

WHO PAYS THE PRICE OF CIVILIZATION?

Eric A. San Juan*

Abstract

At the current juncture of fiscal uncertainty and pending tax reform, this Article addresses tax compliance, combining principles of tax law with methodologies of social science. A narrative on the evolution of the rule of law introduces social science methodologies for studying the operation of law in historical and cultural context. Then the Article sets forth an overview of Federal individual income taxation. As the core data, the Article presents a survey on U.S. taxpayer compliance attitudes gathered by a research team of which the author was a member. To complement the U.S. data, the Article discusses field studies from other countries reported in the social science literature. In turn, the Article discusses the implications of the social science research to the effect that compliance with the rule of law, represented here by a modern fiscal apparatus, may wax and wane through history as national bureaucracy siphons resources off their local origins. Contrary to the theoretical story of legal evolution, actual cases haven't culminated in an ideal civilized state. Finally, the Article makes suggestions for future research on tax law compliance. The Article concludes that rational-legal authority may have less effect on taxpayer compliance than primordial personal motivations.

* AB Harv. 1987, JD *ibid.* 1991, MA Chicago 1996; Adjunct Professor of Law, Georgetown University. Chair, Tax Policy Committee, American Bar Association. Member, Core Idea Group (executive committee) of Meridian-180.org, the multi-lingual platform of the Clarke Program on East Asian Law & Culture, Cornell University. Without prejudice, the author wishes to thank Thomas R. Beers, MBA (Harv.), MSc (MIT), for comments on the manuscript.

I. INTRODUCTION TO TAX COMPLIANCE AS AN ASPECT OF THE RULE OF LAW	47
II. THEORIES OF LEGAL EVOLUTION	47
III. SOCIAL SCIENCE METHODOLOGIES FOR EMPIRICAL STUDY OF LAW & TAX COMPLIANCE	52
IV. OVERVIEW OF FEDERAL INCOME TAXATION	54
V. U.S. SURVEY RESEARCH ON SMALL BUSINESS TAX COMPLIANCE	55
A. Pertinent Results of Survey on Taxpayer Compliance	56
B. Details of Survey Data on Attitudes Toward Government.....	57
C. Further Analysis of Socio-Geographic Networks in the Community Survey	59
VI. FIELD STUDIES OF LEGAL & TAX COMPLIANCE IN THE SOCIAL SCIENCE LITERATURE	60
VII. IMPLICATIONS OF TAX COMPLIANCE RESEARCH FOR THE RULE OF LAW	61
VIII. TOPICS FOR FUTURE RESEARCH ON TAX LAW COMPLIANCE	64
IX. CONCLUSION ON THE SOCIO-HISTORICAL CONTEXT OF TAX COMPLIANCE	65

I. INTRODUCTION TO TAX COMPLIANCE AS AN ASPECT OF THE RULE OF LAW

Current events appear to challenge preconceptions of civilization. On opposite sides of the ocean, heads of state are associated with “alternative facts,” alleged fratricide, or death squads.¹ Central to the received notions shaken by these developments would be the rule of law. Can rational legality survive apparently aberrant administrations? To address this question, this Article introduces the evolutionary context from which the rule of law arose. To balance inaccuracies of generalization, this Article proceeds with case studies from both America and overseas.

As a particular field of compliance (or noncompliance) with the rule of law, the Article focuses on tax law. As U.S. Justice Oliver Wendell Holmes, Jr. opined in a landmark trans-Pacific case, “Taxes are what we pay for civilized society.”² The reasons why people do or don’t comply with taxation may offer insight into legal compliance generally. Thus, a case study of tax may have implications for popular adherence to the rule of law.

Part II proceeds from a heuristic narrative of legal evolution to introduce, in Part III, various social science methodologies for studying the operation of law in historical and cultural context. Part IV sets forth an overview of federal individual income taxation, before Part V discusses survey data on U.S. taxpayer compliance attitudes gathered by a research team of which this writer was a member.³ Part VI complements the U.S. data with field studies from other countries reported in the social science literature. Part VII discusses the implications of the research to the effect that compliance with the rule of law, represented here by modern fiscal apparatus, may wax and wane through history as national bureaucracy siphons resources off their local origins, rather than following a teleology toward any ideal civilized state. Part VIII makes suggestions for future research on tax law compliance. Part IX concludes that rational-legal authority may have less effect on taxpayer compliance than primordial personal motivations.

II. THEORIES OF LEGAL EVOLUTION

This Part describes the evolution of the rule of law, as narrated by successive schools of thought in jurisprudence, to set the stage for empirical study of law, especially tax law, employing social science methodologies. Historically and metaphorically, civilization arose from a primordial substrate of tribal culture and religion.

According to a well-known anthropologist, the

¹ See Nicholas Fandos, *White House Pushes “Alternative Facts,”* N.Y. TIMES, Jan. 22, 2017, at A15; Aidan Foster-Carter, *Kim Jong-nam was assassinated. But was it on his brother’s orders?*, THE GUARDIAN, Feb. 15, 2017, <https://www.theguardian.com/commentisfree/2017/feb/15/kim-jong-nam-assassinated-kim-jong-un-north-korea> [<https://perma.cc/9GSJ-C6FP>]; *Duterte paid us to conduct Davao Death Squad killings, claims cop*, ABS-CBN NEWS, Feb. 20, 2017, <http://news.abs-cbn.com/news/02/20/17/duterte-paid-us-to-conduct-davao-death-squad-killings-claims-cop> [<https://perma.cc/PD7R-3ZFF>].

² *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

³ The views in this Article are solely those of this writer. The data were released in a Government report as cited, but not disseminated in the academic literature. See Tom Beers, Eric LoPresti & Eric San Juan, *Factors Influencing Voluntary Compliance by Sole Proprietors: Preliminary Survey Results*, Paper given at the 2013 IRS-Tax Policy Center Research Conference (June 20, 2013), available at <https://www.irs.gov/pub/irs-soi/13rescon.pdf> [<https://perma.cc/67L8-JRHH>].

tension between primordial sentiments and civil politics ... of place, tongue, blood, looks, and way-of-life ... is rooted in the nonrational foundations of personality ... [I]nvolvement of this unreflective sense of collective selfhood in the steadily broadening political process of the national state is certain ... [W]hat the new states—or their leaders—must somehow contrive to do as far as primordial attachments are concerned is not, as they have so often tried to do, wish them out of existence by belittling them or even denying their reality, but domesticate them. They must reconcile them with the unfolding civil order by divesting them of their legitimizing force with respect to governmental authority, by neutralizing the apparatus of the state in relationship to them, and by channeling discontent arising out of their dislocation into properly political rather than parapolitical forms of expression.⁴

While the anthropologist refers specifically to “new states,” also known as developing countries, these observations could apply to any polity where people are motivated by their identity, as recent ballots in industrial economies have shown.⁵

Given the anthropological foundations of civilization, how did the rule of law evolve? Starting with technologically simple societies, village order would be a matter of social mores and personal charisma, rather than law per se. People might band together around the persuasive authority of a Big Man, but only would a more complex tribe ascribe hereditary leadership to a chief.⁶ Ultimately, civilization would give rise to kings who would become law-givers not only to clans related by kinship but to all subjects in a kingdom.⁷ Thus, a territorial state that monopolizes legitimate violence becomes the jurisdiction of the law of the land.⁸

Since the coronation of the first kings, governments have extracted tribute from their subjects to fund public works, infrastructure, and wars, ultimately in the form of taxes.⁹ The incidence of taxation may reveal non-trivial particularities of each civilization.¹⁰

Types of authority would advance from the patrimonial absolutism of the feudal autocrat to the impersonal office of the state bureaucrat.¹¹ Through the Cold War, ideologically opposed states would become mirror images of bureaucratic apparatus on either side of the Pacific Ocean.¹² In a country with a particular history of race relations, President Obama’s strategic role may have been that of the colorless technocrat.

