Loyola of Los Angeles Law Review

Volume 56 | Number 4 Article 5

Winter 12-21-2023

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THE UNKNOWN CONSEQUENCES OF PLACE-BASED TAX INCENTIVES

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Nearly thirty years have passed since Prof. Ellen Aprill warned policymakers not to rely on tax incentives to fight urban poverty. At the time, federal and state governments were just beginning to embrace so called place-based tax incentives, which are used to promote investment in low-income areas. Aprill was skeptical and expressed doubts about their capacity to change business behavior or to benefit low-income residents. Nevertheless, federal and state lawmakers charged forward, introducing new place-based tax incentive programs in the decades that followed. Today, tax incentives are a central part of most place-based policy initiatives. Yet, there is still a lot we do not know about the consequences of place-based tax incentives. Almost everything we do know about place-based tax incentives has been produced by economists. Those studies cast serious doubt about place-based tax incentives' capacity to benefit low-income communities, but they also have significant limitations. As a result, our understanding of the consequences of place-based tax incentives is incomplete, making it difficult to chart a path forward. The purpose of this Essay is to highlight several alternative scholarly frameworks that may be relevant to understand the consequences of place-based tax incentives. It proceeds with the modest goal of starting a conversation, and it makes no attempt to provide the final word. Rather, this Essay argues that the field of place-based tax incentive research must be expanded to include new, diverse perspectives—from researchers across the academy, from scholars of color and other nontraditional backgrounds, and from members of low-income communities.

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> *Our inner cities and their residents face deep-seated problems. The problems relate to education, health care, crime, transportation, and a deteriorating infrastructure. Enterprise zones can do little to address these problems. The role for tax incentives in addressing the problems of our inner cities should therefore be a limited one. They should not serve as the centerpiece of urban policy in general or urban economic policy in particular.*
>
> – Ellen P. Aprill, *Caution: Enterprise Zones* (1993)[1]

INTRODUCTION

Nearly thirty years have passed since Prof. Ellen Aprill warned policymakers not to rely on tax incentives to fight urban poverty.[2] At the time, federal and state governments were just beginning to embrace a new place-based policy[3] tool called enterprise zones. Enterprise zones were low-income areas designated for business tax relief.[4] Proponents had argued that the tax incentives would spur economic activity, revitalize distressed neighborhoods, and lift up low-income communities.[5] Aprill was skeptical and expressed doubts about their capacity to change business behavior or to benefit low-income residents.[6] For these reasons and others, she predicted that their cost would outweigh the benefits.[7] Nevertheless, federal and state lawmakers charged forward, introducing new place-based tax incentive programs in the decades that followed.[8] Today, tax incentives are a central part of most place-based policy initiatives,[9] and they often draw bipartisan support from lawmakers.[10]

Yet, even with the benefit of hindsight—and despite their prevalence—there is still a lot we don't know about how place-based tax

1. Ellen P. Aprill, *Caution: Enterprise Zones*, 66 S. CAL. L. REV. 1341, 1345–46 (1993).
2. *Id.*
3. Place-based policies target investment to "specific communities or locations, often with the explicit goal of revitalizing entrenched pockets of poverty." Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy*, 16 GEO. J. POVERTY L. POL'Y 1, 1 (2009). In contrast, people-based policies provide assistance directly to individuals and may include either cash transfers or in-kind transfers like housing vouchers or food stamps. *See id.*
4. Aprill, *supra* note 1, at 1341.
5. *Id.* at 1344.
6. *Id.* at 1344–45, 1349–50.
7. *Id.* at 1346.
8. *See infra* Section II.A.
9. Talking Tax, *How a Tax Perk Can Turn a Paper Mill into a Fish Farm*, BLOOMBERG TAX, at 6:58–8:51 (May 9, 2019) (downloaded using Apple Podcasts).
10. Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform*, 2019 WIS. L. REV. 745, 805 (2019).

incentives impact neighborhoods and the people who live in them. Much of what we do know about the consequences of place-based tax incentives has been produced by economists, whose studies cast doubt on their capacity to benefit low-income residents. Consider, for example, studies of the outcomes of three major place-based tax incentives: state enterprise zone laws,[11] the federal Opportunity Zones tax preference,[12] and the federal New Markets Tax Credit.[13] Nearly thirty years of economics research on enterprise zones has "failed to find evidence of beneficial effects on labor market outcomes—including reducing poverty."[14] Research on the new Opportunity Zones incentive suggests that it may be "associated with a slight *increase* in local poverty rates, although the evidence is largely consistent with no effect."[15] Research on the New Markets Tax Credit has linked that program to job creation and decreased poverty rates,[16] but economists are unsure whether improvements are attributable to economic mobility or the in-migration of higher income outsiders.[17]

For many tax scholars, economic studies like these carry significant weight and may bolster arguments for repeal. However, there are at least two reasons why these studies cannot provide the final word on place-based tax incentive policy. The first is that empirical studies can only tell us about the outcomes of place-based tax incentives that *exist*—not those that could be enacted. Most existing place-based tax incentives have not been designed to fight poverty.[18] Instead, existing

11. For a survey of state enterprise zone laws, see Michelle Layser, *Multi-State Survey of State Enterprise Zone Laws*, UNIV. OF ILL. AT URBANA-CHAMPAIGN, https://doi.org/10.13012/B2IDB-8986969_V1 [https://perma.cc/K9YC-BR4H].

12. I.R.C. §§ 1400Z-1 to -2.

13. I.R.C. § 45D.

14. David Neumark & Timothy Young, *Enterprise Zones, Poverty, and Labor Market Outcomes: Resolving Conflicting Evidence*, 78 REG'L SCI. URB. ECON. 1, 1 (2019).

15. Matthew Freedman et al., *JUE Insight: The Impacts of Opportunity Zones on Zone Residents*, J. URB. ECON. (2021) (emphasis added).

16. *See, e.g.*, Brett Theodos et al., *Place-Based Investment and Neighborhood Change: The Impacts of New Markets Tax Credits on Jobs, Poverty, and Neighborhood Composition*, 62 J. REG'L SCI. 1092, 1112 (2022); Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1013 (2012).

17. Theodos et al., *supra* note 16, at 1094 ("These findings leave open the question of whether [New Market Tax Credit] projects create jobs for incumbent residents or just attract new, wealthier people to move into the neighborhood."); Freedman, *supra* note 16, at 1013 ("[T]he results suggest that some of these effects are driven by changes in the composition of residents rather than improvement in the welfare of existing residents.").

18. *See* Michelle D. Layser, *A Typology of Place-Based Investment Tax Incentives*, 25 WASH. & LEE J. C.R. & SOC. JUST. 403, 452 (2019) (noting that "community-oriented" place-based tax incentives, which are designed to fight poverty and benefit low-income communities, are rare under existing law).

incentives tend to subsidize a broad range of activities, lacking any clear link to anti-poverty efforts.[19] One could predict that different incentive designs could improve outcomes,[20] but until those incentives exist, they cannot be tested. Thus, existing studies are valuable for identifying limitations of place-based tax incentives, but they cannot reveal their potential.

The second reason that economic studies, standing alone, are insufficient to evaluate the consequences of place-based tax incentives is that they reflect just one of many possible analytical frameworks. As a result, our understanding of the consequences of place-based tax incentives is incomplete, making it difficult to chart a path forward. The purpose of this Essay is to highlight several alternative scholarly frameworks that may be relevant to understand the consequences of place-based tax incentives. It proceeds with the modest goal of starting a conversation, and it makes no attempt to provide the final word. Rather, this Essay argues that the field of place-based tax incentive research must be expanded to include new, diverse perspectives—from researchers across the academy, from scholars of color and other nontraditional backgrounds, and from members of low-income communities.

