

# RACE-BASED TAX WEAPONS

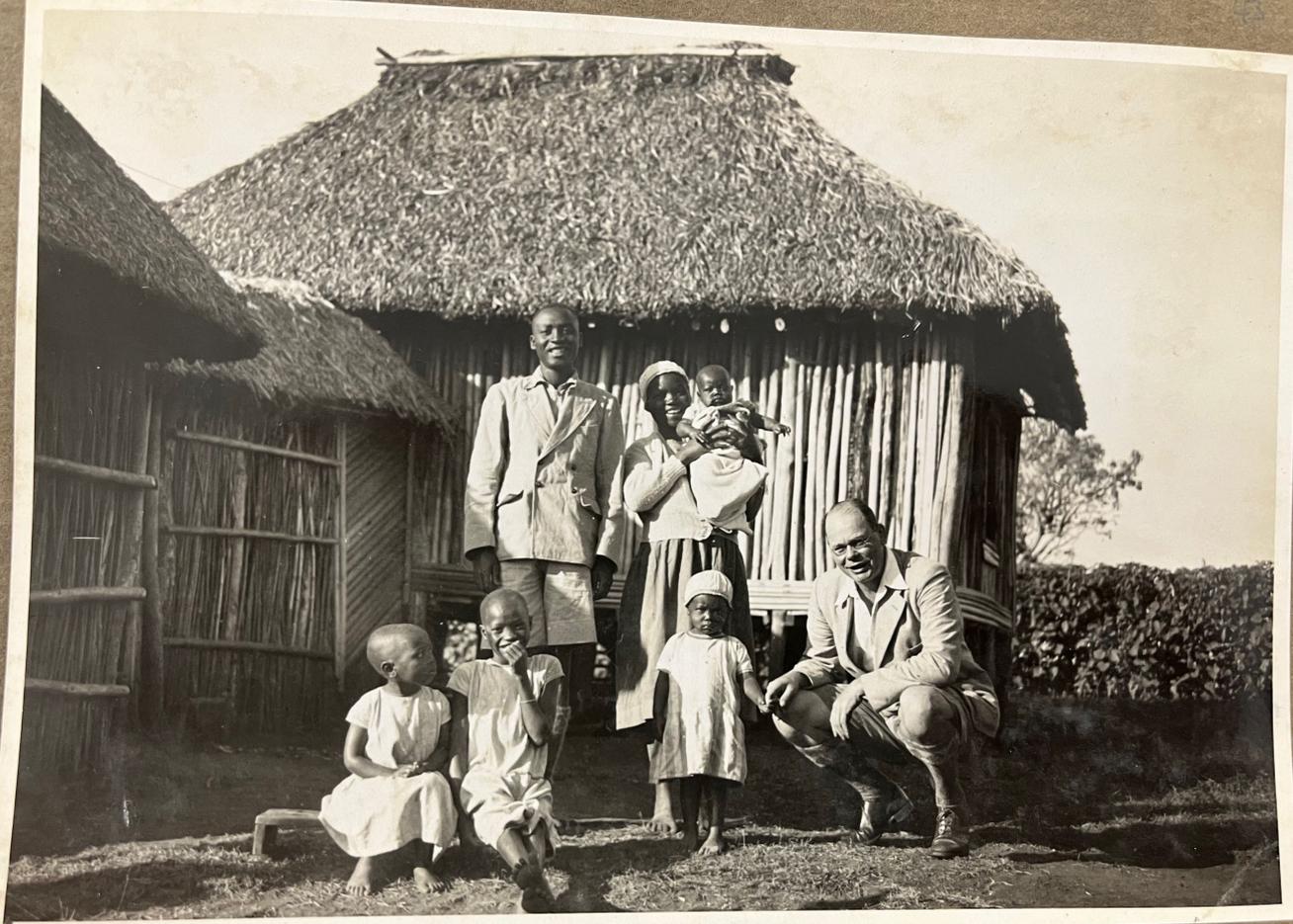
**Jeremy Bearer-Friend**

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American Tax Policy Institute Symposium  
Skadden, Arps, Slate, Meagher & Flom, LLP  
February 24, 2023

# What Is A Poll Tax?



The evangelist teacher at Mankambe.  
with wife and family. 1931

# Agenda for Today's Talk

- I. Why poll taxes? Why *revisit* poll taxes? Why compare them?
- II. Four 20<sup>th</sup> century poll taxes
- III. Tax weapon mechanics
  - A. Claim 1: Poll taxes as tax weapons
  - B. Claim 2: Targeting within universal statutory language
  - C. Claim 3: Targeting as more effective when universal
- IV. Disarming tax weapons

## **Why poll taxes?**

- Have a legacy of racial targeting
- Are nominally universal
- Are often used as a baseline for measuring other taxes

