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Abstract

Have Americans become so desensitized to inequality that we have morphed into a state of dystopia, and vast inequalities have become normalized? Discussions of dystopia typically describe acts of oppression, tyranny, inequality, and an overall undesirable societal state. Dystopia analysis also requires a hard look at societal values to determine ways to avoid adverse outcomes that vast inequalities may produce. By identifying the undesirable outcome, there is an opportunity to avoid or reverse it by enacting laws to combat inequalities.

The Hunger Games *is a fictional tale of wealthy society members enjoying the rewards of high society while using the poor societal members for labor and entertainment. This illustration may also depict American realities. For example, Panem is described as a country consisting of twelve districts and the Capitol. The Capitol is the power center where the wealthiest reside. While decisions regarding the entire society are made by a select few, namely the President, those decisions primarily benefit the wealthy, and they intentionally contribute to a state of inequality and selective oppression.*

America's growing inequalities were further facilitated through the Tax Cuts and Jobs Act (TCJA). The TCJA has contributed to disparities, and America's version of dystopia, by disproportionally benefitting the wealthy.

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There are vast inequalities across multiple areas of the law; however, this article will focus on specific tax policies by comparing the dystopic society depicted in The Hunger Games *to tax policies within the TCJA. This analysis will include a discussion of changes to the standard deduction and personal exemptions alliance, historical justifications for both, and the impact of tax policy on inequalities.*

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I. INTRODUCTION

The headline reads: "The One Percent Have Gotten $21 Trillion Richer Since 1989. The Bottom 50% Have Gotten Poorer."[1] At first glance, one might view the title as sensationalism and overlook it, but I had to inquire. The news article explained how new data released by the Federal Reserve indicated that "America's superrich" have gained twenty-one trillion dollars in wealth while the bottom half lost nine hundred billion dollars since 1989.[2]

Reading this article should have brought a certain outrage by the American public, but I have not seen it. The state of inequality has become so entrenched in America that less than forty percent of the adults polled indicated reducing income differences was a "very important priority" for Congress and the President.[3] In fact, only 42% of adults polled indicated "reducing inequality should be a top priority."[4] Have Americans become so desensitized to inequality that we have morphed into a state of dystopia, and vast inequalities are normalized?[5]

Discussions of dystopia typically describe acts of oppression, tyranny, inequalities, and an overall undesirable societal state.[6] Dystopia analysis also requires a hard look at societal values to determine ways to avoid adverse

1. Eric Levitz, *The One Percent Have Gotten $21 Trillion Richer Since 1989. The Bottom 50% Have Gotten Poorer.*, N.Y. MAG. (June 16, 2019), https://nymag.com/intelligencer/2019/06/the-fed-just-released-a-damning-indictment-of-capitalism.html.

2. *Id.*

3. Joe Neel, *Is There Hope For The American Dream? What Americans Think About Income Inequality*, NPR (January 9, 2020), https://www.npr.org/sections/health-shots/2020/01/09/794884978/is-there-hope-for-the-american-dream-what-americans-think-about-income-inequality ("Income inequality in the U.S. is at an all-time high, according to the Census Bureau. But do Americans care? A new poll from NPR, the Robert Wood Johnson Foundation and the Harvard T.H. Chan School of Public Health shows that less than half of Americans, regardless of income, view it as [a] very serious problem.").

4. JULIANA MENASCE HOROWITZ, RUTH IGIELNIK & RAKESH KOCHHAR, PEW RESEARCH CTR., MOST AMERICANS SAY THERE IS TOO MUCH ECONOMIC INEQUALITY IN THE U.S., BUT FEWER THAN HALF CALL IT A TOP PRIORITY 23 (2020), https://www.pewresearch.org/social-trends/2020/01/09/most-americans-say-there-is-too-much-economic-inequality-in-the-u-s-but-fewer-than-half-call-it-a-top-priority/ ("Roughly four-in-ten Americans (42%) say reducing inequality should be a top priority for the federal government. Among this group, large majorities say the influence it gives to the wealthy and the limits it places on people's opportunities are major reasons why inequality should be given priority status. Relative to other issues, though, the public does not rank inequality among the country's biggest problems.").

5. *See id.* at 24, 26 (noting that "[r]oughly one-in-five (19%) say that only minor changes are required in order to address inequality," and "[a]mong those who say there is too much inequality, 70% say some amount is acceptable").

6. *See* Thomas P. Crocker, *Dystopian Constitutionalism*, 18 U. PA. J. CONST. L. 593, 606 (2015).

outcomes that vast inequalities may produce.[7] By identifying the undesirable effect, there is an opportunity to prevent or reverse it by enacting laws to combat inequalities. If not actively avoided, rules and laws that perpetuate inequalities may become so indoctrinated in society that dystopia is inevitable and societal unrest is the next natural step.[8]

The Tax Cuts and Jobs Act (TCJA) further facilitated America's growing inequalities.[9] The TCJA has contributed to inequalities, and America's version of dystopia, by passing laws that disproportionally benefit the wealthy. There are vast inequalities across multiple areas of the law; however, this article will focus on specific tax policies by comparing the dystopic society as depicted in *The Hunger Games*[10] to tax policies within the TCJA.

Part II will lay out the setting for the games and discuss the standard deduction and personal exemptions alliance, historical justifications, and the impact of the changes implemented by the TCJA on inequalities. Part III will discuss the difference in access versus opportunity to access higher education, and how tax policy impacts those efforts. Part IV will examine laws and policies, particularly the TCJA, that contribute to vast inequalities. The conclusion follows ways to use tax policy to stimulate changes to reverse some of the regressive effects facilitated by tax policy.

II. THE GAMES

The Hunger Games is a fictional tale of wealthy society members enjoying the rewards of high society while using the poor societal members for labor and entertainment. This illustration may also depict American realities. For example, Panem is described as a country consisting of twelve districts and the Capitol.[11] The Capitol is the power center where the wealthiest reside.[12] While decisions regarding the entire society are made by

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7. *See id.* at 607.

8. *See* Melissa Chan, *This Researcher Predicted 2020 Would Be Mayhem. Here's What He Says May Come Next*, TIME (June 16, 2020, 11:26 AM), https://time.com/5852397/turchin-2020-prediction/ ("Turchin says societal crises, which are triggered when pent-up pressures seek an outlet, can typically last for five to 15 years. If the underlying roots of unrest are not properly addressed, turbulent events are easily set off again. In South Africa, for example, which is one of the world's most unequal countries, according to the World Bank, intense protests and anger over race and wealth inequality still rankle the country, 26 years after apartheid ended.").

9. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

10. SUZANNE COLLINS, THE HUNGER GAMES (Scholastic 2008).

11. *Id.* at 12.

12. *See id.*

a select few, namely the President, those decisions primarily benefit the wealthy and they intentionally contribute to a state of inequality and selective oppression.[13]

While the description of Panem is based on a fictitious society, there are correlations to American society. In America, the wealthiest households enjoy the benefits of wealth, power, and status in the face of vast inequalities.[14] Further evidence of the analogy to *The Hunger Games* is the level of manipulation used to control Americans. Government leaders have been successful at pitting Americans against each other. For example, rather than focusing on the issues and policies that inhibit socioeconomic mobility, taxpayers have been distracted by propaganda that portrays the poor as lazy people who live on welfare and waste government resources.[15] The rest of this article will provide more examples and analogies of *The Hunger Games* to American society focusing on tax policy.

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13. *See id.* at 13, 15–16 (explaining how the districts are forced to comply with the oppressive directives given by the Capitol or else their village may face destruction).

14. *See generally* KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY (Princeton Univ. Press, 2019) (documenting that "the one percent" hold "27 percent of the new wealth").

15. *See, e.g.*, Gilliam Brockell, *She Was Stereotyped as 'The Welfare Queen,'* WASH. POST (May 21, 2019, 12:01 PM), https://www.washingtonpost.com/history/2019/05/21/she-was-stereotyped-welfare-queen-truth-was-more-disturbing-new-book-says/ ("Reagan invoked the nameless woman frequently that year as he very nearly toppled Ford for the GOP spot. He continued to speak of her over the next four years in his popular radio commentaries, again on the campaign trail in 1980, and as president when he called on Congress to pass a welfare overhaul. She became known as the 'welfare queen.' The term was designed to conjure racist stereotypes of a single black mother living large on the taxpayers' largesse, collecting government checks while bedecked in diamonds and driving a Cadillac."); *see also* Derek Thompson, *Busting the Myth of 'Welfare Makes People Lazy,'* THE ATLANTIC (March 8, 2018), https://www.theatlantic.com/business/archive/2018/03/welfare-childhood/555119/ ("'Welfare makes people lazy.' The notion is buried so deep within mainstream political thought that it can often be stated without evidence. It was explicit during the Great Depression, when Franklin D. Roosevelt's WPA (Works Progress Administration) was nicknamed 'We Piddle Around' by his detractors. It was implicit in Bill Clinton's pledge to 'end welfare as we know it.' Even today, it is an intellectual pillar of conservative economic theory, which recommends slashing programs like Medicaid and cash assistance, partly out of a fear that self-reliance atrophies in the face of government assistance.").