But first, some additional context is useful. An assumption underlying this Essay is that there are good reasons to pursue place-based policies. Many economists have expressed skepticism about place-based policies, preferring instead people-based policies that direct assistance to individuals.[21] Researchers from other fields have been more receptive to place-based policies, viewing them as a useful supplement to people-based strategies. For example, sociologist Patrick Sharkey has observed that inequality tends to cluster in "social settings like neighborhoods," which "represent crucial sites at which American inequality is generated, maintained, and reinforced."[22] Sharkey

19. *Id.* at 418.

20. David Neumark & Timothy Young, *Heterogeneous Effects of State Enterprise Zone Programs in the Shorter Run and Longer Run*, 35 ECON. DEV. Q. 91, 92 (2021).

21. Cailin Slattery & Owen Zidar, *Evaluating State and Local Business Incentives*, 34 J. ECON. PERSPS. 90 (2020); Patrick Kline & Enrico Moretti, *People, Places, and Public Policy: Some Simple Welfare Economics of Local Economic Development Programs*, 6 ANN. REV. ECON. 629, 633 (2014) ("[E]conomists have traditionally been skeptical of equity-based arguments, as location is being used to serve a fundamentally person-based motive: subsidizing poor households. Such a goal could be achieved more directly by making the tax system more progressive or strengthening means-tested transfer programs.").

22. PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 14 (2013).

researched economic mobility among black families in the decades since the Civil Rights Act and found that "[o]ther than parents' own income, the measure of neighborhood poverty emerges as the single most important explanation for why black and white children raised in this period continue to have such disparate economic status as adults."[23] For this reason and others, Sharkey argues that place-based and people-based approaches are interrelated and complementary, and that anti-poverty strategies should include both types of initiatives.[24]

Economists have begun to reach similar conclusions. Professors Raj Chetty and Nathaniel Hendren have used quasi-experimental methods to study the relationship between place and economic mobility.[25] Their research shows that "children's opportunities for economic mobility are shaped by the neighborhoods in which they grow up."[26] They find that "[u]rban areas, particularly those with concentrated poverty, generate particularly negative outcomes for low-income children,"[27] and that place effects further "amplify racial inequality: black children have worse economic outcomes because they grow up in worse neighborhoods."[28] Chetty and Hendren conclude that their research supports "place-focused approaches to improving economic opportunity, by helping families move to opportunity and through place-based investments."[29] Other economists have similarly argued that place-based policies may be justified by market failures.[30]

For these reasons, this Essay will proceed on the assumptions that there may be good reasons to adopt place-based policies, and that place-based tax incentives are likely to remain among the policy tools available to lawmakers. Taking these as a given, this Essay proceeds as follows. Section I.A recounts the history of place-based tax incentives and argues that their link to neoliberal, market-based ideologies may explain why they are most frequently evaluated within traditional

23. *Id.* at 107.

24. *Id.* at 138.

25. *See generally* Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, 133 Q.J. ECON. 1107 (2018).

26. *Id.* at 1159.

27. Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility II: Childhood Exposure Effects*, 133 Q.J. ECON. 1163, 1169 (2018).

28. *Id.* at 1170.

29. *Id.* at 1225.

30. *See, e.g.*, Timothy J. Bartik, *Using Place-Based Jobs Policies to Help Distressed Communities*, 34 J. ECON. PERSPS. 99, 100 (2020) (identifying several "market failures that might justify place-based jobs policies"); Kline & Moretti, *supra* note 21, at 657 ("A potentially compelling case for place-based policies can be made based upon the remediation of localized market imperfections.").

economic frameworks. Section I.B explains the limitations of traditional economic frameworks for studying how place-based tax incentives change neighborhoods and impact residents. Part II provides examples of alternative frameworks and methodologies that may be useful for evaluating the consequences of place-based tax incentives. These include frameworks grounded in economics, geography and urban planning, sociology, and law. The alternative frameworks can help evaluate distributive consequences, power relationships, and impacts that are rarely captured by existing studies of place-based tax incentives.

Part III considers the implications of the foregoing discussion for tax law scholarship. It argues that tax law scholars are uniquely positioned to develop legal theory and to critique the design and administration of place-based tax incentives, but their contributions can be enhanced by engaging three groups. These include: (1) non-legal scholars, who can be engaged through interdisciplinary scholarship; (2) scholars from traditionally underrepresented groups who can generate new perspectives within the tax academy; and (3) members of the public who can be engaged as research subjects or through participatory scholarship, an emerging legal research method that gives voice to people directly affected by the laws. The Essay concludes by suggesting that the insights in this Essay are likely to be relevant not only for place-based tax incentive research, but also for tax expenditure research more broadly.

I. MARKET INCENTIVES AND ECONOMIC FRAMEWORKS

A. Neoliberalism and Place-Based Tax Incentives

1. The Reagan Era Incentives

This Essay argues that our understanding of place-based tax incentives has been limited by an overreliance on economic research that focuses on "quantitative analys[es] of the key socioeconomic indicators, such as employment and poverty rates, and property values."[31] First, though, it is worth asking why economic frameworks have dominated the discourse. This part looks to history for an answer. Place-based tax incentives are quintessential examples of the neoliberal

31. Minjee Kim, *How Do Tax-Based Revitalisation Policies Affect Urban Property Development? Evidence from Bronzeville, Chicago*, 59 URB. STUD. 1031, 1036 (2022) (noting that these quantitative methods have been the "prevailing approach" in place-based tax incentive research).

urban policies that emerged in the 1970s and early 1980s.[32] Neoliberalism regards "market dynamics (e.g. private property rights, limited government, free markets, and free trade) as the central mechanism for governing economic, social and political life,"[33] and it assumes that the benefits of economic growth will "trickle down to the average person."[34] In the United States, neoliberalism reached its peak during the Reagan administration, in a period marked by "a resurrection of traditional . . . economic thinking."[35] That is when the first place-based tax incentives were born.

The enterprise zone concept was introduced in Great Britain in 1977.[36] That year, Professor Peter Hall delivered a speech in which he proposed a new type of economic zoning called "enterprise zones."[37] Hall's enterprise zones were legally designated places where businesses "would be exempted from taxes and government regulations, and would be provided with only minimal social service provisions."[38] Hall pitched his idea as a solution to "abandoned and unpopulated industrial areas."[39] His market-based approach to urban development aligned with Prime Minister Margaret Thatcher's political ideology. So-called Thatcherism has been described as:

> a combination of neo-liberalism and neo-conservatism characterised by "distrust of 'big' government; support for 'traditional values' (however defined); a focus on the 'freeing' of the economy from the control of the state; a reliance on the market as the most efficient mechanism for resource

32. *See* Christopher Mele, *Neoliberalism, Race and the Redefining of Urban Redevelopment*, 37 INT'L J. URB. & REG'L RSCH. 598, 598 (2013) ("Armed with sets of neoliberal urban policies, including public–private partnerships and extensive public subsidies and incentives, local governments, along with private partners, have regenerated targeted areas within inner cities."); *see also* Mimi Abramovitz, *Economic Crises, Neoliberalism, and the US Welfare State: Trends, Outcomes and Political Struggle*, *in* GLOBAL SOCIAL WORK: CROSSING BORDERS, BLURRING BOUNDARIES 225, 225 (Corolyn Noble et al. eds., 2014) (describing the neoliberal policies of the period).

33. Abramovitz, *supra* note 32, at 225.

34. *Id.* at 234.

35. CHRIS BENNER & MANUEL PASTOR, SOLIDARITY ECONOMICS: WHY MUTUALITY AND MOVEMENTS MATTER 8 (2021).

36. *See* Layser, *supra* note 10, at 778–79.

37. *Id.*

38. *Id.* (citing Robert A. Williams, *State and Local Development Incentives for Successful Enterprise Zone Initiatives*, 14 RUTGERS L.J. 41, 45 (1982)).

39. *Id.* (quoting Aprill, *supra* note 1, at 1354).

