

December 2020

How Tax Competition May be Exacerbating Inequalities Among Washington Counties

Fabio Ambrosio

Follow this and additional works at: <https://ir.stthomas.edu/ustjlpp>



Part of the [Criminal Law Commons](#), [Law and Economics Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), [Other Law Commons](#), [Social Welfare Law Commons](#), [Taxation-State and Local Commons](#), and the [Tax Law Commons](#)

Recommended Citation

Fabio Ambrosio, *How Tax Competition May be Exacerbating Inequalities Among Washington Counties*, 14 U. ST. THOMAS J.L. & PUB. POL'Y 223 (2020).

Available at: <https://ir.stthomas.edu/ustjlpp/vol14/iss1/9>

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Journal of Law and Public Policy. For more information, please contact the Editor-in-Chief at jlpp@stthomas.edu.

HOW TAX COMPETITION MAY BE EXACERBATING INEQUALITIES AMONG WASHINGTON COUNTIES

FABIO AMBROSIO¹

Tax and criminological research often converge on mutual socioeconomic observations, such as the demographic makeup of a given jurisdiction, its income distribution, educational attainment, rate of unemployment, or levels of poverty. This heightened attention to social predictors of revenue and crime is a recent development that started with the urbanization trend of the last one hundred years. In fact, social interdependence and awareness has become drastically more prominent this past century with the exponential growth of urbanization. While only 40% of the American population lived in urban areas at the turn of the 19th century, that percentage nearly doubled to 79% by the turn of the 20th century and is predicted to grow to almost 90% by 2050.²

The urbanization trend has increased the density of social networks, including the intertwining of behavioral and policy phenomena that before the 19th century were thought to be independent of each other. For example, early criminological research viewed crime as the expression of something wrong with the individual committing the crime, such as sub-standard intelligence, psychic forces, biological imperfections, or “criminal bumps”

¹ Fabio Ambrosio, J.D., LL.M., M.B.A., C.P.A./P.F.S./A.B.V., C.F.P., E.A., C.V.A., M.A.F.F., C.F.E., C.G.M.A, is an Assistant Professor of Accounting at Central Washington University. Besides being an attorney and CPA, he is also a trained mediator and a recipient of a Fulbright grant in taxation. Fabio is a recurring visiting professor at Swiss and Chinese universities and serves as adjunct disciplinary counsel for the Washington State Bar Association. He is the author of the book *Principles of Taxation in the United States: Theory, Policy, and Practice*, and has published articles in the Journal of Tax Practice and Procedure, The Tax Development Journal, The CPA Journal, The Journal of Financial Planning, and The Value Examiner. Prior to joining academia, Fabio was an Appeals Officer in the estate and gift tax program at the Internal Revenue Service.

² Hannah Ritchie & Max Roser, *Urbanization*, OUR WORLD IN DATA, (Sept. 2018), <https://ourworldindata.org/urbanization#citation>.

on the head.³ Only in more recent times the research focus has shifted to society as the possible explanation for criminal behavior.

Crime is but one of the phenomena that was previously thought to depend solely on the individual and was recently rediscovered as fitting in a greater social science. Urbanization has also changed the way researchers study law, economics, epidemiology, ecology, anthropology, and many other disciplines embedded in the relationship between people and their ecosystem. For example, the urbanization phenomenon has deeply impacted the United States geopolitically and fiscally. From a tax perspective, the jurisdictional overlap and tangency of the American federal system, coupled with the urbanization trend, has created unique layers of vertical and horizontal tax competition.⁴ There is horizontal tax competition where two jurisdictions vertically equivalent, such as two counties, compete for the same revenue. There is vertical tax competition where two jurisdictions not vertically equivalent, such as the state and a county within the state, compete for the apportionment of tax revenue.⁵

Competition can be viewed as the intersect between tax and criminological research. Whether the context is tax or crime, competition refers to the same concept: the unequitable partition of a finite amount of resources. In both bodies of literature, this unequitable distribution, often associated with an obsessive culture of success and pursuit of the American dream, leads to the disorganization of social structure, the disruption of family values, and the stratification of social classes based on wealth. Criminological literature has repeatedly explained crime through measures

³ AUGUST AICHHORN, *Verwahrloster Jugend Wien: Internationaler Psychoanalytischer Verlag* [WAYWARD YOUTH OF VIENNA] (1925); ROBERT L. DUGDALE, *THE JUKES: A STUDY IN CRIME, PAUPERISM, AND HEREDITY*, (G.P. Putnam's Sons, 1877); HENRY H. GODDARD, *FEEBLE-MINDEDNESS: ITS CAUSES AND CONSEQUENCES* (MacMillan Co., 1914); GINA LOMBROSO, *CRIMINAL MAN, ACCORDING TO THE CLASSIFICATION OF CESARE LOMBROSO*, (G.P. Putnam's Sons, 1911).

⁴ Michael Devereux et al., *Horizontal and Vertical Indirect Tax Competition: Theory and Some Evidence From the USA*, 91 J. OF PUB. ECON. 451 (2007).