A. The Standard and Itemized Deductions as Tributes

The standard deduction was adopted into the tax code through the Individual Tax Act of 1944.[16] The general purposes of the standard deduction were to simplify tax preparation for taxpayers and reduce tax liability without the obligation to prove expenses.[17] Consequently, the standard deduction implementation also added progressivity to tax policy.[18] Over the years, Congress adjusted the standard deduction to maintain simplicity, increase the number of taxpayers who used it, and ensure that taxpayers below the poverty level would have no tax liability.[19]

16. COMMISSIONER OF INTERNAL REVENUE STAT. DIVISION, STATISTICS OF INCOME FOR 1944 PART I, at 28 (1950), https://www.irs.gov/pub/irs-soi/44soireppt1ar.pdf ("An optional standard deduction in lieu of allowable deductions, tax credits for foreign tax paid and tax paid at source on tax-free covenant bond interest, and credit against net income for Government interest, is provided; such standard deduction is $500 if the adjusted gross income is $5,000 or more; or it is approximately 10 percent of the adjusted gross income if the adjusted gross income is less than $5,000 in which case the tax liability is determined from the tax table (Supplement T) the computation of which utilizes the standard deduction.").

17. *See id.* at 20 ("To relieve taxpayers of the burden of having to itemize these deductions in detail and of having to support them with evidence, the 1944 act provides a substitute called the optional standard deduction, which the taxpayer may use, if he chooses, instead of itemizing his actual deductions."); *see also* John R. Brooks II, *Doing Too Much: The Standard Deduction and the Conflict Between Progressivity and Simplification*, 2 COLUM. J. TAX L. 203, 205 (2011) ("The standard deduction is a provision of the U.S. individual income tax system that serves two purposes: First, it provides for a minimum amount of untaxed income, thus acting as an element of progressivity. Second, it provides a simplified alternative to the itemized deductions for taxpayers with relatively low itemizable expenses, thus relieving them of the record-keeping and computational burden of itemizing deductions. Having one provision serve each of these purposes is a compromise, but it is a compromise that is unreasonable and unnecessary." (footnotes omitted)).

18. *See* Brooks II, *supra* note 17, at 212 ("In 1964—twenty years after the standard deduction was introduced—progressivity finally appeared in the design of the standard deduction. With the Revenue Act of 1964, Congress created the 'minimum standard deduction,' which was intended 'to remove from the tax rolls those persons with minimum incomes and also to provide those with incomes just slightly above these levels a somewhat larger tax reduction than is made available generally through the rate cuts.' This is the first time a progressivity goal was articulated in the legislative history of the standard deduction, and the first time that the standard deduction provision was used to ensure some baseline amount of untaxed income." (footnote omitted)).

19. *See id.* at 212–13 ("In 1969, the connection to progressivity was made even more explicit. In the Tax Reform Act of 1969, Congress renamed the 'minimum standard deduction' the 'low income allowance' and redesigned it to be precisely the poverty level of income."); *see also* Allan J. Samansky, *Nonstandard Thoughts About the Standard Deduction*, 1991 UTAH L. REV. 531, 535–36 (1991) ("In making these changes, Congress was motivated by several factors. It clearly wanted to increase the number of taxpayers who used the standard deduction, thereby simplifying the preparation and auditing of returns. Equitable distribution of the tax burden was also an important goal. A committee report for the Tax Reform Act of 1969 stated that the standard deduction was being used to 'provide tax reduction to *middle-income* taxpayers,' and reports for other acts reiterated this goal.

For expenses that exceeded the standard deduction, the alternative was the itemized deductions.[20] Because deductions were designed to reduce tax liability, specific authorizations were required by the Internal Revenue Code (Code). Personal and living family expenses were expressly disallowed, unless otherwise authorized.[21] Examples of authorized deductible personal expenses included certain medical and dental expenses,[22] mortgage interest for a personal principal residence,[23] state and local income taxes (SALT), and real property taxes.[24]

Deductions have been justified as a method to provide taxpayers relief for large expenses, incentives to engage in certain behaviors, and costs for earning income even though most taxpayers who itemize are wealthier and do not need subsidies.[25] For example, payments of local real estate property and state income taxes are deductible as part of the itemized deductions. In the case of local real estate property taxes, scholars and economists disagree on whether the expense should be deductible.[26] The discourse centers on various factors,

The low-income allowance was designed to assure, to the extent possible, that the level of income at which individuals first started paying tax was at least equal to the poverty level and to provide tax relief to lower income persons above the poverty level." (footnotes omitted)).

20. SEAN LOWRY, CONG. RES. SERV. R42872, TAX DEDUCTIONS FOR INDIVIDUALS: A SUMMARY 6 (2017), https://fas.org/sgp/crs/misc/R42872.pdf ("Tax filers have been able to itemize their deductions since the Revenue Act of 1913 (P.L. 63–16), which created the first permanent federal income tax.").

21. I.R.C. § 262 (2018) ("Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."); *see also* I.R.C. § 163(h)(1) (West 2020) ("In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.").

22. I.R.C. § 213 (West 2020) ("There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 10 percent of adjusted gross income.").

23. I.R.C. § 163(h)(2) (West 2020) ("For purposes of this subsection, the term 'personal interest' means any interest allowable as a deduction under this chapter other than . . . any qualified residence interest (within the meaning of paragraph (3)) . . . .").

24. I.R.C. §164 (2018) ("Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued: (1) State and local, and foreign, real property taxes. (2) State and local personal property taxes. (3) State and local, and foreign, income, war profits, and excess profits taxes.").

25. *See generally* Linda M. Beale, *Congress Fiddles While Middle America Burns: Amending the AMT (and Regular Tax)*, 6 FLA. TAX REV. 811 (2004); Edward Yorio, *Equity, Efficiency, and the Tax Reform Act of 1986*, 55 FORDHAM L. REV. 395 (1987).

26. *See* Louis Kaplow, *Fiscal Federalism and the Deductibility of State and Local Taxes in a Federal Income Tax*, 82 VA. L. REV. 413, 417–18 (1996) ("Some suggest that the match is good, so that state and local taxes can be viewed as payments for government services. Just as individuals are

including whether taxpayers received a defined benefit, whether benefits may be measured, and the impact of redistribution and ability to pay.[27]

Local property taxes impact taxpayers in ways that may not be calculated, yet the benefits of living in communities that exclude others are apparent. People who live in high property tax communities enjoy benefits such as greater resources for their public schools, libraries, and public services.[28] While these are desirable government expenses that provide a general benefit to the public, this definition of public is exclusive, as demonstrated by two well-known cases in the media in which low-income mothers were convicted of stealing public education.[29] These low-income mothers paid a very high

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not permitted to deduct expenditures on ordinary consumption, they should receive no deduction for consumption purchased through the government; hence, state and local taxes should not be deductible. Others question the connection between taxes paid and benefits received. If state and local taxes are contributions to government that hardly correlate with benefits received, such taxes should be deductible."); Samansky, *supra* note 19, at 541–42 ("Other deductions are more difficult to justify under the rationale of equitable distribution of the tax burden. For example, the argument that equity justifies a deduction for state and local taxes can be questioned since those taxes may reflect the level of services provided to taxpayers of the state or municipality. On the other hand, state and local taxes are involuntary and provide no direct return to the payor."); Kirk J. Stark, *Fiscal Federalism and Tax Progressivity: Should the Federal Income Tax Encourage State and Local Redistribution?*, 51 UCLA L. REV. 1389, 1414 (2004) ("Tax scholars disagree as to whether utility is an appropriate ground for comparing different taxpayers. Many commentators, noting the serious theoretical problems in making any but the broadest generalization about individual utility, suggest instead that the fundamental measure of taxpayers should be their 'ability to pay.'" (citing Brian Galle, *Federal Fairness to State Taxpayers: Irrationality, Unfunded Mandates, and the "Salt" Deduction*, 106 MICH. L. REV. 805, 812 n.29 (2008))).

27. *See supra* note 26 and accompanying text.

28. *See, e.g.*, John F. Wasik, *Should You Move to Reduce Your Property Taxes?*, FORBES (Apr. 26, 2019, 9:22 AM), https://www.forbes.com/sites/johnwasik/2019/04/26/should-you-move-to-reduce-your-property-taxes/?sh=7feee1ee548a (explaining that high-tax states have beneficial services including decent schools and good libraries, park districts, and community colleges).

29. *See* Annie Lowrey, *Her Only Crime Was Helping Her Kids*, THE ATLANTIC (Sept. 13, 2019), https://www.theatlantic.com/ideas/archive/2019/09/her-only-crime-was-helping-her-kid/597979/. Kelley Williams-Bolar used her father's address to enroll her children in his school district. *Id.* Ms. Williams-Bolar's father assisted her with childcare and she split her time between her own home address her and her father's home. *Id.* The public school in her father's district had resources such as greenhouses, clean water, updated textbooks, and clean facilities, to name a few. *Id.* When this low-income single mother enrolled her children, the children surely looked out of place to the extent the school hired a private detective to prove the children lived "out-of-bounds." *Id.* She was convicted of a felony for falsifying records and theft of public education. *Id.* *See also* Jessica Hopper, *Connecticut Mom Tanya McDowell, Accused of Stealing Son's Education, Arrested on Drug Charges*, ABC NEWS (June 13, 2011), https://abcnews.go.com/US/connecticut-mom-tanya-mcdowell-accused-stealing-sons-education/story?id=13831758 ("In April, McDowell was charged with first degree grand larceny and conspiracy for allegedly stealing $15,686 in educational services from Norwalk Public Schools because she sent her 6-year-old son to Brookside Elementary School, a school allegedly

and public price for violating perceived boundaries.[30]

These examples demonstrate some benefits derived from property taxes. These and other tax benefits have subsidized wealthy households and contributed to the regressivity of the tax system.[31] In the game of tax policy, there are winners and losers.[32] A primary purpose of taxation is to raise revenue; therefore, someone must pay.[33] If the wealthy receive tax relief, the burden of raising revenue is derived from another source.