⁴ Clifford Geertz, *The Integrative Revolution: Primordial Sentiments and Politics in the New States*, in *OLD SOCIETIES & NEW STATES: THE QUEST FOR MODERNITY IN ASIA & AFRICA* 105, 128 (Clifford Geertz ed., 1963).

⁵ See, e.g., Richard V. Reeves, *Brexit: British Identity Politics, Immigration and David Cameron’s Undoing*, BROOKINGS INST. (June 24, 2016), available at <https://www.brookings.edu/opinions/brexit-british-identity-politics-immigration-and-david-camerons-undoing/> [<https://perma.cc/U3DA-FJ4R>].

⁶ See Marshall D. Sahlins, *Rich Man, Poor Man, Big Man, Chief: Political Types in Melanesia & Polynesia*, 5 *COMP. STUD. IN SOC’Y & HIST.* 285 (1963).

⁷ See generally MORTON H. FRIED, *EVOLUTION OF POLITICAL SOCIETY: AN ESSAY IN POLITICAL ANTHROPOLOGY* (1967).

⁸ See Max Weber, *Politics as a Vocation*, in *MAX WEBER: ESSAYS IN SOCIOLOGY* 77 (H.H. Gerth & C. Wright Mills eds., 1970).

⁹ See generally AARON WILDAVSKY & CAROLYN WEBBER, *A HISTORY OF TAXATION & EXPENDITURE IN THE WESTERN WORLD* (1986).

¹⁰ See, e.g., SALLY FALK MOORE, *POWER & PROPERTY IN INCA PERU* (1958).

¹¹ See Max Weber, *The Three Pure Types of Authority*, in *ECONOMY & SOCIETY* 215 (Guenther Roth & Claus Wittich eds., 2013).

¹² See C. R. MITCHELL, *THE STRUCTURE OF INTERNATIONAL CONFLICT* 113 (1989).

At the same time, charismatic personalities may continue to attract followers even in a formal nation-state. In the range of historical anthropology, there is even the case of “a theatre state in which the kings and princes were the impresarios, the priests the directors, and the peasants the supporting cast, stage crew, and audience.... Power served pomp, not pomp power.”¹³ It would not be unprecedented for the state to enact authority, even if the performance is administratively ineffective.

Meanwhile, social mores and personal charisma would not wither away but persist as local reflectors of official law. Local custom and the rule of law may coincide. For example, the scriptural commandment that “you shall not kill” finds itself inscribed in the criminalization of homicide.¹⁴ Dissonance would arise when the rule of law diverges from local custom, which in turn informs personal psychology. Such dissonance may inform tax compliance or “social noncompliance,” i.e. transgression of law while conforming to custom, as discussed below. Later, a case study will describe a “blending” of traditional and modern practices to achieve practical legal results.¹⁵

The rule of law as such was celebrated in the eighteenth-century European Enlightenment. Classic liberal writers anticipated law with a social contract entered out of mutual consideration.¹⁶ People volunteered to observe laws to lift themselves out of the state of nature, an “original position.”¹⁷ Paradoxically, law was natural because it was a logical consequence of social life. Under liberal legality, natural law was to embody social mores.

In the Enlightenment imagination, the “noble savage” populates the state of nature logically antecedent to the social contract which forms the basis of the Western republic.¹⁸ As clans of such people, tribes animate the anthropology of this state.¹⁹

Through variants on Whig history, the social contract became more than metaphorical. What had been heuristic became dogmatic. Consider the “Contract with America” of former Speaker Newt Gingrich (R-Ga.) or latter-day commentators who have suggested that the social contract is an obligation between each citizen and the government.²⁰ They may do so by a convoluted rhetoric as follows.

Some tax administrators subscribe to a version of the social contract whereby governments render services to taxpayers in consideration for revenue collected from them. Literally, this would constitute more of a procurement contract than a social one. According to the Organisation for Economic Co-operation and Development (OECD), the multi-lateral, non-governmental organization of developed economies:

Bargaining with citizens over tax makes governments more accountable, as taxpayers mobilise to resist or negotiate tax demands, monitor how tax is collected

¹³ CLIFFORD GEERTZ, *NEGARA: THE THEATRE STATE IN NINETEENTH-CENTURY BALI* 13 (1980).

¹⁴ *Exodus* 20:13.

¹⁵ See Jane Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 L. & SOC'Y REV. 193 (1994).

¹⁶ See generally JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* (1762).

¹⁷ Cf. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

¹⁸ Cf. ROBERT A. WILLIAMS JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT* (1990).

¹⁹ Cf. Renato Rosaldo, *Utter Savages of Scientific Value*, in *POLITICS & HISTORY IN BAND SOCIETIES* (Eleanor Leacock & Richard Lee eds., 1982).

²⁰ On “Gingrich’s Contract for America and its attacks on the IRS,” see W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A SHORT HISTORY* 214 (2004).

and used, and insist on having a greater say in public policy in exchange for compliance with tax demands.²¹

Notwithstanding the merits of accountability, then the logical consequence is that the citizen as taxpayer would be entitled to reduce his or her tax liability in consideration of every policy shortcoming. In a small political sense, accountable (electoral) democracy has become both precept and telos.

Applied to tax compliance, a similar logic of the pre-social man, or so-called noble savage, leads to “everyday libertarianism,” the premise “that people earn their pretax incomes without any assistance from the government, with the result that there is a strong presumption that it is unfair for the government to tax away any of that pretax income.”²² As discussed below, nowadays noncompliance may be principled, if obtuse.

On the contrary, the eighteenth-century text clarified that “each contracting party” was an “individual personality.”²³ In any case, the government was not a party to the social contract: “a contract between the people and the rulers it sets over itself” would be “absurd and contradictory.”²⁴ Rather, “the institution of government is not a contract, but a law.”²⁵ In other words, the social contract was not a procurement contract but a metaphor for the reciprocal agreement by which individual people united in political society.

Nineteenth-century disseminators of social science viewed law as a mechanism of social ideology. For instance, law could direct restitution in case of injustice;²⁶ legal concepts could rationalize transactions in the economy;²⁷ or regulatory rules could prescribe ideal workings of government.²⁸ While early social science drew on a varied tradition of political economy, generally this approach would emphasize the artifactual quality of law. In particular, positive law promulgated as statutes and regulations may be more artificial than the natural path of the common law, so conceived.

By the early twentieth century, North American legal scholars would react against a natural law style, gravitating toward an empiricist approach that borrowed from social science. Legal realism that emphasized experience of compliance coincided with empirical (imperial) discoveries of nomothetic order outside of nations then recognized as civilized.²⁹

Later twentieth-century U.S. jurisprudence would follow with schools of thought focusing on the institutional process or economic consequences of law-making rather than the internal logic that had been the stuff of traditional legal philosophy.³⁰ In the late twentieth century, a revisiting of the internal logic of law would take a sharply critical

²¹ The Organisation for Economic Co-operation and Development, *Taxation, State Building & Aid* 1 (Dec. 2009), available at <https://www.oecd.org/ctp/taxation-state-building-and-aid-factsheet.pdf> [<https://perma.cc/S34Y-5D29>].

