf/2012/01/loss_of_federal_forest_payment.html; *see also* Greg Bolt, *Tax Increases, More Logging Proposed to Rescue Oregon Counties*, THE REG. GUARD (Eugene, Or.), June 24, 2008 (noting that "[l]ocal people are going to have to step up"), *available at* http://satellite.tmcnet.com/news/2008/06/26/3518870.htm.

92. Hogan, *supra* note 84.

93. Rice, *supra* note 16; Bill Chappell, *Oregon's Cash-Strapped Counties Reject Public Safety Levies*, NPR.ORG (May 22, 2013), http://www.npr.org/blogs/thetwo-way/2013/05/22/186045158/oregons-cash-strapped-counties-reject-public-safety-levies.

94. Kavanaugh, *supra* note 72.

95. Mortenson, *supra* note 89.

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

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

C. The State Response

The state of Oregon could decide that it will ride to the rescue, stepping into the federal shoes of subsidizing the timber county budgets with revenues collected and redistributed from taxpayers bearing higher tax rates. Oregon governors, however, have consistently warned the timber counties not to count on state bailouts. Governor Ted Kulongoski said as much in 2008, citing falling income tax revenues from the sluggish economy.[101] In 2011, Governor John Kitzhaber reiterated his predecessor's warning "The state can't backfill local shortfalls."[102] In 2012, Governor Kitzhaber again stressed, "The state has its own money problems and can't help."[103]

State-level governmental entities have, however, undertaken extensive reviews, analyses, and problem-solving commissions to

96. Sickinger, *supra* note 77.

97. *Id.* (emphasis added).

98. Mortenson, *supra* note 89.

99. *Id.*

100. Barnard, *supra* note 1.

101. Hogan, *supra* note 84.

102. Matt Cooper, *Timber Counties Make Plea to Salem*, THE REGISTER GUARD (Eugene, Or.), Dec. 20, 2011, http://projects.registerguard.com/web/newslocalnews/27349025-41/counties-county-state-lane-budget.html.csp.

103. Mortenson, supra note 89.

address the financial difficulties facing Oregon's Timber Counties. In 2007, in response to the first expiration of the SRS Act, a gubernatorial task force recommended a combination of new local taxes, state policy change and revenue sharing, new federal revenues, and new timber harvests on federal land.[104] In 2009, the Oregon legislature convened a task force on cutting costs in service provision and improved fiscal planning in timber counties.[105] In 2012, the Oregon Secretary of State chimed in with a comprehensive review of the finances of troubled counties across the state and considered other states' strategies for managing local financial crisis.[106] That same year, the Oregon legislature convened a joint legislative task force to discuss how the state could serve as a backstop when counties could no longer fund certain services such as "building permits, code enforcement and inspections, elections, tax collection, and veterans' services."[107] In addition, advocates and legislators have focused on technical assistance and legislative changes, such as amending state law to facilitate the consolidation of city and county services[108] and loosening the rules for transferring road funding to discretionary uses.[109]

State officials have also proposed more dramatic interventions, such as state receiverships and bankruptcy authorization. In 2008, Governor Ted Kulongoski expressed concern that the state did not have a process to manage local financial emergencies, and he

104. *See* 2009 GOVERNOR'S TASK FORCE FINAL REPORT, *supra* note 9, at 23, 26.

105. STATE OF OR., TASK FORCE ON EFFECTIVE AND COST-EFFICIENT SERV. PROVISION 1 (2010), *available at* www.aocweb.org/aoc/Portals/0/Final%20E-Version%207.pdf.

106. *See* 2012 FINANCIAL CONDITION REVIEW, *supra* note 4.

107. *See* Eric Mortenson, *Legislature Considers Rescue of Oregon Timber Counties if Services Fall Through the Crack*, OREGONIAN, Sept. 12, 2012, http://www.oregonlive.com/business/index.ssf/2012/09/legislature_considers_rescue_o.html; ASS'N OF OR. COUNTIES, COUNTY FISCAL DISTRESS: RECOMMENDATIONS, LEGISLATION, AND BILLS 2–3 (2013), *available at* http://www.aocweb.org/aoc/Portals/0/Todd%27s%20Dummy%20Page/Co%20%20fiscal%20distress%20bills%207-13.pdf.

108. Cooper, *supra* note 102.

109. In 2010, with limited state legal approval, some counties began exchanging their reserved road funds, which were restricted, with their local cities' general funds, which could be spent on a broader range of purposes. The exchanges permitted a county to transfer road funds to one of its cities, which would spend the money on city streets; the city would then transfer back unrestricted money that could be used on county services. Such transfers require not only that a county has road funds in reserve, but that the county has a city with surplus funds available to trade. *See* Mortenson, *supra* note 91. In 2012, the Oregon legislature passed a bill that allowed counties to access their road funds to pay for sheriff's patrols. *See id.*; H.B. 4175, 76th Leg. Assemb., Reg. Sess. (Or. 2012).

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

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

110. Bolt, *supra* note 91.

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

112. *Id.*

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

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

115. Sarah Filcher, *Filin' 9 to 5: Municipal Bankruptcy and Oregon*, OR. DEBTOR-CREDITOR NEWSLETTER (Or. State Bar, Tigard, Or.), Winter 2013, at 2, 5 (on file with the Oregon State Bar Association) ("As the word 'bankruptcy' continues to evolve to meet the needs of insolvent municipalities, alternative solutions . . . must be developed. After all, chapter 9 is not a liquidation chapter, and cutting public services and employees has its limits. Despite current economic challenges, chapter 9 remains an infrequent event. The contrast between the Nebraska Sanitary and Improvement Districts and California cities' bankruptcies illuminates the varying goals and successes of municipalities entering this highly politicized chapter. The time is long overdue for Oregon to update its chapter 9 statutes for irrigation and drainage districts, and further conversations discussing the merit of expanding access to Oregon cities and counties are needed.").

116. OR. REV. STAT. § 548.705 (2013); *see also* Peter Benvenuttia & Joseph Witalec, *State Law Authorization for a Chapter 9 Filing*, *in* CHAPTER 9 BANKRUPTCY STRATEGIES: LEADING LAWYERS ON NAVIGATING THE CHAPTER 9 FILING PROCESS, COUNSELING MUNICIPALITIES, AND ANALYZING RECENT TRENDS AND CASES 35 (2011), *available at* 2011 WL 5053632 (confirming, as part of its fifty-state survey of states' Chapter 9 bankruptcy authorization laws, that Chapter 9 bankruptcy in Oregon is limited to irrigation and drainage districts).