⁵ Cynthia L. Rogers, *Local Option Sales Tax (LOST) Policy on the Urban Fringe*, 34 J. REG'L ANALYSIS & POL'Y 27 (2004); John D. Wong, *The Impact of Local Option Sales Taxes on Retail Sales, Employment, Payrolls, and Establishments: The Case for Kansas*, 26 REV. REG'L STUD. 165 (1996); Zhirong Zhao, *Motivations, Obstacles, and Resources: The Adoption of the General-Purpose Local Option Sales Tax in Georgia Counties*, 33 PUB. FIN. REV. 721 (2005).

of inequality in income, wealth distribution, educational attainment, unemployment, and opportunities. By exacerbating inequalities across jurisdictions, tax competition may be laying the foundations for more crime.

I. CRIMINOLOGICAL LITERATURE

There is an ample body of empirical criminological research from the last century that has looked at the statistical relationship between crime and variables predicting crime. The early trend at the turn of the 19th century was to explain crime through factors wholly within the individual.⁶ The urbanization trend at the turn of the century caused a major change in criminological research, shifting the focus of crime predictors toward social indicators of crime outside the control of the individual. Unlike the early research, modern studies formulate numerous theories of crime predictions, which, albeit different, are all embedded in the greater social context.

One of the first researchers to formulate a socially induced crime theory was Robert Merton, often seen as the father of social anomie theory.⁷ In general terms, the theory of social anomie suggests that an excessively competitive society may lead to the disintegration of ethical behavior due to the struggle for survival of the fittest. Merton argued that the rigid conformity with traditional American values of economic success created a fictitious picture where everyone, through hard work, could achieve the American dream.⁸ This cultural indoctrination of obsessive economic success inevitably emarginated those not able to achieve the American dream through legitimate means. Therefore, Merton argued, it was the exaltation of “success-seeking” that explained crime.⁹ In the theory of social anomie, “anomie” is the result of the weakening of ethical behavior as society places the largest emphasis on whether success is achieved, more so than how. Social anomie theory rests on the premise that something is fundamentally broken in the social structure, or its priorities, which fosters deviant behavior.¹⁰ In this respect, social anomie theory also implies that economic

⁶ AICHHORN, *supra* note 3; DUGDALE, *supra* note 3; GODDARD, *supra* note 3; LOMBROSO, *supra* note 3.

⁷ Robert Merton, *Social Structure and Anomie*, 3 AM. SOCIO. REV. 672 (1938).

⁸ Merton, *supra* note 7.

⁹ *Id.*

¹⁰ Mitchell B. Chamlin & John K. Cochran, *Assessing Messner and Rosenfeld's Institutional Anomie Theory: A Partial Test*, 33 CRIMINOLOGY 411 (1995); Merton, *supra* note 7; Jukka Savolainen, *Inequality, Welfare State, and*

safety nets may mitigate the incidence of some types of crime, as they reduce social stress.¹¹

Before moving on to other emerging criminological theories, the meta-analysis of one hundred years of criminological research offers valuable insights into how social trends shaped the research approach. The early individualistic studies of Dugdale, Goddard, and others were followed by a more complex and urbanized world, which increased awareness of intricate social dynamics potentially leading to crime. The theory of social anomie picked up on these dynamics during five decades of immense social strain caused by two world wars and the Great Depression. These were major events that, at least with respect to criminological literature, promoted a more liberal and collective agenda.¹² Not surprisingly, social anomie theory came under attack in the 1970's, when the American dream and economic success were once again at the forefront of self-identification and anomie theory was viewed as promoting a social agenda.¹³ In the last 50 years, two new theories have emerged—social disorganization theory and deprivation theory—that continue to find crime predictors in the greater social context but do not call into question the very essence of American culture: economic success and the American dream.

The theory of social disorganization rests on the statistical relationship between crime and social disorder indicators, such as increased urbanization, longer commute time, higher population density, and sparse friendship networks.¹⁴ Shaw and McKay first formulated the theory when

Homicide: Further Support for the Institutional Anomie Theory, 38 CRIMINOLOGY 1021 (2000).

¹¹ James DeFronzo, *Economic Assistance to Impoverished Americans: Relationship to Incidence of Crime*, 21 CRIMINOLOGY 119 (1983).

¹² Travis C. Pratt, *Assessing the Relative Effects of Macro-level Predictors of Crime: A Meta-Analysis*, (Jan. 19, 2001) (Ph.D. dissertation, University of Cincinnati) (ProQuest Dissertations Publishing).

¹³ STEVEN F. MESSNER & RICHARD ROSENFELD, *CRIME AND THE AMERICAN DREAM* (Wadsworth Publishing Company, 1997).

¹⁴ Paul E. Bellair, *Social Interaction and Community Crime: Examining the Importance of Neighbor Networks*, 35 CRIMINOLOGY 677 (1977); Robert J. Bursik Jr., *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, 26 CRIMINOLOGY 519 (1988); Robert Sampson & Byron W. Groves, *Community Structure and Crime: Testing Social Disorganization Theory*, 94 AM. J. SOCIO. 774 (1989); CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (University of Chicago Press 1972); Ralph B. Taylor, *Social Order and Disorder of Street Blocks and Neighborhoods: Ecology, Microecology, and the Systemic model of Social Disorganization*, 35 J. RSCH. IN CRIME & DELINQ 113 (1997).