> distribution and an associated normative commitment to the sanctity of the individual and individual choice."[40]

Accordingly, Hall's "unbridled free enterprise" approach drew support from the Thatcher administration and other British conservatives.[41] The first enterprise zones were created in Great Britain in 1980 as part of the Local Government, Planning and Land Act.[42]

The *Solicitors' Journal*, a British legal magazine, described the new enterprise zones as areas "in which commerce and industry will be set free from 'much of the bureaucracy and complication surrounding them' . . . in particular planning controls and certain financial charges, in the hope that they will thrive *without the artificial stimuli of subsidies and aids*."[43] Of course, the perceived absence of subsidies was an illusion. The tax exemptions in enterprise zones were examples of "tax expenditures." Tax expenditures include deductions, credits, exemptions, and other tax preferences designed to serve nontax objectives, and they are economically equivalent to direct government expenditures.[44]

Notably, the British concept of enterprise zones did *not* center around job creation or anti-poverty goals.[45] In the United States, enterprise zones took a different form. In 1979, conservative economist Stuart Butler reimagined enterprise zones and introduced them to Americans as a "radical new approach to inner city revitalization."[46] Unlike the British model, "Butler's version of enterprise zones focused on tax and regulatory incentives to stimulate new jobs,

40. Christian Fuchs, *Neoliberalism in Britain: From Thatcherism to Cameronism*, 14 TRIPLEC 163, 164 (2016) (quoting Colin Hay & Stephen Farrall, *Interrogating and Conceptualizing the Legacy of Thatcherism*, *in* THE LEGACY OF THATCHERISM: ASSESSING AND EXPLORING THATCHERITE SOCIAL AND ECONOMIC POLICIES 3, 9 (Colin Hay & Stephen Farrall eds., 2014).

41. Williams, *supra* note 38, at 45.

42. Local Government, Planning and Land Act 1980, c. 65 (UK), https://www.legislation.gov.uk/ukpga/1980/65/contents [https://perma.cc/6RFM-HCTS]. The *Solicitors' Journal* described the law as a land-use law "concerned with special cases of development, namely new towns, urban development areas and enterprise zones, emphasising perhaps the trend in recent years from the creation of new towns to the reinvigoration of the centres of old towns." R.N.D. Hamilton, *Local Government, Planning and Land Act 1980–II*, 124 SOLICS'. J. 836, 836 (1980).

43. Hamilton, *supra* note 42, at 837 (emphasis added). Note that the *Solicitors' Journal* placed its description of enterprise zones under the heading "Land," not under the heading of "Taxes," which it reserved for a discussion of developments related to Value Added Taxes. *Id.* at 836, 838.

44. Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 706 (1970). Surrey argued that there should be a strong presumption against using tax expenditures. *Id.* at 734.

45. *See* Aprill, *supra* note 1, at 1354.

46. Williams, *supra* note 38, at 49–51.

especially in the small business sector, as a solution to urban poverty."[47] The idea was popular among supply-side politicians, who began to introduce enterprise zone legislation in Congress.[48] Republican Congressman Jack Kemp introduced the first draft "discussion" bill in May of 1980.[49]

Kemp's draft bill "received considerable attention from liberals and conservatives, and the Enterprise Zone concept soon attracted bipartisan support."[50] After those initial discussions, several enterprise zone bills were introduced to Congress in the early 1980s, but none were adopted.[51] Some of the "[b]arriers to adoption on the federal level included a lack of empirical support for the strategy, opposition from some national businesses, and a suspicion that enterprise zones represented a 'zero-sum game[],' in which governments entice business investments and jobs away from each other, with no net gain to the national economy."[52] Nevertheless, the proposals gained traction at the state level,[53] and "by the early 1990s, thirty-eight states and the District of Columbia had adopted their own enterprise zone legislation."[54]

Though the push for federal enterprise zones failed, another Reagan-era incentive was successful: the Low-Income Housing Tax Credit.[55] The tax credit was introduced in 1986 as a market-based alternative to government-owned public housing.[56] By the time the law was enacted, the Reagan administration had already discontinued direct funding for affordable housing production and tenant vouchers.[57] The new tax credit program "shifted the responsibility for providing affordable housing from HUD to the Internal Revenue Service."[58] The tax credits function as a capital subsidy to developers who produce

47. Layser, *supra* note 10, at 779.
48. Williams, *supra* note 38, at 54–55.
49. *Id.*
50. *Id.*
51. Layser, *supra* note 10, at 780.
52. *Id.*
53. Jeffrey M. Euston, *Clinton's Empowerment Zones: Hope for the Cities or a Failing Enterprise?*, 3 KAN. J.L. PUB. POL'Y, Spring 1994, at 140, 141.
54. Layser, *supra* note 10, at 780.
55. I.R.C. § 42.
56. *Id.*; *see also* Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 883 (1993).
57. Barry Zigas, *Learning from the Low Income Housing Tax Credit: Building a New Social Investment Model*, CMTY. DEV. INV. REV., April 2013, at 47, 48, https://www.frbsf.org/community-development/wp-content/uploads/sites/3/learning-low-income-housing-tax-credit-building-new-social-investment-model.pdf [https://perma.cc/FX2F-2K2K].
58. Michelle D. Layser, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 918 n.7 (2018).

affordable housing.[59] Today, the Low-Income Housing Tax Credit is the largest federal subsidy for new construction of affordable housing, and it costs the government more than $10 billion annually.[60] At the time, it marked the first instance the federal government adopted a major place-based tax incentive program. More would follow.

2. The Clinton Era Incentives

Federal enterprise zone proposals failed during the Reagan administration, but the idea was soon revived and reimagined by the Clinton administration, which succeeded in enacting a version of the laws in 1993. Clinton's version of enterprise zones included nine large "Empowerment Zones" and ninety-five "enterprise communities."[61] In some respects, Empowerment Zones reflected a shift away from the radical free-market rhetoric that emphasized "urban revival simply by withdrawing government activity from an area."[62] Instead, Empowerment Zones blended "social services and tax incentives to create jobs and reduce poverty."[63] The law included a "twenty percent wage credit for the first $15,000 of qualified wages paid to employees who work and live in the designated area."[64] In this way, Empowerment Zones attempted to nudge businesses toward hiring workers in the zones, reflecting a small shift toward more liberal place-based policy. Still, Empowerment Zones retained the core elements of enterprise zones and neoliberal principles.

Empowerment Zones were an important achievement in Clinton's urban policy, but they were not the most significant place-based tax incentive enacted under the administration. That designation arguably

59. I.R.C. § 42(a). The Department of Housing and Urban Development oversees the tax credit program, but state housing agencies are responsible for administering the tax credits. MARK P. KEIGHTLEY, CONG. RSCH. SERV., RS22389, AN INTRODUCTION TO THE LOW-INCOME HOUSING TAX CREDIT 1 (2023). Affordable housing developers apply for the tax credits through an allocation process. *Id.* at 3–4. If the developer receives an allocation, then it will solicit investors—usually large financial institutions—to contribute equity capital to its project. *Id.* at 1, 5. Once construction is complete and the affordable housing units are placed in service, the investors (not the developer) will start claiming the tax credits, which are received over a ten-year period. I.R.C. § 42(b)(1)(B); KEIGHTLEY, *supra*, at 1, 5–6.

60. KEIGHTLEY, *supra* note 59, at 1.

61. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13301, 107 Stat. 312, 543 (1993); Euston, *supra* note 53, at 140.

62. Myron A. Levine, *Urban Policy in America: The Clinton Approach*, 9 LOCAL ECON. 278, 279 (1994).

63. Gerry Riposa, *From Enterprise Zones to Empowerment Zones: The Community Context of Urban Economic Development*, 39 AM. BEHAV. SCI. 536, 537 (1996).