117. Bolt, *supra* note 91.

118. Jonathan Cooper, *Rural Counties Struggle with Payment Loss; Federal Timber*

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

III. LESSONS FOR (AND FROM) OREGON

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

As an observer of the state of local public services in fiscally troubled cities and counties, I find that incident both tragic and tragically unsurprising. Across the post-industrial Midwest Northeast, and West towns and cities have slashed services so deeply that emergency police and fire services are understaffed and overwhelmed, and their employees rely on broken, beleaguered systems and equipment.[123] Services unrelated to public safety and

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Program Expired in September, SPOKESMAN REV. (Spokane, Wash.), Dec. 20, 2011, http://www.spokesman.com/stories/2011/dec/20/rural-counties-struggle-with-payment-loss/.

119. Loew, *supra* note 113. House Bill 2924 was introduced, which would authorize local governments and special government bodies to file for bankruptcy, but the bill died in committee. H.B. 2924, 77th Leg. Assemb., Reg. Sess. (Or. 2013); *see also* Oren Haker & Samir Parikh, *An Option of Last Resort: Federal Bankruptcy and Oregon's Municipalities*, 50 Willamette L. Rev. 619 (2014) (discussing the implications of a bankruptcy law for Oregon general purpose local governments).

120. Amelia Templeton, *Loss of Timber Payments Cuts Deep in Oregon* (May 21, 2013), http://www.npr.org/2013/05/21/185839248/loss-of-timber-payments-cuts-deep-in-oregon.

121. *Id.*

122. *Id.* For a thoughtful discussion of special issues and aspects of domestic violence in rural areas, see Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J.L. GENDER & SOC'Y 347 (2008).

123. For a discussion of eroding public services in cities in fiscal crisis, see *New Minimal Cities*, *supra* note 17.

taxes—such as regular park maintenance, summer youth programs, child welfare services, facilities to house the indigent elderly, land-use planning, and proactive code enforcement—seem like a luxury of the past.

Rural Oregon and the historically industrial North have more in common than meets the eye. Post-industrial poverty shows up nationwide, and we should not take for granted that federal aid and programs to ameliorate it only flow towards urban centers. Some simpleton pundits have laid all of Detroit's problems at the feet of progressive politics, which purportedly enabled government dependence and inhibited market recovery.[124] Such judgments are as grossly distorted as it would be to blame the conservative right for all of rural Oregon's problems. In both cases, the dramatic, late twentieth century restructuring of our economy away from low-skilled manufacturing jobs make federal programs to ease locally concentrated job losses look like minor—indeed insufficient—acts of mercy to ease genuine hardship. And the direct subsidies to local governments in Oregon remind us that federal and state funds can and do flow from blue to red, and urban to rural. Similar challenges mean similar constraints on solutions, such as the hard realities that in poor areas, there is not much new revenue to raise locally, or the fact that job retraining and economic development require investment and time. In this Part, I put these regions in dialogue over state and local government legal interventions for fiscal crisis and synthesize five lessons from their juxtaposition.

A. How low can local government go?

America's post-industrial cities and regions are testing a new nadir in local public services. Is there a floor beneath these cuts—some level of services to which every American should be entitled? If so, where is that floor, and how does it change depending on an area's degree of urbanization or density? What does it say about our public safety net and shared values if local government is reduced only to law enforcement?

124. *See* Glen Beck, *Beck TV: Hiroshima vs. Detroit – Which City Really Embraced the 'American Dream'?,* THE BLAZE (Feb. 28, 2011), http://www.theblaze.com/stories/2011/02/28/beck-tv-hiroshima-vs-detroit-which-city-really-embraced-the-american-dream/. *Cf.* Jeff Wattrick, *While bashing Detroit, Glenn Beck exposes ignorance of Hiroshima's rebuilding, auto bailout and most everything else*, MLIVE.COM (March 1, 2011), http://www.mlive.com/news/detroit/index.ssf/2011/03/glenn_beck_ignorant_of_hiroshi.html.

In 2010, the executive director of the Association of Oregon Counties suggested that fiscally stressed counties "simply ratchet back services to the point the budget is balanced."[125] With no good alternatives, counties are following that plan. Josephine County, for instance, cut its budget by 10% between fiscal years 2012–13 and 2013–14, and over the last decade Josephine County has cut deeply into its reserves while nonetheless having to cut 400 positions from its staff (including sixty-two from the sheriff's department). The county's budget message described a pattern of outsourcing some services to non-profits, even at the risk of higher costs later on, while "other programs were drastically cut to minimum levels of service."[126] One could easily take issue with this characterization: a county with mass release from it jail due to staffing cuts and weekly hours of non-operation at the sheriff's department, as described in Part II.*B.* is arguable *below* minimum levels. Few reasonable people would accept the zeroing out of all local public services, so what should be spared? What services are most important, and how much of those essential services do we need?

Whether urban or rural, all insolvent local governments raise these questions of what level of local public services will we protect and guarantee for Americans.[127] Whether the cause for insolvency is a revenue problem, a spending problem, or a combination of both, is there some level of public services that must be funded for current residents? In the context of urban areas weathering fiscal crisis through bankruptcy and receiverships, I have encouraged the public, as well as state and local decision-makers, to consider whether there is or should be a floor beneath cuts to the local public sector.[128]

Rural Oregon is struggling through this question, and we should pay close attention to its answers. Lawmakers at the state and local level assume that local government services cannot be eliminated completely, and they have tried to identify the minimum levels of

125. Sickinger, *supra* note 77.

126. JOSEPHINE CNTY., OR., BUDGET 2013–14, BUDGET ADOPTION, at A14, *available at* http://www.co.josephine.or.us/files/aintroduction1314.pdf; *see also id.* at A27-A28 (summarizing the county's budget cuts and changes since 2005).

127. *See* Michelle Wilde Anderson, Op-Ed., *Detroit: What a City Owes its Residents*, LA TIMES (July 24, 2013), http://articles.latimes.com/2013/jul/24/opinion/la-oe-anderson-detroit-bankruptcy-20130724; Anderson, *New Minimal Cities*, *supra* note 17.

128. *See New Minimal Cities*, *supra* note 17, at 1180–1221 (describing dramatic cuts to public services in the cities across the country that entered a state receivership or filed for municipal bankruptcy between 2008 and 2013).

services that would be morally and politically tolerable. For instance, in 2009 the state established an unusual fiscal intervention process for distressed counties. Rather than making debt levels, structural deficits, and other fiscal factors the triggering condition for intervention, Oregon makes fallen service levels the triggering condition for intervention.[129] The law allows counties to petition for state assistance if funding for a mandatory state service like public safety has fallen (or soon will fall) below "minimally adequate" levels.[130] After receiving a county petition, the Governor consults with the governing body of the county and stakeholders, including labor organizations, to determine the levels of state-required services currently being provided by the county, and then to "determine whether the county is providing a minimally adequate level of state-required services."[131]

If the Governor confirms that county services have fallen (or will fall within one year) below this minimally adequate level of state-required services, the county will declare a fiscal emergency for the county that triggers creation of a "fiscal assistance board."[132] This board will then work with the county to draft a "recovery plan designed to restore or sustain minimally adequate state-required services."[133] That plan might include layoffs, asset sales, the issuance of bonds, service reorganizations and intergovernmental agreements, the referral of fiscal matters to voters (including through an emergency election), and a state takeover of responsibility for critical services.[134] The Board and fiscal emergency are terminated "when the Governor concludes that the fiscally distressed county has restored or sustained minimally adequate state-required services in the

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129. For an overview of fiscal intervention models, see Omer Kimhi, *Reviving Cities: Legal Remedies to Municipal Financial Crises*, 88 B.U. L. REV. 633 (2008); Michelle Wilde Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577 (2012).