## **Why revisit?**

- Often studied by nontax scholars, but thin account within tax
- Often referred to as a hypothetical

## **Why comparative?**

- To make broader claims about poll taxes
- To make broader claims about tax policy

## **Why these four taxes?**

- 20th Century; can read original text; key variations

# A Poll Tax in Texas

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- 1902
- Men, aged 21 to 60, resident in Texas on January 1 of the year
- Exemptions for "the insane," the blind, disabled veterans
- Rate same across the state
- 66% revenue for school, rest to general fund
- Nonpayment prevents voting

## Art. 5.09. Liability to pay poll tax

There shall be levied and collected from every person between the ages of twenty-one and sixty years on the first day of January of each year and resident within this state on that date, an annual state poll tax of one dollar and fifty cents, one dollar of which shall be for the benefit of the free schools and fifty cents for general revenue purposes; provided, however, that the fifty-cent portion of the tax for general revenue purposes shall not be levied and collected from persons insane or blind, those who have lost a hand or foot, those permanently disabled, and disabled veterans of foreign wars where such disability is forty per cent or more, or from members of the active militia of this state who are exempt therefrom under the provisions of Articles 5840 and 5841 of the Revised Civil Statutes of Texas, 1925. On poll tax receipts issued to persons exempt from the fifty-cent portion of the tax, the tax collector shall make the notation, "Partial exemption, \_\_\_\_\_," stating the ground therefor, and such person shall not be issued or be required to obtain any other evidence of the exemption. The tax shall be paid at any time between the first day of October and the thirty-first day of January following, both dates inclusive, and shall be paid in the county in which the taxpayer resides at the time of payment; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. As amended Acts 1959, 56th Leg., p. 171, ch. 97, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 20.

Effective 90 days after May 24, 1963, date of adjournment.

Repeal of this article by Acts 1963, 58th Leg., p. 1103, ch. 430, § 4 was conditioned upon adoption of amendment to Const. art. 6, §§ 2, 4, proposed by S.J.R. No. 1, Acts 1963, 58th Leg., p. 1797, voted on at election held Nov. 9, 1963. The proposed constitutional amendment was rejected by the

voters and therefore Acts 1963, 58th Leg., p. 1103, ch. 430, § 4 did not become effective or operative as a law.

Enactment of an article 5.09a by Acts 1963, 58th Leg., p. 1103, ch. 430, § 2 was conditioned upon adoption of amendment to Const. art. 6, §§ 2, 4, proposed by S.J.R. No. 1, Acts 1963, 58th Leg., p. 1797, voted on at election held Nov. 9, 1963. The

# A Poll Tax in California

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- 1921
- “Alien” men, ages 21 to 59
- Exemptions for “paupers, idiots, and insane persons”
- Rate same across the state
- All revenue to county school fund
- Taxpayers could not vote

## CHAPTER IX.

### Poll Tax on Aliens.

A new chapter relating to poll taxes on aliens and consisting of sections 3839 to 3856 was approved May 25, 1921 (Stats. 1921, p. 613).

- § 3839. Alien poll tax.
- § 3840. Registration of aliens.
- § 3841. Registration by county clerk or registrar of voters. Temporary registration clerks. Compensation.
- § 3842. Receipt-books procured by treasurer.
- § 3843. Delivery of receipt-books to auditor.
- § 3844. Delivery of receipt-books to assessor.
- § 3845. Collection of poll tax by assessor. Field deputies.
- § 3846. Sale of personal property on failure to pay tax.
- § 3847. Garnishment of debts and wages.
- § 3848. Receipt only evidence of payment.
- § 3849. Notice to tax collector of persons who have failed to pay tax.
- § 3850. Monthly settlement by assessor.
- § 3851. Yearly settlement by assessor.
- § 3852. Correction of error.
- § 3853. Payment of proceeds to school fund.
- § 3854. Preparation and cost of forms.
- § 3855. Penalties.
- § 3856. Tax wrongfully collected.
- § 3857. Assessor to keep roll of persons liable to poll tax and of payments and delinquents. [Repealed.]
- § 3858. Duty of auditor when roll returned to him. [Repealed.]
- § 3859. Correction of poll tax roll. [Repealed.]
- § 3860. Unpaid poll tax a lien. [Repealed.]
- § 3861. Proceeds of poll tax paid to county treasurer for state school fund. [Repealed.]
- § 3862. Compensation for collecting poll tax. [Repealed.]