they studied juvenile crime across Chicago neighborhoods and found that crime was more prevalent in certain neighborhoods.¹⁵ They found that these neighborhoods were “socially disorganized” in the sense that they had weak social institutions—churches, schools, and adolescence organizations—unable to adequately supervise the youth.¹⁶ Research in traditional social disorganization theory looks at residential mobility, racial heterogeneity, strengths of social associations and networks, and socioeconomic status: all indicators at the neighborhood level. A more focused and recent approach to the theory of social disorganization has noted that traditional social disorganization theory has failed to consider the structure of the family as predictive of that of the neighborhood.¹⁷ In this respect, measures of family disruption such as divorce, single parenthood, the strength of the family network, and time invested in raising children offer additional indicators of social disruption at the micro family level.¹⁸

Deprivation theory suggests that crime is linked to indicators of economic deprivation, where the general lack of means leads to higher crime.¹⁹ For example, multiple studies have found a significant positive relationship between unemployment rates and property crime, or poverty and crime at large.²⁰ Under the theory of deprivation, the business and economic cycles are useful predictors of crime.²¹ The theory of deprivation, however, does not only take an absolute form—whether poverty or unemployment is present—but also a relative form. In its relative form, deprivation theory

¹⁵ SHAW & MCKAY, *supra* note 14.

¹⁶ *Id.*

¹⁷ ROBERT J. SAMPSON, *Neighborhood Family Structure and the Risk of Personal Victimization*, in *THE SOCIAL ECOLOGY OF CRIME* 25 (Springer, 1986).

¹⁸ SAMPSON, *supra* note 17; Lawrence E. Cohen & Marcus Felson, *Social Change and Crime Rate Trends: A Routine Activity Approach*, 44 *AM. SOCIO. REV.* 588 (1979); Nigel Barber, *Single Parenthood as a Predictor of Cross-National Variation in Violent Crime*, 38 *CROSS-CULTURAL RESEARCH* 343 (2004).

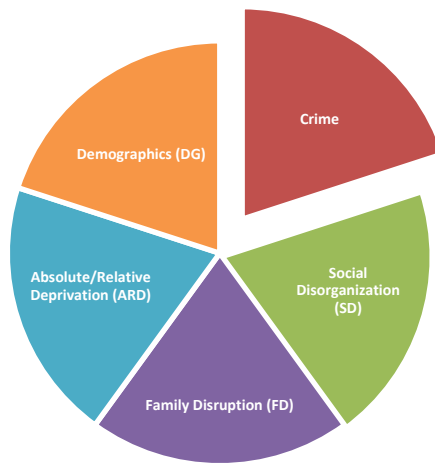
¹⁹ J. ROBERT LILLY et al., *CRIMINOLOGICAL THEORY: CONTEXT AND CONSEQUENCES* (Sage Publications, Inc. 2d ed., 1995); AUSTIN T. TURK, *CRIMINALITY AND THE LEGAL ORDER* (Rand McNally, 1969).

²⁰ Marvin D. Krohn, *Inequality, Unemployment and Crime: A Cross-National Analysis*, 17 *SOCIO. Q.* 303 (1976); E. Britt Patterson, *Poverty, Income Inequality, and Community Crime Rates*, 29 *CRIMINOLOGY*, 755 (1991); Ruth D. Peterson & William C. Bailey, *Forcible Rape, Poverty, and Economic Inequality in U.S. Metropolitan Communities*, 4 *J. QUANTITATIVE CRIMINOLOGY* 99 (1988); Steven Raphael & Rudolf Winter-Ebmer, *Identifying the Effect of Unemployment on Crime*, 44 *J. L. & ECON.* 259 (2001).

²¹ Albert C. Wagner, *Crime and Economic Change in Philadelphia*, 27 *J. CRIMINAL L. & CRIMINOLOGY* 83 (1936).

looks at inequality and wealth distribution rather than poverty or unemployment.²² Relative deprivation research has found that economic inequality is positively associated with crime, thus suggesting that income redistribution may be a more effective measure of crime intervention than punishment.²³ Deprivation theory can be viewed as a growth form of social anomie theory in that both study the social stress between those who have and those who do not as predictors of crime. Unlike social anomie theory, deprivation theory does not blame a broken success-hungry society, but merely suggests that the satisfaction of basic needs and avoidance of excessive social stratification of classes may be sufficient to curb criminal behavior without redesigning the very essence of the American culture driven by seeking economic success.

Theories of crime prediction are naturally interwoven. For example, an increased divorce rate, coupled with both parents being fully employed,



would suggest lower property crime rates as deprivation decreases, but higher non-property crime rates because of family disruption and social disorganization.²⁴ None of the theories claim to offer infallible forecasts but a meta-analysis of all criminological research shapes four key paradigms of the strongest and most stable predictors of crime:

²² Judith R. Blau & Peter M. Blau, *The Cost of Inequality: Metropolitan Structure and Violent Crime*. 47 AM. SOCIO. REV. 114 (1982).

²³ Leo Carroll & Pamela I. Jackson, *Inequality, Opportunity, and Crime Rates in Central Cities*. 21 CRIMINOLOGY 178 (1983); Sheldon Danziger & David Wheeler, *The Economics of Crime: Punishment or Income Redistribution*, 33 REV. SOC. ECON. 113, (1975); Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. POL. ECON. 521 (1973); Lynne M. Vieraitis, *Inequality and Urban Crime: Labor Stratification, Income Inequality, Poverty, and Violent Crime in Large United States Cities, 1990*. (Oct. 4, 1999) (Ph.D. dissertation, Florida State University) (ProQuest Dissertations Publishing).

²⁴ Robert J. Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 AM. J. SOCIO. 348 (1987).