64. Duane A. Martin, *The President and the Cities: Clinton's Urban Aid Agenda*, 26 URB. LAW. 99, 120 (1994).

belongs to the New Markets Tax Credit,[65] which was enacted in 2000 to promote investment in low-income communities.[66] The law subsidizes the activities of community development entities (CDEs). CDEs are financial institutions that specialize in lending to borrowers in low-income communities.[67] The New Markets Tax Credit program is overseen by the Community Development Financial Institutions Fund (CDFI Fund), a department within the Treasury.[68] Every year, the CDFI Fund allocates the tax credits to CDEs pursuant to a competitive application process.[69] CDEs that win allocations solicit capital from investors (again, these are usually large financial institutions), and they use that capital to invest in projects in low-income communities.[70] The tax credit allocations have been used to support a wide range of investments, including real estate construction and rehabilitation, small business financing, and nonprofit expansions.[71] In 2023, $5 billion were available for allocations.[72]

3. The Trump Era Incentives

Both the Low-Income Housing Tax Credit and the New Markets Tax Credit have been politically successful, maintaining bipartisan support and expanding over time. But not everyone in the community development industry is satisfied. Critics of the New Markets Tax Credit have argued that its administrative procedures create significant compliance burdens that slow development, restrict project pipelines, and stifle the program's potential impact.[73] For these reasons, the Economic Innovation Group proposed an alternative: the Opportunity Zones tax preference,[74] which was enacted with the Tax Cuts and Jobs Act of 2017.[75] The Opportunity Zones law provides capital gains relief to investors who invest their gain proceeds in a specialized entity

65. I.R.C. § 45D.

66. *See* Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 § 121, 114 Stat. 2763, A-605 (2000).

67. *See* I.R.C. §§ 45D(a)(1), (c).

68. *New Markets Tax Credit Program*, CMTY. DEV. FIN. INSTS. FUND, https://www.cdfifund.gov/programs-training/programs/new-markets-tax-credit [https://perma.cc/Y3G9-Q6DX].

69. Michelle D. Layser, *Nonprofit Participation in Place-Based Tax Incentive Transactions*, 48 FORDHAM URB. L.J. 1131, 1136–37 (2021).

70. *Id.*

71. *Id.* at 1138.

72. I.R.C. § 45D(f)(1)(H).

73. *See, e.g.*, Talking Tax, *supra* note 9, at 7:40–8:00.

74. I.R.C. §§ 1400Z-1 to -2; DAVID WESSELL, ONLY THE RICH CAN PLAY 12 (2021).

75. Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (2017).

called an Opportunity Fund.[76] Opportunity Funds are required to use that money to invest in low-income neighborhoods.[77]

In structure, the new Opportunity Zones law has more in common with the tax credit programs than with enterprise zones.[78] Like the tax credits, the Opportunity Zones preference functions as a capital subsidy.[79] It provides tax relief to upstream investors as an incentive to contribute capital to an Opportunity Fund. But unlike the tax credit programs, the Opportunity Zones law relies on tax deferral and exemptions as its incentive mechanisms.[80] And like the earliest enterprise zone laws, the Opportunity Zones law embraces neoliberal preferences for limited regulation over markets. There are no regulatory gatekeepers to Opportunity Zones. Funds self-certify,[81] and the tax exemption is automatic for taxpayers who invest in qualified Opportunity Funds.

Legal scholars worry that the new Opportunity Zones law will fuel gentrification and displacement and fail to benefit low-income communities.[82] Journalists have reported that Opportunity Zones have funded investment in luxury condos and storage facilities.[83] Early empirical research by economists has added further evidence that Opportunity Zone investment is flowing to communities that may be gentrifying, and that Opportunity Funds are more likely to pursue high-end real estate projects than affordable housing.[84] Given these concerns, it will be essential for researchers to monitor the outcomes of the Opportunity Zones program. The traditional economic frameworks are

76. I.R.C. § 1400Z-2(a).

77. I.R.C. § 1400Z-2(d).

78. Layser, *supra* note 18, at 443.

79. *See id.* at 449.

80. I.R.C. § 1400Z-2(a).

81. *Certify and Maintain a Qualified Opportunity Fund*, INTERNAL REVENUE SERV., https://www.irs.gov/credits-deductions/businesses/certify-and-maintain-a-qualified-opportunity-fund [https://perma.cc/8CA4-SXBT].

82. Layser, *supra* note 10, at 788–89; Calvin H. Johnson, *Repeal Opportunity Zones*, 169 TAX NOTES FED. 625, 625 (2020); Brandon M. Weiss, *Opportunity Zones, 1031 Exchanges, and Universal Housing Vouchers*, 110 CAL. L. REV. 179, 182 (2022); Edward W. De Barbieri, *Opportunism Zones*, 39 YALE L. & POL'Y REV. 82, 87 (2020).

83. Jesse Drucker & Eric Lipton, *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, N.Y. TIMES (Sept. 27, 2020), https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html [https://perma.cc/YSU4-4KC3]; *see* Eric Lipton & Jesse Drucker, *Symbol of '80s Greed Stands to Profit from Trump Tax Break for Poor Areas*, N.Y. TIMES (Feb. 19, 2020), https://www.nytimes.com/2019/10/26/business/michael-milken-trump-opportunity-zones.html [https://perma.cc/HJC9-HCMW].

84. Patrick Kennedy & Harrison Wheeler, Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence 28 (Apr. 15, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4024514 [https://perma.cc/CDW7-DENG].

necessary to evaluate assumptions underlying these market-based incentives, but they are insufficient to describe the consequences of place-based tax incentives. The next section explains why.

B. The Limits of Economic Frameworks

As explained above, early proponents of the place-based tax incentive approach embraced the view that the benefits of economic growth in low-income places would trickle down to the communities who live there. For this reason, it may be unsurprising that economists have spent considerable time and resources attempting to measure the impact of place-based tax incentives on poverty rates, unemployment, and income levels. Economists like Edward Glaeser,[85] Helen Ladd,[86] David Neumark,[87] Matthew Freedman,[88] Brett Theodos[89] and others have collected and analyzed data about enterprise zones, Empowerment Zones, New Markets Tax Credits, and Opportunity Zones to investigate their impact on zone residents. Their studies have yielded valuable insights about the limitations of place-based tax incentives, but they have also left many questions about the consequences of place-based tax incentives unanswered. This Essay is concerned with two: How do place-based tax incentives change neighborhoods, and how do low-income residents experience those changes? We know surprisingly little about the answers to either of these questions.

Economists typically rely on quantitative analyses that employ statistical methods to measure changes in key metrics. However, conventional statistics may fail to capture some of the impacts associated with place-based tax incentives. One reason relates to heterogeneity across tax incentives, which make aggregate studies of laws like

85. *See generally* Benjamin A. Austin et al., *Jobs for the Heartland: Place-Based Policies in 21st Century America* (Nat'l Bureau of Econ. Rsch., Working Paper No. 24548, 2018), https://www.nber.org/papers/w24548 [https://perma.cc/SZV2-Z7TM]; Edward L. Glaeser & Joshua D. Gottlieb, *The Economics of Place-Making Policies* (Nat'l Bureau of Econ. Rsch., Working Paper No. 14373, 2008) https://www.nber.org/papers/w14373 [https://perma.cc/6QST-L339].

86. *See generally* Helen F. Ladd, *Spatially Targeted Economic Development Strategies: Do They Work?*, CITYSCAPE, Aug. 1994, at 193 (1994).

87. *See generally* Neumark & Young, *supra* note 14; David Neumark & Helen Simpson, *Place-Based Policies*, *in* 5 HANDBOOK OF REG'L & URB. ECON. 1197 (Gilles Duranton et al. eds., 2015); Neumark & Young, *supra* note 20.

88. *See generally* Freedman, *supra* note 16; Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RES. 311 (2013); Matthew Freedman, *Place-Based Programs and the Geographic Dispersion of Employment*, 53 REG. SCI. & URB. ECON. 1 (2015); Freedman et al., *supra* note 15.