130. First, if the "governing body of the county believes that the county is in a state of fiscal distress that compromises the county's ability to provide a minimally adequate" service levels "currently or within the next fiscal year," the "governing body of a county" can petition the Governor for "a declaration of a fiscal emergency." OR. REV. STAT. § 203.095(1) (2013). The composition of and procedures for any fiscal assistance board are set forth in a different statutory subsection. *See id.* § 203.100 (2013). Note, however, that these statutes will be repealed on January 1, 2016. *See* 2012 Or. Laws Ch. 76 (H.B. 4176), *amended by* 2013 Or. Laws Ch. 485 (S.B. 581).

131. OR. REV. STAT. § 203.095(2) (2013).

132. *Id.* § 203.095(3)–(4).

133. *Id.* § 203.095(5) (2013).

134. *Id.*

county."[135]

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

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

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

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

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

137. *Id.*

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

139. *See id.*

140. Sickinger, *supra* note 77.

provides a service directly, the local government loses control over the policies, staffing, supervision, and funding levels of that service. Where the local government enjoyed little discretion anyway (as in elections), such losses mean little; where it enjoyed higher levels of autonomy (as in law enforcement), a loss of local control may be quite significant. For this reason, in-kind bailouts exert more pressure on local governments to come up with new sources of local revenue—if they can pay their own bills, they can earn back local control over services.

Whatever the mechanism for introducing a floor under local government cuts, there are very compelling reasons to do so. Such floors are critically needed as a humanitarian matter, but also as sound policy. For one thing, the cuts to public services protects an unusually broad range of constituents, including those unlikely to notice their gains. Ensuring continued public services benefits low-income voters who cannot afford either new taxes or services provided for a fee. It also protects political minorities who were outvoted in approving new state or local taxes, as well as any persons who did not anticipate, but come to need, public services. Political majorities can defeat new tax levies, but the costs of the absentee services that result will be borne by individuals regardless of their ideology on taxes. Minimum services also protect all voters from downstream costs created by service inefficiencies—such as funding incarceration rather than outpatient mental health services, or a residential nursing home rather than in-home care for the indigent elderly. In addition, residents beyond any given local government's borders may have a powerful interest in preventing spillover effects caused by falling service levels; for instance, large, under-policed swathes of rural Oregon that facilitated the production of illegal narcotics that are then trafficked into urban areas within and beyond the state.

The experience in Oregon, when read in the larger context of local government law and finance, suggests additional policy models for putting a floor beneath cuts to local government services. Anti-tax conservatives have been creative about controlling government growth in ways that could be marshaled for the opposing goal of salvaging local government. For instance, local governments in Oregon and some states (like Colorado) control the rate of government growth by setting a maximum growth rate for total city spending.[141] Could this model be turned on its head to control and counterbalance the rate of local government *shrinkage*? A state could determine, for example, that if a county government's staffing levels or total budget has fallen below a critical per capita threshold and it is nonetheless facing additional cuts of more than, say, 3% in the coming fiscal year, the county property tax rate will automatically float to the level of the statewide average until the minimum level of per capita service levels is restored.[142] If carefully drafted in per capita terms based on minimal rather than optimal service levels, such a measure would not incentivize overspending or disincentivize desirable privatization. Aggressive efforts to block government growth and taxes are one cause of local government disintegration, but perhaps they can also serve as models for its salvation.

In addition to controlling shrinkage, could local laws preserve basic services in cases of fiscal emergency? Here too, anti-government laws inadvertently model an option. Damascus, Oregon, a very conservative city with a strong growth control measure, came close to passing city charter amendments that would permanently forbid the city from providing new types of public services, such as public transportation.[143] A government-saving version of this law could establish charter amendments protecting key services, just as many states have done with respect to education. Notably, however, whether barring a particular service or mandating one, this approach has the serious downside of constraining government flexibility to adapt to changing needs and shifting budgets, and it subjects services to an electoral popularity contest sure to benefit widely used services like law enforcement, while disadvantaging rainy day services like mental health treatment. The risk is that, without more, such provisions would simply lock down one part of a shrinking budget pie based on old formulas, thus crowding out other services. To make such laws fiscally and politically responsible, they would need to trigger new (perhaps temporary, subject to voter re-authorization) tax or fee levies to fund the protected service.

141. *See New Minimal Cities*, *supra* note 17, at 1183 (describing such a measure in Damascus, Oregon).

142. Though anti-growth measures in this vein unreasonably fail to concede government growth based on population growth or other significant local changes, a responsible anti-shrinkage alternative to it would surely measure contraction on a per capita basis. Changes like population loss, natural disaster, or other changed circumstances can intervene to drive budgets up or down in ways that require flexible lawmaking.

143. *See New Minimal Cities*, *supra* note 17, at 1183.

A more advisable but surely even less popular approach would be to amend Measure 5, Measure 50, or both to include greater flexibility for local governments—something that, given the unpopularity of recent local budget cuts, might be more viable today than ten years ago, when local governments were flush with federal subsidies. As described in Part II.*A*., these two property tax controls in the Oregon state constitution create a permanent tax rate derived from county property tax levels set in 1997.[144] Unfortunately, however, the permanent tax rates were fixed at a time when the timber counties enjoyed the external cushion provided by federal subsidies. While repeals to Measures 5 and 50 may be infeasible in Oregon, a more modest reform might amend them to permit larger single year property tax rate hikes, pending local approval, in the face of a "public services emergency," defined by triggering conditions like those contained in Oregon's state fiscal intervention law.[145] An alternative amendment model would suspend electoral supermajorities required for tax approval in favor of simple majorities when services fall below a minimally adequate level.

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

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

144. *See supra* text accompanying notes 86–87; Gaid, *supra* note 19, at 18–19.

145. *See supra* note 130.

the state will find itself in the same game of chicken facing the federal government: Who will yield first and consent to producing new revenues to be spent on timber county services? Will it be the central government trying to protect public safety for political minorities outvoted in their support of local government? Or will the requisite local majorities authorize new revenues and investments in their own public services? Unless something changes in statewide anti-tax laws (for instance, through a statewide tax reform law of the kind discussed above), the state will not be able to override the barrier created by local anti-tax obstinacy except by allowing local services to collapse.