1. Indicators of social disorganization (SD);
2. Indicators of family disruption (FD);
3. Indicators of absolute or relative deprivation (ARD);
4. Demographics (DG).²⁵

Criminological literature offers three further lessons that are important. First, policing and arrest measures are among the weakest indicators of crime as they predict the use of public resources in fighting crime but not the crime itself.²⁶ Therefore, data pertaining to the size of the police force per capita or the number of arrests is not useful to a study that aims to gauge future crime trends.

Second, the value of the indicators of crime is in its degree of change over time. For example, a 1993 study looked at whether an abrupt change in a crime indicator is itself a crime predictor.²⁷ The study looked at 500 delinquents and 500 control subjects matched by age, IQ, and neighborhood.²⁸ The study then gathered exhaustive records on the subjects' life course and identified several life-turning points on a common scale.²⁹ The study found that adult crime is clearly connected to childhood behavior, but perhaps more so because it could lead to weaker adult social bonds (e.g., labor force attachment and marital cohesion), which are mitigative of crime.³⁰ Thus, the benefits of a longitudinal study are evident in its ability to, among other things, capture the predictive value of change.

Third, crime is often spatially autocorrelated and this autocorrelation principle, coupled with longitudinal data and spatial association, dramatically improves the predictable power of a statistical model.³¹ This is, in fact, the

²⁵ Amy E. Nivette, *Cross-National Predictors of Crime: A Meta-Analysis*, 15 HOMICIDE STUD. 103 (2011); Travis C. Pratt & Francis T. Cullen, *Assessing Macro-Level Predictors and Theories of Crime: A Meta-Analysis*, 32 CRIME & JUST. 373 (2005).

²⁶ Pratt & Cullen, *supra* note 25.

²⁷ John H. Laub & Robert J. Sampson, *Turning Points in the Life Course: Why Change Matters to the Study of Crime*, 31 CRIMINOLOGY 301 (1993).

²⁸ *Id.*

²⁹ *Id.* at 305.

³⁰ *Id.* at 306.

³¹ THE HANDBOOK OF MEASUREMENT ISSUES IN CRIMINOLOGY AND CRIMINAL JUSTICE (Beth M. Huebner ed. & Timothy S. Bynum ed., Wiley) (2016); NED LEVINE, *Spatial Autocorrelation Statistics*, in CRIMESTAT IV: A SPATIAL STATISTICS PROGRAM FOR THE ANALYSIS OF CRIME INCIDENT LOCATIONS, VERSION 4.0, NAT. INST. JUST. (2013).

very principle behind the crime prediction *CrimeStat* software, developed under the direction of the United States Department of Justice.³²

II. TAX LITERATURE

A 1989 study found that the package of public services provided by local governments is relatively standardized across localities; however, the way local governments finance those public services is quite diverse.³³ After all, most cities must offer the same set of housekeeping functions: what will vary is the quality of the services and thus the tax price. When it comes to financing local public services, many studies have examined the optimal revenue portfolio composition for local governments.³⁴

Historically, the property tax has been the most important source of local government revenue in the United States. Since the Reagan administration, public support for the property tax has dramatically decreased. While in 1970 property taxes contributed 84% of all local government tax collections, the property tax share fell to 32% by 1994 and down to 26.6% by 2015.³⁵ This phenomenon is sometimes referred to as the “property tax revolt.” The property tax revolt forced local governments to provide social services without relying too heavily on property taxes, as they once did. In the last five decades, local governments have struggled to make up for the lost property tax revenue through other revenue sources, such as fines, licensing fees, utility taxes, documentary fees, bonds, and sales taxes.³⁶

³² *CrimeStat: Spatial Statistics Program for the Analysis of Crime Incident Locations*. U.S. DEP'T JUSTICE, NAT'L INST. JUSTICE (2011), <https://nij.ojp.gov/topics/articles/crimestat-spatial-statistics-program-analysis-crime-incident-locations>.

³³ Mark Schneider, *Fragmentation and the Growth of Local Government*, 48 PUB. CHOICE. 255, 264 (1989).

³⁴ David S. Jones & Maureen M. McIntosh, *Revenue Options for Georgia Localities*, 6 GA. GOV'T REV. 6, (1974); Ben Lockwood, *Commodity Tax Competition and Tax Coordination under Destination and Origin Principles* (Ctr. for Econ. Policy Research, Paper No. 2256, 2000); Zhirong Jerry Zhao & Changhoon Jung, *Does Earmarked Revenue Provide Property Tax Relief? Long-Term Budgetary Effects of Georgia's Local Option Sales Tax*, 28 PUB. BUDGETING & FIN. 52 (2008).

³⁵ NAT'L CONFERENCE OF STATE LEGISLATURES, *CRITICAL ISSUES IN STATE-LOCAL FISCAL POLICY: A GUIDE TO LOCAL OPTION TAXES* (Scott R. MacKey ed., 1997); U.S. DEP'T COM., U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/> (2015).

³⁶ INST. FOR LOCAL GOV'T, *UNDERSTANDING THE BASICS OF COUNTY AND CITY REVENUES* (2013).