Itemized deductions are not revenue sources. On the contrary, they are tax expenditures and cause revenue loss.[34] The use of SALT deductions for non-business related SALT expenses resulted in almost $370 billion in revenue loss for tax years 2016–2020.[35] To continue the subsidy, Congress

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outside of her district.").

30. *See* Lowrey*, supra* note 29 ("Williams-Bolar and McDowell made their choices in an educational system rife with inequalities, among them deeply unequal per-pupil financing and persistent school segregation. School districts have a way of turning a public good into a private good. Rich families enroll their kids in neighborhood schools, hoarding opportunity through boundary enforcement, zoning laws, real-estate prices, and redlining. The structure of education financing gives parents a sense of entitlement and ownership: They *pay* for schools with their mortgages and property taxes, and therefore the school is *theirs*. (Of course, the math is more complicated than that.) In-boundary parents are often the initiators of boundary-hopping investigations; they believe that out-of-boundary parents are stealing.").

31. *See* Martin J. McMahon, Jr., *Individual Tax Reform for Fairness and Simplicity: Let Economic Growth Fend for Itself*, 50 WASH. & LEE L. REV. 459, 486 (1993) ("[T]he home mortgage deduction is a tax expenditure to subsidize housing. As a housing subsidy it provides benefits that bear a direct relationship to income." (footnote omitted)).

32. *See id.* at 460 ("Inequity in the tax system derives from two sources. First, despite a decade of 'tax reform,' the Internal Revenue Code remains riddled with exclusions that result in horizontal inequity. Some, such as nonrecognition for like-kind exchanges, probably are best viewed as historical artifacts. Others, such as statutory tax-free fringe benefits, are not just remnants of the past, but continue to multiply. Second, the supply-side economics emphasis that strongly influenced tax policy in the 1980s has seen the effective tax rates on very high-income individuals—the top 10%—fall dramatically relative to the tax rates of the remaining 90% of individual taxpayers.").

33. *What Are the Sources of Revenue for the Federal Government?*, TAX POLICY CTR. (last visited Feb. 19, 2021), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government ("The individual income tax has provided nearly half of total federal revenue since 1950, while other revenue sources have waxed and waned . . . .").

34. *See, e.g.*, JOINT COMM. ON TAXATION, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2016–2020, NO. JCX-3-17 at 18 (2017), https://www.jct.gov/publications/2017/jcx-3-17/ ("Under the Joint Committee staff methodology, each tax expenditure is measured by the difference between tax liability under present law and the tax liability that would result if the tax expenditure provision were repealed and taxpayers were allowed to take advantage of any of the remaining tax expenditure provisions that apply to the income or the expenses associated with the repealed tax expenditure.").

35. *Id.* at 40 The calculations included a deduction for nonbusiness State and local government income taxes, sales taxes, and personal property taxes. *Id.*

must raise revenue from another source, borrow funds, or reduce costs for other programs or services.[36] While the standard deduction and itemized deductions are both designed to reduce tax liability, they serve distinctly different taxpayers (districts).[37]

B. The Rule Change

> Claudius Templesmith's voice booms down from overhead, congratulating the six of us who remain. But he is not inviting us to a feast. He's saying something very confusing. There's been a rule change in the Games. A rule change! That in itself is mind bending since we don't really have any rules to speak of except don't step off your circle for sixty seconds and the unspoken rule about not eating one another. Under the new rule, both tributes from the same district will be declared winners if they are the last two alive. Claudius pauses, as if he knows we're not getting it, and repeats the change again. The news sinks in. Two tributes can win this year. If they're from the same district. Both can live. Both of us can live.[38]

The Hunger Games were formed as retribution for a previous rebellion by the subordinate districts against the Capitol. Each of the twelve districts was required to submit a male and female tribute to participate in the games, in which they were forced to fight and kill each other until the last tribute survived. In the middle of the games, the tributes received an announcement that two tributes could win if they were from the same district. In response to the rule change, the protagonist, Katniss, immediately changed her strategy from working alone and sought out Peeta, her fellow District 12 tribute.

The rule change gave her hope and gave the people something to root for, and the on-screen romance offered better entertainment. The Gamemakers never intended to honor the rule change; it was a manipulation. Government leaders have also used propaganda and similar tactics to manipulate the American people. When the TCJA was announced, government leaders announced a new rule; there would be tax breaks for everyone.[39] At the time,

36. *See supra* notes 31–35 and accompanying text.
37. See Tax Policy Ctr., supra note 33, at 2; see also Joint Comm. on Taxation, Overview of the Federal Tax System as in Effect for 2019, No. JCX-9-19 at 4 (2019), https://www.jct.gov/publications/2019/jcx-9-19/.
38. COLLINS, *supra* note 10, at 244.
39. *See Trump Hails 'Largest Tax Cut' In US History*, BBC NEWS (Dec. 20, 2017),

the announcement was designed to gain support for the legislation and give people hope. In reality, the TCJA was really designed to benefit the wealthy and perpetuate inequalities.

The TCJA enacted numerous changes that benefit the wealthy; however, only three will be discussed and analyzed in this article. First, the TCJA imposed special limits for SALT deductions by capping them at $10,000 ($5,000 for married filing separate) until 2025 when they had been unlimited in previous years.[40] The SALT deduction predominantly benefitted high-income households because they have higher property tax payments and higher incomes equated to higher marginal tax rates.[41] Before and after the TCJA, taxpayers with a household income of more than $100,000 benefitted the most from SALT deductions.[42] This change appeared to address inequalities by removing a subsidy for the wealthy; however, state governments responded by enacting laws to circumvent the effects of the deduction cap.[43]

The IRS endorsed the state efforts by issuing Notice 2020-75, which indicated the intent to issue proposed regulations to permit SALT deductions for pass-through entities, specifically partnerships and S corporations.[44] A key point about this change is that the pass-through entity definition did not include sole proprietorships and single member LLCs.[45] More than half of small businesses are sole proprietors and a majority of them are in the lower income brackets, making $82,000 or less.[46] On the other hand, partnerships

http://www.bbc.com/news/world-us-canada-42429424 ("'We are making America great again,' a jubilant Mr. Trump said. . . . He thanked congressional leaders for pushing through what he called 'the largest tax cut in the history of our country.'").

40. I.R.C. § 164(b)(6) (2018).

41. GRANT A. DRIESSEN & JOSEPH S. HUGHES, CONG. RES. SERV., R46246, THE SALT CAP: OVERVIEW AND ANALYSIS 10 (2020), https://www.everycrsreport.com/files/20200306_R46246_65be04f15fb8d5e87fabf0269739a267ddb22939.pdf.

42. *Id.* ("Taxpayers with more than $100,000 of AGI received the vast majority of SALT benefits in both 2017 (93%) and 2019 (89%).").

43. *Id.* at 13.

44. *Forthcoming Regulations Regarding the Deductibility of Payments by Partnerships and S Corporations for Certain State and Local Income Taxes: Notice 2020-75*, IRS (last visited Apr. 20, 2021), https://www.irs.gov/pub/irs-drop/n-20-75.pdf ("This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations to clarify that State and local income taxes imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation in computing its non-separately stated taxable income or loss for the taxable year of payment.").

45. *Id.*

46. Howard Gleckman, *Who Owns Pass-Through Businesses, And Who Would Benefit From*

and S corporations are predominantly in the highest income bracket.[47]

Next, the standard deduction amount increased.[48] At first glance, it appeared the increased standard deduction provided tax breaks for low- and middle-income taxpayers, as announced.[49] Deductions are designed to reduce tax liability.[50] However, just as the Gamemakers knew they never intended to honor the new rule to allow two winners, government leaders were aware the wealthiest taxpayers would receive the bulk of the tax cuts.[51]

Third, the standard deduction was increased by sacrificing personal exemptions.[52] The advantage and relevance of the personal exemption was the direct relationship between the number of exemptions to the taxpayer's household size. For example, before the TCJA, a taxpayer was authorized to

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Trump's Plan To Cut Their Taxes?, (Aug. 25, 2016), https://www.taxpolicycenter.org/taxvox/who-owns-pass-through-businesses-and-who-would-benefit-trumps-plan-cut-their-taxes ("And about 26 million of the 38 million households who report business income on their individual tax returns are sole proprietors, and nearly 60 percent make $82,000 or less in total income. However, they report relatively little business income.").

47. *Id.* ("More than half of pass-through business income is reported by those in the 39.6 percent bracket. Those in the 28, 33, or 35 percent brackets account for more than 20 percent-plus of pass-through income. That income distribution is especially skewed for partnerships and S Corps, where TPC estimates about three-quarters of the $590 billion in net income goes to those in the 39.6 percent tax bracket.").

48. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11021, 131 Stat. 2054, 2072 (2017)

49. *See* HOROWITZ, IGIELNIK & KOCHHAR, *supra* note 4, at 11 ("The middle-income range for this analysis is about $40,100 to $120,400 annually for a three-person household. Lower-income families have incomes less than roughly $40,100, and upper-income families have incomes greater than roughly $120,400.").

50. *See, e.g.*, LOWRY, *supra* note 20, at 1.

51. *See* FRANK SAMMARTINO, PHILIP STALLWORTH & DAVID WEINER, TAX POLICY CTR., THE EFFECT OF THE TCJA INDIVIDUAL INCOME TAX PROVISIONS ACROSS INCOME GROUPS AND ACROSS THE STATES 2 (2018), https://www.taxpolicycenter.org/sites/default/files/publication/154006/the_effect_of_the_tcja_individual_income_tax_provisions_across_income_groups_and_across_the_states.pdf ("Taxpayers in the bottom income-quintile (those with income less than $25,000) will see an average tax cut of $40, or 0.3 percent of after-tax income. Taxpayers in the middle income-quintile (those with income between about $49,000 and $86,000) will receive an average tax cut of about $800, or 1.4 percent of after-tax income. Taxpayers in the 95th to 99th income percentiles (those with income between about $308,000 and $733,000) will benefit the most as a share of after-tax income, with an average tax cut of about $11,200 or 3.4 percent of after-tax income. Taxpayers in the top 1 percent of the income distribution (those with income more than $733,000) will receive an average cut of nearly $33,000, or 2.2 percent of after-tax income.").

52. COMM. ON WAYS AND MEANS, TAX CUTS AND JOBS ACT, H.R. REP. NO. 115-409, at 124, 125 (2017) ("The Committee believes that consolidating the basic standard deduction, additional standard deduction, personal exemption, and other tax benefits for taxpayer and spouse into a larger standard deduction simplifies the tax code while allowing a minimum level of income to be exempt from Federal income taxation.").

claim an exemption for each person in the taxpayer's household.[53] After the TCJA, a married couple with two children or other dependents received no tax benefit from the increased standard deduction.[54] When the personal exemptions were eliminated, married households comprised of more than three members experienced a tax increase.

For example, in 2017 (2016 tax year), before the TCJA, the standard deduction for Married Household A was $12,700 and the personal exemption amount was $4,050 per person.[55] If this couple had one child or someone who qualified as a dependent, the standard deduction and personal exemptions resulted in $24,850 subtracted from their adjusted gross income (AGI) and reduced their tax liability.[56] When the same couple filed in 2020, after the TCJA, they had $24,800 subtracted from their AGI.[57]

While it appeared the taxpayers received essentially the same tax benefit, this couple had a worse tax position after the TCJA. In 2017, the exemptions were separated from the standard deduction.[58] As a result, this household would have benefitted from the standard deduction, personal exemptions, and itemized deductions when costs exceeded $12,700 for qualifying expenses.[59] After the TCJA, the same taxpayers did not benefit from itemized deductions until their expenses exceeded $24,800 for qualifying expenses because exemptions were integrated into the standard deduction.[60] Further, if the

53. *See* I.R.C. § 152 (2018) (defining dependents and eligibility of dependents for tax purposes).

54. *See* TPC STAFF, TAX POLICY CTR., UPDATED EFFECTS OF THE TAX CUTS AND JOBS ACT ON REPRESENTATIVE FAMILIES 3 (2017), https://www.taxpolicycenter.org/sites/default/files/publication/151341/updated_effects_of_tcja_act_on_representative_families_final.pdf (charting the tax differences before and after the TCJA for married couples with two children). For ease of the discussion, the married couple is presumed to file as married filing jointly.

55. Kelly Phillips Erb, *IRS Announces 2017 Tax Rates, Standard Deductions, Exemption Amounts and More*, FORBES (Oct. 25, 2016, 4:39 PM), https://www.forbes.com/sites/kellyphillipserb/2016/10/25/irs-announces-2017-tax-rates-standard-deductions-exemption-amounts-and-more/?sh=404385b75701.

56. *See id.*; *see also* I.R.C. § 62 (2018) ("[T]he term 'adjusted gross income' means, in the case of an individual, gross income minus deductions.").

57. *Publication 501 (2020), Dependents, Standard Deduction, and Filing Information*, IRS [hereinafter *Publication 501*], https://www.irs.gov/publications/p501 (last visited Feb. 19, 2020).

58. *See* Erb, *supra* note 55.

59. *See id.*

60. See *Publication 501*, supra note 57; see also *How the TCJA Changes to Personal Exemptions, Standard Deductions, and the Child Credit Could Impact Your Tax Liability*, KRAFT CPAS (Jan. 22, 2018) [hereinafter *How the TCJA Changes Could Impact Your Tax Liability*], https://www.kraftcpas.com/articles/tcja-changes-personal-exemptions-standard-deductions-child-credit-impact-tax-liability/ (explaining that while the TCJA eliminated personal exemptions, it nearly doubled the standard deduction).

couple gained another dependent during the taxable year, the increased standard deduction did not adjust for the additional member of the household as personal exemptions had in the past.[61]

Further, compare Married Household B, who did not have children. The increased standard deduction provided a greater benefit to Married Couple B because it incorporated the equivalent of three personal exemptions.[62] In that regard, the increased standard deduction had regressive effects.

The child tax credit was increased to compensate for the elimination of personal exemptions.[63] This was an inefficient and ineffective substitute. The additional child tax credit had specific limitations and did not apply to all children.[64] Next, the child tax credit did not apply to other dependents, while the personal exemptions applied to all qualified dependents for the taxable year.[65]

Elimination of the personal exemption removed a valuable tool designed to provide tax relief for the low- and middle-income households.[66] Historically, the personal exemption reduced taxpayer liability by setting the amount high enough to avoid taxing low-income taxpayers when combined with the standard deduction.[67] After the TCJA, most tax returns claimed the

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61. See *How the TCJA Changes Could Impact Your Tax Liability*, *supra* note 60.

62. *Compare* Erb, *supra* note 55 (stating that the pre-TCJA standard deduction for a couple married filing jointly was $12,700, and the personal exemption is $4,050), *with Publication 501*, *supra* note 57 (showing that the post-TCJA standard deduction increased by $12,100, roughly three times the personal exemption rate of $4,050 per person).

63. *See How Did the Tax Cuts and Jobs Act Change Personal Taxes?*, TAX POLICY CTR. (last visited Feb. 19, 2021), https://www.taxpolicycenter.org/briefing-book/how-did-tax-cuts-and-jobs-act-change-personal-taxes ("TCJA repealed personal and dependent exemptions. In place of personal exemptions, TCJA increased the standard deduction, discussed below. In place of dependent exemptions, TCJA increased the child tax credit (CTC) and created a new $500 tax credit for dependents not eligible for the child tax credit . . . .").

64. *See* I.R.C. § 24(c), (h)(4) (2018).

65. *See How Did the TCJA Change Taxes of Families With Children?*, TAX POLICY CTR. (last visited Feb. 19, 2021), https://www.taxpolicycenter.org/briefing-book/how-did-tax-cuts-and-jobs-act-change-personal-taxes ("[TCJA] doubled the maximum per child credit amount from $1,000 to $2,000 starting in 2018. . . . TCJA created a new nonrefundable $500 credit for other dependents, including children who are too old to be eligible for the CTC, full-time college students, other adult members of the household for whom the taxpayer provides significant financial support, and children who would otherwise be eligible for the $2,000 child tax credit but lack a valid social security number.").

66. *See* McMahon, Jr., *supra* note 31, at 473 ("Low income individuals are relieved from an income tax burden through three major allowances: the personal and dependency exemptions, the standard deduction, and the earned income credit.").

67. *See* Alan L. Feld, *Fairness in Rate Cuts in the Individual Income Tax*, 68 CORNELL L. REV. 429, 434 (1983) ("The high level of the personal exemption meant that the income tax reached only discretionary household income: for each household the tax base excluded a significant amount of

standard deduction.[68] Now, the justifications for other expensive expenditures claimed under the itemized deduction are even less justified.[69]

Unlike the Hunger Games, Congress had multiple rule changes and they did not publicly announce the actual rule changes; they were more subtle. Prior to the TCJA, taxpayers who itemized deductions were subject to limitations.[70] In 2017 (2016 tax year), the itemized deductions were phased out for Married Household A when the AGI exceeded $311,300.[71] After the TCJA, the AGI limitations were repealed.[72] Consequently, taxpayers whose AGI exceeded $311,300 received tax relief.[73]

The SALT deduction should be eliminated, the personal exemption should be reinstated, and the AGI limits on itemized deductions should be restored. The SALT deductions are still a subsidy for the wealthy, and even more so after the TCJA and Notice 2020-75. State and federal governments adjusted the rules to reduce tax liability for the wealthiest without making similar adjustments for lower income households.

Personal exemptions were considered as a part of the tax code and thus not as an expenditure.[74] The elimination was unjustified especially in light of

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income available to cover subsistence at a modestly acceptable level of comfort. The tax fell on relatively few families and when it did apply, it extended only to family income in excess of that part which covered food, clothing, and shelter needs." (footnote omitted)).

