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Forward

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FOREWORD TO THE *WEST VIRGINIA LAW REVIEW*
APPALACHIAN JUSTICE SYMPOSIUM

*Jennifer D. Oliva**

“In our history no region has contributed more to the shaping of our destiny. . . . It is not too much to suggest that today we may again find our way to new promise and new fulfillment by taking up the human challenge of modern Appalachia.”

— PRESIDENT LYNDON B. JOHNSON (1965)¹

“Appalachia needs no defense – It needs more defenders.”

— JEFF BIGGERS, *THE UNITED STATES OF APPALACHIA*²

INTRODUCTION

Once again, it seems the national media has delivered Appalachia from the ashes of obscurity to the forefront of mainstream American consciousness. Throughout the 2016 Presidential campaign, the national press flocked to the region to ascertain why “ordinary white Appalachians” overwhelmingly supported the candidacy of Donald J. Trump.³ Coinciding with the media’s surge of interest in Appalachia was the release of J.D. Vance’s 2016 memoir, *Hillbilly Elegy*.⁴ Perhaps unsurprisingly, *The New York Times* Bestseller, which defines Appalachia “as a homogenous white region crumbling under a poverty created

* Associate Professor of Law and Public Health, West Virginia University. The author would like to thank the leadership of the *West Virginia Law Review*, including Editor-in-Chief Rebecca Trump, Managing Editor Zach Warder, and Symposium Co-Editors, Lexi Smith and Alex Frampton, for their outstanding work on the Appalachian Justice Symposium and this Symposium edition of the *Law Review*.

¹ LYNDON B. JOHNSON, REMARKS UPON SIGNING THE APPALACHIA BILL (Mar. 9, 1965), <http://www.presidency.ucsb.edu/ws/?pid=26801>.

² JEFF BIGGERS, *THE UNITED STATES OF APPALACHIA: HOW SOUTHERN MOUNTAINEERS BROUGHT INDEPENDENCE, CULTURE, AND ENLIGHTENMENT TO AMERICA* xi (2007).

³ See, e.g., Sarah Smarsh, *Dangerous Idiots: How the Liberal Media Elite Failed Working-Class Americans*, *GUARDIAN* (Oct. 13, 2016), <https://www.theguardian.com/media/2016/oct/13/liberal-media-bias-working-class-americans>.

⁴ J.D. VANCE, *HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS* (2016).

by its own lazy culture,”⁵ was embraced by conservatives and liberals alike.⁶ As The New Republic’s Sarah Jones observed, the memoir “has become a kind of Rosetta Stone for blue America to interpret that most mysterious of species: the economically precarious white voter.”⁷ Moreover, *The New York Times* lavished extraordinary praise on *Elegy*, calling it “a compassionate, discerning sociological analysis of the white underclass that has helped drive the politics of rebellion.”⁸

In Vancian vein, the popular media continues to publish story after story reducing the everyday Appalachian experience to caricaturized images and hillbilly tropes in the construction of a simple narrative that seeks to explain to the rest of the country the region’s poverty, isolation, and alleged role in the 2016 election. One of the common threads that emerges from this journalism is the notion that white working-class Americans are responsible for their own plight. Conservative columnist Kevin D. Williamson makes this point explicit in his article, *Chaos in the Family, Chaos in the State: The White Working Class’s Dysfunction*.⁹ He castigates as a “lie” the notion “that the white working class . . . attracted to Trump has been victimized by outside forces.”¹⁰ According to Williamson, working-class white folk have “failed themselves” and, therefore, their “dysfunctional, downscale communities . . . deserve to die.”¹¹

Not to be outdone, liberal critic Frank Rich penned a New York Magazine piece entitled *No Sympathy for the Hillbilly* in March 2017.¹² Invoking liberal eliminationist rhetoric, Rich advises progressive America to “hold the empathy” for “Trump’s white working-class base,” whom he refers to as “hillbill[ies].”¹³ *No Sympathy for the Hillbilly* pleads that liberals demand the white working class “take responsibility for [their] own votes — or in some cases

⁵ Ann-Derrick Gaillot, *Appalachia Deserves More than J.D. Vance*, OUTLINE (Jan. 30, 2018), <https://theoutline.com/post/3147/elizabeth-catte-what-you-are-getting-wrong-about-appalachia-interview?zd=1&zi=4s5ae3kl>.

⁶ Sarah Jones, *J.D. Vance, the False Prophet of Blue America*, NEW REPUBLIC (Nov. 17, 2016), <https://newrepublic.com/article/138717/jd-vance-false-prophet-blue-america> (explaining that the memoir “has received positive reviews across the board” and that “Vance’s influence has been everywhere this campaign season, shaping our conception of what motivates these voters”).

⁷ *Id.*

⁸ Jennifer Senior, *Review: In ‘Hillbilly Elegy,’ a Tough Love Analysis of the Poor Who Back Trump*, N.Y. TIMES (Aug. 10, 2016), <https://www.nytimes.com/2016/08/11/books/review-in-hillbilly-elegy-a-compassionate-analysis-of-the-poor-who-love-trump.html>.