If local constituencies bait the government for bailouts in this way, the state will need to wrestle with the argument that it owes minimum services as a safety net even in areas that have exerted below average tax effort. Even where local tax initiatives fail, there is still an argument for protecting persons with minimal levels of public services. People anywhere, after all, are vulnerable to crimes, mental illness, drug and alcohol addiction, and other maladies. Application of high standards of independence and self-reliance might argue for minimal services—even as an affirmative policy preference for living with greater dependence on self, family, and voluntary private charity rather than government—but it is hard to justify a state that is absent all together.

Those who say there must be better ways to meet service needs without new revenues will surely influence the debate. But the truth is, such solutions are often a mirage. Outsourcing cannot solve every fiscal problem. As one Oregon government report put it: "The means of dealing with fiscal stress are structurally constrained as well. Contracting out government services and privatization can be a way to achieve greater efficiency. However, rural communities may not have the abundance of contractors and businesses to ensure vibrant competition, so these methods may be problematic."[146] Rural areas face structural barriers such as a lack of competition among service suppliers and a low level of attractiveness to alternative providers.[147] These characteristics are the primary cause of low levels of privatization in rural areas, despite citizen attitudes that favor

146. Vince Adams, *Local Government Responses to Fiscal Stress: How Do Oregon Counties Compare?* 3 (Or. State Univ. Rural Studies Program, Working Paper No. RSP 0902, 2009), *available at* http://oregonstate.edu/cla/mpp/sites/default/files/RSP-09-02.pdf.

147. Mildred Warner, *Civic government or market-based governance? The limits of privatization for rural local governments*, 26 AGRIC. HUM. VALUES 133, 134, 139 (2009).

privatization.[148]

Oregon's timber counties are experimenting with a local public sector that is responsible for little more than public safety in true emergencies. From the risks and benefits of do-it-yourself citizen policing to the consequences of privatization of mental health services, Oregon's experiences in the coming years should be of great interest to a national conversation about the shrinking local public sector.

B. Where do we need local government at all?

Where states, and thus larger jurisdictions of taxpayers, are carrying the costs of most basic services for an area, what is the function of the local government? Should cities or counties enjoy control over fiscal decision-making (including the autonomy to block new taxes and other sources of locally generated revenue, or to authorize new lines of spending) where they are no longer paying most of their own bills? To pose this question is not to diminish the value of place or community. In my view, the restoration and continued population of our historic places, whether urban or rural, is a policy imperative for both environmental and humanitarian reasons. What kind of government best suits this setting, however, is a different matter.

The minimal local state raises difficult questions about where local government is worth funding at all. As described in the last section, collapsing public services in the timber counties have led Oregon state and local lawmakers to explore ways that the state could serve as a backstop when counties can no longer fund certain services, including building code enforcement and permits, tax collection, elections, and veterans' services.[149] Whether the state takes over a key service in this way or it ceases to be provided at all, a county government's role and responsibilities weaken.

Extreme cases of weakening county governments raise difficult and controversial questions: Should any pairs of neighboring timber counties merge, fusing them into larger county governments? Should

148. Mildred Warner & Amir Hefetz, *Rural-Urban Differences in Privatization: Limits to the Competitive State*, 21 ENV'T & PLAN. C: GOV'T & POL'Y 703, 705, 714 (2003) (differentiating structural characteristics, such as a lack of competition, from managerial factors, like the administrative capacity to engage in contracting and monitoring, and assessing their influence on privatization levels in rural areas).

149. *See supra*, Part II.; Mortenson, *supra* note 107.

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

County mergers present the most obvious option for county reorganization. The rationale for such a change would be to unite more rural territory under a single local government as a means of more fluidly sharing and running services (whether elections, courts, jails, or social services) across a larger territory. In principle, there is no limit on the appropriate size for a county government, and indeed, some counties in the West are spatially enormous—two to three times the size in square miles of the largest Oregon counties.[150] Big is not necessarily better though, so this change, like any boundary change, would only be advisable if it would offer specific gains in cost sharing that would not be offset by other downsides.

If merger is obvious, dissolution in this context is not. What does it mean to dissolve the county government on land that already lacks a municipal government? Land without any form of general purpose local government is rare in the United States. It is not unprecedented, however, and some states with large undeveloped areas have created special local government systems for that land. Maine, for instance, is a useful model for further study in Oregon. Maine has created a special category of thinly populated, heavily forested rural land outside of local government jurisdiction that is referred to as "unorganized territory."[151] This territory includes *more than half* of the state of Maine, comprising more than 10.4 million acres—a land area representing the largest contiguous undeveloped area in the Northeast.[152] These lands consist of coastal islands as well as Maine's North Woods, an area of "pristine lakes, ponds, rivers, and mountains" that supports some of the largest reserves of birds and mammals in the Northeast.[153] Landownership in these areas is both

150. Five counties in California, Arizona, and Nevada are larger than 12,000 square miles—double the size of Oregon's largest distressed timber county. *See supra* note 25; Wikipedia, "List of the largest counties in the United States by area," (based on 2000 US Census data), WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_the_largest_counties_in_the _United_States_by_area (last visited Aug. 30, 2014) (citing 2000 U.S. census data).

151. Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1376 & n. 31 (2012).

152. *See About us*, DEP'T OF AGRIC., CONSERVATION, & FORESTRY, ME. LAND USE PLANNING COMM'N (2013), http://www.maine.gov/dacf/lupc/about/index.shtml [hereinafter ME. LAND USE PLANNING COMM'N] (last visited Aug. 27, 2014).

153. *Maine's Land Use Planning Commission*, NATURAL RESOURCES COUNCIL OF MAINE, http://www.nrcm.org/projects-hot-issues/woods-wildlife-and-wilderness/north-woods

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

Though the unorganized territories of Maine lie within a county's boundaries for purposes of taxes and some services, they are not governed by their county and do not have a municipal government. The Maine Legislature serves as their "local" governing body.[156] This means that the state determines land use regulations applied to the unorganized territories as a whole, and the state purchases services, including schools, from the county.[157] The statewide-land use commission for Maine's unorganized area is specifically charged with balancing ecological and human values. On the one hand, they must support the state's "natural resource-based economy," "encourage appropriate residential, recreational, commercial and industrial land uses," and "honor the rights and participation of residents and property owners" in the territory.[158] On the other hand, the body is expressly charged with environmental protection goals, including to "prevent the despoliation, pollution and detrimental uses of the water in these areas," to "conserve ecological and natural values," and to "recognize[e] the unique value of these lands and waters to the State."[159] Land use in the territory may not enact short-term gains at the expense of "the long-term health, use and value of these areas" or the value of the land to "Maine's natural resource-based economy."[160]

Property taxes in the unorganized territories are set based on a mill rate with three components: payments to the state for services

-protection-lupc/maines-land-use-planning-commission-lupc/ [hereinafter: NATURAL RESOURCES COUNCIL] (last visited Aug. 27, 2014). For more information on this land and the history of protection by the stateside land use body, see Mark B. Lapping & Sandra L. Guay, *Changing Times: Shifting Rural Landscapes,* 15 VT. J. ENVTL. L. 103, 115–21 (2013); Jeffrey L. Amestoy & Mark J. Di Stefano, *Wildlife Habitat Protection Through State-Wide Land Use Regulation*, 14 HARV. ENVTL. L. REV. 45 (1990).