68. INTERNAL REVENUE SERV., STATISTICS OF INCOME—2018 INDIVIDUAL INCOME TAX RETURNS 22 (rev. 2020), https://www.irs.gov/pub/irs-pdf/p1304.pdf ("Most tax returns (87.3 percent) claimed a standard deduction, and standard deductions accounted for 77.6 percent of total deductions. In 2017, the standard deduction was taken on 68.9 percent of returns and accounted for only 39.3 percent of total deductions. The total amount of the standard deduction claimed for Tax Year 2018 rose 148.5 percent, while the average standard deduction claimed increased from $8,718 for 2017 to $16,780 for 2018.").

69. *See id.* at 24 ("The largest itemized deduction for 2018 was interest paid, followed by charitable contributions and taxes paid. Interest paid[] decreased 37.1 percent from the previous year to $197.5 billion. Mortgage interest accounted for 89.0 percent ($175.8 billion) of the total interest paid deduction.").

70. *See* LOWRY, *supra* note 20, at 6 ("The limitation on itemized deductions was initially included in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508), drafted by Representative Donald Pease of Ohio. Commonly referred to as 'Pease' by tax analysts, it effectively increases taxes on high-income tax filers without explicitly increasing tax rates.").

71. *Id.* at 7 ("For the 2016 tax year (2017 filing season), the Pease threshold amounts are adjusted to $259,400, if single and not married; $285,350, if head of household; $311,300, if married filing jointly or a surviving spouse; or $155,650, if married, filing separately.").

72. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11046, 131 Stat. 2054, 2088 (2017).

73. *See id.*

74. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-13-167SP, TAX EXPENDITURES: BACKGROUND AND EVALUATION CRITERIA AND QUESTION 4 (2012), https://www.gao.gov/assets/660/650371.pdf ("Even with an income tax, judgments must be made about what is normal and

the repeal of AGI limits on itemized deductions. Increasing the standard deduction by integrating the personal exemption was an attack on the poor and disbanded a successful alliance between the standard deduction and personal exemptions.[75]

Congress changed the rules knowing the people who would be hurt the most would be powerless to resist, similar to the treatment of people in the districts who were powerless to resist the oppression exhibited by the Capitol.

III. THE CORNUCOPIA

> I'm fast. I can sprint faster than any of the girls in our school although a couple can beat me in distance races. But this forty-yard length, this is what I am built for. I know I can get it, I know I can reach it first, but then the question is how quickly can I get out of there?[76]

On the first day of the Seventy-fourth Hunger Games, the tributes were released to an open field with a Cornucopia filled with food, water, weapons, and other supplies necessary for survival. To have the best chance for survival, the tributes needed to obtain weapons that reinforced their strengths. When Katniss spotted the bow and arrows, she knew this was her weapon of strength and might be the key to saving her life. Even though the weapons and other supplies were in her line of sight, she did not have access. Those weapons and supplies were strategically placed with barriers to limit or obstruct access, so she had to take a different, longer path.

The reality version of the Cornucopia might have various tools for success such as education, income stability, wealth generating assets, and investing.[77]

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what is an exception. For example, Treasury and the congressional Joint Committee on Taxation (JCT), which both estimate revenue losses from tax expenditures, have decided that the personal exemption is part of the normal income tax and not a tax expenditure. However, the exemption for child dependents ages 19 through 23 who are full-time students is a tax expenditure.").

75. *See* SAMMARTINO, STALLWORTH & WEINER, *supra* note 51, at 11 ("About two-thirds of taxpayers will receive a tax cut from the individual income tax provisions of the TCJA in 2018. Most (70 percent) households in the lowest income-quintile will not see a reduction in their individual income taxes.").

76. COLLINS, *supra* note 10, at 149.

77. *See, e.g.*, Camille Busette, Jill Simmerman Lawrence, Richard V. Reeves & Sarah Nzau, *How We Rise: How Social Networks Impact Economic Mobility in Racine, WI, San Francisco, CA, and Washington, DC*, BROOKINGS (Jan. 2021), https://www.brookings.edu/essay/how-we-rise-how-social-networks-impact-economic-mobility-in-racine-wi-san-francisco-ca-and-washington-dc/ (discussing the impact of social capital on economic mobility).

Just as the Careers and Gamemakers were the immediate threat to Katniss's access to the bow and arrows, tax policy and government leaders have contributed to threats and obstacles to wealth building by limiting access to education.[78]

A. Access Versus Opportunity for Education

Higher education is a gateway to socioeconomic mobility.[79] Higher education is a tool needed to gain the skills and knowledge necessary to define and reinforce strengths. Higher education also provides credentials needed to secure career positions and qualify for promotions.[80] While there are numerous public colleges and universities available to provide affordable education, opportunity does not equate to access.[81]

Since the nineteenth century, free public elementary and secondary education has been available to White Americans while Black Americans were actively denied access to education.[82] Even after free public education

78. *See, e.g.*, Elizabeth McNichol, *How State Tax Policies Can Stop Increasing Inequality and Start Reducing It*, CTR. ON BUDGET & POLICY PRIORITIES (Dec. 15, 2016), https://www.cbpp.org/research/state-budget-and-tax/how-state-tax-policies-can-stop-increasing-inequality-and-start.

79. PETER D. ECKEL & JACQUELINE E. KING, AM. COUNCIL ON EDUC., AN OVERVIEW OF HIGHER EDUCATION IN THE UNITED STATES: DIVERSITY, ACCESS, AND THE ROLE OF THE MARKETPLACE 16 (James J.F. Forest & Philip G. Altbach, 2007), https://www.acenet.edu/Documents/Overview-of-Higher-Education-in-the-United-States-Diversity-Access-and-the-Role-of-the-Marketplace-2004.pdf ("Since World War II, U.S. higher education has been engaged in a process of 'massification,' that is, expanding to serve students from all walks of life. Motivating this effort is a widespread belief in the power of education to create social and economic mobility and in the morality and social value of making higher education accessible to everyone. Longitudinal data bear out public perceptions: Young people from low-income backgrounds who complete a bachelor's degree have income and employment characteristics after graduation equivalent to their peers from more affluent backgrounds. Education truly can be 'the great equalizer.'" (citation omitted)).

80. *See id.* at 9.

81. *See id.* at 1–2 ("There are only 630 public four-year colleges and universities in the United States. But these institutions—which include regional comprehensive universities that concentrate on undergraduate teaching and graduate preparation in professional fields such as teaching and business, as well as research universities that offer a comprehensive set of undergraduate, graduate, and professional degree programs—enrolled 6.2 million students in 2001.").

82. *See* Phyllis C. Smith, *The Elusive Cap and Gown: The Impact of Tax Policy on Access to Higher Education for Low-Income Individuals and Families*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 181, 183 (2008) ("Public education became available to all children of free men in the United States during the nineteenth century. For children of slaves, however, public education was not available until after President Lincoln issued the Emancipation Proclamation. While public education was theoretically available to the children of former slaves, it was only available in segregated schools." (footnotes omitted)).

became available to Black Americans, they were subjected to segregated schools with inferior resources.[83] Access to education was litigated all the way to the Supreme Court to establish the constitutional right to equal educational opportunities for Black Americans, a right that was inherently available to White Americans.[84]

Still, after the Supreme Court declared it unconstitutional to restrict access to education based on race, higher education was still elusive to Black Americans. After the ruling in *Brown*, education institutions used covert tactics such as increased test scores and higher costs to effectively exclude Black Americans without ever mentioning race.[85] Years of such tactics have impacted both socio-economic status and the opportunity to build wealth.[86] Even when higher education was obtained it was not always enough to compete. Individuals from high-net-worth families have access to human capital and cultural advantages that the passage of time and education cannot equalize.

83. *See id.* at 183–84 ("The education was indeed separate, but it certainly was not equal. The African-American students attended schools with poorly trained teachers, the schools' physical facilities tended to be substandard, and books were scarce and when available they were used and worn. In addition to the aforementioned obstacles, African-American students often had to travel great distances to attend school and suffered from poor nutrition because they lived in poverty." (footnotes omitted)).

84. *See id.* at 189 ("In 1954, the Supreme Court decided *Brown v. Board of Education* which held that segregated education violated the Equal Protection Clause of the Fourteenth Amendment. *Brown* is most widely known for discussions regarding racial segregation in public education, but this decision was instrumental to the issue of access to education in general. While the ruling in *Brown* never mentions the term access, with its decision, the Supreme Court sanctioned the premise and gave authority to the principle that access to education was a fundamental right that warranted constitutional protection. The Court acknowledged that education was essential to a person's success and lot in life, thus, interference with or outright denial of that right, based on race, was a constitutional violation. After *Brown* a multitude of opportunities should have become available to African-American students pursuing higher education; however, years of struggle would come before the letter and the spirit of the law were followed." (footnotes omitted)).

85. *See id.* ("Even with de jure segregation outlawed, some institutions found other ways to limit access to those persons the institutions wished to exclude on racial grounds without specifically stating race as a reason. The most familiar methods of exclusion are to make entry costs prohibitive and set the entry standards so high that only a select few will qualify. In the immediate post-*Brown* era, both test scores and wealth were very effective at preventing racial integration. By raising the cost and scores, low-income families were systematically shut out from higher education opportunities." (footnote omitted)).