⁹ Kevin D. Williamson, *Chaos in the Family, Chaos in the State: The White Working Class’s Dysfunction*, NAT’L REV. (Mar. 17, 2016), <https://www.nationalreview.com/2016/03/donald-trump-white-working-class-dysfunction-real-opportunity-needed-not-trump/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Frank Rich, *No Sympathy for the Hillbilly*, N.Y. MAG. (Mar. 19, 2017, 9:00 PM), <http://nymag.com/daily/intelligencer/2017/03/frank-rich-no-sympathy-for-the-hillbilly.html>.

¹³ *Id.*

failure to vote — and live with the election’s consequences.”¹⁴ Rich concludes his anti-empathy entreaty with a shout-out to Kevin Williamson cast in the form of a rhetorical question: “[I]f *National Review* says that their towns deserve to die, who are Democrats to stand in the way of [hillbillies] who used their ballots to commit assisted suicide?”¹⁵

As historian Elizabeth Catte explains in her book, *What You Are Getting Wrong About Appalachia*, America’s fascination with the so-called “horrors of Appalachia” is nothing new.¹⁶ When asked why people believed *Elegy*’s unflattering depiction of Appalachia, Catte responded as follows:

Some of it is escapism. People in regions like Appalachia, poor white people, have always received the projected angst of more comfortable and stable white Americans. There’s a long history of that in Appalachia and I think there’s lots of parallels in our current political moment about that, certain regions and certain people just absolving all of the country’s sin so people can continue to feel self-righteous and progressive.¹⁷

Appalachian studies scholar Ronald Eller prognostically echoed similar sentiments three years before the release of *Elegy*, arguing that

[n]ot only do the prevailing images of Appalachia blame the victim for Appalachia’s problems, but they trivialize complex political and economic issues facing the region to the level of personality traits and cultural quirks. Moonshiners, welfare cheats, coal miners, and other Appalachian “types” distance us from the political and economic realities of the region, including our own injustices toward those stereotyped. In the case of Appalachia, such images allow the rest of America to keep the region at arm’s length, rather than to confront the systemic problems of a dependent economy, environmental decay, and institutional weaknesses that challenge mountain communities today.¹⁸

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ ELIZABETH CATTE, *WHAT YOU ARE GETTING WRONG ABOUT APPALACHIA* (2018); see also BIGGERS, *supra* note 2, at xii (espousing that “[f]ew regions in the United States confound and fascinate Americans like Appalachia” and “no other region has been so misrepresented by the mass media”).

¹⁷ Gaillot, *supra* note 5.

¹⁸ Ronald D. Eller, *Foreword* to *BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES* x (Dwight B. Billings & Gurney Norman eds., 2013); see also Smarsh, *supra* note 3 (explaining “[t]hat sometimes seems the only concept of [Appalachians] that the American consciousness can contain: tucked away in a remote mountain shanty like a coal-dust-covered ghost, as though white

The oft-repeated, one-dimensional mainstream narratives about the region and its myriad challenges beg the question: who, what, and where exactly is Appalachia today? The *West Virginia Law Review* hosted an Appalachian Justice Symposium to seek answers to these questions and other pressing issues facing the region. The Symposium invited scholars and practitioners from various disciplines to come together for a serious conversation about Appalachian legal and public policy concerns and to develop innovative solutions in keeping with what Jeff Biggers describes as “Appalachia’s best-kept secret”:

Far from being a “strange land with peculiar people,” the mountains and hills have been a stage for some of the most quintessential and daring American experiences of innovation, rebellion, and social change.¹⁹

Indeed, from the Battle of Blair Mountain to the Highland Folk School to the very-recent West Virginia teachers’ wage strike, populist Appalachian movements have paved the way for change throughout the region and inspired similar uprisings across the country.²⁰ “Beyond its mythology as a quaint backwater in the American imagination, Appalachia . . . needs to be embraced for its historical role as a vanguard region in the United States.”²¹ With a nod toward this basic truism, our first group of authors took on the task of challenging prevailing Appalachian myths and stereotypes.

I. CHALLENGING APPALACHIAN MYTHS AND STEREOTYPES

Professors Stump and Lofaso unmask the prevailing myths about Appalachia—and the harm those myths have wrought on the region—in their article, *De-essentializing Appalachia*.²² The piece traces the origin of the Appalachian “otherness” myth to popular 19th-century travel writers, including Will Wallace Harvey, who authored the “stereotype-engendering” travelogue *A Strange Land and a Peculiar People*.²³ Stump and Lofaso argue that such period writers purposefully perpetuated the myth of Appalachian otherness “to facilitate the subordination of the Appalachian citizenry and the corresponding industrial

poverty isn’t always right in front of us, swiping our credit cards at a Target in Denver or asking for cash on a Los Angeles sidewalk”).

¹⁹ BIGGERS, *supra* note 2, at xv.

²⁰ Sarah Jaffe, *The Rising Ghosts of Labor in the West Virginia Teacher Strike*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/opinion/west-virginia-teacher-strike.html>.

²¹ BIGGERS, *supra* note 2, at xi.

²² Nicholas F. Stump & Anne Marie Lofaso, *De-essentializing Appalachia: Transforming Soci-Legal Change Requires Unmasking Regional Myths*, 120 W. VA. L. REV. 823 (2018).