²² Lawrence Zelenak, *Tearing out the Income Tax by the (Grass)Roots*, 15 FLA. TAX REV. 649, 657 (2014).

²³ ROUSSEAU, *supra* note 17, Book I, at 6.

²⁴ *Id.* Book III, at 16.

²⁵ *Id.* Book III, at 18.

²⁶ See ÉMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (George Simpson trans., Macmillan 1933) (1893).

²⁷ See KARL MARX, *GRUNDRISSE: FOUNDATIONS OF THE CRITIQUE OF POLITICAL ECONOMY* (Martin Nicolaus trans., Penguin 1973) (1939).

²⁸ WEBER, *supra* note 12, ch. 8.

²⁹ See KARL N. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS* (1960).

³⁰ See HENRY M. HART & ALBERT SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING & APPLICATION OF LAW* (1958); RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (1986).

turn.³¹ In sum, legal theory has grown out of intersections with social science, which may inform an otherwise artifactual legal logic.

By comparison, an Eastern philosophy of law proceeded from a broader nomothetic framework. In particular, a legal scholar explains Chinese social order:

The Chinese neither saw public, positive law as the defining focus of social order nor divided law into distinct categories of civil and criminal. Rather, traditional Chinese thought arranged the various instruments through which the state might be administered and social harmony maintained into a hierarchy ranging downward in desirability from heavenly reason (*tianli*), the way (*tao*), morality (*de*), ritual propriety (*li*), custom (*xixu*), community compacts (*xiang yue*), and family rules (*jia cheng*) to the formal written law of the state. Public, positive law was meant to buttress, rather than supersede, the more desirable means of guiding society and was to be resorted to only when these other means failed to elicit appropriate behavior.³²

This rendition of Chinese law dispenses with public, positive law, or sanctions. Consequently, statutes, “formal written law,” are understood best in terms of larger principles of social, and even heavenly, order. Reversing the Western premise, here, custom is conceptually superior to law.

North Atlantic political scientists have contradistinguished the Western rule of law from this Asian Pacific legality by reference to a religiously infused natural law that rose above any man.³³ Nevertheless, the extent to which the Confucian heavenly order would fall short of liberal transcendence is unclear.³⁴

Within Anglo-American legal history, commentators have shown how trial or appellate courts alternately bolstered and transformed the social concept of race or nationality.³⁵ Nineteenth-century courts depicted Chinese immigrants as black, while in 1894 the American legal scholar John Henry Wigmore, who had served as a professor at Keio University in Tokyo, agreed that Chinese were not white, although Japanese were.³⁶ Perceived diversity amongst the taxpayer population may affect compliance behavior. Below, a juxtaposition of case studies will pose the question of comparability between American, Asian, and European tax compliance. Presumably, some common principles of political science should emerge.

In short, successive theorists of liberal legality hypothesized the evolution of the rule of law. Their reflections on civilization arose in contrast to an imagined natural state populated by noble savages who still haunt nations today. Consequently, the concept of legality developed in conjunction with social sciences that produced empirical methodologies.

³¹ See ROBERTO M. UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (2015).

³² WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* 10 (1995).

³³ FRANCIS FUKUYAMA, *THE ORIGINS OF POLITICAL ORDER: FROM PREHUMAN TIMES TO THE FRENCH REVOLUTION* 249 (2011).

³⁴ See William P. Alford, *The Inscrutable Occidental? Implications of Roberto Unger's Uses and Abuses of the Chinese Past*, 64 *TEX. L. REV.* 915 (1986).

³⁵ See, e.g., IAN F. HANEY-LOPEZ, *WHITE BY LAW* (1996).

³⁶ *Id.* at 51, 61.

III. SOCIAL SCIENCE METHODOLOGIES FOR EMPIRICAL STUDY OF LAW & TAX COMPLIANCE

Of course, the foregoing account of legal evolution is more heuristic than chronological. Currently, various communities inside civilized states may experience law in more or less official uniform. Still, legal anthropology can help. Historically, writers may have inferred the evolution of civilization from observations of isolated tribes. By now, however,

It was no longer possible to study dominated non-European ‘tribes’ in imagined isolation from the historical forces which had not only formed them, but which had transformed them into politically independent national entities resentful at the prospect of inclusion on library shelves devoted to ‘vanishing savages.’³⁷

Instead, legal anthropology can discern various experiences of law across societies. Societies without states no longer serve to falsify or contrast to liberal legality. Nevertheless, anthropology can still show how the rule of law is never realized, that is, functions as an ideology, even in modern societies, or those engulfed by global capitalism. A case study set forth below may exemplify this proposition.

Consequently, the theory of legal evolution, from natural status to social contract, leads to an empirical methodology to study the rule of law.³⁸ If the rule of law emerged as a rational result of individual negotiation, then the question why obey the law logically follows whenever the cost outweighs the benefit. This could be a classic question of *Homo economicus*.

Even assuming the neo-classical terms of public finance in which tax policy may be couched, internal inconsistencies appear. Under existing federal penalty amounts, a cost-benefit analysis would not effectuate deterrence.³⁹ Nonetheless, the Internal Revenue Service (IRS) enjoys approximately 83 percent compliance, estimating a 17 percent tax gap.⁴⁰ Consequently, there is an explanatory appeal to psychology and other social sciences of decision-making, now taking center stage as behavioral economics.⁴¹ If compliance reflects values other than gross maximization, presumably enforcement strategies can build on those values.⁴²

Major contributions of behavioral economics to research on tax compliance include the following. One hope is that trust in government makes people accept the obligation to pay tax, even when it is possible to evade.⁴³ Other researchers look at taxation in terms of reciprocal relationships of giving and receiving.⁴⁴ Still others have elaborated

³⁷ GEORGE W. STOCKING JR., *RACE, CULTURE & EVOLUTION: ESSAYS IN THE HISTORY OF ANTHROPOLOGY* xii (1982).

³⁸ See HENRY MAINE, *ANCIENT LAW* ch. 5 (1861).

³⁹ Eric A. Posner, *Law and Social Norms: The Case of Tax Compliance*, 86 VA. L. REV. 1781, 1782 (2000).

⁴⁰ See INTERNAL REVENUE SERV., *Tax Gap Estimates for TY 2008-10* (Apr. 2016), available at <https://www.irs.gov/pub/irs-soi/p1415.pdf> [<https://perma.cc/4CYJ-3NT9>].

⁴¹ See DANIEL KAHNEMAN, *THINKING: FAST & SLOW* (2011).

⁴² Cf. Michael S. Barr, Sendhil Mullainathan & Eldar Shafir, *Behaviorally Informed Financial Services Regulation*, NEW AM. FOUND. (Oct. 2008), available at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1028&context=other> [<https://perma.cc/TGY3-WWPS>].

⁴³ See VALERIE BRAITHWAITE, *DEFIANCE IN TAXATION AND GOVERNANCE: RESISTING AND DISMISSING AUTHORITY IN A DEMOCRACY* (2009); Valerie Braithwaite, *Responsive Regulation and Taxation*, 29 J. LAW & POL’Y 3 (2007).

⁴⁴ See ERICH KIRCHLER, *THE ECONOMIC PSYCHOLOGY OF TAX BEHAVIOUR* (2007).

on the concept of “tax morale.”⁴⁵ The survey presented below pursues questions from the tax morale and related behavioral literature.