86. *See id.* at 185 ("Without access to higher education, it is unlikely that low-income individuals will ever be liberated from poverty.").

B. Sponsorship: Getting the Right Kind of Assistance

> No wonder the District 12 tributes never stand a chance. It isn't just that we've been underfed and lack training. Some of our tributes have still been strong enough to make a go of it. But we rarely get sponsors and he's a big part of the reason why. The rich people who back tributes—either because they're betting on them or simply for the bragging rights of picking a winner—expect someone classier than Haymitch to deal with.[87]

Gaining sponsorship was an important part of the Hunger Games. As Katniss learned about strategies beyond fighting, she recognized tributes from wealthier districts would not have a problem attracting sponsors to gain necessary supplies during the game. Sponsors, as observers, had the discretion and resources to send the specific type of assistance tributes needed during the game.

Low-income households also need sponsors to gain access to higher education because tax credits and deductions are not sufficient. Increasingly, the data show that tax credits primarily benefit the upper middle- and high-income households.[88] Tax benefits for education based on credits and deductions only benefit taxpayers who can afford to pay expenses upfront and wait to receive a tax benefit in the next taxable year.[89]

Various tax acts were implemented to subsidize the costs of higher education. The American Opportunity Tax Credit (AOTC) was implemented as a refundable education credit for eligible taxpayers, with up to $2,500 credit per eligible student for up to four years.[90] The Lifetime Learning Credit (LLC) was implemented as a nonrefundable credit for taxpayers, with up to $2,000

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87. COLLINS, *supra* note 10, at 64.

88. *See, e.g.*, Andrew D. Pike, *No Wealthy Parent Left Behind: An Analysis of Tax Subsidies for Higher Education*, 56 AM. U. L. REV. 1229, 1250 (2007) ("Second, the tax savings that result from claiming the deduction for higher education expenses depend upon a taxpayer's marginal tax rate. For a taxpayer in the fifteen percent tax bracket, the maximum § 222 deduction ($4,000) results in a tax savings of $600. For a taxpayer in the twenty-eight percent tax bracket, the corresponding tax savings is $1,120. The "upside-down" pattern of benefits, with higher-income taxpayers receiving a larger economic benefit than lower-income taxpayers, is problematical. Unless the tuition subsidy for these higher-income taxpayers yields a larger societal benefit than a comparable subsidy for lower-income taxpayers, this distribution of tax benefits cannot be justified." (footnotes omitted)).

89. *See id.* at 1249.

90. I.R.C. § 25A(b) (2018).

for qualifying expenses for qualifying students.[91] Unlike the AOTC, the LLC only applied per taxpayer, not per student,[92] and only applied to eligible expenses paid directly to the institution.[93]

The final education-based tax subsidies for discussion in this article are the Qualified Tuition Programs, commonly referred to as 529 Plans.[94] The 529 Plans may be either prepaid tuition or education savings plans.[95] The 529 education saving plan was implemented as an investment account for taxpayers to pay eligible expenses up to $10,000 per year per beneficiary.[96] Distributions from these accounts for qualified education expenses were tax free.[97] The 529 prepaid tuition plan was implemented as a program for taxpayers to purchase tuition credits for future expenses at current prices at participating institutions.[98]

Eligibility for tax savings under AOTC or LLC required the taxpayer to pay the expenses upfront and wait for the tax benefit in the following year.[99] The LLC further required sufficient income to receive the entire benefit because it was a nonrefundable credit.[100] To participate in the 529 Plans, taxpayers needed disposable income to fund the plans years in advance. In the end, these options are essentially unavailable for low-income families, which compels them to find other sources for financial aid. Without proper sponsorship, such as state and federal grants, low-income households must resort to student loans. While student loans may seem like a good investment in their future, for low-income families, loans would be disastrous if the student did not complete a degree program or worked in a job that did not pay enough to offset the debt. Low-income and Black households are more likely to need student loans to finance their education.[101]

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91. *Id.* § 25A(c).
92. *Id.* § 25A(c)(1).
93. *Id.* § 25A(c)(2)(B).
94. *Id.* § 529.
95. *See id.* § 529(b).
96. *Id.* § 529(c)(9)(B).
97. *Id.* §§ 529(a), (c).
98. *Id.* § 529(b).
99. *See id.* §§ 25A(b)(1), (c)(1) (providing future tax credits for "expenses paid by the taxpayer during the taxable year").
100. *See* Kerry A. Ryan, *Access Assured: Restoring Progressivity in the Tax and Spending Programs for Higher Education*, 38 SETON HALL L. REV. 1, 31 (2008) ("[S]ince neither education-related credit is refundable, the maximum credit is limited by the amount of the taxpayer's positive income tax liability.").
101. *See* Abbye Atkinson, *Race, Educational Loans, & Bankruptcy*, 16 MICH. J. RACE & L. 1, 29–

C. *Impact of the Tax Cuts and Jobs Act*

The TCJA did not make substantive changes to the deductions and credits described above.[102] The TCJA, however, modified the 529 Plans to expand qualified education expenses to include tuition at elementary, secondary, and religious schools.[103] The expansion was made to encourage families to save for future education expenses.[104]

The changes to the 529 Plans primarily benefitted upper middle- and high-income households because these households are most likely to both (1) have the funds to save in advance and (2) enroll children in private elementary and secondary schools.[105] To effectuate access to higher education to low- and middle-income households, reform should focus on the cost of attendance and making higher education more affordable. Instead of using tax subsidies, the federal subsidies should be direct and more immediate to provide financial aid for the entire cost of attendance for low-income families.[106] The problem

30 (2010) ("African Americans are more likely to come from lower income households in which financial resources that might be used to subsidize higher education are likely to be slim, which makes them more likely to require outside financing to pay for college costs. Consequently, in order to address the ever-increasing cost of a college education, African Americans are more likely to need to borrow. Thus, a higher proportion of African American students must begin their post-college lives in debt, which in turn leads to a diminished capability of surviving economic landmines such as sudden medical problems and unexpected lay-offs." (footnotes omitted)).

102. See What Tax Incentives Exist for Higher Education?, TAX POLICY CTR., https://www.taxpolicycenter.org/briefing-book/what-tax-incentives-exist-higher-education (last visited Mar. 15, 2021).

103. I.R.C. § 529(c)(7) (2018).

104. H.R. REP. NO. 115-409 *supra* note 52, at 152 (2017) ("The Committee believes that expanding and strengthening the 529 program will help families have the ability to save for future college expenses. Additionally, the Committee believes that replacing Coverdell savings accounts with an expanded 529 program that allows individuals to save for primary and secondary school tuition is an important step towards consolidating duplicative Code provisions and simplifying the Code.").

105. KURT BAUMAN & STEPHEN CRANNEY, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, SCHOOL ENROLLMENT IN THE UNITED STATES: 2018, 4 (2020) ("Students in private schools came from homes with higher incomes than those students who attended public schools. Specifically, those who attended private kindergarten, elementary school, or high school came from households with median incomes of $99,000 to $109,000, whereas students who attended public schools in kindergarten through 12th grade came from households with median incomes of $68,000 to $79,000." (citation omitted)).

106. *See* Ryan, *supra* note 100, at 56 ("To make college more affordable, a financial subsidy must meaningfully affect net price, including all relevant costs. Qualified expenses for purposes of the education-related tax credits and deduction include only tuition and fees. Title IV, on the other hand, allows its grants to subsidize the entire cost of attendance, including room, board, books, transportation expenses, etc. All of these costs factor into a student's cost-benefit analysis when making the enrollment decision. Accordingly, in order to enhance the ability of the consolidated refundable

with using tax subsidies to facilitate access to education is the people who need the most assistance are often in the least position to obtain it.[107]

Assistance designed to provide access to education for low- and middle-income individuals should be divided into separate categories. Just as the sponsors sent tailored assistance to the tributes, responses to facilitate access to higher education for low-income households should be different. While 529 Plans, tax deductions, loans and/or tax credits may be a good solution for middle-income households, individuals from low-income households typically need financial aid upfront without prepayment or repayment requirements.[108]

IV. THE CAPITOL

A. *Inequalities in Income*

> I stand straight, and while I'm thin, I'm strong. The meat and plants from the woods combined with the exertion it took to get them have given me a healthier body than most of those I see around me.
>
> The exceptions are the kids from the wealthier districts, the volunteers, the ones who have been fed and trained throughout their lives for this moment. The tributes from 1, 2, and 4 traditionally have this look about them. It's technically against the rules to train tributes before they reach the Capitol but it happens every year. In District 12, we call them the Career Tributes, or just the Careers. And like as not, the winner will be one of them.[109]

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college tax credit to increase college attendance by decreasing cost, the new tax credit should adopt Title IV's expanded definition of COA. Harmonization of the definition of qualified expenses should also avoid certain anomalies associated with the interaction between the two systems when differing eligible expense definitions apply." (footnotes omitted)).

107. Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791, 826 (2014).