²³ *Id.* at 825.

exploitation of the region's abundant natural resources."²⁴ *De-essentializing Appalachia* deconstructs the contemporary myth of a non-diverse, backward, and isolated Appalachia, argues that, beyond stereotypes, there exists no single, monolithic Appalachian culture, and calls for the implementation of systemic, socio-legal reforms to effectuate positive change throughout the region.²⁵

Unified in Dignified Appalachian Pride also tackles long-standing Appalachian myths and stereotypes, including the "What's the Matter with Kansas?" caricature, which depicts Appalachia as "mythic Trump Country"²⁶ packed to the gills with denizens who "act or vote against their own self-interest."²⁷ Aaron Ferrari and William Rhee test the "What's the Matter" argument's empirical claims against American presidential voting data from 1980 to 2016.²⁸ Interestingly, and consistent with a 2008 study of county-level Appalachian voting patterns, the co-authors' statistical analysis demonstrates that traditional measures of economic well-being fail to explain Appalachian voting patterns.²⁹ Indeed, Ferrari and Rhee expose the "What's the Matter" argument as an elitist, blame-shifting, political polemic dangerous to democracy and devoid of any evidence-based empirical support.³⁰ In conclusion, *Unified in Dignified Appalachian Pride* advises "Appalachian counties . . . to maintain solidarity" by "promot[ing] laws and policies that best help those within their borders."³¹

Eric Franklin Amarante's article, *The Unsung Latino Entrepreneurs of Appalachia*, further challenges regional stereotypes by examining the upsurge in Latino-owned businesses in small-town Appalachia and their attendant positive effects on state and local economies.³² As Professor Amarante explains, the traditional "story of Latinos in Appalachia . . . is dominated by the plight of migrant workers drawn to meat processing factories or agricultural work, with very little attention paid to Latino entrepreneurship in Appalachia."³³ The author points out that Latino businesses "have helped revitalize city commercial strips and small-town Main Streets across the country"³⁴ and the region by "spiffing up

²⁴ *Id.*

²⁵ *See id.* at 847.

²⁶ Aaron Ferrari & Will Rhee, *Unified in Dignified Appalachia Pride*, 120 W. VA. L. REV. 849, 852 (2018).

²⁷ *Id.* at 850.

²⁸ *Id.* at 869–70.

²⁹ *Id.* at 868–69.

³⁰ *Id.* at Part II.

³¹ *Id.* at 888.

³² Eric Franklin Amarante, *The Unsung Latino Entrepreneurs of Appalachia*, 120 W. VA. L. REV. 773 (2018).

³³ *Id.* at 773.

³⁴ *Id.* at 787.

aging minimalls and downtowns”³⁵ and that “Latino immigrants are creating companies that expand the tax base, create jobs, and breathe new life into depressed commercial districts.”³⁶ Indeed, Professor Amarante establishes that Latino entrepreneurship reaps positive goods for the individual entrepreneur, the local Latino community, and state and local economies.³⁷ As a result, he urges lawmakers to adopt policies that encourage the development of small Latino businesses in their communities, including the enactment of provisions that mandate the creation of Spanish-language business formation documents, simplify state business and entity and licensing regimes, and lower the investment threshold for EB-5 Visas.³⁸

II. ADVOCATING FOR APPALACHIAN HEALTH-RELATED REFORMS

Appalachia has earned a reputation as one of the unhealthiest regions in the United States. According to a 2017 report jointly-issued by the Robert Wood Johnson Foundation, the Appalachian Regional Commission (ARC) and other collaborators, Appalachia lags the rest of the country in 33 of 41 population health indicators, including 7 of the 10 leading causes of death in the United States.³⁹ Appalachia’s suicide rate is 17% higher⁴⁰ and depression among fee-for-service Medicare beneficiaries is 16.7% more prevalent than any other part of the country.⁴¹ Despite these significant mental health indicators, Appalachia also lags the rest of the country in mental health providers, with 35% fewer providers per capita than the national average.⁴² Several Symposium authors responded to the numerous health-related challenges facing Appalachia with articles that advocate for novel legal and public policy reforms.

Employing the Anderson Healthcare Utilization Model as its analytical frame, *Healthcare in Appalachia and the Role of the Federal Government* addresses the “widening health disparity” between Appalachia and the rest of the nation through the lens of Department of Veterans’ Affairs’ (VA) and Health and Human Services’ (HHS) programs targeting the region.⁴³ Citing recent studies,

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 783–90.

³⁸ *Id.* at 790–95.

³⁹ ROBERT WOOD JOHNSON FOUNDATION ET AL., HEALTH DISPARITIES IN APPALACHIA (Aug. 2017), https://www.arc.gov/assets/research_reports/Health_Disparities_in_Appalachia_August_2017.pdf.

⁴⁰ *Id.* at 123.

⁴¹ *Id.* at 118.

⁴² *Id.* at 224.