89. *See generally* Theodos et al., *supra* note 16; BRETT THEODOS ET AL., AN EARLY ASSESSMENT OF OPPORTUNITY ZONES FOR EQUITABLE DEVELOPMENT PROJECTS (2020).

enterprise zones challenging.[90] Enterprise zone tax incentives vary across jurisdictions, and "there is a smattering of evidence pointing to some heterogeneity in the job creation impacts of enterprise zones."[91] Since different program designs may produce different impacts, aggregate studies may mask difference in outcomes. Meanwhile, economists have noted that "there is a strong theoretical expectation that well-designed hiring credits could boost job creation."[92]

In a recent study, economics professors David Neumark and Timothy Young studied whether the incentive variations across enterprise zones affect their impact on employment, poverty rates, and income levels.[93] The researchers failed to find significant differences in outcomes.[94] However, they noted that coding was challenging because "potential features by which state enterprise zone programs could be classified are too numerous and idiosyncratic to be directly usable in an empirical analysis."[95] Ultimately, they qualified their findings, observing:

> Overall, we think this evidence should be interpreted cautiously. The data provide limited capacity to test for program heterogeneity, as there are not that many state programs to study and hence not a great deal of program variation. In addition, there could be richer dynamics associated with longer-run effects that our decadal analysis with census data does not capture. Moreover, there could be other sources of variation that are relevant, such as unmeasured initial economic (or other) conditions in the areas designated as enterprise zones.[96]

Sample size probably also presents challenges for studying other tax incentive programs. The size of tax incentive programs is often small compared to the geographies that receive funding—and even smaller when compared to the places that are *eligible* for funding. Take, for example, the New Markets Tax Credit. In many cities, a large proportion of census tracts are eligible for New Markets Tax

90. Neumark & Young, *supra* note 20, at 92.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.* at 104.
95. *Id.* at 93.
96. *Id.* at 104.

Credit funding.[97] However, only $5 billion in funding is approved to be allocated annually, and those allocations could be spread across up to 31,680 eligible census tracts nationwide.[98] Between 2016 and 2020, CDEs used their tax credit allocations to fund investment in fewer than 1,724 census tracts.[99] Among tracts that received investment, the average investment included approximately 1.3 projects and $7.84 million of investment.[100] For comparison, the city of San Diego recently began construction of a $4 *billion* project to restore a stretch along the San Diego River.[101]

Given the relatively small scale of the New Markets Tax Credit program, it is surprising that researchers have identified *any* statistically significant changes in income or poverty levels. However, this does not mean that the 2,245 projects funded during that period had no impact. During the period from October 2021 to January 2022, a co-author and I interviewed twenty-four professionals with experience with New Markets Tax Credits, including employees from CDEs, investors, borrowers, and consultants.[102] These professionals described their efforts to use the tax credits to fund workforce training centers, charter schools, hospitals, food halls, childcare centers, small businesses, and other projects in low-income communities.[103] Key takeaways from these conversations included the fact that many projects are intended to produce impacts unrelated to traditional metrics like job creation (though, job creation is almost always among the goals).[104]

97. Michelle D. Layser, *Subsidizing Gentrification: A Spatial Analysis of Place-Based Tax Incentives*, 12 U.C. IRVINE L. REV. 163, 177 (2021).

98. I.R.C. § 45D(f)(1)(H); CMTY. DEV. FIN. INSTS. FUND, U.S. DEP'T OF THE TREASURY, NEW MARKETS TAX CREDIT LOW-INCOME COMMUNITY CENSUS TRACTS–AMERICAN COMMUNITY SURVEY 2011-2015 (Nov. 2, 2017), https://www.cdfifund.gov/sites/cdfi/files/documents/nmtc-2011-2015-lic-nov2-2017-4pm.xlsx [https://perma.cc/Q4YX-JKW3].

99. Data Calculations from Author (May 23, 2023) (on file with *Loyola of Los Angeles Law Review*). Note that CDFI Fund data lists projects in 1,675 unique census tracts. *Id.* In addition, forty-eight projects were funded in census tracts with no recorded tract number. *Id.*

100. *Id.* Note that these figures were calculated based on data associated with the 1,675 tracts with known census tract numbers, and they exclude missing tract data associated with forty-eight projects. *Id.*

101. Jennifer Van Grove, *Construction Starts on Mission Valley's Riverwalk, Now a $4B Project*, SAN DIEGO UNION-TRIB. (Sept. 21, 2022, 4:55 PM), https://www.sandiegouniontribune.com/business/story/2022-09-21/construction-starts-on-mission-valleys-riverwalk-now-a-4b-project [https://perma.cc/7TRU-Z4AT].

102. Michelle D. Layser & Andrew J. Greenlee, *Structural Inequality and the New Markets Tax Credit*, 73 DUKE L.J. (forthcoming 2023) (manuscript at 24–25).

103. *Id.* at 16.

104. *Id.* at 30.

These other impacts can—and must—be quantified for the purpose of applying for New Markets Tax Credit allocations. One consultant with familiarity with the field explained:

> The very first thing the CDEs are going to do is be able to fill in the metrics they need for their application. So that's where they want quantifiable data. Number of students served by the educational entity, number of people served by the health care facility or the behavioral health facility. . . . Amount of pounds of food delivered to a food desert is something we've counted both for the food bank as well as to a . . . farmers market that was fueled by a community garden . . . .[105]

It is not hard to see why impacts like these would be difficult to measure in an aggregate study. Even if a researcher did set out to test how many pounds of food pass through food kitchens funded by the New Markets Tax Credit, the answer would be nearly impossible to interpret. Yet, to the families served by the new facility, those food kitchens may be extremely valuable—even if the families themselves remain in poverty.

Aggregate statistics simply cannot tell us how place-based tax incentives change neighborhoods, or how residents experience those changes. Take, for example, a new tax-subsidized grocery store. Can residents afford the food it sells? Have the managers hired residents from the community to work there? Are residents eating healthier food now that they have access? Do they shop there? Does the nearby grocery store save residents time in their day? Does it make their neighborhood feel less isolated? Or, are residents skeptical of the new store? Did the store hire outsiders, or does it cater to a higher income demographic? Do residents worry that the store is a harbinger for gentrification? Has the new store shifted the culture in ways that create anxiety and destabilize existing networks? How has the store affected the local business ecosystem?

There is much we don't know about the consequences of place-based tax incentives—and few of these questions can be easily answered using quantitative analyses. Yet, the answers to questions like these are incredibly important to evaluate the outcomes of place-based tax incentives and the wisdom of place-based policies more generally. In the future, I hope to conduct qualitative research on place-based tax

105. Zoom Interview with Participant No. 20211130MP (Nov. 30, 2021).

incentives that helps shed light on how residents experience tax-subsidized projects. But as the example of a single grocery store illustrates, every project has the potential to impact communities in different ways, and the research gap is much too large for any single researcher to fill. Rather, it will take a sustained effort among researchers to collect and disseminate data about tax-subsidized projects, including efforts to track impacts over time. Such research can help answer the questions about neighborhood change and residents' experiences, helping researchers develop predictive models to guide policymakers and improve outcomes. The next part provides a high-level survey of alternative research methods and frameworks that may also be relevant to study the consequences of place-based tax incentives.

II. NEW FRAMEWORKS FOR PLACE-BASED TAX INCENTIVE RESEARCH

A. Alternative Economic Frameworks

So far, this Essay has argued that the traditional economic methods used to study the consequences of place-based tax incentives are relevant given their history and ideological basis, but that the studies have significant limitations. This part proposes alternative frameworks that may be relevant to study the consequences of place-based tax incentives. This part begins with alternative economics frameworks that have rarely, if ever, been used to study place-based tax incentives. It then turns to non-economic frameworks, pointing to social science theories about community networks and neighborhood change. Relevant fields include urban planning, geography, and sociology. Finally, this section considers legal frameworks that may be relevant to analyze the consequences of place-based tax incentives. This part does not aim to provide a comprehensive or exclusive account of relevant frameworks, or to predict what researchers may discover if such frameworks are employed. Rather, the goal is merely to outline promising avenues for future research.