108. *See* Smith, *supra* note 82, at 218 ("The need based system is designed to provide assistance to someone who lacks the ability and might not ever have the ability to save and pay his or her own college expenses. One set of rules applied to students who are not similarly situated clearly will not result in equal opportunities to access higher education. Reducing Pell Grants and shifting resources to savings type plans creates an advantage to middle and high-income families, at the expense of lower income families.").

109. COLLINS, *supra* note 10, at 94.

When Katniss compared herself to the "Careers," she recognized they had clear advantages. Even though it was illegal to train tributes ahead of the games, the Careers were from wealthier districts, where food was plentiful and training was provided. The odds were clearly in their favor. Still, the President and Gamemakers imposed obstacles and interfered in the games to manipulate the outcome.

Imagine how disheartened a person might feel to know that no matter how hard they try, the deck is stacked in favor of the next person. Similar analogies exist in America and manifest in multiple ways. For example, as previously discussed, access to higher education has a definite impact on socio-economic status and opportunities. While individuals from wealthier households already have the advantages of excellent primary, secondary, and higher education, the government has served as the primary sponsor to make education more affordable for the wealthy through tax subsidies. Conversely, as previously discussed, government agencies have historically interfered with access to education for Black and low-income households.

Higher education provided clear advantages and directly impacted opportunities for income stability and mobility. Individuals who earned at least a bachelor's degree were the least likely to be in poverty.[110] Further, individuals who were more likely to have a bachelor's degree were Asian or White.[111] The Pew Research Center reported that household incomes have steadily increased between 1970 and 2018, except for brief periods of recessions.[112] Even so, income has not grown at the same pace for households

110. JESSICA SEMEGA, MELISSA KOLLAR, JOHN CREAMER & ABINASH MOHANTY, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2018, 17 (2020) ("Among people with at least a bachelor's degree, 4.4 percent were in poverty in 2018, not statistically different from 2017. Among educational attainment groups, people with at least a bachelor's degree had the lowest poverty rates in 2018.").

111. CAMILLE L. RYAN & KURT BAUMAN, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2015, 5 (2016) ("Educational attainment has increased for all race and Hispanic origin groups. Asians had the highest percentage of adults with a bachelor's degree or higher in all years. In 1988, 38 percent of Asians held at least a bachelor's degree compared to 21 percent of non-Hispanic Whites, 11 percent of Blacks, and 10 percent of Hispanics. In 2015, a majority of Asians 25 years and older had a bachelor's degree or higher (54 percent). More than one-third of non-Hispanic Whites had a bachelor's degree or higher (36 percent), 22 percent of Blacks had this level of education, as did 15 percent of Hispanics." (footnotes omitted) (citation omitted)).

112. HOROWITZ, IGIELNIK & KOCHHAR, *supra* note 4, at 13 ("The shortfall in household income is attributable in part to two recessions since 2000. The first recession, lasting from March 2001 to November 2001, was relatively short-lived. Yet household incomes were slow to recover from the 2001 recession and it was not until 2007 that the median income was restored to about its level in

of color.

Using data from the U.S. Census Bureau, the Pew Research Center reported the median adjusted income for Black households was $43,300 and $71,300 for White households.[113] Even among households with college degrees, the income disparity was significant. The median adjusted income for college educated Black households was $82,300 compared to $106,600 for White households.[114]

Tax preferences have also impacted income inequality. In particular, capital gains have enjoyed several different tax preferences; however, this article will reference one for the purpose of this discussion: preferential rates.[115] Preferential rates have been afforded to capital property held more than twelve months, generally referenced as long-term capital gains.[116] Since 1921, long-term capital gains have received preferential rates.[117] Congress justified reduced tax rates to mitigate the "lock-in-effects."[118] The favorable capital gains rates have persisted through major tax reforms and continued to primarily benefit the wealthiest households.[119] Excluding the value of the

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2000. But 2007 also marked the onset of the Great Recession, and that delivered another blow to household incomes. This time it took until 2015 for incomes to approach their pre-recession level. Indeed, the median household income in 2015—$70,200—was no higher than its level in 2000, marking a 15-year period of stagnation, an episode of unprecedented duration in the past five decades." (footnote omitted)).

113. PEW RESEARCH CTR., ON VIEWS OF RACE AND INEQUALITY, BLACKS AND WHITES ARE WORLDS APART 8 (2016), https://www.pewresearch.org/social-trends/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/.

114. *Id.*

115. For a more detailed discussion of capital gains preferences, see Phyllis C. Taite, *Saving the Farm or Giving Away the Farm: A Critical Analysis of the Capital Gains Tax Preferences*, 53 SAN DIEGO L. REV. 1017 (2016).

116. *See* I.R.C. § 1222 (2018) (providing terms and definitions for short- and long-term capital gains and losses). For the purpose of simplicity and ease of discussion, unless otherwise specified, capital gains property refers to property treated as long-term capital gain property as defined by I.R.C. § 1222(3) (2018). Long-term capital gains qualify for preferential rates in accordance with I.R.C. § 1(h) (2018).

117. GREGG A. ESENWEIN, CONG. RES. SERV., RL98473, INDIVIDUAL CAPITAL GAINS INCOME: LEGISLATIVE HISTORY 3 (2007).

118. Richard L. Schmalbeck, *The Uneasy Case for a Lower Capital Gains Tax: Why Not the Second Best?*, 48 TAX NOTES 195, 200 (1990) ("The principle distortion created by the combined effects of a realization requirement and a relatively high tax on realized gains has to do with the tax-induced reluctance to dispose of assets. This is sometimes referred to as the 'lock-in' effect.").

119. Alice Gresham Bullock, *The Tax Code, the Tax Gap, and Income Inequality: The Middle Class Squeeze*, 53 HOW. L.J. 249, 259 (2010) ("The super-rich derive the bulk of their income from capital gains and dividends. Since 1997, the capital gains rate dropped from 28% to 20% to 15%. The 2003 tax cuts, under the George W. Bush administration, reduced the top tax rate on capital gains to less

principal residence, capital assets have been predominantly owned by households with incomes of $200,000 or more.[120]

Lower tax rates on capital gains provided tax relief to taxpayers who had discretionary funds to invest. Meanwhile, income and payroll taxes shouldered the burden of government revenue,[121] and tax expenditures for capital gains and dividends totaled more than $677 billion between 2016 and 2020.[122]

B. The Aftermath: The Great Wealth Divide

Just as tributes from the wealthy districts had a head start with training, children of the wealthy had head starts on higher education attainment and generational wealth. The wealthiest households have generations of wealth building through property ownership facilitated income inequality and tax policy that provides distinct advantages for their households.[123] Higher education has been a pathway to income mobility and intergenerational wealth for families who could afford to finance their descendants.[124] Even with the benefit of higher education, the wealth gap between White and Black

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than half of the 35% rate on ordinary income. Yet, the tax rate on combined income and payroll taxes of typical workers is more than 30%.").

120. CONG. BUDGET OFFICE & JOINT COMM. ON TAXATION, THE DISTRIBUTION OF ASSET HOLDING AND CAPITAL GAINS 4 (2016), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51831-capitalgains.pdf ("When homes are excluded from capital assets, the difference in ownership rates between the top and bottom income groups increases. About 90 percent of families with over $200,000 of income owned nonresidential capital assets, but about 20 percent of families with income of $50,000 or less held such assets.").

121. *See What Are the Sources of Revenue for the Federal Government?*, *supra* note 33 ("The individual income tax has provided nearly half of total federal revenue since 1950, while other revenue sources have waxed and waned. Excise taxes brought in 19 percent of total revenue in 1950, but only about 3 percent in recent years. The share of revenue coming from the corporate income tax dropped from about one-third of the total in the early 1950s to 7 percent in 2019. In contrast, payroll taxes provided more than one-third of revenue in 2019, more than three times the share in the early 1950s." (citation omitted)).

122. JOINT COMM. ON TAXATION, *supra* note 34, at 33.

123. *See* Palma Joy Strand & Nicholas A. Mirkay, *Racialized Tax Inequity: Wealth, Racism, and the U.S. System of Taxation*, 15 NW. J. L. & SOC. POL'Y. 265, 270 (2020) ("Historical waves of nation-scale wealth-building initiatives accrued primarily to the benefit of Whites, both native and foreign-born, excluding Black citizens and other people of color.").

124. John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 6 MICH. L. REV. 722, 730 (1988) ("The educational demands of modern economic life have become immense, and so has the cost of providing children with this educational endowment. A central thesis of this article is that paying for education has become the characteristic mode of intergenerational wealth transmission for most American families.").

households has persisted.[125]

As previously discussed, education and tax policy have contributed to income inequality.[126] Income inequality has contributed to wealth inequality.[127] When individuals who accomplished the same work were paid different amounts based on race, the ability to accumulate wealth was improved in the person who received higher pay. Additionally, how income was taxed played a factor in wealth inequalities.[128] When the government chose to grant more favorable rates to passive income rather than labor income, they stacked the deck for wealthier households despite historical justifications.[129]

Consistent with disparities in education and income levels, disparities in homeownership rates also negatively impact wealth building for low- and middle-income taxpayers.[130] The racial disparity in homeownership existed with Black households even at higher income levels. The Black homeownership rate was 68% compared to 84% for White taxpayers at similar income levels and educational attainment.[131] To facilitate homeownership and wealth building for low- and middle-income households, and more specifically Black households, the government should structure programs to

125. PEW RESEARCH CTR., *supra* note 113, at 24 ("While median net worth tends to increase as levels of educational attainment rise, the white-black gap in wealth persists even controlling for educational differences. For example, the median net worth of black households headed by someone with at least a bachelor's degree was $26,300 in 2013, while for households headed by white college degree holders that net worth was $301,300—11 times that of blacks.").