⁴³ Robert R. Davis & Shelly Cole, *Healthcare in Appalachia and the Role of the Federal Government*, 120 W. VA. L. REV. 1001, 1002 (2018).

co-authors Robert Davis and Shelly Cole found that mortality rates for 25–44 year-olds were 70% higher, mortality rates for infants were 16% higher, and Years of Potential Life Lost were 25% higher for Appalachians than the remainder of the United States.⁴⁴ In an attempt to address these and other health-related disparities particular to rural Appalachia, VA and HHS Medicare have worked to develop policies and procedures “focused on increasing points of [healthcare] access [throughout] the region.”⁴⁵

As Davis and Cole explain, VA has made significant strides to increase services to rural veterans by “dramatically transform[ing] from utilizing large hospitals as a central point of access to a more accommodating system that includes clinics and increasingly emphasizes funding non-VA care”⁴⁶ In addition, “Medicare has increased payments to rural providers and established clinics and centers to ameliorate healthcare shortages” that are pervasive throughout rural Appalachia.⁴⁷ *Healthcare in Appalachia* concludes by highlighting the VA and Medicare programs’ shortcomings vis-à-vis their rural Appalachian patient population and calls for the expansion of specific rural health initiatives, such as telehealth, to relieve resource-strapped rural healthcare systems.

Jill C. Engle “examines trends in Appalachian child poverty and wellness in the context of the Affordable Care Act (ACA)” in *Improving Outcomes in Child Poverty and Wellness in Appalachia in the “New Normal” Era: Infusing Empathy into Law*.⁴⁸ Professor Engle opens her article by professing that economic deprivation, isolation, and child poverty are problems that have long plagued Appalachia. She then calls on “Appalachian community leaders” to “utiliz[e] cutting-edge . . . public health, wellness, and empathy [data] . . . [to] cultivate lasting changes to the economic, physical, and mental health of [Appalachian] children.”⁴⁹

Professor Engle characterizes the ACA, which includes the reduction of child poverty as one of its aims, as “a legislative lifeline for rural communities, given its capability to increase access to basic health services [as well as] specialties like dentistry and mental health.”⁵⁰ While conceding that “[t]he ACA’s impact in Appalachia is difficult to measure” and largely dependent on state adoption of Medicaid expansion, Professor Engle argues that the statute “has improved Appalachia’s health delivery systems” and dramatically reduced the number of uninsured who live in Medicaid expansion states, such as West

⁴⁴ *Id.* at 1007.

⁴⁵ *Id.* at 1024.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Jill C. Engle, *Improving Outcomes in Child Poverty and Wellness in Appalachia in the “New Normal” Era: Infusing Empathy into Law*, 120 W. VA. L. REV. 1047, 1047 (2018).

⁴⁹ *Id.* at 1055.

⁵⁰ *Id.*

Virginia.⁵¹ The author, therefore, chastises on-going attempts to dismantle the ACA, which she describes as a “rejection of the empathic poverty-reduction methods [the statute] is cultivating for Appalachian children long-term.”⁵² Professor Engle concludes by urging states to fully embrace the ACA’s public health principles by, for example, “more aggressively subsidiz[ing] and regulat[ing] the delivery of care” that operates to improve health outcomes for children and enhance financial stability.⁵³

Evan Barret Smith grapples with Appalachia’s “skyrocketing resurgence” of coal workers’ pneumoconiosis (CWP) in *Black Lung in the 21st Century: Disease, Law, and Policy*.⁵⁴ As Smith explains, “[t]he Appalachian coalfields are now the epicenter of one of the worst industrial health disasters in U.S. history” as “[c]urrent rates of severe black lung among career Appalachian miners are worse than when federal statistics started being kept in 1970.”⁵⁵ In other words, “20th-century efforts to end black lung failed.”⁵⁶

Smith’s article analyzes the four major legal reforms that the federal government has enacted since 2000 in response to black lung disease. These include the 2001 Amendments to the Black Lung Benefits Regulations,⁵⁷ which, among other things, recognized chronic obstructive pulmonary disease (COPD) as a potentially compensable black lung disease, the 2010 ACA “Byrd Amendments,” which revived the “fifteen-year presumption”⁵⁸ and the “automatic entitlement” provision for surviving spouses,⁵⁹ the 2014 Mine Safety and Health Administration (MSHA) Dust Rule, which reduced the amount of coal dust a miner is permitted to inhale by 25%,⁶⁰ and the 2016 Medical Disclosure Rule, which requires the disclosure of “any written medical data . . . about the miner that a party develops in connection with a claim for benefits.”⁶¹

Smith then advocates for two pragmatic policy changes to the federal black lung benefits program. Specifically, he argues that policy makers must eliminate the current delays that plague black lung claims adjudication and shift the responsibility for covering black lung-related health care treatment costs

⁵¹ *Id.* at 1059.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Evan Barret Smith, *Black Lung in the 21st Century: Disease, Law, and Policy*, 120 W. VA. L. REV. 797, 799 (2018).

⁵⁵ *Id.* at 798.

⁵⁶ *Id.*

⁵⁷ *Id.* at 809–10.

⁵⁸ *Id.* at 808–09.

⁵⁹ *Id.* at 819.

⁶⁰ *Id.* at 805–07.