1. Welfare Economics

As explained above, most research on place-based tax incentives has been produced by economists. Most of the economics studies about place-based tax incentives fall under the rubric of positive analyses intended to "determine the effects of the policy."[106] The quantitative methods favored by economists have had limitations for place-based tax incentive research for reasons already discussed. This may change in the future, however, as the increasing availability of big data is making it more "feasible to gather credible evidence on the social distributions of policy impact and to model long-term impacts over the lifecourse."[107] Even if the data problems were solved, however, economic impact studies would be insufficient to describe the consequences of place-based tax incentives.

This is because impact studies alone cannot answer questions about "social desirability."[108] Economists Patrick Kline and Enrico Moretti have observed the following about place-based tax incentive research:

> [A] large academic literature seeks to estimate the local employment effects of such policies, usually with the goal of computing the number of jobs created per dollar spent. Although this is perhaps useful for assessing whether program objectives were met, such exercises do not speak directly to the welfare consequences of these policies.[109]

In referring to "welfare consequences," Kline and Moretti invoke a welfare economics framework that evaluates the social desirability of a policy in terms of its impact on social welfare.[110] The goal of welfare economics is to evaluate "states of the world and formulat[e] recommendations for policies that would improve the well-being of society as a whole."[111] While many people believe that the well-being of society is related, in some way, to notions of equity and fairness, such concepts are difficult to define, "context-dependent and value-laden, and mean[] different things to different people."[112]

For this reason, the welfare economics approach takes the position that "fairness or equity have no role unless they are concerned

106. Louis Kaplow & Steven Shavell, *Fairness Versus Welfare*, 114 HARV. L. REV. 966, 977 (2001).

107. RICHARD COOKSON, COMM. ON THE USE OF ECON. EVIDENCE TO INFORM INVS. IN CHILD., YOUTH, & FAMS., THE NAT'L ACADS. OF SCIS., ENG'G & MED., METHODS FOR INCORPORATING EQUITY INTO ECONOMIC EVALUATION OF SOCIAL INVESTMENTS 3 (2016).

108. Kaplow and Shavell, *supra* note 106, at 977.

109. Kline & Moretti, *supra* note 21, at 633.

110. *Id.* at 635.

111. Roger E. Backhouse et al., *Revisiting the History of Welfare Economics* 1, (GATE, Working Paper No 2027, 2020), https://ssrn.com/abstract=3692494 [https://perma.cc/3Y72-UCCU].

112. COOKSON, *supra* note 107, at 3.

with the distribution of utility or they are in some respect a proxy for effects on utility."[113] Instead, the framework is only concerned with "individuals' utility or well-being," which must be aggregated for the purposes of measuring social welfare.[114] To aggregate individuals' utilities, however, researchers apply a "social welfare function" grounded in a theory of distributive justice.[115] The weight given to individuals' utilities under the social welfare function depends on the chosen theory, which could range from pure egalitarianism to the opposite view, in which "as much wealth as is feasible should be concentrated in the hands of one or a select few."[116] In this way, welfarist analyses incorporate normative views about equity and fairness.

Place-based tax incentives can be justified based on equity or efficiency, or a combination of both.[117] For this reason, Kline and Morretti have suggested using welfare economics frameworks to evaluate the consequences of place-based tax incentives.[118] Kline and Morretti have created a model to analyze equity and efficiency trade-offs associated with place-based tax incentives in light of worker and firm mobility.[119] Other researchers could use welfare economics frameworks to evaluate the consequences of place-based tax incentives under different theories of justice.

2. Emerging Economics Frameworks

In addition to welfare economics, which is an established branch within the field, there are emerging subfields of economics that may be relevant to the study of place-based tax incentives. This section will focus on one example:[120] stratification economics. Stratification economics is "an emerging field in economics that seeks to expand the boundaries of the analysis of how economists analyze intergroup

113. LOUIS KAPLOW, THE THEORY OF TAXATION AND PUBLIC ECONOMICS 41 (2008).
114. *Id.*
115. *Id.* at 44; Kaplow & Shavell, *supra* note 106, at 985–87.
116. KAPLOW, *supra* note 113, at 45.
117. Kline & Moretti, *supra* note 21, at 633.
118. *Id.* at 656.
119. *Id.*
120. A second example of an emerging economics framework is solidarity economics, which was introduced by sociology professors Chris Benner and Manuel Pastor. BENNER & PASTOR, *supra* note 35, at 3. Solidarity economics was pioneered by sociologists and has themes similar to other sociology theories. *See id.* at 14–17. For these reasons, this Essay will consider its potential contributions in the next section, along with other sociology frameworks.

differences."[121] Stratification economics frameworks have been used to "investigate[] significant and enduring disparities in income and wealth by social groups, particularly by race and gender, especially those associated with discrimination in labor and housing markets."[122]

Where mainstream economics focuses on market relationships as an explanation for social relationships, stratification economics focuses on intergroup inequality and argues that "social relationships explain market relationships, so that the laws or dynamics of society explain how the economy works."[123] So far, stratification economics frameworks have not been applied to study place-based tax incentives, but their potential relevance to the topic has been noted by researchers.[124] My own research on place-based tax incentives has described how the incentives can create new, hybrid public-private markets that have elements of both private markets and public programs.[125] Some organizations—including minority-led organizations—struggle to compete within these markets.[126] Stratification economics may be a useful framework to analyze the dynamics of hybrid markets like these.

B. Social Science Frameworks

1. Urban Planning and Geography

Social science frameworks are also relevant, providing promising theoretical and methodological alternatives to the traditional economics frameworks. For example, the disciplines of urban planning and geography both study the "spatial organization of urban development."[127] Urban geography is "a branch of human geography concerned with various aspects of cities," with an emphasis on location, space, and "the spatial processes that create patterns observed in urban

121. William A. Darity Jr. et al., *A Tour de Force in Understanding Intergroup Inequality: An Introduction to Stratification Economics*, 42 REV. BLACK POLIT. ECON. 1, 1 (2015).
122. John B. Davis, *Stratification Economics as an Economics of Exclusion*, 2 J. RACE, ECON., & POL'Y 163, 163 (2019).
123. *Id.* at 164.
124. Richard McGahey, *Policy, Empirical Analysis, and Equity: Challenges for Research*, 37 ECON. DEV. Q. 77, 80–82 (2023).
125. Layser & Greenlee, *supra* note 102, at 44; Alfred C. Aman Jr., *Privatization and the Democracy Problem in Globalization: Making Markets More Accountable Through Administrative Law*, 28 FORDHAM URB. L.J. 1477, 1491 (2001).
126. Layser & Greenlee, *supra* note 102, at 44; Kim, *supra* note 31, at 1034.
127. Daniel Pinson, *Urban Planning: An 'Undisciplined' Discipline?*, 36 FUTURES 503, 506 (2004).

areas."[128] Urban planning, on the other hand, is an interdisciplinary field that is closely related to architecture, civil engineering, and professional urban planning.[129] Its disciplinary focus is to "master[] urban development, by subjecting the transformation processes of the built environment into configurations that will better serve society."[130] Given the significant disciplinary overlap and shared object of study, this section will refer to urban geographers and urban planners collectively as "urban researchers."

Urban researchers have produced a significant body of research about processes of neighborhood change, which are relevant to understand the consequences of place-based tax incentives. Much of this research focuses on the process of gentrification. Modern scholars have defined gentrification as "an influx of new investment and new residents with higher incomes and educational attainment into a neighborhood."[131] Urban researchers have used both qualitative and quantitative methods to describe gentrification.[132] The qualitative studies typically focus on "several or individual neighborhoods selected through a priori knowledge of gentrification."[133] The quantitative studies, on the other hand, rely on "census or other data to conduct panel or cross-sectional analysis of gentrification in multiple areas."[134]

However, quantitative studies of displacement have struggled to overcome "the lack of appropriate longitudinal data with which to measure housing turnover, rent increases, migration destinations or tenurial change at regular intervals."[135] Most gentrification research relies on proxies for displacement, and the field lacks "access to viable sources of data enabling the tracking of individuals through space and across time," rendering "gentrification-induced displacement . . . largely unrecorded and invisible."[136] In other words, gentrification-

128. Amanda Briney, *Urban Geography: An Overview of Urban Geography*, THOUGHTCO. (Aug. 18, 2019), https://www.thoughtco.com/overview-of-urban-geography-1435803 [https://perma.cc/58LM-PLJ3].