A related psychological inquiry focuses on reasons for compliance with criminal sanctions and the law as a whole. In general, legal psychologists report that procedural fairness is a predominant reason why people obey the law.⁴⁶ Along with behavioral economics and legal psychology, another social science methodology that may illuminate tax compliance is fiscal sociology, the study of revenue collection and budgetary appropriation to reveal the priorities of society in peace and war, as will be mentioned below.⁴⁷

Early twenty-first-century anthropologists studying economics extended ethnographic fieldwork from traditional farmers’ markets to modern financial institutions.⁴⁸ The study of tax compliance may learn from both legal and business anthropology. In this vein, the second half of this Article will present a case study from the anthropological literature concerning a modern tax collection agency.⁴⁹

Legal anthropologists have advanced the concept of the semi-autonomous social form (SASF) which may be emblematic of their methodology.⁵⁰ The core of the concept is that the socio-geographic community that operationalizes state laws comprises the same people who embody and enforce customs. The implication is that law is different from custom only by degree. A weakness of the SASF would be not only the distinguishability of legal rules, but also that a mere showing of coincidence between state law and customary context is insufficient to explain the validity of law. On the other hand, a theory of the commitments one makes by engaging in nomothetic discourse would go beyond coincidence.⁵¹

Perhaps the SASF means that everything about social coherence is implied in law, or that rules are a creature of culture. Still, the observation that legal rules are imposed on a community does not explain how they got there, or why people took them there.

These rules are not just facts devoid of moral significance to those who make, apply, and follow them, and give praise or blame according to them. To disregard this rule-guided aspect of existence would be to set aside the subjective meaning of behavior. One must therefore determine the relationship between the scientific search for factual regularities in society and the use of rules in everyday life.⁵²

An analytic device, like the SASF, which emphasizes the coincidence of factual regularities in society and the use of rules in everyday life, would beg the question. The characteristic of legal anthropology, then, would be an emphasis on the empirical or extrinsic function of rules rather than the subjective meaning of behavior. The strengths of legal

⁴⁵ See, e.g., James Alm & Benno Torgler, *Culture Differences & Tax Morale in the U.S. & Europe*, 27 J. ECON. PSYCH. 224 (2006); Benno Torgler, *The Importance of Faith: Tax Morale & Religiosity*, 61 J. ECON. BEHAV. & ORG. 81 (2006).

⁴⁶ See TOM TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

⁴⁷ See ISAAC WILLIAM MARTIN, *RICH PEOPLE’S MOVEMENTS: GRASSROOTS CAMPAIGNS TO UNTAX THE ONE PERCENT* (2013).

⁴⁸ See, e.g., ANNE LISE RILES, *COLLATERAL KNOWLEDGE: LEGAL REASONING IN THE GLOBAL FINANCIAL MARKETS* (2011); KAREN HO, *LIQUIDATED: AN ETHNOGRAPHY OF WALL STREET* (2009).

⁴⁹ See Lotta Björklund Larsen, *Moulding Knowledge into a Legal Complex: Para-ethnography at the Swedish Tax Agency*, 2 J. BUS. ANTHRO. 209 (2013).

⁵⁰ See SALLY FALK MOORE, *Law and social change: the semi-autonomous social field as an appropriate subject of study*, in *LAW AS PROCESS: AN ANTHROPOLOGICAL APPROACH* 54 (1978).

⁵¹ Cf. JURGEN HABERMAS, *BETWEEN FACTS & NORMS* 68 (1996).

⁵² ROBERTO M. UNGER, *LAW IN MODERN SOCIETY* 44 (1976).

anthropology would be the description of “native” custom by reference to juridical concepts, or of the interaction of tribal custom with state government; or in the vein of law & society studies or criminology, the verification of the empirical effect of statutes—in short, micro-politics. To the extent that legal anthropology precisely describes native sanctions, it would not apply to the state as a whole, or to the elaboration of political ideals on a large scale.

Observations of law and society long have oscillated between rules and the organic mores over which they may be superimposed. In the case of compliance with tax law, it may not be hard to envision micro-economic examples in which positive prescriptions deviate from cultural norms. For example, the federal gift tax law favorably allows use of carry-over basis in determining gain upon disposition of property originally received as a gift.⁵³ Ascertaining original cost-basis would require the recipient to inquire of the donor. Such an inquiry, however, would transgress a cultural norm of not “looking a gift horse in the mouth” as if to question a donor’s generosity.⁵⁴ If hypotheses like these about deviation from cultural norms may be accurate (so-called social noncompliance), reduced compliance with tax rules should be empirically verifiable.

Despite the limits of any particular methodology, any instantiation of a system, rationale, or law is inevitably human. Thus, the irreducible experience of tax compliance can ultimately be reflected empirically through sociological and anthropological methods employed below.

IV. OVERVIEW OF FEDERAL INCOME TAXATION

The second half of this Article begins within an overview of federal income taxation of individuals, covering the diversity of the taxpayer population, and sets forth national data from a survey of that population. For comparison, the Article reviews field studies of taxpayer behavior in certain countries. Finally, the Article discusses the survey data in light of the theories of legal compliance introduced above.

In 1913, the U.S. Congress imposed the individual income tax on high-income taxpayers. At that time, the predecessor to IRS was a hands-on collector of various excise and other taxes. Consistent with the incidence of taxation to fund wars, the income tax raised revenue for the U.S. entry into World War I. In 1942, Congress enacted the “greatest tax bill in American history” largely to fund the U.S. effort in World War II, expanding the income tax to the middle class.⁵⁵ Consequently, the Treasury made an historic effort to popularize the income tax, famously staging Walt Disney’s cartoon character Donald Duck as a mascot of the public fisc.⁵⁶ The wartime transition from “class tax to mass tax” occasioned a “marriage of convenience that survived.”⁵⁷ In the second half of the last century, IRS deployed information processing machines that in ensuing years made the agency increasingly “faceless.” In recent decades, a diverse low-income population has become a significant customer base, especially due to refundable credits. As a result, IRS

⁵³ See I.R.C. § 1015.

⁵⁴ On reciprocity, see MARCEL MAUSS, *THE GIFT: FORMS & FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES* (1922).

⁵⁵ RANDOLPH PAUL, *TAXATION IN THE UNITED STATES* 294 (1954).

⁵⁶ See Carolyn Jones, *Class Tax to Mass Tax: The Role of Propaganda in the Expansion of the Income Tax During World War II*, 37 *BUFF. L. REV.* 685 (1989).

⁵⁷ U.S. DEP’T OF THE TREASURY, *IRS HISTORICAL FACT BOOK: A CHRONOLOGY, 1646–1992* 135 (1993).

started as a revenue bureau but now administers social expenditures as well, through highly automated systems.⁵⁸

As long as there has been an income tax, opponents have organized against it politically and ideologically. According to recent scholarship in fiscal sociology, a tax club movement convened hundreds of protest meetings in small towns throughout the South and Midwest to demand repeal of the high rates that paid for World War I. At the beginning, tax protest took place in particular geographic communities. In response to the New Deal, grassroots campaigns arose in several states calling for a Constitutional amendment to limit the top rate of income tax. Responding to tax increases that paid for World War II and the Korean War, thousands petitioned for a Constitutional tax ceiling. Federal tax increases in 1993 sparked a campaign to repeal taxes on the wealthy, i.e. estates and capital gain, arising in the context of the Contract with America mentioned earlier. As discussed above, the evolution of any state—embodied by its fiscal apparatus—is an ongoing history, rather than a teleology.⁵⁹

Nowadays, individual taxpayers are a significant subset of the U.S. population. Individual taxpayers filed 141.2 million returns in 2010, when there were 308.7 million people in the United States according to the Census that year.⁶⁰ With a tax return for about every two people, demographic trends are likely to influence the behavior of the taxpayer population, which may be characterized by ethnicity, economics, gender, age, and geography. Thus, taxpayer behavior is subject to the inherent dynamics of society theorized above.