⁶¹ *Id.* at 811.

from coal operators to a public insurance program co-funded by taxpayers and the coal industry.⁶² *Black Lung in the 21st Century* ends by provoking its audience “to think more generally about how our society should ensure the health of coal miners who helped build our country.”⁶³

Elizabeth Ann Glass Geltman provides a thorough assessment of the legal rules and regulations aimed at protecting American workers from silica exposure in *Regulation of Silica: Will Lowering the Exposure Level Cost Jobs or Improve Public Health?*⁶⁴ As Professor Geltman explains, “[p]ublic understanding of the dangers of silica dust began in West Virginia in Gauley Bridge when Union Carbide and the New Kanawha Power Company embarked on construction of the Hawks Nest Tunnel from 1930 to 1934 in order to bring power to Appalachia.”⁶⁵ Federal regulation of silica exposure was nonetheless non-existent until 1971, when the then-newly-created Occupational Safety and Health Administration (OSHA) first promulgated a silica permissive exposure limit (PEL) rule.⁶⁶ OSHA’s 1971 silica PEL rule remained unchanged for 42 years, that is, until the agency enacted new regulations, including a more-restrictive silica PEL, in 2013.⁶⁷

As Professor Geltman details, OSHA’s 2013 silica regulations were immediately subjected to both industry- and labor union-led legal challenges. Although the new regulations withstood the legal challenges brought by the industry groups, certain of the rules attacked by the unions pertaining to medical removal protection were remanded to OSHA for reconsideration.⁶⁸ While Professor Geltman concedes that the litigation concerning the 2013 silica regulations constitute “an industry defeat and a victory for labor unions,”⁶⁹ she warns caution going forward given the recently “renewed efforts in the states to restrict worker protections” by enacting America Legislative Exchange Council (ALEC) model legislation.⁷⁰

Ursula Ramsey’s article, *Community Orchards and Food Security in Appalachia*, examines Appalachian food insecurity and proposes a novel solution to mitigate the problem: community orchards.⁷¹ According to Professor Ramsey, Appalachians face challenges in “accessing healthy foods . . . due to

⁶² *Id.* at 820–22.

⁶³ *Id.* at 822.

⁶⁴ Elizabeth Ann Glass Geltman, *Regulation of Silica: Will Lowering the Exposure Level Cost Jobs or Improve Public Health?*, 120 W. VA. L. REV. 1135 (2018).

⁶⁵ *Id.* at 1135.

⁶⁶ *Id.* at 1142.

⁶⁷ *Id.* at 1142–43.

⁶⁸ *Id.* at 1151.

⁶⁹ *Id.* at 1161.

⁷⁰ *Id.* at 1158.

⁷¹ Ursula Ramsey, *Community Orchards and Food Security in Appalachia*, 120 W. VA. L. REV. 1063 (2018).

[the region's] location, grocery store availability, and poverty levels" and those challenges "are reflected in the region's [relatively abysmal] health statistics."⁷² The author contends that Appalachians should look toward community orchards, which she defines as "an orchard that is not being managed for private profit and is cared for by . . . [the] community," due to their "host of benefits," including the preservation of local biodiversity, the development of local job skills, the production of new avenues of employment in the community, and the provision of "a free, nutritious food source" to "creat[e] food secure communities"⁷³ Professor Ramsey examines four community orchard case studies and, based on that research, recommends that Appalachians mitigate regional food insecurity by developing "[c]ommunity orchard organizations" that follow the model of the Charlottesville, Virginia organization and are compliant with the Americans with Disabilities Act.⁷⁴

III. IMPROVING SUBSTANCE USE RECOVERY AND REHABILITATION

It is undisputed that Appalachia is currently in the throes of a pervasive drug overdose epidemic. As has been well-publicized, West Virginia has led the nation in per capita drug overdose deaths for several years.⁷⁵ Indeed, the epidemic killed 872 West Virginians in 2017 alone.⁷⁶ A pair of Symposium articles advocate for legal strategies and policy reforms aimed at assisting individuals struggling with substance use disorder (SUD) throughout the region.

Lauren Rogal's essay, *Legal Strategies for Economic Empowerment of Persons in Recovery*, "focuses on legal strategies to expand employment and entrepreneurship opportunities for persons in recovery."⁷⁷ The piece "explores the acute impact of substance use disorder in Appalachia and how the region's socioeconomic dynamics impede economic reintegration of persons in recovery."⁷⁸ *Legal Strategies* exposes three common obstacles to meaningful

⁷² *Id.* at 1068.

⁷³ *Id.* at 1069, 1071, 1080, 1086.

⁷⁴ *Id.* at 1086.

⁷⁵ U.S. DEP'T OF HOMELAND SECURITY, DRUG ENFORCEMENT AGENCY INTELLIGENCE REPORT: THE WEST VIRGINIA SITUATION 2 (May 2017), <https://www.dea.gov/docs/DEA-WAS-DIR-024-17%20West%20Virginia%20Drug%20Situation%20-UNCLASSIFIED.pdf> (opining that "[d]rug abuse and trafficking, particularly of opioids, is a critical threat to West Virginia" and noting the state has the nation's highest rate of drug overdose fatalities).