129. Pinson, *supra* note 127, at 506.

130. *Id.*

131. Nicholas Finio, *Measurement and Definition of Gentrification in Urban Studies and Planning*, 37 J. PLAN. LIT. 249, 250 (2022).

132. *Id.* at 249.

133. *Id.*

134. *Id.*

135. Sue Easton et al., *Measuring and Mapping Displacement: The Problem of Quantification in the Battle Against Gentrification*, 57 URB. STUD. 286, 288 (2020).

136. *Id.* at 300.

induced displacement is particularly challenging to measure, and "not all forms show up in the statistics."[137]

Urban researchers Noli Brazil and Amanda Portier used statistical methods to study whether gentrifying census tracts were eligible for subsidies through the New Markets Tax Credit or Opportunity Zones laws.[138] They found that "a nontrivial percentage of gentrifying neighborhoods are eligible across all programs" and suggest that government officials should "account for neighborhood socioeconomic changes in the neighborhood selection and project development process."[139] However, they note the "limits of a national-scale analysis" and state that "comparative case studies are critical for providing knowledge regarding why a large proportion of a city's gentrifying neighborhoods is eligible for place-based investment."[140]

For reasons like these, some gentrification researchers have advocated for qualitative methods to "provide a fuller account of the range of displacement patterns, as well as highlight and render visible the experiential, psychological and phenomenological forms of displacement that are not accounted for in most conventional statistics."[141] At least one urban planning researcher has used qualitative methods to study place-based tax incentives. Urban planning professor Minjee Kim conducted an interview-based case study of Opportunity Zones in Chicago.[142] Kim noted that quantitative methods are more prevalent in the literature, but "real estate developments are inherently idiosyncratic, difficult to observe and take time to materialise, warranting a qualitative investigation of the policy's early impacts."[143] Using these methods, Kim found that the "least commercialized and most resource-constrained" real estate actors faced considerable challenges securing Opportunity Zone investment, while more commercialized real estate actors "were well poised to tap into this new investment pool."[144] Studies like these may serve as a useful model for future research of other place-based tax incentives.

137. Brian Doucet et al., *Mapping Displacement Through Lived Experiences: Countermapping Transit-Induced Gentrification in Kitchener-Waterloo, Ontario*, 4 RADICAL HOUS. J. 67, 70 (2022).

138. *See generally* Noli Brazil & Amanda Portier, *Investing in Gentrification: The Eligibility of Gentrifying Neighborhoods for Federal Place-Based Economic Investment in U.S. Cities*, 58 URB. AFF. REV. 1234 (2022).

139. *Id.* at 1267–68.

140. *Id.* at 1267.

141. Doucet et al., *supra* note 137, at 70.

142. *See generally* Kim, *supra* note 31.

143. *Id.* at 1036.

144. *Id.* at 1043.

In sum, urban researchers have used both quantitative and qualitative approaches to study neighborhood change, and place-based tax incentives have occasionally been the object of study. Urban researchers have often faced difficulties when using quantitative approaches, however, due to data constraints and lack of consensus about models used to measure neighborhood change. For this reason, some urban researchers favor qualitative methods for studying the processes of neighborhood change. This suggests that qualitative methods may be a promising approach to studying how place-based tax incentives relate to neighborhood change.

2. Sociology

Sociology is another field that may provide useful frameworks for studying place-based tax incentives. Sociologist Patrick Sharkey and others have documented "ways that structural disadvantage and aspects of social organization within neighborhoods can influence patterns of behavior within the boundaries of the neighborhood, thereby influencing the life course trajectories of neighborhood residents."[145] Others have focused on the community dynamics that help improve outcomes. For example, sociology professor Eric Klinenberg has developed the concept of "social infrastructure," which he defines as "the physical places and organizations that shape the way people interact."[146] According to Klinenberg, places with strong social infrastructure have better health outcomes and are more resilient than places with weaker social infrastructure.[147] Similarly, sociology professors Chris Benner and Manuel Pastor place social networks at the center of their new solidarity economics theory.[148]

Like stratification economics, solidarity economics focuses on societal relationships as important drivers of market outcomes.[149] Benner and Pastor argue that the economy is "created by people through collaboration as well as competition," and that both social and economic outcomes can be improved by "reinforc[ing] those collaborative elements."[150] Benner and Pastor have used quantitative methods to show that places with strong social connections are associated with

145. SHARKEY, *supra* note 22, at 20.
146. ERIC KLINENBERG, PALACES FOR THE PEOPLE 5 (2018).
147. *Id.* at 5–7.
148. BENNER & PASTOR, *supra* note 35, at 51.
149. *See id.* at 20.
150. *Id.*

longer periods of employment growth,[151] and they have reinforced those findings with qualitative studies.[152] They explain: "Struck by the statistics, we did something economists infrequently do: we went and talked to civic actors in regions across the country to try to make sense of the data."[153] Sociologists' theoretical insights may provide useful frames for evaluating the consequences of place-based tax incentives, given their potential to impact community networks. In addition, Benner and Pastor's mixed-method approach may provide an answer to the data interpretation challenges associated with existing quantitative studies: talk to people who are affected by the policies.

C. Critical Tax Frameworks

Legal scholars are uniquely positioned to draw on insights generated by economists and social scientists to critique existing law, develop theories about ideal incentive design, and make policy recommendations for legal reform. In addition, legal scholars can draw on their own legal theories and expertise to inform the analysis of place-based tax incentives. Urban law and poverty law scholars can—and do—analyze place-based tax incentives as community development tools and anti-poverty programs. Tax scholars often invoke tax law and economics frameworks and tax expenditure theory. A less common frame is the critical tax frame, which focuses on "the role of tax law in creating and perpetuating persistent economic inequality and disadvantage."[154] A critical tax frame may be useful to explore institutional and structural power dynamics associated with place-based tax incentives.

This section will highlight some areas of inquiry that may be worth exploring from a critical tax frame. For this, I draw from my own recent interview-based research (with co-author Professor Andrew Greenlee) on the New Markets Tax Credit program. According to professionals affiliated with entities that participate in the New Markets Tax Credit program, the law has created a "very white led industry with the intent to impact lower income communities that are mostly populated by people of color."[155] The tax credit program is fueled by

151. *Id.* at 51.
152. *Id.* at 57.
153. *Id.*
154. Diane Kemker, *Teaching Critical Tax: What, Why, & How*, 19 PITT. TAX REV. 143, 143 (2022).
155. Zoom Interview with Participant No. 20210416LV (Apr. 16, 2021).

a "complex, relationship-driven network of [New Markets Tax Credit] program participants who influence decision making and create opportunities for success," and dynamics within that network have created barriers to entry for minority-led CDEs similar to those that exist in private markets.[156] As a result, very few minority-led CDEs participate in the New Markets Tax Credit program, and people of color are underrepresented within the tax credit industry.[157]

A critical tax frame could be used to analyze structural inequality in the New Markets Tax Credit program. Since the New Markets Tax Credit operates in a transactional context, it raises questions about power dynamics in the negotiation process. For example, community development law professor Patience Crowder has presented a theory of "interest convergence as a transaction," which posits that the transactional context for community development creates unique opportunities for interest convergence.[158] Crowder argues that transactional contexts can function as "a mechanism for the collaborative exchange of information to align interests for the purpose of increasing social and economic value of the interest holders through a particular outcome (such as affordable housing)."[159] It is unclear whether the tax credit transactions can have a similar function.