Each demographic group may be more or less acculturated into the nation-state. In sum, the history of U.S. income tax has been the superimposition of the federal system on a diverse mass of taxpayers. Amidst diversity, achieving uniformity—the hallmark of the bureaucratic state—is the challenge of compliance here.

V. U.S. SURVEY RESEARCH ON SMALL BUSINESS TAX COMPLIANCE

Assuming that the probability of punishment is insufficient to deter noncompliance as discussed above, why do taxpayers voluntarily comply? This Part sets forth national survey data and results on U.S. taxpayer compliance attitudes. The survey inquired into themes from the tax morale and related behavioral literature as summarized below.

Taxpayers in a compliant group may exert social pressure on other members to comply (e.g. shaming), and those who cheat may feel guilty when they break the norm that has become reciprocal. Those who trust the government and feel that the tax laws and procedures are fair and justly enforced may be more likely to feel a moral obligation to comply, even if the outcome of those procedures is unfavorable.⁶¹

To address the foregoing hypothetical issues, a research team of which this writer was a member conducted a statistical survey of tax compliance as follows. The research team surveyed sole proprietors (i.e. those filing Form 1040, U.S. Individual Income Tax

⁵⁸ See Eric San Juan, *From Tax Collector to Fiscal Panopticon: Social History of a Century of Federal Income Taxation*, 15 RUTGERS J. OF L. & PUB. POL'Y (forthcoming).

⁵⁹ On this paragraph, see Martin, *supra* note 48.

⁶⁰ IRS Pub. 55-B, *Data Book*, at 4 tbl.2 (2010), available at <https://www.irs.gov/pub/irs-soi/10databk.pdf> [<https://perma.cc/6VML-UT4V>]; U.S. BUREAU OF THE CENSUS, *Population Distribution & Change: 2000 to 2010* (Mar. 2011), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf> [<https://perma.cc/3CZ4-EDMN>].

⁶¹ See Beers, LoPresti & San Juan, *supra* note 4, at 66 tbl.2.

Return, Schedule C) to better understand the factors that may affect their income tax reporting compliance. Identifying how to improve compliance among this segment is particularly important because sole proprietor income is generally not subject to information reporting, is difficult for the IRS to detect, and represents the largest portion of the tax gap, i.e. tax not timely and voluntarily paid.⁶²

Because actual reporting compliance is difficult to measure, the research team used IRS tax compliance estimates to identify sole proprietors most likely to have high or low levels of reporting compliance. The research team surveyed a stratified random national sample of each group (the “National Survey”). The sample was statistically representative of the U.S. population of Schedule C filers. Accordingly, questions on attitudes could reflect the demographic diversity of the population. Ultimately, the National Survey provides an unprecedented link between the views of the Schedule C filers and their compliance level (at least according to IRS scores).⁶³

Because compliance could be affected by local conditions and attitudes, the research team identified geographic communities where a disproportionate number of taxpayers were in the high- or low-compliance group. The research team surveyed taxpayers at random in certain communities (the “Community Survey”) using the same survey questions. The questions went to the effect, if any, on reporting compliance of various factors, such as deterrence, tax morale, compliance norms, trust in the government and the tax administration process, complexity and the convenience of complying, and the influence of preparers.⁶⁴

A. Pertinent Results of Survey on Taxpayer Compliance

Pertinent results of the National Survey included the following. Taxpayers in the high-compliance group expressed more trust in government and the IRS. Taxpayers in the low-compliance group were more likely to participate in local organizations. They were also significantly more likely to report that other participants view the law and the IRS negatively. Both groups professed a “moral” obligation to report income accurately. The responses do not show “asocial” behavior, i.e. that economic deterrence motivates compliance decisions. Those in the low-compliance group were less likely to agree that noncompliance goes unpunished.⁶⁵

Pertinent results of the Community Survey included the following: There were more low-compliance communities than high compliance communities because taxpayers characterized by high compliance were not geographically concentrated. Respondents from the low-compliance communities were suspicious of the tax system and its fairness, whereas those from the high-compliance communities viewed government positively. Among business classifications, the biggest cluster in low-compliance communities was under “professional, scientific, or technical services”; in high-compliance communities, the “other” service industry (e.g. repair & maintenance, personal & laundry, and private household services). The low-compliance community respondents reported more participation in civic institutions than their high-compliance counterparts. The high-

⁶² This paragraph summarizes *id.* at 66.

⁶³ This paragraph summarizes *id.* at 67.

⁶⁴ This paragraph summarizes *id.* at 68.

⁶⁵ This paragraph summarizes *id.* at 70–80.

compliance community respondents were motivated by morals and, if only due to compliant predisposition, deterrence.⁶⁶

In sum, all groups and communities agreed that it is morally wrong to cheat and that they would feel embarrassed if others learned they were not reporting all of their income. Surprisingly, those in the low-compliance group were also more likely than those in the high-compliance group to believe that the IRS detects and penalizes noncompliance. Thus, other factors appeared to overshadow these positive moral, social, and economic pressures for those in the low-compliance group and communities.⁶⁷

Specifically, the results of both surveys associate distrust of the national government and the IRS with the low-compliance groups and communities. For example, respondents from the low-compliance group were more likely to report that the government is too big and wastes tax dollars, while tax laws and IRS are unfair.⁶⁸

The Community Survey revealed that those with low compliance levels clustered in geographic communities, while those with high compliance levels were more dispersed. Perhaps those with low levels of compliance are more likely to associate with each other.⁶⁹

Those in the low-compliance group and communities were more likely to participate in local organizations and to report that other members of those organizations believe the law and the IRS are unfair. The closer association with local organizations by members of the low-compliance group and communities could have undermined their connection with the nation and the national tax system as a whole. The negative views they attributed to other members appeared to mirror their own views. In other words, they affiliated with others who reinforced noncompliance norms locally, feeling a closer connection here than nationally.⁷⁰

B. Details of Survey Data on Attitudes Toward Government

Salient survey results of particular relevance to the socio-legal theories discussed in the first half of this Article are detailed below. To recapitulate, taxpayers in the high-compliance communities were more geographically dispersed than those in low-compliance communities, who were more likely to participate in local organizations. Low-compliance communities clustered in professional occupations; high-compliance communities, the “other” service industry. Nationally, the high-compliance group was more likely to trust government, while the low-compliance group was more inclined to participate in local organizations. The following encapsulates the detailed data:

Respondents from the high-compliance communities most frequently clustered in ‘other services’ (22 percent vs. 11 percent of low-compliance respondents), whereas those from the low-compliance communities most frequently clustered in ‘professional, scientific, or technical services’ (22 vs. 11 percent from the high-compliance communities). Those from the high-compliance communities were more than twice as likely to speak a language other than English at home (22 vs. 9 percent from the low-compliance communities). The Community Survey may have identified a unique type of ‘social’ compliance related to a particular socio-

⁶⁶ This paragraph summarizes *id.* at 83–86.

⁶⁷ This paragraph summarizes *id.* at 82.

⁶⁸ *See id.* at 81.

⁶⁹ *See id.* at 89.