§ 3839. Alien poll tax. Every alien male inhabitant of this state over twenty-one years of age and under sixty years of age, except paupers, idiots and insane persons, must annually pay a poll tax of ten dollars, as hereinafter provided. In the year one thousand nine hundred twenty-one A. D. such poll tax shall become due and payable on the first day of August and shall become delinquent if not paid on or prior to the thirty-first day of December of said year, whereupon there shall be added thereto a penalty of fifty per cent for such delinquency. In all succeeding years such poll tax shall become due and payable on the first Monday in March and shall become delinquent if not paid on or prior to the thirty-first day of July next ensuing, whereupon there shall be added thereto a penalty of fifty per cent for such delinquency. In the event such poll tax and penalty be not paid on or prior to the thirty-first day of December of the year in which

# A Poll Tax in California

<p><b>ALIEN POLL TAX.</b> Assembly Constitutional Amendment 13 amending Section 12, Article XIII of Constitution. Requires the Legislature to provide for the levy of an annual poll tax, and the collection thereof by assessors, of</p>	<p>YES</p>	
<p><b>11</b> not less than four dollars on every alien male inhabitant of this state over twenty-one and under sixty years of age, except paupers, idiots and insane persons, such tax to be paid into county school fund in county where collected.</p>	<p>NO</p>	

# A Poll Tax in Kenya

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- 1934
- All men over 16 years of age who are “native of Africa not of European or Asiatic extraction, and includes Swahili”
- Rate varied by region within the colony
- Exemption for disability and by discretion of governor
- Taxpayers could not vote

## An Ordinance to Provide for the Levy of a Native Hut and Poll Tax.

*By Notice.*

Date of commencement

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Native Hut and Poll Tax Ordinance, 1934, and shall come into operation on such date as the Governor may by notice in the Gazette appoint. Short title and commencement

2. In this Ordinance, unless inconsistent with the context— Interpretation.

“adult male native” means a male native of the apparent age of sixteen years or over;

“collector” means a district officer and any person appointed by a district officer to assist in the collection of taxes leviable under this Ordinance;

“headman” includes a sub-headman, and a head of a section, clan, village or manyatta;

“hut” means a hut constructed according to native custom or any building used by a native as a dwelling other than those erected and maintained by his employer;

“native” means a native of Africa not of European or Asiatic extraction, and includes a Swahili;

“poll tax” means a payment equivalent to the tax by this Ordinance leviable on huts to be made in any year by an adult male native who has not in respect of such year been liable to hut tax;

“wife” means a wife by marriage or by native law and custom and includes a concubine.

DEMAND NOTICE for payment of personal community charge and personal community water charge for [insert names of region and district or name of islands area]

Financial year 19 -19

To [insert name and address of person to whom demand notice is issued]

From [insert name and address of levying authority or housing body issuing the demand notice]

Office use only

Date [insert date on which demand notice is issued]

# A Poll Tax in Scotland

- 1989
- All individuals over 18 for any day in which the sole or main residence of the individual is within the area of the charging authority
- Exemptions for visiting forces, severely mentally impaired, other categories...
- Taxpayers could vote

Notice is hereby given that you are liable to pay the following [insert "regional and district" or "islands" as appropriate] personal community charge(s) and, if applicable, the following [insert "regional" or "islands"] personal community water charge.

\* This demand notice is in respect of your joint and several liability under section 8(7) of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (as amended by the Local Government Finance Act 1988, Schedule 12, paragraph 18(7)) to pay the charge(s) which [insert name of levying authority or housing body issuing the demand notice] are unable to recover from [insert name and address of other person liable to pay the charge(s)] (see Notes).

\* Delete as appropriate.

AMOUNT PAYABLE				
	Personal Community Charge			
	Personal community charge determined for 19 -19	*Percentage for student (see Notes)	*Amount for student for 19 -19 (1st column × 2nd column)	Amount payable for the period from to (see Notes)
*Region/*Islands	£		£	£
*District	£		£	£
Less Rebate/community charge benefit (if any) (see Notes)				£
				£
				£
	Personal Community Water Charge			
	Personal community water charge determined for 19 -19	*Percentage for student (see Notes)	*Amount for student for 19 -19 (1st column × 2nd column)	
*Region/*Islands	†£	†	†£	£
*[Set out, and explain reasons for, adjustments (if any) (see Notes)]				£
				£
Total net amount payable				£

\*Delete as appropriate.

†Insert "not applicable" where there is no liability for the personal community water charge.