126. *See supra* notes 110–120 and accompanying text.

127. *See, e.g.*, HOROWITZ, IGIELNIK & KOCHHAR, *supra* note 4, at 16 (showing how income growth has been the most rapid for those who are in the wealthiest of households).

128. *How Do Taxes Affect Income Inequality?*, TAX POLICY CTR. (last visited Feb. 26, 2021), https://www.taxpolicycenter.org/briefing-book/how-do-taxes-affect-income-inequality.

129. *See How Did the Tax Cuts and Jobs Act Change Personal Taxes?*, *supra* note 63; *see also* Strand & Mirkay, *supra* note 123, at 266 ("The IRC and many state tax codes operate directly to increase wealth inequality, deepening pre-existing historically-based racial wealth disparities. The recent Tax Cuts and Jobs Act of 2017 (TCJA) intensifies these effects.").

130. PEW RESEARCH CTR., *supra* note 113, at 25 ("White householders have consistently higher rates of homeownership than racial and ethnic minorities. For instance, 72% of white householders own their own home, compared with 43% of black householders. As is the case with household wealth, the white-black gap in homeownership is also widening somewhat; in 1976, the homeownership rate among blacks was 44% vs. 69% for whites.").

131. *Id.* ("Homeownership rates generally rise for blacks and whites who have higher incomes and more education, but the differences between black and white households persist. The homeownership rate of upper-income blacks (68%) is significantly lower than the rate of upper-income whites (84%). The same is true among the highly educated—58% of black householders with a college degree own their home, compared with 76% of whites.").

make homeownership more affordable instead of using government resources to subsidize costs for the wealthiest households.[132]

A home is often the largest asset in a family household, and the lack or loss of a home has a detrimental impact on family wealth.[133] According to a report by Pew Research, racial minorities were more impacted by the Great Recession than White households.[134] In addition to homeownership rates, higher education rates, and higher wages, the wealthiest households, which are more likely to be White households, also own the most capital assets.[135] White households owned more stock, at much higher rates, than Black or Hispanic households.[136]

Educational attainment, income disparity, homeownership, wealth accumulation, and wealth transference were all significant factors in creating significant disparities in wealth between White and Black households. In 2013, the median wealth of White households was 13 times greater than for Black households, and this wealth gap has persisted over time.[137] As the wealth gap continued to widen, the government did nothing to address these inequalities.

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132. *See generally*, Phyllis C. Taite, *Taxes, The Problem and Solution: A Model for Vanishing Deductions and Exclusions for Residence-Based Tax Preference*, 59 N.Y.L. SCH. L. REV. 361 (2015).

133. CONG. BUDGET OFFICE & JOINT COMM. ON TAXATION, *supra* note 120, at 11 ("When personal residences are excluded, the proportion of families owning capital assets declines to 36 percent, and the gap between the average and median values of the remaining assets increases: The average value of families' capital asset portfolio excluding their personal residence was $691,000 in 2010, and the median value was $91,000.").

134. PAUL TAYLOR ET AL., PEW RESEARCH CTR., WEALTH GAPS RISE TO RECORD HIGHS BETWEEN WHITES, BLACKS AND HISPANICS 10 (2011), https://www.pewresearch.org/social-trends/2011/07/26/chapter-1-the-macroeconomic-context/ ("Another facet of the housing meltdown is the rise in foreclosure rates. According to RealtyTrac©, the number of homes in the U.S. with at least one foreclosure filing increased from 0.6% in 2006 to 2.2% in 2010. The rates were much higher in some states: Nevada (9.4%); Arizona (5.7%); Florida (5.5%); and California (4.1%). Research also suggests that Hispanics and blacks were twice as likely as whites to experience foreclosures from 2007 to 2009").

135. *Id.* at 22–23.

136. *Id.* at 23.

137. PEW RESEARCH CTR., *supra* note 113, at 24 ("Households headed by whites have considerably higher median net worth—a measure of the value of what a household owns minus what it owes—than those headed by blacks. In 2013, the net worth of white households was $144,200, roughly 13 times that of black households, according to Pew Research Center analysis of data from the Federal Reserve's Survey of Consumer Finances. The wealth gap between black and white households has widened since 1983, when the median wealth of white households ($98,700) was eight times that of the wealth of black households ($12,200). The gap narrowed in the 1990s and early 2000s but increased in the years following the Great Recession." (footnotes omitted)).

C. *Impact of the Tax Cuts and Jobs Act*

The TCJA has further contributed to income inequality and fortified the great wealth divide. Not only did the TCJA retain favorable rates for capital gains property, it also expanded the base for taxpayers to qualify for 15% tax rates.[138] Before the TCJA, the 15% rate applied to married households whose taxable income fell between the 25% and 35% tax brackets.[139] After the TCJA, the rate structure expanded the 15% bracket to married households with taxable income between $77,200 and $479,000, and taxpayers with taxable income above $479,000 were taxed at 20%.[140] This one change provided significant tax breaks for the wealthy at significant costs to the government.[141]

Next, the TCJA significantly increased the exclusion amount to facilitate substantial transfers of tax-free wealth. In the years leading up to the passage of the TCJA, the exclusion amount for transfer taxes had already significantly increased compared to historical increases.[142] The increased exclusion amount has exacerbated wealth concentration and facilitated wealth advantages for generations to come.[143]

138. TAX POLICY CTR., *supra* note 33, at 148.
139. *Id.*
140. *Id.*
141. *See* JOINT COMM. ON TAXATION, *supra* note 34, at 33 ("Tax expenditures for reduced rates for long-term capital gains between 2016 and 2020 were $677.7 billion.").
142. *See* Phyllis C. Taite, *Exploding Wealth Inequalities*: *Does Tax Policy Promote Social Justice or Social Injustice?*, 36 W. NEW ENG. L. REV. 201, 211–12 (2014) ("The Taxpayer Relief Act of 1997 (TRA 1997) brought about annual incremental increases that started at $625,000 and the increases were scheduled to reach $1,000,000 by 2006. The exclusion increases, scheduled to occur under TRA 1997 after 2001, were preempted by even more increases under the Economic Growth and Tax Reconciliation Relief Act of 2001 (EGTRRA). Even with the increases in exemption amounts, the number of estate tax returns filed increased from an estimated 109,000 in 1998 to 122,000 by 2001. EGTRRA, also known as the Bush Tax Cuts, called for increases from $1,500,000 in 2004 up to $3,500,000 in 2009 and a total repeal for 2010." (footnotes omitted)); *see also id.* at 212 ("In 2012, the American Taxpayer Relief Act passed and the $5.12 million exemption amount became the unified transfer tax exemption amount and the highest marginal rate was 40%.").
143. *See generally* Phyllis C. Smith, *Change We Can't Believe in . . . or Afford: Why the Timing Is Wrong to Reduce the Estate Tax for the Wealthiest Americans*, 42 U. MEM. L. REV. 493 (2012).

With all the advantages afforded the wealthy, who represent less than 10% of all households, the odds will always be in their favor. The Gamemakers, characterized by government leaders, have tipped the scales in their favor in ways that have a disparate impact on minorities, particularly Black households. As tax policy has been a catalyst for inequalities, it should be used to stimulate change to reverse some of the effects.

V. CONCLUSION

Income and wealth disparity in America are significant issues which have persisted too long. Tax policy has played its role in facilitating these inequalities and should be used to reverse some of the effects. While America is not likely to morph into the extreme dystopic state depicted in *The Hunger Games*, significant change is still necessary. The America that has promoted equal liberty and justice for all has ignored policies that contributed to and exacerbated income and wealth inequality.

Just as Katniss clearly recognized the obvious advantages exhibited by the "Careers," most Americans recognize the advantages afforded the wealthy. While the Gamemakers manipulated the games to benefit the wealthy, the same construct is true for the American government. Even though wealthier households have already received clear advantages in education, property ownership, and wealth transference, government leaders still use tax policy to provide even more advantages. Inequalities are more evident when income and wealth are measured between the races.

When the TCJA eliminated the personal exemptions, it removed a valuable tool designed to provide tax relief for low- and middle-income households. For the first time in history, the standard deduction and personal exemptions were integrated to simplify the tax law, but most deductions and exemptions that primarily benefit the wealthy remained intact.

Drastic measures are required to reverse centuries of inequalities to build a system based on justice, equity, and equality. While there is no direct correlation between eliminating personal exemptions and any specific deductions or tax preferences for the wealthy, the personal exemptions were sacrificed to help finance the tax cuts implemented under the TCJA.

American government leaders have used tax policy to favor the wealthy. Tax policy is but one weapon of the many weapons used to maintain the status quo, and the Tax Cuts and Jobs Act was the latest weapon employed to continue rewarding the wealthy and remind us that inequalities are here to stay. "Panem today, Panem tomorrow, Panem forever."[144]

144. CATCHING FIRE (Lionsgate Films 2013).

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