154. *See* NATURAL RESOURCES COUNCIL, *supra* note 153.

155. *Unorganized Territory*, MAINE REVENUE SERVICES, http://www.maine.gov/revenue/propertytax/unorganizedterritory/unorganized.htm (last visited July 3, 2014).

156. *Id.*

157. *Id.*

158. ME. LAND USE PLANNING COMM'N, *supra* note 152.

159. *Id.*

160. *Id.*

including education and forest fire protection, payments to the county for countywide services (like the registry of deeds), and payments to the county for services specific to the unorganized territories (like road services and transfer stations).[161] This formula generates a different mill rate for each county's unorganized territory.[162] As in Oregon, falling levels of public revenues are leading to changes in local governance of declining rural areas in Maine. Economic decline, population loss, and the inability to sustain municipal taxes have expanded the reach of unorganized territory, with seven small historic towns recently dissolving back into Maine's unorganized territory.[163]

Maine is not the only state with land directly under state management in one way or another. The 2010 Census identifies varying arrangements of unorganized territory in nine U.S. states, including Arkansas, Indiana, Iowa, Maine, Minnesota, New York, North Carolina, North Dakota, and South Dakota.[164] A model of unorganized territory would be inappropriate for populous areas of the timber counties, but it might well be worth consideration—tailored, of course, to Oregon's own legal and political circumstances—for large areas east of Bend, Oregon, which are thinly populated and generate extremely low levels of locally generated revenues for public services. Can such areas afford to host a local government?

Merger and dissolution of distressed counties warrant serious consideration. Like many of the services Oregonians took for granted when protected by the safety net of SRS payments, county borders and state dissolution law deserves a hard look. The strains of fiscal stress force hard questions about whether and why to fund local governments in very low population areas. If the local government cannot survive without the state or federal government directly assuming the cost of basic services, why make the land an independent political unit? Why let that political unit "defend" the territory against the imposition of new taxes? It is hard to justify a dependent local government where local control allows that territory

161. *See 2013 Tax Rates*, ME. REVENUE SERVICES (2013), http://www.maine.gov/revenue/propertytax/unorganizedterritory/taxrates.htm (listing mill rates per $1,000 in property value for Maine's unorganized territory).

162. *Id.*

163. *Dissolving Cities*, *supra* note 151, at 1402, nn. 88 & 149.

164. *Geographic Terms and Concepts - County Subdivision*, U.S. CENSUS BUREAU, http://www.census.gov/geo/reference/gtc/gtc_cousub.html (last revised Dec. 6, 2012).

to prevent new property taxes—especially when the loss of fiscal control could ultimately generate sufficient local revenues to resume fiscal independence over the long run.

Reorganizations, like merger and dissolution, deserve no automatic deference or preference, but they should nonetheless be policy options on the table among others. As modes of boundary change, these forms of restructuring are not inherently desirable or undesirable. They are simply policy changes that warrant detailed analysis based on specific local circumstances.[165] For that reason, lawmakers and voters need concrete information about the effects of a boundary change in terms of tax rates, service providers, fiscal impact on the new government, the disposition of county assets, the fate of public employees, the effects on county land-use laws and other regulations, and so forth. To that end, New York law, requires a dissolution plan prior to a public election on the matter, and the state has piloted statewide programs to fund local research, analysis, and reporting of the impacts of dissolution.[166] These efforts provide a model for Oregon and other states.

States like Oregon should look closely at their merger and dissolution laws to ensure that the state is not blocking valuable modes of restructuring. Laws encumbering border changes with onerous or costly procedures deter measures that could be useful for fiscal savings. As I have explored and written previously, dissolution of a government does not mean dissolution of place hood, local history, or a sense of community.[167] Many communities across history have opted to dissolve or merge their city governments in the name of reducing local taxes, changing local management, or other anticipated gains.[168]

Having said that, the state should permit and unencumber the reorganization of county borders, the ultimate decision about merging or dissolving a county should lie with residents of that jurisdiction. Preserving voter approval requirements for dissolution and merger

165. *See Dissolving Cities*, *supra* note 151, at 1371 ("[D]issolution [is not] good or bad, just or unjust. Such a judgment would be oversimplified and premature. Indeed, after decades of exhaustive research on the proliferation of new legal cities, few scholars, if any, would offer a blanket assessment of whether incorporation is desirable as a general matter. Instead, careful research on the phenomenon has yielded an understanding of the circumstances in which incorporation favors or disfavors particular values.").

166. *Id.* at 1394–95.

167. *See id.* at 1417–18.

168. *See id.* at 1399–1411.

acknowledges that residents within a dissolving county would be most affected by the change. If state leaders view restructuring as a means to ameliorate a fiscal crisis, they still maintain powerful levers of influence over that choice, including takeover of local management or services, and the choice of whether to bail out a county that is turning away from measures to improve its finances.

Under current Oregon law, a county cannot be merged or dissolved without consent of a majority of voters, even following the declaration of a fiscal emergency.[169] There has been some legislative activity to soften the procedural requirements for mergers, but it has failed to pass the legislature,[170] and dissolution and merger may be unpopular ideas in the timber counties.[171] Cities and counties are a tier of government that most people would loathe to eliminate, even in areas where residents refuse to approve new taxes needed to fund essential local services. For some voters, county governments may be symbolic of community, independence and separation from statewide politics, and local control, even when the government at issue is extremely weak.

In my view, historic places and modes of living have existence value, even when they have trouble attracting residents and businesses in a competitive system. Politicians in Oregon have articulated our broader ethical interest in assisting struggling rural areas: In Oregon Senator Ron Wyden's words, to "make sure rural America doesn't become a ghost town."[172] This sentiment captures something particular to rural areas—a regional, state, and national interest in continued population of remote areas. That interest is not merely

169. *See* Letter from Dexter Johnson, Legislative Counsel, Or. Legislative Counsel Committee, to Representative Wally Hicks, Or. State Legislature (Apr. 23, 2012), *available at* www.co.josephine.or.us/Files/07-12-12%20%20General.pdf.

