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Foreword

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Foreword

*Michelle Lyon Drumbl**

For decades, the United States has struggled with questions of how to address the pervasive problem of poverty. Famously, President Lyndon Johnson declared “unconditional war on poverty” in his 1964 State of the Union address, during which he introduced legislation that expanded the social safety net.¹ These and other subsequent policies, including policies housed in the internal revenue laws, have helped reduce the rate of poverty and in particular child poverty.² Yet poverty and income inequality remain troubling concerns for modern America. In 2018, the United Nations Special Rapporteur on extreme poverty and human rights issued a report identifying the United States as “a land of stark contrasts . . . its immense wealth and expertise stand in shocking contrast with the conditions in which vast numbers of its citizens live.”³

The Journal of Civil Rights and Social Justice provided a forum for discussion of these issues at its annual symposium on November 1–2, 2018. The symposium’s theme, *Always With Us?*

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1. See generally Lyndon Johnson, *Annual Message to the Congress on the State of the Union, January 8, 1964*, LBJ PRESIDENTIAL LIBRARY, <http://www.lbjlibrary.net/collections/selected-speeches/november-1963-1964/01-08-1964.html> (last visited May 2, 2019) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

2. See Isaac Shapiro & Danilo Trisi, *Child Poverty Falls to Record Low, Comprehensive Measure Shows Stronger Government Policies Account for Long-Term Improvement*, CTR. ON BUDGET AND POLICY PRIORITIES (Oct. 5, 2017) (discussing the effects that social safety net policies have had on poverty rates in the United States).

3. Philip Alston, *Rep. on His Mission to the United States*, UNITED NATIONS DIGITAL LIBRARY (May 4, 2018), https://digitallibrary.un.org/record/1629536/files/A_HRC_38_33_Add-1-EN.pdf (further noting that in the United States approximately “40 million live in poverty, 18.5 million in extreme poverty, and 5.3 million live in Third World conditions of absolute poverty.”) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

Poverty, Taxes, and Social Policy, created a timely opportunity for scholars to reflect on how the United States addresses poverty and income inequality through the Internal Revenue Code, as well as visions of how it might do so more effectively. Speakers included professors from a variety of disciplines, including law, economics, and business.

Dean Brant Hellwig opened the event at the symposium dinner with his thought-provoking remarks regarding how Congress has amended the estate and gift tax laws in the last two decades to reduce the number of individuals impacted by these transfer taxes. Tax policy, from a revenue standpoint, creates relative winners and losers. Income tax provisions that provide exclusions, exemptions, deductions from gross income, credits, preferred rates of tax, or deferral of liability are known as “tax expenditures” in that they result in a revenue loss to the government.⁴ There are scores of examples of tax expenditures in the Code, benefiting individuals, corporations, estates, and trusts. With his talk, Dean Hellwig set up a contrast for the next day, which focused on federal income tax provisions and tax expenditures that affect lower income earners.

Symposium speakers addressed a number of themes, including the use of refundable tax credits as a social safety net, tax incentives and economic development, and the pros and cons of reducing income inequality through the use of guaranteed income supplements.

This issue of the *Journal* memorializes the Symposium’s themes and provides readers in-depth analysis of some of the discussions from the event. It includes the keynote address delivered by Susannah Camic Tahk, associate professor of law and associate dean for Research and Faculty Development at University of Wisconsin. Professor Tahk wove the day’s themes together into a broader tapestry. Her address highlighted the benefits of tax-based social policy, but also its shortcomings and her concerns about moving further away from traditional welfare programs: Though politically popular, income tax-based solutions

4. See Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 3(3), 88 Stat. 297 (1974) (defining tax expenditures as such).

fail to reach all Americans who are in need, with troubling divisions along race and social class lines.

In her article for the Journal, Professor Michelle Layser from the University of Illinois College of Law examines Opportunity Zones, which are an economic development incentive created by the Tax Cuts and Jobs Act of 2017. Layser analyzes this new incentive by creating a broader typology of place-based investment tax incentives, and she situates her analysis within tax expenditure theory. Professor Layser offers this typology in the hopes that it will provide “benchmarks that force lawmakers to confront the assumptions about place that are built into these tax laws and affect their performance.”

Professor Benjamin Leff of the American University Washington College of Law contributed a paper that will be forthcoming in the December issue of the Journal. Professor Leff spoke about the Universal Basic Income (UBI), a concept he describes as an “old idea that has recently seen increased attention and popularity around the world.” Leff’s work identifies similarities between the existing Earned Income Tax Credit (EITC) and common aspects of UBI proposals; through this framework he suggests ways to reform the EITC that could achieve some of the goals of a UBI while serving working families more effectively.

This issue includes three student notes authored by Journal members. Douglas Chapman writes about legal challenges brought by private landowners to the construction of interstate natural gas pipelines in the Atlantic states. Chapman argues that Virginia’s survey delegation laws, which grant certain eminent domain powers to private utility developers, amount to a compensable taking. Matthew Black explores how the legal profession can better serve low- and moderate-income individuals. Black argues that ethical rules prohibiting fee-sharing arrangements between lawyers and non-lawyers serve as an undesirable impediment to business structures that could better meet the needs of the underserved. Chase Cobb identifies what he sees as a troubling shortcoming in the process for applying for Veterans Disability Benefits: The rules at trial for qualification of the agency’s expert medical examiners, and the role of those examiners in claim denial.

Cobb describes the problem as both gargantuan and as one that can be easily fixed.

The Symposium and this issue of the Journal are timely and important contributions to a national conversation about tax policy and poverty. I am grateful to Alexis Narducci, Caden Hayes, Douglas Chapman, Wendy Rains, and the entire energetic JCRSJ staff for all of the work that went into making the event a tremendous success. I further wish to thank the Journal's faculty advisor, my colleague Professor Joan Shaughnessy—it truly was a joy and honor to work with her on brainstorming and organizing speakers and topics for the event.

Finally, on behalf of the Journal staff, I wish to extend thanks and appreciation to each of our Symposium participants and authors, who contributed from places near and far on an engaging variety of topics that made for a memorable event that lives on in this Journal issue.