The sales tax has become increasingly popular after the property tax revolt for two main reasons. First, the sales tax has a low degree of salience,³⁷ which makes it politically more acceptable than the property or income tax.³⁸ Under the theory of tax salience, “salience” represents the degree of consumer response to a tax change for reasons other than the net tax liability, such as the way that taxes are displayed and the tax payment mechanism. Therefore, an invisible tax, such as a sales tax added at the register, has low salience and may not impact consumer behavior as much as expected based on the sales tax rate.³⁹ Southern states, such as Tennessee, North Carolina, and Georgia, have spearheaded the effort to restructure local public financing relying less on property tax revenue and more on sales tax revenue. Nearly all the research concerning local sales tax policy to date, in fact, has been geographically specific to these states.⁴⁰

Second, the sales tax allows a jurisdiction to shift the cost incidence of critical social services to residents of neighboring jurisdictions and research has shown that taxpayers favor proposals that shift the tax incidence to someone else.⁴¹ This trend promotes horizontal tax competition.⁴² Horizontal tax competition can be one of necessity, where residents of neighboring jurisdictions are forced to commute to shop or find work in another jurisdiction. It could also be a perfect competition where a jurisdiction allures business and shopping through lower sales tax rates. In both cases, the result is a tax spillover, a phenomenon where a jurisdiction

³⁷ Raj Chetty et. al., *Salience and Taxation: Theory and Evidence*, 99 AM. ECON. REV. 1145 (2009); Darien Shanske & David Gamage, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19 (2011).

³⁸ J. Biegelson & David Sjoquist, *Rational Voting Applies to Choice of Taxes*, 57 PUB. CHOICE 39 (1988); Andrew D. Green, *Life in the Fast Lane: Transportation Finance and the Local Option Sales Tax*, 38 ST. LOC. GOV'T. REV. 92 (2006).

³⁹ Chetty et al., *supra* note 37; Gamage, *supra* note 37.

⁴⁰ Anicca C. Jansen, *Can Sales Tax Revenue Equitable Finance Education?*, 16 J. EDUC. FIN. 478 (1991); Jones, *supra* note 34; Ross Rubenstein & Catherine Freeman, *Do Local Sales Taxes for Education Increase Inequities? The Case of Georgia's ESPLOST*, 28 J. EDUC. FIN. 425 (2003); Wen Wang & Zhirong Jerry Zhao, *Fiscal Effects of Local Option Sales Tax on School Facilities Funding: Evidence from North Carolina*, 23 J. PUB. BUDGETING, ACCT., FIN., MGMT. 507 (2011); Zhao & Jung, *supra* note 34; Zhirong Jerry Zhao, *Motivations, Obstacles, and Resources: The Adoption Of the General-Purpose Local Option Sales Tax in Georgia Counties*, 33 PUB. FIN. REV. 721 (2005).

⁴¹ Biegeleisen & Sjoquist., *supra* note 38.

⁴² Gregory Burge & Brian Piper, *Strategic Fiscal Interdependence: County and Municipal Adoptions of Local Option Sales Tax*, 65 NAT'L TAX J. 387 (2012).

collects an amount of sales tax different from the product of the sales tax rate and the income spent by its residents.⁴³ The overall result is an uneven flow of tax revenue due to the spatial mobility of the revenue base. Tax spillovers preclude an equity condition known as “fiscal equivalence.”⁴⁴ Fiscal equivalence would be present if a body of taxpayers paying for a public service is 100% congruent with the body of taxpayers benefitting from that public service. Fiscal equivalence, tax spillovers, and mitigation mechanisms are key elements to the theory of tax competition.

At the local government level, sales taxes often take the form of Local Option Sales Taxes (LOST).⁴⁵ LOST consist of optional local increases to the statewide sales tax rate. The increase is optional because localities can choose whether to impose it and at what rate (within the rate limits authorized by a state). LOST are generally levied towards a local general fund, but can be levied to finance specific purposes, such as education or transportation, in which case they are commonly referred to as “Special Purpose” Local Option Sales Taxes (SPLOST). For example, Tennessee,⁴⁶ North Carolina,⁴⁷ and Georgia⁴⁸ have tried to finance public schools through a special local sales tax surcharge imposed by the counties. Similarly, California tried to finance public roads.⁴⁹ Generally, studies have found that SPLOST are a suboptimal method of financing critical government services because sales tax revenue flows unevenly: since the revenue base (economic spending) is mobile, sales tax revenue tends to flow where most shopping opportunities exist.⁵⁰ While the uneven flow could be mitigated through revenue-sharing at the state level, state tax laws rarely mandate revenue sharing of local sales tax revenue. Not surprisingly, research has shown that SPLOST tied to education and

⁴³ Gregory Burge & Cynthia Rogers, *Local option sales taxes and consumer spending patterns: Fiscal interdependence under multi-tiered local taxation*, 41 REGIONAL SCI. URB. ECON. 46 (2010).

⁴⁴ Jansen, *supra* note 40; Lockwood, *supra* note 34.

⁴⁵ Ronald J. Shadbegian, *The Effect of Tax and Expenditure Limitations on the Revenue Structure of Local Government, 1962-87*, 52 NAT'L TAX J. 221 (1999); Zhao, *supra* note 40.

⁴⁶ TENN. CODE ANN. §67-6-701 (2020).

⁴⁷ N.C. GEN. STAT. §105-463 (2020).

⁴⁸ GA. CODE ANN. §48-8-111 (2020).

⁴⁹ CAL. PUB. UTIL. CODE §132300 (2020).