170. *See* ASSOCIATION OF OREGON COUNTIES, *supra* note 138 (summarizing House Joint Resolution 2, which died in the House Rules Committee).

171. *See, e.g.*, Letter from Dexter Johnson, Legislative Counsel, Or. Legislative Counsel Committee, to Representative Wally Hicks, Or. State Legislature (Apr. 23, 2012), *available at* www.co.josephine.or.us/Files/07-12-12%20%20General.pdf (responding to an inquiry by Josephine County's state representative expressing concern about involuntary reorganization of the county); Representatives Wally Hicks & Cliff Bentz, comments during "Panel: Local Fiscal Distress in Oregon: Timber Counties and Beyond" at the 2014 Willamette Law Review Spring Symposium: Under Pressure: Fiscal and Regional Difficulties Facing Local Governments (Feb. 28, 2014).

172. Nathan Rice, *Lawmakers scramble to fix the funding problem in Oregon's timber counties*, HIGH COUNTRY NEWS (Apr. 29, 2013), https://www.hcn.org/issues/45.7/seeking-balance-in-oregons-timber-country/lawmakers-scramble-to-fix-the-funding-problem-in-oregons-timber-counties.

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

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

C. Distinguishing political will from fiscal incapacity

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

One could tell two opposing narratives of fiscal crisis in the timber counties. On the one hand, the fiscal struggle is self-imposed: voters and their representatives have decided not to approve the property taxes necessary to sustain rudimentary government services, because they are waiting for state or federal taxpayers to bail them out. The rolling over and reauthorization of federal payments has created something of "a cry-wolf scenario, where voters refuse to make up the gap until it's certain the government money has dried up."[173] Viewing the timber counties' fiscal problems in this way ascribes the crisis to anti-tax, anti-government politics tinged with the hypocrisy of dependence on the federal government. Consistent with this story is the reality that it would be the heavily taxed counties around Portland—"blue" voters—who would be sending their dollars to bail out "red" voters in rural areas with dramatically lower tax rates.[174]

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

There is truth in both of these narratives, making the timber counties' fiscal stress the blended result of political will and fiscal incapacity. Voters there are ideologically opposed to well-funded government and new taxes, but they are also genuinely less prosperous on average than the statewide electorate that might help them sustain the costs of basic services. Josephine County demonstrates this reality: it has the lowest level of per capita local revenues in the entire state, due both to the fact that it has the lowest property tax rate in the state as well as some of the lowest per capita personal income levels in the state.[175]

This mixed story matters, because it informs the decision about whether, and to what degree, the state should bail out the timber

173. Sickinger, *supra* note 77.

174. *See* Zheng, *supra* note 111, ("If officials tap state resources to operate county functions in southwest Oregon, that would likely mean that tax dollars from more prosperous, heavily taxed Portland-area counties get shipped to the timber-reliant counties, which have some of the lowest permanent property tax rates in the state.").

175. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 42, 45.

counties. The municipal bankruptcy literature has pushed lawmakers to be more mindful about the basic principle that bailouts are most appropriate when the underlying entity suffers from a lack of political will, rather than fiscal incapacity.[176] A problem of political will exists when voters or politicians behave strategically with the hope of state or federal rescue measures (whether bailout money or debt relief through bankruptcy)—for instance, where a local government overspends on discretionary projects (creating a spending problem) or defeats new taxes (creating a revenue problem) because it expects subsequent relief from the state capital. Fiscal incapacity, by contrast, captures the idea that some voters cannot bear new taxes without economic hardship, but in theory it also means that even when new taxes are "affordable" to resident households and businesses, the availability of lower tax alternatives in the region may drive taxpayers out of the jurisdiction.[177]

Another way of seeing this political will versus fiscal incapacity issue is this: Has the economic distress been caused by socioeconomic decline or mismanagement? The main theories of economic distress distinguish fiscal problems caused inevitably by the rising costs and falling revenues associated with poverty, on the one hand, from internal causes such as incompetent or untrustworthy officials or capture by local special interests.[178] Political decisions to underfund local government despite the need for its services should fall in this latter category as well—a population that cuts off urgently needed public revenue is as much of a management condition as a population that spends more than it has.

Under either framing, the lesson for Oregon is that officials considering bailouts or ongoing subsidies have to determine the nature of the problem in each troubled county. Local property tax rates are as relevant as local poverty rates. Both are revenue

176. *See* Clayton P. Gillette, *Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy*, 79 U. CHI. L. REV. 281 (2012).

177. This later cause of fiscal capacity requires, however, that local jurisdictions are competing with one another for residents—an idea that is less salient in remote rural areas. While rural Oregon, especially in the southwest of the state, surely benefits from low taxes that attract retirees and others away from California and other higher-tax locales, that advantage has to be set against the risk that escalating crime and a sense of lawlessness will deter residents and businesses from settlement. And in any event, modest new tax levies that bring Josephine and other timber counties up to tax rates that are more in line with state averages would still maintain their competitive advantage vis-à-vis the urban parts of the state and all of California, which has sales taxes as well as higher income taxes.

178. *See* Kimhi, *supra* note 129, at 642–46.

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

Where an area's problems are socioeconomic and structural, state interventions must address those issues in order to be useful. Bailouts are easier than economic development or legal reforms, but they provide only a temporary solution infected with bitter politics. Even where there seems to be some kind of "easy" solution that is blocked by political majorities at the state or federal level (i.e., in Oregon, the resumption of large scale logging on federal land, or in the Rustbelt, the mobility of affordable housing into higher income suburbs and school districts), lawmakers still need to cope with the situation as is—rebuilding a local area on the terms of its reality.

All of the Rustbelt, from New York to Oregon, reminds us that economic development is easier said than done, and job retraining is expensive. It is hard for individuals to relocate, and hard for aging towns to attract new businesses. When it comes to rural or urban areas, economic development arguably should be as much of a concern to environmentalists as to humanitarians. One commenter wisely noted that "regions of economic hardship often overlap with areas where many species are at risk of extinction, surely an argument for making economic development a cornerstone of environmental activism."[179] For this reason, the Northwest Forest Plan included job development programs with forest management components, including a "Jobs in the Woods" initiative that employed some loggers in the work of restoring watersheds.[180] Klamath County has invested in economic development activities related to hydroelectric power, biomass projects, and health care facilities.[181] Even in urban areas, economic development and environmentalism are complementary goals—the decontamination and reuse of urban brownfield land and the revival of a historic industrial city alleviates housing pressure to sprawl the metro area into new greenfield sites that not only confiscate open land but create traffic patterns that increase greenhouse gas emissions.

179. Jonathan Rosen, *The Birds: Why the Passenger Pigeon Became Extinct*, NEW YORKER (Jan. 6, 2014), http://www.newyorker.com/arts/critics/books/2014/01/06/140106crbo_books_rosen? currentPage=all.