⁷⁶ *WV Recorded 872 Fatal Drug Overdoses in 2017*, CHARLESTON GAZETTE-MAIL (Mar. 9, 2018), https://www.wvgazette.com/news/health/wv-recorded-fatal-drug-overdoses-in/article_e877b9f-dd6c-56df-825d-70fab61b7e09.html.

⁷⁷ Lauren Rogal, *Legal Strategies for Economic Empowerment of Persons in Recovery*, 120 W. VA. L. REV. 1025, 1026 (2018).

⁷⁸ *Id.*

employment experienced by individuals in recovery: “spotty work histories, stigma, and records of criminal justice involvement.”⁷⁹

Professor Rogal urges “[p]olicymakers [to] leverage the law to promote employment opportunities for persons in recovery.”⁸⁰ The author cites numerous opportunities for “positive reform” including the (1) adoption of nondiscrimination provisions that cover persons in recovery; (2) relaxation of “tax rules to facilitate nonprofit rehabilitative employment programs;” (3) “reforming the Work Opportunity Tax Credit to incentivize hiring of persons in recovery;” (4) reduction of the risks to employers associated with hiring individuals in recovery; and (5) reduction or elimination of collateral consequences attendant to drug-related convictions.⁸¹ Professor Rogal concludes her piece by recommending that jurisdictions adopt The National Employment Law Project (NELP) model occupational licensing law framework “to balance consumer protection with the societal and individual interest in offender rehabilitation.”⁸²

Samuel Brown Petsonk and Anne Marie Lofaso examine the circumstances in which a person suffering from substance use disorder is protected by the Americans with Disabilities Act (ADA) and West Virginia Human Rights Act (WVHRA) in *Working for Recovery: How Civil Rights Laws Can Improve the Prospects for Successful Rehabilitation and Gainful Employment for Alcoholics and Drug Addicts*.⁸³ Petsonk and Lofaso begin their article by explaining that “[t]he U.S.’s response to the opioid epidemic has been hindered by the lack of adequate support in the workplace as workers undergo rehabilitation and long-term recovery.”⁸⁴ The authors work from the premise that “[p]rivate employers can play a more prominent role in supporting recovery by providing reasonable accommodations that help workers remain employed while participating in rehabilitation” because SUD is a disability and the private “workplace has contributed to the oversupply of opioids that fueled the present epidemic.”⁸⁵

Working for Recovery details the doctrinal components of the ADA and WVHRA, the potential causes of action an individual suffering from SUD can bring under either civil rights scheme, as well as the obstacles and affirmative defenses that putative plaintiffs face under those schemes.⁸⁶ Petsonk and Lofaso

⁷⁹ *Id.*

⁸⁰ *Id.* at 1036.

⁸¹ *Id.*

⁸² *Id.* at 1045.

⁸³ Samuel Brown Petsonk & Anne Marie Lofaso, *Working for Recovery: How Civil Rights Laws Can Improve the Prospects for Successful Rehabilitation and Gainful Employment for Alcoholics and Drug Addicts*, 120 W. VA. L. REV. 891 (2018).

⁸⁴ *Id.* at 894.

⁸⁵ *Id.* at 893.

⁸⁶ *Id.* at 894–914.

conclude their article with a series of proposed policy changes aimed at providing individuals with SUD increased access to recovery services. Among other things, the authors recommend employers provide reasonable job accommodations for those struggling with SUD, “regulatory agencies that oversee workers’ compensation and health insurance [] prioritize the provision of physical therapy and other non-pharmaceutical modalities for the treatment of pain,”⁸⁷ and “Congress . . . enhance protection for recovering addicts by expanding recovery services through the federal Rehabilitation Services Administration and by facilitating access to group therapy programs that use best practices under Medicare and Medicaid.”⁸⁸ Petsonk and Lofaso also demand that “the EEOC and the state and local fair employment agencies . . . acknowledge and prioritize the pursuit of claims for failures to accommodate and discrimination involving addiction.”⁸⁹

IV. ADDRESSING REGIONAL POVERTY AND ECONOMIC DEVELOPMENT

A trio of Symposium articles explore Appalachian poverty and economic development-related public policy issues. For example, Faith Mullen’s article, *Another Day Older and Deeper in Debt: Mitigating the Deleterious Effect of Wage Garnishments in Appalachia’s Low-Wage Workers*, calls on Appalachian states to reform their wage garnishment laws, which currently operate to reinforce and entrench regional poverty.⁹⁰ As Professor Mullen contends, “[f]ederal law . . . leaves the details of the garnishment process to the discretion of the states.”⁹¹ Therefore, she argues, high poverty-rate states can—and should—implement a series of reforms to their current wage garnishment practices.

First, Professor Mullen maintains that states should adjust down the amount that judgment creditors are permitted to garnish from low-wage workers by either increasing the number of minimum-wage work hours exempt from garnishment or decreasing the percentage of disposable earnings that are subject to garnishment.⁹² Second, she argues that states should implement protections for low-income workers that go beyond adjusting their garnishment formulae, such as reducing garnishment based on family size, limiting or exempting garnishment for certain low-income wage earners, and limiting the use of garnishment to collect certain categories of debt.⁹³ Third, she contends that states

⁸⁷ *Id.* at 914.