⁵⁰ Burge & Rogers, *supra* note 43.

transportation exacerbate inequalities among counties to the detriment of rural communities.⁵¹

Local option sales tax literature has examined the interjurisdictional tax competition whereby an increase in sales tax rates in one local jurisdiction causes consumers to spend more in neighboring lower tax jurisdictions.⁵² The results were confirmed by a 2010 study which found that LOST rates are inversely and significantly related to retail sales and that higher sales tax rates in rural communities accompany a disproportionately high erosion of retail sales.⁵³ From these studies we learn that market dominant, densely populated jurisdictions surrounded by rural jurisdictions are best suited to export the tax cost of their social services.

Most of the literature to date has focused on generic LOST policy without distinction as to what social services the imported LOST revenue is used to finance. In the context of SPLOST, the limited literature available has focused on the correlation between SPLOST and public education financing⁵⁴ or public transportation financing.⁵⁵ One of these studies examined the correlation between LOST rates and local public education financing in Tennessee.⁵⁶ The Tennessee study found that sales tax revenue and capacity was particularly low in rural counties, which were in turn unable to properly fund education.⁵⁷ Another SPLOST study specific to public education in North Carolina confirmed that the adoption of an education SPLOST was aggravating inequalities across public schools within the state, recommending that the central state government adopt a sales tax revenue

⁵¹ Green, *supra* note 38; Jansen *supra* note 40; Gary L. Peevely & John R. Ray, *Equity As Determined By Locally Funded Teaching Positions in Tennessee Schools*, 15 J. EDUC. FIN. 289 (1989); Rubenstein & Freeman, *supra* note 40; Catherine Sielke, *Rural Factors in State Funding Systems*, 29 J. EDUC. FIN. 223 (2004).

⁵² Cynthia L. Rogers, *Local Option Sales Tax (LOST) Policy on the Urban Fringe*, 34 J. REG'L ANALYSIS POL'Y. 27 (2004); John D. Wong, *The Impact of Local Option Sales Taxes on Retail Sales, Employment, Payrolls, and Establishments: The Case for Kansas*, 26 REV. REG'L STUD. 165 (1996); Zhao, *supra* note 40.

⁵³ Burge & Rogers, *supra* note 43.

⁵⁴ Peevely & Ray, *supra* note 51; Jansen, *supra* note 40; Rubenstein & Freeman, *supra* note 40; Sielke, *supra* note 51; Wen Wang & Zhirong Jerry Zhao, *Fiscal Effects of Local Option Sales Tax on School Facilities Funding: Evidence from North Carolina*, 23 J. PUB. BUDGETING, ACCT. & FIN. MGMT. 507 (2011).

⁵⁵ Green, *supra* note 38.

⁵⁶ Jansen, *supra* note 40.

⁵⁷ *Id.*

sharing scheme across the state in order to mitigate tax spillovers.⁵⁸ Every other study reached similar conclusions: funding local services through sales tax revenue exacerbates inequalities between urban communities with market dominance and rural communities without market dominance.⁵⁹

III. THE LOCAL OPTION SALES TAX LANDSCAPE IN WASHINGTON STATE

The State of Washington has never levied an income tax and has therefore historically always been funded through property and sales taxes, thus severely altering the state's portfolio flexibility. The tax system in the State of Washington is in fact the most regressive in the nation, as it relies most heavily on sales taxes.⁶⁰ The State of Washington is also the first and only jurisdiction in the United States that ties one or more SPLOST not to education or transportation, but to public safety.

Under RCW 82.14, the state offers counties and cities three optional sales tax surcharges earmarked for public safety.⁶¹ The first option permits any county to impose, without vote but subject to repeal by referendum, a 0.1% SPLOST earmarked to fund criminal justice, broadly defined as "activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocate...."⁶² Once collected, 10% of the tax remains in the county coffers and 90% is shared among the county and the cities within the county ratably based on population.

The second option is more complicated as it offers a "county option" and a "city option." The county option allows any county to impose, subject to a majority approval of county voters, up to a 0.3% SPLOST, one third of

⁵⁸ Wang & Zhao, *supra* note 54.

⁵⁹ Peevely & Ray, *supra* note 51; Rubenstein & Freeman, *supra* note 40; Sielke, *supra* note 51; Green, *supra* note 38.

⁶⁰ *Real Change: Study: Washington Bottoms Out on US Tax Assessment*, INST. ON TAX'N & ECON. POL'Y (Oct. 24, 2018), <https://itep.org/real-change-study-washington-bottoms-out-on-us-tax-assessment/>; William H. Gates, Sr., *Tax Alternatives for Washington State*, WASH. STATE DEP'T REV. (Nov. 2002), <https://dor.wa.gov/about/statistics-reports/tax-structure-final-report>.

⁶¹ WASH. REV. CODE § 82.14 (2020).

⁶² § 82.14.340.

which must be used to fund either criminal justice or fire protection.⁶³ Once collected, 40% of the tax remains in the county coffers and 60% is shared among the county and the cities within the county ratably based on population. The city option allows any city, independently of counties, to impose, subject to a majority approval of county voters, a 0.1% SPLOST, one third of which must be used to fund criminal justice programs.⁶⁴ Once collected, 85% of the tax remains in the city coffers and 15% is distributed to the county.

The third option permits counties with populations of less than one million to impose, subject to a majority approval of county voters, a 0.1% SPLOST earmarked to fund “costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails.”⁶⁵ Once collected, this tax remains entirely in the county coffers and is not shared with the cities within the county.