180. Rice, *supra* note 16.

181. 2012 FINANCIAL CONDITION REVIEW, *supra* note 4, at 46.

If economic development is the best answer to address socioeconomic decline, Oregon lawmakers have to bear in mind another important principle learned in other states. State receiverships and bankruptcy are famously bad at fixing structural problems. It doesn't have to be that way,[182] but as is, these systems have very few tools available to fix a revenue side problem—whether it is generated by political opposition to new taxes or by a lack of taxable wealth—because they cannot overcome the city's legal borders or the will of its electorate. Other than monetizing assets, more aggressively punishing tax delinquency, and attracting external funding, fiscal experts appointed to rescue a troubled jurisdiction simply don't have many options beyond those held by already held by elected officials. A city's borders contain the local government's electorate and voting majorities, as well as its taxable land and wealth. Just as Adam Levitin put it for states, "[b]ankruptcy cannot fix the structural political problems underlying states' budgets any more than it can make a buggy whip maker or typewriter manufacturer profitable."[183] The causes of local structural problems are beyond the reach of receivership and bankruptcy solutions with spending-side levers alone.

In that sense, our existing ways of intervening in local fiscal stress preference spending cuts over new forms of locally generated revenue. Yet when household economic fortunes are falling, doubling down on anti-government, anti-tax sentiment may be self-defeating. Spending cuts to public programs during times of heightened individual need can create higher downstream costs, destroy synergies among public programs that bring down total costs (such as mental health care and jail facilities), and trigger individual hardship.[184] Preferring spending cuts to increases in progressive taxes like the property tax is a partisan choice that spares wealthier residents from new contributions to the public sector.[185]

182. For thoughtful arguments to improve the restructuring achieved by fiscal intervention strategies, see, e.g., Gillette, *supra* note 176; Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425 (1993).

183. *See* Adam J. Levitin, *Bankrupt Politics and the Politics of Bankruptcy*, 97 CORNELL L. REV. 1399, 1403 (2012).

184. *See New Minimal Cities*, *supra* note 17, at 1157–58; David A. Skeel Jr., *States of Bankruptcy*, 79 U. CHI. L. REV. 677, 686 (2012).

185. *Id.*

D. Can volunteers replace local government?

Fiscally troubled areas across the country are testing new forms of dependence on the voluntary sector to provide basic services, including law enforcement. These experiments are admirable, because they ignite local social capital and civic engagement, but also worrisome, because volunteer services may be less reliable, trained, equipped, and uniformly available.

In 2012, residents of the small town of O'Brien in Josephine County organized "Citizens Against Crime" (CAC), a voluntary group that organizes armed neighborhood patrols to supplement thinning local law enforcement in their rural county.[186] With flashing lights and a star-shaped logo on their vehicles, volunteers look something like regular police, and they work in routine patrols to prevent crimes, respond to emergency calls, and provide evidence and information to the sheriff's department.[187] Voluntary law enforcement efforts like CAC have been on the rise in rural Oregon to make up for lost sheriff's department hours and staff.[188] Even investigative work is getting some voluntary assistance: Josephine County residents set up a Facebook page called "To Catch a Thief" that attempts a "virtual neighborhood watch"[189] that helps solicit tips and evidence related to local crimes.[190] These efforts have counterparts across the country's post-industrial cities and counties. In Detroit and other Rustbelt cities, groups of residents have taken on a range of duties including neighborhood watch, graffiti cleanup, the demolition of vacant homes, lot clearing and reuse, and public park maintenance.[191]

186. Feine & Manning, *supra* note 72.

187. *Id.*

188. Liam Moriarty, *Citizen Volunteers Arm Themselves Against Crime in Rural Oregon*, NPR.ORG (Apr. 23, 2014), http://www.npr.org/2014/04/23/303404121/citizen-volunteers-arm-themselves-against-crime-in-rural-oregon (describing the North County Valley Community Watch Responder Team).

189. Feine & Manning, *supra* note 72.

190. *Id.*

191. *See, e.g.*, Keith Matheny, *Detroit activist takes illegal dumping fight to the streets, Internet*, DETROIT FREE PRESS, Apr. 22, 2014, http://www.freep.com/article/20140422/NEWS01/304220025 (describing a voluntary effort to combat illegal dumping); *Detroiters Texting Toward A Safer Neighborhood*, CBS DETROIT, Aug. 18, 2011, http://detroit.cbslocal.com/2011/08/18/detroiters-texting-toward-a-safer-neighborhood/ (describing a crime reporting and evidence gathering system set up by a volunteer); Motor City Blight Busters, *2014 Projects*, http://www.mcbbdetroit.com/projects/ (a non-profit group that performs demolitions and building revitalization in a Detroit neighborhood); *Detroit Mower Gang is Back in Action, Kicking Grass One Park at a Time*, CBS DETROIT (Apr. 11, 2014), http://detroit.cbsloc

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

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

Supplemental private services have their virtues, but they bring worrisome risks as well. Voluntary law enforcement has limited to no training, controls, or accountability, and it risks life, limb, and liability for volunteers as well as others. Josephine County Sheriff Gil Gilbertson described his mixed feelings about the rise of

al.com/2014/04/11/detroit-mower-gang-is-back-in-action-kicking-grass-one-park-at-a-time/ (describing a creative, upbeat voluntary group that cuts grass, restores equipment, and maintains local parks through events like "Motown Mowdown" and lawnmower polo games).

192. *See* Stephen Davies, *The Private Provision of Police during the Eighteenth and Nineteenth Centuries*, *in* THE VOLUNTARY CITY: CHOICE, COMMUNITY, AND CIVIL SOCIETY 151, 174 (David T. Beito et al. eds., 2002) (drawing together historical work by a range of scholars).

193. *Id.*

194. *Id.* at 168.

195. *Id.*

volutnary policing in his community:

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

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

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

Actions and advocacy moving to supplement, if not supplant, the local public police should renew our interest in the roots of modern American policing and the experiences that brought it about; that is, both good and bad experiences—neither romanticized nor

196. Feine & Manning, *supra* note 72.

197. *Id.* (interviewing CAC founder Sam Nichols, who said "[w]e don't want something to happen that happened to Florida, the case where Zimmerman shot the boy.").

198. Moriarty, *supra* note 188 (describing a community member who told the Josephine County Sheriff: "'We're not going to hire any more of you guys, we're not going to pay for you because we can do this ourselves.'").

199. David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1210 (1999) (quoting MICHAEL STEPHEN HINDUS, PRISON AND PLANTATION: CRIME, JUSTICE, AND AUTHORITY IN MASSACHUSETTS AND SOUTH CAROLINA, 1767–1878, at 41 (1980)).