# Claim 1

## ***Poll taxes illustrate the use of tax policy as a weapon against political rivals***

- A “tax weapon” is the use of tax policy to harm a political adversary;
- The harm of a tax weapon is determined by the extent to which: (1) there is a coercive resource extraction that exceeds what otherwise similarly situated taxpayers would remit but for their membership in the constituency; or (2) there is a coercive resource extraction in a setting where the taxpaying constituency did not have political voice in shaping the fiscal system
- Not all taxes are inherently weapons, and not all tax weapons are exclusively weapons

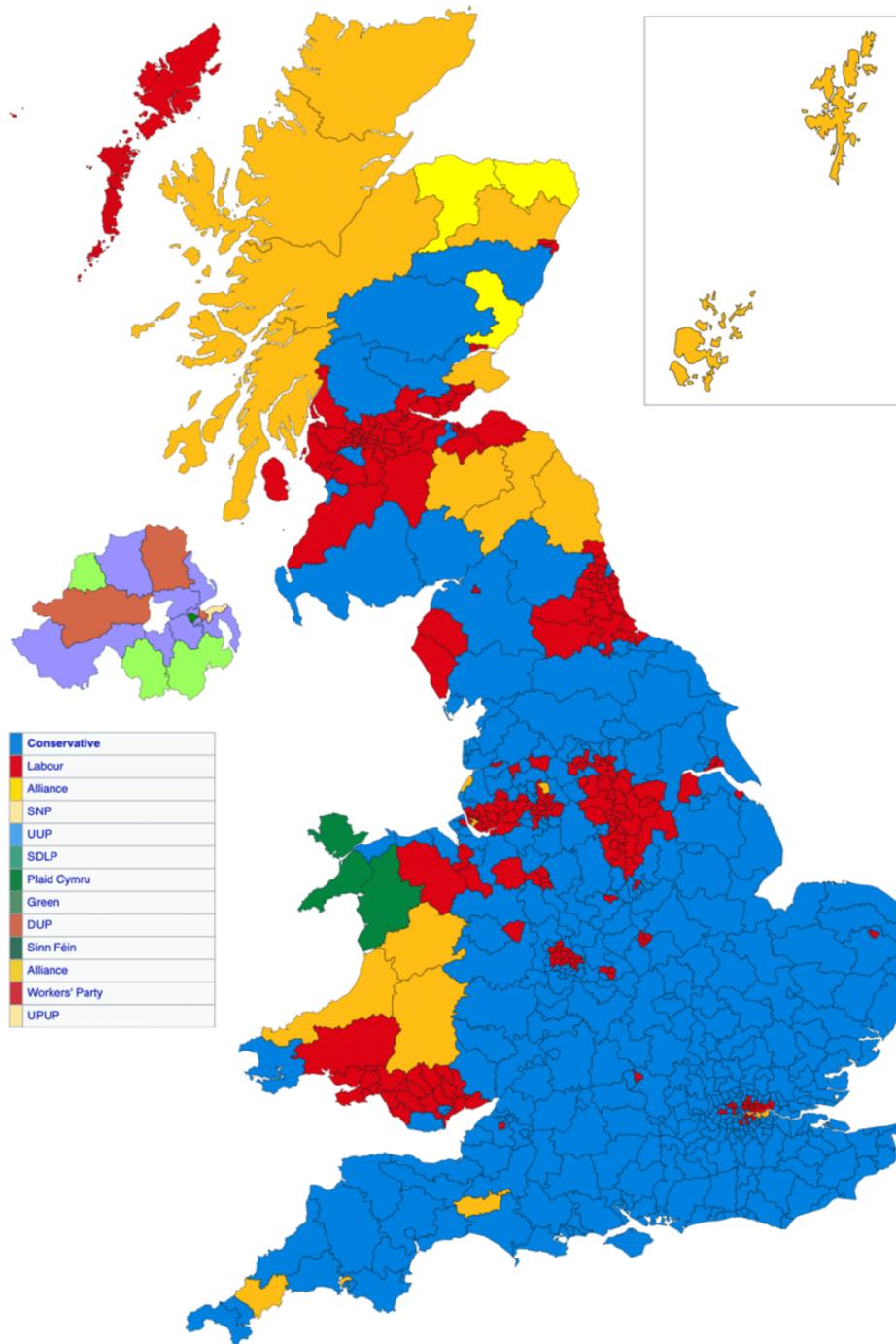
## Claim 2

### ***Poll taxes illustrate the use of nominally universalist tax policy to target political rivals***

- Reliance on racial proxies for determining tax liability
- Reliance on tax localization to target discriminately
- Strategic disfunction enabling targeted enforcement

Sorry GRANNY you'll have to go... we can't afford your POLL TAX!