⁷⁰ *See id.*

economic experience, that of a linguistic minority employed in the service industry who expressed trust in government.⁷¹

Taxpayers in the [National Survey] high-compliance group were more likely to trust the government than those in the low-compliance group, potentially suggesting that negative views about the government promote symbolic noncompliance ... For example, those in the high-compliance group were less likely to agree that the government is involved in areas best left to the private sector (59 percent of the high-compliance group agreed vs. 66 percent of the low-compliance group), more likely to support higher taxes in exchange for improved government services (37 vs. 30 percent), and more likely to believe that the federal government spends tax dollars wisely (80 percent of the low-compliance group disagreed vs. 70 percent of the high-compliance group). These results are generally consistent with research suggesting that trust in government has a positive effect on compliance.⁷²

Taxpayers in the [National Survey] high-compliance group were less likely than those in the low-compliance group to belong to a local business organization (11 vs. 16 percent), a local trade, labor, or other occupational organization (15 vs. 18 percent), or religious congregation (61 vs. 71 percent). To the extent association with these groups transmits local compliance norms, those norms appear to have a negative effect on compliance, rather than a positive one.⁷³

Among [National Survey] respondents who belong to local organizations, those in the low-compliance group were more likely to report that they usually participate. This was true for various organizations identified by the survey, including local business organizations (50 percent from the low-compliance group usually participate vs. 30 percent from the high-compliance group), local trade, labor, or occupational organizations (40 vs. 24 percent), and local civic, community, or fraternal organizations (67 vs. 47 percent). Thus, active participation in these groups appears to be negatively correlated with tax compliance, possibly promoting social noncompliance ... Perhaps those with a closer connection to local groups feel a weaker connection to the federal government, and a weaker obligation to comply with federal tax laws. They may also choose to associate with those who hold similarly negative views about the federal government and tax compliance, which reinforced their own views.⁷⁴

In short, trust in government versus local ties were better indicators of compliance behavior than deterrence, morality, or norms (inasmuch as noncompliance may be social as well as asocial). The apparent contradiction between received norms and (non)compliance level may reflect the inherent tension between commitment to the nation-state versus the local community.

⁷¹ *Id.* at 85 (footnote omitted).

⁷² *Id.* at 70 (footnotes omitted).

⁷³ *Id.* at 73.

⁷⁴ *Id.* at 74.

C. Further Analysis of Socio-Geographic Networks in the Community Survey

Given the results above, the research team conducted further analysis of social networks that the Community Survey had indicated were geographically based as follows:

The community survey ... mapped low-compliance sites as they occurred not randomly but heavily clustered in regions where geographers have classified cultures of the South and West. At the same time, responses to a set of questions in the community survey tended to link low compliance levels with social affiliations or networks associated especially with volunteering, voting, and congregations (i.e. houses of worship of any denomination). Consequently, the question arises whether low-compliance sites are located in regions where those social networks are prevalent.

To answer that question, further analysis focuses on one state [of the U.S.] containing low-compliance sites among other sites not so classified. In particular, the state is composed of 23 counties, six of which contained low-compliance sites. Physical geography divides the counties into areas labeled Valley, Hills, and Shore (East & West). According to geographers, the Valley and East Shore fall into cultures of the North and South, respectively. The Hills and adjacent West Shore run between those two areas, hosting a regional Metropolitan corridor classified by geographers as Megalopolis. The low-compliance sites were located in Megalopolis.

Given this geographic layout, this analysis employs a fairly transparent methodology as follows ... [The research team compiled] statistics reported by the U.S. Census and other published sources on relevant demographics, urban concentration, congregational membership, charities, and voter turn-out. County-level data are averaged into the four physical areas, with the two middle areas again averaged for Megalopolis, which has the highest urban concentration ...

The demographic and related statistics for the geographic areas identified above [in the relevant time-frame] reveal the following. Megalopolis has the highest percentages of population involved in congregations, living in families, and turning out to vote (depending on which election). Within Megalopolis, the six counties containing low-compliance sites had high rates of urban concentration and ethnic diversity. On the other hand, the Valley has the most charities per ten thousand population. The Valley has the lowest rates of voter turnout and population living in families. Overall, the Valley's population is the oldest, least ethnically diverse, and most masculine (i.e. has the highest male to female ratio) of the three average areas. Finally, the East Shore population was the youngest and least religious, but most rural.

In sum, Megalopolis had some expected characteristics related to social networks. However, another area turned out to be more charitable. Accordingly, [the analysis] ... may be inconclusive at this point while additional research could

uncover further, more granular data. If further research could confirm that the least compliant area is the densest in social networks, an implication might be that those networks could be a medium for messages about tax compliance.

Potentially, future research could extend to field studies at a granular level ... [F]uture research alternatively could survey relevant social science literature for attributes statistically linked to the prevalence or density of social networks.

While this [Community] survey elicited direct responses from taxpayers, the ‘social’ nature of norms should be observable even beyond these responses, potentially by observing characteristics of the high- and low-compliance communities or regions. Future research could build upon the survey results by investigating social noncompliance and compliance in sites where they occur. Further investigation would relate to tax administration vis-à-vis regional traditions.⁷⁵

Thus, there were some indications that tax noncompliance travels along social networks. Since the foregoing geographic profile based on the Community Survey above suggested in part that granular field research could prove fruitful, literature reviewed below reveals a couple of examples of field studies of legal and tax compliance.

VI. FIELD STUDIES OF LEGAL & TAX COMPLIANCE IN THE SOCIAL SCIENCE LITERATURE

This Part sets forth relevant case studies from the social science literature from the perspectives of both taxpayers and tax collectors. While the literature contains various studies, these ones ethnographically highlight tax behavior. The first concerns informal financial practices of small business in Taiwan; the second, bureaucratic practices in the Swedish Tax Agency. While North American taxpayers, East Asian entrepreneurs, and Northern European bureaucrats may be incomparable as informants, these case studies exemplify the kind of information available from field research that could complement the nationwide survey data above.

Field research can illuminate tax compliance as exemplified by a study of small business in a particular insular country. Through interviews of informants in that country, this study looks at the informal financing techniques used by small businesses to clarify the interaction between the formal Republic of China (RoC) legal system and the network structure of Taiwanese society. According to the study, the traditional structure of rural Chinese society has survived on Taiwan in a modified form, which selectively blends elements of the modern legal system, networks of relationships, and the “enforcement services” by organized crime.⁷⁶

⁷⁵ Tom Beers, Mike Nestor & Eric San Juan, *Small Business Compliance: Further Analysis of Influential Factors*, IRS Pub. 2104-B, Taxpayer Advocate Serv. Annual Report to Congress, at 43–45 (2013) (footnotes omitted), available at <http://taxpayeradvocate.irs.gov/2013-Annual-Report/downloads/Volume-2-TAS-Research-And-Related-Studies.pdf> [<https://perma.cc/J9L2-YRD9>]. On measures of civic engagement, see, e.g., ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK* (1994).

⁷⁶ See Winn, *supra* note 15.

When small businesses have been unable to rely on the formal legal system to support relational practices, alternatives as simple as post-dated checks (PDCs), have served a similar function. For example, when the RoC enacted criminal penalties on bounced checks, creditors lending without benefit of written contracts but “interacting through networks of relationships assumed they could verify the other party’s good faith by simply asking for a PDC to document any extension of credit.”⁷⁷ Thus, informal business relationships leveraged legal consequences, although not as intended by the legislators.