200. Davies, *supra* note 192, at 170. For a broader discussion of the costs and benefits of private policing, as well as its history, see Sklansky, *supra* note 199; LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY (1993); ERIC H. MONKKONEN, AMERICA BECOMES URBAN: THE DEVELOPMENT OF U.S. CITIES AND TOWNS 1780–1980 (1988); ERIC H. MONKKONEN, POLICE IN URBAN AMERICA 1860–1920 (1981); David Alan Sklansky, *Private Police and Democracy*, 43 AM. CRIM. L. REV. 89 (2006).

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

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

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

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

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

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

204. *Id.* at 1211.

205. *Id.* at 1201, 1211.

206. *Id.* at 1188.

notion that "the very point of government is to monopolize the coercive use of force, in order to ensure public peace, personal security, and the use and enjoyment of property."[207] When local fiscal crisis sees the public apparatus of law enforcement wither, it forces us to look back on these time-honored ideas and reconsider: How much public policing do we need? If some cities and regions are going to live without it, what systems belong in its place?

E. Rural localism and its discontents

Localism in finance (i.e. pay-for-what-you get financing for services) depresses the quality of public services in areas with concentrated poverty. Many such areas are rural, making the thinning public sector a rural problem as well as an urban one. Redistribution remedies will thus sometimes shift public revenues from urban jurisdictions to rural ones.

Scholars and policymakers focus on the consequences of local fiscal autonomy and independence (as well as pay-for-what-you get financing for public services in general) for older, high poverty urban areas such as declining central cities. The fiscal crisis in rural Oregon is a chance to observe and reflect on the downsides of such policies in the distinct setting of rural areas with high poverty rates. The politics of this setting are reversed from the more visible urban paradigm (i.e., "blue" poverty and "red" affluence in the familiar urban story, versus "red" poverty and "blue" affluence in the rural Oregon case). Concentrated poverty is very much a rural problem: Rural residents are more likely than urban dwellers to live in counties with a poverty rate of at least 20%, i.e., in counties with high levels of local poverty.[208]

Several extremely valuable pieces of scholarship have described the perils of localism for rural areas before,[209] but in general, the public and academic conversations about local government have understudied rural economic decline and its significance for debates about local autonomy and the redistribution of centralized tax

207. *Id.*

208. *See* Janet L. Wallace & Lisa R. Pruitt, *Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights*, 77 MO. L. REV. 95, 117 (2012) (citing Daniel T. Lichter & Kenneth M. Johnson, *The Changing Spatial Concentration of America's Rural Poor Population*, 72 RURAL SOC. 331, 338 (2007)).

209. *See, e.g.*, Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1 (2010); *see also* Katherine Porter, *Going Broke The Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969 (2005).

revenue. As Lisa Pruitt has demonstrated, extreme variation among counties' ability to generate local revenues affects not only the quality of basic services (like law enforcement) and of discretionary services (like libraries and social services), but also the quality of mandatory services provided by counties (such as indigent defense).[210] When all of these services are put in conflict with one another for limited funds, the services valued by the largest array of residents will prevail to the fullest extent permissible under state law. In some cases, a services' popularity corresponds to the public need for it, but that will not always be the case. Mental health and substance abuse services, for instance, may not be as valuable to a majority of residents as law enforcement, but using police and jails as a substitute for those more diverse services may as expensive in the long term as it is inhumane.

A political landscape that favors local fiscal autonomy as well as service privatization leads to weaker service quality in rural areas, as well as in inner-city urban areas. As compared with suburban areas, these two settings have fewer alternative market suppliers. Empirical research demonstrates that the costs of providing services on a per capita basis are highest in dense urban areas and rural ones, even though rural municipalities provide fewer services.[211] In urban areas, higher costs result from "the need for more sophisticated and nuanced service systems to account for the congestion and heterogeneity of urban populations."[212] In rural areas, higher costs result from spatial inefficiencies—the higher unit costs of serving a diffuse population.[213] These higher costs mean that both kinds of jurisdictions find it difficult to compete with suburban jurisdictions when it comes to the quality of services and the rate of taxation—inner city urban areas and rural ones are both in the weakest position to enjoy a competitive market among private service providers, to

210. *See* Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52, ARIZ. L. REV. 219, 222. (2010); *see also* Lisa R. Pruitt, *The Forgotten Fifth: Rural Youth and Substance Abuse*, 20 STAN. L. & POL'Y REV. 359 (2009) (describing the consequences of spatial inequality among counties for the quality of social services and healthcare available to troubled youth); Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J.L. GENDER & SOC'Y 347 (2008) (investigating rural-urban spatial inequality in the context of domestic violence, including its effects on law enforcement responses and the availability of services for domestic violence victims); Wallace & Pruitt, *supra* note 208 (arguing that poor rural parents lack ready access to state support programs for families).

211. *See* Warner, *supra* note 147, at 137.

212. *Id.* at 139.

213. Warner & Hefetz, *supra* note 148, at 703, 705.

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

> Poor rural and urban areas appear to be caught in a vicious cycle of lower tax capacity, lower public investment and lower economic development. By contrast, richer suburban areas are caught in a virtuous cycle of higher tax capacity, higher public investment and higher economic development.[216]

Where local areas are not willing or able to produce more tax revenue, the only mechanism of increased funding for local services is redistribution from larger jurisdictions of taxpayers. Do these larger catchments of voters have interests—whether ethical or economic—in the existence of a public safety net in the timber counties? Michael Jordan, director of the Department of Administrative Services, posed the question this way: "'[H]ow much does every citizen in Oregon have a stake in at least a base level of service delivery across the state?'"[217] Even though there is an "'equity argument that most of the income tax revenue comes from the Portland metro area,'" he explained, education dollars have been distributed formulaically across the state.[218] At least in the case of education, the state defined educational equality based on outputs rather than inputs—the spending on each child, not the tax effort of each adult. In an era of shrinking public revenues, we need to begin looking at other services the same way.

IV. CONCLUSION

Cave Junction, a small, scenic town in Josephine County, has been struggling with an increase in serious crimes, including three violent deaths in late 2013, the arson of the town's post office, and

214. *See* Warner, *supra* note 147, at 137.
215. *Id.* at 137–38.
216. *Id.* at 138.
217. Zheng, *supra* note 111.
218. *Id.*

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

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

When states pursue the "greater good" of the state's economy or majoritarian voter preferences at the expense of local economies, households, and governments, we should soften the blow of the consequences that flow to individuals and local governments. Suburbanization and urban flight, for instance, have winners (those who want more space, new homes, and less class diversity) and losers (those unable to afford suburban prices, and thus are left behind in areas of increasingly concentrated poverty). Globalization of trade may benefit consumers even as it hurts American workers, just as

219. Kavanaugh, *supra* note 72.
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *Id.*
225. *Id.*

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