State-issued literature typically refers to the three above-mentioned SPLOSTs as criminal justice (first option), public safety (second option), and juvenile facilities (third option) SPLOST.

Option	1	2 (County Option)	2 (City Option)	3
Authority	RCW 82.14.340	RCW 82.14.450(1)	RCW 82.14.450(2)	RCW 82.14.350
Commonly Referred to as	Criminal Justice SPLOST	Public Safety SPLOST	Public Safety SPLOST	Juvenile Facilities SPLOST
Authorized Jurisdictions	All Counties, no vote, subject only to repeal by	All Counties, subject to majority vote	All Cities, subject to majority vote	Counties with populations of <1M, subject to majority
Rate of Tax	0.10%	0.30%	0.10%	0.10%
Portion Earmarked for Criminal Programs	100.00%	33.33%	33.33%	100.00%
Revenue sharing?	10% county; 90% county and cities based on population	60% county; 40% county and cities based on population	85% city; 15% county	No
Earmarked Funds may be used for	Activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocate	Criminal justice (same as RCW 82.14.340) and/or fire protection.	Criminal justice (same as RCW 82.14.340) and/or fire protection.	Costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails

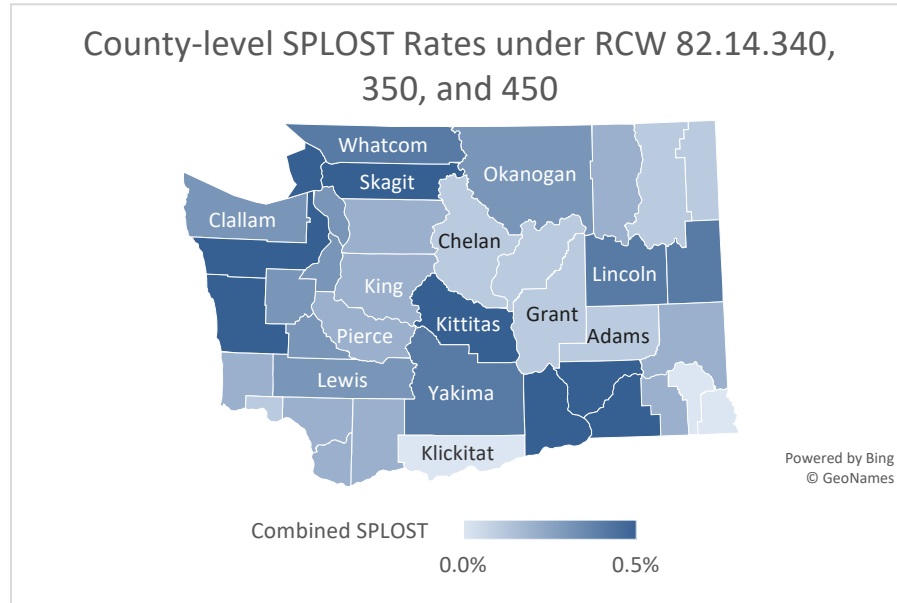
As of 2018, only Asotin, Garfield, Klickitat, and Wahkiakum counties have not adopted any of the three SPLOST options. Only Benton, Franklin, Kittitas, San Juan, Spokane, Walla Walla, and Whatcom counties

⁶³ § 82.14.450(1).

⁶⁴ § 82.14.450(2).

⁶⁵ § 82.14.350.

have adopted all three SPLOST options. All other counties have adopted one or two SPLOST options, but not all three.

