

INTRODUCTION TO THEMATIC ISSUE ON STRUCTURAL ECONOMIC INEQUALITY AND THE OCCUPY MOVEMENT

In this special thematic issue on structural economic equality and the Occupy movement, for the first time, the *Journal of Law and Social Change* explores a single theme. As we prepared to shepherd the Journal into its third decade of publication and complete its fifth year as an official journal of the University of Pennsylvania Law School, we, the journal members, took time to reflect on our roots, our mission, and the new, emerging legal context in which we now publish. We found inspiration in our 1993 beginning as a non-traditional legal publication titled, *Hybrid, a Journal of Law and Social Change*.

The Editors note in the inaugural issue of *Hybrid* that they believe:

[I]ndividuals and communities perceive and respond to the law in many dimensions. As a journal, it is our goal to give voice to this variety of experience and, in so doing, to create a synergy that extends beyond the written word.

We offer *Hybrid* as a multi-faceted forum for discussion and expression by members of all communities, professions and disciplines. We hope the reader will view *Hybrid* as an invitation—to academics to make theory more accessible and relevant; to practitioners and activists to share in innovative approaches to their work; and to those outside of both worlds who offer insights to a system that is often closed to new perspectives. Diverse forms of expression are therefore necessary for the law to respond effectively and to take a proactive role as an agent of progressive social change.

As a Journal, we strive to return continuously to that original mission. Entering this new era, in addition to publishing articles written on diverse topics, we present this issue as the beginning of a new tradition. By exploring a single theme from many perspectives, we hope that these discrete voices come together to contextualize and situate the issues they explore.

As we set out to choose our theme for this inaugural issue, we were struck by the enormous changes we have witnessed in America and throughout the world during the short three years we have been in law school. From the economic crash, to the foreclosure crisis, to rapidly increasing economic inequality, it has been a turbulent time. And yet, hope stirred from the tents in Zuccotti Park to the streets of Egypt.

Time Magazine named the “Protester” the “Person of the Year” in 2011. In the Middle East and all across America, people took to the streets to express dissatisfaction with the status quo. Whether it was challenging a political regime in Tunisia, or protesting the wealth held by the top 1% of Americans, the Arab Spring and the Occupy movement were powerful antidotes to the hopelessness that had spread throughout the country and world - a challenge to the belief that nothing would change.

Of course, there were critics. Some characterized the Occupy movement as a bunch of college-educated hippies with too much time on their hands. Others challenged the movement for not working harder to partner with individuals and groups who are the most marginalized in our

society. Perhaps the most common critique was that the movement lacked a coherent message. If you just walked past an Occupy rally in Philadelphia, you would see signs challenging everything from corporate bailouts, to the prison-industrial complex, to the defunding of public education, to the criminalizing of immigrant communities, to union-busting.

As we began to explore article ideas for an issue on economic inequality and the Occupy movement, we understood at once why the Occupy movement had these seemingly disparate messages. Economic inequality is extremely complicated, held in place by a tapestry of laws, policies, institutions, and individuals at every level of government and in every corner of our society. There is no single message. There is no one solution. There is only a long list of injustices that we all must work to address.

In this issue, we have chosen several of many such injustices to highlight. From criminal records keeping individuals impoverished because they are consistently denied employment opportunities, to city ordinances that outlaw the simple act of sharing food with someone in need, we seek to shed light on some of the legal and political dimensions of economic inequality.

We also take to heart the critique that the Occupy movement should have done more to include the voices of those who suffer most from economic injustice. Therefore, we have partnered with individuals, community leaders, and organizations to include in this issue personal narratives that speak to the experience of challenges such as homelessness and joblessness. Too often, such personal stories are completely left out of academic scholarship, law-making, and even protest movements. We feel it is critical for those who seek to create social change to do so in partnership with individuals and communities who experience the realities of economic hardship every single day.

We hope that the following collection of pieces combined with the personal narratives will both bring to light some of the most pressing economic justice issues we face, as well as inspire all those who seek a more just future to work together in partnership toward that vision.

Nan Aron has been a voice for change on a wide variety of these issues since she founded Alliance for Justice (AFJ) in 1979 which works to ensure that all Americans have access to justice and the courts. In her article *The Favorite 1% of the Roberts Court*, Aron critically examines the impact the Supreme Court has had on everyday Americans while under the stewardship of Chief Justice Roberts. She argues that through a series of cases, including *Citizens United v. FEC*, *Wal-mart v. Dukes*, and *Ashcroft v. Iqbal*, this Court has “come to play a significant role in reinforcing economic inequality.” These and other pro-big business decisions have repeatedly limited corporate liability while shutting out the claims of the 99%. Aron’s article sheds light on this increasingly ignored majority and warns against the dangers of the Court’s continuing circumscription of the meaning of justice and equality in America.