GW

LAW

Figure 4: party support among low-income voters, 1987-2017

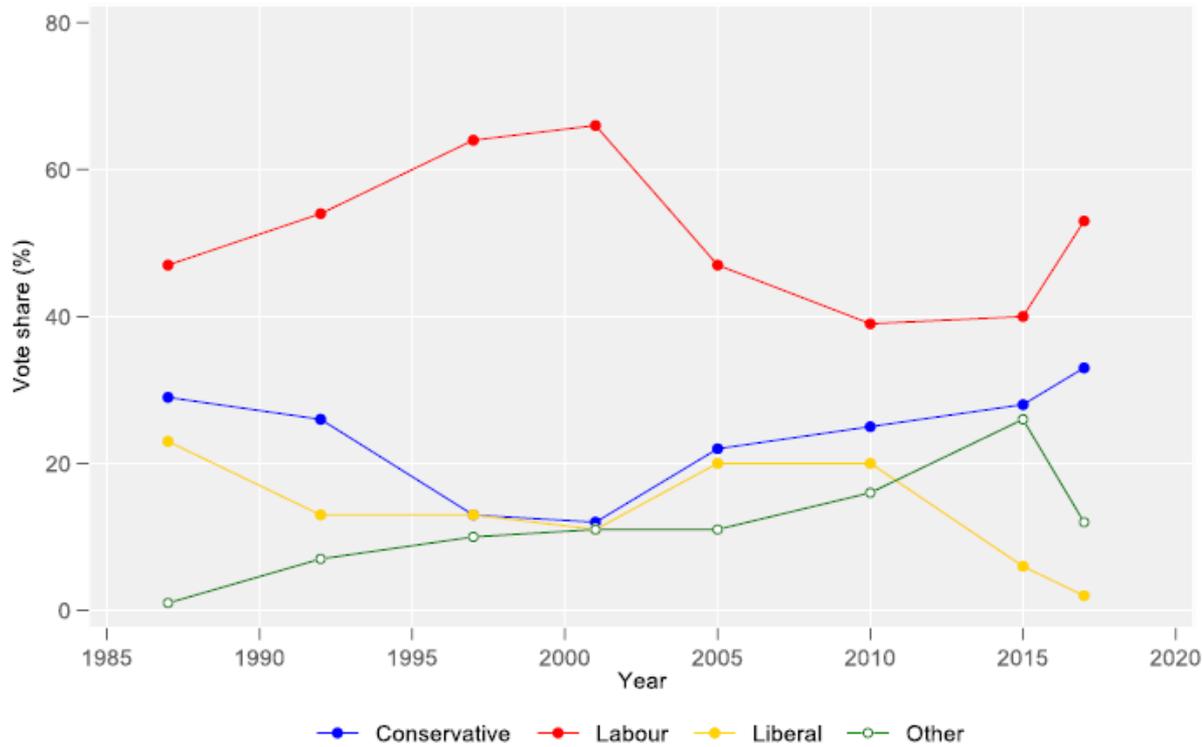
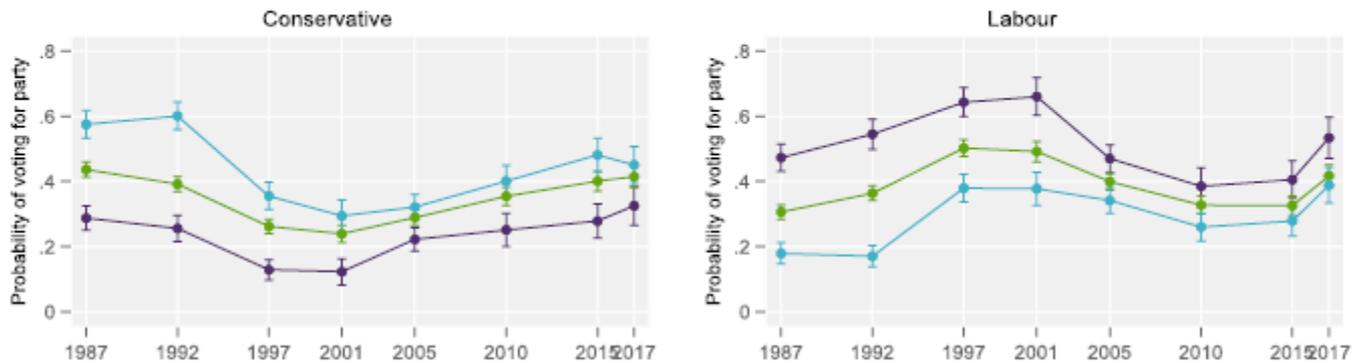