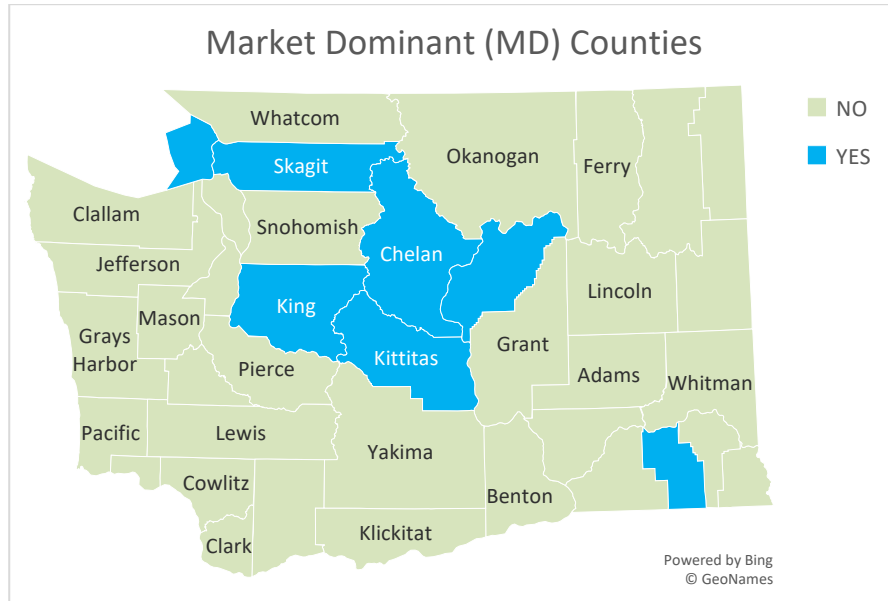


Source: Washington State Department of Revenue.⁶⁶

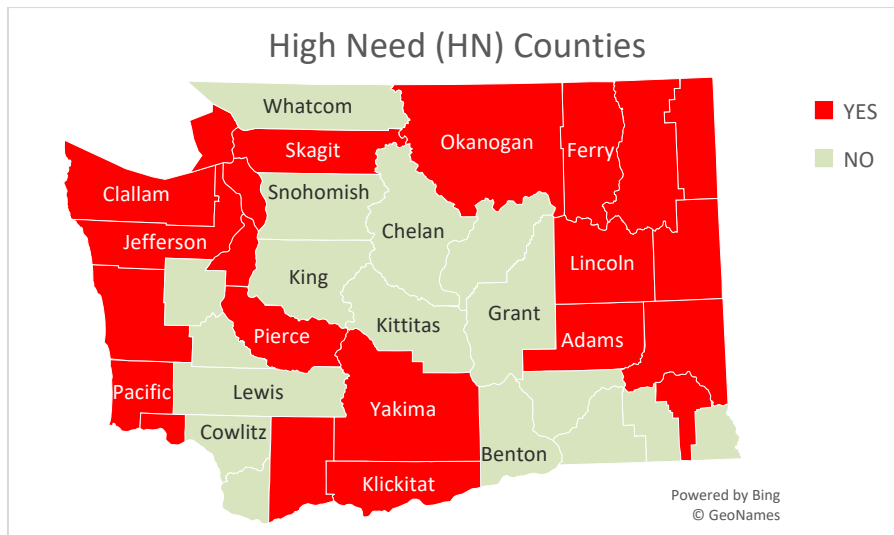
As informed by criminological and tax literature, the Washington SPLOST model is expected to exacerbate inequalities across Washington counties. If tax revenue is flowing unevenly across the State because of the urbanization trend and a portion of that tax revenue is earmarked for public safety, some counties are expected to be financially better able to guarantee public safety than others.

This study tabulated data pertaining to all 39 Washington counties based on their market dominance and crime levels. For purposes of this study, counties that collected more than 1.25 times the state-wide average of sales tax per capita from 2014 to 2017 are labeled Market Dominant (MD). Counties are labeled High Need (HN) if they meet at least one of the following two criteria based on 2016 crime statistics: (a) a total crime rate equal to, or higher than, 1.25 times the state-wide average; or (b) a violent crime rate equal to, or higher than, 1.25 times the state-wide average. Maps showing which Washington counties are considered MD and HN based on the above criteria are below.

⁶⁶ *Tax Rate Lookup*, WASHINGTON STATE DEPARTMENT OF REVENUE, <https://webgis.dor.wa.gov/taxratelookup/SalesTax.aspx> (last visited Sept. 8, 2020).



Source: Washington State Department of Revenue.⁶⁷

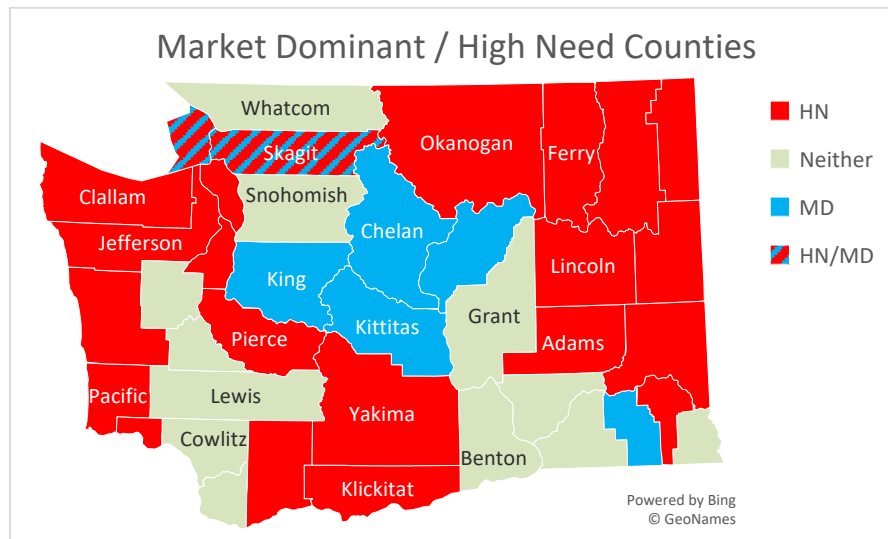


Source: Washington Criminal Justice Databook.⁶⁸

⁶⁷ *Id.*

⁶⁸ *Washington State Criminal Justice Data Book*, DATA.WA.GOV, <https://data.wa.gov/Public-Safety/Criminal-Justice-Data-Book/ixek-wnci/data> (last visited Sept. 8, 2020).

As the sales tax revenue base is mobile, blue market dominant counties may stand a better chance to collect more SPLOST tax revenue, whereas red HN counties may have the highest need for that SPLOST tax revenue. Overlaying the two maps, there is reason to suspect that local sales tax revenue earmarked towards public safety is not flowing where it's most needed, exacerbating inequalities between market dominant counties (King, Chelan, Douglas, Kittitas, and Columbia) and other counties. In fact, only two counties in the entire state (San Juan and Skagit) fit both HN and MD definitions.



Source: Washington State Department of Revenue; Washington Criminal Justice Databook.⁶⁹

⁶⁹ *Tax Rate Lookup*, *supra* note 66; Washington State, *supra* note 68.