⁸⁸ *Id.* at 915.

⁸⁹ *Id.*

⁹⁰ Faith Mullen, *Another Day Older and Deeper in Debt: Mitigating the Deleterious Effect of Wage Garnishments in Appalachia’s Low-Wage Workers*, 120 W. VA. L. REV. 973 (2018).

⁹¹ *Id.* at 978.

⁹² *Id.* at 978–81.

⁹³ *Id.* at 981–86.

should amend their wage garnishment procedures to require adequate post-judgment notice, enhance transparency in garnishment payments, and prohibit firing of low-wage earners as the result of garnishment.⁹⁴ Fourth and finally, Professor Mullen suggests that states lower their post-judgment income rates.⁹⁵ Simply stated, *Another Day Older and Deeper in Debt* makes the case that high-poverty Appalachian states ought to “boost the economic security of [their] low wage workers” by reforming their garnishment laws.⁹⁶

In *Power and Powerlessness in the Shale Valley Schools: Fracking for Funding*, Jacqueline J. Yahn explores how the Marcellus and Utica shale gas booms have impacted school funding throughout the Appalachian Ohio region known as “Shale Valley.”⁹⁷ As Dr. Yahn’s article explains, the shale gas rush, commonly characterized as “the fracking boom,” began in Appalachian Ohio in 2010.⁹⁸ “By late 2010, public school officials throughout [the region] began to lease district-owned property to oil and gas companies for exploration and drilling in an effort to resolve long-term budget deficits,”⁹⁹ which evolved as the result of “local property valuation decreases or stagnations associated with deindustrialization, outmigration, and environmental degradation.”¹⁰⁰

Dr. Yahn outlines the shale boom’s benefits to local school districts, including the increase in short-term revenue and the ability to enhance and design novel curricula aimed at “educating-in” or preventing outmigration of young people from the region.¹⁰¹ She also details the drawbacks for the districts, which include potential property devaluation and the advent of “invisible gorillas” or “consequences of the fracking boom that could lead to long-term environmental, economic, social, and political dilemmas for schools and communities.”¹⁰² Dr. Yahn concludes her article by advancing four policy recommendations aimed to ensure that that “the inevitable busts associated with resource extraction” are insulated from devastating the Shale Valley communities.

In *Parallel Worlds: Comparing Rural Development to Development in International Countries*, Professors Jena Martin and Karon Powell posit that rural communities in developed nations, such as the United States, share more commonalities than differences with rural communities in developing nations,

⁹⁴ *Id.* at 986–92.

⁹⁵ *Id.* at 992–93.

⁹⁶ *Id.* at 995.

⁹⁷ Jacqueline Yahn, *Power and Powerlessness in the Shale Valley Schools: Fracking for Funding*, 120 W. VA. L. REV. 943, 943 (2018).

⁹⁸ *Id.* at 944.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 951.

¹⁰¹ *Id.* at 962.

¹⁰² *Id.* at 964.

such as those in East Africa.¹⁰³ As such, the authors contend that “an examination of the frameworks used to discuss international development may lead us to insights regarding how to think about development in rural Appalachian communities.”¹⁰⁴ *Parallel Worlds* opens by guiding the reader through the ever-evolving frameworks of international development theory. The article then “provide[s] an in-depth comparison of Appalachian and East African communities using five of the United Nations Sustainable Development Goals (“SDGs” or “the Goals”) as measurements.”¹⁰⁵ Relying on their assessment and analysis of the SDGs, Professors Martin and Powell conclude that “the path forward for both Appalachia and East Africa” involves “making strides toward an inclusive model of development—not just one that focuses on economic factors—but one that also encompass[es] the community as a whole and[] . . . take[s] individual voices into consideration.”¹⁰⁶

V. A CRITIQUE OF APPALACHIAN LAND-OWNERSHIP ISSUES

Appalachia has long-attracted outside interests fixated on profiting from the region’s valuable natural resources. To ensure access to those commodities, outside investors purchased huge tracts of land throughout Appalachia. According to a 2013 report issued by the West Virginia Center on Budget and Policy, “[b]y 1810, as much as 93 percent of [the] land in present day West Virginia was held by absentee owners,” and “by the 1880s, outside interests began purchasing extensive timber and underground mineral rights on land whose residents retained only the surface rights.”¹⁰⁷ Jacob Meadows and Jesse J. Richardson, Jr. grapple with problematic Appalachian land ownership issues, including absentee ownership and heirs property, in their respective Symposium articles.

Jacob Meadows’s research design, *Who Owns North Carolina? Econometric, Geospatial, and Interview Analyses of Land in Appalachian North Carolina for Land Policy Reform in the Appalachians: A Research Design and Findings to Date*, argues for the development and implementation of unbiased and representative mixed methodological studies to advance an “understanding [of] the dynamics between absentee landownership and community

¹⁰³ Jena Martin & Karon Powell, *Parallel Worlds: Comparing Rural Development to Development in International Countries*, 120 W. VA. L. REV. 1107 (2018).

¹⁰⁴ *Id.* at 1109.

¹⁰⁵ *Id.* at 1111.