Figure 5: party support by income, 1987-2017



DISTRICT 11 SHETLAND  
WARD 17 WHITNESS WEISDALE AND TINGHALL COMMUNITY CHARGES REGISTER AS AT 01 OCTOBER 1989

STREET FLAT NUMBER SYMBOL NAME	STREET FLAT NUMBER SYMBOL NAME	STREET FLAT NUMBER SYMBOL NAME
WHITNESS (CONT.)	WHITNESS (CONT.)	WHITNESS (CONT.)
JARRAJEM JARRISON, JOHN J JARRISON, JOHNNINA J	STANEYKNOME HUGHSON, LINDA C	MORMADALE (CONT.)
KINVARRA GRAHAM, ANNE GRAHAM, DAVID J	STEBBINGRIND NICHOLSON, CHARLES R NICHOLSON, COLIN W NICHOLSON, JEAN E. M.	WHITNESS
KOLLASTER DONALD, EILEEN M DONALD, NEIL R	STEBBINGRIND ABERNETHY, ANDREW J ABERNETHY, BERYL P	THE DYKES
KYENDIGAEET HAIRE, JAMES D HAIRE, SUSAN C	STENAQUOY SMITH, MARGARET K SMITH, THEODORE G C	MORRISON, ANDREW B MORRISON, ANDREW B MORRISON, LISA L CANTHURNE, CHRISTOPHER C CANTHURNE, CHRISTOPHER C
LYNMOR STOUT, THOMAS M	STROM UTTERSON, ELIZABETH D. UTTERSON, KATHLEEN B. A UTTERSON, NORMAN J	WESTINGS
LYNNFIELD MORRISON, GRACE A MORRISON, PETER I	STROMVATN ROEBSTER, EMMA A N ROEBSTER, PETER	
MALLAND SMITH, HENRY	SUDRAGARTH GILBERTSON, NORMAN SHANLEY, JAMES	
MAREEL FRASER, COLIN J FRASER, VERINIA A	SUNNYSIDE GRAZNS, GRACE E GRAZNS, JAMES R	
METHODIST MANSE JONES, JUDITH A JONES, MALCOLM C	TAING SMITH, GRACE SMITH, INGRID J SMITH, JACQUELINE G SMITH, JOANN M SMITH, WELLIAM M SMITH, WILLIAM T	
MOUSANESS LEASK, JOHN M LEASK, MARY A R	THE ROCK TAIT, COLIN F TAIT, MANDY A	
MOUSANESS WILLIAMSON, CHRISTINA J WILLIAMSON, HARRY G	TIGH NA MARA HUGHSON, CATHERINE T HUGHSON, JOHN M L	
NOOSTGARTH QUINN, JAMES M SMITH, BARBARA A	VISTA HUNTER, LAURINA M TULLOCH, MARION	
NORCREST RAMSAY, FIONA A RAMSAY, ROBERT B.	WESTHAVEN EUNSON, ELEANOR M EUNSON, KENNETH G	
OLD KIRK BELSHAM, ENID	WESTHOUSE JAMIESON, J L LESLIE JAMIESON, JULIA	
OLLIGARTH ELLIS, THOMAS J	WINDY HEIGHTS LEASK, JOHN E LEASK, VALERIE	
OLLIGARTH COUPER, JAMES A S MCNEILL, IAN	MORMADALE	
PUND SMITH, AGNES H SMITH, ROBERT E	WHITNESS	
QUOYNNESS CLARK, AGNES B CLARK, JOHN A C	CHALET NO 1 SANDISON, D	
QUOYNNESS GARR, JEREMIAH M GUNN, JEAN M	CHALET NO 10 NICOLSON, RODERICK J	
ROADSIDE SMITH, MARY H	CHALET NO 2 MORRISON, SHEILA	
ROADSIDE STOUT, SHEILA R R STOUT, T. ALEXANDER STOUT, THOMAS M	CHALET NO 3 TULLOCH, ROBERT E	
ROCKLEA OPPERMANN, JORK	CHALET NO 4 CHITTY, STEPHEN A	
ROSEMOUNT HUNTER, BRIAN H	CHALET NO 5 MORRISON, LINDA	
RUGG SMITH, ROBERTHA C	CHALET NO 9 MCKAY, ALAN	
SCHOOL FLAT 1 EUNSON, ANNE H EUNSON, RONALD B	SHAELA MORT, AGNES A MORT, ROBERT E	
SCHOOL FLAT 3 SHETLAND ISLANDS COUNCIL	TANNOCH BRAE KELLY, BRIAN P KELLY, CHRISTINE E	
SOLBREK JAMIESON, JOHN T H JAMIESON, MARIE E		
STAANKHALS GAFFNEY, ANITA V GAFFNEY, T. FRANK		
STANEYKNOME HUGHSON, DAVID T A		