In this study, the RoC represents the modernity adopted in the twentieth century from the West, especially German civil law. Traditional Chinese culture here represents a rural survival, rather than Confucian philosophy of the legal theories discussed in the first half of this Article. Nevertheless, what the study glosses as a practical grounding in “relational practices,” rather than niceties like written contracts, may not be inconsistent with the historical observation that, as a nomothetic concept, customary morality took precedence over positive law throughout Chinese civilization.

On the other side of the tax system, ethnographic research can illuminate compliance from the perspective of the tax collector as well as the taxpayer. A study of the Swedish Tax Agency exemplifies this. The Swedish study proceeds from the proposition that the foundation of a functioning welfare state is a tax system that is widely accepted and considered to be fair and legitimate. This proposition resonates with various theoretical bases for compliance discussed above, from the social contract to procedural fairness.

How and by what means a tax collection agency interprets the laws affect taxpayers’ willingness to pay. Through participant observation in government offices and related sites, this study addresses the various practices, knowledge and forms of data in the Swedish Tax Agency against a background of the Agency’s ongoing endeavor for legitimacy.

This study shows how the Agency’s methods entail not only regulations, research, and statistical data, but also stories, hunches, and examples from the media—including the instant ethnographer—and from everyday life. For example, the ethnographer witnessed the Agency’s process of deciding to execute questionnaire research through telephone interviews, not unlike the survey presented above.⁷⁸

Both case studies illustrate the instantiation of national systems in quotidian locales. Field research on this micro-scale could complement survey research of the national dimension described above.

VII. IMPLICATIONS OF TAX COMPLIANCE RESEARCH FOR THE RULE OF LAW

After review of the tax morale literature at outset of the survey set forth above, the research team formed a hypothesis that, in general, tax law compliance would reflect conformity to social norms related to trust in government. In part, the survey results reversed those expectations. Those taxpayers who conformed to social norms, to the extent measured by participation in local organizations and geographic clustering, turned out to be relatively noncompliant. Additionally, low-compliance communities tended to

⁷⁷ *Id.* at 219.

⁷⁸ *See* Larsen, *supra* note 49, at 218.

comprise professionals rather than “other” service personnel. While those who trusted government were more compliant, they were relatively dispersed. In fact, they may have been a small minority. These odd results may be reconciled as follows.

As discussed in the first half of this Article, legal evolution has been a history of national cooptation of local power. States, kingdoms, and chiefdoms emerged above the primordial substrate of tribal culture, which never withers away. The survey results above may be consistent with that political science model of tension between national power and local resources. In the case of so-called tax protest, litigants have attempted to avoid federal tax by assertion of citizenship in one of the fifty states rather than the U.S.⁷⁹ Likewise, recent scholarship in political sociology confirms that Americans are willing to pay taxes for local services like roads, schools, and healthcare, but not nationwide expenses such as science or foreign aid.⁸⁰ The national government, represented by IRS, may hold sway over a small, relatively disenfranchised, population.

These observations are consistent with legal commentary that underscores the role of legislators, at least in the U.S. Congress, who may encourage low compliance in pursuit of regressive tax policy. In particular, 2016 presidential candidate Gov. John Kasich (R–Oh.), then chair of the House Budget Committee, said in the context of a 1995 “flat tax” legislative proposal that “the end game here is to strip the government of the financial means for butting into the lives of Americans, and thus returning power and responsibility to families and localities.”⁸¹ The commentators conclude that subsequent Senate Finance Committee hearings that “revealed shortcomings in the IRS’s operations ... mainly provided a highly visible forum for antitax forces to levy sensational charges about outrageous agency behavior.”⁸² Objections to the conduct of the federal tax collector were coupled with local resistance.

Local elites could have the power to resist compliance with taxation as representative of federal law more generally. If so, the expected result would be that well-established socio-economic communities may have low compliance, rather than high compliance with national taxation. The professional status of the low-compliance communities, which were geographically clustered, may indicate that they constitute a localized elite. Even in the National Survey, the low-compliance group was more likely to participate in local organizations. That’s why the further analysis above mapped the geographic communities for social networks that could transmit or reinforce low levels of compliance.

Local elites may be known to commentators variously as the *petite bourgeoisie*, characterized by a “parochial” outlook, or smallholders, responsible in large part for “the military and fiscal basis of the empire” in historic civilizations.⁸³ This commentary reinforces the role of local elites, who ultimately pay tax, in the acceptance or rejection of legal regimes generally.

Then this Article drew on an ethnographic study of small business to suggest potential mechanisms for the transmission of noncompliant behavior. While the U.S.

⁷⁹ See, e.g., *Betz v. U.S.*, 40 Fed. Cl. 286, 294–95 (1998).

⁸⁰ See VANESSA WILLIAMSON, *READ MY LIPS: WHY AMERICANS ARE PROUD TO PAY TAXES* (2017).

⁸¹ TANINA ROSTAIN & MILTON C. REGAN, JR., *The IRS Under Siege*, in *CONFIDENCE GAMES: LAWYERS, ACCOUNTANTS, AND THE TAX SHELTER INDUSTRY* 12 (2014).

⁸² *Id.* at 19.

⁸³ ROBERTO M. UNGER, *PLASTICITY INTO POWER: COMPARATIVE-HISTORICAL STUDIES ON THE INSTITUTIONAL CONDITIONS OF ECONOMIC & MILITARY SUCCESS* 5 (1987); Frank Bechhofer & Brian Elliott, *Persistence & Change: The Petite Bourgeoisie in Industrial Society*, 17 *EUR. J. OF SOCIOLOGY* 74, 84 (1976).

survey and the Taiwan field study reflect vastly divergent cultures, it is possible that local elites in different countries avail themselves of the same type of small business practices (or even conveniences), as simple as post-dating checks, or more generally, informal—and thereby noncompliant—economics.

As expected, those who trusted government had higher compliance than those who didn't. Nationally, high-compliance taxpayers were more likely to support higher taxes in exchange for improved government services. Conversely, respondents from the low-compliance group were more likely to report that the government is too big and wastes tax dollars, while tax laws and IRS are unfair. Apparently, the highly-compliant feel that they receive commensurate utility from their taxes, either personally or through public goods. On the other hand, the low-compliance group either suffers from redistribution or, in principle, opposes tax policy. The survey doesn't resolve which interpretation of the social contract may prevail.

The national versus local model, encapsulated by the SASF concept set forth above, may be consistent also with the field studies summarized from the literature above. Small businesses in the insular case study may have relied on informal market and legal practices where the modern state couldn't penetrate the economy. Conversely, tax collectors in the second cited ethnography represent the attempt of the state to intercede in the everyday stories of inevitably local life. As a practical matter, compliance must be embedded in local culture because it is an aspect of individual behavior. To extrapolate to popular adherence to the rule of law, a fruitful inquiry could be whether contemporary divisions also fall along national (cosmopolitan) versus local (rural) lines.

Moreover, high compliance was consistent with a perception of a fair process that underlies legal compliance in general. As expected, respondents from the low-compliance communities were suspicious of the tax system and its fairness. As discussed above, the psychological literature concludes that compliance arises from a perception of procedural justice.

Theoretically, the question why obey the law arises where people can disobey. On a small scale, this may mean Schedule C, which presents opportunities for noncompliance, especially mischaracterization of personal consumption as deductible business expenses.⁸⁴ On a larger scale, the discretion to disobey comes from the premise that the rule of law evolved out of the social contract as an individually reasoned artifact.⁸⁵ Paradoxically, the question of compliance is a function of the social contract, without which the question wouldn't arise. Without the mutual consideration of right-bearing individuals, the question presumably would be one of conquest or counterattack, or put simply, might makes right.