Justice and economic equality have long been circumscribed and delayed for individuals involved in the criminal justice system. These individuals, even those without convictions, are forever marked by their contact with the criminal justice system. Ryan Hancock, in his article *The Double Bind: Obstacles to Employment & Resources for Survivors of the Criminal Justice System*, focuses on the impediments to employment faced by individuals with criminal histories in Pennsylvania. He explains that although it is “unlawful in Pennsylvania for an employer to use non-conviction data in hiring decisions, employers often adopt blanket criminal history record information policies, which reject any individual with any type of criminal history record information, even non-conviction records.” Since the criminal justice system disproportionately impacts poor and minority communities, it is increasingly difficult for members of these communities to obtain gainful employment and accumulate wealth. To remedy this problem, Hancock writes, individuals in Pennsylvania are able to petition to have some of their non-

conviction data expunged from their record. However, expungement is only available in a limited number of cases and the cost can often be prohibitive. Thus, Hancock presents several recommendations to improve and streamline the expungement process as well as minimize the stigmatizing effect of criminal record information. His recommendations seek to break down the barriers to employment faced by survivors of the criminal justice system in Pennsylvania and beyond as a means promoting greater economic equality and opportunity for them and their families.

Any discussion of economic justice and Occupy today would be remiss to ignore the important role of the First Amendment. Although the First Amendment itself offers no economic rights, its protection of the public sphere, of the right to protest and the right to be heard has been essential in the fight for economic equality. This issue highlights the important role of the First Amendment through three different pieces.

Nate Vogel's article, *The Fundraisers, the Beggars, and the Hungry: The First Amendment Rights to Solicit Donations, to Beg for Money, and to Share Food*, applies the First Amendment to protect rights of the poor to beg and share food in public spaces. Millions around the country and around the globe will continue to face poverty, homelessness, and other threats to their basic well-being. Vogel suggests that perhaps even more disturbing than number of individuals facing poverty in the United States, is the "prevalence of laws that actively seek to erase them from the public spaces that are very nearly the last place they can go." Specifically, various states and localities have passed anti-begging laws and/or prohibitions on public food sharing. While laws like these have been upheld under Equal Protection jurisprudence, Vogel contends that such laws could perhaps be struck down under a First Amendment argument. Vogel extends the rationale of the First Amendment precedent establishing the right to solicit donations for charity to advocate for the First Amendment right to beg and share food in public spaces. In doing so, his article not only lays out the law but also offers advocates a "how to" guide to mount a First Amendment challenge and ensure that poverty does not exclude an entire class of people for the public sphere.

Sheheryar T. Sardar and Benish A. Shah, on the other hand, use the First Amendment to argue for free digital media. Their essay, *Social Media, Censorship and Control: Beyond SOPA, PIPA, and the Arab Spring*, underscores the importance of uncensored social media to counterbalance the unchecked power the media to disseminate information in their essay. Their piece provides glimpses into the potential of social media to rapidly disseminate information, especially information that may be ignored by major media conglomerates, and to organize people. It also raises concerns about lawmakers' efforts to police, monitor, and censor the internet despite their clear lack of basic technical knowledge of the internet and social media. While recognizing the need for some digital monitoring, they argue for broad freedoms for social media as a means of promoting free speech and the right to organize.

Social media was also one of the big stories coming out of the revolutions in Egypt and the Middle East. While not the cause of any of these revolutions, Adeel A. Shah argues that these political movements were "amplified and sustained to some measure by media and journalistic forums outside the purview of traditional media." In *Beyond the Power of the Pen in Pakistan and America: The Changing Ethics of Journalism and the World of Digital Media*, Shah explores the role of the media in the United States and Pakistan to illustrate the "broken social contract between citizens and the news media." He uses these two countries as case studies to demonstrate that when the "voice of the people [is] lost amongst the words of the elite . . . [t]he only viable avenue remaining for the masses to ensure the democratic dissemination of information and to preserve the voice of the people was through the use of social media." His piece emphasizes the

importance of the digital world in promoting democracy, equality, and the voice of the people

These people's movements have breathed new life and meaning into the digital world; it has also brought about a reinvigoration of the physical public sphere through the prominent use of public protest. Traci Yoder's article, *A Tale of Two (Occupied) Cities: Policing Strategies at Occupy Wall Street and Occupy Philadelphia*, documents this rekindling of popular protest in the United States through a comparative analysis of the Occupy movement in New York City and Philadelphia. Yoder examines the strategies employed by police and government official to control these protests, especially contrasting the use of more aggressive tactics such as Escalated Force policing (seen mostly in New York) with more conciliatory approaches such as Negotiated Management (seen mostly in Philadelphia). Based on her experience she concludes that while the latter appears on its face to be more beneficial to protesters, it can be far more effective and harmful in "neutralizing social justice movements" and in "controlling dissent and thwarting efforts to produce social changes." In light of this, Yoder offers the legal profession some suggestions to help protesters confront Escalated Force policing and escape and avoid the special traps of Negotiated Management policing. Her argument, contextualized by her first hand observations, emphasizes the need and place for legal profession in the Occupy movement and in the fight for greater economic justice.

The articles, essays, and narratives in this issue merely touch the surface of the myriad issues that contribute to the economic inequality. Our hope, however, is that this issue can be a starting off point for further discussion both within the legal profession and in the general public discourse. We also hope that the personal narratives that have been so generously shared with our Journal will provide important and necessary context to the legal and political challenges discussed in the articles and essays. Finally, we hope that these articles offer some practical recommendations that practitioners and policymakers can employ to meaningfully fight against the systems and practices which perpetuate and expand economic inequality.