DISTRICT 11 SHETLAND  
WARD 18 HILLSAY & SKERRIES COMMUNITY CHARGES REGISTER AS AT 01 OCTOBER 1989

STREET FLAT NUMBER SYMBOL NAME	STREET FLAT NUMBER SYMBOL NAME	STREET FLAT NUMBER SYMBOL NAME
HILLSAY (CONT.)	HILLSAY (CONT.)	HILLSAY (CONT.)
HAMBAK	HAMBAK	HAMBAK
SYMBISTER	SYMBISTER	SYMBISTER
MOUAT, DOROTHY M MOUAT, HALDANE	HAMVADE IRVINE, ROBERT W	HAMVADE IRVINE, ROBERT W
ANDERSON, JOHN I	HAYFIELD SHEARER, CATHERINE B SHEARER, THOMAS J	11 BROUGH SANDISON, MARGARET S
ANDERSON, IAN ANDERSON, MARGARET A.	HILLSIDE SIMPSON, MARY C	12 BROUGH HUTCHISON, ANDREW E HUTCHISON, CHRISTINE A HUTCHISON, SHONA H. HUTCHISON, WILLIAM R
WILLIAMSON, JANET WILLIAMSON, THOMAS	HILLSLEA COAN, IAN J	5 BROUGH ARTHUR, GRACE H ARTHUR, WILLIAM
	HILLVIEW STEWART, JOHN W STEWART, WILLIAM W	6 BROUGH SUTHERLAND, BRYAN H. SUTHERLAND, KATHLEEN WILLIAMSON, ALICE WILLIAMSON, ANDREA A WILLIAMSON, BETH WILLIAMSON, ROBERT
	BELLSBRAE HUTCHISON, EVELYN J. HUTCHISON, GILBERT H.	7 BROUGH ARTHUR, LORNA J ARTHUR, THOMAS R
	SYMBISTER KAY, CATHERINE	8 BROUGH HUTCHISON, ROBERT T HUTCHISON, ROBIINA
	WILLIAMSON, ARTHUR S WILLIAMSON, JOHN A WILLIAMSON, GEORGE A. WILLIAMSON, MARGARET H	9 BROUGH WILLIAMSON, HENRY
	LEA HENDERSON, PETER J	
	LEA RIG HUTCHISON, ANDREW J HUTCHISON, DONNA HUTCHISON, ELIZABETH M HUTCHISON, NEIL A	
	LEABURN ANDERSON, DAVID	
	LIBRA IRVINE, ELIZABETH A IRVINE, ROBERT J	
	MIDFIELD IRVINE, JEMIMA J IRVINE, SAMUEL G	
	MYRTLE COTTAGE POLESON, NORMAN D SANDISON, RHODA G. A.	
	NEEDERLEA TULLOCH, S. JANE K TULLOCH, JAMES J	
	NETHERLEA SHEARER, JONES A SHEARER, LAURENCE J SHEARER, MARTIN E	
	NETTOWN HUTCHISON, CHARLES HUTCHISON, JOHN M	
	NORHOOD SIMPSON, JOHN S SIMPSON, NAN S	
	NURSE'S HOUSE SHETLAND HEALTH BOARD	
	ROSEMOUNT HUTCHISON, CATHERINE H HUTCHISON, WILLIAM J	
	SCHOOLHOUSE WILLIAMSON, ALEXANDER WILLIAMSON, JUNE M WILLIAMSON, WILLIAMINA B	
	SKAWTANG CULLEN, GEORGE H	
	SOUND VIEW WILLIAMSON, BETTY WILLIAMSON, GEORGE	
	STACKERHVI WILLIAMSON, ANDREW J WILLIAMSON, ANNALENE M WILLIAMSON, CATHERINE A	
	TRAVERA STEWART, ARTHUR G STEWART, BARBARA J	
	VENESTA ANDERSON, SAMUEL G	
	1 BROUGH TULLOCH, ALLAN J TULLOCH, EILEEN A TULLOCH, J. FRANCIS	
	10 BROUGH GILBERTSON, PETER J	

ORIGINAL

TO BE USED FROM FEB. 1, 1960 TO JAN. 31, 1961

# POLL TAX Receipt

COUNTY OF HARRIS

No. 350205

STATE OF TEXAS

DATE JAN 31 1960

RECEIVED OF

JOHN J HERRERA

the sum of \$1.50 in payment of poll tax for year 1959, the said tax payer being duly sworn by me says that:

1722 HAWTHORNE

His  Her  HOME address is

ATTORNEY

He  She  is age . . .

YEARS
49
47
35

Whose occupation is

and has resided in Texas . . .

White  Colored  Native born

in Harris County . . . . .

Naturalized citizen of the U.S.

PRECINCT NUMBER 60

in City of Houston

Birthplace LA State of

(SEAL)

Party Affiliation

All of which I Certify,

1959

*Carl Smith*



By *Ida Mae DeFoe*

ASSESSOR AND COLLECTOR OF TAXES, HARRIS COUNTY, TEXAS

DEPUTY

## Claim 3

***Poll taxes illustrate how nominally universalist tax policy can be more effective at racial targeting than facially neutral tax laws***

- Easier to deny is targeting in public messaging
- More resilient against legal challenge



Office of Tax Analysis  
Technical Paper 11  
January 2023

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Estimation of Race and Ethnicity by Re-  
Weighting Tax Data