Outside of the rule of law, so conceived, the question may be that of customary conduct (or immoral behavior) rather than reasoned compliance (or civil disobedience). Assuming rational actors, legal compliance becomes a cost-benefit analysis. Then the exercise is to identify the costs and benefits.

⁸⁴ See, e.g., *Peacock v. Comm'r*, T.C. Memo. 2002-122 (2002) (denying incorrect deduction).

⁸⁵ Cf. MORTIMER & SANFORD KADISH, *DISCRETION TO DISOBEY: A STUDY OF LAWFUL DEPARTURES FROM LEGAL RULES* 5 (1973) ("legal systems may still fairly be called such even though they provide alternatives to unqualified obedience").

VIII. TOPICS FOR FUTURE RESEARCH ON TAX LAW COMPLIANCE

Where rational legal analysis prevails, the following research topics may have potential. Consider a previous American proposal to mandate that businesses establish bank accounts segregated from the personal funds of their owners to reduce, presumably through tracing, incorrect tax deduction of personal consumption as business expenses.⁸⁶ Given the proposal's attempt to reach beyond Title 26 to manipulate business behavior for a potential tax compliance effect, it may be no wonder that the proposal failed to gain legislative traction. On the other hand, the substance of the proposal could be designed as a product for the convenience of business owners. That is, banks could offer business accounts enhanced with recordkeeping services that automatically generate income and expense tabulations useful for tax purposes, as long as the account contains the entirety of a business' monetary transactions. Thus, an attempt to control behavior may be transformed into an opportunity that recognizes the value of convenience in today's business culture. For comparison, some brokerage houses offered certain basis reports as a customer service even before Congress mandated basis reporting for tax purposes.⁸⁷ To whatever extent behavioral economics has identified complexity as a reason for noncompliance, this proposal could help.

Similarly, policy-makers could design tax legislation in view of user friendliness, including administrability by the tax collector. To take a negative example, the home buyer credit enacted in the wake of the U.S. housing market crisis requires purchase documentation exogenous to the tax system (not to mention a housing expenditure policy as to which the tax collector could not be expected to have the requisite institutional expertise).⁸⁸ In this case, tax noncompliance could be expected as a result of cumbersome design of housing policy.⁸⁹

As a subset of legal compliance, tax compliance may correlate with other aspects of civil compliance, such as postal rules or traffic violations. At least since the eighteenth century, commentators have idealized small business as the backbone of America,⁹⁰ ultimately in contradistinction to Big Business, Big Government, and even Big Labor. No wonder that a major contributor to the tax gap is small business,⁹¹ a sector that may gloss noncompliance as "cutting red tape." As a testable hypothesis, small business compliance may diverge from big business compliance not only in tax but in other regulatory areas,

⁸⁶ See THE PRESIDENTIAL ADVISORY PANEL ON FED. TAX REFORM, SIMPLE, FAIR, AND PRO-GROWTH: PROPOSALS TO FIX AMERICA'S TAX SYSTEM, at 128 (2005), available at <https://www.treasury.gov/resource-center/tax-policy/Documents/Report-Fix-Tax-System-2005.pdf> [<https://perma.cc/B436-GP8B>].

⁸⁷ See JOINT COMM. ON TAXATION, GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN THE 110TH CONGRESS, at 363 (Mar. 2009), available at <https://www.jct.gov/publications.html?func=startdown&id=1990> [<https://perma.cc/ZK2B-ZB7H>].

⁸⁸ See I.R.C. § 36 (2008).

⁸⁹ The Treasury Inspector General for Tax Administration (TIGTA) "recommended that the IRS require taxpayers to provide documentation to verify a home purchase, such as a U.S. Department of Housing and Urban Development Settlement Statement (HUD-1) issued to homebuyers at closing. The IRS disagreed ... As a result of the IRS's inaction, TIGTA's report found that 19,351 taxpayers claimed \$139.4 million in credits for homes they had not yet purchased." Press Release, TIGTA, TIGTA Audits IRS's Administration on First-Time Homebuyer Credit (Oct. 22, 2009), https://www.treasury.gov/tigta/press/press_10222009.htm [<https://perma.cc/R463-RNWR>].

⁹⁰ See, e.g., ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (1840).

⁹¹ Stacy Cowley, *Why the IRS Fails to Crack the Small-Business Tax Nut*, N.Y. TIMES, June 15, 2016, at B4 ("Most of that 'tax gap' is income that goes unreported, and the biggest chunk of it, by far—\$125 billion—is individual business income ... primarily sole proprietors," referring to the survey presented above).

such as licensing requirements. The case study above indicates that small business may have this potential not only in the U.S. but similarly in developing economies.

If tax morale is an instantiation of civic responsibility at the national level, presumably tax compliance would rise with the ascendancy of the so-called welfare state, while the tax gap would grow during periods of dissension. The post-World War II hegemony of the so-called military-industrial complex,⁹² accompanied by burgeoning programs for a great society,⁹³ could represent a peak of legal, including tax, compliance. On the other hand, dissension over the Vietnam War, segregation in violation of civil rights, and lapse of bureaucratic authority epitomized by the Watergate burglary could have decreased legal and tax compliance. Presumably, this hypothesis could be tested by historical data. Likewise, tax morale as civic responsibility could be higher in homogeneous, organic nation-states but lower in countries whose populations are historically divisive.⁹⁴ In other words, comparative data could confirm the incidence of tax morale in context.

In sum, an interdisciplinary social science of law, or law & society studies, can inform hypotheses about tax compliance as a subset of legal compliance, on both world-historical and micro-economic scales. The latter may be most productive for applied research. In either case, actual behavior could be informed by received social ideologies or cultural norms, while intended policy may be ostensibly based on rational principles of revenue raising. An understanding of the interstices between behavior and policy may inform strategies and designs for better compliance.

IX. CONCLUSION ON THE SOCIO-HISTORICAL CONTEXT OF TAX COMPLIANCE

As intimated at the outset, the rule of law continues to be an aspiration in industrial as well as developing economies around the world. On the bottom line, revenue collection has always been necessary to fund the operations of governments. Accordingly, tax compliance has formed the nexus between the local origin of resources and supra-local civilization, or nation-states. The noncompliant communities discussed above may occupy this nexus.

Meanwhile, every regime arises in its particular time and place, or social context. Consequently, the rule of law can be actualized only in irreducible human experience. In turn, this experience is subject to study through social science methodologies, which then may inform legal theory or jurisprudence.

While a teleology of liberal legality has held heuristic and metaphorical sway, the empirical reality has been merely evolutionary or historic. Observance of the rule of law may be more or less adaptive at times. Even in advanced countries, the level of compliance is a perennial question for local elites, who ultimately pay tax. There is no escaping the substrate of custom and culture that informs human behavior, as in the case of so-called social noncompliance. The primordial nature of personality is a reality not only for taxpayers but also for presidents. Colorless rational authority may not persuade taxpayers to remit or propel candidates into national office. On the contrary, compliance with tax law has expanded through national mobilization or even fervor, as in the case of major

⁹² See generally C. WRIGHT MILLS, *THE POWER ELITE* (1956).

⁹³ See generally THEDA SKOCPOL, *PROTECTING SOLDIERS & MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE U.S.* (1992).

⁹⁴ For a typology, see HUGH SETON-WATSON, *NATIONS & STATES* (1977).

wartime efforts. Further research could confirm that tax compliance, and the rule of law in general, may be more of an historic incidence than an endpoint of evolution.