A more traditional version of interest convergence theory holds that the "interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites."[160] Stated differently, the interests of marginalized groups (e.g., poverty reduction) will only be advanced when doing so does not threaten the status quo of social orders (e.g., by generating profits for wealthy investors). No tax scholar has specifically investigated interest convergence in the context of place-based tax incentives, which have unique features intended to split benefits between wealthy and low-income groups. The legal incidence of place-based tax incentives falls to the businesses and investors who claim them, but low-income stakeholders may also benefit from the incentives. For example, high-income

156. Layser & Greenlee, *supra* note 102, at 53.

157. *Id.*

158. *See generally* Patience A. Crowder, *Interest Convergence as Transaction?*, 75 U. PITT. L. REV. 693 (2014).

159. *Id.* at 704–05.

160. Derrick A. Bell, Jr., Comment, Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

investors claim Low-Income Housing Tax Credits, but low-income tenants benefit from the tax-subsidized affordable housing.

These unique features of place-based tax incentives raise unexplored questions about whether and how interest convergence may apply to this setting. Namely, to what extent does interest convergence theory explain the existence, durability, and bipartisan support for place-based tax incentives? Research applying a critical legal frame to the study of place-based tax incentives could help further our understanding of how place-based tax incentives affect power structures and the control of resources.

III. IMPLICATIONS FOR TAX SCHOLARSHIP

This Essay has demonstrated that existing research on place-based tax incentives has prioritized traditional economic frameworks that have significant limitations for understanding the consequences of place-based tax incentives. It has also provided a survey of alternative scholarly frameworks that may be useful for studying and evaluating place-based tax incentives. These frameworks include economics frameworks designed to incorporate notions of distributive justice and equality, social science frameworks focused on neighborhood change and social networks, and critical legal frameworks that have not yet been applied to place-based tax incentives. This part considers the implications of the foregoing analysis for legal scholars.

A central theme in this Essay has been the importance of new perspectives. Legal analyses of place-based tax incentives will be strengthened as the scope of empirical studies expands beyond traditional economics frameworks. Rather than wait passively for such developments across the academy, legal scholars can actively push the research agenda by engaging with three groups. The first group includes non-legal scholars, who can be engaged through interdisciplinary scholarship. Collaborations with empiricists and non-tax legal theorists can help tax scholars explore questions that may otherwise lie beyond their skill set.

Second, the tax academy should seek to engage scholars from traditionally underrepresented groups who can generate new perspectives within the tax academy. This Essay has identified scholarly frameworks, such as stratification economics and critical tax theory, that were introduced to the academy by members of historically marginalized groups.[161] Professor Dorothy Brown has long noted that the underrepresentation of people of color within the tax academy may affect how questions are asked and which ideas are accepted and amplified.[162] Writing in 2005, Brown observed that, "White federal tax professors represent 84.8% of all tax professors, and professors of color teaching tax represent 10%."[163] Brown theorized that the lack of diversity in the academy created blind spots in the literature, noting that researchers had "ignore[d] key features of the [Earned Income Tax Credit (EITC)], such as the requirement that one has earned income and that the EITC does not increase for every child present in the household."[164] In addition, she argued that lack of diversity contributed to the field's hostility toward critical tax scholarship.[165] Notably, critical tax scholarship frequently draws heavily on storytelling and personal perspectives of the authors, in which the "author 'outs' their own identity."[166]

A key takeaway from Brown's research is that increased diversity brings with it a diversity of perspectives, affecting both the questions that are asked and the methods employed to answer them. Recent research suggests that historically marginalized groups are still underrepresented in the field of tax law. Professors Alice Abreu and Richard Greenstein have documented the notable lack of diversity within the tax bar.[167] According to their research, only 3–6 percent of tax section members identified as minorities.[168] It stands to reason that the lack of diversity in the tax bar would also affect the pipeline for tax researchers, with detrimental consequences for knowledge production. In recent years, there has been an increased interest among tax scholars in understanding structural inequality in taxation, including racial and economic inequality. Increased diversity in the tax academy

161. The field of "stratification economics" was introduced by William "Sandy" Darity. Kyle K. Moore, *Stratification Economics: A Moral Policy Approach for Addressing Persistent Group-Based Disparities*, ECON. POL'Y INST., June 15, 2022, at 6, https://files.epi.org/uploads/246404.pdf [https://perma.cc/4SKN-T9YT]. The first critical tax working group was created by Karen B. Brown, along with Mary Louise Fellows. Karen B. Brown et al., *The Past, Present, and Future of Critical Tax Theory: A Conversation*, 10 PITT. TAX REV. 59, 59 (2012).

162. Dorothy A. Brown, *The Tax Treatment of Children: Separate but Unequal*, 54 EMORY L.J. 755, 814 (2005).

163. *Id.* at 813.

164. *Id.* at 818.

165. *Id.* at 808–17.

166. Kemker, *supra* note 154, at 155.

167. Alice G. Abreu & Richard K. Greenstein, *Rebranding Tax/Increasing Diversity*, 96 DENV. L. REV. 1, 23 (2018).

168. *Id.* at 25.

would bring new perspectives that help answer questions that current scholars have not thought to ask.

The third includes members of the public who can be engaged as research subjects or through participatory scholarship, an emerging legal research method that gives voice to people directly affected by the laws. One reason why we know so little about the consequences of place-based tax incentives is that so few studies have endeavored to *ask* people how they have been impacted by tax-subsidized investment or what their communities needed. Qualitative research methods that include interviews with members of low-income communities would greatly enhance our understanding of the laws' impact on communities. In addition, law professor Rachel López has recently introduced the concept of "participatory law scholarship," whereby legal scholarship is "written in collaboration with authors who have no formal training in the law, but rather expertise in its function and disfunction through lived experience."[169] Methods like these would give voice to members of low-income communities affected by place-based tax incentives, helping shed light on their experiences.

CONCLUSION

Ellen Aprill was among the first tax scholars to write about place-based tax incentives, and her words of caution were, by many measures, prophetic. Aprill predicted that the incentives would fail to benefit low-income communities, and economists' research suggests that she was right. However, economic frameworks have significant limits for studying place-based tax incentives due to various data challenges that make quantitative studies difficult to interpret. For these reasons and others, this Essay has argued that researchers should look beyond traditional economic frameworks to gain a more complete understanding of the consequences of place-based tax incentives. It has provided a nonexclusive list of alternative frameworks that may be particularly fruitful, including welfare economics, stratification economics, urban planning and geography frameworks, and the new solidarity economics framework created by sociologists. In addition, alternative legal frameworks like critical tax may also provide a useful lens for analyzing place-based tax incentives.

169. Rachel López, *Participatory Law Scholarship*, 123 COLUM. L. REV. (forthcoming 2023) (manuscript at 3), https://papers.ssrn.com/abstract=4335644 [https://perma.cc/G72P-CM6C].

Alternative scholarly frameworks like these can help shed light on how place-based tax incentives change neighborhoods, how residents experience those changes, and how place-based tax incentives relate to structural inequality. They can enable us to ask new questions based in principles of equality and social power, and they invite new methodological approaches based in qualitative methods rarely used by traditional economists. Research applying these frameworks may uncover benefits that are not reflected in the traditional economic analyses, or it may reveal new harms. Either way, such research would expand our understanding of the consequences of place-based tax incentives, helping to chart a path forward.

The insights in this Essay have important implications for tax scholars who study place-based tax incentives, but they may also apply to tax expenditure research more broadly. Tax expenditures are inherently interdisciplinary, mixing elements of tax law with social policy. For this reason, it is likely that other tax expenditure research could similarly benefit from engagement with alternatives to traditional economic frameworks. To put these insights to action, this Essay has argued that tax scholars should seek opportunities to engage non-legal scholars who can serve as co-researchers, scholars from traditionally underrepresented groups who can bring new perspectives to important social issues, and members of the public who can be engaged as research subjects or through participatory scholarship, an emerging legal research method that gives voice to people directly affected by the laws.