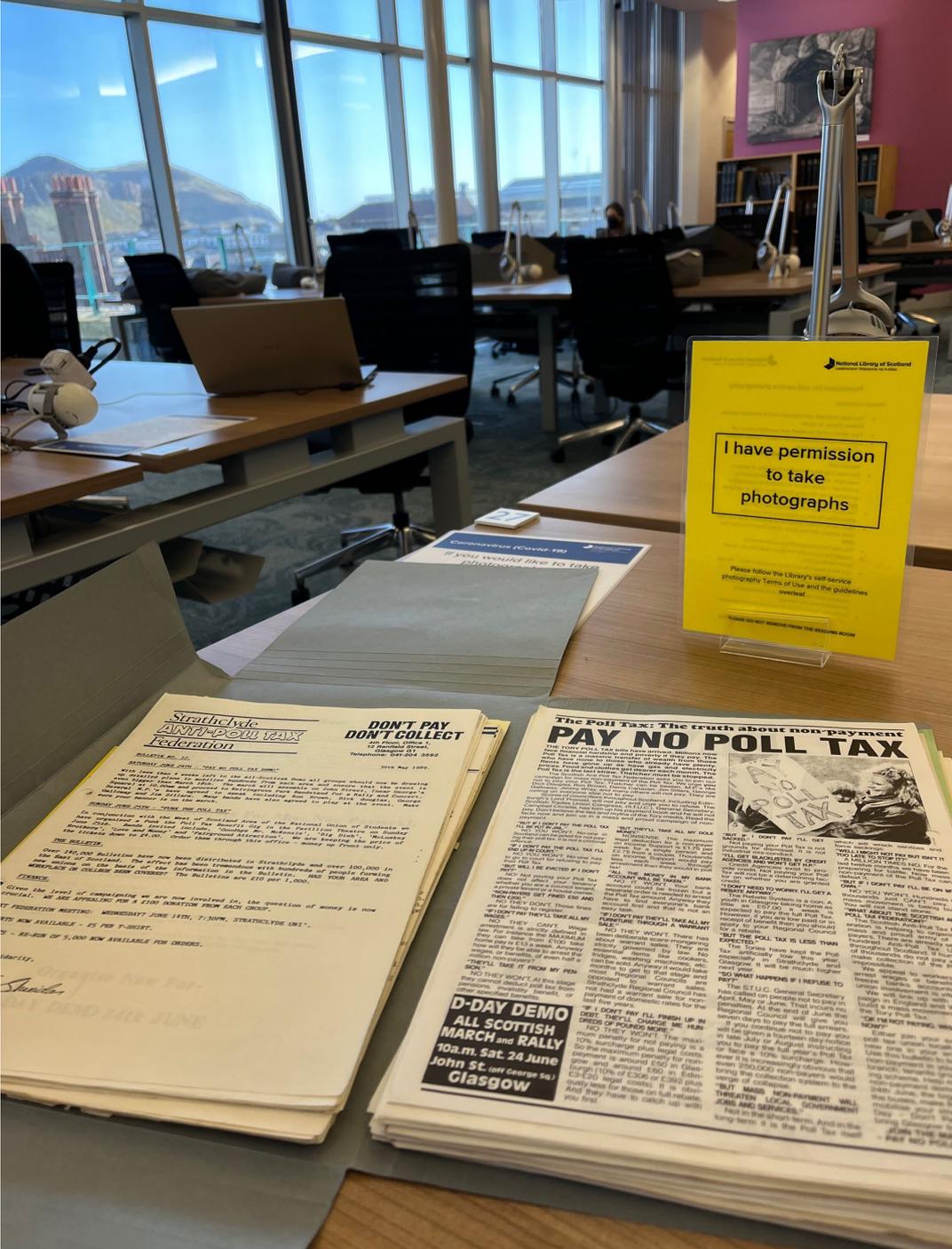
# RACE-BASED TAX WEAPONS

**Jeremy Bearer-Friend**

Associate Professor of Law

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February 24, 2023



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**CONSTITUTION CHANGE: YES**  
 If you would like to take part in the referendum...

**Strathclyde ANTI-POLL TAX Federation**

**DON'T PAY DON'T COLLECT**  
 Glasgow 21 Telephone: 041 884 3392

**THE BULLETIN**  
 Over 100,000 Bulletins have now been distributed in Strathclyde and over 100,000 in the West of Scotland. The "Poll Tax" has been withdrawn with hundreds of people forming MARCHES or COLLECTOR WALKS EVERYWHERE. The Bulletin is £10 per 1,000.

**The Poll Tax: The truth about non-payment PAY NO POLL TAX**

**D-DAY DEMO ALL SCOTTISH MARCH AND RALLY**  
 10a.m. Sat. 24 June  
 John St. (off George St)  
 Glasgow

**CONSTITUTION CHANGE: YES**  
 If you would like to take part in the referendum...

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