¹⁰⁶ *Id.* at 1134.

¹⁰⁷ Elizabeth E. Payne, *Owning the Mountains: Appalachia’s History of Corporate Control*, APPALACHIAN VOICES (Feb. 18, 2016), <http://appvoices.org/2016/02/18/corporate-land-ownership-appalachia/>.

socioeconomics in Appalachian North Carolina.”¹⁰⁸ Meadows begins his design by describing theories of capital regarding absentee land ownership, the impacts of land ownership on community socioeconomics, and the history of absentee land ownership in Appalachia.¹⁰⁹ The author then exposes the methodological flaws of a 40-year-old study, which “surveyed approximately 13 million acres of land in 80 Appalachian counties” and found that 72% of the surveyed land was owned by absentee interests.¹¹⁰

Meadows advocates for the development of a new mixed-methodological study of Appalachian North Carolina land ownership that includes: (1) “spatial mapping” of land parcels; (2) “econometric modeling of absentee landowners and community socioeconomics;” (3) qualitative interviews with county tax assessors to ascertain current assessment practices; and (4) “a comparative case study between land in post-industrial Wales and Appalachia.”¹¹¹ He also examines general trends, including very high rates of both absentee ownership and underdevelopment, that have emerged thus far from a small sample of data derived from a sub-set of Appalachian North Carolina counties.¹¹² *Who Owns North Carolina?* concludes by reminding the reader that its above-described mixed methods research proposal is designed to “address [the] ongoing debate on how to transition Appalachia’s economy in a just and sustainable fashion.”¹¹³

Jesse J. Richardson, Jr.’s essay, *Receivership: Another Option for Partition of Heirs Property*, “discusses the nature of heirs property and the negative consequences that arise in communities . . . with significant amounts of land held” in such form, “including the significant role that [heirs property] plays in Appalachian poverty.”¹¹⁴ Professor Richardson describes two pervasive problems that arise in the context of “heirs property,” which he defines as “a form of ownership where at least some of the owners have acquired the property through inheritance, usually without probate and with clouds on title from unknown heirs.”¹¹⁵ Specifically, he contends that heirs property raises both vulnerability and wealth concerns.

Vulnerability concerns “involve[] the risk of being involuntarily stripped of property rights through a partition suit filed by [a] cotenant” while wealth

¹⁰⁸ Jacob Meadows, *Who Owns North Carolina? Econometric, Geospatial, and Interview Analyses of Land in Appalachian North Carolina for Land Policy Reform in the Appalachians: A Research Design and Findings to Date*, 120 W. VA. L. REV. 1089, 1090 (2018).

¹⁰⁹ *Id.* at 1091–95.

¹¹⁰ *Id.* at 1095.

¹¹¹ *Id.* at 1099–1100.

¹¹² *Id.* at 1102–03.

¹¹³ *Id.* at 1103.

¹¹⁴ Jesse J. Richardson, Jr., *Receivership: Another Option for Partition of Heirs Property*, 120 W. VA. L. REV. 917, 918 (2018).

¹¹⁵ *Id.*

concerns arise because “cotenants find it difficult, if not impossible, to access or utilize their share of the value of the property”¹¹⁶ As the author makes clear, these two concerns often operate in concert to create an environment whereby heirs property is “likely to become abandoned and/or neglected.”¹¹⁷ Professor Richardson concludes his article by examining several potential policy changes to address the vulnerability and wealth concerns attendant to heirs property and ultimately recommends that Appalachian states borrow from their urban counterparts and enact broad receivership statutes “to unlock heirs property in” the region.¹¹⁸

VI. CONCLUSION

In this Symposium edition of the *West Virginia Law Review*, the region’s leading scholars and practitioners have taken up the cause of confronting Appalachian stereotypes, advocating for local entrepreneurship, economic development, and poverty-related reforms, addressing the significant health-related difficulties facing the region, reimagining development-stifling Appalachian land ownership issues, and confronting the obstacles that face our neighbors recovering from substance use disorder. A common thread in the literature generated by the Symposium is the call for Appalachians to work collaboratively to formulate innovative solutions to the unique and persistent problems that plague our distinct and resilient region. The Symposium scholars reject the “longstanding pattern of presenting Appalachia as a monolithic ‘other America’ that defies narratives of progress”¹¹⁹ and, instead, embrace a reconstructed narrative of Appalachia that is complex, diverse, self-sufficient, and, ultimately, capable of shaking off the shackles of historic oppression by outside forces and emerging formidable.

From the earliest days of our nation, to its leaps in artistic and creative endeavors, and to its most significant struggles of labor and civil rights and fairness in the nineteenth and twentieth centuries, . . . Appalachians have been in the vanguard in determining that American destiny. There is no question they will continue to do so. The greater question is whether the rest of the country will “come up to these hills and mountains” and join them.¹²⁰

Montani semper liberi.

¹¹⁶ *Id.* at 918–19.

¹¹⁷ *Id.* at 919.

¹¹⁸ *Id.* at 937–38.

¹¹⁹ CATTE, *supra* note 16, at 22.

¹²⁰ BIGGERS, *supra* note 2, at 211.